



New South Wales

Environmental Planning and Assessment Amendment Bill 2006

Explanatory note

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

Overview of Bill

The object of this Bill is:

- (a) to amend the *Environmental Planning and Assessment Act 1979*:
 - (i) to provide for contributions for the provision of infrastructure in relation to development within special contributions areas, and
 - (ii) to enable the Minister for Planning (*the Minister*) to give directions to a council in respect of contributions plans, development control plans and other matters, and
 - (iii) to provide for the establishment of planning assessment panels and the exercise of council's planning functions by those panels and by planning administrators, and
- (b) to amend the *Growth Centres (Development Corporations) Act 1974* to permit the Minister to appoint a chief executive of a development corporation and to require a corporation to submit an annual statement of business intent, and
- (c) to amend the *Redfern–Waterloo Authority Act 2004* to permit Crown land to be transferred to the Redfern–Waterloo Authority and to permit the Minister to delegate certain functions.

* Amended in committee—see table at end of volume.

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 appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Acts set out in Schedules 1–4.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203 with respect to contributions

Schedule 1 [15] inserts proposed Subdivisions 4 and 5 into Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the **Principal Act**). Proposed Subdivision 4 provides for the levying of special contributions for the provision of infrastructure as a condition of development consent in relation to development on land within a special contributions area (being land within a growth centre or other land for the time being described in proposed Schedule 5A to the Principal Act). The level and nature of any contribution is to be determined by the Minister (any such determination is not subject to appeal to the Land and Environment Court). The Minister may direct a consent authority for development on land within a special contributions area to impose a condition on a grant of development consent requiring the developer to contribute, in accordance with the Minister's determination, money or land (or both) for the purpose of providing infrastructure in relation to the development (if the Minister is the consent authority he or she may impose such a condition without the need for a direction). Any such condition is in addition to any condition the consent authority may impose under section 94 or 94A of the Principal Act (which provide for contributions in relation to local infrastructure). Money received by a consent authority is to be paid into the Special Contributions Areas Infrastructure Fund (**the Fund**) established under proposed Subdivision 5. Money from the Fund is to be paid to public authorities for the provision of infrastructure. Proposed Schedule 5A to the Principal Act (which sets out the special contributions areas) may be amended by the Minister by order published in the Gazette. **Schedule 1 [1]–[5], [7], [10], [11] and [17]** make consequential amendments.

Schedule 1 [6] provides that a planning authority other than the Minister is not to enter a planning agreement that excludes a special contribution under proposed Subdivision 4 without the approval of the Minister or a development corporation designated by the Minister to give such approvals.

Schedule 1 [8] prevents a consent authority from imposing a condition under section 94A of the Principal Act in relation to development on land within a special contributions area without the approval of the Minister or a development corporation designated by the Minister to give such approvals.

Schedule 1 [12] provides that a contributions plan does not authorise the imposition of conditions under section 94 of the Principal Act if the infrastructure to be provided from the contribution under that section is infrastructure that is to be provided from a special contribution under proposed Subdivision 4.

Schedule 1 [13] requires a council to provide the Minister with a copy of each contributions plan approved by the council.

Schedule 1 [14] permits the Minister to direct a council to approve, amend or repeal a contributions plan in the time and manner specified in the direction. If the council fails to follow the direction, the Minister may make, amend or repeal the plan. The Minister may also make, amend or repeal the plan if the council consents. The Minister is not subject to the regulations in approving, amending or repealing a plan and a person cannot appeal any such approval, amendment or repeal.

Schedule 1 [16] prevents a condition under section 94F of the Principal Act (which relates to contributions for affordable housing) from being imposed in relation to development on land within a special contributions area.

Schedule 1 [9] omits a cross reference to a repealed provision.

Schedule 1 [18] enables regulations to be made under the Principal Act that contain savings and transitional provisions.

Schedule 1 [19] inserts a number of savings and transitional provisions into the Principal Act.

Schedule 2 Miscellaneous amendments of Environmental Planning and Assessment Act 1979 No 203

Schedule 2 [1] amends the *Environmental Planning and Assessment Act 1979* (the *Principal Act*) to permit the Minister, subject to the regulations (if any), to direct a council to make, amend or revoke a development control plan in the time and manner specified in the direction. If a council fails to comply with a direction, the Minister may make, amend or revoke the development control plan.

Schedule 2 [2] permits the Minister to direct a council to provide him or her with reports on the council's performance with respect to planning and development matters.

