



New South Wales

Planning Administration Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Planning Bill 2013*.

Overview of Bill

The object of this Bill is to make provision relating to the administration of the planning legislation.

Outline of provisions

Part 1 Preliminary

Clause 1.1 sets out the name (also called the short title) of the proposed Act.

Clause 1.2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 1.3 defines certain words and expressions used in the proposed Act. In particular: *NSW Planning Director-General* means the Director-General of the Department of Planning and Infrastructure.

planning legislation is defined to mean any of the following:

- (a) the proposed *Planning Act 2013* and the instruments under that proposed Act,
- (b) this proposed Act and the instruments under this proposed Act.

Part 2 Minister and NSW Planning Director-General

Clause 2.1 declares that the Minister has portfolio responsibility for planning and the administration of the planning legislation.

Clause 2.2 declares that the NSW Planning Director-General has departmental responsibility for planning and the administration of the planning legislation and is subject to Ministerial control (except in relation to the contents of any advice, recommendation or report made by the NSW Planning Director-General to the Minister).

Clause 2.3 authorises the Minister or the NSW Planning Director-General to establish committees or panels for the purposes of the planning legislation. Under the proposed *Planning Act 2013*, the Minister is required to establish a committee to advise on community participation in planning matters to be known as the Community Participation Advisory Panel.

Clause 2.4 authorises the Minister, the Planning Ministerial Corporation and the NSW Planning Director-General to delegate their respective functions under the planning legislation.

Part 3 Planning Ministerial Corporation

Clause 3.1 constitutes a NSW Government agency to be known as the Planning Ministerial Corporation. The corporation is a continuation of the corporation sole under the former Act known as "the Minister administering the *Environmental Planning and Assessment Act 1979*".

Clause 3.2 requires the affairs of the Corporation to be managed by the NSW Planning Director-General in accordance with Ministerial directions.

Clause 3.3 refers to the land functions of the Corporation set out in Schedule 1 (which generally continue the existing land functions of the corporation sole under the former Act).

Clause 3.4 refers to Schedule 7 to the proposed *Planning Act 2013* which contains provisions relating to Planning Growth Funds and other financial provisions relating to the Corporation (which generally continue the existing financial functions of the corporation sole under the former Act).

Part 4 Planning Assessment Commission

Clause 4.1 constitutes the Planning Assessment Commission (the *Commission* or *PAC*) as a NSW Government agency. The Minister does not have the power to direct and control the Commission, except in relation to certain procedural and other matters.

Clause 4.2 provides that the Commission is to consist of between 4 and 9 members appointed by the Minister with expertise in relevant fields.

Clause 4.3 sets out the functions of the Commission, including the provision on request of advice to the Minister or the NSW Planning Director-General, the holding of public hearings at the request of the Minister and, in certain circumstances, the performance of the functions of a regional planning panel or subregional planning board.

Clause 4.4 sets out how the Commission is to be constituted for the purposes of carrying out any of its functions, including the number of members.

Clause 4.5 provides for the work of the Commission to be allocated by its chairperson.

Clause 4.6 allows for the functions of the Commission to be delegated with the approval of the Minister.

Part 5 Regional planning panels

Clause 5.1 constitutes the regional planning panels listed in Schedule 3 (being the joint regional panels under the existing Act).

Clause 5.2 requires regional planning panels to comprise 3 State members and 2 nominees of the applicable council with expertise in relevant fields.

Clause 5.3 outlines the functions of regional planning panels, including the specified functions of a consent authority for regionally significant development.

Clause 5.4 deals with the members and procedure of regional planning panels.

Clause 5.5 allows, with the approval of the Minister, the functions of regional planning panels to be delegated to a council or its staff.

Part 6 Subregional planning boards

Clause 6.1 constitutes the subregional planning boards to be listed in Schedule 4 by Ministerial planning order.

Clause 6.2 requires subregional planning boards to comprise not more than 4 State members, nominees from councils in its area and a chairperson with expertise in relevant fields.

Clause 6.3 declares that subregional planning boards have the functions conferred or imposed on them under the planning legislation or any other legislation.

Clause 6.4 deals with the functions, members and procedure of subregional planning boards.

Part 7 Provisions relating to councils

Clause 7.1 makes provisions for a council to constitute panels of experts (independent hearing and assessment panels) to exercise the council's function of determining development applications, or to assess those applications, as may be required by the planning control provisions of the local plan or determined by the council.

Clause 7.2 requires the Planning Assessment Commission or a regional planning panel to consult with a council on matters having a significantly adverse financial impact on the council.

Clause 7.3 requires councils to provide requested assistance, including facilities and staff, to the Planning Assessment Commission or a regional planning panel.

Clause 7.4 limits the operation of the *Local Government Act 1993* with respect to delegations to the general manager or other staff of a council under the proposed Act.

Part 8 Investigative powers

Division 1 Preliminary

Clause 8.1 defines certain words and expressions used in the Part. In particular:

- (a) *investigation authority* means:
- (i) a council, in relation to an investigation officer appointed by the council, or
 - (ii) the NSW Planning Director-General, in relation to any other investigation officer.
- (b) *investigation officer* means a person appointed as an investigation officer under the proposed Part by the NSW Planning Director-General (a *departmental investigation officer*) or by a council (a *council investigation officer*).

Clause 8.2 provides for the appointment of investigation officers by the NSW Planning Director-General or a council.

Clause 8.3 specifies the purposes for which departmental investigation officers can exercise their powers, including to determine whether there has been compliance with or a contravention of the planning legislation. The clause also specifies the purposes for which council investigation officers can exercise their powers.

