



New South Wales

# Planning Bill 2013

## Explanatory note

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

## Overview of Bill

The object of this Bill is to introduce a new planning system for New South Wales as outlined in the Government's White Paper released in April 2013. Following public consultation a number of changes have been made to the reforms outlined in the White Paper, in particular to increase community participation and local community powers in relation to planning matters and to provide greater scrutiny of planning decisions.

## Outline of provisions

### Part 1 General

**Division 1.1** contains preliminary provisions, including the name of the proposed Act, the commencement of the proposed Act on a date to be proclaimed and the following objects of the proposed Act:

- (a) to promote the growth of the State's economy and increased productivity,
- (b) to promote sustainable development,
- (c) to provide opportunities for early and on-going community participation in strategic planning and to promote transparent decision-making,
- (d) to facilitate and manage growth by the co-ordination, planning, delivery and integration of infrastructure and services in strategic planning,

- (e) to promote the timely delivery of business, employment and housing opportunities (including for housing choice and affordable housing),
- (f) to promote the protection of the environment and heritage, including by:
  - (i) the conservation of biodiversity, and
  - (ii) the conservation and sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to enable the effective management of natural hazards and natural resources, including agricultural land, water and minerals,
- (h) to promote health and safety in the design, construction and performance of buildings,
- (i) to promote health, amenity and quality in the design and planning of the built environment,
- (j) to promote efficient and timely development assessment that is proportionate to the likely impacts of proposed development,
- (k) to share responsibility between all levels of government for planning and the management of growth.

*Sustainable development* is defined as development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs. Sustainable development is achieved by the integration of relevant economic, environmental and social considerations in decision-making about planning and development.

**Division 1.2** deals with the interpretation of words and expressions used in the proposed Act. The Division contains the definitions of key words and expressions—Schedule 1 contains a dictionary of all relevant words and expressions. The key words and expressions include the following:

- (a) development,
- (b) strategic plans (namely, NSW planning policies, regional growth plans, subregional delivery plans and local plans),
- (c) planning approvals (namely, development consents, State infrastructure approvals and construction and other certificates under Part 8),
- (d) infrastructure plans and contributions (including local infrastructure plans and growth infrastructure plans),
- (e) development likely to significantly affect threatened species and biodiversity offsets.

**Division 1.3** contains general provisions that list the categories of development and that provide for criminal and civil enforcement for carrying out prohibited development or development without or contrary to planning approval or building and related work activity without a certificate under Part 8.

## **Part 2 Community participation**

The Part sets out the Community Participation Charter which contains principles to engage the community (including industry, businesses, residents, interest groups and organisations) in strategic planning, planning decisions and other planning matters. The Part requires planning authorities (including the Minister and councils) to exercise their planning functions consistently with the Charter. For that purpose, planning authorities are to have community participation plans about how they will undertake community participation.

Certain community participation requirements will be mandatory (see Part 1 of Schedule 2 to the proposed Act).

The NSW Planning Director-General is also required to provide online delivery of planning information and services (including on the NSW planning portal).

## **Part 3 Strategic planning**

**Division 3.1** contains introductory provisions, including identifying the relevant planning authority for preparing strategic plans, being the NSW Planning Director-General for NSW

planning policies or regional growth plans, the relevant subregional planning board for subregional delivery plans and the council (or other designated authority) for local plans.

**Division 3.2** deals with the preparation and making of strategic plans (other than local plans). The Division sets out what each such plan is to contain and establishes a hierarchy of plans that give effect to each other (namely NSW planning policies, then regional growth plans, then subregional delivery plans and finally local plans).

**Division 3.3** makes general provisions in relation to local plans. The Division establishes a local plan for each council area (and for any other areas not within a council area). The local plan is to comprise provisions as follows:

- (a) strategic context provisions,
- (b) planning control provisions,
- (c) development code or guide provisions,
- (d) contribution provisions.

The Division declares that the Minister may make the provisions of local plans, but authorises the council to make planning control provisions authorised by a gateway determination, local infrastructure contributions provisions and other provisions.

**Division 3.4** deals with the planning control provisions of local plans. The provisions are those that are currently contained in environmental planning instruments, including land use zoning and the categories of development. The Division continues provisions relating to the standard instrument program for the planning control provisions of a local plan. The Division also continues as part of the process for making planning control provisions:

- (a) the requirement for a planning proposal to be prepared, and
- (b) a gateway process where the Minister determines whether the proposal is to proceed and a number of related matters (such as the period of public exhibition and whether the making of the plan is devolved to the council), and
- (c) the ability to suspend covenants and agreements.

