



New South Wales

Environmental Planning and Assessment Amendment Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* (**the principal Act**) to implement a range of reforms to improve the environmental planning and assessment system in NSW and to re-organise, revise and simplify the provisions of the principal Act.

The Bill:

- (a) updates the objects of the principal Act, and
- (b) revises and consolidates provisions relating to the administration of the principal Act and the planning bodies established under it (including the Independent Planning Commission (currently the Planning Assessment Commission), Sydney district planning panels and regional planning panels and local planning panels), and
- (c) enhances community participation (including by requiring planning authorities to prepare community participation plans according to specified community participation principles) and by revising and consolidating minimum public exhibition requirements, and
- (d) enhances strategic planning (including by requiring councils to prepare local strategic planning statements to inform future planning proposals in their locality), and
- (e) makes further provision with respect to planning instruments (including by requiring the periodic review of SEPPs and LEPs and the enabling the standardisation of DCPs), and
- (f) facilitates infrastructure delivery (including by enabling SEPPs to require the concurrence of public transport or other authorities before determining authorities carry out or approve

- the carrying out of an activity in designated corridors set aside for future major roads, railways and other linear infrastructure), and
- (g) revises and consolidates provisions relating to building and subdivision certification, and
 - (h) makes further provision with respect to development contributions (including by providing for State infrastructure contributions and planning agreements relating to complying development), and
 - (i) revises and consolidates the provisions relating to reviews of planning decisions and appeals to the Land and Environment Court, and
 - (j) facilitates the enforcement of complying development requirements (including by enabling councils to stop work under complying development certificates for up to 7 days for compliance investigation purposes and by enabling the Court to invalidate any such certificate), and
 - (k) revises other enforcement arrangements (including by revising provisions relating to development control orders and by providing for enforceable undertakings), and
 - (l) makes a number of other miscellaneous amendments.

The Bill re-organises, revises and simplifies the provisions of the principal Act, including by:

- (a) moving matters of detail (particularly savings and transitional provisions) to the regulations under the principal Act, and
- (b) re-arranging the provisions of the principal Act with new Parts dealing with administration, appeals and infrastructure contributions, and
- (c) re-writing in plainer and less complex terms provisions relating to planning administration, building and subdivision certificates and criminal and civil enforcement, and
- (d) clarifying the provisions of the principal Act that give rise to criminal sanctions, and
- (e) implementing a decimal divisional and section numbering system.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed by the Governor.

Schedules 1–10 to the Bill each amend different Parts of the principal Act. Each Schedule contains firstly principal amendments and secondly consequential and statute law revision amendments.

Schedule 1 Amendment of principal Act—Preliminary

Schedule 1.1 replaces the objects of the principal Act. The revised objects are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,

- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

Schedule 1.2 contains consequential and statutory revision amendments. In particular, the Schedule re-arranges interpretation provisions to highlight the principal definitions used in the principal Act and summarises the different categories of development.

Schedule 2 Amendment of principal Act—Planning administration

Schedule 2.1 [1] revises and consolidates provisions relating to the administration of the principal Act and the planning bodies established under it. The planning bodies include the Independent Planning Commission (currently the Planning Assessment Commission), Sydney district planning panels and regional planning panels, local planning panels and the Planning Ministerial Corporation (currently the Minister is a corporation sole). The provisions relating to the Sydney district planning panels have been transferred from the *Greater Sydney Commission Act 2015*.

The amendment re-enacts the provisions relating to the establishment of local planning panels inserted into the principal Act by the *Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017*. In addition to the Greater Sydney Region and the City of Wollongong, the re-enacted provisions also enable the regulations to extend the requirement for a local planning panel to other local government areas.

Schedule 2.1 [3] inserts Schedule 2 which contains provisions relating to the constitution, membership and procedures of these planning bodies and provisions dealing with the land and property functions of the Planning Ministerial Corporation.

Schedule 2.1 [1] and [2] revise and consolidate community participation requirements (including requiring planning authorities to prepare community participation plans according to specified community participation principles). The planning authorities subject to the community participation requirements include the Minister, the Planning Secretary, the Greater Sydney Commission, Sydney district or regional planning panels, local planning panels and councils, when exercising planning functions. Proposed Schedule 1 to the principal Act sets out the draft planning instruments and decisions that are to be placed on public exhibition and the requisite period of exhibition. Certain decisions by planning authorities (such as Ministerial determinations about State significant infrastructure and consent authority decisions about development applications) will be required to be made publicly available, and reasons for the decision will also need to be made public.

