

Sustainable Planning and Other Legislation Amendment Bill 2012

Amendments agreed to during Consideration

1 **Clause 2 (Commencement)**

Page 12, line 9, ‘59, 61, 63, 67’—

omit, insert—

‘63’.

2 **Clause 2 (Commencement)**

Page 12, line 11, ‘sections 945 and 946’—

omit, insert—

‘section 945’.

3 **Clause 35 (Insertion of new ch 6, pt 1, div 4, sdiv 2A)**

Page 24, line 25—

omit, insert—

‘matters prescribed under a regulation.’

‘255D Chief executive imposes conditions or recommends conditions be imposed on development approval

‘(1) Subsection (3) applies if the chief executive—

- (a) is the assessment manager for an application and imposes a condition on the development approval; or
- (b) is a concurrence agency for an application and, in a concurrence agency’s response given under section 285 or 290 or in an amended response given under section 290, tells the assessment manager that a condition must attach to the development approval; or

- (c) is an advice agency for an application and, in an advice agency's response given under section 291, makes a recommendation to the assessment manager about a condition that should attach to the development approval, and the assessment manager imposes the condition.
- '(2) Subsection (3) also applies if—
- (a) the chief executive is a referral agency for a matter within the referral agency's jurisdiction about a development; and
 - (b) the chief executive gives a referral agency's response under section 271 before an application for the development is made that—
 - (i) if the chief executive is a concurrence agency—tells the assessment manager that a condition must attach to any development approval for the application; or
 - (ii) if the chief executive is an advice agency—makes a recommendation to the assessment manager about a condition that should attach to any development approval and the assessment manager imposes the condition on a development approval for the application; and
 - (c) the functions of the chief executive as a referral agency in relation to the application are lawfully devolved or delegated to the assessment manager.
- '(3) The chief executive may nominate an entity to be the assessing authority for the development to which the development approval relates for the administration and enforcement of a matter relating to the condition.
- '(4) If the chief executive nominates an entity under subsection (3), the chief executive must give the entity a written notice to that effect.

'255E Relationship with other Acts

- '(1) This section applies to an application if—
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- (a) under another Act, had the application been made before the commencement of this section, an entity (a *relevant entity*) other than the local government would have been the assessment manager, or a referral agency that has particular jurisdiction, for the application; and
 - (b) the other Act imposes requirements on the relevant entity assessing the application as the assessment manager or a referral agency; and
 - (c) under this Act, on or after the commencement the chief executive becomes the assessment manager, or a referral agency that has the same or substantially the same jurisdiction, for the application.
- ‘(2) If there is an inconsistency between this subdivision and the other Act, this subdivision prevails to the extent of the inconsistency.
- ‘(3) Subsection (2) applies despite express words or an implied intention to the contrary in the other Act.
- ‘(4) Without limiting subsections (2) and (3)—
- (a) a provision of the other Act stating that matters referred to in that Act to which the relevant entity in assessing the application must or may have regard does not apply to the chief executive in assessing the application; and
 - (b) for assessing the application, the chief executive may under section 255A(2)(b), 225B(2)(b) or 255C(2)(b) have regard, and give the weight the chief executive considers appropriate, to the matters prescribed under a regulation for that section, despite any provision in the other Act that states the relevant entity must or may have regard to other particular matters.
- ‘(5) Subsection (6) applies if, under the other Act, a function is conferred on the relevant entity for assessing a matter as the assessment manager or a referral agency for the application.
- ‘(6) For assessing the matter—
- (a) the function is conferred on the chief executive; and
 - (b) the chief executive may, but is not required to, have regard to the other Act’s purpose.

- ‘(7) If a provision of the other Act states that the relevant entity may impose particular conditions on any development approval for the application—
- (a) the provision does not apply to the chief executive for imposing conditions on the development approval; but
 - (b) any condition the chief executive imposes on the development approval must comply with section 345.
- ‘(8) If a provision of the other Act states that the relevant entity would be, or would be taken to be, the assessment manager or a referral agency for assessing a matter for the application, the chief executive is, or is taken to be, the assessment manager or the referral agency for assessing the matter.
- ‘(9) Subsection (10) applies if a provision of the other Act (a *stated provision*) requires the applicant to give the relevant entity a document relating to the application.
- ‘(10) Despite the stated provision, the applicant must give the chief executive the document.
- ‘(11) In this section—
- application* includes part of an application.
 - assessing*, an application or a matter, includes deciding the application or the matter.
 - function* includes power.
 - must have regard to* includes must comply with.’.

