

LEGISLATIVE COUNCIL

Planning Bill 2013

First print

Proposed amendments

No. 1 Page 2, clause 1.3, lines 8–38. Omit all words on those lines. Insert instead:

1.3 Objects of Act

- (1) The objects of this Act are:
 - (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land, and
 - (iii) the protection, provision and co-ordination of communication and utility services, and
 - (iv) the provision of land for public purposes, and
 - (v) the provision and co-ordination of community services and facilities, and
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
 - (vii) ecologically sustainable development, and
 - (viii) the provision and maintenance of affordable housing, and
 - (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
 - (c) to provide increased opportunity for public involvement and participation in decision-making about planning and development.

Drafting note 1.1 *If this amendment is successful the following amendment would not be moved.*

No. 2 Page 2, clause 1.3, lines 37 and 38. Omit all words on those lines. Insert instead:

- (3) The principles that should inform whether sustainable development is achieved include the following:

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- (a) the sustainable use of resources,
 - (b) the plausible and reasonable evaluation of whether there is a threat of serious or irreversible environmental damage, the degree of certainty and proportional preventative actions,
 - (c) the polluter pays,
 - (d) the inclusion of environmental factors in the valuation of assets and services.
- (4) Strategic plans should seek to implement sustainable development in any such decision-making about planning and development.

No. 3 Page 5, clause 1.12. Insert after line 7:

- (f) any other measures to benefit biodiversity that accord with the policy on environmental offsets adopted in 2012 under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.
- (4) The measures to benefit biodiversity are ranked in descending order prescribed by the regulations commencing with direct measures that provide the greatest biodiversity benefit to indirect biodiversity benefits that compensate for the likely impacts of proposed development.
- (5) The regulations may make provision for the compilation and publication of a register of biodiversity offsets that are conditions of planning approvals or that are otherwise to be provided in connection with the carrying out of development.

No. 4 Page 5, clause 1.13 (b), line 27. Insert “, along with other merit assessed development,” after “and that”.

Drafting note 1.2 *This amendment consequential on giving objectors appeal rights in case of any merit assessed development not just EIS assessed development.*

No. 5 Page 9, clause 2.4 (3), line 34. Omit “discretionary”.

No. 6 Page 9, clause 2.4. Insert after line 38:

- (4) The mandatory requirements for community participation referred to in section 2.5 are taken to include any other forms of community participation that are set out in a community participation plan and that are identified in that plan as mandatory requirements.

No. 7 Page 9, clause 2.4. Insert after line 43:

- (7) Planning authorities are to publish annual reports, in accordance with the regulations, on their implementation of community participation plans.

No. 8 Page 10, clause 2.8. Insert after line 27:

- (c) in particular, to provide advice and make recommendations to the Minister on the adequacy of draft community participation plans and the implementation of the Community Participation Charter through the operation of those plans,

No. 9 Page 11, clause 3.4 (2). Insert after line 36:

- (d) proposed growth areas in the region (including historical context and themes for those areas),

No. 10 Page 12, clause 3.5 (2) (d), line 17. Insert “(including historical context and themes for those areas)” after “growth areas in the subregion”.

No. 11 Page 12, clause 3.6. Insert after line 47:

(4) When making a decision under this section, the Minister is to have regard to the objects of this Act.

No. 12 Page 15, clause 3.13 (c), line 21. Omit “, EIS assessed development”.

Drafting note 1.3 *This is the first of a number of amendments that provide that EIS assessed development is to be the classes of development prescribed by the regulations rather than prescribed by a local plan.*

No. 13 Page 15, clause 3.13 (j), line 36. Insert “, including places of Aboriginal heritage significance” after “conservation areas”.

No. 14 Page 17, clause 3.17, lines 30–33. Omit all words on those lines. Insert instead:

(3) After reviewing the planning proposal, the Minister must determine whether the proposal should proceed (with or without variation).

