

Environmental Planning and Assessment Amendment (Affordable Housing Development Contributions) Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* with respect to development contributions as follows:

- (a) to require any development consent for the erection and use of buildings containing 10 or more dwellings to include a condition requiring the dedication of land, or the payment of a monetary contribution, for the purpose of providing affordable housing (and to require that development contribution to be no more than 25 per cent of the total floor area of the proposed building or buildings or its cash equivalent),
- (b) to omit the consideration of the potential impact of a proposed development contribution on the affordability of housing from the key considerations for development contributions,
- (c) to make affordable housing a key community infrastructure, so that a council's contributions plan can require a community infrastructure contribution to be made for the purpose of providing affordable housing,
- (d) to omit a provision that requires that planning agreements entered into by councils be limited to key community infrastructure,
- (e) to remove the Minister's power to direct a consent authority to transfer land dedicated, or a monetary contribution paid, as a compulsory development contribution to a person nominated by the Minister,
- (f) to require the consent authority, in all cases, to make available land dedicated as a compulsory contribution, or to apply a monetary contribution paid as a compulsory development contribution, for the purposes of affordable housing or to transfer the land, or pay the monetary contribution, to a social housing provider or a council,
- (g) to provide that any community infrastructure contribution or a State infrastructure contribution can be used for the purpose of providing affordable housing.

This Bill also repeals *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)* and makes consequential amendments to the *Redfern—Waterloo Authority Act 2004* and a number of environmental planning instruments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Redfern—Waterloo Authority Act 2004* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the environmental planning instruments specified in Schedule 3.

Clause 6 repeals *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)* as a consequence of the amendments made by Schedule 1 [1] and [7] to the proposed Act.

Clause 7 provides for the repeal of the proposed Act after the proposed Act commences. Once the proposed Act commences, it will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Schedule 1 [1] replaces the existing definition of *affordable housing* in section 4 (1) of the *Environmental Planning and Assessment Act 1979* (which currently provides for the regulations or an environmental planning instrument to specify which households affordable housing is provided for). The revised definition covers housing that is intended to be supplied to households having disposable incomes in the lowest 40 per cent of household incomes, for the time being, for the Statistical Subdivision of Inner Sydney, according to data published by the Australian Bureau of Statistics, and at a rental of no more than 30 per cent of relevant tenants' incomes.

Schedule 1 [2] inserts a note that is consequential on the amendment made by Schedule 1 [7].

Schedule 1 [3] and [5] make affordable housing a kind of key community infrastructure. (Proposed section 116I provides that a council's contributions plan cannot allow the council to require a community infrastructure contribution unless the community infrastructure is key community infrastructure or additional approved community infrastructure).

Schedule 1 [4] omits the consideration of the potential impact of a proposed development contribution on the affordability of housing from the key considerations for development contributions for the purposes of proposed Part 5B (Provision of public infrastructure).

Schedule 1 [6] omits a provision that provides that planning agreements entered into by councils are limited to key community infrastructure.

Schedule 1 [7] replaces the provisions about affordable housing proposed to be inserted by uncommenced provisions of the *Environmental Planning and Assessment Amendment Act 2008*.

Proposed section 116Y requires the payment of monetary contributions, or the dedication of land, for the purpose of affordable housing as a condition of any development consent relating to the erection of buildings containing 10 or more dwellings. (At present a development contribution may be required (at the consent authority's discretion) for the purpose of providing affordable housing in the case of any development.) The new provision may be imposed only if the need for affordable housing has been identified in a local environmental plan, rather than a State environmental planning policy.

Proposed section 116Z requires other contributions to be taken into account by a consent authority.

Proposed section 116ZA makes it clear that the proposed Division does not prevent the imposition of other conditions concerning affordable housing.

Proposed section 116ZB removes the Minister's power to direct a consent authority to transfer such land or such a monetary contribution to a person nominated by the Minister and requires the consent authority, in all cases, to make such land available, or apply such a monetary contribution, for the purposes of affordable housing.

Proposed section 116ZBA provides that a monetary contribution (together with any additional amount earned from its investment) may be applied for the purpose of providing affordable housing in the area concerned or an adjoining area even if the purpose for which the contribution was paid is not related to affordable housing.

Schedule 1 [8] makes an amendment that is consequential on the amendment made by Schedule 1 [1].

Schedule 1 [9] enables the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [10] makes provision of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Consequential amendment of Redfern–Waterloo Authority Act 2004

Schedule 2 [1]–[6] contains amendments to the *Redfern–Waterloo Authority Act 2004* that are consequential on the amendment made by Schedule 1 [7].

Schedule 2 [7] amends clause 1 of Schedule 4 to the *Redfern–Waterloo Authority Act 2004* to enable the Governor to make regulations of a savings or transitional nature consequent on the amendments made to that Act by Schedule 2 [1]–[6].

Schedule 3 Consequential amendment of environmental planning instruments

Schedule 3 contains amendments to South Sydney Local Environmental Plan 1998, Sydney Regional Environmental Plan No 26—City West and Willoughby Local Environmental Plan 1995 that are consequential on the amendment made by Schedule 1 [7].