

ENVIRONMENTAL PLANNING AND ASSESSMENT  
(AMENDMENT) ACT 1985 No. 228

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 228, 1985

An Act to amend the Environmental Planning and Assessment Act 1979 with respect to the granting of consent to certain development, the preparation of draft environmental planning instruments, the imposition of certain conditions of consent and in certain other respects. [Assented to, 18th December, 1985.]

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See also Local Government (Subdivision) Amendment Act 1985; Statutory and Other Offices Remuneration (Commissioners of Inquiry) Amendment Act 1985.

50917-08274 (\$1.50)

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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:

**Short title**

1. This Act may be cited as the "Environmental Planning and Assessment (Amendment) Act 1985".

**Commencement**

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Section 5, in its application to a provision of Schedules 1-8, shall commence on the day on which the provision commences.

(3) The several provisions of Schedules 1-8 shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Principal Act**

3. The Environmental Planning and Assessment Act 1979 is referred to in this Act as the Principal Act.

**Schedules**

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO THE DETERMINATION OF CERTAIN  
DEVELOPMENT APPLICATIONS

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO COMMISSIONS OF INQUIRY

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO THE PREPARATION OF DRAFT  
ENVIRONMENTAL PLANNING INSTRUMENTS

SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO THE PROVISION, ETC., OF PUBLIC  
AMENITIES AND PUBLIC SERVICES

SCHEDULE 5—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO EXISTING USES

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SCHEDULE 6—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO ENVIRONMENTAL ASSESSMENT

SCHEDULE 7—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO THE VALIDITY OF CERTAIN MATTERS

SCHEDULE 8—MISCELLANEOUS AMENDMENTS TO THE  
PRINCIPAL ACT

SCHEDULE 9—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS

**Amendment of Act No. 203, 1979**

5. The Principal Act is amended in the manner set forth in Schedules 1–8.

**Savings, transitional and other provisions**

6. Schedule 9 has effect.

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SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
DETERMINATION OF CERTAIN DEVELOPMENT APPLICATIONS

(1) Section 89 (2)—

Omit the subsection, insert instead:

(2) The provisions of section 101 (8), (9) and (10) apply to a determination of the Minister under this section as if it were a determination under section 101 (8).

(2) (a) Section 99 (1) (a) (ii)—

Omit “having”, insert instead “which would, but for sections 100A and 101, have”.

(b) Section 99 (4)—

After “may” where firstly occurring, insert “, except where the application is made in respect of a consent granted by the Minister under section 101,”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
DETERMINATION OF CERTAIN DEVELOPMENT  
APPLICATIONS—*continued*

(c) Section 99 (8)—

After “may” where firstly occurring, insert “. except where the notice is given in relation to a consent granted by the Minister under section 101.”.

(3) Sections 100A, 101—

Omit section 101, insert instead:

**Carrying out of prohibited development**

100A. (1) In this section and section 101—

“prohibited development” means—

- (a) development which cannot be carried out either with or without development consent; or
- (b) development the carrying out of which is prohibited under this Act.

(2) Notwithstanding section 76 (3) or section 91 (2) or any other provision of this Act or the provisions of an environmental planning instrument—

- (a) the Minister may, subject to and in accordance with section 101, grant consent to the carrying out by a person of prohibited development; and
- (b) a person may, subject to and in accordance with a consent referred to in paragraph (a), carry out prohibited development.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
DETERMINATION OF CERTAIN DEVELOPMENT  
APPLICATIONS—*continued***Determination of development applications by the Minister**

101. (1) Where the Minister is of the opinion that it is expedient in the public interest to do so, having regard to matters which in the opinion of the Minister are of significance for State or regional environmental planning, the Minister 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) Without limiting the generality of subsection (1), a direction may be given under that subsection in respect of a development application notwithstanding that the development application is an application for consent to carry out prohibited development.

