

**ENVIRONMENTAL PLANNING AND ASSESSMENT
ACT, 1979, No. 203**

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 203, 1979.

An Act to institute a system of environmental planning and assessment for the State of New South Wales. [Assented to, 21st December, 1979.]

See also Land and Environment Court Act, 1979; Miscellaneous Acts (Planning) Repeal and Amendment Act, 1979; Heritage (Amendment) Act, 1979; and Height of Buildings (Amendment) Act, 1979.

Environmental Planning and Assessment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Environmental Planning and Assessment Act, 1979". Short title.

2. (1) This section and sections 1 and 155 shall commence on the date of assent to this Act. Commence-
ment.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Arrange-
ment.

PART I.—PRELIMINARY—ss. 1–6.

PART II.—ADMINISTRATION—ss. 7–23.

DIVISION 1.—*The Minister*—ss. 7–12.

DIVISION 2.—*The Director*—ss. 13–15.

DIVISION 3.—*The Department*—ss. 16, 17.

DIVISION 4.—*Commissioners of Inquiry*—s. 18.

DIVISION 5.—*Committees*—ss. 19–22.

DIVISION 6.—*Delegation*—s. 23.

PART III.—ENVIRONMENTAL PLANNING INSTRUMENTS—ss.
24–74.

Environmental Planning and Assessment.

DIVISION 1.—*General*—ss. 24–36.

DIVISION 2.—*State environmental planning policies*—ss. 37–39.

DIVISION 3.—*Regional environmental plans*—ss. 40–52.

DIVISION 4.—*Local environmental plans*—ss. 53–72.

DIVISION 5.—*Review and amendment of environmental planning instruments*—ss. 73, 74.

PART IV.—ENVIRONMENTAL PLANNING CONTROL—ss. 75–109.

DIVISION 1.—*General*—ss. 75–105.

DIVISION 2.—*Existing use*—ss. 106–109.

PART V.—ENVIRONMENTAL ASSESSMENT—ss. 110–115.

PART VI.—IMPLEMENTATION AND ENFORCEMENT—ss. 116–127.

DIVISION 1.—*General*—ss. 116–118.

DIVISION 2.—*Public inquiries and settlement of disputes*—ss. 119–121.

DIVISION 3.—*Orders of the Court*—ss. 122–124.

DIVISION 4.—*Offences*—ss. 125–127.

PART VII.—FINANCE—ss. 128–145.

DIVISION 1.—*Funds*—ss. 128–135.

DIVISION 2.—*Charges and fees*—ss. 136–139.

DIVISION 3.—*Loans*—ss. 140–143.

DIVISION 4.—*General*—ss. 144, 145.

PART VIII.—MISCELLANEOUS—ss. 146–158.

SCHEDULE 1.—THE DIRECTOR.

SCHEDULE 2.—ADVISORY CO-ORDINATING COMMITTEE.

Environmental Planning and Assessment.

SCHEDULE 3.—LOCAL GOVERNMENT LIAISON COMMITTEE.

SCHEDULE 4.—ENVIRONMENT AND PLANNING ADVISORY COMMITTEE.

SCHEDULE 5.—COMMITTEE PROCEDURES.

SCHEDULE 6.—LOANS.

SCHEDULE 7.—MODIFICATION OF THE PUBLIC WORKS ACT, 1912.

4. (1) In this Act, except in so far as the context or ^{Interpreta-} subject-matter otherwise indicates or requires— _{tion.}

“area” has the meaning ascribed thereto in the Local Government Act, 1919;

“building” includes a structure or a part of a structure;

“Commission of Inquiry” means a Commission of Inquiry constituted under section 119;

“Commissioner of Inquiry” means a person appointed and holding office under section 18;

“consent authority”, in relation to a development application, means—

- (a) the council having the function to determine the application; or
- (b) where an environmental planning instrument specifies a Minister or public authority (other than a council) or the Director as having the function to determine the application—that Minister or public authority or the Director, as the case may be;

Environmental Planning and Assessment.

“control”, in relation to development or any other act, matter or thing, means—

- (a) consent to, permit, regulate, restrict or prohibit that development or that other act, matter or thing, either unconditionally or subject to conditions; or
- (b) confer or impose on a consent authority functions with respect to consenting to, permitting, regulating, restricting or prohibiting that development or that other act, matter or thing, either unconditionally or subject to conditions;

“corporation” means the corporation constituted by section 8 (1);

“council” has the meaning ascribed thereto in the Local Government Act, 1919;

“Court” means the Land and Environment Court;

“deemed environmental planning instrument” means a former planning instrument referred to in clause 2 of Schedule 3 to the Miscellaneous Acts (Planning) Repeal and Amendment Act, 1979, and includes an instrument referred to in clause 3 (2) of that Schedule;

“Department” means the Department of Environment and Planning;

“designated development” means any class or description of development that is declared pursuant to section 29 or 158 to be designated development for the purposes of this Act;

“development”, in relation to land, means—

- (a) the erection of a building on that land;
- (b) the carrying out of a work in, on, over or under that land;

Environmental Planning and Assessment.

(c) the use of that land or of a building or work on that land; and

(d) the subdivision of that land,

but does not include any development of a class or description prescribed by the regulations for the purposes of this definition;

“development application” means an application for consent under Division 1 of Part IV to carry out development;

“development area” means land constituted as a development area in accordance with Division 1 of Part VII;

“development consent” means consent under Division 1 of Part IV to carry out development;

“development standards” means provisions of an environmental planning instrument in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point;

(b) the proportion or percentage of the area of a site which a building or work may occupy;

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work;

(d) the cubic content or floor space of a building;

(e) the intensity or density of the use of any land, building or work;

Environmental Planning and Assessment.

- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment;
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles;
- (h) the volume, nature and type of traffic generated by the development;
- (i) road patterns;
- (j) drainage;
- (k) the carrying out of earthworks;
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows;
- (m) the provision of services, facilities and amenities demanded by development;
- (n) the emission of pollution and means for its prevention or control or mitigation; and
- (o) such other matters as may be prescribed;

“Director” means the person appointed and holding office under section 13;

“environment” includes all aspects of the surroundings of man, whether affecting him as an individual or in his social groupings;

“environmental planning instrument” means a State environmental planning policy, a regional environmental plan, or a local environmental plan, and except where otherwise expressly provided by this Act, includes a deemed environmental planning instrument;

“functions” includes powers, authorities and duties;

“local environmental plan” means a plan made by the Minister under section 70 that is in force;

Environmental Planning and Assessment.

“objector”, in relation to a development application to carry out designated development, means a person who makes a submission by way of objection under section 87;

“occupier” includes a tenant or other lawful occupant of premises, not being the owner;

“officer of the Department” means an officer or employee of the Department, and includes the Director;

“owner” has the meaning ascribed thereto in the Local Government Act, 1919;

“person” includes an unincorporated group of persons or a person authorised to represent that group;

“public authority” means a public or local authority constituted by or under any Act, a government Department or a statutory body representing the Crown, and includes a person exercising functions on behalf of that authority, Department or body;

“region” means any land that the Minister, under subsection (6), declares to be a region;

“regional environmental plan” means a plan made by the Minister under section 51 that is in force;

“regulation” means a regulation made under this Act;

“Secretary” means the person for the time being holding or acting in—

(a) a prescribed office in the establishment of the Department; and

(b) if no office is for the time being prescribed—the office of Secretary to the Department;

“State environmental planning policy” means a policy made by the Governor under section 39 that is in force.

Environmental Planning and Assessment.

- (2) A reference in this Act to—
- (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, or the enlargement or extension of a building or the placing or relocating of a building on land;
 - (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, or the enlargement or extension of a work;
 - (c) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be work for the purposes of this Act;
 - (d) the subdivision of land is a reference to—
 - (i) (without limiting the following provisions of this paragraph) the subdivision of land within the meaning of the Local Government Act, 1919;
 - (ii) any other division of land into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition; or
 - (iii) the redivision of land, by such a subdivision or by any other division, into different parts which, after the redivision, would be obviously adapted for separate occupation, use or disposition,and includes a reference to a subdivision effected under Division 1 of Part II of the Strata Titles Act, 1973; and
 - (e) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land, as the case may require.

Environmental Planning and Assessment.

(3) Where functions are conferred or imposed by or under this Act on a council—

- (a) except as provided in paragraph (b), those functions may be exercised in respect of an area by the council of that area; or
- (b) if the functions are conferred or imposed in respect of part of an area, those functions may be exercised in respect of that part by the council of that area.

(4) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.

(5) Subject to section 56, a reference in this Act to the Director or a council preparing an environmental planning instrument or an environmental study includes a reference to the Director or a council, as the case may be, causing that environmental planning instrument or environmental study to be prepared on his or its behalf.

(6) The Minister may, by order published in the Gazette, declare any land, whether or not consisting of areas or parts of areas, to be a region for the purposes of this Act.

(7) A reference in this Act to a direction is a reference to a direction in writing.

(8) A power, express or implied, to give a direction under this Act includes a power to revoke or amend the direction.

(9) A reference in this Act to a prescribed form includes a reference to a form that is to the effect of that prescribed form.

(10) A reference in this Act to any act, matter or thing as specified in an environmental planning instrument includes a reference to any act, matter or thing that is of a class or description as specified in such an instrument.

Environmental Planning and Assessment.

(11) A reference in this Act to the granting of consent includes a reference to the granting of consent subject to conditions.

Objects.

5. The objects of this Act are—

(a) to encourage—

(i) the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;

(ii) the promotion and co-ordination of the orderly and economic use and development of land;

(iii) the protection, provision and co-ordination of communication and utility services;

(iv) the provision of land for public purposes;

(v) the provision and co-ordination of community services and facilities; and

(vi) the protection of the environment;

(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State; and

(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Environmental Planning and Assessment.

6. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities. Act to bind Crown.

PART II.

ADMINISTRATION.

DIVISION 1.—*The Minister.*

7. Without affecting the functions that the Minister has apart from this section, the Minister is charged with the responsibility of promoting and co-ordinating environmental planning and assessment for the purpose of carrying out the objects of this Act and, in discharging that responsibility, shall have and may exercise the following functions :— Responsibility of the Minister.

- (a) to carry out research into problems of environmental planning and assessment and disseminate information including the issue of memoranda, reports, bulletins, maps or plans relating to environmental planning and assessment;
- (b) to advise councils upon all matters concerning the principles of environmental planning and assessment and the implementation thereof in local environmental plans;
- (c) to promote the co-ordination of the provision of public utility and community services and facilities within the State;
- (d) to promote planning of the distribution of population and economic activity within the State;
- (e) to investigate the social aspects of economic activity and population distribution in relation to the distribution of utility services and facilities; and

Environmental Planning and Assessment.

- (f) to monitor progress and performance in environmental planning and assessment, and to initiate the taking of remedial action where necessary.

Minister
to be
corpora-
tion sole
for certain
purposes.

8. (1) The Minister is, for the purpose of exercising those functions expressed to be conferred or imposed on the corporation by or under this or any other Act, hereby incorporated as a corporation sole with the corporate name "Minister administering the Environmental Planning and Assessment Act, 1979".

(2) The corporation—

- (a) has perpetual succession;
- (b) shall have an official seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- (d) may do and suffer all other things that a body corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which the corporation is constituted; and
- (e) is, for the purpose of any Act, a statutory body representing the Crown.

(3) The seal of the corporation shall not be affixed to any instrument or document except in the presence of the Minister, or an officer of the Department for the time being authorised by him for the purpose, who shall attest by his signature the fact and date of the affixing of the seal.

(4) All courts and persons acting judicially—

- (a) shall take judicial notice of the seal of the corporation that has been affixed to any instrument or document; and
- (b) shall, until the contrary is proved, presume that the seal was properly affixed.

Environmental Planning and Assessment.

(5) For the purposes of section 81 of the Public Works Act, 1912, the corporation shall be deemed to be a Constructing Authority.

9. (1) The corporation may, for the purposes of this Act or pursuant to any function conferred or imposed on the Minister or the Director by any environmental planning instrument, acquire land, including land previously appropriated or resumed for any purpose, by lease or purchase or by resumption or appropriation in accordance with the provisions of this Part. **Power to acquire land, etc.**

(2) Without limiting the generality of subsection (1), the corporation may acquire in any manner authorised by that subsection—

- (a) any land to which an environmental planning instrument applies and which the Minister considers should be made available in the public interest for any purpose;
- (b) any land of which that proposed to be acquired under this Part forms part; or
- (c) any land adjoining or in the vicinity of any land proposed to be acquired under this Part.

(3) The corporation may acquire, by gift inter vivos, devise or bequest, any property for the purposes of this Act and may agree to the condition of any such gift, devise or bequest.

(4) The rule of law against remoteness of vesting shall not apply to any such condition to which the corporation has agreed.

(5) Where the corporation acquires property under subsection (3)—

- (a) neither an instrument that effects the acquisition nor any agreement pursuant to which the property is acquired is chargeable with duty under the Stamp Duties Act, 1920; and

Environmental Planning and Assessment.

- (b) the property, or the value of the property, shall not be included in the dutiable estate of the donor or testator for the purposes of assessing death duty under that Act.

**Resump-
tion.**

10. (1) A resumption or appropriation for the purposes of this Act shall be effected by the Governor under the Public Works Act, 1912, and, without affecting the generality of the foregoing, appropriation under that Act may be effected in respect of any land vested in Her Majesty or any person in trust for Her Majesty.

(2) Such a resumption or appropriation shall be deemed to be for an authorised work and the corporation shall be deemed to be the Constructing Authority.

(3) Notwithstanding subsection (1), sections 34, 35, 36 and 37 of the Public Works Act, 1912, do not apply in respect of the expenditure on any works constructed in pursuance of this Act, but section 38 of that Act applies in respect of that expenditure.

(4) For the purposes of this section and not otherwise, Schedule 7 has effect.

**Functions
of corpora-
tion.**

11. (1) For the purposes of this Act, the corporation may, in such manner and subject to such terms and conditions as it thinks fit, sell, lease, exchange or otherwise dispose of or deal with land vested in the corporation and grant easements or rights-of-way over that land or any part thereof.

(2) Without affecting the generality of subsection (1), the corporation may, in any contract for the sale of land vested in it, include conditions for or with respect to—

- (a) the erection of any building on that land by the purchaser within a specified period;
- (b) conferring on the corporation an option or right to repurchase that land if the purchaser has failed to comply with a condition referred to in paragraph (a);

Environmental Planning and Assessment.

- (c) conferring on the corporation an option or right to repurchase that land if the purchaser wishes to sell or otherwise dispose of that land before the expiration of a specified period or requiring the purchaser to pay to the corporation a sum determined in a specified manner where the corporation does not exercise that option or right; or
- (d) the determination of the repurchase price payable by the corporation pursuant to a condition referred to in paragraph (b) or (c).

(3) A condition included in a contract of sale pursuant to subsection (2) does not merge in the transfer of title to the land, the subject of the contract of sale, on completion of the sale.

(4) In addition to other functions conferred or imposed on the corporation by or under this or any other Act, the corporation may, for the purposes of this Act—

- (a) manage land vested in the corporation;
- (b) cause surveys to be made and plans of surveys to be prepared in relation to land vested in the corporation or in relation to any land proposed to be acquired by the corporation;
- (c) by notification published in the Gazette, close or realign any public road or part thereof within or adjoining or in the vicinity or for the purposes of the development of land vested in the corporation;
- (d) demolish, or cause to be demolished, any building on land vested in the corporation of which it has exclusive possession;
- (e) provide, or arrange, on such terms and conditions as may be agreed upon for the location or relocation of utility services within or adjoining or in the vicinity of land vested in the corporation;
- (f) subdivide and re-subdivide land and consolidate subdivided or re-subdivided land vested in the corporation;

Environmental Planning and Assessment.

- (g) set out and construct roads on land vested in the corporation or on land of which the corporation has exclusive possession, or on any other land with the consent of the person in whom it is vested;
- (h) erect, alter, repair and renovate buildings on and make other improvements to or otherwise develop land vested in the corporation or any other land, with the consent of a person in whom it is vested;
- (i) cause any work to be done on or in relation to any land vested in the corporation or any other land, with the consent of the person in whom it is vested, for the purpose of rendering it fit to be used for any purpose for which it may be used under any environmental planning instrument which applies to the land; and
- (j) by notification published in the Gazette, dedicate any land vested in the corporation as a reserve for public recreation or other public purposes and fence, plant and improve any such reserve.

(5) Notwithstanding anything in any Act, upon the publication, pursuant to subsection (4) (c), of a notification closing a public road or part thereof, the estate or interest therein of any person or public authority shall vest in the corporation freed and discharged from any trusts affecting it immediately before that publication and freed and discharged from any rights of the public or any person thereto as a public road or highway.

(6) In the exercise of any function under subsection (4) (c) or (g), consultations shall be held with the Traffic Authority of New South Wales, the relevant council and such other persons as the Minister determines.

Notifica-
tion of
interests.

12. (1) The Registrar-General shall, at the request of the corporation made in a manner approved by the Registrar-General and on payment of the fee prescribed under the Real Property Act, 1900, make, in the Register kept under that Act, a recording appropriate to signify—

- (a) that land specified in the request is held subject to a condition authorised under section 11 (2); or

Environmental Planning and Assessment.

(b) that a recording made pursuant to paragraph (a) has ceased to have effect.

(2) The corporation shall not make a request pursuant to subsection (1) (a) except for the purpose of ensuring compliance with the conditions in the contract of sale under which the land was sold, but the Registrar-General shall not be concerned to inquire whether any such request has been made for that purpose.

(3) Where a recording pursuant to subsection (1) (a) has been made in respect of any land, the Registrar-General shall not register under the Real Property Act, 1900, a transfer of that land to or by a person other than the corporation unless it would be so registrable if this Part had not been enacted and unless—

- (a) a recording pursuant to subsection (1) (b) has been made in respect of the land; or
- (b) the consent of the corporation to the transfer has been endorsed thereon.

(4) When a recording is made pursuant to subsection (1) in respect of any land, the Secretary shall notify the council in whose area the land is situated of the recording.

DIVISION 2.—*The Director.*

13. (1) The Governor may appoint a Director of Environment and Planning. Director of
Environ-
ment and
Planning.

(2) The Director shall, in the exercise of any function conferred upon him by or under this Act (except in relation to the contents of a recommendation or report made by him to the Minister), be subject to the control and direction of the Minister.

(3) Schedule 1 has effect in respect of the Director.

Environmental Planning and Assessment.

Acting
Director.

14. (1) The Minister may, by writing under his hand, appoint any officer of the Department as Acting Director to act in the office of the Director while the Director is absent from his office through illness or any other cause or where the Director is deemed to have vacated his office, and the person so appointed, while so acting, shall have and may exercise the functions of the Director vested in the Director by or under this or any other Act, and shall be subject to the control and direction of the Minister in the same manner as the Director.

(2) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising the Acting Director to act in the office of the Director and all acts or things done or omitted by the Acting Director while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted by the Director.

Functions
of the
Director.

15. In addition to the functions conferred or imposed on the Director by or under this or any other Act, the Director may, for the purposes of this Act—

- (a) submit to the Minister such proposals with respect to environmental planning and assessment as the Director considers necessary or appropriate, including proposals for the development and use of land, whether or not in conjunction with the provision of utility services and public transport facilities; and
- (b) consider and furnish reports to and advise and make recommendations to the Minister upon any matter or proposal relating to the development and use of land or to environmental planning and assessment which may be referred to him by the Minister.

DIVISION 3.—*The Department.*

Establish-
ment of
Depart-
ment.

16. (1) There is hereby established a Department of the Government, with the name "Department of Environment and Planning", to be under the control and management of the Minister.

Environmental Planning and Assessment.

(2) The persons who are officers and temporary employees referred to in—

(a) subsection (4); and

(b) clause 18 of Schedule 3 to the Miscellaneous Acts (Planning) Repeal and Amendment Act, 1979,

constitute the Department of Environment and Planning.

(3) Nothing in this section affects the power conferred by section 49 of the Constitution Act, 1902, to abolish, or change the name of, the Department.

(4) Such officers and temporary employees as may be necessary to enable the Minister, corporation, Department and Director to exercise their functions under this or any other Act shall be appointed and employed under and subject to the Public Service Act, 1979.