Drafting note 1.4 *Opposition amendment No 14 is repeated but not changed - it is required if amendment No 15 is changed as follows.*

No. 15 Page 17, clause 3.17. Insert after line 35:

(a) the minimum period of public exhibition of the planning proposal (or a determination that no such public exhibition is required because of the minor nature of the proposal),

Note. Under Schedule 2, the mandatory period of public exhibition is 28 days if a determination is not made under paragraph (a).

No. 16 Page 18, clause 3.18 (4), lines 22 and 23. Omit all words on those lines. Insert instead:

(4) Further public exhibition of a revised planning proposal is required unless the Minister determines in the revised gateway determination that further public exhibition is not required because of the minor nature of the variation to the planning proposal.

No. 17 Page 19, clause 3.22. Insert after line 44:

(3) However, that planning control provision does not apply to the following in respect of development other than State infrastructure development or public priority infrastructure:

(a) a trust agreement within the meaning of the *Nature Conservation Trust Act 2001*,

(b) a biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*,

(c) a property vegetation plan within the meaning of the *Native Vegetation Act 2003*,

(d) a conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*.

No. 18 Page 20, clause 3.24 (1). Insert after line 34:

(a) the economic, environmental and social conditions of the area concerned,

(b) any likely cumulative impacts of future development and of targets and actions to achieve those targets identified in the draft plan (or proposal),

(c) any relevant statutory instrument that applies to the area concerned.

No. 19 Page 20, clause 3.24 (1). Insert after line 37:

(c) the objects of this Act.

- No. 20 Page 20, clause 3.24 (2), lines 38-42. Omit all words on those lines.
- No. 21 Pages 20 and 21, clause 3.25, line 44 on page 20 to line 3 on page 21. Omit all words on those lines. Insert instead:
- (1) The public exhibition of a draft strategic plan (or proposal for a strategic plan) is to be accompanied by such documents as are required by the regulations.
 - (2) If the draft is a principal regional growth plan or a principal subregional delivery plan, the public exhibition of the draft is to be accompanied by a strategic assessment statement.
Note. See Schedule 3 with respect to the preparation of strategic assessment statements.
- No. 22 Page 21, clause 3.27 (2), lines 30 and 31. Omit all words on those lines. Insert instead:
- following if the proposed plan has been publicly exhibited in accordance with the requirements of Part 1 of Schedule 2:
- No. 23 Page 21, clause 3.27 (2) (b), lines 34 and 35. Omit “State, regional or subregional significance”. Insert instead “State or regional significance”.
- No. 24 Page 24, clause 4.7 (2), lines 34–36. Omit all words on those lines. Insert instead:
- (2) A council may issue a variation certificate for an aspect of a development only if it is satisfied that non-compliance with the standard or requirement is likely to have only a minor additional adverse impact on the environment and development on the surrounding land.
- No. 25 Page 28, clause 4.18 (2) (c), line 25. Insert “(including Aboriginal cultural heritage impacts and other heritage impacts)” after “natural and built environments”.
- No. 26 Page 29, clause 4.19 (3), lines 22–27. Omit all words on those lines.
- No. 27 Page 30, clause 4.22 (2), lines 30 and 35. Omit “EIS assessed development” wherever occurring. Insert instead “merit assessed development”.

Drafting note 1.5 *This amendment consequential on giving objectors appeal rights in case of any merit assessed development not just EIS assessed development.*

- No. 28 Page 30, clause 4.22 (2), lines 32 and 33. Omit all words on those lines.

Drafting note 1.6 *This amendment is consequential on the proposed removal of clause 9.6 (3) (a) which would have prevented appeals to the Court where there is a PAC hearing.*

- No. 29 Page 32, clause 4.28 (2), lines 41–43. Omit all words on those lines. Insert instead:
- (2) The Minister may make that declaration only if the Minister has first obtained and made publicly available advice from the Planning Assessment Commission that supports the declaration of the development as State significant development.
- No. 30 Page 33, clause 4.29 (1) and (2), lines 5–18. Omit all words on those lines. Insert instead:
- (1) An application for development consent for State significant development is (whether or not it is EIS assessed development) to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in accordance with the regulations.
Note. Schedule 2 requires the application (and accompanying EIS) to be publicly exhibited for at least 28 days.