(3) Where a direction is given under subsection (1), a consent authority (other than the Minister)—

(a) shall not determine in accordance with this Division any development application to which that direction applies; and

(b) shall forthwith after dealing, except as provided by paragraph (a), with the application—

(i) in accordance with this Division; or

(ii) in the case of a development application for consent to carry out prohibited development which is not designated development—in accordance with this Division and in accordance with the provisions of sections 84, 85, 86, 87 (1) and 90 as if the prohibited development were designated development.

refer the application to the Secretary.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
DETERMINATION OF CERTAIN DEVELOPMENT  
APPLICATIONS—*continued*

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

- (4) The consent authority shall, by notice in writing, inform—
- (a) in the case of a development application, other than a development application for consent to carry out prohibited development—the applicant and any objector to that application; or
  - (b) in the case of a development application for consent to carry out prohibited development—the applicant and any person who made a submission under section 87 (1) in relation to that application.

that the application has been referred to the Secretary for determination by the Minister and of the rights, under subsection (5), of the applicant and any such person.

(5) The consent authority, the applicant and any person who made a submission under section 87 (1) in relation to the development application shall be afforded the opportunity of a hearing if so required by any of them before the Minister determines the application.

(6) Where, pursuant to subsection (5), a hearing is 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 consent authority, the applicant and any person who made a submission under section 87 (1) in relation to the development application shall be entitled to appear and be heard.

(7) The Minister shall consider the findings and recommendations of the Commission of Inquiry (if any) appointed as referred to in subsection (6) before determining the development application in respect of which the inquiry was held.

(8) The Minister may determine the development application—

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
DETERMINATION OF CERTAIN DEVELOPMENT  
APPLICATIONS—*continued*

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

(b) by refusing consent to that application,

and the provisions of sections 90 and (subject to section 100A) 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.

(9) The Minister's determination under subsection (8)—

(a) shall be final and the provisions of sections 97 and 98 shall not apply to or in respect of the determination; 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 (10) to the applicant.

(10) The Secretary shall notify the consent authority, the applicant and any person who made a submission under section 87 (1) in relation to the development application of the Minister's determination under subsection (8), 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.

(11) Where the Minister, under subsection (8), determines a development application by the granting of consent, the Minister shall, for the purposes of this Act or any instrument in force under this Act, be deemed to be the consent authority, to the exclusion of any other consent authority, in relation to that application and that consent and any decision made by the Minister as the consent authority in relation to that application or that consent shall be final.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
DETERMINATION OF CERTAIN DEVELOPMENT  
APPLICATIONS—*continued*

(12) 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 the Minister's functions under this section.

(4) (a) Section 102 (3)—

Omit "(7)", insert instead "(9)".

(b) Section 102 (5)—

After "may" where firstly occurring, insert " , except where the application is made in relation to a consent granted by the Minister under section 101, or except as may otherwise be provided by this section,".

(5) Section 106 (a)—

Omit "having", insert instead "which would, but for sections 100A and 101, have".

(6) Section 108 (4)—

After section 108 (3), insert:

(4) Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions shall not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 101 to a development application for consent to carry out prohibited development within the meaning of section 100A.

(7) Section 119 (2)—

Omit "(5)", insert instead "(6)".

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## SCHEDULE 2

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
COMMISSIONS OF INQUIRY

## (1) Section 4 (1), definition of "Commissioner of Inquiry"—

After "section 18", insert "and includes the Chairman of Commissioners of Inquiry and the Deputy Chairman of Commissioners of Inquiry".

## (2) Section 18—

Omit the section, insert instead:

**Commissioners of Inquiry**

18. (1) The Governor may appoint a person to be the Chairman of Commissioners of Inquiry, a person to be the Deputy Chairman of Commissioners of Inquiry and persons to be Commissioners of Inquiry.

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

(3) The Governor may appoint a person under subsection (1) to be a Commissioner of Inquiry for the purposes only of a particular inquiry directed to be held by the Minister.

(4) Where a person is appointed as referred to in subsection (3)—

(a) the person shall be paid such remuneration and allowances as may be determined in respect of the person by the Minister; and

(b) clauses 3, 5, 6, 8 (e), 9, 10 and 11 of Schedule 1 shall not apply to or in respect of the person.

(5) Without affecting the functions of Commissioners of Inquiry under section 119, the Minister may make use of the services of any Commissioner in the administration of this Act or any other Act administered by the Minister.

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SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
COMMISSIONS OF INQUIRY—*continued*

## (3) (a) Section 119 (1) (a)—

After “instrument”, insert “or relating to the administration and implementation of the provisions of any other Act administered by the Minister”.

