A NEW PLANNING SYSTEM FOR NSW

WHITE PAPER

SUMMARY OF THE EXPOSURE PLANNING BILL

2013

Exposure Planning Bill 2013

This is a summary of the Exposure Planning Bill 2013 to provide practitioners and the community with an overview of the proposed draft planning legislation. Please refer to the full text of the Exposure Bill for the actual provisions.

The Exposure Planning Bill 2013 is a Bill for planning and sustainable growth in NSW.

This document provides an overview of the Exposure Bill and has been prepared solely for information purposes.

PART 1

General

Part 1 of the Bill contains provisions relating to preliminary matters, interpretation and categories of development.

Preliminary

The preliminary matters include the name of the Act, the date of commencement of the Act, the objects of the Act and an overview of the planning system.

The objects of the Act are to promote:

- economic growth and environmental and social well being through sustainable development
- opportunities for early and ongoing community participation in strategic planning and decision–making
- the co–ordination, planning, delivery and integration of infrastructure and services in strategic planning and growth management
- the timely delivery of business, employment and housing opportunities (including opportunities for housing choice and affordable housing)
- the protection of the environment, including:
  - —the conservation of threatened species, populations and ecological communities, and their habitats, and
  - —the conservation and sustainable use of built and cultural heritage
- the effective management of agricultural and water resources
- health, safety and amenity in the planning, design, construction and performance of individual buildings and the built environment
- efficient and timely development assessment proportionate to the likely impacts of proposed development
- the sharing of responsibility for planning and growth management between all levels of government.

Part 1 provides that 'sustainable development' is achieved by the integration of economic, environmental and social considerations, having regard for present and future needs, in decision making about planning and development.

Interpretation

The following key concepts are defined in Part 1:

- development
- strategic plans and planning control provisions
- planning approvals
- infrastructure plans and contributions
- building work and subdivision work
- planning bodies
- development that is 'likely to significantly affect threatened species'.

Other terms and expressions used in the Bill are defined in Schedule 1.

Development

This Part identifies categories of development, including:

- exempt and complying development
- development that requires consent and is subject to code or merit assessment
- State and regionally significant development
- EIS assessed development
- Part 5 environmental impact assessment development
- State infrastructure development
- Public Priority Infrastructure.

It also includes offence provisions relating to the carrying out of:

- development without, or contrary to, a planning approval
- building or related works without, or contrary to, a certificate under Part 8
- prohibited development.

PART 2

Community participation

Part 2 of the Bill sets out how the community participation object of the Bill is to be met. It provides for a community participation charter, community participation plans, mandatory public notification and exhibition requirements and ePlanning.

Community participation

The Bill defines community participation as any of the processes for engaging the community (including industry, businesses, residents, groups and organisations) in planning activities and decisions.

Community Participation Charter

The Community Participation Charter comprises the following principles:

1. The community is to be provided with opportunities to participate in planning.

2. The community is to have access to information that is easy to read and obtain so that planning issues and decisions can be better understood.

3.The community is to be provided with opportunities to participate in strategic planning as soon as possible before decisions are made.

4. The community has a right to be informed about planning decisions which affect them.

5. Community participation in development decisions is to be proportionate to the significance and impact of the proposed development.

6. Planning authorities are to seek the views of the community by selecting participation methods that are representative, inclusive and appropriate to the needs of the community.

7. Planning authorities are to make decisions in an open and transparent way and provide the community with reasons for their decisions (including how community views have been taken into account).

A planning authority is required to act consistently with the Charter when exercising:

- the function of preparing community participation plans under Part 2
- strategic planning functions under Part 3
- development consent functions under Part 4
- assessment and approval functions for development under Part 5 that require an environmental impact statement or species impact statement
- infrastructure plan functions under Part 7.

Community participation plans

A planning authority is to prepare a community participation plan that provides guidance on how it will undertake community participation when exercising planning functions to which the Community Participation Charter applies.

A community participation plan is to be prepared by:

- the Director–General
- the Planning Assessment Commission
- regional planning panels
- subregional planning boards
- councils
- any other public authority prescribed in the regulations.

A community participation plan is to be prepared in accordance with any regulations on the form and content of plans. The regulations may also provide for the inclusion of guidelines on the responsibilities of the community with respect to community participation.

Community participation plans must be publicly exhibited before they are published on the NSW planning website and are to be reviewed periodically.

A council need not prepare a separate community participation plan if it includes all the matters required by the planning legislation in its community participation plan prepared under the *Local Government Act 1993* (previously known as a Community Engagement Strategy).

Mandatory notification and exhibition requirements

Schedule 2 sets out the mandatory notification and exhibition requirements for strategic or infrastructure plans, development applications and other functions to which the Community Participation Charter applies.

Community participation and strategic planning

In addition to the mandatory requirement to exhibit draft strategic plans, a planning authority must give public notice of the ways in which the community can participate in the preparation of draft plans.

Online delivery of planning services and information

The Bill establishes the NSW planning database as an electronic repository of:

- documents and planning control provisions of local plans that are required to be published on the NSW planning website
- maps that are adopted or incorporated in local plans and other documents
- Ministerial orders, delegations, directions and other instruments.

The Bill provides that the Director–General is to make arrangements for information held on the NSW planning database to be made publicly available on the NSW planning website.

The regulations will provide for the online delivery of planning services and information, including access to information about land use zoning and development standards applying to particular land.