Schedule 2.1 [4] transfers from the body of the principal Act to Schedule 3 the provisions that establish the electronic repository of planning information, and provides for public access to that information through the online planning portal.

Schedule 2.2 contains consequential and statutory revision amendments relating to planning bodies.

Schedule 2.3 contains consequential and statutory revision amendments relating to community participation.

Schedule 3 Amendment of principal Act—Planning instruments

Schedule 3.1 (except Schedule 3.1 [6], [13], [17], [20] and [21]) restates the provision relating to the authority to make local environmental plans or to prepare proposals for environmental plans and makes consequential amendments. The revised provisions seek to make clear the existing role of the Greater Sydney Commission in relation to local environmental plans in the Greater Sydney Region. A local environmental plan is to be made by a *local plan-making authority*. The local plan-making authorities are:

- (a) the Minister (except in the Greater Sydney Region), and

- (b) the Greater Sydney Commission for areas in the Greater Sydney Region, and
- (c) a council, if the gateway determination for a proposed plan authorises the council to make the local environmental plan.

The planning proposal authority for a proposed instrument is the council for the local government area concerned. The Minister, or the Greater Sydney Commission in the Greater Sydney Region, may direct that the Planning Secretary or a panel or other body is the planning proposal authority in certain cases.

Schedule 3.1 [13] requires the Planning Secretary, every 5 years following a review of a State environmental planning policy, to determine whether the policy should be updated and requires councils to do the same for local environmental plans.

Schedule 3.1 [17] enables the regulations to require the standardisation of development control plans and to authorise the Minister to publish requirements as to the form, structure and subject-matter of the plans.

Schedule 3.1 [20] and [21] require each council to prepare and make a local strategic planning statement, which includes the planning priorities for the area that are consistent with any strategic plans applying to the area, including any community strategic plan under the *Local Government Act 1993*. If the council area is divided into wards, the councillors of a ward are to be given a reasonable opportunity to participate in the preparation of the provisions of the statement that deal with the ward and to endorse their consistency with strategic plans applying to the ward.

Schedule 3.1 [6] requires a planning proposal prepared for a local area to address whether the proposal will give effect to the local strategic planning statement of the council of the area.

Schedule 3.2 contains consequential and statutory revision amendments. In particular, the strategic planning provisions of Part 3B are incorporated into Part 3 which contains other planning instrument provisions.

Schedule 4 Amendment of principal Act—Development assessment and consent

Schedule 4.1 [1] and [4] declare the *consent authority* for the different categories of development as follows:

- (a) in the case of State significant development—the Independent Planning Commission (if the development is of a kind for which the Commission is declared the consent authority by an environmental planning instrument) or the Minister (if the development is not of that kind),
- (b) in the case of development of a kind that is declared by an environmental planning instrument as regionally significant development—the Sydney district or regional planning panel for the area in which the development is to be carried out,
- (c) in the case of development of a kind that is declared by an environmental planning instrument as development for which a public authority (other than a council) is the consent authority—that public authority,
- (d) in the case of any other development—the council of the area in which the development is to be carried out.

In the case of a council for which a local planning panel has been constituted, the proposed Act continues the existing provision that confers the consent authority function on the local planning panel (where established) or a delegated staff member of the council.

Schedule 4.1 [2] and [3] make consequential amendments relating to the identification of provisions of the principal Act that give rise to criminal offences.

Schedule 4.1 [5] enables Sydney district or regional planning panels as well as local planning panels to exercise related approval powers under the *Local Government Act 1993* in connection with the grant of development consent.

Schedule 4.1 [6] provides that a development consent may be granted subject to the following conditions:

- (a) a condition that ceases to have effect when an authorisation under another Act is issued in relation to the development,

(b) a condition that requires funding to be assured for the carrying out of works required by the consent.

Schedule 4.1 [7] provides that the regulations may specify the kind of development for which an accredited certifier is not authorised to issue a complying development certificate.

Schedule 4.1 [8] enables a complying development certificate to be issued subject to a deferred commencement condition.