## (b) Section 119 (3A), (3B)—

After section 119 (3), insert:

(3A) Where the Chairman of Commissioners of Inquiry is appointed with one or more Commissioners of Inquiry to constitute a Commission of Inquiry, the Chairman shall preside at the proceedings of the Commission.

(3B) Except as provided by subsection (3A), where the Deputy Chairman of Commissioners of Inquiry is appointed with one or more Commissioners of Inquiry to constitute a Commission of Inquiry, the Deputy Chairman shall preside at the proceedings of the Commission.

## (c) Section 119 (4)—

Before “the Minister”, insert “neither or none of whom is the Chairman of Commissioners of Inquiry or the Deputy Chairman of Commissioners of Inquiry.”.

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SCHEDULE 3

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PREPARATION OF DRAFT ENVIRONMENTAL PLANNING  
INSTRUMENTS

## (1) Section 39 (2)—

After “steps”, insert “, if any.”.

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SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PREPARATION OF DRAFT ENVIRONMENTAL PLANNING  
INSTRUMENTS—*continued*

(2) Section 40 (1)—

After “region” where firstly occurring, insert “or part of a region”.

(3) Sections 40 (1), (2), 41 (2)—

After “to which” wherever occurring, insert “, or to part of which,”.

(4) Sections 42, 43—

Omit the sections.

(5) (a) Section 44 (a)—

After “plan;” insert “and”.

(b) Section 44 (b)–(e)—

Omit the paragraphs, insert instead:

(b) prepare the plan having regard to the environmental study prepared by the Director under section 41.

(6) Section 45 (a)—

After “region”, insert “or part of the region”.

(7) (a) Section 47 (a)—

After “which,” where thirdly occurring, insert “the environmental study prepared by the Director under section 41 of the land to which the draft regional environmental plan applies and”.

(b) Section 47 (b)—

After “that”, insert “environmental study and”.

(8) Section 54 (4)—

Omit “, within 14 days of making the decision”.

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SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PREPARATION OF DRAFT ENVIRONMENTAL PLANNING  
INSTRUMENTS—*continued*

(9) (a) Section 57 (3)—

Omit the subsection.

(b) Section 57 (5)—

After section 57 (4), insert:

(5) Where, in relation to a request or submission made by or on behalf of a person to a council, an environmental study referred to in subsection (1) of particular land is prepared by the council for the purposes of a draft local environmental plan to enable the carrying out of development on the land, the council may, subject to and in accordance with the regulations, recover the costs and expenses, determined in accordance with the regulations, incurred in the preparation of the environmental study, from the person.

(10) Sections 58–60—

Omit the sections.

(11) Section 61—

Omit the section, insert instead:

**Council's responsibilities in preparing draft local environmental plan**

61. The council shall prepare a draft local environmental plan having regard to the environmental study prepared by the council under section 57.

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PREPARATION OF DRAFT ENVIRONMENTAL PLANNING  
INSTRUMENTS—*continued*

(12) Section 64—

Omit the section, insert instead:

**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 specifying the names of the public authorities, bodies and other persons the council has consulted with pursuant to section 62.

(13) Section 65 (1), (2)—

Omit the subsections, insert instead:

(1) Where the Secretary receives a copy of a draft local environmental plan from a council under section 64, the Director may cause to be issued to the council a certificate certifying that the draft plan may be publicly exhibited in accordance with section 66.

(2) A certificate issued under this section may be granted subject to the condition that the draft local environmental plan be amended in the manner specified in the certificate before it is publicly exhibited in accordance with section 66.

(14) (a) Section 66 (1)—

After “it shall,” insert “after complying with any condition subject to which the certificate was granted and”.

(b) Section 66 (1) (a)—

After “which,” where thirdly occurring, insert “the environmental study prepared by the council under section 57 of the land to which the draft local environmental plan applies and”.

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SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PREPARATION OF DRAFT ENVIRONMENTAL PLANNING  
INSTRUMENTS—*continued*

(c) Section 66 (1) (b) (i)—

After “that”, insert “environmental study and”.

(15) (a) Section 68 (3A)—

After section 68 (3), insert:

(3A) An alteration made by a council pursuant to subsection (3) need not relate to a submission.