PART 3

Strategic planning

Part 3 of the Bill contains provisions relating to strategic planning, including the preparation of Local Plans. This Part sets out the strategic planning principles which planning authorities are required to act consistently with when preparing strategic plans.

Strategic planning principles

The strategic planning principles are:

1. Strategic plans should promote the State's economy and productivity through facilitating housing, retail, commercial and industrial development and other forms of economic activity, having regard to environmental and social considerations.
2. Strategic plans are to be integrated with the provision of infrastructure.
3. Strategic plans are to guide all decisions made by planning authorities and allow for streamlined development assessment.
4. Strategic planning is to provide opportunities for early community participation.
5. Planning authorities and State agencies are to co–operate constructively in the preparation and implementation of strategic plans.
6. Strategic plans should reflect agreed planning outcomes in setting the planning vision for an area.
7. Strategic plans are to be standardised, easy to use and available online.
8. There should be monitoring and reporting of strategic planning outcomes.
9. Strategic plans are to be based on evidence, set realistically deliverable targets and take account of economic, environmental and social considerations.
10. Local Plans should facilitate development that is consistent with agreed strategic planning outcomes and should not contain overly complex or onerous controls that may adversely impact on the financial viability of proposed development.

NSW Planning Policies

The Director–General can prepare NSW Planning Policies in relation to matters related to strategic planning for the State, including planning for infrastructure, development assessment or other planning matters.

Regional Growth Plans

The Director–General can prepare a Regional Growth Plan for any region in the State. In preparing a Regional Growth Plan, the Director–General is to give effect to NSW Planning Policies.

The Regional Growth Plan is to identify:

- the basis for strategic planning in a region
- existing and proposed transport and other infrastructure (including priority infrastructure)
- regionally significant areas
- housing, employment and environmental targets for achieving the planning outcomes for the region and the actions required by public authorities to meet those targets
- how performance against the targets is to be monitored
- the land and the kinds of development to which proposed biodiversity offset contributions should apply
- other planning matters relevant to the region.

A Regional Growth Plan can address the contents of a Subregional Delivery Plan if one has not been made.

Subregional Delivery Plans

The Subregional Planning Board can prepare a Subregional Delivery Plan for a subregion. In preparing a Subregional Delivery Plan, the Board is to give effect to NSW Planning Policies and Regional Growth Plans.

The Subregional Delivery Plan is to identify:

- existing and proposed transport and other infrastructure (including priority infrastructure)
- significant areas in the subregion
- how the housing, employment and environmental targets in the regional growth plan are to be achieved in the subregion

- proposed growth areas in the subregion and the proposed planning controls that should apply or the strategic planning process that should be undertaken to establish those controls
- development proposed to be prescribed in Local Plans as exempt or complying development or for code assessment
- the land and the kinds of development to which proposed biodiversity offset contributions should apply
- other matters relevant to planning for the subregion.

A Subregional Delivery Plan can address the contents of a Regional Growth Plan if one has not been made.

The Minister may appoint the Planning Assessment Commission to prepare a Subregional Delivery Plan if a Subregional Planning Board does not comply with any Ministerial direction that has been issued with respect to the Plan. If this occurs, the Planning Assessment Commission has all the powers and functions of the Subregional Planning Board with respect to the preparation of the Subregional Delivery Plan.

Making planning policies and strategic plans

A planning authority, when submitting a policy or strategic plan to the Minister for approval, is to provide the following:

- any public submissions (or a summary of submissions) made about the policy or plan
- any submissions made by a public authority about the policy or plan
- if the Planning Assessment Commission has held a public hearing into the draft policy or plan, the report of and any recommendations made by the Commission.

The mandatory notification and exhibition requirements for draft NSW Planning Policies, Regional Growth Plans and Subregional Delivery Plans are set out in Schedule 2.

The Minister may give directions to planning authorities about the preparation of strategic plans, including specifying time periods and other requirements for the preparation of plans.

NSW Planning Policies, Regional Growth Plans and Subregional Delivery Plans take effect when they are published on the NSW planning website. Policies and plans may be amended by the making of a further policy or plan. An amending policy or plan may be made without compliance with the statutory requirements for making a policy or plan to:

- correct an obvious error or misdescription or to address matters that are of a consequential or minor nature
- deal with matters that will not have any significant adverse impact on the environment or adjoining land
- deal in an expeditious manner with matters that give effect to approved strategic or infrastructure plans or that are of State, regional or subregional significance.

Once a policy or plan has been made, the Minister may:

- amend a local plan to give effect to strategic planning outcomes identified in the policy or plan
- direct a planning authority to exercise functions under this Part with respect to the preparation of planning proposals and local plans.

Local Plans

A Local Plan is established for each local government area or other specified area of the State and consists of the following parts:

1. Strategic Context

An explanation of how NSW Planning Policies and strategic plans are to be given effect in the local government area (having regard to any applicable community strategic plan under section 402 of the *Local Government Act 1993*).

2. Planning Controls

Containing provisions relating to land use zoning, concurrence and referral requirements, the identification of consent authorities and categories of development (including exempt and complying development and development subject to code assessment).

3. Development Guides

Containing guides relating to the carrying out of development so as to give effect to the aims of the planning control provisions and the objects of the zone and to facilitate development that is permissible under the plan.

