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Greens

LEGISLATIVE COUNCIL

Planning Bill 2013

First print

Proposed amendments

No. 1 Page 2, clause 1.3, lines 9–11 and 32–38. Omit all words on those lines. Insert after line 8:

(1) The principal object of this Act is to promote ecologically sustainable development. All decision-making about planning and development under this Act or instruments made under this Act must be exercised consistently with the principles of ecologically sustainable development.

(2) ***Ecologically sustainable development*** includes the following:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,

(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best

placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

(3) The other object of this Act are as follows:

No. 2 Page 2, clause 1.3 (1) (c), line 13. Insert "(including to guarantee meaningful public involvement and participation in decision-making about planning and development)" after "decision-making".

No. 3 Page 2, clause 1.3 (1) (f) (ii), line 20. Insert "identification," before "conservation".

No. 4 Page 2, clause 1.3 (1) (f). Insert after line 21:

, and

(iii) the protection and conservation of native animals and plants, and

(iv) the provision of land for public purposes,

No. 5 Page 2, clause 1.3. Insert after line 21:

(g) to promote resilience to climate change for communities, wildlife and the environment and to address risks and opportunities through climate mitigation and adaptation,

No. 6 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.

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

No. 7 Page 4. clause 1.12 (2), line 43. Omit all words on that line. Insert instead:

(2) The measures to benefit biodiversity are measures that will mainly benefit the

No. 8 Page 5, clause 1.12 (3) (d) and (e), lines 5-7. Omit all words on those lines.

No. 9 Page 5, clause 1.13 (b) (ii), lines 20 and 21. Omit all words on those lines.

Drafting note 1.2 *Amendment related to removal of Code assessment.*

No. 10 Page 5, clause 1.13 (b), line 27. Insert ", along with other merit assessed development," after "and that".

Drafting note 1.3 *This amendment consequential on giving objectors appeal rights in case of any merit assessed development not just EIS assessed development.*

No. 11 Page 7, clause 1.19, line 1. Omit "by a strategic compatibility certificate,".

Drafting note 1.4 *Amendment related to removal of strategic compatibility certificates.*

No. 12 Page 9, clause 2.4. Insert after line 41:

(5) A community participation plan does not have effect until the advice of the Community Participation Panel referred to in section 2.8 on the proposed plan has been obtained and the Minister has approved the plan after having regard to that advice.

No. 13 Page 10, clause 2.8. Insert after line 27:

(c) in particular, to monitor and review the implementation of the Community Participation Charter through the operation of community participation plans and to provide advice to the Minister and information to the public on the results of that monitoring and review,

No. 14 Page 11, clause 3.4 (2). Insert after line 36:

(d) heritage items and conservation areas, including Aboriginal heritage places,

No. 15 Page 12, clause 3.5 (2). Insert after line 14:

(c) heritage items and conservation areas, including Aboriginal heritage places,

No. 16 Page 12, clause 3.5 (2) (e), lines 21 and 22. Omit "or development proposed for code assessment".

Drafting note 1.5 *Amendment related to removal of Code assessment.*

No. 17 Page 15, clause 3.13 (j), line 36. Insert ", including places of Aboriginal heritage significance" after "conservation areas".

No. 18 Page 22. Insert after line 11:

3.29 NSW planning policies disallowable instruments

Sections 40 and 41 of the *Interpretation Act 1987* apply to a NSW planning policy as if it were a statutory rule to which those sections apply.

No. 19 Page 13, clause 3.9, line 37. Omit "development assessment codes and".

Drafting note 1.6 *Amendment related to removal of Code assessment.*

No. 20 Page 13, clause 3.9, line 44. Omit "or biodiversity offset contributions,". Insert instead "biodiversity offset contributions or affordable housing contributions".

Drafting note 1.7 *These amendments relate to affordable housing.*

No. 21 Page 14, clause 3.10, line 5. Omit "or biodiversity offset". Insert instead ", biodiversity offset or affordable housing".

Drafting note 1.8 *These amendments relate to affordable housing.*

No. 22 Page 15, clause 3.13 (c), lines 21 and 22. Omit "and code assessed development".

Drafting note 1.9 *Amendment related to removal of Code assessment.*

No. 23 Page 21, clause 3.25, lines 2 and 3. Omit "or proposal for a development assessment code".

Drafting note 1.10 *Amendment related to removal of Code assessment.*

No. 24 Page 21, clause 3.27 (1) (b), lines 22–25. Omit all words on those lines.