No. 31 Page 33. Insert after line 42:

4.30 State significant development must meet net positive standard for biodiversity outcomes

- (1) Development consent cannot be granted for State significant development unless the Minister is satisfied that:
 - (a) the applicant for consent has demonstrated that all practical steps have been taken to avoid or minimise the likely impacts of the proposed development on biodiversity, and
 - (b) the proposed development, together with any proposed biodiversity offsets, will result in a net improvement in biodiversity outcomes.
- (2) The determination of whether proposed development, together with any proposed biodiversity offsets, will result in a net improvement in biodiversity outcomes is to be determined by a biodiversity outcomes assessment methodology adopted by the regulations for the purposes of this section (being a procedure adopted after public exhibition of the proposed procedure for a period of not less than 2 months and its certification by the Natural Resources Commission as an appropriate methodology for its purpose).
- (3) A biodiversity outcomes assessment methodology is to be adopted within 12 months after the commencement of this Act.

No. 32 Page 35, clause 4.32 (3), lines 2 and 3. Omit “EIS assessed development.”

Drafting note 1.7 *This amendment relates to EIS assessed development being the classes of development prescribed by the regulations rather than prescribed by a local plan.*

No. 33 Page 35, clause 4.34, lines 18 and 19. Omit all words on those lines. Insert instead:

- (a) a regional growth plan that applies to the area has been in force for at least 2 years or subregional delivery plan that applies to the area has been in force for at least 1 year, and

No. 34 Page 35, clause 4.34. Insert after line 22:

- (d) the development will not be carried out in an environmentally sensitive area, and

No. 35 Page 35, clause 4.34, line 24. Insert “and environment” after “uses”.

No. 36 Page 36, clause 4.41 (1) (c), line 44. Omit all words on that line.

No. 37 Page 39, clause 5.3 (1), lines 36 and 37. Omit “take into account the matters affecting or likely to affect the environment”. Insert instead “take into account to the fullest extent possible all matters affecting or likely to affect the environment”.

No. 38 Page 42, clause 5.9. Insert “**and other provisions**” after “**exemptions**” on line 17 and insert after line 27:

- (2) A determining authority is to make publicly available in accordance with the regulations any review or statement of environmental effects, prepared by or on behalf of the determining authority in relation to relevant development for which an environmental impact statement has not been obtained, as soon as practicable after it has been prepared and before the grant of any approval for the development.

No. 39 Page 42, clause 5.10. Insert after line 35:

- (4) The Minister may make that declaration only if the Minister has first obtained and made publicly available advice from the Planning Assessment Commission about whether the Minister should make the declaration.

No. 40 Page 45. Insert after line 13:

5.17 State infrastructure development must meet net positive standard for biodiversity outcomes

- (1) Approval cannot be given for State infrastructure development unless the Minister is satisfied that:
 - (a) the applicant for approval has demonstrated that all practical steps have been taken to avoid or minimise the likely impacts of the proposed development on biodiversity, and
 - (b) the proposed development, together with any proposed biodiversity offsets, will result in a net improvement in biodiversity outcomes.
- (2) The determination of whether proposed development, together with any proposed biodiversity offsets, will result in a net improvement in biodiversity outcomes is to be determined by a biodiversity outcomes assessment methodology adopted by the regulations for the purposes of this section (being a procedure adopted after public exhibition of the proposed procedure for a period of not less than 2 months and its certification by the Natural Resources Commission as an appropriate methodology for its purpose).
- (3) A biodiversity outcomes assessment methodology is to be adopted within 12 months after the commencement of this Act.

No. 41 Page 47, clause 5.20. Insert after line 17:

- (5) The Minister, when deciding whether or not to modify the approval, is to consider whether the modification will increase any adverse environmental impact of the development.