4. Contributions

Containing provisions relating to the amount of local and regional infrastructure contributions, and biodiversity offset contributions, payable for particular types of development.

In preparing a Local Plan, the relevant planning authority is to give effect to NSW Planning Policies, Regional Growth Plans and Subregional Delivery Plans.

Before a Local Plan that imposes planning controls is made, the relevant planning authority must prepare a planning proposal for the planning controls. The Minister may appoint a body other than the council to be the relevant planning authority for parts of a Plan.

The relevant planning authority must submit the planning proposal to the Minister for a gateway determination to establish whether the Plan should proceed and, if so, the requirements that must be satisfied before the Plan can be made. The mandatory exhibition requirements for the making of a draft Plan are set out in the relevant gateway determination for the proposed Plan.

A planning authority, when submitting a Plan to the Minister for approval, is to provide the following:

- any public submissions (or a summary of submissions) made about the Plan
- any submissions made by a public authority about the Plan
- if the Planning Assessment Commission has held a public hearing into the draft Plan, the report of and any recommendations made by the Commission.

A Local Plan may be amended without compliance with the statutory requirements for making a Plan where an amendment is required to:

- correct an obvious error or misdescription or to address matters that are of a consequential or minor nature
- deal with matters that will not have any significant adverse impact on the environment or adjoining land
- deal in an expeditious manner with matters that give effect to approved strategic or infrastructure plans or that are of State, regional or subregional significance (including where a strategic compatibility certificate has been issued)
- deal with matters that a planning authority has been directed to deal with by the Minister in relation to the preparation of a Local Plan but has failed to do so
- identify development subject to an alternative biodiversity assessment procedure
- remove or modify concurrence, referral or approval requirements (see Part 6).

Regulations may provide for the delegation of the function of making gateway determinations and the making of Plans (including parts of Plans) to the council or another planning body. A Plan takes effect when it is published on the NSW planning website or the legislation website for the planning controls.

The regulations may provide for the form and content of Local Plans (including requirements for Local Plans to be made in accordance with a standard instrument structure).

PART 4

Development assessment

Part 4 of the Bill sets out the assessment tracks for development that requires consent and identifies relevant consent authorities and their functions.

Requirements for development that needs consent

The assessment tracks for obtaining development consent are:

- complying development track
- code assessment track
- merit assessment track.

A single development may be subject to both the code and merit assessment track.

Note: Development that does not need consent may be either exempt or prohibited.

Complying development

The requirement for consent can be satisfied by obtaining a complying development certificate if a development meets the standards in the complying development code in a Local Plan.

Either a council or accredited certifier may issue a complying development certificate. If a development does not comply with all of the standards or prescribed conditions, a complying development certificate may still be issued if a variation certificate has been obtained. Council may issue a variation certificate if the non–compliance is not likely to cause any significant additional adverse impact on development on the surrounding land.

Development that requires assessment

Development that requires consent (that is not dealt with as complying development) may be code or merit assessed.

Code assessment track

A Local Plan identifies the classes of development that are code assessed. Classes of development may be defined by reference to the type of development or by reference to development on a particular site. If development falls within a class, and meets all of the standards prescribed in the description of the class, it will be assessed against the relevant development guides in the Local Plan.

An applicant for development that is code assessed can adopt the acceptable solutions prescribed for that aspect of the development or propose alternative solutions that meet the performance criteria for that aspect of the development. Development that adopts the acceptable solutions or meets the performance criteria by some other means cannot be refused on those grounds and the consent authority cannot impose conditions that are more onerous than those standards.

If development (or an aspect of the development) does not satisfy an acceptable solution or the performance criteria, the consent authority will assess that development (or aspect of the development) against the following considerations:

- whether that aspect of the development is consistent with the strategic context provisions of the Local Plan and the objectives of the zone (including any draft planning control provisions that have been exhibited)
- any submissions (or summary of submissions) received from the community
- the likely impacts of the development, including any environmental impacts on the natural or built environments, and any economic or social impacts in the locality
- the public interest (in particular, whether any public benefit outweighs any adverse impact of the proposed development).

Merit assessment track

Development subject to merit assessment is development that requires an environmental impact statement (identified in a Local Plan) and any other development that:

- requires a concurrence because the development is proposed on critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats
- requires specific approvals or authorisations under other Acts (such as approvals under the *Heritage Act 1977*) and is subject to one stop referral
- is accompanied by a strategic compatibility certificate

- is permissible but is not of a class identified for code assessment or does not meet all of the standards in a class.

Development subject to merit assessment that is regionally significant development or State significant development is assessed against the following criteria:

- whether the development is consistent with applicable NSW Planning Policies, Regional Growth Plans and Subregional Delivery Plans (including any draft plans that have been exhibited)
- any submissions (or summary of submissions) received from the community
- the likely impacts of the development, including any environmental impacts on the natural or built environments, and any economic or social impacts in the locality
- the public interest (in particular, whether any public benefit outweighs any adverse impact of the proposed development).

All other development subject to merit assessment is assessed against the following considerations:

- whether the development is consistent with the strategic context provisions of the Local Plan and the objectives of the zone including any draft planning control provisions that have been exhibited)
- any submissions (or summary of submissions) received from the community
- the likely impacts of the development, including any environmental impacts on the natural or built environments, and any economic or social impacts in the locality
- the public interest (in particular, whether any public benefit outweighs any adverse impact of the proposed development).