(b) Section 68 (4)—

Omit “in the prescribed form and manner (if any)”, insert instead “subject to and except as may be provided by the regulations”.

(c) Section 68 (4) (d) (ii)—

Omit “for the purposes of section 61 (e)”.

(d) Section 68 (6)—

After “matter”, insert “, without having to publicly re-exhibit that deferred matter.”.

(16) (a) Section 70 (1) (a) (ii)—

Omit “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”, insert instead “any matter which in the opinion of the Minister is of significance for State or regional environmental planning”.

(b) Section 70 (7)—

Before “the reasons therefor”, insert “, except where the Minister decides to make a local environmental plan in accordance with the draft local environmental plan as submitted by the council under section 68 (4),”.

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PREPARATION OF DRAFT ENVIRONMENTAL PLANNING  
INSTRUMENTS—*continued*

## (17) (a) Section 72 (1)—

After “local environmental plan”, insert “or a draft local environmental plan”.

## (b) Section 72 (1)—

Before “applies”, insert “or draft plan, as the case may be.”.

## (c) Section 72 (3)—

After “local environmental plan”, insert “or the draft local environmental plan”.

## (18) (a) Section 74 (1)—

Omit “, but only where the latter instrument applies to the land to which the former instrument applies”.

## (b) Section 74 (2) (a)—

Omit “, 42, 43 and 44 (b)–(e)”, insert instead “and 44 (b)”.

## (c) Section 74 (2) (b)—

Omit “sections 57, 58, 59, 60, 61 (a)–(d) and 65 (1) (b)”, insert instead “sections 57 and 61”.

## (19) Section 117 (2)—

Omit the subsection, insert instead:

(2) In addition to any direction which may be given under subsection (1), the Minister may direct a council—

- (a) 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 are specified in the direction; and

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SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PREPARATION OF DRAFT ENVIRONMENTAL PLANNING  
INSTRUMENTS—*continued*

- (b) without limiting paragraph (a), to include in a draft local environmental plan prepared by the council provisions which will achieve or give effect to such principles or such aims, objectives or policies, not inconsistent with this Act, as are specified in the direction.
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SCHEDULE 4

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PROVISION, ETC., OF PUBLIC AMENITIES AND PUBLIC  
SERVICES

- (1) (a) Section 94 (1)—  
Omit “council, being the consent authority.”, insert instead “consent authority”.
- (b) Section 94 (1)—  
Omit “council” where secondly occurring, insert instead “consent authority”.
- (c) Section 94 (2) (a)—  
Omit the paragraph.
- (d) Section 94 (2A)—(2c)—  
After section 94 (2), insert:  
(2A) Subject to subsection (2B), where—  
(a) a consent authority has, at any time, whether before or after the date of commencement of this subsection, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area; and



SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PROVISION, ETC., OF PUBLIC AMENITIES AND PUBLIC  
SERVICES—*continued*

- (b) development, the subject of a development application, will, if carried out, benefit from the provision of those public amenities or public services,

the consent authority may grant consent to the application subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services.

(2B) A condition referred to in subsection (2A) shall, subject to any direction of the Minister under section 94A (1), be imposed only to require a reasonable contribution towards recoupment of the cost referred to in subsection (2A).

(2C) The consent authority may accept—

- (a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (2A); or
- (b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (2A).

(e) Section 94 (3)–(5)—

Omit “council” wherever occurring, insert instead “consent authority”.

(f) Section 94 (3)—

After “contribution”, insert “paid in accordance with a condition referred to in subsection (1)”.

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SCHEDULE 4—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PROVISION, ETC., OF PUBLIC AMENITIES AND PUBLIC  
SERVICES—*continued*

(g) Section 94 (3A)—

After section 94 (3), insert:

(3A) The consent authority shall apply any monetary contribution paid in accordance with a condition referred to in subsection (2A), where the whole or any part of the cost incurred in providing the public amenities or public services with respect to which the contribution is paid remains unpaid, towards repayment of that cost.

(h) Section 94 (4)—

After “subsection (1)”, insert “or in part or full satisfaction of a condition imposed under subsection (2A)”.

(i) Section 94 (5), (6)—

After “subsection (1)” wherever occurring, insert “or (2A)”.