17. For the purpose of exercising any functions of the Minister, corporation, Department or Director under this or any other Act, the Director may, with the approval of the Minister and of the public authority concerned and on such terms as may be arranged, make use of the services of any officers, employees or servants of any public authority. ^{Use of services of public authorities.}

DIVISION 4.—*Commissioners of Inquiry.*

18. (1) The Governor may appoint persons to be Commissioners of Inquiry. ^{Commissioners of Inquiry.}

(2) Subject to this section, Schedule 1 has effect in respect of each Commissioner of Inquiry in the same way as it has effect in respect of the Director.

(3) Without affecting the functions of Commissioners of Inquiry under section 119, the Director may, with the approval of the Minister, make use of the services of any Commissioner in the administration of this Act.

Environmental Planning and Assessment.

(4) While the services of a Commissioner of Inquiry are being made use of under subsection (3), he shall be deemed to be an officer of the Department for the purposes of this Act.

DIVISION 5.—*Committees.*

Advisory
Co-
ordinating
Committee.

19. (1) An Advisory Co-ordinating Committee is hereby established.

(2) The functions of the Committee shall be—

- (a) to advise the Minister on means to ensure effective co-ordination of the activities and programmes of public authorities in the achievement of the objects of this Act;
- (b) to review progress and performance in the achievement of the objects of this Act;
- (c) to advise the Minister on the priorities to be established for the achievement of the objects of this Act;
- (d) to advise the Minister on matters which should be taken into consideration in the preparation of environmental planning instruments; and
- (e) to advise the Minister on such matters as may be referred to it by the Minister or the Director.

(3) The Director shall have power to co-opt or invite representatives of other departments and authorities, Commonwealth Government departments and authorities and private utility undertakings to participate in the proceedings and deliberations of the Committee.

(4) Schedules 2 and 5 apply in relation to the Committee.

Environmental Planning and Assessment.

20. (1) A Local Government Liaison Committee is hereby established. Local
Govern-
ment
Liaison
Committee.

(2) The functions of the Committee shall be to advise the Minister on the following matters :—

- (a) the means to ensure effective co-ordination of the activities and programmes of public authorities and councils in the achievement of the objects of this Act;
- (b) policies and procedures relating to the functions of councils under this Act;
- (c) the needs of councils in connection with their responsibilities under this Act for information, advice and procedures relating to environmental planning and assessment;
- (d) local environmental planning policies and procedures; and
- (e) such other matters as may be referred to the Committee by the Minister or the Director.

(3) Schedules 3 and 5 apply in relation to the Committee.

21. (1) An Environment and Planning Advisory Committee is hereby established. Environ-
ment and
Planning
Advisory
Committee.

(2) The functions of the Committee shall be to advise the Minister on the following matters :—

- (a) policies and procedures relating to the administration of this Act; and
- (b) such other matters as may be referred to the Committee by the Minister or the Director.

(3) Schedules 4 and 5 apply in relation to the Committee.

22. (1) The Director may establish committees, in addition to those established by this Act. Establish-
ment of
other
committees.

Environmental Planning and Assessment.

(2) The function of a committee established under subsection (1) shall be to advise the Minister on such matters as may be referred to it by the Minister or the Director.

(3) The Director may appoint one of the members of a committee established under subsection (1) as Chairman of the committee.

(4) Schedule 5 applies in relation to a committee established under subsection (1).

DIVISION 6.—*Delegation.*

Delegation. **23.** (1) The Minister, corporation or Director may, by instrument in writing, under seal (in the case of the corporation), delegate any of his or its functions conferred or imposed by or under this or any other Act as are specified in the instrument to—

- (a) any officer of the Department;
- (b) any officer, employee or servant of whose services the Director makes use in pursuance of this or any other Act;
- (c) any committee or subcommittee established under this Act; or
- (d) a council,

and may, by such an instrument, revoke wholly or in part any such delegation.

(2) A function, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation under this section, the Minister, corporation or Director, as the case may be, may continue to exercise all or any of the functions delegated.

Environmental Planning and Assessment.

(5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Minister, corporation or Director, as the case may be, and shall be deemed to have been done or suffered by the Minister, corporation or Director, as the case may be.

(6) An instrument purporting to be signed by a delegate of the Minister, corporation or Director, in his capacity as such a delegate, shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Minister, corporation or Director, as the case may be, under seal (in the case of the corporation), and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Minister, corporation or Director, as the case may be, under this section.

(7) The Secretary shall cause to be published in the Gazette a notice setting out the details of any instrument referred to in subsection (1), but this subsection does not affect the provisions of subsection (1).

(8) Nothing in this section authorises the delegation of—

- (a) the power of delegation conferred by this section; or
- (b) any function of the Minister conferred by section 89, 101, 117 or 118.

PART III.

ENVIRONMENTAL PLANNING INSTRUMENTS.

DIVISION 1.—*General.*

24. Without affecting the generality of any other provisions of this Act, an environmental planning instrument may be made in accordance with this Part for the purposes of achieving any of the objects of this Act.

Making of environmental planning instruments and the application of objects thereto.

Environmental Planning and Assessment.

Statement
of aims,
etc., in
environ-
mental
planning
instruments.

25. (1) An environmental planning instrument shall state the aims, objectives, policies and strategies whereby that environmental planning instrument is designed to achieve any of the objects of this Act.

(2) Except as provided by subsection (3), a statement referred to in subsection (1) does not affect the construction or effect of any other provision of the environmental planning instrument in which the statement is made.

(3) Where a provision of an environmental planning instrument is genuinely capable of different interpretations, that interpretation which best meets the aims, objectives, policies and strategies stated in that instrument shall be preferred.

(4) A failure to comply in any respect with subsection (1) does not affect the validity, construction or effect of an environmental planning instrument.

(5) This section does not apply in the case of a deemed environmental planning instrument.

Contents of
environ-
mental
planning
instruments.

26. Without affecting the generality of section 24 or any other provision of this Act, an environmental planning instrument may make provision for or with respect to any of the following :—

- (a) protecting, improving or utilising, to the best advantage, the environment;
- (b) controlling (whether by the imposing of development standards or otherwise) development;
- (c) reserving land for use for the purposes of open space, a public place or public reserve within the meaning of the Local Government Act, 1919, a public cemetery, a public hospital, a public railway, a public school or any other purpose that is prescribed as a public purpose for the purposes of this section;
- (d) controlling the demolition of buildings or works;
- (e) protecting or preserving trees or vegetation;

Environmental Planning and Assessment.

- (f) controlling any act, matter or thing for or with respect to which provision may be made under paragraph (a) or (e);
- (g) controlling advertisements within the meaning of section 510 of the Local Government Act, 1919; and
- (h) such other matters as are authorised or required to be included in the environmental planning instrument by this or any other Act.

27. (1) Where an environmental planning instrument reserves land for use exclusively for a purpose referred to in section 26 (c), that environmental planning instrument shall make provision for or with respect to the acquisition of that land by a public authority unless the land is owned by a public authority and is held by that public authority for that purpose.

Reserva-
tion of
land for
public
purposes.

(2) Nothing in this section shall be construed as authorising or requiring an environmental planning instrument to contain a provision empowering or purporting to empower the compulsory acquisition of land.

28. (1) In this section, "regulatory instrument" means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made.

Suspension of
laws, etc.,
by environ-
mental
planning
instruments.

(2) For the purpose of enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent granted under this Act, an environmental planning instrument may provide that, to the extent necessary to serve that purpose, a regulatory instrument specified in that environmental planning instrument shall not apply to any such development or shall apply subject to the modifications specified in that environmental planning instrument.

Environmental Planning and Assessment.

(3) A provision referred to in subsection (2) shall have effect according to its tenor, but only if the Governor has, before the making of the environmental planning instrument, approved of the provision.

(4) Where a Minister is responsible for the administration of a regulatory instrument referred to in subsection (2), the approval of the Governor for the purposes of subsection (3) shall not be recommended except with the prior concurrence in writing of that Minister.

(5) A declaration in the environmental planning instrument as to the approval of the Governor as referred to in subsection (3) or the concurrence of a Minister as referred to in subsection (4) shall be prima facie evidence of the approval or concurrence.

Designated
develop-
ment:
declaration
by environ-
mental
planning
instruments.

29. An environmental planning instrument may contain provisions declaring any class or description of development (whether by reference to the type, purpose or location of development or otherwise) to be designated development for the purposes of this Act.

Consents
and con-
currences.

30. (1) Without limiting the generality of section 26 (b), an environmental planning instrument may provide that development specified therein—

- (a) may be carried out without the necessity for consent under this Act being obtained therefor; or
- (b) may not be carried out except with consent under this Act being obtained therefor.

(2) Where provision is made in accordance with subsection (1) (b), the instrument may provide that a development application in respect of development specified in the instrument shall not be determined by the granting of consent under this Act, except with the concurrence of such Minister or public authority as is specified in the instrument to the carrying out of the development.

Environmental Planning and Assessment.

(3) An environmental planning instrument which makes provision in accordance with subsection (2) shall state the matters which shall be taken into consideration in deciding whether concurrence should be granted.

(4) Without limiting the generality of section 26 (b), an environmental planning instrument may provide that the provisions of sections 84, 85, 86, 87 (1) and 90 apply to and in respect of development (not being designated development) specified in the instrument in the same way as those provisions apply to and in respect of designated development.

(5) For the purposes only of subsection (4), section 84 (4) shall be construed as if—

- (a) the reference therein to an environmental impact statement were omitted; and
- (b) the reference therein to 30 days were a reference to 14 days.

31. Without limiting the generality of section 26 (b), an environmental planning instrument may provide that development specified therein is prohibited. Prohibitions.

32. An environmental planning instrument may be made so as to authorise any matter or thing to be from time to time determined, applied or regulated by such Minister or public authority as is specified in the environmental planning instrument. Authorisation of matters under environmental planning instruments.

33. (1) An environmental planning instrument may, by reference, adopt wholly or partially any set of model provisions made by the Minister by order published in the Gazette. Model provisions.

(2) Where model provisions have been adopted in accordance with subsection (1) and those provisions are subsequently—

- (a) amended—the provisions in their amended form shall apply; or

Environmental Planning and Assessment.

(b) ~~revoked~~—the provisions shall cease to apply, except to the extent that those provisions or the environmental planning instrument otherwise provide.

(3) The Minister may take such steps as he considers appropriate or necessary to publicise draft model provisions or draft amendments to model provisions and to seek and consider submissions from the public before he makes the provisions or amendments, as the case may be.

Environ-
mental
planning
instruments
—making,
operation
and in-
spection.

34. (1) Expressions used in an environmental planning instrument shall, unless the contrary intention appears, have the same meanings respectively as they have in this Act.

(2) Judicial notice shall be taken of an environmental planning instrument and of the date of its publication.

(3) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of an environmental planning instrument have been complied with and performed.

(4) The amendment or the alteration, variation or repeal, whether in whole or in part, of any environmental planning instrument does not affect—

- (a) the previous operation of the instrument or anything duly suffered, done or commenced under the instrument;
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the instrument; or
- (c) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation or liability,

and any such investigation, legal proceedings or remedy may be instituted, continued and enforced as if the amendment, alteration, variation or repeal had not occurred.

(5) An environmental planning instrument shall—

- (a) be published in the Gazette; and

Environmental Planning and Assessment.

(b) take effect on and from the date of publication or a later date specified in the instrument.

(6) A copy of every environmental planning instrument shall be available for public inspection, without charge, at the office of the Department during ordinary office hours.

(7) The Secretary shall furnish each council affected by an environmental planning instrument with a copy of the instrument as soon as practicable after it is made.

(8) A copy of each environmental planning instrument that has been furnished to a council by the Secretary shall be available for public inspection, without charge, at—

- (a) the office of the council during ordinary office hours; and
- (b) such other premises operated or controlled by the council and at such times as may be prescribed.

(9) An environmental planning instrument shall be deemed to have been published in the Gazette notwithstanding that any planning map or other instrument or material referred to, embodied or incorporated in the environmental planning instrument is not so published.

(10) A reference in subsections (6), (7) and (8) to a copy of an environmental planning instrument includes a reference to any planning map or other prescribed instrument or material referred to, embodied or incorporated in the instrument.

35. The validity of an environmental planning instrument in relation only to any failure to comply with any formal or procedural requirements of this Part (including the regulations in force in connection therewith) with respect to its making shall not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date of its publication in the Gazette.

Non-compliance with statutory provisions.

Environmental Planning and Assessment.

Incon-
sistency
between
instruments

36. In the event of an inconsistency between environmental planning instruments, then, to the extent of the inconsistency and unless otherwise provided—

- (a) there is no general presumption that—
 - (i) a State environmental planning policy prevails over a regional environmental plan or a local environmental plan; or
 - (ii) a regional environmental plan prevails over a local environmental plan; and
- (b) the provisions of a later instrument prevail over the provisions of an earlier instrument, unless the contrary intention appears.

DIVISION 2.—*State environmental planning policies.*

Decision or
direction
to prepare
draft State
environ-
mental
planning
policy.

37. (1) The Director may, after consultation with such public authorities as he determines, prepare a draft State environmental planning policy with respect to such matters as are, in the opinion of the Director, of significance for environmental planning for the State, and may submit it to the Minister.

(2) The Minister may, after consultation with such Ministers as he determines, cause to be prepared by the Director for submission to the Minister a draft State environmental planning policy with respect to any matter specified by the Minister, being a matter which is, in the opinion of the Minister, of significance for environmental planning for the State.

Format of
State
environ-
mental
planning
policies.

38. Subject to this Act and the regulations, the format, structure and subject-matter of a State environmental planning policy or draft State environmental planning policy shall be as determined by the Minister.

Environmental Planning and Assessment.

39. (1) The Minister may, on the submission to him by the Director of a draft State environmental planning policy, recommend to the Governor the making of a State environmental planning policy—

Making of State environmental planning policies by the Governor.

- (a) in accordance with that draft State environmental planning policy submitted to the Minister; or
- (b) in accordance with that draft State environmental planning policy with such alterations as the Minister thinks fit,

or he may decide not to make that recommendation.

(2) The Minister shall take such steps as he considers appropriate or necessary to publicise a draft State environmental planning policy and to seek and consider submissions from the public before he makes such a recommendation.

(3) The Minister may not make such a recommendation except with respect to such matters as are, in his opinion, of significance for environmental planning for the State.

(4) The Governor may make a State environmental planning policy in accordance with a recommendation made under this section.

(5) A State environmental planning policy shall apply to the State or such part of the State as is described in the policy.

DIVISION 3.—Regional environmental plans.

40. (1) The Director may prepare a draft regional environmental plan in respect of a region and with respect to such matters as are, in the opinion of the Director, of significance for environmental planning for the region to which that plan is intended to apply.

Decision or direction to prepare draft regional environmental plan.

(2) The Minister may cause to be prepared by the Director for submission to the Minister a draft regional environmental plan with respect to any matter specified by the Minister,

Environmental Planning and Assessment.

being a matter which is, in the opinion of the Minister, of significance for environmental planning for the region to which that plan is intended to apply.

**Preparation
of environ-
mental
study.**

41. (1) The Director shall, before commencing to prepare a draft regional environmental plan, prepare an environmental study of the land to which the draft regional environmental plan is intended to apply.

(2) The environmental study referred to in subsection (1) shall have regard to such matters, relating to the environment of the region to which the draft regional environmental plan is intended to apply, as the Director determines.

**Public ex-
hibition of
environ-
mental
study.**

42. When the environmental study referred to in section 41 (1) has been prepared, the Director shall—

- (a) give public notice, in a form and manner determined by the Director, of—
 - (i) his intention to prepare a draft regional environmental plan; and
 - (ii) the places at which, the dates on which, and the times during which, copies of the environmental study may be inspected by the public;
- (b) publicly exhibit copies of the environmental study at the places, on the dates and during the times set out in the notice; and
- (c) specify, in the notice, the period during which submissions may be made to the Secretary in accordance with section 43,

and may, in the notice, specify the kinds of aims, objectives, policies and strategies which he considers the draft regional environmental plan should adopt.

Environmental Planning and Assessment.

43. Any person may, during the period referred to in section 42 (c), make a submission in writing to the Secretary as to— Making of submissions.

- (a) the aims, objectives, policies and strategies which the draft regional environmental plan should adopt; and
- (b) the environmental study referred to in section 41 (1).

44. In the preparation of a draft regional environmental plan, the Director shall, within such time as the Minister may determine— Preparation of draft regional environmental plan.

- (a) cause any State environmental planning policy to be considered so far as it may affect or be affected by the subject-matter of the draft regional environmental plan;
- (b) cause any submissions in relation to the environmental study to be considered and decide whether the study needs to be modified or supplemented before the preparation of the plan is commenced;
- (c) cause any submissions in relation to the aims, objectives, policies and strategies applicable to the plan to be considered, and in the light of the submissions and the environmental study, determine the aims, objectives, policies and strategies to be adopted in the plan;
- (d) give public notice, in the form and manner determined by the Director, of the aims, objectives, policies and strategies to be so adopted; and
- (e) prepare the draft regional environmental plan, having regard to the environmental study, so as to achieve the aims, objectives, policies and strategies to be so adopted.

45. In the preparation of an environmental study or a draft regional environmental plan, the Director shall ensure that consultations are held with— Consultation.

- (a) each council whose area or part of whose area is situated in the region to which that draft regional environmental plan applies;

Environmental Planning and Assessment.

- (b) the Advisory Co-ordinating Committee;
- (c) the Local Government Liaison Committee;
- (d) such other public authorities or bodies (including authorities of the Commonwealth or other States) as, in the opinion of the Director, will or may be affected by that draft regional environmental plan; and
- (e) such other persons as the Director determines.

Information from public authorities.

46. To facilitate the preparation of an environmental study or a draft regional environmental plan, a public authority—

- (a) shall, if requested in writing to do so by the Director, furnish such information and provide such assistance as may reasonably be required by the Director in the preparation of the study or plan; and
- (b) shall notify the Director of any information or any actual or proposed activity or work that, in its opinion, is relevant to the study or plan,

and a public authority is hereby empowered to the extent necessary to comply with the provisions of this section.

Public exhibition of draft regional environmental plan.

47. When a draft regional environmental plan has been prepared, the Director shall—

- (a) give public notice, in a form and manner determined by the Director, of the places at which, the dates on which, and the times during which, the draft regional environmental plan may be inspected by the public;
- (b) publicly exhibit that draft regional environmental plan at the places, on the dates and during the times set out in the notice;
- (c) publicly exhibit such other matters as he considers appropriate or necessary to better enable the draft plan and its implications to be understood; and

Environmental Planning and Assessment.

- (d) specify, in the notice, the period during which submissions may be made to the Secretary in accordance with section 48.

48. Any person may, during the period referred to in section 47 (d), make submissions in writing to the Secretary with respect to the draft regional environmental plan publicly exhibited under section 47 (b). Sub-
missions.

49. (1) The Director shall cause any submissions made under section 48 to be considered and— Consideration of
submissions.

- (a) may, if he thinks fit, direct that an inquiry be held, in accordance with section 119, by a Commission of Inquiry appointed under section 119 (2), with respect to any matter relating to the draft regional environmental plan whether or not arising from any submission;
- (b) may amend the draft regional environmental plan whether or not as a consequence of the consideration of any such submissions or of the findings and recommendations of any such Commission of Inquiry;
- (c) may, if he thinks fit, publicly exhibit that amended draft regional environmental plan together with a written explanation of the reasons for the amendments, at such places, on such dates and during such times as he determines; and
- (d) where an amended draft regional environmental plan is exhibited under paragraph (c), shall cause public notice to be given in a form and manner determined by the Director, specifying the period during which submissions may be made to the Secretary in accordance with section 48 as applied by subsection (2).

Environmental Planning and Assessment.

(2) Where the Director causes an amended draft regional environmental plan to be publicly exhibited in accordance with subsection (1) (c), section 48 and subsection (1) apply to and in respect of that amended draft regional environmental plan in the same way as they apply to and in respect of a draft regional environmental plan.

Submission
of draft
regional
environ-
mental plan
to the
Minister.