The acceptable solutions and performance criteria in a Local Plan will apply as guidelines for merit assessed development. If the development meets any acceptable solutions, or a proposed alternative solution satisfies the performance criteria in the Local Plan, the consent authority cannot refuse the application in relation to that aspect of the development.

An application accompanied by a strategic compatibility certificate must be assessed having regard to the terms and conditions of that certificate and any consent granted must be consistent with the certificate.

Staged development applications

An applicant may make a staged development application that sets out concept proposals for an entire site. A consent granted for staged development does not authorise the carrying out of development unless:

- consent is later granted following a further development application with more detail, or
- the application includes the required details of the development on a part of the site and consent is granted for that first stage of development.

Subsequent development applications for the staged development must be consistent with the initial consent.

Crown development

A consent authority (other than the Minister) must not refuse consent for a Crown development application or impose a condition on a consent for a Crown development application except with the approval of the applicant.

An applicant or the consent authority may refer a Crown development application to the Director–General. The Director–General may submit recommendations to the Minister in relation to the application. The Minister must consider the Director–General's report and recommendations before determining the application. A decision of the Minister is taken to be a decision of the consent authority.

State significant development

A Local Plan identifies development that is State significant. The Minister may also declare development to be State significant after receiving advice from the Planning Assessment Commission and publishing the declaration on the NSW planning website.

An application for State significant development may be subject to either the code or merit assessment tracks. A State significant development application for EIS assessed development must be accompanied by an environmental impact statement prepared in accordance with the regulations. The regulations may prescribe other classes of State significant development for which environmental assessment requirements may be issued and where a statement of environmental effects must address those requirements.

If a staged development application is made for State significant development, the Minister may make a range of determinations including the assessment requirements for future stages and whether those stages cease to be State significant development.

Additional assessment requirements

A Local Plan sets out any additional assessment requirements including provisions for concurrences and referrals. The consent authority must carry out these requirements unless it determines to refuse the application.

Concurrent planning proposals and development applications

Where development may only be carried out if a Local Plan is amended, a concurrent planning proposal and development application may be made. For State significant development, the Director–General may undertake the functions of the relevant planning authority for the planning proposal and the Minister is to delegate the functions of determining the application to the Planning Assessment Commission.

Application for approval for certain matters under the *Local Government Act 1993*

A development application made to a council may also include application for any approval required under the *Local Government Act*.

Concurrent development applications and construction certificates

A concurrent application for a construction certificate may be submitted with a development application. If consent is granted, a construction certificate may be issued at the same time if the council is the building certifier.

Modification of consents

Development consent may be modified if the development, as modified, is substantially the same development and the regulations will provide that consent can also be modified:

- to correct a minor error, misdescription or miscalculation, or
- if the development, as modified, is substantially the same development and:
  - is of minor environmental impact, or
  - it meets the acceptable solutions or performance criteria in an applicable development guide.

A consent authority cannot refuse any modification application on grounds related to relevant acceptable solutions or performance criteria that the development, as modified, meets or impose conditions more onerous than those acceptable solutions or performance criteria.

Strategic compatibility certificates

A person may apply to the Director–General for a strategic compatibility certificate where a Local Plan has not yet been updated to reflect an approved Regional Growth Plan or Subregional Delivery Plan. The effect of a strategic compatibility certificate is to make development which is otherwise prohibited under the Local Plan permissible with consent.

Before issuing a certificate, the Director–General is to consult the relevant council and seek independent advice from the applicable Regional Planning Panel.

In determining an application for a strategic compatibility certificate, the Director–General is to consider:

- the views of the council and the advice provided by the Regional Planning Panel
- whether the proposed development is consistent with the applicable Regional Growth Plan or Subregional Delivery Plan
- the impact of the development on likely future uses of the surrounding land.

If the Director–General makes a determination that is contrary to the advice provided by a Regional Planning Panel, the reasons for that decision must be made publicly available.

A certificate may be issued subject to conditions and is valid for two years.

PART 5

Infrastructure and environmental impact assessment

Part 5 of the Bill contains provisions for development that does not require consent. It covers:

- environmental impact assessment development
- state infrastructure development
- Public Priority Infrastructure.

Part 5 environmental impact assessment development

Development that is not:

- subject to Part 4
- prohibited, or
- State infrastructure development

requires environmental impact assessment by the determining authority. A determining authority is the Minister or public authority carrying out the development or whose approval is required for the development to be carried out.

A determining authority has a duty to:

- consider matters affecting or likely to affect the environment because of the development
- obtain or prepare an environmental impact statement if the development is likely to significantly affect the environment.

If development is likely to significantly affect threatened species or is proposed to be carried out on critical habitat, a species impact statement may be prepared and consultation and concurrence requirements must be satisfied before determining the development can proceed.

A determining authority may, after consideration of any environmental impact statement (and/or species impact statement):

- approve the development, subject to conditions or modifications that reduce or eliminate any adverse environmental impacts of the development, or
- determine that the development should not proceed.

State infrastructure development

State infrastructure development is development that is identified in the planning control provisions of a Local Plan. For example, Part 5 environmental impact assessment development that requires an environmental impact statement (except where a council is the proponent) may be declared by a Local Plan to be State infrastructure development.