No. 42 Page 48, clause 5.23 (2), line 19. Insert “the Minister has first obtained and made publicly available advice from the Planning Assessment Commission about whether the Minister should make the declaration and” after “may only be made if”.

No. 43 Page 49, clause 5.26. Insert after line 33:

- (4) The provisions relating to public exhibition and the making of submissions under Part 1 of Schedule 2 apply to the public exhibition of the project definition report under subsection (1) (b). After the public exhibition of the project definition report, the proponent and the NSW Planning Director-General are to consider any submissions made during the public exhibition period.

No. 44 Page 51, Division 6.1, heading, lines 4 and 5. Omit “, **State infrastructure development and State significant development**”. Insert instead “**and State infrastructure development**”.

Drafting note 1.8 *This amendment and the following 5 amendments remove State significant development from Division 6.1.*

No. 45 Page 51, clause 6.1 (1), lines 9 and 10. Omit “and” on line 9 and all words on line 10.

No. 46 Page 51, clause 6.1 (3), lines 18–23. Omit all words on those lines. Insert instead:

- (3) For the purposes of this Division, State infrastructure development is approved under this Act if the Minister has approved the carrying out of the development under Division 5.2 of Part 5.

No. 47 Page 51, clause 6.2, heading, lines 33 and 34. Omit “, **State infrastructure development or State significant development**”. Insert instead “**or State infrastructure development**”.

No. 48 Page 52, clause 6.3, heading, lines 1 and 2. Omit “, **State infrastructure development or State significant development**”. Insert instead “**or State infrastructure development**”.

No. 49 Page 52, clause 6.3 (3), line 10. Omit “or State significant development”.

No. 50 Page 57, Division 6.3, heading, line 17. Omit “**and for concurrences and consultation**”.

Drafting note 1.9 *This amendment and the following amendment omit concurrence and consultation requirements from Division 6.3 - One stop referrals and decisions provisions.*

No. 51 Page 57, clause 6.10 (1), lines 21–24. Omit “or” on line 21 and all words on lines 22-24.

No. 52 Pages 58 and 59, clause 6.12, line 4 on page 58 to line 9 on page 59. Omit all words on those lines. Insert instead:

6.12 One stop referrals and decisions for other legislative proposals

- (1) This section applies to one stop referrals development that requires approvals of the kind set out in Table 3 to this Division in any case where the terms (or proposed terms) of the different approvals impose conflicting requirements on the person carrying out the development. This section does not apply if one of the relevant approval bodies is the Minister or the NSW Planning Director-General.
- (2) The NSW Planning Director-General is to seek to resolve, in accordance with the regulations, any such conflicting requirements.
- (3) If the matter is not resolved within the time prescribed by the regulations, the NSW Planning Director-General may exercise the functions of the approval bodies to resolve the matter (including by amending the terms of an approval in accordance with the relevant Act).
- (4) The NSW Planning Director-General is, when exercising functions under this section, to have regard to any advice of the approval body for which he or she acts and is to publish on the NSW planning portal reasons for exercising the function and any advice of the approval body that has not been accepted.

No. 53 Page 59, clause 6.13, lines 10–28. Omit all words on those lines. Insert instead:

6.13 One stop referrals and decisions for consultation and concurrences

- (1) This section applies to one stop referrals development that requires any concurrence or consultation imposed by Division 6.2 or by the planning control provisions of a local plan referred to in Division 6.2.
- (2) The regulations may make provision for or with respect to the co-ordination of any such concurrences or consultation.
- (3) If the person or body whose concurrence is required fails to make a decision on the matter within the time required by the regulations, the NSW Planning Director-General is, in accordance with this Act and the relevant planning control provisions, to give or refuse to give that concurrence in the place of (and as if he or she were) that person or body.
- (4) The NSW Planning Director-General is, when exercising functions under this section, to have regard to any advice of that person or body and is to publish on the NSW planning portal reasons for giving or refusing concurrence and any advice of that person or body that has not been accepted.