50. (1) Subject to subsection (2), the Director shall submit to the Minister the draft regional environmental plan, with any amendments made in accordance with section 49.

(2) In submitting the draft regional environmental plan, the Director may exclude certain provisions thereof or exclude from the application thereof part of the region to which that draft plan applied (in this section referred to as "the deferred matter") which, in his opinion, require or requires further consideration but which should not prejudice the consideration by the Minister of the draft plan as submitted.

(3) A draft regional environmental plan submitted under subsection (1) shall be accompanied by a report by the Director on the draft plan, on any submissions made under section 48 and on any inquiry referred to in section 49 (1) (a) in relation to the draft plan.

(4) The Director may subsequently take action under section 49 and this section in respect of the deferred matter which for the purposes of those sections shall be deemed to be a draft regional environmental plan.

Making of
regional
environ-
mental
plans by the
Minister.

51. (1) The Minister may, on the submission to him by the Director of a draft regional environmental plan—

(a) make a regional environmental plan—

(i) in accordance with the draft regional environmental plan submitted to him; or

(ii) in accordance with the draft regional environmental plan with such alterations as he thinks fit;

Environmental Planning and Assessment.

- (b) direct that action be taken in accordance with subsection (4); or
- (c) decide not to proceed with the draft regional environmental plan.

(2) The Minister may not make a regional environmental plan except with respect to such matters as are, in his opinion, of significance for environmental planning for the region or part of the region to which that regional environmental plan applies.

(3) A regional environmental plan shall apply to such region or part of the region as is described in the plan.

(4) The Minister may direct the Director to publicly exhibit a draft regional environmental plan with such alterations as he specifies, and the provisions of this section and sections 47, 48, 49 and 50 shall, with any necessary adaptations, apply to that plan.

52. Subject to this Act and the regulations, the format, structure and subject-matter of a regional environmental plan or draft regional environmental plan shall be as determined by the Minister.

Format of regional environmental plan or draft plan.

DIVISION 4.—Local environmental plans.

53. Where 2 or more councils decide to join in the preparation of a draft local environmental plan under section 54 (2), a reference in this Division—

Interpretation.

- (a) except in section 54, to a council includes a reference to those councils; and
- (b) to an area includes a reference to the areas of those councils.

Environmental Planning and Assessment.

Decision to
prepare
draft local
environ-
mental
plan.

54. (1) A council may decide to prepare a draft local environmental plan in respect of the whole or any part of the land within its area.

(2) Two or more councils may decide to join in the preparation of a draft local environmental plan in respect of the whole or any part of the land within their areas.

(3) Where 2 or more councils decide to join in the preparation of a draft local environmental plan under subsection (2), they shall enter into an agreement under section 521 of the Local Government Act, 1919, for the purpose of preparing that draft local environmental plan.

(4) A council or councils, as the case may be, shall inform the Secretary of the decision to prepare a draft local environmental plan and of the land to which it is intended to apply, within 14 days of making the decision.

(5) Following the decision to prepare a draft local environmental plan, the council or councils may, subject to and in accordance with this Division, prepare the plan.

Directions
from
Minister
for the
preparation
of local
environ-
mental
plan.

55. (1) The Minister may direct a council, or 2 or more councils jointly, to perform any function conferred or imposed on it or them under section 54 or any other provision of this Division within such time or period as is specified in the direction.

(2) Where a direction is given under subsection (1), no function performed after the expiration of any time or period specified in the direction shall thereby be rendered void or otherwise ineffective.

(3) Nothing in this section affects the operation of section 117.

(4) Following the direction to prepare a draft local environmental plan, the council or councils shall, subject to and in accordance with this Division, prepare the plan.

Environmental Planning and Assessment.

56. A council that decides to prepare a draft local environmental plan or is directed to do so by the Minister under section 55 shall, unless the Director otherwise approves, appoint or employ a person who has a prescribed environmental planning qualification to assist it in the preparation of or to prepare on its behalf an environmental study referred to in section 57 or a draft local environmental plan or both. Appointment of qualified person.

57. (1) Where a council decides to prepare a draft local environmental plan or is directed to do so by the Minister under section 55, it shall prepare an environmental study of the land to which the draft local environmental plan is intended to apply. Preparation of environmental study.

(2) A council shall prepare an environmental study in accordance with such specifications, if any, relating to the form, content and preparation of the study as have been notified to the council by the Director and are then applicable.

(3) The Secretary shall cause to be published in the Gazette a notice setting out the details of any specifications referred to in subsection (2), but this subsection does not affect the provisions of subsection (2).

(4) The environmental study referred to in subsection (1) shall be prepared with regard to such matters, relating to the environment of the area to which the draft local environmental plan is intended to apply, as the council, subject to the specifications, determines.

58. When the environmental study referred to in section 57 (1) has been prepared, the council, subject to the regulations, shall— Public exhibition of environmental study.

(a) give public notice, in a form and manner determined by the council, of—

(i) its intention to prepare a draft local environmental plan; and

Environmental Planning and Assessment.

- (ii) the place at which, the dates on which, and the times during which, a copy of the environmental study may be inspected by the public;
- (b) publicly exhibit at the place, on the dates and during the times set out in the notice—
- (i) a copy of that environmental study;
 - (ii) a copy of any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft local environmental plan is intended to apply; and
 - (iii) if such a policy, plan or direction does so apply—a statement to the effect that the policy, plan or direction substantially governs the content and operation of the proposed local environmental plan and that any submission made pursuant to section 59 should be made having regard thereto; and
- (c) specify, in the notice, the period during which submissions may be made to the council in accordance with section 59, and may, in the notice, specify the kinds of aims, objectives, policies and strategies which it considers the draft local environmental plan should adopt.

Making of submissions. **59.** Any person may, during the period referred to in section 58 (c), make a submission in writing to the council as to—

- (a) the aims, objectives, policies and strategies which the draft local environmental plan should adopt; and
- (b) the environmental study referred to in section 57 (1).

Environmental Planning and Assessment.

60. The council shall not prepare a draft local environmental plan until after the expiration of the period referred to in section 58 (c).

Preparation of draft local environmental plan.

61. In the preparation of a draft local environmental plan, the council shall—

Council's responsibilities in preparing draft local environmental plan.

- (a) consider any submissions in relation to the environmental study and decide whether the study needs to be modified or supplemented before the preparation of the plan is commenced;
- (b) consider any submissions in relation to the aims, objectives, policies and strategies applicable to the plan and in the light of the submissions and the environmental study determine the aims, objectives, policies and strategies to be adopted in the plan;
- (c) give public notice, in the prescribed form and manner, of the aims, objectives, policies and strategies to be so adopted;
- (d) prepare the draft local environmental plan having regard to the environmental study, so as to achieve the aims, objectives, policies and strategies to be so adopted; and
- (e) ensure that the draft local environmental plan, and its aims, objectives, policies and strategies, are not substantially inconsistent with any State environmental planning policy, regional environmental plan, or relevant direction under section 117, which applies to the land to which the draft local environmental plan applies, and give effect to the aims, objectives, policies and strategies of any such policies or plans.

62. In the preparation of an environmental study or a draft local environmental plan, the council shall consult with—

Consultation.

- (a) such public authorities or bodies (including authorities of the Commonwealth or other States) as, in its opinion, will or may be affected by that draft local environmental plan;

Environmental Planning and Assessment.

- (b) where the draft local environmental plan applies to land adjoining a boundary between the council's area and another area—the council of that other area; and
- (c) such other persons as the council determines.

Information from public authorities.

63. To facilitate the preparation of an environmental study or a draft local environmental plan, a public authority—

- (a) shall, if requested in writing to do so by the council, furnish such information and provide such assistance as it deems proper to assist the council in the preparation of the study or plan; and
- (b) shall notify the council of any information or any actual or proposed activity or work that, in its opinion, is relevant to the study or plan,

and a public authority is hereby empowered to the extent necessary to comply with the provisions of this section.

Submission of copy of draft local environmental plan to Department.

64. When a draft local environmental plan has been prepared, the council shall submit a copy of the draft plan to the Secretary, together with a statement—

- (a) to the effect that the provisions of sections 58, 59 and 61 relating to public involvement in the preparation of the draft plan have been complied with;
- (b) specifying the environmental planning instruments and directions under section 117 that have been taken into consideration for the purposes of section 61 (e); and
- (c) giving details of any inconsistency between the draft plan and any instrument or direction referred to in paragraph (b) and the reasons justifying the inconsistency.

*Environmental Planning and Assessment.***65.** (1) Where—

- Certificate of Director.
- (a) the Secretary receives a copy of a draft local environmental plan from a council under section 64; and
 - (b) the Director is satisfied, from information received from the council, that the provisions of sections 58, 59 and 61 relating to public involvement in the preparation of the draft plan have been complied with,

the Director may cause to be issued to the council a certificate certifying that the draft plan is not inconsistent with any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft plan applies.

(2) Where the Director is of the opinion that the draft local environmental plan referred to in subsection (1) is inconsistent with a State environmental planning policy, regional environmental plan, or relevant direction under section 117, the Director may cause to be issued to the council a certificate certifying that the inconsistency is, in his opinion, justifiable in the circumstances and that otherwise the draft plan is consistent with any such policies, plans or directions.

(3) Where a certificate is not issued under this section, the Director shall return the draft plan to the council, giving the reasons why the certificate was not issued, and directing the council to amend the draft plan in such a manner as to enable a certificate to be issued, or to take such other action as is appropriate.

(4) The council shall comply with a direction given under subsection (3).

66. (1) Where a council receives a certificate under section 65 with respect to a draft local environmental plan, it shall, subject to the regulations—

- Public exhibition of draft local environmental plan.
- (a) give public notice, in a form and manner determined by the council, of the place at which, the dates on which, and the times during which, the draft local environmental plan may be inspected by the public;

Environmental Planning and Assessment.

- (b) publicly exhibit at the place, on the dates and during the times set out in the notice—
 - (i) a copy of that draft local environmental plan;
 - (ii) a copy of any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft local environmental plan is intended to apply; and
 - (iii) if such a policy, plan or direction does so apply—a statement to the effect that the policy, plan or direction referred to in subparagraph (ii) substantially governs the content and operation of the draft local environmental plan and that any submission made pursuant to section 67 should be made having regard thereto;
- (c) specify, in the notice, the period (being a period which is or includes the period referred to in subsection (2)) during which submissions may be made to the council in accordance with section 67; and
- (d) publicly exhibit such other matter as it considers appropriate or necessary to better enable the draft plan and its implications to be understood.

(2) A draft local environmental plan shall be publicly exhibited for a period being not less than the prescribed period.

(3) Where, for the purposes of informing the public generally, a council decides to publicly exhibit a draft local environmental plan otherwise than in accordance with subsection (1), or to publicly exhibit any other matter which could be construed or represented as having a similar purpose to a draft local environmental plan, it shall at the same time publicly exhibit a statement to the effect that the exhibition is not to be regarded as an exhibition for the purposes of this Act.

Environmental Planning and Assessment.

67. Any person may, during the period referred to in section 66 (1) (c), make submissions in writing to the council with respect to the provisions of a draft local environmental plan publicly exhibited under section 66 (1) (b). Making of
submissions.

68. (1) Where—

- (a) a person making a submission so requests; and
- (b) the council considers that the issues raised in a submission are of such significance that they should be the subject of a hearing before the council decides whether and, if so, what alterations should be made,

Consideration of
submissions.

the council shall, in the prescribed manner, arrange a public hearing in respect of the submission.

(2) A report of the public hearing shall be furnished to the council and the council shall make public the report.

(3) The council shall consider the submission and the report furnished pursuant to subsection (2) and may make any alterations it considers are necessary to the draft local environmental plan arising from its consideration of submissions or matters raised at any public hearing.

(4) The council shall, in the prescribed form and manner (if any), submit to the Secretary—

- (a) details of all submissions;
- (b) the report of any public hearing;
- (c) the draft local environmental plan and the reasons for any alterations made to the plan pursuant to subsection (3); and
- (d) a statement—
 - (i) to the effect that the provisions of sections 66 and 67 and this section relating to public involvement in the preparation of the draft plan have been complied with;

Environmental Planning and Assessment.

- (ii) specifying the environmental planning instruments and directions under section 117 that have been taken into consideration for the purposes of section 61 (e);
- (iii) giving details of any inconsistency between the draft plan and any instrument or direction referred to in subparagraph (ii) and the reasons justifying the inconsistency; and
- (iv) giving details of the reasons justifying the exclusion of provisions of the draft plan under subsection (5) or the exclusion from the application of the draft plan of any land under that subsection.

(5) In submitting the draft local environmental plan, the council may exclude certain provisions thereof or exclude from the application thereof part of the land to which the draft plan applied (in this section referred to as "the deferred matter") which, in its opinion, require or requires further consideration but which should not prejudice the consideration by the Director and the Minister of the draft plan as submitted.

(6) The council may subsequently take action under this section in respect of the deferred matter as if it were a draft local environmental plan.

(7) More than one public hearing may be held in respect of any submissions, and one hearing may be held in respect of more than one submission.

(8) The regulations may make provision for or with respect to the conduct of a public hearing.

Report by
Director.

69. The Director shall furnish a report to the Minister as to—

- (a) whether the draft local environmental plan submitted under section 68 (4) is inconsistent with any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft plan applies;

Environmental Planning and Assessment.

- (b) if there is such an inconsistency—whether the inconsistency is justifiable in the circumstances;
- (c) whether the provisions of sections 66, 67 and 68 relating to public involvement in the preparation of the draft plan have been complied with;
- (d) the relationship between the draft plan, and other proposed and any existing environmental planning instruments, and any relevant directions under section 117, applying to the land to which the draft plan applies; and
- (e) such other matters (if any) relating to the draft plan as the Director thinks appropriate.

70. (1) After considering the Director's report made under section 69, the Minister may—

**Making of
local
environ-
mental
plan.**

- (a) make a local environmental plan—
 - (i) in accordance with the draft local environmental plan as submitted by the council under section 68 (4); or
 - (ii) in accordance with that draft plan with such alterations as he thinks fit relating to the relationship between the plan and any other environmental planning instruments, and any relevant directions under section 117, applying to the land to which the plan applies;
- (b) direct that action be taken in accordance with subsection (3); or
- (c) decide not to proceed with the draft local environmental plan.

(2) A local environmental plan shall apply to such area or part of such area as is described in that plan.

Environmental Planning and Assessment.

(3) The Minister may direct the council to publicly exhibit, wholly or in part, a draft local environmental plan that has been altered pursuant to this section or section 68, and the provisions of this section and sections 66, 67, 68 and 69 shall, with any necessary adaptations, apply to that plan.

(4) Where the Minister decides to make a plan in accordance with subsection (1), he may exclude certain provisions thereof or exclude from the application thereof part of the land to which the draft plan applied (in this section referred to as "the deferred matter") which, in his opinion, require or requires further consideration but which should not prejudice the making of the local environmental plan.

(5) The Minister may subsequently take action in accordance with this section in respect of the deferred matter as if it were a draft local environmental plan submitted under section 68 (4).

(6) Where the Minister decides not to proceed with a draft local environmental plan under subsection (1) (c), he shall give such directions to the council as he considers necessary in relation to that decision.

(7) The Minister shall inform the council of his decision under subsection (1) and the reasons therefor, and may at the same time give directions to the council as to the procedure to be followed in connection with making his decision known to the public.

(8) Notwithstanding anything in this section and without affecting the power to make alterations pursuant to subsection (1), the Minister may make a local environmental plan with such alterations as he thinks fit, being alterations that do not affect the substance of the provisions of the plan as submitted by the council or as altered pursuant to subsection (1).

Environmental Planning and Assessment.

71. Subject to this Act and the regulations, the format, structure and subject-matter of a local environmental plan or draft local environmental plan shall be as determined by the Minister and notified to the council concerned.

Format of local environmental plan or draft plan.

72. (1) Where a council considers it necessary or desirable to provide more detailed provisions than are contained in a local environmental plan in respect of a part or parts of the land to which that plan applies, it may prepare or cause to be prepared a development control plan.

Development control plans.

(2) The format, structure, subject-matter and procedures for the preparation, public exhibition, approval, amendment and repeal of a development control plan shall be as prescribed.

(3) A development control plan shall generally conform to the provisions of the local environmental plan which applies to the land to which the development control plan applies.

(4) A development control plan prepared in accordance with this section shall be available for public inspection, without charge, at—

- (a) the office of the council during ordinary office hours; and
- (b) such other premises operated or controlled by the council and at such times as may be prescribed.

DIVISION 5.—Review and amendment of environmental planning instruments.

73. The Director shall keep State environmental planning policies and regional environmental plans, and councils shall keep their local environmental plans and development control plans under regular and periodic review for the purpose of ensuring that the objects of this Act are, having regard to such changing circumstances as may be relevant, achieved to the maximum extent possible.

Review of environmental planning instruments.

74. (1) An environmental planning instrument may be amended in whole or in part by a subsequent environmental planning instrument whether of the same or a different type, but only where the latter instrument applies to the land to which the former instrument applies.

Amendment of environmental planning instruments.

Environmental Planning and Assessment.

(2) A subsequent environmental planning instrument shall be made in accordance with the provisions of this Part except that—

- (a) where the subsequent instrument is a regional environmental plan—the provisions of sections 41, 42, 43 and 44 (b)–(e) shall not apply, unless the Minister directs to the contrary; or
- (b) where the subsequent instrument is a local environmental plan—the provisions of sections 57, 58, 59, 60, 61 (a)–(d) and 65 (1) (b) shall not apply, unless the Director directs to the contrary.

(3) In this section, “amended” includes altered, varied or repealed.

PART IV.

ENVIRONMENTAL PLANNING CONTROL.

DIVISION 1.—*General.*

Interpreta-
tion.

75. (1) In this Part, a reference to development includes a reference to any other act, matter or thing referred to in section 26 which is controlled by an environmental planning instrument.

(2) A provision of this Part that applies to or in respect of designated development also applies, but only in accordance with and to the extent provided by section 30 (4) and (5), to or in respect of development (not being designated development) specified in an environmental planning instrument pursuant to section 30 (4).

Environmental Planning and Assessment.

76. (1) Subject to this Act, where an environmental planning instrument provides that development specified therein may be carried out without the necessity for consent under this Act being obtained therefor, a person shall not carry out that development on land to which that provision applies except in accordance with the provisions of that instrument. **Restriction on development.**

(2) Subject to this Act, where an environmental planning instrument provides that development specified therein may not be carried out except with consent under this Act being obtained therefor, a person shall not carry out that development on land to which that provision applies unless—

- (a) that consent has been obtained and is in force under this Act; and
- (b) the development is carried out in accordance with the provisions of any conditions subject to which that consent was granted and of that instrument.

(3) Subject to this Act, where an environmental planning instrument provides that development specified therein is prohibited, a person shall not carry out that development on land to which that provision applies.

77. (1) A development application may be made only by— **Making of development applications.**

- (a) the owner of the land to which that development application relates; or
- (b) any person, with the consent in writing of the owner of the land to which that development application relates.

(2) Notwithstanding subsection (1) (b), a development application may be made by a lawful occupier of Crown lands within the meaning of the Crown Lands Consolidation Act, 1913, who makes a development application with respect to the whole or any part of the land occupied by him, without the consent in writing or otherwise of—

- (a) where the lands are not within an irrigation area within the meaning of that Act—the Minister for Lands; or

Environmental Planning and Assessment.

(b) where the lands are within such an irrigation area—the Minister for the time being administering the Irrigation Act, 1912.

(3) A development application shall—

- (a) be made to the consent authority;
- (b) be made in the prescribed form and manner;
- (c) where the application is not in respect of designated development—
 - (i) embody such information as the applicant considers suitable to demonstrate that he has given appropriate consideration to the impact that the development to which that application relates will have on the environment; and
 - (ii) set out the steps that he proposes to take to mitigate any likely adverse impact;
- (d) where the application is in respect of designated development, be accompanied by an environmental impact statement in the prescribed form prepared by or on behalf of the applicant; and
- (e) be accompanied by such fee determined by the consent authority (not exceeding the maximum amount, if any, prescribed in relation thereto) or, where a fee is prescribed, by that prescribed fee.

(4) The consent authority shall forward a copy of the development application referred to in subsection (3) to the council where the council is not the consent authority.