The Minister may also declare specified development to be State infrastructure development by way of an order published on the NSW planning website. If development is both State significant development under Part 4 and State infrastructure development, the development is State significant development unless it has been declared by such an order.

The Minister's approval is required to carry out State infrastructure development. When an application for approval is made, the Director–General will prepare environmental assessment requirements for the preparation of an environmental impact statement by the proponent.

The Minister, when determining an application for State infrastructure approval is to consider:

- the Director–General's report
- any advice provided by the Minister having portfolio responsibility for the proposal
- any findings or recommendations of the Planning Assessment Commission about the matter.

Staged State infrastructure development

A staged State infrastructure development application may be made that sets out concept proposals for an entire site. Approval for a staged application does not authorise the carrying out of the State infrastructure development unless:

- approval is subsequently granted following a further application with more detail, or
- the application provided requisite details of the development on a part of the site and approval is granted for that first stage of development.

If a staged application is made, the Minister may make a range of determinations including the assessment requirements for future stages and whether those stages cease to be State infrastructure development.

An approval for staged State infrastructure development is of no effect if it is inconsistent with the determination of a further application in respect of that State infrastructure development.

Modification of Minister's approval

A proponent may request the Minister modify an approval for State infrastructure development. The Minister's approval is not required if the development, as modified, will be substantially the same development.

Public Priority Infrastructure

Development may be declared to be Public Priority Infrastructure by order of the Minister if:

- the development is identified in a NSW Planning Policy, Regional Growth Plan, Subregional Delivery Plan or Growth Infrastructure Plan as priority infrastructure, or
- on application from the proponent Minister, the Minister for Planning and Infrastructure is of the opinion the development is essential for the economic, environmental or social well–being of the State.

The Minister is to give written reasons for making a Public Priority Infrastructure declaration.

The declaration authorises the carrying out of the development, however, the proponent must first prepare and submit a project definition report to the Director–General.

The report is to set out:

- a description of the development (including proposed staging)
- the measures the proponent will take to avoid, minimise or mitigate any adverse impacts of the development on the environment
- any monitoring, auditing and reporting the proponent will undertake on the environmental impacts of the development during the construction and operational stages
- any other matters prescribed in the regulations.

The Director–General may require revisions be made to the report to address any matters notified to the proponent. The report will then be exhibited by the Director–General for a minimum of 28 days.

Following exhibition, the proponent is to revise the project definition report to address any further matters notified to the proponent by the Director–General and the report will then be published on the NSW planning website.

PART 6

Concurrences, consultation and other legislative approvals

Part 6 of the Bill contains provisions relating to the application of concurrences, consultation requirements and approvals under other Acts to development under Part 4 or Part 5 of the Act.

Approvals and authorisations under other Acts

Requirements for approvals and authorisations under other Acts for:

- Public Priority Infrastructure
- State infrastructure development, and
- State significant development

either do not apply (see Table 1) or are required to be issued consistent with the planning approval for the development (see Table 2).

For Public Priority Infrastructure, the approvals listed in Table 3 are required to be issued consistent with the relevant Public Priority Infrastructure declaration and the published project definition report.

Table 1
List of approvals which do not apply to PPI, SID and SSD

Coastal Protection Act 1979	Concurrence under Part 3 for development in the coastal zone
Fisheries Management Act 1994	Permits under ss.201, 205 and 219
Heritage Act 1977	Approval under Subdivision 1 of Division 3 of Part 4 or excavation permit under section 139
National Parks and Wildlife Act 1974	Aboriginal heritage impact permit under s.90
Native Vegetation Act 2003	Authorisation for the clearing of native vegetation under s. 12
Rural Fires Act 1997	Bushfire safety authority under s. 100B
Water Management Act 2000	Approval under Chapter 3, Part 3 (including water use approval, water management work approval and controlled activity or aquifer interference approval)

Table 2
List of approvals which must be issued consistently with PPI, SID and SSD

Fisheries Management Act 1994	Aquaculture permit under s.144
Mine Subsidence Compensation Act 1961	Approval under s.15
Mining Act 1992	Grant of a mining lease under ss.63 or 64
Petroleum (Onshore) Act 1991	Grant of a production lease under s.42
Pipelines Act 1967	Licence under Part 3
Protection of the Environment Operations Act 1997	Environmental protection licences under Chapter 3
Roads Act 1993	Consent under Division 3 of Part 9

For other development, the Bill includes requirements for concurrence to be obtained from the Office of Environment and Heritage or Fisheries NSW where development is on land that is part of a critical habitat or that is likely to significantly affect a threatened species, population or ecological community or its habitat. The consent authority will also be required, as part of its assessment of the development, to take into account whether there is likely to be a significant effect on the threatened species, population or ecological community or its habitat.

For development on bushfire prone land, the Bill will include consultation and/or certification requirements that must be satisfied before planning approval is granted.

Local Plans may impose other concurrence and referral requirements for certain types of development assessed under Part 4.

The Minister may amend a Local Plan to remove or modify concurrence, referral or approval requirements for development subject to Part 4 or Part 5 and to specify:

- the matters that must be included in a development application
- additional or alternative environmental impact assessment requirements
- heads of consideration that must be taken into account by a consent authority before determining a development application
- standard conditions that apply to the carrying out of development
- matters to be taken into account by a determining authority before development is carried out under Part 5
- any other matter related to the assessment, determination or carrying out of development under Part 4 or Part 5.