Drafting note 1.10 *This amendment would only be moved if the previous amendment to exclude consultation and concurrence provisions from Division 6.3 is not approved.*

No. 54 Page 68, clause 7.23. Insert after line 38:

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- (5) Payments from the Funds into which biodiversity offset contributions are paid are to be made, as far as practicable, so the amounts contributed are used to offset the specific impact on biodiversity that is caused by the carrying out of the development for which the contribution was payable or are used for the purposes of higher biodiversity values.
 - (6) Land received under this Division in respect of a contribution that relates to the impact of development on any threatened species is not to be sold unless the Minister administering the threatened species legislation is satisfied that it will not result in a significant impact on that threatened species and that the proceeds of sale will be used for the purposes of higher biodiversity values.

No. 55 Page 86, clause 9.6 (3) (a), lines 11–13. Omit all words on those lines.

No. 56 Page 86, clause 9.7 (3), line 34. Omit “EIS assessed development”. Insert instead “merit assessed development”.

Drafting note 1.11 *This amendment is consequential on giving objectors appeal rights in case of any merit assessed development not just EIS assessed development.*

No. 57 Page 86, clause 9.8, lines 37–41. Omit all words on those lines. Insert instead:

9.8 Appeal by an objector—merit assessed development applications

- (1) This section applies to the determination of an application for development consent that is merit assessed under section 4.18, being a determination to grant development consent either unconditionally or subject to conditions.

No. 58 Page 97, clause 10.12 (1), lines 26–36. Omit all words on those lines.

No. 59 Page 102, clause 10.22. Insert after line 44:

- (2) A person who provides information in connection with a planning matter that is false or misleading in a material particular, because of the person’s negligence in providing the information, is guilty of an offence. For the purposes of this subsection, *negligence* has the same meaning it has in the Commonwealth Criminal Code.
Maximum penalty: 30 penalty units.

No. 60 Page 103, clause 10.22 (2). Insert after line 12:

- (d) the person provides information for the purposes of a report or investigation concerning a planning approval that the person is required to provide under the planning legislation, or

No. 61 Page 103, clause 10.22. Insert after line 19:

- (4) In this section, *planning approval* includes an approval for relevant development that is subject to environmental impact assessment under Division 5.1.

No. 62 Page 117, clause 11.28. Insert after line 7:

- (2) The Minister is to ensure that there is public participation in the conduct of the review.

No. 63 Page 117, clause 11.28, lines 8 and 11. Omit “5 years” wherever occurring. Instead instead “3 years”.

No. 64 Page 119, Schedule 1, Dictionary, lines 18–20. Omit all words on those lines. Insert instead:

EIS assessed development means development requiring development consent declared by the regulations to be EIS assessed development.

Drafting note 1.12 *This amendment relates to EIS assessed development being the classes of development prescribed by the regulations rather than prescribed by a local plan.*

No. 65 Page 119, Schedule 1, Dictionary. Insert after line 22:

environmentally sensitive area means any of the following:

- (a) land within a land use zone that is described as an environment protection zone in the standard instrument for planning control provisions (or an equivalent land use zone),
Note. Environment protection zones on the enactment of this Act are: E1 National Parks and Nature Reserves; E2 Environmental Conservation; E3 Environmental Management; E4 Environmental Living.
- (b) the coastal waters of the State,
- (c) an aquatic reserve under the *Fisheries Management Act 1994* or a marine park under the *Marine Parks Act 1997*,
- (d) a wetland of international significance declared under the Ramsar Convention on Wetlands,
- (e) a World Heritage area declared under the World Heritage Convention,
- (f) land reserved under the *National Parks and Wildlife Act 1974* or land to which Part 11 of that Act applies,
- (g) critical habitat,
- (h) a wilderness area,
- (i) any other land identified by the planning control provisions of a local plan as an environmentally sensitive area, as an area of high Aboriginal cultural significance or as an area of high biodiversity significance.