(5) The consent authority shall forward to the Secretary (where the Minister or Director is not the consent authority) and to the council (where the council is not the consent authority) a copy of the environmental impact statement referred to in subsection (3) (d), together with a copy of the application to which it relates.

Environmental Planning and Assessment.

(6) The regulations may make provision for or with respect to the amendment or variation of development applications.

(7) A development application may be withdrawn at any time prior to its determination by the consent authority by service on the consent authority of a notice to that effect in writing signed by the applicant.

(8) An application withdrawn under subsection (7) shall, without prejudice to the question whether the fee paid under subsection (3) should be refunded (which matter shall be at the absolute discretion of the consent authority), be deemed for the purposes of this Act (section 85 excepted) never to have been made.

(9) Upon an application being made under this section the applicant, not being entitled to copyright, shall be deemed to have indemnified all persons using the application and documents in accordance with this Act, against any claim or action in respect of breach of copyright.

78. (1) Where an environmental planning instrument provides that a development application shall not be determined by the granting of consent under this Act without the concurrence of a Minister or public authority to development specified in the instrument, the consent authority shall, unless the concurrence of that Minister or public authority may be assumed under section 81 or consent to the application is refused—

**Seeking
concurrence
of Minister
or public
authority.**

(a) forward forthwith a copy of the application to that Minister or public authority; and

(b) notify by post the applicant of the action taken by it under paragraph (a).

(2) Where development referred to in subsection (1) is designated development, the consent authority shall comply with the provisions of sections 84 and 86 and with the provisions of subsection (1) concurrently.

Environmental Planning and Assessment.

Granting or refusal of concurrence by Minister or public authority.

79. (1) A Minister or public authority referred to in section 78 may, with respect to development the subject of a development application, a copy of which has been forwarded to him or it under section 78 (1) (a)—

- (a) grant concurrence to that development either unconditionally or subject to conditions; or
- (b) refuse concurrence to that development.

(2) In deciding whether concurrence should be granted under subsection (1), a Minister or public authority referred to in section 78 shall take into consideration the matters stated pursuant to section 30 (3) and applicable in relation to the development application (and those matters only).

(3) Where a Minister or public authority grants concurrence subject to conditions or refuses concurrence, he or it shall notify the consent authority of the reasons for the imposition of the conditions or the refusal.

(4) Subsection (2) does not apply in the case of a deemed environmental planning instrument.

Notification of Minister's or public authority's decision.

80. (1) A Minister or public authority referred to in section 78 shall notify the consent authority of his or its decision with respect to development the subject of a development application a copy of which has been forwarded to him or it under section 78 (1) (a)—

- (a) except as provided by paragraph (b)—within a period of 40 days after receipt of the copy of that development application; or
- (b) where, within the period referred to in paragraph (a), that Minister or public authority sends by post to the consent authority and the applicant a notice informing it and him that that Minister or public authority is unable to deal with that development application within

Environmental Planning and Assessment.

that period and specifies in that notice a longer period within which that Minister or public authority will notify his or its decision—within the longer period,

but nothing in this subsection affects the operation of section 96.

(2) Where a Minister or public authority referred to in section 78 does not inform the consent authority of his or its decision within the period referred to in subsection (1) (a), or the longer period referred to in subsection (1) (b), as the case may be, the consent authority may determine the development application by granting consent thereto without the concurrence of that Minister or public authority.

(3) Where a Minister or public authority issues a notice under subsection (1) (b), he or it shall forward a copy of that notice to the Secretary.

81. (1) Where under an environmental planning instrument a development application may not be determined by the granting of consent under this Act without the concurrence of a Minister or public authority to development specified in the instrument, that Minister or public authority may inform the consent authority, by notification in writing, that the concurrence may be assumed with such qualifications or conditions as are specified in the notification. **Circumstances in which concurrence may be assumed.**

(2) A Minister or public authority referred to in subsection (1) may, by notification in writing given to the consent authority, amend or revoke a notification given by him or it under subsection (1).

(3) A consent granted by a consent authority which has assumed the concurrence of a Minister or public authority in accordance with a notification in force under this section is as valid and effective as if the consent authority had obtained the concurrence of that Minister or public authority pursuant to sections 78 and 79.

Environmental Planning and Assessment.

Giving
effect to
concurrence.

82. (1) Where the concurrence of a Minister or public authority is given pursuant to section 79 or may be assumed pursuant to section 81, the consent authority shall, in granting consent to the carrying out of the development to which the concurrence relates, notwithstanding section 81, grant the consent subject to any conditions specified in the notification referred to in section 80 or 81, as the case may be.

(2) Nothing in subsection (1) affects the right of the consent authority to impose conditions under section 91 not inconsistent with the conditions referred to in subsection (1) or to refuse consent to the development application.

Avoidance
of consents.

83. Where under an environmental planning instrument a development application may not be determined by the granting of consent under this Act without the concurrence of a Minister or public authority to that development, a consent (other than a consent granted as referred to in section 80 (2) or 81 (3)) granted—

- (a) without the concurrence of that Minister or public authority; or
- (b) not subject to such conditions, if any, as are referred to in a notification under section 80 or 81,

shall be void, but nothing in this section affects any liability of a consent authority in respect of a consent granted as referred to in paragraph (a) or (b).

Notice of
applications
respecting
designated
development.

84. (1) Where a development application is made for consent to carry out designated development, the consent authority shall forthwith—

- (a) give written notice of that development application to such persons as appear to it to own or occupy the land adjoining the land to which the development application relates and where practicable to such other persons as appear to it to own or occupy land the use and enjoyment

Environmental Planning and Assessment.

of which, in the opinion of the consent authority, may be detrimentally affected if that designated development is carried out;

- (b) cause notice, in such form as may be prescribed, to be exhibited in the prescribed manner on the land to which that development application relates; and
- (c) cause notice, in such form as may be prescribed, of that development application to be published in a newspaper circulating in the locality.

(2) Where land is a lot within the meaning of the Strata Titles Act, 1973, a written notice to the body corporate shall be deemed to be a written notice under subsection (1) (a) to the owner or occupier of each lot within the strata scheme.

(3) Where land is owned or occupied by more than one person, a written notice to one owner or one occupier shall be deemed to satisfy the requirements of subsection (1) (a).

(4) Each notice referred to in subsection (1) shall contain a statement to the effect that the development application referred to in the notice and the documents (including the environmental impact statement) accompanying that application and in the custody of the consent authority may be inspected at—

- (a) the office of the consent authority, the Department (where the Minister or the Director is not the consent authority) and the council (where the council is not the consent authority), at any time during ordinary office hours; and
- (b) such other premises operated or controlled by them respectively and at such times as may be prescribed,

within a specified period (not exceeding the prescribed period, if any) of not less than 30 days after the day on which notice of that development application is published in a newspaper in accordance with subsection (1) (c).

Environmental Planning and Assessment.

(5) Where a notice given under subsection (1) refers to a period exceeding 30 days, the consent authority shall notify the applicant of the period specified in the notice and the effect of that period on the operation of section 96.

Circumstances in which compliance with section 84 may be dispensed with.

85. (1) Notwithstanding section 84, where—

- (a) a development application referred to in section 84 which has not been determined by the consent authority is amended, or substituted by a subsequent development application, or the development application so referred to is withdrawn and a subsequent development application is made with respect to substantially the same development; and
- (b) the consent authority has with respect to that development application referred to in section 84 complied in all respects with that section,

the consent authority may, if it is of the opinion that there is no necessity, by reason that the amended or subsequent development application differs only in minor respects from the former development application, to comply with section 84 with respect to the amended or subsequent development application, decide to dispense with further compliance with that section in relation to that application, and compliance with that section in relation to the former development application shall be deemed to be compliance in relation to the amended or subsequent development application.

(2) The consent authority shall notify the applicant of its decision under subsection (1) at or before the time notice of the determination of the development application is given under section 92.

Inspection of development applications, etc.

86. At the places and during the period referred to in section 84 (4) any person may inspect the development application and documents accompanying that application and may make extracts from or copies thereof.

Environmental Planning and Assessment.

87. (1) Any person may, during the period referred to in section 84 (4), make a submission in writing to the consent authority, and, where a submission by way of objection is made, the grounds of objection to the development application referred to in section 84 (4) shall be specified in that submission.

Submissions
in respect
of develop-
ment appli-
cations for
designated
develop-
ment.

(2) Where the application referred to in subsection (1) is an application to which section 78 applies, the consent authority shall, immediately after the expiration of the period referred to in section 84 (4), forward copies of any submissions to a Minister or public authority, as the case may be, referred to in section 78, if—

- (a) that Minister or public authority, as the case may be, so requires; or
- (b) the consent authority considers that that Minister or public authority, as the case may be, would be assisted in his or its consideration of the application by having regard to the submissions.

(3) A consent authority shall, as soon as practicable after the expiration of the period referred to in section 84 (4), forward to the Secretary copies of submissions made under subsection (1).

88. (1) A consent authority shall not determine a development application to carry out designated development otherwise than in accordance with this section.

Restrictions
on deter-
mination by
consent
authority of
develop-
ment
application
for
designated
develop-
ment.

(2) Subject to subsection (3), a consent authority may determine the application—

- (a) where no objection has been made under section 87 (1) —at any time after the expiration of the period referred to in section 84 (4); or
- (b) where objection has been made under section 87 (1)— at any time after the expiration of the period of 21 days following the date upon which a copy of that objection is forwarded to the Secretary in accordance with section 87 (3).

Environmental Planning and Assessment.

(3) A consent authority shall not determine the development application where it receives notice from the Secretary that the Minister has directed that an inquiry be held, in accordance with section 119, with respect to the environmental aspects of the proposed development the subject of the application.

**Determina-
tion of
certain
develop-
ment appli-
cations
after in-
quiry by
Commission
of Inquiry.**

89. (1) Where the Minister has, as referred to in section 88 (3), directed that an inquiry be held in relation to any designated development the subject of a development application, he shall determine the application, after—

- (a) the inquiry has been held; and
- (b) he has considered the findings and recommendations of the Commission of Inquiry.

(2) The provisions of section 101 (6), (7) and (8) apply to a determination of the Minister under this section as if it were a determination under section 101 (6).

**Matters for
considera-
tion.**

90. (1) In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application :—

- (a) the provisions of—
 - (i) any environmental planning instrument;
 - (ii) any draft environmental planning instrument that is or has been placed on exhibition pursuant to section 47 (b) or 66 (1) (b);
 - (iii) any draft State environmental planning policy which has been submitted to the Minister in accordance with section 37 and details of which have been notified to the consent authority; and
 - (iv) any development control plan in force under section 72,

applying to the land to which the development application relates;

Environmental Planning and Assessment.

- (b) the impact of that development on the environment (whether or not the subject of an environmental impact statement) and, where harm to the environment is likely to be caused, any means that may be employed to protect the environment or to mitigate that harm;
- (c) the effect of that development on the landscape or scenic quality of the locality;
- (d) the social effect and the economic effect of that development in the locality;
- (e) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of that development;
- (f) the size and shape of the land to which that development application relates, the siting of any building or works thereon and the area to be occupied by that development;
- (g) whether the land to which that development application relates is unsuitable for that development by reason of its being, or being likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk;
- (h) the relationship of that development to development on adjoining land or on other land in the locality;
- (i) whether the proposed means of entrance to and exit from that development and the land to which that development application relates are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles within that development or on that land;
- (j) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system;
- (k) whether public transport services are necessary and, if so, whether they are available and adequate for that development;

Environmental Planning and Assessment.

- (l) whether utility services are available and adequate for that development;
- (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved;
- (n) any representations made by a public authority in relation to that development application, or to the development of the area, and the rights and powers of that public authority;
- (o) the existing and likely future amenity of the neighbourhood;
- (p) any submission made under section 87;
- (q) the circumstances of the case;
- (r) the public interest; and
- (s) any other prescribed matter.

(2) A reference in this section to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application.

**Determina-
tion of
development
application.**

- 91.** (1) A development application shall be determined by—
- (a) the granting of consent to that application, either unconditionally or subject to conditions; or
 - (b) the refusing of consent to that application.

(2) Notwithstanding subsection (1), the consent authority shall refuse an application where the development referred to therein, being the subdivision of land, would if carried out result in a contravention of an environmental planning instrument or of this Act, whether arising in relation to that or any other development.

Environmental Planning and Assessment.

(3) A condition may be imposed for the purposes of subsection (1) if it—

- (a) relates to any matter referred to in section 90 (1) of relevance to the development the subject of the consent;
- (b) requires the modification or surrender of a consent granted under this Act or a right conferred by Division 2 in relation to the land to which the development application relates;
- (c) requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out on land (whether or not being land to which the development application relates);
- (d) limits the period during which development may be carried out in accordance with the consent so granted;
- (e) requires the removal of buildings and works (or any part thereof) at the expiration of the period referred to in paragraph (d);
- (f) requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 90 (1) applicable to the development the subject of the consent;
- (g) modifies details of the development the subject of the development application; or
- (h) is authorised to be imposed under section 94.

(4) A consent to a development application for the carrying out of development, being the erection of a building, shall be sufficient to authorise the use of the building when erected for the purpose for which it was erected where that purpose is specified in the development application.

(5) A consent granted by a consent authority, otherwise than in accordance with the provisions of this Act or of any environmental planning instrument applying to the land to which that development application relates, is void, but nothing in this subsection affects any liability of the consent authority.

Environmental Planning and Assessment.

(6) Where in respect of a development application referred to in subsection (1), the consent authority is not the council, the consent authority shall inform the council of its determination under this section.

(7) Where a consent authority imposes under this section a condition requiring the modification or surrender of a consent granted under this Act or a right conferred by Division 2, the consent or right may be modified or surrendered subject to and in accordance with the regulations.

Notice to applicant of determination of development application.

92. (1) Notice of a determination under section 91 shall be given to the applicant in the prescribed form and manner.

(2) Where the determination is made by the granting of consent subject to conditions or by the refusing of consent, the notice referred to in subsection (1) shall—

- (a) indicate the reasons for the imposition of the conditions or the refusal; and
- (b) notify the applicant of the provisions of this Act conferring a right of appeal against the determination.

Date from which consent operates.

93. (1) Subject to subsections (2) and (3), where a determination under section 91 is made by the granting of consent, the consent shall become effective and operate from—

- (a) except as provided in paragraph (b)—the date of consent that is endorsed, as prescribed, upon the notice referred to in section 92; or
- (b) in the case of designated development to which any objection has been made under section 87—the expiration of 28 days from the date of consent that is endorsed, as prescribed, upon the notice referred to in section 92.

Environmental Planning and Assessment.

(2) Subject to subsection (3), where a determination under section 91 is made by the granting of consent or the granting of consent subject to conditions, and an appeal has been made under section 97 or 98, the consent—

- (a) shall cease to be, or shall not become, effective pursuant to subsection (1); and
- (b) shall become effective and operate from the date of the decision on that appeal, except where that decision is to refuse development consent.

(3) A consent referred to in subsection (1) or (2) is void and shall, except for the purposes of section 97 or 98, be deemed never to have been granted where—

- (a) an appeal under section 97 is dismissed and development consent is refused; or
- (b) an appeal under section 98 is upheld, with the effect that development consent is refused.

(4) Where a determination under section 91 is made by refusing consent or where an application is deemed by section 96 to have been so determined, and the decision on the appeal made pursuant to section 97 in respect of that determination has the effect of granting consent, the decision shall be deemed to be a consent granted under this Division and that consent shall be effective and operate from the date of that decision.

94. (1) Subject to subsection (2), where a council, being the consent authority, is satisfied that a development, the subject of a development application, will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the council may grant consent to that application subject to a condition requiring—

- (a) the dedication of land free of cost; or
- (b) the payment of a monetary contribution,

or both.

Payment towards provision or improvement of amenities or services.

Environmental Planning and Assessment.

(2) A condition referred to in subsection (1) shall be imposed only—

- (a) where an environmental planning instrument identifies a likely increased demand for public amenities and public services as a consequence of the carrying out of development in accordance with that instrument and stipulates that dedication or a contribution under subsection (1) or both may be required as a condition of any consent to that development; and
- (b) to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services mentioned in that subsection.

(3) The council shall hold any monetary contribution in trust for the purpose for which the payment was required and apply the money towards providing public amenities or public services or both within a reasonable time and in such a manner as will meet the increased demand for those amenities or services or both.

(4) Land dedicated in accordance with a condition imposed under subsection (1) shall be made available by the council for the purpose of providing public amenities or public services or both within a reasonable time.

(5) Where a council proposes to impose a condition in accordance with subsection (1) in respect of development, the council shall take into consideration any land or other sum of money that the applicant has elsewhere dedicated free of cost within the area or previously paid to the council other than as a condition of the grant of consent under this Act or approval, consent or permission under Part XII or XIII A of the Local Government Act, 1919, as in force at any time.

(6) Where—

- (a) a condition imposed under subsection (1) in relation to development the subject of a development application has been complied with; and

Environmental Planning and Assessment.

- (b) a public authority would, but for this subsection, be entitled under any other Act to require, in relation to or in connection with that development, a dedication of land or payment of money in respect of the provision of public amenities or public services or both,

then, notwithstanding that other Act, compliance with the condition referred to in paragraph (a) shall be deemed to have satisfied the requirement referred to in paragraph (b) to the extent of the value (determined, if the regulations so provide, in accordance with the regulations) of the land dedicated or the amount of money paid in compliance with the condition.

(7) Subsection (2) (a) does not apply in the case of a deemed environmental planning instrument.

(8) Where a Minister or public authority (not being a council) is the consent authority in respect of a development application, this section applies to a determination by that consent authority as if a reference to—

- (a) the council were a reference to that Minister or public authority, as the case may be; or
- (b) the area were a reference to the locality.

95. A consent authority shall notify, in the prescribed form, time and manner—

- (a) each person who made a submission under section 87 in respect of a development application, of its determination of that application; and
- (b) each objector in respect of the application, of the rights under this Act of the applicant and each objector to appeal in respect of that determination.

Notification
of consent
authority's
determina-
tion to
objectors,
etc.

Environmental Planning and Assessment.

Circumstances in which consent is deemed to have been refused.

96. (1) Where a consent authority has not determined a development application—

- (a) in respect of development other than development referred to in paragraph (b) or (c)—within a period of 40 days after lodgment of that development application with the consent authority;
- (b) in respect of development referred to in section 78 other than development referred to in paragraph (c)—within a period of 60 days after lodgment of that development application with the consent authority; or
- (c) in respect of designated development (whether or not being development referred to in section 78)—
 - (i) except as provided in subparagraph (ii)—within 60 days after lodgment of that development application with the consent authority; or
 - (ii) where that development application is available for inspection in accordance with section 84 (4) for a period exceeding 30 days—within such period exceeding 60 days from the date of lodgment of that development application with the consent authority as the firstmentioned period exceeds 30 days,

that consent authority shall, for the purpose only of section 97, be deemed to have determined that application by refusing consent on the date upon which that period expires.

(2) Nothing in subsection (1) prevents a consent authority from determining a development application after the expiration of the period referred to in that subsection in relation to that development application.

(3) A determination pursuant to subsection (2) shall not, subject to subsection (4), prejudice or affect the continuance or determination of an appeal made under section 97 in respect of a determination that is deemed by subsection (1) to have been made.

Environmental Planning and Assessment.

(4) Where a determination pursuant to subsection (2) is made by granting consent, the consent authority shall be entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 97 in respect of a determination that is deemed by subsection (1) to have been made, withdrawn at any time prior to the determination of that appeal.

97. (1) An applicant who is dissatisfied with the determination of a consent authority with respect to his development application may appeal to the Court within 12 months after the date on which he received notice under section 92 in respect of that application or the date upon which that application is deemed to have been determined under section 96 (1). ^{Appeal by an applicant.}

(2) Where an appeal has been made under subsection (1) relating to a development application for consent to carry out designated development, each objector to that application shall be given notice by the consent authority of that appeal and shall, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, be entitled to be heard at the hearing of the appeal as if he were a party to the appeal.