If the concurrence, referral or approval requirement is in an Act, the Minister must first obtain the approval of the relevant portfolio Minister. Approval is not required if the requirement is in a Local Plan.

One stop referral for concurrences and approvals under the Act or other Acts

Development applications that require concurrence, referrals and approvals under the Act, other Acts or a Local Plan will be subject to one stop referral (see Table 3).

For these development applications, the Director–General will undertake the functions of the concurrence or referral agency or issue general terms of approval to the consent authority. The Director–General is to have regard to any advice provided by relevant agencies when undertaking these functions.

Table 3

Fisheries Management Act 1994	Permits under ss. 144, 201, 205 and 219
Heritage Act 1977	Approval under s. 58
National Parks and Wildlife Act 1974	Aboriginal heritage impact permit under s.90
Rural Fires Act 1997	Bushfire safety authority under s.100B
Water Management Act 2000	Approval under Chapter 3, Part 3 (including water use approval, water management work approval and controlled activity or aquifer interference approval)
Native Vegetation Act 2003	Consent for the clearing of native vegetation under s.12
Mine Subsidence Compensation Act 1961	Approval to alter or erect improvements within a mine subsidence district or to subdivide land under s.15
Mining Act 1992	Grant of a mining lease under ss.63 and 64
Petroleum (Onshore) Act 1991	Grant of a production lease under s.42
Protection of the Environment Operations Act 1997	Environmental protection licences under s.47, 48, 55 and 122 (i.e. licences referred to in s.43)
Roads Act 1993	Consent for works and structures under s.138

A development consent granted by the consent authority must be consistent with the general terms of approval. Agencies responsible for the above approvals must issue approval if an application is made within three years of the development consent being granted and the approval must be substantially consistent with the general terms of approval.

PART 7

Infrastructure and other contributions

Part 7 of the Bill provides for local infrastructure contributions, regional infrastructure contributions and biodiversity offset contributions, as well as Local Infrastructure Plans, Growth Infrastructure Plans and planning agreements.

Local infrastructure contributions

Local infrastructure contributions will be imposed by the consent authority as a condition of development consent. Local infrastructure contributions can fund the provision of:

- local roads
- drainage works
- open space
- community facilities.

The contribution can also be used to meet administrative costs and expenses.

There are two types of local infrastructure contributions:

Direct local infrastructure contributions: a monetary contribution towards the provision, extension or augmentation of local infrastructure or recoupment of the cost of providing existing local infrastructure. A direct local infrastructure contribution can also be paid by the dedication of land or the provision of works–in–kind.

Indirect local infrastructure contributions: a monetary contribution that is a percentage of the capital investment value of development, an amount based on the area of land used for development or another amount determined by the regulations. An indirect local infrastructure contribution does not need to relate to the local infrastructure provided. An indirect local infrastructure contribution cannot be satisfied by the dedication of land or provision of works–in–kind.

Local Infrastructure Plans

A council can impose a condition requiring the payment of a direct or an indirect local infrastructure contribution if it has a Local Infrastructure Plan.

A Local Infrastructure Plan is to set out:

the development or class of development that the local infrastructure contribution applies to

- the rate of the contribution
- when the contribution is payable and in what form it can be paid
- how the contribution will be indexed between the grant of consent and the payment of the contribution.

A Local Infrastructure Plan can be made and amended by the Minister.

Consent authorities (other than councils) can require a local infrastructure contribution in accordance with a Local Infrastructure Plan. However, the Minister is only required to have regard to the Local Infrastructure Plan when imposing a local infrastructure contribution.

Administration of local infrastructure contributions

Local infrastructure contributions are payable to the council and are to be applied as set out in the Local Infrastructure Plan. The Minister can re–apply local infrastructure contributions for other purposes that are consistent with agreed strategic outcomes for the subregion. Councils are to report annually on local infrastructure contributions.

Regional infrastructure contributions

Regional infrastructure contributions are a monetary contribution that is a percentage of the capital investment value of development, an amount based on the area of land used for development or another amount determined by the regulations. Regional infrastructure contributions are imposed as a condition of development consent.

A regional infrastructure contribution can be paid by the dedication of land or the provision of works–in–kind. The land dedication or works–in–kind must relate to the infrastructure identified in the Growth Infrastructure Plan.

Regional infrastructure contributions can fund the provision of enabling infrastructure to support development, including:

- regional or State roads
- land for drainage
- transport infrastructure
- regional open space
- educational establishments.

The contribution can also be used to meet administrative costs and expenses.

Growth Infrastructure Plans

A Growth Infrastructure Plan is to identify the regional infrastructure that will be subject to regional infrastructure contributions and include a contestability assessment. A Growth Infrastructure Plan can be made and amended by the Minister.

Administration of regional infrastructure contributions

Regional infrastructure contributions and the proceeds of the sale of any land dedicated in payment of a regional infrastructure contribution are payable to:

- the Regional Growth Fund, if the contribution relates to land for regional open space or drainage
- the Regional Contributions Fund, in any other case.

The Regional Contributions Fund is administered by the Treasury in consultation with the department. Payments out of the Fund are to be made to public authorities and other persons for the provision of regional infrastructure identified in a Growth Infrastructure Plan.

The priorities for the payment of money from the Fund are to be determined in consultation with the relevant Subregional Planning Board.