Drafting note 1.11 *Amendment related to removal of strategic compatibility certificates.*

No. 25 Page 23, clause 4.2, lines 22 and 23. Omit all words on those lines.

Drafting note 1.12 *Amendment related to removal of Code assessment.*

No. 26 Page 23, clause 4.3, lines 31 and 32. Omit all words on those lines.

Drafting note 1.13 *Amendment related to removal of Code assessment.*

No. 27 Page 26, Division 4.4, heading, line 7. Omit "**Code and merit**". Insert instead "**Merit**".

Drafting note 1.14 *Amendment related to removal of Code assessment.*

* Page 27. [Vote "No" that clause 4.16 stand part of the Bill]

Drafting note 1.15 *Amendment related to removal of Code assessment.*

No. 28 Page 27, clause 4.17 (1) (b), lines 28 and 29. Omit all words on those lines.

Drafting note 1.16 *Amendment related to removal of strategic compatibility certificates.*

No. 29 Page 27, clause 4.17 (1). Insert after line 34:

(e) the development is on, or in the vicinity of, a site that is listed as a heritage item, heritage conservation area or a place of Aboriginal heritage significance,

* Pages 27 and 28. [Vote "No" that clause 4.17 stand part of the Bill]

Drafting note 1.17 *Amendment related to removal of Code assessment.*

No. 30 Page 28, clause 4.18 (1), line 17. Omit "if it is not subject to code assessment under section 4.17".

Drafting note 1.18 *Amendment related to removal of Code assessment.*

No. 31 Page 28, clause 4.18 (2) (c). Insert after line 25:

(ii) any heritage impacts, including on Aboriginal heritage, and

No. 32 Page 28, clause 4.18 (3), lines 34–39. Omit all words on those lines.

Drafting note 1.19 *Amendment related to removal of strategic compatibility certificates.*

No. 33 Page 30, clause 4.22 (2), lines 30 and 35. Omit "EIS assessed development" wherever occurring. Insert instead "merit assessed development".

Drafting note 1.20 *This amendment consequential on giving objectors appeal rights in case of any merit assessed development not just EIS assessed development.*

No. 34 Page 33, clause 4.29 (3) and (4), lines 19–25. Omit all words on those lines. Insert instead:

(3) Development consent cannot be granted for State significant development if the development is wholly or partly prohibited by the planning control provisions of the local plan.

No. 35 Pages 34–36, Division 4.7, clauses 4.32–4.37, line 38 on page 34 to line 23 on page 36. Omit all words on those lines.

Drafting note 1.21 *Amendment related to removal of strategic compatibility certificates.*

* Pages 51 and 52, clause 6.2. [Vote "No" to the question that clause 6.2 stand part of the Bill]

* Page 52, clause 6.3. [Vote "No" to the question that clause 6.3 stand part of the Bill]

* Page 53, clause 6.4. [Vote "No" to the question that clause 6.4 stand part of the Bill]

* Pages 56 and 57, clause 6.9. [Vote "No" to the question that clause 6.9 stand part of the Bill]

No. 36 Page 61, clause 7.1. Insert after line 4:

affordable housing contribution means a contribution imposed under Division 7.5.

Drafting note 1.22 *These amendments relate to affordable housing.*

No. 37 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,

(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.

Drafting note 1.23 *These amendments relate to affordable housing.*

No. 38 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)".

Drafting note 1.24 *These amendments relate to affordable housing.*

No. 39 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.

Drafting note 1.25 *These amendments relate to affordable housing.*

No. 40 Page 70, clause 7.27, line 9. Omit "or 7.4". Insert instead ", 7.4 or 7.5".

Drafting note 1.26 *These amendments relate to affordable housing.*

No. 41 Page 71, clause 7.31, line 5. Omit "and 7.4". Insert instead ", 7.4 and 7.5".

Drafting note 1.27 *These amendments relate to affordable housing.*

No. 42 Page 75. Insert after line 40:

8.4 Private certifiers may only issue certificates if allocated under scheme operated by the Building Professionals Board

(1) A certifier (other than a council) cannot exercise the functions of a certifier under this Part of issuing a certificate unless:

(a) the regulations have adopted a scheme under which the allocation of a certifier to issue the certificate is determined by the Building Professionals Board without the knowledge or influence of the applicant for the certificate, and

(b) the certifier is allocated in accordance with that scheme or, if the allocated certifier is unable to deal with the application for the certificate, the certifier is chosen by the Building Professionals Board to deal with the application for that certificate.