(j) Section 94 (7), (8)—

Omit the subsections.

(2) Section 94A—

After section 94, insert:

**Directions by the Minister**

94A. (1) The Minister may, generally or in any particular case or class of cases, direct a consent authority as to—

- (a) the public amenities and public services in relation to which a condition referred to in section 94 may or may not be imposed;
- (b) in the case of a condition referred to in that section requiring the payment of a monetary contribution—
  - (i) the means by which or the factors in relation to which the amount of the contribution may or may not be calculated or determined; and

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SCHEDULE 4—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
PROVISION, ETC., OF PUBLIC AMENITIES AND PUBLIC  
SERVICES—*continued*

- (ii) the maximum amount of any such contribution;  
and
- (c) the things which may or may not be accepted as a material  
public benefit pursuant to section 94 (2c).
- (2) A consent authority to which a direction is given under  
subsection (1) shall comply, and is hereby empowered to comply,  
with the direction in accordance with the terms of the direction.
- (3) Notwithstanding section 94, a consent authority shall not,  
in granting consent to a development application in relation to  
which a direction under subsection (1) applies, impose a  
condition which is not in accordance with the terms of the  
direction.

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SCHEDULE 5

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
EXISTING USES

- (1) Section 107 (2) (b1)—

After section 107 (2) (b), insert:

- (b1) without affecting paragraph (a) or (b), any enlargement or  
expansion or intensification of an existing use;

- (2) Section 109 (2), (3)—

At the end of section 109, insert:

- (2) Nothing in subsection (1) authorises—

- (a) any alteration or extension to or rebuilding of a building  
or work;

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EXISTING USES—*continued*

- (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) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of the use therein mentioned;
- (d) 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
- (e) the continuance of the use therein mentioned where that use is abandoned.

(3) Without limiting the generality of subsection (2) (e), 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.

## (3) Section 109A—

After section 109, insert:

**Uses unlawfully commenced**

109A. (1) The use of a building, work or land which was unlawfully commenced shall not be rendered lawful by the occurrence of any subsequent event except—

- (a) the commencement of an environmental planning instrument which permits the use without the necessity for consent under this Act being obtained therefor; or
- (b) the granting of development consent to that use.

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SCHEDULE 5—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
EXISTING USES—*continued*

(2) The continuation of a use of a building or work or of land that was unlawfully commenced is, and shall be deemed always to have been, development of the land within the meaning of and for the purposes of any deemed environmental planning instrument applying, or which at any time applied, to or in respect of the building, work or land.

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SCHEDULE 6

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
ENVIRONMENTAL ASSESSMENT

(1) Sections 110, 110A—

Omit section 110. insert instead:

**Interpretation**

110. In this Part—

“activity” means—

- (a) the erection of a building;
- (b) the carrying out of a work in, on, over or under land;
- (c) the use of land or of a building or work; and
- (d) the subdivision of land,

and includes any act, matter or thing for which provision may be made under section 26 and which is prescribed for the purposes of this definition, but does not include—

- (e) any act, matter or thing for which development consent under Part IV is required or has been obtained; or

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SCHEDULE 6—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
ENVIRONMENTAL ASSESSMENT—*continued*

- (f) any act, matter or thing which is prohibited under an environmental planning instrument;

“approval” includes—

- (a) a consent, licence or permission or any form of authorisation; and
- (b) a provision of financial accommodation by a determining authority to another person, not being a provision of such financial accommodation, or financial accommodation of such class or description, as may be prescribed for the purposes of this definition by a determining authority so prescribed;

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

“nominated determining authority”, in relation to an activity, means the determining authority nominated by the Minister in accordance with section 110A in relation to the activity;

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

SCHEDULE 6—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
ENVIRONMENTAL ASSESSMENT—*continued***Nomination of nominated determining authority**

110A. (1) Where the approval of more than one determining authority is required in relation to an activity or an activity of a specified class or description (either in respect of the carrying out of the activity or the granting of an approval in respect of the activity), the Minister may, by order published in the Gazette and in a newspaper circulating throughout the State, nominate a determining authority to be the nominated determining authority in relation to the activity or an activity of that class or description for the purposes of this Part.