4 Clause 59 (Amendment of s 445 (Rules of court))

Page 30, lines 1 to 8—

omit.

5 Clause 61 (Amendment of s 457 (Costs))

Page 30, lines 17 to 28 and page 31, lines 1 to 22—

omit, insert—

‘renumber as section 457(10) to (16).

‘(2) Section 457(1) and (2)—

omit, insert—

‘(1) Costs of a proceeding or part of a proceeding, including an application in a proceeding, are in the discretion of the court.

‘(2) In making an order for costs, the court may have regard to any of the following matters—

- (a) the relative success of the parties in the proceeding;
- (b) the commercial interests of the parties in the proceeding;
- (c) whether a party commenced or participated in the proceeding for an improper purpose;
- (d) whether a party commenced or participated in the proceeding without reasonable prospects of success;
- (e) if the proceeding is an appeal against a decision on a development application and the court decides the decision conflicts with a relevant instrument as defined under section 326(2) or 329(2), whether the matters mentioned in section 326(1) or 329(1) have been satisfied;
- (f) if the proceeding is an appeal to which section 495(2) applies and there is a change to the application on which the decision being appealed was made, the circumstances relating to making the change and its effect on the proceeding;
- (g) whether the proceeding involves an issue that affects, or may affect, a matter of public interest, in addition to any personal right or interest of a party to the proceeding;
- (h) whether a party has acted unreasonably leading up to the proceeding, including, for example, if the proceeding is an appeal against a decision on a development application, the party did not, in responding to an information request, give all the information reasonably requested before the decision was made;
- (i) whether a party has acted unreasonably in the conduct of the proceeding, including, for example—

- (i) by not giving another party reasonable notice of the party's intention to apply for an adjournment of the proceeding; or
 - (ii) by causing an adjournment of the proceeding because of the conduct of the party;
 - (j) whether a party has incurred costs because another party has introduced, or sought to introduce, new material;
 - (k) whether a party has incurred costs because another party has not complied with, or has not fully complied with, a provision of this Act or another Act relating to a matter the subject of the proceeding;
 - (l) whether a party has incurred costs because another party has defaulted in the court's procedural requirements;
 - (m) whether a party should have taken a more active part in a proceeding and did not do so.
- '(3) Subsection (2) does not limit the matters to which the court may have regard in making an order as to costs.
- '(4) Despite subsection (1), if—
- (a) early in a proceeding the parties to the proceeding participate in a dispute resolution process under the ADR provisions or the *Planning and Environment Court Rules 2010*; and
 - (b) the proceeding is resolved during the dispute resolution process or soon after it has been finalised;
- each party to the proceeding must bear the party's own costs for the proceeding unless the court orders otherwise.
- '(5) If the parties to a proceeding under this part participate in a dispute resolution process under the ADR provisions or the *Planning and Environment Court Rules 2010* and the proceeding is not resolved, the costs of the proceeding include the costs of the dispute resolution process.
- '(6) Also, the costs of a proceeding include investigation costs for the following—
- (a) a declaration under section 456(1)(e);

- (b) an order made by the court under section 456(7) about a declaration made by the court;
 - (c) an appeal against the giving of an enforcement notice under section 473(1);
 - (d) a proceeding mentioned in section 601(1).
- ‘(7) Investigation costs for subsection (6) include costs the court decides were reasonably incurred by a party to the proceeding relating to investigations or gathering of evidence for the making of the declaration or order, the giving of the enforcement notice or the bringing of the proceeding.
- ‘(8) Subsections (9) to (15) apply to a proceeding despite subsection (1).
- ‘(9) Costs of a proceeding mentioned in section 601, including an application in a proceeding mentioned in that section, are in the discretion of the court but follow the event, unless the court orders otherwise.’.
- ‘(3) Section 457(16), as renumbered—
- insert—*
- Note—*
- See section 491B(3) for when a party to a proceeding must bear the party’s own costs.’.

6 Clause 67 (Insertion of new ch 7, pt 1, div 12A)

Page 34, line 7, ‘section 457(1)’—

omit, insert—

‘section 457(1), (4) and (9) to (14)’.

7 Clause 67 (Insertion of new ch 7, pt 1, div 12A)

Page 34, lines 12 to 17—

omit, insert—

‘ADR registrar must act as quickly, and with as little formality and technicality, as is consistent with a fair and appropriate consideration of the issues.’.