(3) Where—

- (a) an appeal has been made under subsection (1) relating to a development application; and
- (b) the concurrence of a Minister or public authority is required, as referred to in section 78, in relation to the application,

that Minister or public authority shall be given notice by the consent authority of that appeal and shall, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, be entitled to be heard at the hearing of the appeal as if he or it were a party to the appeal.

Environmental Planning and Assessment.

(4) An appeal under subsection (1) relating to a development application for consent to carry out designated development in respect of which an objection has been made under section 87 shall not be heard by the Court until after the expiration of the time within which an objector may appeal to the Court under section 98.

Appeal by
an objector.

98. (1) An objector who is dissatisfied with the determination of a consent authority to grant consent to a development application either unconditionally or subject to conditions may, within 28 days after the date on which notice of the determination was given under section 95, and in accordance with rules of court, appeal to the Court.

(2) Where an appeal has been made under subsection (1), the person who made the development application and the consent authority referred to in that subsection shall be given notice of that appeal, in accordance with rules of court, and shall be entitled to be heard at the hearing of the appeal as parties thereto.

(3) Where—

- (a) an appeal has been made under subsection (1) relating to a development application;
- (b) the consent authority referred to in subsection (1) is given notice of an appeal under that subsection; and
- (c) the concurrence of a Minister or public authority is required, as referred to in section 78, in relation to the application,

that Minister or public authority shall be given notice of that appeal by the consent authority and shall, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, be entitled to be heard at the hearing of the appeal as if he or it were a party thereto.

Environmental Planning and Assessment.

99. (1) A consent granted under this Division to a development application shall lapse— **Lapsing of consent.**

- (a) unless the development the subject of that consent is commenced—
 - (i) except as provided in subparagraph (ii)—within 2 years (or, if the consent authority so approves in accordance with subsection (3), 3 years) of the date upon which that consent becomes effective in accordance with section 93 (in this section referred to as “the prescribed date”); or
 - (ii) where within one year of the prescribed date a provision of an environmental planning instrument is made having the effect of prohibiting the development—within one year of the date upon which that provision comes into force; and
- (b) where a notice referred to in subsection (5) is in force under subsection (6)—unless the development the subject of that consent is completed within the time specified in that notice.

(2) For the purposes of subsection (1) (a)—

- (a) where development comprises the erection of a building or the carrying out of a work or the subdivision (involving physical work) of land (including, where applicable, the subsequent use of that building when erected, that work when carried out, or that land when subdivided)—that development is commenced when building, engineering or construction work relating to that development is physically commenced on the land to which the consent applies; or
- (b) where development comprises the use of any land, building or work (not being a use referred to in paragraph (a))—that development is commenced when the use of that land, building or work is actually commenced.

Environmental Planning and Assessment.

(3) The consent authority may approve a 3 year period for the purposes of subsection (1) (a) (i)—

- (a) upon application being made in the prescribed form by the applicant or any other person entitled to act upon the consent, being an application made within 2 years of the prescribed date; and
- (b) if the consent authority is satisfied that the applicant has shown good cause for the grant of the approval.

(4) A person making an application under subsection (3), and dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days of its being made, may appeal to the Court, and the Court may determine the appeal.

(5) Where development is commenced within the period specified in subsection (1) but is not completed within that period, the consent authority, at any time after the expiration of that period, may, subject to this section, issue a notice requiring completion of the development within such time (not being less than 12 months from the date of service of the notice) as the consent authority considers reasonable, having regard to all relevant circumstances including the nature of the development.

(6) Subject to subsections (8) and (9), a notice issued under subsection (5) shall—

- (a) be in the prescribed form;
- (b) take effect from the date when the notice is sent by post addressed to the owner of the land to which the consent applies; and
- (c) operate according to its tenor.

(7) The consent authority shall, on or as soon as practicable after the day on which the notice is sent to the owner referred to in subsection (6), send a copy of the notice to—

- (a) such persons (if any) as are, in the opinion of the consent authority, likely to be disadvantaged by the issue of the notice; and

Environmental Planning and Assessment.

- (b) such persons (if any) as are referred to in the regulations for the purposes of this paragraph.

(8) Within 3 months of the date upon which the notice takes effect, any person aggrieved by the notice may appeal to the Court, and the Court may determine the appeal.

(9) The Court shall determine the appeal under subsection (8) by—

- (a) affirming the notice;
- (b) varying the notice by substituting a different time stipulation; or
- (c) cancelling the notice.

(10) The consent authority may extend the time stipulated in a notice issued under subsection (5)—

- (a) upon application being made in the prescribed form by the applicant or any other person entitled to act upon the consent, being an application made within the time so stipulated; and
- (b) if the consent authority is satisfied that the applicant has shown good cause for the extension of the time.

(11) A person making an application under subsection (10) and dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days of its being made, may appeal to the Court, and the Court may determine the appeal.

100. (1) If an appeal is made under section 97 with respect to a development application, the appeal shall, as far as practicable, be heard together with any appeals under section 98 made with respect to the application. ^{Joint hearing, of certain}

Environmental Planning and Assessment.

(2) Without affecting subsection (1), if 2 or more appeals are made under section 98 with respect to the same development application, the appeals shall, as far as practicable, be heard together.

(3) If 2 or more appeals are made under section 99 (8) with respect to the same notice referred to in that section, the appeals shall, as far as practicable, be heard together.

Determina-
tion of
development
applications
by the
Minister.

101. (1) Where the Minister considers it expedient in the public interest to do so, having regard to matters of significance for State or regional environmental planning, he may give a direction in writing to a consent authority to refer to the Secretary for determination by the Minister in accordance with this section a particular development application or a development application of a class or description of development applications.

(2) Where a direction is given under subsection (1), a consent authority—

- (a) shall not determine in accordance with this Division any development application to which that direction applies; and
- (b) shall forthwith after dealing with the application in accordance with this Division, except as provided by paragraph (a), refer the application to the Secretary,

and the provisions of section 96 shall not apply to the development application.

(3) The consent authority shall inform the applicant and any objector to that application that the application has been referred to the Secretary for determination by the Minister.

(4) The persons referred to in subsection (3) shall be afforded the opportunity of a hearing if so required by any of them before the Minister determines the application.

Environmental Planning and Assessment.

(5) Where a hearing is so required to be held, the Minister shall direct that an inquiry be held, in accordance with section 119, by a Commission of Inquiry appointed under section 119 (2), with respect to the application, and the applicant, consent authority and any objector shall be entitled to appear and be heard.

(6) The Minister, after consideration of the findings and recommendations of the Commission of Inquiry (if any), may determine the development application—

(a) by granting consent to that application either unconditionally or subject to such conditions as he thinks fit;
or

(b) by refusing consent to that application,

and the provisions of sections 90 and 91 apply to and in respect of the determination by the Minister under this section of a development application in the same way as they apply to and in respect of the determination by a consent authority under those sections of such an application.

(7) The Minister's determination under subsection (6)—

(a) shall be final and the provisions of sections 97 and 98 shall not apply thereto; and

(b) where the determination has the effect of granting consent to the development application, shall be deemed to be a consent granted under this Division and take effect from the date of notification under subsection (8) to the applicant.

(8) The Secretary shall notify the applicant, consent authority and any objector of the Minister's determination under subsection (6), and, where the determination is made by the granting of consent subject to conditions or by the refusing of consent, the notification shall indicate the reasons for the imposition of the conditions or the refusal.

Environmental Planning and Assessment.

(9) Where the Minister has given a direction under subsection (1), the Secretary may require the consent authority to furnish such information concerning development applications as the Secretary considers expedient for the purpose of enabling the Minister to exercise his functions under this section.

**Amendment
of consents.**

102. (1) Upon application being made in the prescribed form by the applicant or any other person entitled to act upon the consent, a consent authority which has granted development consent under this Division may modify details of the consent where—

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development;
- (b) it is satisfied that no prejudice will be caused to any person who objected to the development application the subject of that consent; and
- (c) it has consulted with the relevant Minister or public authority in respect of a condition referred to in section 82 (1) and that Minister or authority has not, within 21 days after being consulted, objected to the modification of that consent.

(2) A development consent shall not be modified under this section where it relates to designated development, unless the consent authority has first given notice, as prescribed, to the persons (if any) who made submissions under section 87 in relation to the application for the consent, and the consent authority shall consider any further submissions made by any of those persons within the prescribed period.

(3) Where the development consent referred to in subsection (1) is a consent referred to in section 93 (4) or 101 (7) (b), the Court or the Minister, as the case may be, shall be deemed for the purposes of this section to be the consent authority.

Environmental Planning and Assessment.

(4) Modification of a development consent in accordance with this section shall not be construed as the granting of development consent under this Division but a reference in this or any other Act to a development consent shall be a reference to the development consent so modified.

(5) A person making an application under subsection (1), and dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days of the application being made, may appeal to the Court, and the Court may determine the appeal.

(6) Nothing in this Act prevents the making and determination of a development application where the development to which the application relates is the subject of a development consent, and the foregoing provisions of this subsection apply whether or not the details of that consent could be modified under this section.

103. (1) If at any time it appears to—

- (a) the Director, having regard to the provisions of any draft State environmental planning policy or draft regional environmental plan; or
- (b) a council (being the consent authority in relation to the development application referred to in this subsection), having regard to the provisions of any draft local environmental plan,

Revocation
or modifica-
tion of
development
consent.

that any development for which consent under this Division is in force in relation to a development application should not be carried out or completed, or should not be carried out or completed except with modifications, he or it may, by instrument in writing, revoke or modify that consent.

(2) Before revoking or modifying a consent as provided by subsection (1), the Director or council shall by notice in writing inform each person who in his or its opinion will be adversely affected by the revocation or modification of the consent

Environmental Planning and Assessment.

of his or its intention to revoke or modify that consent and afford that person the opportunity of appearing before the Director or council or a person appointed by him or it to show cause why the revocation or modification should not be effected.

(3) The revocation or modification of a development consent shall, subject to this section, take effect from the date upon which the instrument referred to in subsection (1) is served upon the owner of the land to which that consent applies.

(4) Within 3 months of the date upon which the revocation or modification of a consent referred to in subsection (1) takes effect, the applicant for the consent, or any other person entitled to rely upon the consent, who is aggrieved by the revocation or modification may appeal to the Court, and the Court may determine the appeal.

(5) The Court shall determine the appeal under subsection (4) by affirming, varying or cancelling the instrument of revocation or modification.

(6) Where a development consent is revoked or modified under this section, any person aggrieved by the revocation or modification shall be entitled to recover from—

- (a) where the Director is responsible for the issue of the instrument of revocation or modification—the Government of New South Wales; or
- (b) where a council is responsible for the issue of that instrument—that council,

compensation for expenditure incurred pursuant to that consent during the period between the date on which that consent becomes effective and the date of service of the notice under subsection (2) which expenditure is rendered abortive by the revocation or modification of that consent.

(7) The Director or council shall, on or as soon as practicable after the date upon which the instrument referred to in subsection (1) is served upon the owner of the land referred to in

Environmental Planning and Assessment.

subsection (3), cause a copy of the instrument to be sent to each person who is, in his or its opinion, likely to be disadvantaged by the revocation or modification of the consent.

(8) This section does not apply to or in respect of a consent granted by the Court or by the Minister.

104. (1) A council shall, in the prescribed form and manner (if any), keep a register of consents granted under this Division and of decisions on appeal from any determination made under this Division. Register of consents.

(2) The register referred to in subsection (1) shall be available for public inspection, without charge, at the office of the council during ordinary office hours.

105. The regulations may make provision for or with respect to— Regulations respecting environmental impact statements under this Part.

- (a) the furnishing of environmental impact statements for the purposes of this Part; and
- (b) any matters relating to environmental impact statements under this Part, being matters for or with respect to which regulations relating to environmental impact statements referred to in Part V may be made.

DIVISION 2.—Existing use.

106. In this Division, “existing use” means— Interpretation.

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument having the effect of prohibiting that use; and
- (b) in the case of a building, work or land erected, carried out or used in accordance with a consent to which section 99 (1) (a) (ii) applies—the use of that building, work or land for the purpose specified in the development application to which the consent was granted.

Environmental Planning and Assessment.

Continuance of and limitations on existing use.

107. (1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.

(2) Nothing in subsection (1) authorises—

- (a) any alteration or extension to or rebuilding of a building or work;
- (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned;
- (c) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 91 (3) (b); or
- (d) the continuance of the use therein mentioned where that use is abandoned.

(3) Without limiting the generality of subsection (2) (d), a use shall be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

Regulations respecting existing use.

108. (1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—

- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use; and
- (b) the change of an existing use to another use.

(2) The provisions (in this section referred to as “the incorporated provisions”) of any regulations in force for the purposes of subsection (1) shall be deemed to be incorporated in every environmental planning instrument.

Environmental Planning and Assessment.

(3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.

109. Nothing in an environmental planning instrument operates so as to require consent to be obtained under this Act for the continuance of a use of a building, work or land for a lawful purpose for which it was being used immediately before the coming into force of the instrument or so as to prevent the continuance of that use except with consent under this Act being obtained. ^{Existing consent.}

PART V.

ENVIRONMENTAL ASSESSMENT.

110. In this Part—

**Interpre-
tation.**

“activity” means—

- (a) the formulation of a proposal, or the making of a recommendation or decision, for the carrying out of a development, work or project by a determining authority or a development, work or project for which the approval of a determining authority is required;

Environmental Planning and Assessment.

- (b) the incurring of expenditure by or on behalf of a determining authority in respect of the carrying out of a development, work or project by the determining authority or the incurring of expenditure by or on behalf of any other person in respect of a development, work or project for which the approval of a determining authority is required; or
- (c) the carrying out of a development, work or project by a determining authority or a development, work or project for which the approval of a determining authority is required,

but does not include the preparation or making of an environmental planning instrument under Part III or an activity as defined in paragraph (a), (b) or (c) that requires a consent under Part IV;

“determining authority” means a Minister or public authority and, in relation to any activity, means that Minister or public authority by or on whose behalf the activity is or is to be carried out or whose approval to the carrying out of the activity is required;

“proponent”, in relation to an activity, means the person proposing to undertake the activity.

Duty to consider environmental impact.

111. For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

Environmental Planning and Assessment.

112. (1) A determining authority shall not make a final decision to undertake, or to approve of the undertaking of, an activity that is either a prescribed activity, an activity of a prescribed kind or an activity that is likely to significantly affect the environment unless—

Decision of determining authority in relation to certain activities.

- (a) the determining authority has obtained, examined and considered an environmental impact statement in respect of that activity—
 - (i) prepared in the prescribed form and manner by or on behalf of the proponent; and
 - (ii) except where the proponent is the determining authority, submitted to the determining authority in the prescribed manner;
- (b) notice referred to in section 113 (1) has been duly given, the period specified in the notice has expired and the determining authority has examined and considered any representations made to it in accordance with section 113 (2);
- (c) the determining authority has complied with section 113 (3);
- (d) where it receives notice from the Secretary that the Minister has directed that an inquiry be held, in accordance with section 119, with respect to the activity, the inquiry has been held and the determining authority has considered the findings and recommendations of the Commission of Inquiry and any advice given to it by the Minister in accordance with section 114; and
- (e) where it receives notice from the Secretary that the Director has decided that an examination be undertaken in accordance with section 113 (5), that examination has been carried out and the determining authority has considered the report furnished to it in accordance with that subsection.

Environmental Planning and Assessment.

(2) The determining authority shall, as soon as practicable after an environmental impact statement is prepared by or submitted to it, as referred to in subsection (1), but before giving notice under section 113 (1), furnish to the Secretary a copy of the statement.

(3) In making its final decision in relation to an activity referred to in subsection (1), a determining authority which is satisfied that the undertaking of that activity will detrimentally affect the environment—

- (a) may, except where it is the proponent—
 - (i) impose such conditions or require such modifications as will in its opinion eliminate or reduce the detrimental effect of the activity on the environment; or
 - (ii) disapprove of the activity; or
- (b) may, where it is the proponent of the activity—
 - (i) modify the proposed activity so as to eliminate or reduce the detrimental effect of the activity on the environment; or
 - (ii) refrain from undertaking the activity.

(4) The provisions of subsection (3) have effect notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act.

Publicity
and exam-
ination
of environ-
mental
impact
statement.

113. (1) A determining authority shall give notice in the prescribed form and manner that a copy of an environmental impact statement prepared by or submitted to it, as referred to in section 112 (1), may be inspected at—

- (a) the office of the determining authority and the Department at any time during ordinary office hours; and
- (b) such other premises operated or controlled by them respectively and at such times as may be prescribed,

within such period, being not less than 30 days after the day on which the notice is given, as may be specified in the notice.

Environmental Planning and Assessment.

(2) Any person may, during the period specified in the notice, inspect the environmental impact statement (except any part thereof the publication of which would, in the opinion of the determining authority, be contrary to the public interest by reason of its confidential nature or for any other reason) and may within that period make representations in writing to the determining authority with respect to the activity to which the environmental impact statement relates.

(3) A determining authority shall, as soon as practicable and not less than 21 days before a final decision referred to in section 112 (1) is made with respect to an activity, furnish to the Secretary a copy of any representations made to it under subsection (2) with respect to the activity.

(4) A proponent not entitled to copyright in an environmental impact statement referred to in section 112 (1) shall be deemed to have indemnified all persons using the environmental impact statement for the purposes of this Part against any claim or action in respect of a breach of copyright in the statement.

(5) Except where the Minister has directed that an inquiry be held in accordance with section 119, the Director may examine or cause to be examined in the Department an environmental impact statement furnished in accordance with section 112 (2) and any representations made with respect to the activity to which the statement relates under section 113 (2) and shall forward, as soon as practicable to the relevant determining authority, a report containing the findings of that examination together with any recommendations arising therefrom.

(6) After the report referred to in subsection (5) has been forwarded to the determining authority, the Director shall make public that report.

(7) Any public authority or body to which an appeal may be made by or under any Act in relation to the activity the subject of an examination carried out under subsection (5) shall, in deciding the appeal, consider and take into account the report forwarded to the determining authority under that subsection.

Environmental Planning and Assessment.

Consideration of findings and recommendations of Commission of Inquiry.

114. Where the Minister has directed that an inquiry be held, in accordance with section 119, with respect to any activity referred to in section 112 (1)—

- (a) the Minister shall consider the findings and recommendations of the Commission of Inquiry and forward to the relevant determining authority a copy of the findings and recommendations and may give advice to the authority as to whether, in his opinion—
 - (i) there are no environmental grounds which would preclude the carrying out of the activity to which the findings and recommendations relate in accordance with the proponent's proposal;
 - (ii) there are no environmental grounds which would preclude the carrying out of the activity subject to its being modified in the manner specified in the advice;
 - (iii) there are no environmental grounds which would preclude the carrying out of the activity subject to the observance of conditions specified in the advice; or
 - (iv) there are environmental grounds which would preclude the carrying out of the activity; and
- (b) any public authority or body to which an appeal may be made by or under any Act in relation to the activity shall, in deciding the appeal, consider and take into account the findings and recommendations of the Commission of Inquiry and any such advice given by the Minister.

Regulations.

115. The regulations may make provision for or with respect to—

- (a) the factors to be taken into account when consideration is being given to the likely impact of an activity on the environment;
- (b) the preparation, contents, form and submission of environmental impact statements;

Environmental Planning and Assessment.

- (c) the making of environmental impact statements available for public comment; or
- (d) the methods of examination of environmental impact statements and representations made with respect to activities to which any such statements relate.

PART VI.

IMPLEMENTATION AND ENFORCEMENT.

DIVISION 1.—*General.*

116. (1) Where land reserved by an environmental planning instrument pursuant to section 26 (c) or proposed to be reserved by a draft environmental planning instrument is resumed or appropriated, the value of that land shall be determined as if it had not been so reserved or proposed to be reserved. ^{Value of reserved land on compulsory acquisition.}

(2) Where—

- (a) land reserved by an environmental planning instrument pursuant to section 26 (c) is resumed or appropriated for the purpose for which it is reserved; and
- (b) that land was at the date of resumption or appropriation used by the claimant as his place of residence,

then, in ascertaining compensation payable in consequence of the resumption or appropriation, the Court may award additional compensation in respect of—

- (c) the amount (if any) by which the cost to the claimant of relocating his residence in other accommodation would exceed the value of the land referred to in subsection (1), on the assumption that the other accommodation is equivalent to or comparable with the accommodation on the land so referred to; and

Environmental Planning and Assessment.