(2) Where, under subsection (1), the Minister has nominated a determining authority to be the nominated determining authority in relation to an activity or an activity of a specified class or description, any other determining authority which would otherwise be required to comply with the provisions of this Part in relation to the activity or an activity of that class or description is not required—

(a) to comply with section 112 (2) or (3); or

(b) to comply with section 113 (subsection (3) excepted),

in relation to the activity or any activity which comes within that class or description but shall, in all other respects, comply with the relevant provisions of this Part.

**(2) Section 112—**

Omit the section, insert instead:

**Decision of determining authority in relation to certain activities**

112. (1) A determining authority shall not carry out an activity, or grant an approval in relation to an activity, being an

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SCHEDULE 6—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
ENVIRONMENTAL ASSESSMENT—*continued*

activity that is a prescribed activity, an activity of a prescribed kind or an activity that is likely to significantly affect the environment unless—

- (a) the determining authority has obtained or been furnished with and has examined and considered an environmental impact statement in respect of the 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 by the determining authority (or, where a nominated determining authority has been nominated in relation to the activity, by the nominated determining authority), the period specified in the notice has expired and the determining authority has examined and considered any representations made to it or any other determining authority 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.



SCHEDULE 6—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
ENVIRONMENTAL ASSESSMENT—*continued*

(2) The determining authority or nominated determining authority, as the case requires, shall, as soon as practicable after an environmental impact statement is obtained by or furnished 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) A determining authority or nominated determining authority, as the case requires, shall furnish such number of additional copies of an environmental impact statement to the Secretary as the Secretary may request.

(4) Before carrying out an activity referred to in subsection (1) or in determining whether to grant an approval in relation to such an activity, a determining authority which is satisfied that the activity will detrimentally affect the environment—

(a) may, except where it is the proponent of the activity—

(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.

(5) Where a determining authority, not being the proponent of an activity, imposes conditions as referred to in subsection (4) (a) (i) or disapproves of an activity as referred to in subsection

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SCHEDULE 6—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
ENVIRONMENTAL ASSESSMENT—*continued*

(4) (a) (ii), the determining authority shall, by notice in writing to the proponent, indicate the reasons for the imposition of the conditions or for disapproving of the activity.

(6) The provisions of subsection (4) 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.

(7) Where a nominated determining authority has been nominated in relation to an activity, no other determining authority which may grant an approval in relation to the activity shall be concerned to inquire whether or not the nominated determining authority has complied with this section or section 113.

(3) (a) Section 113 (3)—

Omit “a final decision referred to in section 112 (1) is made with respect to an activity”, insert instead “carrying out an activity or granting an approval in relation to an activity, being an activity referred to in section 112 (1)”.

(b) Section 113 (5)—

Omit “section 113 (2)”, insert instead “subsection (2)”.

(4) Section 114 (a)—

After “relevant determining authority”, insert “(whether or not that determining authority is the nominated determining authority)”.

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## SCHEDULE 7

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
VALIDITY OF CERTAIN MATTERS

## (1) Section 35—

Omit the section, insert instead:

**Validity of instruments**

35. The validity of an environmental planning instrument 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.

## (2) Section 104A—

After section 104, insert:

**Validity of development consents**

104A. The validity of a consent shall not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date on which the granting of the consent has been publicly notified in accordance with the regulations.

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SCHEDULE 8

(Sec. 5)

## MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

## (1) Section 3—

Omit the section.

## (2) (a) Section 4 (1), definition of "land"—

After the definition of "functions", insert:

"land" includes—

(a) the sea or an arm of the sea;

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SCHEDULE 8—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(b) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or non-tidal; and

(c) a river, stream or watercourse, whether tidal or non-tidal;

(b) Section 4 (1), definition of "objector"—

Omit the definition, insert instead:

"objector" means a person who makes a submission under section 87 by way of objection to a development application to carry out designated development, but does not include a person who makes a submission under that section by way of objection to a development application to carry out development which is not designated development but is a development application to which any of the provisions of that section have been applied;

(c) Section 4 (4)—

After "a duty," insert "a reference to".

(3) Section 21—

Omit the section.

(4) (a) Section 23 (1) (c)—

Omit "or" where secondly occurring.