8 Clause 121 (Insertion of new ss 761A and 761B)

Page 48, lines 10 to 12—

omit, insert—

‘commencement—

- (a) for each of the local government’s declared master planned areas that has a structure plan for the area—to incorporate the structure plan in the planning scheme; or
- (b) for each of the local government’s declared master planned areas that does not have a structure plan for the area—to address the matters mentioned in subsection (4) for the area in the planning scheme by following the process stated in the guideline mentioned in section 117(1).’.

9 Clause 121 (Insertion of new ss 761A and 761B)

Page 48, lines 18 to 21—

omit, insert—

‘(b) either—

- (i) for each of the local government’s declared master planned areas that has a structure plan for the area—incorporate the structure plan in the planning scheme; or
- (ii) for each of the local government’s declared master planned areas that does not have a structure plan for the area—address the matters mentioned in subsection (4) for the area in the planning scheme by following the process stated in the guideline mentioned in section 117(1).

‘(4) For subsections (2)(b) and (3)(b)(ii), the matters are all of the following—

- (a) set out the broad environmental, infrastructure and development intent to guide detailed planning for the area;

- (b) appropriately reflect the standard planning scheme provisions;
 - (c) include a code that—
 - (i) states the development entitlements and development obligations for the area; and
 - (ii) includes a map that gives a spatial dimension to the matters the subject of the code;
 - (d) for development in the area—
 - (i) state development that is—
 - (A) exempt development; and
 - (B) self-assessable development; and
 - (C) development requiring compliance assessment; and
 - (D) assessable development requiring code or impact assessment, or both code and impact assessment; and
 - (ii) identify or include codes for the development.
- ‘(5) In this section—’.

10 Clause 121 (Insertion of new ss 761A and 761B)

Page 48, line 27, ‘master’—

omit, insert—

‘declared master’.

11 Clause 122 (Insertion of new ch 10, pt 6)

Page 49, line 19, ‘section 761A(3)’—

omit, insert—

‘section 761A(5)’.

12 Clause 122 (Insertion of new ch 10, pt 6)

Page 49, lines 26 and 27—

omit, insert—

‘structure plan, for a master planned area, means the structure plan for the area made under the unamended Act and in effect on the commencement.’.

13 Clause 122 (Insertion of new ch 10, pt 6)

Page 52, line 7, after ‘scheme’—

insert—

‘, or makes a planning scheme.’.

14 Clause 122 (Insertion of new ch 10, pt 6)

Page 53, line 1, ‘on particular’—

omit, insert—

‘on, and notification requirements for, particular’.

15 Clause 122 (Insertion of new ch 10, pt 6)

Page 53, after line 13—

insert—

- ‘(3) Despite section 295(1), the notification stage does not apply to the development application if—
 - (a) the development for which the application is made is substantially consistent with—
 - (i) the structure plan area code identified or included in the structure plan for the area; and
 - (ii) any master plan area code included in a master plan that applies to land or part of the land in the area; and

- (b) the application does not seek to change the type of assessment for the development or, if it does, it seeks to change it in a way mentioned in section 295(3)(b).’.

16 Clause 122 (Insertion of new ch 10, pt 6)

Page 53, lines 20 to 32 and page 54, lines 1 to 18—
omit.

17 Clause 122 (Insertion of new ch 10, pt 6)

Page 55, lines 1 to 5—
omit, insert—

- ‘(3) The local government must, as required under section 761A, amend its planning scheme or make a planning scheme instead of preparing the structure plan.
- ‘(4) The planning scheme amended or made under subsection (3) must be consistent’.

18 Clause 123 (Amendment of sch 3 (Dictionary))

Page 77, lines 27 and 28—
omit, insert—

‘*ADR provisions* see section 491(1).

ADR registrar, for chapter 7, part 1, division 12A, see section 491A.

impact report, for chapter 3, part 5, division 2, see section 122C(1).’.

19 Clause 123 (Amendment of sch 3 (Dictionary))

Page 78, lines 3 to 6—
omit, insert—

‘*code assessment* means the assessment of development by the’.

20 Clause 123 (Amendment of sch 3 (Dictionary))

Page 79, lines 2 to 4—

omit, insert—

'omit, insert—

'(k) for development under a development approval for which the chief executive is the assessment manager or a referral agency and has, under section 255D, nominated an entity to be the assessing authority for the development for the administration and enforcement of a matter relating to a condition of the development approval—the entity; or'.'

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