The regulations will specify the reporting and auditing requirements for local and regional infrastructure contributions.

Relationship between local and regional infrastructure contributions

A regional infrastructure contribution is payable in addition to any requirement for a local infrastructure contribution.

Biodiversity offset contributions

Biodiversity offset contributions are a monetary contribution towards the conservation or enhancement of the natural environment. A biodiversity offset contribution can also be paid by the dedication of land and the provision of works–in–kind.

A consent authority can only impose a condition requiring the payment of a biodiversity contribution if it is identified in the subregional delivery plan and authorised by the Local Plan.

Administration of biodiversity offset contributions

Biodiversity offset contributions and the proceeds of the sale of any land dedicated in payment of a biodiversity offset contribution are payable to a biodiversity offset fund jointly administered by the Ministers administering the *Threatened Species Conservation Act 1995, Fisheries Management Act 1994* and *Marine Parks Act 1997*.

Contributions in local plans

The rates of infrastructure contributions set out in a Local Infrastructure Plan and Growth Infrastructure Plan, as well as the rates of biodiversity offset contributions set out in a Subregional Delivery Plan, are to be included in Part 4 of the relevant Local Plan.

Planning agreements

A planning agreement is an agreement between one or more planning authorities and a developer, where the developer is required to dedicate land free of cost, pay a monetary contribution or provide any other material public benefit (or a combination of them) to provide:

- public infrastructure identified in an infrastructure plan
- infrastructure identified in a Ministerial planning order (if there is no applicable infrastructure plan)
- affordable housing (if authorised by a strategic plan)
- for the conservation or enhancement of the natural environment of the State.

The developer is a person who has sought a change to a Local Plan, has made (or proposes to make) a development application, or is associated with a person who has done or proposes to do one of these things.

A planning agreement can exclude the requirement to pay:

- a local infrastructure contribution for development, if the consent authority or the Minister is a party to the agreement
- a Regional Infrastructure Contribution for development, if the Minister is a party to the agreement or approves another planning authority to do so.

PART 8

Building and subdivision

Part 8 of the Bill provides for the appointment of building certifiers, the carrying out of building work and subdivision work and the issue of certificates.

Building and subdivision certifiers

A person carrying out development authorised by a development consent is to appoint a building certifier for any building work and/or a subdivision certifier for any subdivision work. A council or private certifier may be appointed as the building or subdivision certifier.

Types of certificates

There are the following kinds of certificates under Part 8:

A construction certificate:
authorising a person to carry out building work under a development consent. It is an offence to carry out building work without a construction certificate.

An occupation certificate:
authorising a person to occupy or use a new building or change the use of an existing building. It can be issued for the whole or any part of a building. It is an offence to occupy or use a new building or change the use of an existing building without an occupation certificate.

A subdivision works certificate:
authorising the carrying out of subdivision works under a development consent. It is an offence to carry out subdivision works without a subdivision works certificate.

A subdivision certificate:
authorising a person to register a plan of subdivision under the *Conveyancing Act 1919*. It is an offence to register a plan of subdivision without a subdivision certificate.

A compliance certificate:
certifying that an aspect of development complies with certain plans, specifications or standards. The regulations will specify when a compliance certificate is necessary to certify compliance with specified building and design matters. A compliance certificate can be issued by a person specified in the regulations.

Requirement for a building manual

A building manual is to be prepared by the building certifier when issuing an occupation certificate for specified buildings and is to be maintained by the owner of the building. The building manual includes matters required to be checked for ongoing compliance, for example fire systems that must be maintained. It is an offence not to maintain a building manual.

Liability for defective building or subdivision work

Legal proceedings may only be brought in relation to building work or subdivision work within 10 years of completion, unless the work comprises ‘residential building work’ (within the meaning of the *Home Building Act 1989*) in which case it is six years.

A person exercising functions under the legislation can rely on certificates under Part 8 and is exempt from liability for any loss or damage arising from any matter to which the certificate relates. This does not apply to a private certifier who relies on a certificate it has issued.

PART 9

Reviews and appeals

Part 9 of the Bill sets out the review and appeal rights available to applicants and objectors.

Reviews

An applicant may seek a review of:

- a determination of a development application
- a determination of a modification application
- a decision to reject a development application.

Reviews are available where the original determination or decision was made by:

- council (or its delegate)
- a Regional Planning Panel (in respect of regionally significant development)
- the Planning Assessment Commission (in respect of State significant development).

Reviews are not available for:

- complying development
- EIS assessed development
- development that requires specified approvals under other Acts
- Crown development
- decisions made after the Planning Assessment Commission has held a public hearing.

Where the original determination or decision was made by a delegate of council, the review is conducted by the council or a delegate more senior than the person who originally made the determination or decision. If council made the original determination or decision, the council conducts the review.

Independent hearing and assessment panels, regional planning panels and the Planning Assessment Commission conduct reviews of their own determinations or decisions.

Reviews must be requested within six months after receiving notice of a determination or decision, or six months after the date of deemed refusal.

A review may confirm or change a determination or decision and the determination or decision is taken to be one made by the consent authority.

Court appeals available for applicants

Applicants have a right of appeal to the court against a determination or deemed refusal of:

- a development application (including a determination after a review)
- a modification application (including a determination after a review).