(b) Section 23 (1) (e), (f)—

After section 23 (1) (d), insert:

(e) an officer or servant of a council; or

(f) a Commissioner of Inquiry,

SCHEDULE 8—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(c) Section 23 (9)—

After section 23 (8), insert:

(9) Any matter or thing done and any contract entered into by a person acting in accordance with a delegation under this section shall not, if the matter or thing was done or the contract was entered into in good faith for the purpose of exercising the function delegated, subject the person to any action, liability, claim or demand.

(5) (a) Section 77 (2)—

Omit “, who makes a development application with respect to the whole or any part of the land occupied by him.”, insert instead “with respect to the whole or any part of any such land lawfully contracted to be sold to the occupier”.

(b) Section 77 (2A)—

After section 77 (2), insert:

(2A) Notwithstanding subsection (1) (b), the consent in writing of the owner of the land to which a development application relates is not required where the applicant is a public authority and the public authority has, before making the application, served a copy of the application on the owner.

(c) Section 77 (3) (c)—

Omit the paragraph, insert instead:

(c) where the application is not in respect of designated development, contain, or, as may be provided by the regulations, be accompanied by, such information and particulars as may be prescribed;

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SCHEDULE 8--*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(6) (a) Section 84 (1) (a)—

Omit the paragraph, insert instead:

(a) give written notice of that development application—

- (i) to such persons as appear to it to own or occupy the land adjoining the land to which the development application relates;
- (ii) where practicable; to such other persons as appear to it to own or occupy land the use and enjoyment of which, in the opinion of the consent authority, may be detrimentally affected if that designated development is carried out; and
- (iii) to such public authorities as, in the opinion of the consent authority, may have an interest in the determination of that development application;

(b) Section 84 (4)—

Omit the subsection, insert instead:

(4) Each notice referred to in subsection (1) shall be in or to the effect of such form, if any, as may be prescribed or, where no such form is prescribed, shall contain such matters as may be prescribed.

(7) (a) Section 90 (1) (m1)—

After section 90 (1) (m), insert:

(m1) whether that development is likely to cause soil erosion;

SCHEDULE 8—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

## (b) Section 90 (1) (p1)—

After section 90 (1) (p), insert:

- (p1) without limiting the generality of paragraph (a), any matter specified in an environmental planning instrument as a matter to be taken into consideration or to which the consent authority shall otherwise have regard in determining the development application;

## (8) Section 91 (5)—

Omit the subsection.

## (9) Section 91A—

After section 91, insert:

**Determination of development applications by Crown, etc.**

91A. (1) A consent authority, in respect of a development application made by or on behalf of the Crown or a prescribed person—

- (a) shall not refuse its consent to the application except with the written approval of the Minister; and  
(b) shall not impose a condition of its consent except with the written approval of the Minister or the applicant.

(2) If, on the expiration of the prescribed period after the date of the Minister's notification to a consent authority that—

- (a) the Minister does not approve the refusal of consent to a development application; or  
(b) the Minister does not approve the imposition of any condition of a consent to a development application.

the consent authority has not determined the development application in accordance with the decision of the Minister, the consent authority shall be deemed to have granted unconditional consent to the development application.

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SCHEDULE 8—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(10) (a) Section 102 (1)—

Omit “details of”.

(b) Section 102 (5A)—

After section 102 (5), insert:

(5A) Nothing in subsection (5) enables an appeal to be made against the determination of, or the failure to determine, an application to modify a development consent, being a development consent granted by the Court.

(c) Section 102 (6)—

Omit “the details of”.

(11) Sections 117A, 117B—

After section 117, insert:

**Power of entry**

117A. (1) The Director or a council may authorise a person, in writing, to carry out inspections for the purposes of this Act, the regulations and any environmental planning instrument.

(2) A person authorised under subsection (1) may enter any land or any place on any land and may thereon or therein carry out such inspections and surveys and take such measurements and such photographs as the person considers necessary in connection with the administration of this Act, the regulations and any environmental planning instrument.

(3) Subsection (2) does not authorise a person to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises.

(4) A person authorised under subsection (1), in exercising a function conferred by subsection (2) in relation to any land or any place on any land, shall, if so required by a person apparently in charge of that land or place, produce the instrument of his or her authority to that person.