**Division 3.5** contains miscellaneous provisions relating to strategic plans, including provisions relating to the public exhibition of proposed plans and the circumstances in which plans can be made without compliance with the conditions precedent for their making.

## **Part 4 Development (other than infrastructure) assessment and consent**

**Division 4.1** contains introductory provisions including:

- (a) declaring that the Part applies to development that requires development consent, and
- (b) identifying the provisions that apply to development consent in the form of a complying development certificate, and
- (c) providing that development applications may be assessed as complying development, code assessed or merit assessed.

**Division 4.2** declares who is the consent authority for development, namely:

- (a) a certifier—for complying development the subject of an application for a complying development certificate, and
- (b) the Minister—for State significant development, and
- (c) a regional planning panel—for regionally significant development, and
- (d) the council or other designated public authority—for other development.

**Division 4.3** deals with complying development. A building or subdivision certifier is required to issue a certificate if the development complies with the relevant standards in the development code or guide provisions of the local plan.

**Division 4.4** deals with code and merit assessment. Code assessment is a new assessment process under which consent may be granted for development that is identified in the planning control provisions of the local plan and that meets the development standards in the relevant development assessment code for precinct development (and which adopts acceptable or alternative solutions to meet the relevant performance criteria in the local plan). Code assessment will not apply to certain development (such as EIS assessed development, development that requires heritage approval or that is subject to concurrence or consultation because of the effect on threatened species).

If development is not code assessed it is to be merit assessed according to similar considerations that currently apply.

The Division continues provisions relating to the referral of proposals to the Planning Assessment Commission (*PAC*), staged development applications and other matters.

**Division 4.5** relates to the imposition of conditions of development consent in line with existing provisions.

**Division 4.6** makes additional provisions for State significant development. The Minister is authorised to “call in” development as State significant development.

**Division 4.7** introduces a new procedure to enable the carrying out of development otherwise prohibited by the planning control provisions of a local plan. Proposed development may be permitted if the regional planning panel (or, in limited circumstances, the NSW Planning Director-General) issues a strategic compatibility certificate on the grounds that the planning control provisions have not yet been amended to give effect to a new regional growth plan or subregional delivery plan and that the proposed development will not have any significant adverse impact on the likely future uses of surrounding land.

**Division 4.8** deals with the modification of development consents.

**Division 4.9** contains miscellaneous provisions (including with respect to Crown development applications and the lapsing of development consent).

## **Part 5 Infrastructure and environmental impact assessment**

**Division 5.1** continues arrangements under Part 5 of the existing Act for environmental impact assessment of development that is not subject to Part 4 assessment and consent. The assessment generally applies when a public authority proponent carries out development or a determining authority grants approval for the development under other legislation. The Division continues the general duty to consider the environmental impact of relevant development and to obtain and consider an environmental impact statement if the development is likely to have a significant effect on the environment (including if the development is likely to significantly affect threatened species).

**Division 5.2** provides for the declaration of State infrastructure development that requires the approval of the Minister but does not require development consent under Part 4. The Division continues existing provisions relating to the environmental assessment and approval of such development.

**Division 5.3** deals with a new category of development to be called public priority infrastructure. Once particular development is declared by the Minister as public priority infrastructure, it can be carried out without further planning approval. In order to be declared, the development needs to be identified as priority infrastructure in a strategic or infrastructure plan (other than a local plan) or, in the opinion of the Minister, be essential for the State. Before public priority infrastructure is carried out, the proponent is required to prepare and publicly consult on a project definition report. The other provisions of the proposed Act do not generally apply to public priority infrastructure.

## **Part 6 Concurrences, consultation and other legislative approvals**

**Division 6.1** sets out the approvals under other legislation that do not apply to public priority infrastructure, State infrastructure development or State significant development (including

approvals under fisheries management legislation, heritage approvals, native vegetation clearing approvals and water management approvals).

The Division also sets out the approvals under other legislation that must be issued consistently for public priority infrastructure, State infrastructure development or State significant development (including environment protection licences and mining leases).

**Division 6.2** sets out requirements in relation to development (with certain exceptions) for consultation or concurrence with relevant Ministers or agencies if the development is likely to significantly affect threatened species, if required under planning control provisions of local plans or if carried out on certain bush fire prone land.

The Division continues and expands existing provisions that enable a local plan to be amended to remove consultation or concurrence requirements or other statutory provisions so as to facilitate the carrying out of development.