(d) solatium for the necessity to relocate his residence.

Directions
by the
Minister.

117. (1) The Minister may direct a public authority or person having functions under this Act or an environmental planning instrument to exercise those functions at or within such times as are specified in the direction.

(2) Without limiting subsection (1), the Minister may direct a council to exercise its functions under Division 4 or 5 of Part III in relation to the preparation of a draft local environmental plan in accordance with such principles, not inconsistent with this Act, as—

- (a) are specified in the direction; and
- (b) relate to matters which could be dealt with by any State environmental planning policy or regional environmental plan applying to the land to which the draft local environmental plan is intended to apply.

(3) A public authority or person to whom a direction is given under subsection (1) or (2) shall comply, and is hereby empowered to comply, with the direction in accordance with the terms of the direction.

(4) Before giving a direction under subsection (1) or (2), the Minister shall consult with the responsible Minister concerned.

Appointment
of officer
of Depart-
ment as
environ-
mental
planning
adminis-
trator.

118. (1) Where, in the opinion of the Minister, a council has failed to comply with, carry into effect or enforce the provisions of this Act, an environmental planning instrument or a direction given under section 117, he may, after consultation with the Minister for Local Government, by notice call upon the council to show cause why the Minister should not exercise the powers conferred upon him by this section.

(2) A council that has received a notice under subsection (1) shall be afforded the opportunity of a hearing if it so requires for the purpose of showing cause.

Environmental Planning and Assessment.

(3) Where a hearing is so required to be held, the Minister shall direct that an inquiry be held, in accordance with section 119, by a Commission of Inquiry appointed under section 119 (2), with respect to the proposed exercise of those powers.

(4) Where the Minister, after giving notice under subsection (1) and after consideration of the findings and recommendations of the Commission of Inquiry (if any), considers it proper to do so, he may, with the concurrence of the Minister for Local Government, by order published in the Gazette, appoint, for a period specified in the order, an officer of the Department to administer all, or such part as is specified in the order, of the functions conferred or imposed on that council by or under this Act.

(5) Notwithstanding subsection (4), the officer shall not enter into contracts in the exercise of his functions except with the consent of the Minister and the concurrence of the Minister for Local Government.

(6) The officer shall, during the period of his appointment under subsection (4), be deemed to be and have the functions of the council specified in the order of his appointment.

(7) In respect of the period of an officer's appointment under subsection (4), there is payable to the Director, for transmission to the Consolidated Revenue Fund, out of the general fund of the council such remuneration and such costs and expenses as the Minister determines with the concurrence of the Minister for Local Government.

(8) The regulations may make provision for or with respect to the functions of the officer in connection with his appointment and, in particular, for or with respect to—

- (a) the accommodation, if any, to be provided at the offices of the council for the officer and any other officers of the Department assisting him in the exercise of those functions; and

Environmental Planning and Assessment.

- (b) requiring officers and servants of the council to render all necessary assistance to the officer in the exercise of his functions in accordance with his appointment and any such officers and servants not to obstruct the officer in the exercise of his functions.

DIVISION 2.—*Public inquiries and settlement of disputes.*

Public
inquiry.

119. (1) The Minister may at any time direct that an inquiry be held, in accordance with this section, by a Commission of Inquiry appointed under subsection (2) with respect to—

- (a) any matter relating to the administration and implementation of the provisions of this Act or any environmental planning instrument;
- (b) the environmental aspects of any proposed designated development the subject of a development application referred to in section 88 (3);
- (c) the environmental aspects of any activity referred to in section 112 (1); or
- (d) a proposal to constitute, alter or abolish a development area under section 132 or 133.

(2) Where, pursuant to subsection (1) or section 49 (1), 101 (5) or 118 (3), an inquiry is directed to be held, the Minister may appoint one or more Commissioners of Inquiry to constitute a Commission of Inquiry to hold the inquiry and may appoint one or more persons to assist such a Commission.

(3) Any person appointed under subsection (2) to assist a Commission of Inquiry shall be paid such remuneration and allowances as may be determined in respect of him by the Minister.

(4) Where there is more than one Commissioner of Inquiry constituting a Commission of Inquiry, the Minister shall appoint one of the Commissioners to preside at the proceedings of the Commission.

Environmental Planning and Assessment.

(5) Except as provided in subsection (1), a Commission of Inquiry is not subject to directions by the Minister or any other person in relation to the contents of its report, findings or recommendations.

(6) A Commission of Inquiry constituted under this section shall hold an inquiry in accordance with the direction of the Minister or Director, as referred to in subsection (1) or (2), shall report its findings and recommendations to the Minister or Director, as the case may be, and shall, after so reporting, but subject to subsection (7), make public those findings and recommendations.

(7) A Commission of Inquiry shall not make public any evidence or matters in respect of which directions have been given under section 120 (5) (b) or matters the publication of which is excepted from section 120 (8).

120. (1) Subject to this section, an inquiry by a Commission of Inquiry constituted under section 119 shall be held in public and evidence in the inquiry shall be taken in public and may be required to be taken on oath or affirmation. **Procedure at inquiries.**

(2) Before a Commission of Inquiry commences to hold an inquiry, it shall give reasonable notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold the inquiry, of the subject of the inquiry and of the time and place at which the inquiry is to be commenced.

(3) A Commissioner of Inquiry may, by writing signed by him, summon a person to appear before the Commission of Inquiry at a time and place specified in the summons to give evidence and to produce such books and documents (if any) as are referred to in the summons.

(4) A person served with a summons to appear as a witness at an inquiry by a Commission of Inquiry shall not, without reasonable excuse—

(a) fail to attend as required by the summons; or

Environmental Planning and Assessment.

- (b) fail to appear and report himself from day to day unless excused or released from further attendance by or on behalf of the Commission.

Penalty : \$1,000.

(5) Where a Commission of Inquiry is satisfied that it is desirable to do so in the public interest by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may—

- (a) direct that an inquiry or a part of an inquiry shall take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission,

or do both of those things.

(6) A Commission of Inquiry may, if it thinks fit, permit a person appearing as a witness before the Commission to give evidence by tendering, and verifying by oath or affirmation, a written statement.

(7) Where a Commission of Inquiry considers that the attendance of a person as a witness before the Commission would cause serious hardship to the person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the Commission allows.

(8) Where evidence is given to a Commission of Inquiry by a written statement in accordance with subsection (6) or (7), the Commission shall make available to the public in such manner as the Commission thinks fit the contents of the statement other than any matter the publication of which, in the opinion of the Commission, would be contrary to the public interest by reason of its confidential nature or for any other reason.

Environmental Planning and Assessment.

(9) Subject to this section and the regulations—

- (a) the procedure to be followed at an inquiry by a Commission of Inquiry shall be determined by the Commission; and
- (b) a Commission of Inquiry is not bound by the rules of evidence.

(10) An oath or an affirmation may be administered for the purposes of this section by a Commissioner of Inquiry or by any person authorised by the Oaths Act, 1900, to administer a judicial oath.

(11) Nothing in this section derogates from any law relating to Crown privilege.

121. (1) Where a dispute arises between the Department or the Director and a public authority, other than a council, with respect to—

- (a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument; or
- (b) the exercise of any function conferred or imposed upon the Department or the Director or upon the public authority by or under this Act, the regulations or an environmental planning instrument,

a party to the dispute may submit that dispute to the Premier for settlement in accordance with this section.

(2) Where a dispute arises between a public authority (including the Department and the Director) and a council with respect to—

- (a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument; or

Environmental Planning and Assessment.

(b) the exercise of any function conferred or imposed upon the public authority or council by or under this Act, the regulations or an environmental planning instrument, a party to the dispute may submit that dispute to the Minister for settlement in accordance with this section.

(3) On the submission of a dispute to the Premier or the Minister under subsection (1) or (2), the Premier or Minister may appoint a person to hold an inquiry and make a report to him with respect to that dispute or may himself hold an inquiry with respect to that dispute.

(4) After the completion of an inquiry held under subsection (3) and, where a report is made to the Premier or the Minister under that subsection, after consideration by him of that report, the Premier or the Minister, as the case may be, may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as he thinks fit.

(5) An order made by the Premier or the Minister under subsection (4) may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.

(6) The Department, the Director, a council or other public authority, as the case may be, shall comply with an order given to it or him under subsection (4), and shall, notwithstanding the provisions of any Act, be empowered to comply with any such order.

(7) The provisions of any other Act relating to the settlement of disputes do not apply to the settlement of a dispute referred to in subsection (1) or (2).

DIVISION 3.—*Orders of the Court.*

Interpre-
tation.

122. In this Division—

- (a) a reference to a breach of this Act is a reference to—
 - (i) a contravention of or failure to comply with this Act; and

Environmental Planning and Assessment.

- (ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act; and
- (b) a reference to this Act includes a reference to—
 - (i) an environmental planning instrument;
 - (ii) a consent granted under this Act; and
 - (iii) a condition subject to which a consent referred to in subparagraph (ii) was granted.

123. (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach. Restraint, etc., of breaches of this Act.

(2) Proceedings under this section may be brought by a person on his own behalf or on behalf of himself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

124. (1) Where the Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach. Order of the Court.

(2) Without limiting the powers of the Court under subsection (1), an order made under that subsection may—

- (a) where the breach of this Act comprises a use of any building, work or land—restrain that use:

Environmental Planning and Assessment.

- (b) where the breach of this Act comprises the erection of a building or the carrying out of a work—require the demolition or removal of that building or work; or
- (c) where the breach of this Act has the effect of altering the condition or state of any building, work or land—require the reinstatement, so far as is practicable, of that building, work or land to the condition or state the building, work or land was in immediately before the breach was committed.

(3) Where a breach of this Act would not have been committed but for the failure to obtain a consent under Part IV, the Court, upon application being made by the defendant, may—

- (a) adjourn the proceedings to enable a development application to be made under Part IV to obtain that consent; and
- (b) in its discretion, by interlocutory order, restrain the continuance of the commission of the breach while the proceedings are adjourned.

(4) The functions of the Court under this Division are in addition to and not in derogation from any other functions of the Court.

DIVISION 4.—*Offences.*

**Offences
against this
Act and the
regulations.**

125. (1) Where any matter or thing is by or under this Act, other than by or under the regulations, directed or forbidden to be done, or where the Minister, the Director, a council or any other person is authorised by or under this Act, other than by or under the regulations, to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against this Act.

Environmental Planning and Assessment.

(2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where the Minister, the Director, a council or any other person is authorised by the regulations to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against the regulations.

(3) Nothing in subsection (1) or (2) applies in respect of a direction given under this Act by the Minister to a public authority.

126. (1) A person guilty of an offence against this Act shall, ^{Penalties.} for every such offence, be liable to the penalty expressly imposed and if no penalty is so imposed to a penalty not exceeding \$20,000 and to a further daily penalty not exceeding \$1,000.

(2) A person guilty of an offence against the regulations is liable to a penalty not exceeding \$2,000.

(3) Where a person is guilty of an offence involving the destruction of or damage to a tree or vegetation, the court dealing with the offence may, in addition to or in substitution for any pecuniary penalty imposed or liable to be imposed, direct that person—

- (a) to plant new trees and vegetation and maintain those trees and vegetation to a mature growth; and
- (b) to provide security for the performance of any obligation imposed under paragraph (a).

127. (1) Proceedings for an offence against this Act may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone or before the Court in its summary jurisdiction. ^{Proceedings for offences.}

Environmental Planning and Assessment.

(2) Proceedings for an offence against the regulations may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone.

(3) If proceedings in respect of an offence against this Act are brought in a court of petty sessions held before a stipendiary magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provisions of this Act, \$2,000 or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.

(4) If proceedings in respect of an offence against this Act are brought in the Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.

(5) Proceedings in the Court in its summary jurisdiction in respect of an offence against this Act may be commenced not later than 6 months after the offence was alleged to be committed.

(6) Proceedings for an offence against this Act shall not be instituted in the Court in its summary jurisdiction without the written consent of the Minister or of such prescribed person or person of a class or description of persons prescribed for the purposes of this section.

(7) A person shall not be convicted of an offence against this Act where the matter constituting the offence is, at the date upon which the conviction would, but for this subsection, be made—

- (a) the subject of proceedings under section 123, which proceedings have not been concluded; or
- (b) the subject of an order made under section 124.

(8) Nothing in subsection (7) precludes a conviction being made where the proceedings referred to in paragraph (a) of that subsection are concluded otherwise than by the making of an order under section 124.

Environmental Planning and Assessment.

PART VII.

FINANCE.

DIVISION 1.—*Funds.*

128. The Account which has been established in the Special Deposits Account in the Treasury pursuant to section 30 (1) of the State Planning Authority Act, 1963, shall be continued under a name determined by the Treasurer. Department of Environment and Planning Account.

129. (1) In connection with the Account referred to in section 128, there shall be created in the books of the Department the following funds :— Funds generally.

- (a) a Development Fund in respect of each development area (each of which funds is referred to in this Part as a “Development Fund”); and
- (b) the Trust Fund (which is referred to in this Part as “the Trust Fund”).

(2) The funds shall be separate and distinct.

130. (1) The Development Fund in respect of each development area shall consist of— Development Funds.

- (a) all money borrowed for the purpose of the acquisition or development of land within the development area and for the purpose of repaying or renewing a loan obtained for that purpose and the proceeds of any levy or assessment made by the corporation for the purpose of repaying money so borrowed or renewing such a loan;
- (b) the proceeds of the sale or lease by the corporation of any land situated within the development area;
- (c) all money and land directed by or under this Act to be allocated to the Development Fund;

Environmental Planning and Assessment.

- (d) all money received as a result of the investment of the Development Fund as authorised by this Act; and
- (e) such other money as the Treasurer authorises to be paid into the Development Fund.

(2) All land vested in the corporation and situated within a development area shall form part of the assets of the Development Fund in respect of that development area.

(3) The Development Fund in respect of each development area may be applied to any of the following purposes :—

- (a) the acquisition or development of any land within the development area;
- (b) the payment of rates and charges due and payable by the corporation in respect of land within the development area;
- (c) transfers to any reserve for loan repayment in respect of money borrowed in respect of the development area or in respect of any loan transferred to the corporation in pursuance of Schedule 3 to the Miscellaneous Acts (Planning) Repeal and Amendment Act, 1979;
- (d) payment of principal, interest and expenses in respect of money borrowed in respect of the development area or in respect of any loan transferred to the corporation in pursuance of that Schedule;
- (e) any purpose authorised by or under this Act for the application of the Development Fund;
- (f) the creation of assets and incurring and discharging liabilities not inconsistent with the purposes of the Development Fund;
- (g) payment of principal, interest and expenses in respect of money borrowed which is not chargeable to any fund other than the Development Fund, or in respect of a loan or asset transferred from another fund;

Environmental Planning and Assessment.

- (h) the investment of money for the creation of reserves for any purposes not inconsistent with the purposes of the Development Fund;
- (i) any costs incurred in the administration of the Development Fund.

131. (1) The Trust Fund shall consist of the following **Trust Fund.**
assets :—

- (a) all money and land held by the corporation by way of deposit or in trust for any person;
- (b) all money and land assigned, conveyed, bequeathed or devised to the corporation in trust for the purpose of any function which the corporation is by or under this Act empowered to exercise;
- (c) all money received as a result of the investment of the Trust Fund as authorised by this Act.

(2) The Trust Fund shall be applied as follows :—

- (a) where the money or land is held by way of deposit or in trust for any person, the money may be paid or the land may be assured to or on behalf of the person entitled thereto, but if the money has remained in the Trust Fund for 10 years, the corporation may transfer it to such Development Fund as it may deem proper, subject to repaying it from that fund to any person entitled thereto;
- (b) except as otherwise provided in this section, for the purposes and according to the trusts upon which the money or land is held by the corporation;
- (c) by investment in securities authorised under the Trustee Act, 1925, or for the purposes of and according to the trusts referred to in paragraph (b).

Environmental Planning and Assessment.

Constitution
of
development
areas.

132. (1) Development areas may be constituted in accordance with this section.

(2) The Director may, by notice published in the Gazette, notify a proposal to constitute as a development area any area or areas or parts of areas specified in the notice.

(3) In determining which areas or parts of areas should be included in the development area, the Director shall have regard to any environmental planning instruments relating to those areas or parts, environmental planning principles and such other matters as the Director thinks fit.

(4) Within 14 days after the publication in the Gazette of the notice referred to in subsection (2), the Director shall, in the prescribed manner, notify the councils of the areas or parts of areas proposed to be included in the development area of the proposal and the reasons therefor and otherwise publicise the proposal.

(5) Any person may, by notice in writing, lodge with the Director, within 3 months after the publication in the Gazette of the notice referred to in subsection (2), representations in relation to the proposal.

(6) Where representations have been lodged under subsection (5), the Director shall refer the matter to the Minister who shall either—

- (a) confirm the proposal; or
- (b) alter the proposal by excluding, from the proposed development area, any area other than an area in which the corporation has acquired land pursuant to section 9.

(7) Where the Minister has directed that an inquiry be held, in accordance with section 119, with respect to the proposal, he shall not determine the application until after—

- (a) the inquiry has been held; and

Environmental Planning and Assessment.

(b) he has considered the findings and recommendations of the Commission of Inquiry appointed in respect of the inquiry.

(8) If no representations are lodged under subsection (5), the proposal shall be deemed to be confirmed immediately on the expiry of the period allowed for the lodgment of representations.

(9) The areas or parts of areas specified in the proposal as confirmed or altered shall, upon publication in the Gazette of a notice constituting them as a development area, be constituted as a development area under the name specified in the notice.

133. The Director may, by notice published in the Gazette, notify a proposal to alter a development area constituted under this Division by including therein any land or by excluding therefrom any land or to abolish such a development area, and the provisions of this Division shall apply to the notice as they apply to a notice referred to in section 132 (2).

Alteration or abolition of development area.

134. Land shall not at the one time be within more than one development area.

Land to be in one development area only.

135. (1) A copy of the notice constituting, altering or abolishing a development area published in the Gazette in accordance with this Division shall be laid before each House of Parliament within 14 sitting days of that House after the date of publication.

Disallowance of constitution of development area.

(2) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a copy of a notice referred to in subsection (1) has been laid before it, disallowing the constitution, alteration or abolition of the development area, the constitution, alteration or abolition is thereupon revoked.

Environmental Planning and Assessment.

(3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

DIVISION 2.—*Charges and fees.*

Right to
charges and
fees.

136. For the purpose of this Act, the Director may demand, levy and recover the prescribed charges and fees in accordance with this Division.

Charges and
fees fixed by
regulation.

137. (1) Where under the provisions of any Act, ordinance, regulation or environmental planning instrument the Minister, corporation, Department or Director—

- (a) supplies any service;
- (b) makes any registration;
- (c) gives any permission;
- (d) furnishes any information; or
- (e) receives any application for its approval,

the charge or fee shall be as prescribed by the regulations.

(2) In any such regulation, provision may be made requiring a deposit or prepayment in respect of any such charge or fee.

(3) Nothing in this section authorises any charge or fee contrary to the provisions of any Act, ordinance, regulation or environmental planning instrument.

Liability for
charge or
fee.

138. The charge or fee shall be paid to the Minister, corporation, Department or Director by the person to whom or at whose request the service, permission or information is supplied, given or furnished, or at whose request the registration is made or from whom the application is received, as the case may be.

Environmental Planning and Assessment.

139. Any charge, fee or money due to the Minister, corporation, Department or Director under the provisions of this Act may be recovered as a debt or liquidated demand in a court of competent jurisdiction. Recovery of charges, etc.

DIVISION 3.—*Loans.*

140. (1) For the temporary accommodation of the corporation, it may obtain advances by overdraft of current account in any bank or banks upon the credit of the corporation's funds to such extent as may from time to time be approved by the Governor. Temporary accommodation.

(2) The Treasurer may advance such money to the corporation, upon such terms and conditions as to repayment and interest, as may be agreed upon.

141. (1) Without affecting section 140, the corporation may enter into arrangements to borrow money from, or obtain advances from, or obtain other financial accommodation from, an approved person or body, whether in New South Wales or elsewhere, to such extent and secured and arranged in such manner and for such period as may be approved. Other financial accommodation.