Schedule 4.1 [9] enables the Land and Environment Court to declare a complying development certificate invalid within 3 months of it being issued if the Court determines it was not authorised to be issued.

Schedule 4.1 [12] authorises the Planning Secretary to act on behalf of an approval body under other legislation, in the case of integrated development, to determine whether or not the approval body will grant the approval, or of the general terms of its approval. The Planning Secretary may do so if the approval body fails to make the determination or because of an inconsistency in the general terms of approval of 2 or more approval bodies. **Schedule 4.1 [13]** is a consequential amendment.

Schedule 4.1 [14] and [15] require a consent authority, when considering an application to modify a development consent, to take into consideration the reasons given by the consent authority for the grant of the original consent.

Schedule 4.1 [16] facilitates the consolidation of existing development consents in connection with the grant of a related development consent by not requiring a re-assessment of the development already authorised by the existing consents.

Schedule 4.1 [17] authorises regulations to enable the recoupment of costs incurred by councils in investigating and enforcing compliance with the principal Act relating to development requiring consent (including complying development) by the imposition of a levy on applicants making development applications. The regulations may also authorise council officers to suspend the carrying out of work under a complying development certificate (for a period not exceeding 7 days) pending an investigation into compliance of the work with applicable development standards.

Schedule 4.1 [18] confirms that the Minister may impose, vary or revoke a condition requiring monitoring or an environmental audit of State significant development at any time after the approval of the development.

Schedule 4.1 [10] and [11] make other consequential or minor amendments.

Schedule 4.2 contains consequential and statutory revision amendments.

Schedule 5 Amendment of principal Act—Infrastructure and environmental impact assessment

Schedule 5.1 [1] inserts new requirements into Part 5 that will enable SEPPs to require the concurrence of public transport or other authorities before a determining authority carries out an activity, or grants an approval in relation to an activity, within infrastructure corridors set aside for future major roads, railways and other linear infrastructure. The public transport or other authority may refuse concurrence if it is satisfied that the activity will unreasonably interfere with the future use of the land for the purpose for which it has been set aside. The determining authority may seek a review of a refusal by the Planning Secretary or the Minister.

Schedule 5.1 [2] makes a consequential amendment relating to the identification of provisions of the principal Act that give rise to criminal offences.

Schedule 5.2 contains consequential and statutory revision amendments. The amendments convert existing Part 5 (Environmental assessment) into Division 5.1 of Part 5 and converts Part 5.1 (State significant infrastructure) into Division 5.2 of Part 5. The provisions of Part 5 relating to the environmental assessment of fishing activities are transferred to related provisions in the *Fisheries Management Act 1994*.

Schedule 6 Amendment of principal Act—Building and subdivision certification

Schedule 6.1 revises and consolidates in a new Part 6 provisions dealing with building and subdivision certification, including provisions relating to the following:

- (a) the types of work that require certification,
- (b) the various types of certificates (construction certificates, subdivision works certificates, occupation certificates, subdivision certificates and compliance certificates) and when they are required,
- (c) a continuation of the 10 year time limit on bringing legal proceedings in relation to defective building work or subdivision,
- (d) building information certificates,
- (e) the owner's building manual that must be provided with the issue of an occupation certificate for a building,
- (f) the power of the Land and Environment Court to declare certificates invalid if they are not consistent with the development consent,
- (g) regulation-making powers relating to the carrying out of building and subdivision work, compliance with the *Building Code of Australia* and smoke alarms,
- (h) regulation-making powers relating to certificates from Transport NSW in cases where the concurrence of rail authorities is required in relation to the impact of development on rail infrastructure so that concurrence can be granted for the development to proceed with detailed requirements determined at the subsequent certificate stage.

Schedule 6.2 contains consequential and statutory revision amendments. The new Part consolidates existing Parts 4A and 4C and sections 149A–149G and various other provisions throughout the Act relating to certification.

Schedule 7 Amendment of principal Act—Infrastructure contributions and finance

Schedule 7.1. [1] enables planning agreements to be entered into for complying development proposals, as well as for development application proposals (as is currently the case).

Schedule 7.1 [2] enables the Minister to make determinations or give directions about the method of determining the extent of the public benefit that is to be provided by a developer under a planning agreement.

