

LEGISLATIVE COUNCIL

Environmental Planning and Assessment Amendment Bill 2017

First print

Proposed amendments

No. 1 **Principal object of Act**

Page 3, Schedule 1.1, line 7. Omit all words on that line. Insert instead:

- (1) The principal object of this Act is to promote ecologically sustainable development and, accordingly, all decision-making about planning and development under this Act and the 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 the following:
- (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 objects of this Act are as follows:

No. 2 **Principal object of Act**

Page 3, Schedule 1.1, line 11. Omit “to facilitate ecologically sustainable development”. Insert instead “to achieve ecologically sustainable development”.

No. 3 **Other objects of Act**

Page 3, Schedule 1.1. Insert after line 14:

- (d) to promote the provision of land for public purposes,

No. 4 **Other objects of Act**

Page 3, Schedule 1.1. Insert after line 18:

- (f) to promote the retention and expansion of the urban tree canopy,

No. 5 **Other objects of Act**

Page 3, Schedule 1.1. Insert after line 20:

- (g) to promote the expansion of adequate public transport, green space, schools, public hospitals, community facilities and affordable housing in conjunction with housing development,

No. 6 **Addressing climate change**

Page 3, Schedule 1.1. Insert after line 27:

- (k) to ensure that the development of land is consistent with the reduction of greenhouse gas emissions and the impact of climate change,
(l) to ensure that the development of land adequately minimises the cumulative lifetime greenhouse gas emissions from the development site.

No. 7 **Addressing climate change**

Page 4, Schedule 1.2 [4]. Insert after line 11:

climate change means a change of climate over an extended period, typically decades or longer, that is caused by human activity or natural climate variability.

No. 8 **Addressing climate change**

Page 4, Schedule 1.2 [4]. Insert after line 29:

greenhouse gas emissions means emissions of carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, a hydrofluorocarbon gas, a perfluorocarbon gas or any other gas prescribed by the regulations for the purposes of this definition.

No. 9 **Members of local planning panels**

Page 14, Schedule 2.1 [1], lines 35 to 37. Omit all words on those lines. Insert instead:

- (a) a person with relevant expertise appointed as the chairperson of the panel,

No. 10 **Members of local planning panels**

Page 14, Schedule 2.1 [1], lines 39 and 40. Omit “who is not a councillor or mayor”.

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- No. 11 **Minimum public exhibition periods**
Pages 20 and 21, Schedule 2.1 [2], lines 22, 26, 29, 36 and 38 on page 20 and lines 13, 16, 22 and 24 on page 21. Omit “28 days” wherever occurring. Insert instead “45 days”.
- No. 12 **Minimum public exhibition periods**
Page 21, Schedule 2.1 [2], line 5. Omit “14 days”. Insert instead “28 days”.
- No. 13 **Giving of evidence in private before Commission**
Page 24, Schedule 2.1 [3], lines 35 and 36. Omit “or for any other reason”.
- No. 14 **Restriction of publication of evidence before Commission**
Page 25, Schedule 2.1 [3], lines 11 and 12. Omit “or for any other reason”.
- No. 15 **Addressing climate change**
Page 42, Schedule 3.1. Insert after line 10:

[3] Part 3

Insert after section 34 (with appropriate decimal section number):

Special provisions relating to implications for climate change

- (1) The Minister must not recommend to the Governor the making of a State environmental planning policy unless the Minister has considered the implications of the proposed policy for climate change.
- (2) A local plan-making authority (within the meaning of Division 3.4) must, when making a local environmental plan, consider the implications of the plan for climate change.
- (3) In particular, the Minister or local plan-making authority must:
 - (a) consider the need for environmental planning instruments to be consistent with commitments made by the State and by the Commonwealth to limit the increase in global warming to no more than 1.5 degrees Celsius above pre-industrial levels, and
 - (b) consider the need to protect the site of the land the subject of an environmental planning instrument, and adjoining areas, from the likely impact of climate change, and
 - (c) give preference to any adaptation to climate change that involves the reduction or prevention of greenhouse gas emissions.