(2) The due payment of any amounts payable by the corporation pursuant to any arrangements entered into under this section, and any interest or other charges in relation thereto, is hereby guaranteed by the Government, and any liability arising from the guarantee shall be payable out of money provided by Parliament.

(3) Where the approval of the Governor in relation to any arrangements is expressed to be given under this section, section 142 and Schedule 6 do not apply to or in respect of the arrangements, but this subsection does not prevent the borrowing of money under section 142 (1) for the discharge or partial discharge of any indebtedness to any person or body referred to in subsection (1).

Environmental Planning and Assessment.

(4) In this section—

“approved” means approved from time to time by the Governor on the recommendation of the Minister and the Treasurer;

“financial accommodation” includes financial accommodation by way of credit arrangements, including arrangements for the deferred payment by the corporation of amounts payable by it under any contract or agreement entered into by it, but not including any arrangements that provide for the payment of instalments where the extension of credit to the corporation is not involved, and includes financial accommodation involving the use of bills of exchange.

Borrowing. **142.** (1) The corporation may from time to time, with the concurrence of the Treasurer and the approval of the Governor, borrow money for—

- (a) the purpose of exercising any of its functions;
- (b) the renewal of loans;
- (c) the discharge or partial discharge of any loan or any indebtedness to the Treasurer or to any bank or to any person or body referred to in section 141 (1); or
- (d) any other purpose of this Act.

(2) Schedule 6 has effect.

**Assessment
of loan
commit-
ments.**

143. (1) The corporation may, in respect of each year ending on 31st December, assess the amount required in any such year for the payment of interest on, or repayment of principal of, any loan raised by the corporation upon the councils whose areas or parts of areas are included in the development area to which the purpose for which the loan was raised relates.

Environmental Planning and Assessment.

(2) Where the corporation decides to make an assessment upon the councils under subsection (1), it shall, not later than 1st August in the year preceding that in which the assessment is to be paid, notify the councils as to its intention and require each such council to furnish to the corporation a certified statement of the prescribed value of all ratable land within the council's area, or within such part of the council's area, included in the development area, as the case may be, as at 1st January in the firstmentioned year.

(3) The council shall furnish such a certified statement within one month after being required to do so.

(4) The assessment to be made upon a council shall be made in accordance with the following formula :—

$$C = E \times \frac{V_1}{V_2}$$

where—

C is the amount to be contributed by the council;

E is the total assessment for the development area, as referred to in subsection (1);

V_1 is the prescribed value shown in the last statement furnished by the council to the corporation in accordance with subsection (3) in respect of ratable land in the area or part of the area, as the case may be, of the council; and

V_2 is the total of the prescribed value, shown in the last statements furnished by all councils in the development area to the corporation in accordance with subsection (3), of all the ratable land in the areas or parts of areas, as the case may be, of all such councils.

(5) The assessment shall be served by the corporation upon the council concerned on or before 1st October in the year preceding that in which the assessment is to be paid.

(6) A council so assessed shall pay the amount of the assessment from its general fund.

Environmental Planning and Assessment.

(7) The corporation may recover as a debt or liquidated demand in any court of competent jurisdiction any amount assessed upon any council and not paid on or before 30th June in the year in which the assessment is to be paid.

(8) In this section, "prescribed value", in relation to land, means—

- (a) where no basis is prescribed under paragraph (b)—the unimproved capital value of the land; or
- (b) the value of the land determined on such other basis as is prescribed.

DIVISION 4.—*General.*

Accounts. **144.** (1) The corporation shall cause to be kept proper accounts and records in relation to all of its operations.

(2) The corporation shall, as soon as practicable, but within 6 months, after the end of each financial year of the corporation, prepare for presentation to Parliament a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.

(3) The statement of accounts shall be in a form approved by the Auditor-General, shall include such information as is requested by him, and shall exhibit a true and fair view of the financial position and transactions of the corporation.

(4) The corporation shall, as soon as practicable, but within 4 months, after the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.

(5) The Auditor-General's certificate shall state that he has audited the accounts of the corporation relating to the relevant financial year, shall indicate whether the statement of accounts complies with subsection (3), and shall set forth any qualifications subject to which the certificate is given.

Environmental Planning and Assessment.

(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by him and before its presentation to Parliament.

(7) The Minister shall lay the statement of accounts, or cause it to be laid, together with the Auditor-General's certificate, before both Houses of Parliament as soon as practicable after the receipt by him of the certificate.

(8) The financial year of the corporation shall be the year ending on 30th June.

145. (1) The accounts and records of financial transactions ^{Audit.} of the corporation, and the records relating to assets of or in the custody of the corporation, shall be inspected and audited by the Auditor-General.

(2) For the purposes of any such inspection and audit, the Auditor-General or a person authorised by him is entitled at all reasonable times to full and free access to the accounts, records, documents and papers of the corporation and may make copies thereof or take extracts therefrom.

(3) The Auditor-General or a person authorised by him may require a person, being an officer of the Department, to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

Penalty : \$200.

(4) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

Environmental Planning and Assessment.

(5) The Auditor-General shall report to the Minister on the result of any such inspection and audit, and as to such irregularities or other matters as in his judgment call for special notice.

(6) Towards defraying the costs and expenses of any such inspection and audit, the corporation shall pay to the Consolidated Revenue Fund such amounts, at such times, as the Treasurer decides.

PART VIII.

MISCELLANEOUS.

Annual
report.

146. As soon as practicable after 30th June in each year but not later than 30th September of that year, the Director shall cause to be prepared and furnish to the Minister a report upon the operations and activities of the Department during the year ending on 30th June.

Tabling of
annual
report.

147. The Minister shall lay the report furnished under section 146, or cause it to be laid, before both Houses of Parliament as soon as practicable after receipt by him of the report.

Dis-
closure and
misuse of
informa-
tion.

148. (1) A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;

Environmental Planning and Assessment.

- (d) in accordance with a requirement imposed under the Ombudsman Act, 1974; or
- (e) with other lawful excuse.

(2) A person acting in the administration or execution of this Act shall not use, either directly or indirectly, information acquired by him in that capacity, being information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land, for the purpose of gaining either directly or indirectly an advantage for himself.

(3) A person acting in the administration or execution of this Act, and being in a position to do so, shall not, for the purpose of gaining either directly or indirectly an advantage for himself, influence—

- (a) the making of any provision of an environmental planning instrument or draft environmental planning instrument; or
- (b) the determination of a development application.

Penalty : \$2,000 or imprisonment for a term not exceeding 6 months.

149. (1) A person may, on payment of the prescribed fee, **Certificates.** apply to a council for a certificate under this section with respect to any land within the area of the council.

(2) On application made to it under subsection (1), the council shall, as soon as practicable, issue a certificate that on the date specified in the certificate any land within its area is land to which an environmental planning instrument applies in such manner as is specified in the certificate or is not land to which an environmental planning instrument applies.

(3) A certificate issued under subsection (2) shall specify such other matters relating to the land to which the certificate relates as may be prescribed (whether arising under or connected with this or any other Act or otherwise).

Environmental Planning and Assessment.

(4) The regulations may provide that information to be furnished in a certificate under subsection (2) shall be set out in the prescribed form and manner.

(5) A council may, in a certificate under subsection (2), include advice on such other relevant matters affecting the land of which it may be aware.

(6) A council shall not incur any liability in respect of any advice provided in good faith pursuant to subsection (5).

(7) For the purpose of any proceedings for an offence against this Act or the regulations which may be taken against a person who has obtained a certificate under this section or who might reasonably be expected to rely on that certificate, that certificate shall, in favour of that person, be conclusively presumed to be true and correct.

Evidence. **150.** (1) A document that purports to be a copy or extract of any document, map or plan embodied, incorporated or referred to in an environmental planning instrument is admissible in evidence if—

(a) it purports to be printed by the Government Printer or by the authority of the Government; or

(b) it purports to be certified—

(i) where the original documents, maps or plans are held in the office of the Department—under the hand of such officer of the Department as is prescribed; or

(ii) where the original documents, maps or plans are held in the offices of a council—under the hand of the proper servant, as defined in section 4 of the Local Government Act, 1919, of the council.

Environmental Planning and Assessment.

(2) Where the original documents, maps or plans are held in the office of—

- (a) the Department—the Secretary shall furnish a certified copy or extract to the person applying for it on payment of the prescribed fee; or
- (b) a council—that council shall furnish a certified copy or extract to the person applying for it on payment of the prescribed fee.

(3) For the purposes of this section, a copy or extract of a map or plan—

- (a) may be to the same scale as the original document, map or plan or may be an enlarged or reduced copy; and
- (b) where the original document, map or plan is coloured, may be a coloured copy or may be a black and white copy.

151. (1) A council may, by resolution, authorise an officer, servant or person or a committee consisting either in whole or in part of officers, servants or persons to exercise such of the functions (other than this power of delegation) imposed upon it by or under this Act or the regulations as may be specified in the resolution. **Delegation by councils.**

(2) Any such delegation may, if the council so resolves, be unlimited as to the period during which it may be exercised or limited as may be specified in the resolution.

(3) The exercise of any such delegation shall be subject to such limitations and conditions as may be specified by the council in the resolution or as may be prescribed.

(4) Any officer, servant, person or committee, when acting in the exercise of any such delegation and within its scope, shall be deemed to be the council.

(5) The council may, by resolution, revoke any such delegation either in whole or in part.

Environmental Planning and Assessment.

(6) No act of an officer, servant, person or committee done within the scope of any such delegation during the period in which such delegation remains in force shall be invalidated by reason of the revocation of the delegation.

(7) Notwithstanding any delegation made under this section, the council may continue to exercise all or any of the functions delegated.

Right to be heard. **152.** Where this Act confers a right on a person to be heard, that person shall be entitled to be heard personally or by counsel, solicitor or agent.

Notices. **153.** (1) Where under this Act any notice or other document is required to be given to or served upon any person, the notice or other document may be given or served—

(a) in the case of an individual—

(i) by delivering it to him; or

(ii) by sending it by prepaid post addressed to him at the address, if any, specified by him for the giving of notices or service of documents under this Act, or, where no such address is specified, at his usual or last known place of abode or his last known place of business; or

(b) in the case of a person not being an individual—

(i) by leaving it at that person's place of business, or, if that person is a corporation, at the registered office of that corporation, with a person apparently not less than 16 years of age and apparently in the service of the person to whom the notice or other document is required to be given or on whom the notice or other document is required to be served; or

Environmental Planning and Assessment.

- (ii) by sending it by prepaid post addressed to that person at the address, if any, specified by that person for the giving of notices or service of documents under this Act, or, where no such address is specified, at that person's last known place of business.

(2) A notice or other document shall, in respect of a notice or other document sent by prepaid post in accordance with subsection (1) (a) (ii) or (b) (ii), be deemed to have been given or served at the time at which the notice or other document would be delivered in the ordinary course of post.

154. (1) Where land is transferred from one area to another area or is amalgamated with land of another area—

- (a) subject to paragraph (b), an environmental planning instrument shall continue to apply to the land to which it applied immediately before the date of the transfer or amalgamation, and so applies as in force at that date; and
- (b) the council of that other area has the functions conferred or imposed on a council by or under this Act by virtue of any environmental planning instrument applying to the land so transferred or amalgamated immediately before the date of the transfer or amalgamation.

Transfer or amalgamation of land to which an environmental planning instrument applies.

(2) Where land is transferred from one area to another area—

- (a) a draft local environmental plan that has been placed on public exhibition in accordance with section 66 and that applies to land including that land may, with the written consent of the council of that other area given within 2 months after the date of the transfer, be proceeded with as if the transfer had not taken effect;
- (b) subject to paragraph (c), the plan, when it takes effect as an environmental planning instrument, shall apply to that land, and so applies as in force at the date of publication of the plan in the Gazette; and

Environmental Planning and Assessment.

(c) the council of that other area has the functions conferred or imposed on a council by or under this Act by virtue of the plan, when it takes effect as an environmental planning instrument, so far as it applies to that land.

(3) An environmental planning instrument referred to in subsection (1) or (2), to the extent that it applies to land so referred to, so applies subject to any subsequent environmental planning instrument applying to that land.

(4) This section applies to and in respect of a transfer or amalgamation of land, whether or not it is effected pursuant to the Local Government Act, 1919.

Application
of section
37 of the
Interpre-
tation Act,
1897.

155. Without limiting the generality of section 37 of the Interpretation Act, 1897, a reference in that section to an instrument includes a reference to an environmental planning instrument.

Statute law
revision
(sec. 16).

156. (1) On a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette, section 16 is repealed.

(2) A day shall not be appointed for the purposes of subsection (1) that is earlier than a day on which the Department established by section 16 is abolished, or its name changed, under section 49 of the Constitution Act, 1902.

(3) The repeal of section 16 by subsection (1) does not itself affect the existence of the Department established by section 16, but nothing in this subsection affects the powers conferred by section 49 of the Constitution Act, 1902.

Environmental Planning and Assessment.

157. (1) The Governor may make regulations, not Regulations. inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) any function conferred by this Act on any person;
- (b) requiring information, particulars, returns and statistics to be furnished to the Secretary by councils and the time and mode of furnishing and the manner of verifying them; and
- (c) the form, time, manner and mode of giving notices under this Act.

(2) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

158. The regulations may contain provisions declaring any class or description of development (whether by reference to the type, purpose or location of development or otherwise) to be designated development for the purposes of this Act. **Designated development: declaration by regulation.**

Environmental Planning and Assessment.

Sec. 13.**SCHEDULE 1.****THE DIRECTOR.****Nominated
by the
Minister.**

1. The appointment of the Director shall be on the nomination of the Minister of a person who in his opinion has special knowledge or experience in the following :—

- (a) the practice of;
- (b) the administration of; or
- (c) the law relating to,

town planning, environmental planning or environmental assessment.

**Term of
office.**

2. (1) The Director shall, subject to this Schedule, hold office for such term, not exceeding 7 years, as may be specified in the instrument of his appointment, and shall be, if otherwise qualified, eligible for re-appointment from time to time for such further terms or periods as the Governor may appoint.

(2) The Director shall devote the whole of his time to the duties of his office.

**Remunera-
tion.**

3. The Director is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

**Application
of Public
Service
Act, 1979.**

4. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of the Director, and the Director shall not, in his capacity as such, be subject to those provisions during his term of office.

**Ineligibility
by reason
of age.**

5. A person who is of or above the age of 65 years is not eligible for appointment as Director.

*Environmental Planning and Assessment.*SCHEDULE 1—*continued.*THE DIRECTOR—*continued.*

6. The Director shall cease to hold office on the day on which he attains the age of 65 years. Director attaining 65 years of age.
7. The Governor may remove the Director from office for misbehaviour or incompetence. Removal from office.
8. The Director shall be deemed to have vacated his office if he—
 (a) dies;
 (b) resigns his office by writing under his hand addressed to the Minister;
 (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
 (d) is removed from office by the Governor under clause 7. Vacation of office.
9. (1) In this clause—
 “statutory body” means any body declared under clause 11 to be a statutory body for the purposes of this Schedule;
 “superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act. Preservation of rights of Director if previously public servant, etc.
- (2) Subject to subclause (3) of this clause and to the terms of his appointment, where the Director was, immediately before his appointment as Director—
 (a) an officer of the Public Service;
 (b) a contributor to a superannuation scheme;
 (c) an officer employed by any statutory body; or
 (d) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,
 he—
 (e) shall retain any rights accrued or accruing to him as such an officer, contributor or person;

Environmental Planning and Assessment.

SCHEDULE 1—*continued.*THE DIRECTOR—*continued.*

(f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Director; and

(g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer, contributor or person during his service as Director, and—

(h) his service as Director shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and

(i) he shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this subclause.

(3) Where the Director would, but for this subclause, be entitled under subclause (2) of this clause to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as Director or at any later time while he holds office as Director) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) of this clause cease to apply to or in respect of him and the Government of New South Wales in any case where he becomes a contributor to such another superannuation scheme.

(4) Subclause (3) of this clause does not prevent the payment to the Director upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(5) The Director shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Director
entitled to
re-appoint-
ment in
former
employment
in certain
cases.

10. (1) In this clause—

“retiring age” means—

(a) in relation to a person who was, immediately before his appointment as Director, an officer of the Public Service—the age of 60 years; and

Environmental Planning and Assessment.

SCHEDULE 1—*continued.*THE DIRECTOR—*continued.*

- (b) in relation to a person who was, immediately before his appointment as Director, an officer or employee of a statutory body and except as provided in paragraph (a)—the age at which officers or employees (being officers or employees of the class to which that person belonged immediately before his appointment as Director), as the case may be, of that statutory body are entitled to retire;

“statutory body” means any body declared under clause 11 to be a statutory body for the purposes of this Schedule.

(2) Where a person ceases to be Director, otherwise than pursuant to clause 8 (paragraph (b) excepted), he shall, if he has not attained the retiring age, be entitled to be appointed, where, immediately before his appointment as Director, he was—

- (a) an officer of the Public Service—to some position in the Public Service; or
- (b) an officer or employee of a statutory body, except as provided in paragraph (a)—to some office in the service of that statutory body,

not lower in classification and salary than that which he held immediately before his appointment as Director.

11. The Governor may, by proclamation published in the Gazette, declare Statutory any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

SCHEDULE 2.

Sec. 19.

ADVISORY CO-ORDINATING COMMITTEE.

1. The Committee shall consist of—

- (a) the Director as Chairman; and
- (b) the Department Head, president, chairman or other principal officer of each of the following public authorities:—

The Treasury.

The Department of Public Works.

Environmental Planning and Assessment.

SCHEDULE 2—*continued.*ADVISORY CO-ORDINATING COMMITTEE—*continued.*

The Maritime Services Board of New South Wales.
The Metropolitan Water Sewerage and Drainage Board.
The Ministry of Transport.
The Department of Mineral Resources and Development.
The Energy Authority of New South Wales.
The State Pollution Control Commission.
The Department of Decentralisation.
The Department of Agriculture.
The Department of Education.
The Department of Local Government.
The Metropolitan Waste Disposal Authority.
The Department of Lands.
The National Parks and Wildlife Service.
The Valuer-General's Department.
The Health Commission of New South Wales.
The Housing Commission of New South Wales.
The Land Commission of New South Wales.
The Department of Sport and Recreation.
The Department of Tourism.
The Water Resources Commission.
The Department of Youth and Community Services.
The New South Wales State Fisheries.
The Soil Conservation Service.
The Electricity Commission of New South Wales.
The Forestry Commission of New South Wales.
The Department of Main Roads.
The Department of Technical and Further Education.

2. The Governor may, by regulation, amend clause 1 (b)—
(a) by omitting therefrom the name of any public authority; or
(b) by inserting therein the name of any public authority.
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Environmental Planning and Assessment.

SCHEDULE 3.

Sec. 20.

LOCAL GOVERNMENT LIAISON COMMITTEE.

1. The Committee shall consist of—

(a) the Director as Chairman; and

(b) the following persons appointed by the Minister :—

- (i) a person nominated by the Commissioner for Main Roads;
- (ii) a person nominated by the Under Secretary of the Department of Local Government;
- (iii) a person nominated by the State Pollution Control Commission;
- (iv) 2 persons included in a panel of 6 persons nominated by the Local Government Association of New South Wales;
- (v) 2 persons included in a panel of 6 persons nominated by the Shires Association of New South Wales;
- (vi) a person nominated by the Local Government Planners' Association;
- (vii) a person nominated by the Town Clerks' Society;
- (viii) a person nominated by the Local Government Engineers' Association;
- (ix) a person nominated jointly by the Australian Institute of Health Surveyors and the Building Surveyors Institute; and
- (x) a person nominated by the Federated Municipal and Shire Council Employees' Union.

2. Where, for the purposes of clause 1, a nomination of a person for appointment as a member or a panel of persons is not made within the time or in the manner specified by the Minister in a notice in writing given to the body or person entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination or from that panel, as the case may be.

3. A person referred to in clause 1 (b) shall, subject to the regulations and section 30 of the Interpretation Act, 1897, hold office for a term specified in the instrument of his appointment, and is, if otherwise qualified, eligible for re-appointment.