Schedule 7.1 [3] provides that State infrastructure contributions can be required for complying development. The Minister may direct a certifier to impose conditions for State infrastructure contributions in the same way as a consent authority may be directed. **Schedule 7.1 [10]** makes a consequential amendment.

Schedule 7.1. [4] enables the Minister to take into account infrastructure (including land for infrastructure) provided or required to be provided under a planning agreement in order to ensure the fair apportionment of the cost of the provision of infrastructure across the whole area in respect of which State infrastructure contributions are payable.

Schedule 7.1. [5] makes it clear that required State infrastructure contributions may be provided in the form of the carrying out of works or the supply of land for the provision of the infrastructure.

Schedule 7.1 [6] ensures that a determination of State infrastructure contributions may deal with the timing of the payment of contributions. **Schedule 7.1 [9]** makes a related amendment.

Schedule 7.1 [7] and [8] revise provisions relating to directions for the imposition of State infrastructure contributions and enable a requirement to be imposed for obtaining a certificate from the Planning Secretary as to whether such a contribution is payable.

Schedule 7.2 contains consequential and statutory revision amendments. In particular, development and affordable housing contribution provisions are transferred to Part 7 from Part 4.

Schedule 8 Amendment of principal Act—Reviews and appeals

Schedule 8.1 [2] revises and consolidates in a new Part 8 existing provisions throughout the principal Act about reviews of planning decisions and appeals to the Land and Environment Court. The provisions apply in relation to applications for and the grant of development consent, building and subdivision certification, development control orders and other miscellaneous decisions.

Schedule 8.1 [1] reproduces a previous uncommenced amendment that provides for development consents to have effect on their registration on the NSW planning portal.

Schedule 8.2 contains consequential and statutory revision amendments.

Schedule 9 Amendment of principal Act—Implementation and enforcement

Schedule 9.1 [1] enables the Planning Secretary to accept a written undertaking from a person in relation to a planning matter (such as compliance action). In the case of a breach of an undertaking, the Planning Secretary may apply to the Land and Environment Court for an order and if the Court is satisfied that the person has breached the undertaking, the Court may make various orders, including an order directing the person to comply with the undertaking, to pay money to the State or to make good any damage.

Schedule 9.1 [2] revises and consolidates existing provisions about development control orders that enforce obligations under the principal Act. The provisions are in line with similar provisions contained in the *Planning Bill 2013*. There are 3 types of orders that may be given: general orders (such as stop work orders, repair orders and public safety orders), fire safety orders and brothel closure orders. These orders may be given by various enforcement authorities, such as the Minister for Planning, the Planning Secretary, councils and consent authorities.

Schedule 9.1 [3] inserts Schedule 5 into the principal Act, which contains detailed provisions relating to development control orders. The provisions are in line with similar provisions contained in the *Planning Bill 2013*.

Schedule 9.2 contains consequential and statutory revision amendments. In particular, Part 6 (Implementation and enforcement) is renumbered as Part 9 and the provisions of the principal Act that give rise to criminal offences are identified in order to clarify the operation of the existing general offence under the principal Act. The provisions replicate the existing range of maximum penalties under the principal Act.

Schedule 10 Amendment of principal Act—Miscellaneous

Schedule 10.1 [1] enables regulations to be made in relation to obligations on persons regarding building safety, as well as fire safety as is currently the case.

Schedule 10.1 [2] inserts a standard provision that enables savings and transitional regulations to be made consequent on the amendment of the principal Act.

Schedule 10.1 [2] also provides for the making of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, which is set out in Schedule 13 to the Bill.

Schedule 10.2 contains consequential and statutory revision amendments. Current Part 7A, which deals with liability in respect of contaminated land, is transferred to a new Schedule to the principal Act. Existing Schedule 6 (Savings, transitional and other provisions), Schedule 6A (Transitional arrangements—Part 3A) and Parts 1–3 of Schedule 7 (Special provisions) are omitted from the principal Act and transferred to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, which is set out in Schedule 13 to the Bill.

Schedule 11 Consequential amendments of other Acts and instruments

Schedule 11 contains consequential amendments to the following Acts and instruments:

- (a) *Building Professionals Act 2005*,
- (b) *Greater Sydney Commission Act 2015*,

- (c) *Heritage Act 1977*,
- (d) *Independent Commission Against Corruption Act 1988*,
- (e) *Land and Environment Court Act 1979*,
- (f) *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*,
- (g) *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*,
- (h) *Statutory and Other Offices Remuneration Act 1975*,
- (i) *Subordinate Legislation Act 1989*.

