

LEGISLATIVE COUNCIL

Planning Bill 2013

First print

Proposed amendments

Drafting note 1.1 *These amendments relate to affordable housing.*

- No. 1 Page 4, clause 1.8. Insert after line 8:
(4) For the purposes of this Act, an ***affordable housing contribution*** is an affordable housing contribution set out in the contribution provisions of a local plan.
- No. 2 Page 13, clause 3.9, line 44. Omit “or biodiversity offset contributions,”. Insert instead “biodiversity offset contributions or affordable housing contributions”.
- No. 3 Page 14, clause 3.10, line 5. Omit “or biodiversity offset”. Insert instead “, biodiversity offset or affordable housing”.
- No. 4 Page 15, clause 3.13 (k), line 37. Omit all words on that line. Insert instead:
(k) providing, maintaining and retaining affordable housing and encouraging housing choice,
- No. 5 Page 61, clause 7.1. Insert after line 4:
affordable housing contribution means a contribution imposed under Division 7.5.
- No. 6 Page 69, Part 7. Insert after line 9:

Division 7.5 Affordable housing contributions

7.26 Affordable housing contributions for proposed development

- (1) A consent authority can impose an affordable housing contribution on development to fund the provision of affordable housing in the area in which development is proposed to be carried out.
- (2) An affordable housing contribution is a contribution requiring either or both of the following:
 - (a) the dedication free of cost of part of the land comprising the proposed development (or of other land of the applicant for development consent) to be used for the provision of affordable housing,

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- (b) the payment of money as a contribution towards the provision of affordable housing.
 - (3) In this Division, the *provision* of affordable housing includes the extension or augmentation of affordable housing and recoupment of the cost of providing, extending or augmenting affordable housing.
 - (4) An affordable housing contribution is imposed by means of a condition of development consent for the development concerned.

7.27 Contributions to be in accordance with contribution provisions of local plan

An affordable housing contribution must be in accordance with the local plan for the area, that is:

- (a) an affordable housing contribution can only be imposed in respect of development or a class of development that the local plan provides can be the subject of an affordable housing contribution, and
- (b) the size and amount of an affordable housing contribution is to be determined in accordance with the local plan.

7.28 Nexus and other requirements for contributions

- (1) An affordable housing contribution is to be a reasonable contribution, having regard to the following:
 - (a) the extent of the need in the area for affordable housing,
 - (b) the scale of the proposed development,
 - (c) any local infrastructure contribution imposed in respect of the proposed development.
- (2) An affordable housing contribution can only be imposed if:
 - (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing in the area, or
 - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing in the area, or
 - (c) the proposed development can only be carried out after amendments are made to the local plan, or
 - (d) the regulations otherwise authorise the imposition of an affordable housing contribution.
- (3) Nothing in this Division prevents the imposition on a development consent of other conditions relating to the provision or retention of affordable housing. Such conditions may require, but are not restricted to, the imposition of covenants (including positive covenants) or the entering into of contractual or other arrangements.

7.29 Making or payment of affordable housing contributions

- (1) An affordable housing contribution is to be made or payable to the consent authority that imposes the contribution.
- (2) The time for making or payment of an affordable housing contribution is as required by the local plan.
- (3) The consent authority can accept the carrying out of works-in-kind in part or full payment of an affordable housing contribution.
- (4) The local plan can provide for the indexation of affordable housing contributions under the plan that comprise the payment of money by providing for a contribution to increase at a specified rate of indexation between the date the contribution is imposed and the date of payment of the contribution. The amount payable in satisfaction of a contribution is to be increased in accordance with the indexation provisions of the local plan.

7.30 Use of affordable housing contributions

- (1) Land dedicated as an affordable housing contribution:
 - (a) is to be transferred to the consent authority and made available by the consent authority for affordable housing within a reasonable time, or
 - (b) is to be transferred to a person nominated by the Minister in an applicable direction under subsection (3) and made available by that person for affordable housing within a reasonable time.
- (2) Money paid in satisfaction of an affordable housing contribution:
 - (a) is to be held by the consent authority and applied for the purpose of affordable housing in the area or an adjoining area within a reasonable time, or
 - (b) is to be paid to a person nominated by the Minister in an applicable direction under subsection (3) and applied by that person for the purpose of affordable housing in the area or an adjoining area within a reasonable time.

Money paid in satisfaction of an affordable housing contribution includes any additional amount earned from investment of that money and any proceeds of sale of land received in satisfaction of an affordable housing contribution.

- (3) The Minister may direct a consent authority:
 - (a) to pay any money paid in satisfaction of an affordable housing contribution to a person nominated by the Minister, or
 - (b) to transfer any land dedicated as an affordable housing contribution to a person nominated by the Minister.

7.31 Complying development

- (1) The local plan must specify whether or not an affordable housing contribution for which the plan provides is to be imposed on development when a complying development certificate is issued for the development.
- (2) A certifier must impose a condition on a complying development certificate requiring the making or payment of an affordable housing contribution if the local plan so requires (with the size and amount of the contribution to be as required by the local plan).
- (3) If a certifier fails to impose the necessary condition, such a condition has effect as if it had been imposed by the certifier.
- (4) A certifier (other than a council) cannot accept the carrying out of works-in-kind in payment of an affordable housing contribution.
- (5) An affordable housing contribution imposed by a certifier (other than a council) is to be made or payable to the council of the area.

7.32 Appeals

A condition of development consent that imposes an affordable housing contribution may be disallowed or amended by the Land and Environment Court on appeal under Part 9 because it is not reasonable in the particular circumstances of the case, even if it was in accordance with the local plan. The Court cannot disallow or amend the local plan.

No. 7 Page 69, clause 7.26 (1) (c), line 20. Omit “that is identified in a strategic plan”.

No. 8 Page 69, clause 7.27, line 41. Omit “or Division 7.4 (Biodiversity offset contributions)”. Insert instead “; Division 7.4 (Biodiversity offset contributions) or Division 7.5 (Affordable housing contributions)”.

No. 9 Page 70, clause 7.27. Insert after line 7:

(d) a public authority is not to enter into a planning agreement excluding the application of Division 7.5 unless the planning authority is the Minister or does so with the approval of the Minister.

No. 10 Page 70, clause 7.27, line 9. Omit “or 7.4”. Insert instead “, 7.4 or 7.5”.

No. 11 Page 71, clause 7.31, line 5. Omit “and 7.4”. Insert instead “, 7.4 and 7.5”.

No. 12 Page 118, Schedule 1, Dictionary. Insert after line 6:
affordable housing contribution—see section 1.8.