The scheme adopted by the regulations is to make provision for the payment by applicants of a fair and reasonable amount of remuneration for certifiers allocated or chosen by the Building Professionals Board.

No. 43 Page 81, clause 8.18 (1), lines 13–17. Omit all words on those lines. Insert instead:

(1) A civil action for loss or damage arising out of or in connection with defective building work or defective subdivision work cannot be brought more than 10 years after the date of completion of the work.

Drafting note 1.28 *The following amendment is associated with this amendment.*

No. 44 Page 81, clause 8.18 (4), line 35. Insert "or the *Home Building Act 1989*" after "the *Limitation Act 1969*".

No. 45 Page 86, clause 9.7 (3), line 34. Omit "EIS assessed development". Insert instead "merit assessed development".

Drafting note 1.29 *This amendment is consequential on giving objectors appeal rights in case of any merit assessed development not just EIS assessed development.*

No. 46 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.

Drafting note 1.30 *This amendment is main amendment on giving objectors appeal rights in case of any merit assessed development not just EIS assessed development.*

No. 47 Page 103, Part 10. Insert after line 24:

10.23 Revocation of planning approvals affected by false or misleading information

(1) For the purposes of this section, a decision to grant or modify a planning approval is affected by false or misleading information if a person is found guilty of an offence under section 10.22 of providing to the person or body that granted or modified the approval information in connection with the grant or modification of that approval that the person knew, or ought reasonably to have known, to be false or misleading in a material particular.

(2) If a decision to grant or modify a planning approval is affected by false or misleading information, the consent authority may revoke the approval or the modification of the planning approval. The consent authority is to give the applicant for the grant or modification of the planning approval written notice of the revocation as soon as practicable.

(3) A revocation under this section takes effect 28 days after notice is given to the applicant of the revocation. However, if an appeal is made against the revocation within that period, the revocation does not have effect unless and until it is confirmed on appeal.

(4) A planning approval for the erection of a building, the carrying out of a work or the demolition of a building or work (or a modification of any such approval) is not to be revoked under this section if the building, work or demolition authorised by the planning approval (or modification) has been substantially commenced.

(5) Compensation is not payable by a consent authority or the State for any loss suffered by a person because of a revocation under this section.

(6) A person granted a planning approval or approval to modify a planning approval that is revoked under this section may appeal to the Court against the decision to revoke the approval. Part 9.3 applies to any such appeal in the same way as it applies to an appeal against the decision of a consent authority about an application for a development consent.

(7) This section applies to decisions made by a consent authority before the commencement of this section.

No. 48 Page 118, Schedule 1, Dictionary. Insert after line 6:

affordable housing contribution—see section 1.8.

Drafting note 1.31 *These amendments relate to affordable housing.*

No. 49 Page 119, Schedule 1, Dictionary, line 9. Omit all words on that line.

Drafting note 1.32 *Amendment related to removal of Code assessment.*

No. 50 Page 121, Schedule 1, Dictionary, lines 27 and 28. Omit all words on those lines.

Drafting note 1.33 *Amendment related to removal of strategic compatibility certificates.*

No. 51 Page 126, Schedule 2, clause 2.1, line 7. Omit "28 days". Insert instead "3 months".

No. 52 Page 126, Schedule 2, clause 2.5, line 18. Omit "The period specified in the gateway determination for the proposal". Insert instead "3 months (or such longer period specified in the gateway determination for the proposal)".

No. 53 Page 126, Schedule 2, clause 2.6, line 22. Omit "28 days". Insert instead "3 months".

No. 54 Page 126, Schedule 2, clause 2.8, lines 28–30. Omit all words on those lines.

Drafting note 1.34 *Amendment related to removal of strategic compatibility certificates.*

No. 55 Page 128, Schedule 2, clause 2.22 (1) (e), lines 20 and 21. Omit all words on those lines.

Drafting note 1.35 *Amendment related to removal of strategic compatibility certificates.*

No. 56 Page 133, Schedule 4, clause 4.1 (3), lines 13–15. Omit all words on those lines.

Drafting note 1.36 *Amendment related to removal of strategic compatibility certificates.*

No. 57 Page 137, Schedule 4, clause 4.9 (g), lines 3 and 4. Omit all words on those lines.

Drafting note 1.37 *Amendment related to removal of strategic compatibility certificates.*

No. 58 Page 142, Schedule 6, clause 6.1 (3), lines 12–15. Omit all words on those lines.