Schedule 12 Repeal of Acts

Schedule 12 repeals the following Acts:

- (a) *Environmental Planning and Assessment Amendment Act 2008*,
- (b) *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*,
- (c) *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979*,
- (d) *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*.

These Acts contain various uncommenced amendments to the principal Act and other legislation that are no longer required or relevant.

Schedule 13 Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

Schedule 13 contains the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, which contains provisions consequent on the enactment of the proposed Act. The Regulation also contains the provisions of Schedules 6, 6A and 7 (Parts 1–3) to the principal Act, which are transferred to the Regulation by Schedule 10.2 (see above).

Summary of table of contents of Environmental Planning and Assessment Act 1979 (as amended by the Bill)

The following sets out the Parts and Divisions of the *Environmental Planning and Assessment Act 1979*, as proposed to be amended by the proposed Act:

Part 1 Preliminary

Part 2 Planning administration

Division 2.1 Minister and Planning Secretary

Division 2.2 Planning Ministerial Corporation

Division 2.3 Independent Planning Commission

Division 2.4 Sydney district and regional planning panels

Division 2.5 Local planning panels

Division 2.6 Community participation

Division 2.7 Miscellaneous

Part 3 Planning instruments

- Division 3.1 Strategic planning**
- Division 3.2 Environmental planning instruments—general**
- Division 3.3 Environmental planning instruments—SEPPs**
- Division 3.4 Environmental planning instruments—LEPs**
- Division 3.5 Planning instrument amendments and development applications**
- Division 3.6 Development control plans (DCPs)**

Part 4 Development assessment and consent

- Division 4.1 Carrying out of development—with consent, without consent and prohibited**
- Division 4.2 Consent authority**
- Division 4.3 Development that needs consent (except complying development)**
- Division 4.4 Concept development applications**
- Division 4.5 Complying development**
- Division 4.6 Crown development**
- Division 4.7 State significant development**
- Division 4.8 Integrated development**
- Division 4.9 Post-consent provisions**
- Division 4.10 Miscellaneous Part 4 provisions**
- Division 4.11 Existing uses**

Part 5 Infrastructure and environmental impact assessment

- Division 5.1 Environmental impact assessment (except for State significant infrastructure)**
- Division 5.2 State significant infrastructure**
- Division 5.3 Infrastructure corridors—concurrences and notifications**

Part 6 Building and subdivision certification

- Division 6.1 Preliminary**
- Division 6.2 Certificates required under this Part**
- Division 6.3 Building work and certificates relating to building**
- Division 6.4 Subdivision work and certificates relating to subdivision**
- Division 6.5 Compliance certificates**
- Division 6.6 Liability for defective building or subdivision work**
- Division 6.7 Building information certificates**
- Division 6.8 Miscellaneous**

Part 7 Infrastructure contributions and finance

- Division 7.1 Development contributions**
- Division 7.2 Affordable housing contributions**
- Division 7.3 Funds**
- Division 7.4 Charges and fees**

Part 8 Reviews and appeals

- Division 8.1 Introductory**
- Division 8.2 Reviews**
- Division 8.3 Appeals—development consents**
- Division 8.4 Appeals—building and subdivision certification**
- Division 8.5 Appeals—development control orders**
- Division 8.6 Appeals—miscellaneous**

Part 9 Implementation and enforcement

- Division 9.1 Ministerial and other enforcement powers**
- Division 9.2 Investigative powers of departmental or council officers**
- Division 9.3 Development control orders**

Division 9.4 Monitoring and environmental audits

Division 9.5 Civil enforcement proceedings

Division 9.6 Criminal offences and proceedings

Part 10 Miscellaneous

Schedule 1 Community participation requirements

Schedule 2 Provisions relating to planning bodies

**Schedule 3 NSW planning portal and online delivery of
planning services and information**

Schedule 4 Special contributions areas

Schedule 5 Development control orders

Schedule 6 Liability in respect of contaminated land

Schedule 7 Paper subdivisions

Schedule 8 Special provisions