Environmental Planning and Assessment.

SCHEDULE 3—*continued.*LOCAL GOVERNMENT LIAISON COMMITTEE—*continued.*

4. The Governor may, by regulation, amend clause 1 (b)—
- (a) by omitting therefrom a subparagraph; or
 - (b) by inserting therein a subparagraph containing a reference to one or more persons to be persons, or to be included in a panel of persons, nominated by a specified person or body.

Sec. 21.

SCHEDULE 4.

ENVIRONMENT AND PLANNING ADVISORY COMMITTEE.

1. The Committee shall consist of—
- (a) the Director as Chairman; and
 - (b) the following persons appointed by the Minister:—
 - (i) 2 persons included in a panel of 6 persons nominated by the Nature Conservation Council of New South Wales;
 - (ii) 2 persons included in a panel of 6 persons nominated by the Land and Housing Consultative Council;
 - (iii) 2 persons included in a panel of 6 persons nominated by the Labor Council of New South Wales;
 - (iv) 2 persons having such professional or technical qualifications as the Minister considers appropriate;
 - (v) 2 persons engaged in teaching or research in respect of matters related to environmental planning; and
 - (vi) 2 persons representing the interests of the community.
2. Where, for the purposes of clause 1, a nomination of a person for appointment as a member or a panel of persons is not made within the time or in the manner specified by the Minister in a notice in writing given to the body or person entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination or from that panel, as the case may be.

Environmental Planning and Assessment.

SCHEDULE 4—*continued.*

ENVIRONMENT AND PLANNING ADVISORY COMMITTEE—*continued.*

3. A person referred to in clause 1 (b) shall, subject to the regulations and section 30 of the Interpretation Act, 1897, hold office for a term specified in the instrument of his appointment, and is, if otherwise qualified, eligible for re-appointment.

4. The Governor may, by regulation, amend clause 1 (b)—

(a) by omitting therefrom a subparagraph; or

(b) by inserting therein a subparagraph containing a reference to—

(i) one or more persons to be persons, or to be included in a panel of persons, nominated by a specified person or body; or

(ii) one or more specified persons or persons of a specified class or description.

SCHEDULE 5.

Secs. 19-22.

COMMITTEE PROCEDURES.

1. Questions arising at a meeting of the committee shall be determined by a majority of votes of the members present and voting.

2. In the absence of the Chairman at any meeting of the committee, the members present shall appoint one of their number to preside at that meeting.

3. The Chairman or member presiding at a meeting of a committee shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

4. A majority of members of a committee shall form a quorum and any duly convened meeting at which a quorum is present shall be competent to transact any business of the committee and shall have and may exercise all the functions of that committee.

5. The frequency of meetings of a committee and the procedures for the conduct of business at those meetings shall, subject to any directions by the Minister, be as determined by the committee.

Environmental Planning and Assessment.

SCHEDULE 5—*continued.*COMMITTEE PROCEDURES—*continued.*

6. The Chairman of a committee shall cause minutes of the proceedings and decisions at each meeting of the committee to be kept and shall furnish the Minister and the Director with a copy of those minutes as soon as practicable after each meeting.

7. Each member of a committee is entitled to receive such remuneration (including travelling and subsistence allowances) for attending meetings and transacting business of that committee as the Minister may from time to time determine in respect of him.

8. (1) The regulations may make provision for or with respect to the appointment of alternate members for members of the committee and the exercise by them of the functions of those members.

(2) In this Schedule, a reference to a member of the committee includes, subject to the regulations, a reference to the member's alternate appointed and acting in accordance with the regulations.

9. The committee or the Minister may establish subcommittees (whether or not consisting of members of the committee) for the purposes of advising the committee upon such matters within the scope of the committee's functions as may be referred to the subcommittees by the committee or the Minister.

10. The provisions of this Schedule apply to a subcommittee as if it were a committee.

Sec. 142.

SCHEDULE 6.

LOANS.

Reserves
for repay-
ments.

1. (1) The corporation shall establish a reserve for loan repayment fund in respect of each loan or renewal loan raised by the corporation.

Environmental Planning and Assessment.

SCHEDULE 6—*continued.*

LOANS—*continued.*

(2) There shall, during each year, be transferred from each Development Fund to each fund referred to in subclause (1) of this clause a sum not less than the sum that the corporation, in its application for approval of the loan, specified that it proposed to transfer to that fund.

(3) Where any land or property of any kind which has been provided out of loan money is sold before the loan has been wholly repaid, the net proceeds of the sale shall be added to the reserve for loan repayment in the appropriate fund or paid directly to the lender, unless the Minister with the concurrence of the Treasurer directs otherwise.

(4) Money held as a reserve for loan repayment may be invested as a common fund in Government securities of the Commonwealth or the State of New South Wales or in debentures, bonds, inscribed stock or other prescribed securities, in any loan of the corporation or in any securities guaranteed by the Government of that State or in such other securities as the Governor may approve or as may be prescribed, in each case at their current market price.

(5) Any interest or profits realised on any such investments shall be added to and form part of the reserve for loan repayment fund from which the investments were made.

(6) All money paid into the reserve for loan repayment fund in respect of any loan or renewal loan may be applied in or towards repayment of any other loan or renewal loan but may not be applied for any other purpose until the loan or renewal loan in respect of which the fund has been established has been repaid.

(7) Where the corporation decides to cancel debentures, bonds, inscribed stock or other prescribed securities purchased from the reserve for repayment of the loan for which they were issued, the corporation shall, in addition to the sum otherwise payable to the reserve for repayment of that loan and subject to any agreement to which it is a party whereby it undertakes to pay interest at a higher rate to that reserve, pay to that reserve interest at the rate of 4.5 per cent per annum on the face value of the cancelled securities from the date of their cancellation until the maturity of the loan.

(8) If, after a loan has been repaid, there remains in the reserve for loan repayment of that loan any balance, that balance shall be paid to the appropriate Development Fund.

Environmental Planning and Assessment.

SCHEDULE 6—*continued.*LOANS—*continued.*

(9) A reserve for loan repayment fund shall not be subject to seizure in satisfaction of any debt other than the loan in respect of which the reserve was created.

(10) This clause shall not apply to any loan to be repaid by instalments at intervals of one year or less.

Debentures,
etc.

2. (1) For securing repayment of the principal and interest on any money borrowed, the corporation may, as provided by the regulations, issue debentures, bonds, inscribed stock or other prescribed securities.

(2) Every such debenture or bond and every coupon originally annexed to the debenture or bond, and whether separated therefrom or not, may be transferred by simple delivery.

(3) Inscribed stock shall be transferable in the books of the corporation in accordance with the regulations.

(4) Debentures, bonds, inscribed stock or prescribed securities issued under this Act shall, as regards both the issue and transfer thereof for full consideration for money or money's worth, be deemed to be included in the general exemptions from stamp duty under Part III of the Stamp Duties Act, 1920, contained in the Second Schedule to that Act.

Payment of
debentures
and
coupons.

3. (1) The holder of a coupon originally annexed to a debenture or bond, and whether separated therefrom or not, shall be entitled to receive payment from the corporation of the interest specified in the coupon on its presentation on or after the date when, and at the place where, the interest is payable.

(2) The due repayment of any loan in respect of which debentures, bonds, stock or any other prescribed securities have been issued by the corporation and the interest thereon is hereby guaranteed by the Government.

(3) Any liability arising under the guarantee given by subclause (2) of this clause shall be discharged out of money provided by Parliament.

Environmental Planning and Assessment.

SCHEDULE 6—*continued.*LOANS—*continued.*

(4) The charge created by subclause (2) of this clause shall not prejudice or affect any power of the corporation to sell, convey, lease or otherwise deal with, free of the charge, any property vested in it.

4. (1) This clause applies to and in respect of a loan, wherever raised, where the Governor, with the concurrence of the Minister and the Treasurer, approves (as referred to in section 142) of the loan in and by an instrument which specifies that it is a loan to which this clause applies. **Raising loans in any country.**

(2) Except as provided in this clause, the provisions of this Schedule do not apply to or in respect of a loan to which this clause applies.

(3) A loan to which this clause applies may be—

- (a) raised in such amounts and in such currencies;
- (b) raised in such manner and on such terms and conditions; and
- (c) secured by such securities, if any,

as the Governor, with the concurrence of the Minister and the Treasurer, approves in and by the instrument referred to in subclause (1) of this clause or in that instrument by reference to another instrument.

(4) Any security or other instrument issued or executed by the corporation or the Government in respect of a loan to which this clause applies shall, both as regards its issue or execution and its transfer or assignment be deemed to be included in the general exemptions from stamp duty under Part III of the Stamp Duties Act, 1920, contained in the Second Schedule to that Act.

(5) The Governor may, upon the recommendation of the corporation, appoint 2 or more persons for and on behalf of the corporation to enter into any securities or other instruments in respect of a loan to which this clause applies and to sign, execute, or otherwise perfect all such securities or other instruments, and to do all such things as may be necessary or convenient to be done for the purpose of raising the loan under this Act, and may upon the like recommendation revoke or vary any such appointment and make any fresh appointment.

(6) The production of a copy of the Gazette containing a notification of any appointment or revocation under subclause (5) of this clause shall in favour of a lender, of the holder of any security or of a person to whom the benefit under any such instrument is assigned be conclusive evidence of the appointment or revocation.

Environmental Planning and Assessment.

SCHEDULE 6—*continued.*LOANS—*continued.*

(7) The due payment of any amounts payable by the corporation to the lender in respect of any loan to which this clause applies is a charge on the income and revenue of the corporation, from whatever source arising, and is hereby guaranteed by the Government, and, where any agreement to which the Government is a party specifies any terms or conditions upon or subject to which the due payment of those amounts is so guaranteed, the due payment of those amounts is so guaranteed upon or subject to those terms and conditions.

(8) An agreement with respect to a loan to which this clause applies and to which the Government and the corporation are parties may require the Government to make any payment for which the corporation would, under the agreement, be liable but for its being precluded from making the payment by any law in force in New South Wales.

(9) The Consolidated Revenue Fund is hereby appropriated for the purpose of meeting any liability in respect of any guarantee referred to in subclause (7) of this clause and any liability of the Government arising under any agreement referred to in subclause (8) of this clause.

(10) The provisions of—

- (a) clauses 7, 8, 9 and 10 apply to and in respect of the appointment of a receiver by reason of any default being made by the corporation in making any payment in respect of a loan to which this clause applies and to and in respect of a receiver appointed by virtue of the application of clause 7 by this subclause in the same way as those clauses apply to and in respect of the appointment of a receiver by reason of any default being made by the corporation in making any payment, whether of principal or interest, to the holder of any debenture, or coupon, issued, or stock inscribed, by the corporation and to and in respect of a receiver appointed under clause 7;
- (b) clause 11 (1) apply to and in respect of a person advancing money to the corporation by way of a loan to which this clause applies in the same way as they apply to and in respect of a person advancing money to the corporation as referred to in clause 11 (1);
- (c) clause 11 (2) apply to and in respect of a notification in the Gazette of the approval of the Governor having been given to a loan to which this clause applies in the same way as they apply

*Environmental Planning and Assessment.*SCHEDULE 6—*continued.*LOANS—*continued.*

to and in respect of a notification in the Gazette of the approval of the Governor having been given to a borrowing referred to in clause 11 (2);

- (d) clause 12 apply to and in respect of a loan to which this clause applies as if the reference in that clause to other securities which are secured upon the income and revenue of the corporation included a reference to such a loan; and
- (e) any other clause of this Schedule (being a clause that, in an agreement between the corporation and the lender with respect to a loan to which this clause applies, is specified as being a clause that applies to and in respect of the loan or as being a clause that, with such modifications or additions as are so specified, applies to and in respect of the loan) apply or apply with those modifications or additions, as the case may be, to and in respect of the loan.

5. (1) Any trustee, unless expressly forbidden by any instrument creating **Trustees.** the trust, may invest any trust money in his hands in stock inscribed by the corporation or in any debentures, bonds or other securities issued in accordance with this Act, and the investment shall be deemed to be an investment authorised by the Trustee Act, 1925.

(2) Any debenture or bond issued, stock inscribed, or other security issued, in pursuance of this Act, shall be a lawful investment for any money which any company, council or body corporate, incorporated by any Act, is authorised or directed to invest in addition to any other investment authorised for the investment of that money.

(3) No notice of any express, implied or constructive trust shall be received by the corporation or by any officer of the Department in relation to any debenture or coupon issued or stock inscribed by the corporation.

6. (1) If any debenture or bond issued by the corporation is lost, **Lost** destroyed or defaced before it has been redeemed the corporation may, **debentures.** subject to the provisions of this clause, issue a new debenture or bond in its place.

(2) A new debenture or bond, issued under subclause (1) of this clause with interest coupon annexed, shall bear the same date, number, principal sum and rate of interest as the lost, destroyed or defaced debenture or bond.

Environmental Planning and Assessment.

SCHEDULE 6—*continued.*LOANS—*continued.*

(3) Where a debenture or bond is lost or destroyed, a new debenture or bond shall not be issued unless—

- (a) it has been established to the satisfaction of the Supreme Court that the debenture or bond has been lost or destroyed before redemption;
- (b) such advertisements as the Court may direct have been published;
- (c) 6 months have elapsed since the publication of the last of those advertisements; and
- (d) sufficient security has been given to the corporation to indemnify it against any double payment if the missing debenture or bond is at any time thereafter presented for redemption.

(4) Where a debenture or bond is defaced, a new debenture or bond shall not be issued unless and until the defaced debenture or bond is lodged with the corporation for cancellation.

(5) The provisions of this clause shall apply to and in respect of a lost, destroyed or defaced coupon in the same way as they apply to and in respect of a lost, destroyed or defaced debenture or bond.

(6) Notwithstanding any other provision of this clause, in the case of loss, theft, destruction, mutilation or defacement of any debenture or bond issued under clause 4, a duplicate or new debenture or bond may be issued upon proof to the satisfaction of the corporation of the loss, theft or destruction, or upon surrender of the mutilated or defaced debenture or bond, as the case may be, and upon the corporation receiving security or indemnity satisfactory to it against double payment if the missing debenture or bond is at any time thereafter presented for payment.

Receivers.

7. (1) If for 6 months default is made by the corporation in making any payment, whether of principal or interest, to the holder of any debenture, or coupon, issued or stock inscribed by the corporation, the holder thereof may apply to the Supreme Court for the appointment of a receiver of the income of the corporation.

(2) A receiver may be appointed in respect of the income of the corporation either generally or as regards specified income.

*Environmental Planning and Assessment.*SCHEDULE 6—*continued.*LOANS—*continued.*

(3) The Supreme Court may make such orders and give such directions as it may deem proper for and with respect to all or any of the following matters:—

- (a) the appointment of a receiver;
- (b) the removal of a receiver;
- (c) the appointment of a receiver in place of a receiver previously appointed.

(4) The receiver shall be deemed to be an officer of the Supreme Court, and shall act under its directions.

8. (1) A receiver shall have power to collect all income payable to the corporation which he has by order of the Supreme Court been so authorised to collect and for the purposes of this subclause the receiver shall be deemed to be the corporation and may exercise all the powers of the corporation. Powers and duties of receivers.

(2) The receiver shall discharge such duties of the corporation or of any officers of the Department as may be prescribed.

9. The receiver shall be entitled to such commission or remuneration for his services as the Supreme Court may order, and the commission or remuneration shall be payable out of the income for and in respect of which he has been appointed receiver. Commission to receiver.

10. The receiver shall, subject to any order of the Supreme Court, pay and apply all money received by him in the following order, that is to say— Application of money received.

- (a) firstly, in payment of the costs, charges, and expenses of collection, and of his commission or remuneration;
- (b) secondly, in the payment of the amount due and payable to the holder of the debenture or inscribed stock or coupon, as the case may be; and
- (c) thirdly, in payment of all the residue of the money to the corporation.

11. (1) A person advancing money to the corporation shall not be bound to inquire into the application of the money advanced or be in any way responsible for its non-application or misapplication. Protection of investors.

Environmental Planning and Assessment.

SCHEDULE 6—*continued.*LOANS—*continued.*

(2) A notification in the Gazette of the approval of the Governor having been given to a borrowing by the corporation shall, in favour of a lender and of any holder of any security given by the corporation, be conclusive evidence that all conditions precedent to the borrowing have been complied with and, where the approval notified is to a borrowing by the corporation in a place outside New South Wales and in a particular currency, shall also be conclusive evidence in favour of those persons of the approval of the Governor to the borrowing in the place and in the currency specified in the notification.

Securities
rank
equally.

12. All debentures, bonds, stock or other securities which are secured upon the income and revenue of the corporation shall rank *pari passu* without any preference one above another by reason of priority of date or otherwise.

Security
for loans.

13. Each loan raised by or transferred to the corporation shall be secured upon the income of the Development Fund of the development area to which the loan relates.

Sec. 10.

SCHEDULE 7.

MODIFICATION OF THE PUBLIC WORKS ACT, 1912.

The Public Works Act, 1912, shall, for the purposes referred to in section 10, be deemed to be amended—

- (a) (i) by omitting from section 53 the words “so seised, possessed or entitled as aforesaid”;
- (ii) by omitting from section 53 the words “as in the preceding section mentioned” and by inserting instead the words “and may claim compensation in respect of the land resumed and agree to, settle and determine with the Constructing Authority the amount of such compensation”;
- (iii) by inserting in section 53 (3) after the word “release” the words “and to claim, agree to, settle and determine with the Constructing Authority the amount of compensation”;

Environmental Planning and Assessment.

SCHEDULE 7—*continued.*

MODIFICATION OF THE PUBLIC WORKS ACT, 1912—*continued.*

- (iv) by omitting section 53 (5);
- (b) (i) by inserting in section 102 after the word “time” where secondly occurring the words “as the Constructing Authority allows or, in default of any such allowance of further time, within such time”;
- (ii) by omitting from section 102 the words “and upon the Crown Solicitor”;
- (iii) by inserting at the end of section 102 the following subsection:—

(2) Upon receipt of such notice of claim, the Constructing Authority shall obtain a report from a solicitor as to the title of the land in respect of which the claim has been served upon it by the claimant.

- (c) by omitting from section 103 the words “Crown Solicitor he shall forward the same, together with his report thereon to the Constructing Authority, who” and by inserting instead the words “Constructing Authority it”;
- (d) by omitting section 124 and by inserting instead the following section :—

124. (1) For the purpose of ascertaining the compensation to be paid, regard shall in every case be had by the Court not only to the value of the land taken but also to the damage (if any) caused by the severing of the lands taken from other lands or by the exercise of any statutory powers of the Constructing Authority otherwise injuriously affecting such other lands and the Court shall assess the compensation according to what it finds to have been the value of such lands, estate or interest at the time the notification was published in the Gazette and without being bound in any way by the amount of the valuation notified to such claimant and without reference to any alteration in such value arising from the construction of any works upon the land taken.

(2) Notwithstanding subsection (1), the Court, in ascertaining such compensation, shall take into consideration and give effect to, by way of set-off or abatement, any enhancement in the value of the interest of any such owner in any land adjoining the land taken or severed therefrom by the construction of any

Environmental Planning and Assessment.

SCHEDULE 7—*continued.*MODIFICATION OF THE PUBLIC WORKS ACT, 1912—*continued.*

works on the land taken, but in no case does this subsection operate so as to require any payment to be made by such owner to the Constructing Authority in consideration of such enhancement in value as aforesaid.

(3) Notwithstanding subsection (1), in the case of land under the surface taken or acquired by notification in the Gazette for the purpose of constructing a subterranean tunnel, no compensation shall be allowed or awarded unless—

- (a) the surface of the overlying soil is disturbed;
 - (b) the support of such surface is destroyed or injuriously affected by the construction of such tunnel; or
 - (c) any mines or underground working in or adjacent to such land are thereby rendered unworkable or are so affected as aforesaid.
- (e) by omitting section 126 (3);
- (f) (i) by omitting from section 135 (1) the words “such conveyances” and by inserting instead the words “conveyances or assurances of lands taken”;
- (ii) by omitting from section 135 (2) the words “incurred on the part as well of the vendor as of the purchaser,”.
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