Division 2 Powers of entry and search

Clause 8.4 enables investigation officers to enter and search premises (excluding residential premises) without a search warrant or the consent of the occupier.

Clause 8.5 requires an investigation officer to provide notice to the owner or occupier of premises before entering without consent. The clause also lists exceptions to this requirement.

Clause 8.6 sets out a list of things an investigation officer can lawfully do upon entering premises (including the power to seize anything connected with an offence).

Clause 8.7 relates to the issuing of search warrants to investigation officers.

Clause 8.8 requires investigation officers to do as little damage as possible in the exercise of a power of entering or searching.

Clause 8.9 requires an investigation officer who uses force to enter, or enters in an emergency, to notify the investigation authority.

Division 3 Powers to obtain information

Clause 8.10 enables an investigation officer to issue a notice requiring a person to provide that officer with information and records connected with an investigation purpose.

Clause 8.11 enables an investigation officer to require a person to answer questions in relation to matters connected with an investigation purpose.

Clause 8.12 allows an investigation officer to record any questions and answers given under the proposed Division if the officer has informed the person being questioned that such a recording will be made.

Division 4 Miscellaneous provisions applying to exercise of powers

Clause 8.13 specifies certain offences and penalties under proposed Part 8.

Clause 8.14 requires an investigation officer to produce an identification card upon request when exercising functions under proposed Part 8.

Clause 8.15 enables the investigating authority to require an owner or occupier to provide reasonable assistance and facilities where required under proposed Part 8.

Clause 8.16 relates to compensation for any damage caused by the actions of investigation officers.

Clause 8.17 enables an investigation authority to recover costs related to entry and inspection.

Clause 8.18 contains general provisions relating to notices.

Clause 8.19 deals with the admissibility of records, information and answers collected pursuant to the proposed Act for the purposes of criminal proceedings.

Clause 8.20 enables an authorised fire officer to exercise the powers of an investigation officer in relation to fire safety issues.

Clause 8.21 provides that the regulations may confer certain investigative powers on a building certifier or subdivision certifier.

Part 9 Monitoring and environmental auditing of approved development

Clause 9.1 states that the proposed Part applies to the carrying out of State significant development, or State infrastructure development, that has planning approval under the planning legislation.

Clause 9.2 is an interpretive provision that includes the following definitions for the purposes of the proposed Part:

- (a) *monitoring* of development is the monitoring of the carrying out of the development to provide data on compliance with the approval of the development or on the development's environmental impact,
- (b) an *environmental audit* of development is a periodic or particular documented evaluation of approved development to provide information to the proponent of the development and

to the persons administering the planning legislation on compliance with the approval of the development or on the development's environmental management or impact.

Clause 9.3 enables the Minister to require an environmental audit or monitoring of a development as a condition of approval for that development.

Clause 9.4 contains provisions relating to the possible forms of monitoring and environmental audit that may be required as a condition of approval.

Clause 9.5 specifies offences and penalties relating to proposed Part 9, including the provision of false or misleading information and the failure to provide relevant information with respect to monitoring data or an audit report.

Clause 9.6 makes it clear that self-incriminatory information is not exempt from the disclosure requirements and that any such information is admissible as evidence in the prosecution of an offence.

Part 10 Miscellaneous

Clause 10.1 contains general provisions in relation to the disclosure and misuse of information obtained in connection with the administration of the planning legislation. In particular, the clause prohibits a person acting in the administration of the planning legislation to use his or her position to gain a personal advantage. This prohibition extends to associated persons.

Clause 10.2 provides for an exclusion of personal liability for persons acting in the administration of the planning legislation when acting in good faith.

Clause 10.3 relates to the delegation of functions under the planning legislation. In particular, the clause allows public authorities to delegate functions to staff members.

Clause 10.4 relates to the publication of instruments of delegation on the NSW planning portal.

Clause 10.5 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Property provisions relating to Planning Ministerial Corporation

The Schedule contains general provisions in relation to land functions of the Planning Ministerial Corporation, including the ability of the Corporation to sell, lease, exchange or otherwise dispose of or deal with land. The Schedule empowers the Corporation to acquire land by agreement and by compulsory processes.

Schedule 2 Provisions relating to Planning Assessment Commission

The Schedule contains general provisions relating to the Planning Assessment Commission, including provisions relating to public hearings and the procedure of those hearings.

Schedule 3 Constitution of regional planning panels

The Schedule constitutes the 6 existing regional planning panels and specifies the local government areas associated with each panel.

Schedule 4 Constitution of subregional planning boards

The Schedule constitutes the subregional planning boards (which are to be inserted by Ministerial order).

Schedule 5 Provisions relating to planning bodies

Part 1 defines certain terms relevant to Schedule 5, including *planning body* which is to include either the Planning Assessment Commission, a regional planning panel, a subregional planning board or a committee or panel established by the Minister or the NSW Planning Director-General under section 2.3 of the proposed Act.

Part 2 contains general provisions relating to the members of planning bodies, including the duration of terms of office, remuneration and removal from office.

Part 3 contains general provisions relating to the procedure of planning bodies.

Schedule 6 Savings, transitional and other provisions

The Schedule contains savings and transitional provisions that provide for continuity between the proposed Act and the *Environmental Planning and Assessment Act 1979 (former Act)*. These provisions enable regulations of a savings or transitional nature to be made. The Schedule also continues entities established under the former Act and preserves some appointments made under the former Act.