No. 66 Page 124, Schedule 1, clause 1.5. Insert after line 25:

- (3) The Ministers administering the threatened species legislation are not to approve a biodiversity assessment procedure under subclause (2) unless the Ministers are satisfied that:
 - (a) the procedure will result in determinations that have a net positive biodiversity outcome, and
 - (b) the procedure sets clear standards for the evidence required to make a determination in accordance with the procedure, and
 - (c) the procedure has been the subject of review by the scientific committees under the threatened species legislation, and
 - (d) the procedure has been placed on public exhibition (together with the advice of those scientific committees) for at least 3 months.
- (4) A biodiversity assessment procedure is to be adopted within 12 months after the commencement of this Act.

No. 67 Page 126, Schedule 2, lines 15–22. Omit all words on those lines. Insert instead:

2.5 Planning proposals for planning control or other provisions of local plans subject to a gateway determination (other than minor proposals that under the gateway determination are excluded from public exhibition)

28 days or, if a different period of public exhibition is specified in the gateway determination for the proposal, the period so specified.

Note. Public exhibition of a planning proposal includes any neighbourhood impact statement required to accompany the proposal.

2.6 Draft planning control, code or guide provisions of local plans not subject to a gateway determination

28 days.

Note. Public exhibition of a draft includes any neighbourhood impact statement required to accompany the draft.

No. 68 Page 132, Schedule 3. Insert after line 1:

3.1 Strategic assessment statements

A strategic assessment statement to accompany a draft strategic plan (or proposal for a strategic plan) is to include the following:

- (a) a statement of the intended outcomes of the proposed plan,
- (b) a description of the credible evidence used to prepare the proposed plan (including any economic, environmental or social data collected for the purposes of the proposed plan),
- (c) an assessment of any likely cumulative impacts of the proposed plan,
- (d) an assessment of whether the intended outcomes maintain or improve environmental values,
- (e) any other matter prescribed by the regulations.

No. 69 Page 142, Schedule 6, lines 3–15. Omit all words on those lines.

Drafting note 1.13 *This amendment is consequential on the amendments proposed to Part 6 which impose limitations on the power of the NSW Planning Director General to act only if the approval bodies impose conflicting requirements or fail to deal with an application for concurrence within the required time. If the amendments to Part 6 are not successful, the following 2 amendments are alternative amendments, which would not be moved if the amendments to Part 6 are successful.*

No. 70 Page 142, Schedule 6, lines 4, 9 and 10. Omit “heritage or bush fire approval” wherever occurring. Insert instead “relevant approval”.

No. 71 Page 142, Schedule 6. Insert after line 7:

- (c) an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*,
- (d) an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*,
- (e) an approval under Part 3 of Chapter 3 of the *Water Management Act 2000*.

No. 71A Page 142, Schedule 6. Insert after line 15:

6.2 One stop referrals and decisions—consultation and concurrences

- (1) This clause applies to consultation or concurrences referred to in section 6.5 or 6.6 (relevant consultation or concurrence).
- (2) The NSW Planning Director-General, when exercising functions under section 6.13 in relation to any relevant consultation or concurrence, is required to act in accordance with the advice of the person or body that would otherwise give or refuse to give concurrence or with whom the consent authority was otherwise required to consult.

No. 71B Page 142, Schedule 6. Insert after line 15:

6.3 Dispute resolution

The State assessment requirements under section 6.12 extend to the process to be followed by the NSW Planning Director-General to resolve any dispute

with an approval body that has provided advice in connection with one stop referrals development.

No. 72 Page 180, Schedule 12. Insert after line 23:

12.4 EIS assessed development—transitional

Until regulations are made under this Act prescribing the classes of development that are EIS assessed development, the classes of development prescribed under the regulations under the former Act (immediately before the repeal of the former Act) as designated development are EIS assessed development.

Drafting note 1.14 *This amendment relates to EIS assessed development being the classes of development prescribed by the regulations rather than prescribed by a local plan.*

No. 73 Page 181, Schedule 12, clause 12.6 (4), lines 13–16. Omit all words on those lines.