There are also rights of appeal against:

- a decision or a failure to determine an application to extend a lapsing period
- a decision to revoke or modify a development consent
- a decision as to the satisfaction of an ancillary aspect condition
- a decision about a deferred commencement condition
- a decision about the provision of security
- the failure to issue or refusal of an application for a certificate under Part 8.

Appeals must be commenced within six months after receiving notice of a determination or six months after the date of deemed refusal.

Appeals are not available where the Planning Assessment Commission has held a public hearing.

Appeals are also not available for decisions about:

- complying development
- State infrastructure development
- Public Priority Infrastructure.

The Court must make an order for the costs of the consent authority that have been thrown away to be paid by the applicant if an amended application is filed during appeal proceedings.

Court appeals available for objectors

Objectors have appeal rights in respect of development consents issued for EIS assessed development where a public hearing has not been held by the Commission.

Appeals must be commenced within 28 days of receiving notice of the decision.

Miscellaneous matters

The Bill will also include provisions relating to:

- giving notice of appeals
- right of certain parties to be heard and joined to appeals
- the joint hearing of appeals
- revocation or re–grant of development consents after certain orders are made by the Land and Environment Court
- appeals after certain orders are made by the Land and Environment Court
- the voluntary surrender of development consents.

NOTE: THERE WILL BE CONSEQUENTIAL AMENDMENTS TO THE *LAND AND ENVIRONMENT COURT ACT 1979* TO EXPAND THE MANDATORY CONCILIATION AND ARBITRATION APPEAL TRACK FOR ADDITIONAL TYPES OF DEVELOPMENT.

PART 10

Enforcement

Part 10 of the Bill provides for civil and criminal enforcement.

Ministerial enforcement powers

The Bill includes provisions for:

- the Minister to direct public authorities or other persons with functions under the legislation to exercise those functions (for example, directing a relevant planning authority as to the timing and content of strategic plans)
- the Minister to direct councils to provide performance monitoring reports in relation to planning and development functions
- investigations under the *Local Government Act 1993* and *Building Professionals Act 2005*
- settlement of planning disputes.

Development control orders

The Minister or the Director–General, councils and other bodies exercising functions as consent authorities may issue development control orders to people about development and fire safety.

The types of orders that may be issued include:

- orders about carrying out unauthorised development
- orders about carrying out of development inconsistently with an approval
- fire safety orders
- brothel closure orders.

Other provisions relevant to orders deal with:

- when an order can be issued
- who can give an order and the process they must follow
- who can be served with an order
- appeals about orders.

Civil enforcement proceedings

Any person may bring civil proceedings to remedy or restrain a breach of the Act. The Court can make any order to remedy or restrain the breach.

The validity of planning approvals and strategic or infrastructure plans can only be questioned in proceedings commenced within three months after the date on which public notice of the planning approval is given or the date of publication of the plan.

The only requirements that are mandatory in connection with the validity of a planning approval, and strategic or infrastructure plans (or any decision made in connection with a planning approval or plan) are the mandatory notification and exhibition requirements in Schedule 2. Only the planning control provisions of a Local Plan are a statutory instrument for the purposes of proceedings to remedy a breach.

The validity of a declaration of Public Priority Infrastructure, or any decision made or action taken in connection with Public Priority Infrastructure, cannot be the subject of any civil proceedings (except with the approval of the Minister).

The Bill includes special provisions relating to development consents where there has been corrupt conduct.

Criminal enforcement proceedings

Criminal proceedings can be commenced for offences under the legislation where a penalty is specified. Some offences are classified in tiers according to their severity.

Tier 1 offences are the most serious offences and can attract penalties of up to $5 million for corporations and $1 million for individuals. Tier 1 applies only when the following aggravating factors are established:

- the offence was committed intentionally, and
- the offence either:
  - caused or was likely to cause significant harm to the environment, or
  - caused the death or serious injury or illness of a person.

Tier 2 offences are those identified as being less serious (including when the above aggravating factors for Tier 1 offences have not been established) and can attract penalties of up to $2 million for corporations and $500,000 for individuals.

Tier 3 offences are the least serious offences and can attract penalties of up to $1 million for corporations and $250,000 for individuals.

The Bill provides that offences under the regulations will be subject to a maximum penalty of $110,000.

The Bill also inlcudes provisions relating to:

- the provision of false or misleading information
- the commencement of proceedings for criminal offences.

PART 11

Miscellaneous

Part 11 of the Bill contains miscellaneous provisions relating to:

- regulations
- fees and charges
- planning and building information certificates
- existing uses
- contaminated land liability
- bush fire prone land
- disclosure of political donations
- right to be heard
- service of documents
- review of the Act.

SCHEDULES

Each part of the Bill has a corresponding schedule of ancillary provisions:

Schedule 1	**General** This Schedule includes the Dictionary.
Schedule 2	**Community participation** This Schedule sets out the mandatory notification and exhibition requirements for planning authorities including re–exhibition.It also includes provisions relating to ePlanning and copyright.
Schedule 3	**Strategic planning**
Schedule 4	**Development assessment**
Schedule 5	**Infrastructure and environmental impact assessment**
Schedule 6	**Concurrences, consultation and other legislative approvals**
Schedule 7	**Infrastructure and other contributions**
Schedule 8	**Building and subdivision**
Schedule 9	**Reviews and appeals**
Schedule 10	**Enforcement**
Schedule 11	**Miscellaneous** This Schedule includes provisions relating to paper subdivisions.