**Division 6.3** introduces a new one stop referrals and decisions process for other legislative approvals (and for concurrences and consultation) to replace existing provisions that apply to integrated development. Under the new procedure, a single set of general terms of approval for development are to be issued by the NSW Planning Director-General in accordance with State assessment requirements rather than being issued by the approval bodies. If a development consent is granted for development consistently with the general terms of approval, the approval body is to grant any related legislative approval in a form that is substantially consistent with the general terms of approval.

## **Part 7 Infrastructure and other contributions**

**Division 7.1** contains introductory provisions, including:

- (a) a definition of *local infrastructure* to mean local roads, local drainage works, open space and community facilities, and
- (b) a definition of *regional infrastructure* to mean regional or State roads, land for drainage, transport infrastructure, regional open space and educational establishments, and
- (c) the application of the Part to development that requires consent under Part 4, or any State infrastructure development that is not carried out by or on behalf of a public authority.

**Division 7.2** empowers a consent authority, by condition of development consent, to impose a local infrastructure contribution in accordance with the contribution provisions of the local plan. A local infrastructure contribution may be a direct contribution (a reasonable contribution having a nexus with the proposed development) or an indirect contribution (a contribution based on a percentage of capital investment value or based on the area of the proposed development). The Division contains provisions for local infrastructure plans which identify the local infrastructure to be funded by local infrastructure contributions.

**Division 7.3** empowers a consent authority, by condition of development consent, to impose a regional infrastructure contribution in accordance with the contribution provisions of the local plan. A regional infrastructure contribution is to be an indirect contribution (a contribution based on a percentage of capital investment value or calculated by reference to the area of the proposed development or other authorised method). The Division contains provisions for growth infrastructure plans which identify the regional infrastructure to be funded by regional infrastructure contributions.

**Division 7.4** authorises a consent authority, by condition of development consent, to impose a biodiversity offset contribution for the conservation and enhancement of the natural environment of the State in accordance with the contribution provisions of the local plan. Biodiversity offset contributions are to be paid into specially created funds in the threatened species legislation.

**Division 7.5** relates to planning agreements between public authorities and the developers of land for the payment of money, the provision of land or the carrying out of works by the developer for infrastructure, affordable housing or the conservation or enhancement of the natural environment. Planning agreements can exclude the payment of local, regional or biodiversity offset contributions. A planning agreement can be made in contemplation of a development application

or proposed change to a local plan, but cannot require a public authority to grant consent or exercise planning functions to change a local plan.

**Division 7.6** establishes a Regional Contributions Fund for regional infrastructure contributions to be administered by the Secretary of the Treasury.

## **Part 8 Building and subdivision**

**Division 8.1** contains introductory provisions, including the list of certificates that may be issued under the Part, namely:

- (a) construction certificates, and
- (b) subdivision works certificates, and
- (c) occupation certificates, and
- (d) subdivision certificates, and
- (e) compliance certificates.

**Division 8.2** sets out the requirements in order to commence building work, the requirement to obtain a construction certificate from a certifier (unless a complying development certificate has been issued as development consent) and the requirement to obtain an occupation certificate from a certifier once the work is completed.

**Division 8.3** sets out the requirements in order to commence subdivision work, the requirement to obtain a subdivision works certificate from a certifier and the requirement to obtain a subdivision certificate to register the subdivision once the work is completed and other obligations have been complied with.

**Division 8.4** deals with compliance certificates that may be obtained from a certifier (including a completion of work compliance certificate that can be an authorised alternative to an occupation certificate in certain cases).

**Division 8.5** carries forward existing provisions that limit liability for defective building or subdivision work.

**Division 8.6** contains miscellaneous provisions, including the new requirement for an owner's building manual to be provided with the issue of an occupation certificate for a building.

## **Part 9 Reviews and appeals**

**Division 9.1** contains introductory provisions, including a definition of *Court* to mean the Land and Environment Court.

**Division 9.2** enables an applicant for development consent to request, in certain cases, a review of the determination of the application. Generally, reviews are to be conducted by a person who is not subordinate to the person who determined the application.

**Division 9.3** continues rights of appeal to the Court under the existing Act in relation to development consent, including rights of appeal by the applicant for development consent or by the objector in the case of EIS assessed development. There is no right of appeal if the decision is made after a public hearing by the PAC or if the decision related to a complying development certificate.

**Division 9.4** provides rights of appeal to the Court in relation to a failure or refusal to issue a certificate under Part 8.

**Division 9.5** provides rights of appeal to the Court in relation to the issue of development control orders under Part 10.

**Division 9.6** makes miscellaneous provisions relating to appeals.

## **Part 10 Enforcement**

**Division 10.1** confers Ministerial enforcement powers, including directions to planning authorities for the timely exercise of their planning functions.