Schedule 2 [3] inserts proposed Division 1AA into Part 6 of the Principal Act (to replace section 118). The Division provides that if the Minister is of the opinion that the council has failed to comply with its obligations under the planning legislation or its performance in dealing with planning and development matters is unsatisfactory, if the council agrees or if a report by the Independent Commission Against Corruption recommends such an appointment, the Minister may appoint a planning administrator or a planning assessment panel (or both) to exercise functions of a council. Before making an appointment the Minister must consult with the Minister

for Local Government. A planning administrator may (as at present) exercise any of the council's functions under the Principal Act as are specified in the order of appointment. A panel may exercise any of the council's consent authority functions under Part 4, or its functions in relation to the making of environmental planning instruments under Part 3, of the Principal Act as are specified in the order of appointment. A panel is to consist of persons appointed by the Minister and is subject to the direction and control of the Minister except in relation to the determination of a development application. A council is to pay the remuneration and costs and expenses of a planning administrator or panel. A member of a council or a council staff member commits an offence (maximum penalty \$1,100) if he or she obstructs a planning administrator, panel or certain associated persons in the exercise of the person's functions. **Schedule 2 [4]** makes provision with respect to the membership and procedure of a panel (including provision for the conduct of particular business in public if the Minister so orders).

Schedule 3 Amendment of Growth Centres (Development Corporations) Act 1974 No 49

Schedule 3 [4] amends section 6 of the *Growth Centres (Development Corporations) Act 1974* (the *Principal Act*) to permit the Minister (or the Minister for Commerce in respect of the Festival Development Corporation) to appoint a person as chief executive of a development corporation constituted under Part 2 of the Principal Act. If no such person is appointed, the Director-General of the Department of Planning is to be the chief executive. Currently the Director-General is the chief executive of each development corporation. **Schedule 3 [1] and [3]** make consequential amendments. **Schedule 3 [7]** inserts a savings and transitional provision that requires certain references to the Director-General to be construed as references to the chief executive.

Schedule 3 [5] inserts proposed section 23 into the Principal Act which requires a development corporation to prepare an annual statement of business intent and submit the statement to the Minister and the Treasurer.

Schedule 3 [6] omits a provision that requires a member of a development corporation to obtain the approval of the Minister before engaging in any paid employment outside the duties of the member's office.

Schedule 3 [8] enables regulations to be made under the Principal Act that contain savings and transitional provisions.

Schedule 3 [2] updates a reference to a Department.

Schedule 4 Amendment of Redfern–Waterloo Authority Act 2004 No 107

Schedule 4 [1] and [2] amend section 19 of the *Redfern–Waterloo Authority Act 2004* (the *Principal Act*) to permit the Minister administering the *Crown Lands Act 1989* to transfer to the Redfern–Waterloo Authority (the *Authority*), subject to the terms and conditions agreed to between that Minister and the Minister for Redfern Waterloo, Crown land within the operational area of the Authority or the management of any such Crown land. **Schedule 4 [3]** makes a consequential amendment.

Schedule 4 [2] also amends section 19 of the Principal Act to replace the definition of *public authority* to make it clear that a public authority includes a government department, a statutory body representing the Crown and a member of staff or other person who exercises functions on behalf of a public authority.

Schedule 4 [4] inserts proposed section 27A into the Principal Act, which allows the Minister for Planning to delegate to the Minister for Redfern Waterloo the Minister for Planning's functions as a consent authority in relation to development on land in the operational area of the Authority.

Schedule 4 [5] permits the Minister for Redfern Waterloo to delegate to a member of staff of the Authority functions as the approval body under Part 3A of the *Environmental Planning and Assessment Act 1979* that have been delegated to the Minister by the Minister for Planning.

Schedule 4 [6] extends section 29 of the Principal Act (which excludes the provisions of the *Heritage Act 1977*) to apply to all development on land in the operational area of the Authority that is development requiring consent under Part 4 of the *Environmental Planning and Assessment Act 1979* and for which a Minister is the consent authority.

Schedule 4 [7] permits the Minister for Redfern Waterloo to delegate his or her functions under section 29 of the Principal Act to the Authority or a member of staff of the Authority.

Schedule 4 [8] extends section 30 of the Principal Act (which provides for development contributions for affordable housing) to apply to all development on land in the operational area of the Authority that is development requiring consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (and for which a Minister is the consent authority). **Schedule 4 [10] and [11]** make consequential amendments.

Schedule 4 [9] precludes section 30 (development contributions for affordable housing) of the Principal Act from applying to land in a special contributions area within the meaning of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*. This avoids duplication as affordable housing is one of the matters for which a special contribution for infrastructure may be levied under proposed Subdivision 4 of that Division.

Schedule 4 [12] extends section 31 of the Principal Act (which provides for development contributions other than for affordable housing) to apply to all development on land in the operational area of the Authority that is development requiring consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (and for which the Minister is the consent authority). **Schedule 4 [13], [14] and [15]** make consequential amendments.

Schedule 4 [16] makes it clear that a condition requiring a special contribution for infrastructure may still be imposed under Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* in addition to a condition under section 31 (development contributions (other than affordable housing)) of the Principal Act.

Schedule 4 [17] provides that a contributions plan must not authorise a condition to be imposed under section 31 of the Principal Act or section 94 of the *Environmental Planning and Assessment Act 1979* if the infrastructure to which the condition relates is or will be provided out of a special contribution for infrastructure under Division 6 of Part 4 of that Act.

Schedule 4 [18] enables regulations to be made under the Principal Act that contain savings and transitional provisions.

Schedule 4 [19] inserts a number of savings and transitional provisions into the Principal Act.