- No. 16 **Addressing climate change**
Page 50, Schedule 4.1. Insert after line 21:

[6] Section 79C Evaluation

Insert after section 79C (1) (b):

- (b1) whether the proposed development adequately minimises the cumulative lifetime greenhouse gas emissions from the development site, including:
 - (i) by assessing all aspects of the development including associated demolition or vegetation clearing and the construction materials used, and
 - (ii) by ensuring that all emissions associated with ongoing occupation are quantified and taken into account in evaluating the emissions intensity of the proposal, and
 - (iii) in the case of low-impact residential, commercial or agricultural development—by complying with any

standardised assessment process required by the regulations,

No. 17 **Matters for consideration by consent authority**

Page 50, Schedule 4.1. Insert after line 21:

[6] Section 79C Evaluation

Insert after section 79C (1):

- (1A) In determining a development application, a consent authority is required to give due consideration and real weight to its assessment of the dominant opinion of the public with respect to the development the subject of the development application.

No. 18 **Planning Secretary giving approval on behalf of other approval bodies for integrated development**

Pages 51 and 52, Schedule 4.1 [12] and [13], line 33 on page 51 to line 9 on page 52. Omit all words on those lines.

No. 19 **Addressing climate change**

Page 55, Schedule 5.1. Insert after line 4:

[1] Section 111 Duty to consider environmental impact, including climate change

Insert after section 111 (1):

- (1A) Without limiting subsection (1), a determining authority must consider:
- (a) the effect of an activity on climate change, and
 - (b) in particular, whether the proposed activity adequately minimises the cumulative lifetime greenhouse gas emissions from the site of the activity, including:
 - (i) by assessing all aspects of the activity including associated demolition or vegetation clearing and the construction materials used, and
 - (ii) by ensuring that all emissions associated with ongoing occupation are quantified and taken into account in evaluating the emissions intensity of the activity, and
 - (iii) in the case of an activity that involves low-impact residential, commercial or agricultural development—by complying with any standardised assessment process required by the regulations.

No. 20 **Certificates issued by private certifiers**

Page 58, Schedule 6.1. Insert after line 34:

6.3 Allocation of issuing certificates among accredited certifiers

- (1) An accredited certifier is not entitled to issue a certificate under this Part unless the certifier has been allocated the function of issuing the certificate by the Building Professionals Board under a scheme prescribed by the regulations for the purposes of this section.
- (2) The regulations that prescribe such a scheme are to provide:
 - (a) for the allocation of accredited certifiers without the knowledge of or influence by the applicants for the certificates, and
 - (b) for the payment by applicants for the certificates of a fair and reasonable amount of remuneration for the work associated with issuing the certificates.

No. 21 **Right of appeal against decisions of Commission**

Page 80, Schedule 8.1 [2], lines 36 to 42. Omit all words on those lines. Insert instead:

- (3) There is no right of appeal under this Division against the determination of, or a failure to determine, an application for a complying development certificate.

No. 22 **Addressing climate change**

Page 114, Schedule 10.1. Insert after line 5:

[2] Section 157 (1) (h) and (i)

Insert at the end of section 157 (1) (g):

, or

- (h) a standardised assessment process for determining whether proposed low-impact residential, commercial and agricultural development adequately minimises the cumulative lifetime greenhouse gas emissions from the development site, or
- (i) the process for determining the implications for climate change in the course of preparing or making environmental planning instruments or assessing proposed development or activities.

No. 23 **Addressing climate change**

Page 117, Schedule 11.7. Insert after line 17:

[1] Clause 14 Natural resource management and environmental management

Insert after clause 14 (1):

- (1A) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the impact of the development on the global atmosphere, in particular the impact of greenhouse gas emissions from the burning (whether in Australia or outside Australia) of fossil fuels recovered in the course of the development.

[2] Clause 14 (2)

Omit the subclause. Insert instead:

- (2) Without limiting subclauses (1) and (1A), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:
- (a) make an assessment of the greenhouse gas emissions (including downstream emissions) of the development, having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions, and
- (b) have regard to the targets specified in the most recent report of the Intergovernmental Panel on Climate Change, and the steps needed to ensure that those targets are not exceeded and that global warming remains less than 1.5–2 degrees Celsius above pre-industrial levels.