**Division 10.2** makes provision for development control orders to enforce obligations under the proposed Act, comprising general orders, fire safety orders and brothel closure orders. The Division sets out the persons or bodies who may give orders, including councils and the Minister or NSW Planning Director-General in relation to State significant and other specified development.

Detailed provisions relating to orders are contained in Schedule 10.

**Division 10.3** continues the civil enforcement jurisdiction of the Land and Environment Court in relation to remedying or restraining breaches of the proposed Act.

The Division also continues provisions:

- (a) that limit the period for court challenges to the validity of plans and planning approvals to the period of 3 months after the plan or approval is made or given, and
- (b) that limit the requirements of the proposed Act that are mandatory for the purposes of determining the validity of plans and approvals to the mandatory community participation requirements, and
- (c) that make special provision where development consents are tainted by corruption.

**Division 10.4** deals with criminal offences and proceedings. The Division sets out the maximum penalties for offences against the proposed Act, with different penalties for Tier 1, Tier 2 and Tier 3 offences.

The Division also makes other provisions relating to the time within which proceedings may be commenced, penalty notices and ancillary offences.

## **Part 11 Miscellaneous**

**Division 11.1** empowers the making of regulations for the purposes of the proposed Act, including regulations that insert or amend provisions in the ancillary Schedules of the proposed Act and savings and transitional regulations.

**Division 11.2** provides for fees and charges under the planning legislation.

**Division 11.3** provides for the issue of planning and building information certificates to prospective purchasers of property and other persons.

**Division 11.4** continues provisions of the existing Act relating to the protection of existing uses.

**Division 11.5** continues provisions of the existing Act relating to contaminated land liability.

**Division 11.6** makes provisions for bush fire prone land, including the preparation of maps of any such land.

**Division 11.7** contains general miscellaneous provisions, including the continuation of existing provisions relating to the disclosure of political donations in connection with planning matters.

## **Schedule 1 General—ancillary provisions**

The Schedule contains the dictionary of words and expressions used in the proposed Act. Key terms are defined in Part 1 of the proposed Act.

The Schedule also sets out the test for determining whether proposed development is likely to significantly affect threatened species (which continues the existing test but provides that proposed development is not likely to do so if biodiversity assessment procedures adopted by the regulations so determine).

## **Schedule 2 Community participation—ancillary provisions**

Part 1 sets out the mandatory community participation requirements for public exhibition or notification. Part 2 contains general provisions relating to community participation. Part 3 deals with the delivery of e-planning services and information, including the NSW planning portal.

### **Schedule 3 Strategic planning—ancillary provisions**

The Schedule contains regulation-making powers.

### **Schedule 4 Development (other than infrastructure) assessment and consent—ancillary provisions**

The Schedule deals with the lapsing of consent, biobanking, orders for conditional validity of consents and other miscellaneous matters.

### **Schedule 5 Infrastructure and environmental impact assessment—ancillary provisions**

The Schedule continues existing provisions relating to environmental impact assessments and State infrastructure development, and regulation-making powers for that development or public priority infrastructure.

### **Schedule 6 Concurrences, consultation and other legislative approvals—ancillary provisions**

The Schedule contains a provision relating to heritage and bush fire approvals. In particular, the Schedule requires the NSW Planning Director-General to act (except in limited circumstances) in accordance with advice of the Heritage Council and the Rural Fires Services Commissioner when determining one stop referrals.

### **Schedule 7 Infrastructure and other contributions—ancillary provisions**

The Schedule contains regulation-making powers (including for a system of statutory charges to secure payment of contributions under Part 7). The Schedule also continues the funds under the existing Act administered by the Ministerial Corporation (re-named the Planning Growth Funds and Trust Funds).

### **Schedule 8 Building and subdivision—ancillary provisions**

The Schedule contains regulation-making powers.

### **Schedule 9 Reviews and appeals—ancillary provisions**

The Schedule contains regulation-making powers.

### **Schedule 10 Enforcement—ancillary provisions**

Part 1 of the Schedule continues Ministerial powers to appoint regional planning panels or administrators to exercise the planning functions of councils in the place of the council in certain specified circumstances.

Part 2 of the Schedule contains the detailed provisions relating to the issue of development control orders.

Part 3 of the Schedule contains ancillary evidentiary provisions for civil enforcement.



### **Schedule 11 Miscellaneous—ancillary provisions**

The Schedule contains miscellaneous regulation-making powers and continues special provisions relating to paper subdivisions.

### **Schedule 12 Savings, transitional and other provisions**

The Schedule contains savings and transitional provisions consequent on the repeal of the existing Act and the enactment of the proposed Act.