SCHEDULE 8—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued***Obstruction of authorised person**

117B. A person shall not obstruct, hinder or interfere with a person authorised under section 117A (1) in the exercise of the person's functions under section 117A.

## (12) (a) Section 118 (1)–(4)—

Omit the subsections, insert instead:

(1) Where, as a consequence of a failure, in the opinion of the Minister, of a council to comply with, carry into effect or enforce the provisions of this Act, an environmental planning instrument, a direction under section 94A or a direction under section 117, the Minister considers it proper to do so, the Minister may, with the concurrence of the Minister for Local Government, by order published in the Gazette, appoint a person to administer all, or such part as is specified in the order, of the functions conferred or imposed on the council by or under this Act.

## (b) Section 118 (5)–(7)—

Omit “subsection (4)” wherever occurring, insert instead “subsection (1)”.

## (c) Section 118 (5), (6), (8)—

Omit “officer” wherever occurring, insert instead “person”.

## (d) Section 118 (7)—

Omit “an officer's”, insert instead “a person's”.

## (e) Section 118 (8) (a)—

Omit “officers of the Department”, insert instead “persons”.

## (13) Section 119 (2)—

Omit “. 101 (5) or 118 (3)”, insert instead “or 101 (5)”.

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SCHEDULE 8—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(14) Section 121 (3)—

Omit “person”, insert instead “Commissioner of Inquiry”.

(15) Section 132 (6) (b)—

Omit “other than an area”, insert instead “or part of an area other than an area or part”.

(16) (a) Section 143 (1)—

After “December,”, insert “subject to and in accordance with the regulations.”.

(b) Section 143 (2)–(8)—

Omit the subsections, insert instead:

(2) The regulations may make provision for or with respect to—

(a) the notification of a council referred to in subsection (1) by the corporation of a decision to make an assessment under that subsection;

(b) the provision by such a council of information necessary to determine the amount to be paid by the council in relation to the assessment; and

(c) the payment by such a council of the whole or any part of an amount assessed under subsection (1).

(3) A council required to pay the whole or any part of an amount assessed under subsection (1) shall make the payment from its general fund.

(4) The corporation may recover as a debt or liquidated demand in any court of competent jurisdiction any amount assessed upon a council and not paid on or before such day as may be prescribed in relation to the assessment.

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 8—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued*

(17) Sections 146, 147—

Omit the sections.

(18) Section 149 (2), (3)—

Omit the subsections, insert instead:

(2) On application made to it under subsection (1), the council shall, as soon as practicable, issue a certificate specifying such 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).

(19) Schedule 4—

Omit the Schedule.

## SCHEDULE 9

(Sec. 6)

## SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

**Directions under s. 101**

1. A direction given, at any time before the date of commencement of Schedule 1 to this Act, under section 101 of the Principal Act, as then in force, shall not apply to or in respect of prohibited development within the meaning of section 100A of the Principal Act, as amended by this Act, but shall otherwise be deemed to have been given under section 101 of the Principal Act, as so amended.

**Draft environmental planning instruments**

2. The amendments made to the Principal Act by section 5 and Schedule 3 apply to and in respect of any act, matter or thing done after the commencement of Schedule 3 in relation to a draft environmental planning instrument which, before the commencement of Schedule 3, was in the course of preparation but which, before that commencement, had not been made.

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SCHEDULE 9—*continued*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Development applications**

3. (1) Where, immediately before the date on which an amendment made to a provision of the Principal Act by this Act takes effect, a development application has not been finally determined by a consent authority, the development application shall be determined as if the amendment had not been made.

(2) For the purposes of subclause (1), a development application is not finally determined unless—

- (a) consent is granted or refused in respect of that application and no appeal is made within the period of 12 months from the date of granting or refusing the application; or
- (b) where an appeal is made within the period of 12 months referred to in paragraph (a), that appeal is finally disposed of.

**Validation of certain amendments of environmental planning instruments**

4. Any act, matter or thing done or purporting to be done before the commencement of the amendment made by this Act to section 74 (1) of the Principal Act which would have been valid had section 74 (1) of the Principal Act, as amended by this Act, been in force at the time the act, matter or thing was done or purported to be done, is validated.

**Validation of certain conditions of development consents**

5. Any act, matter or thing done or purporting to be done before the commencement of Schedule 4 which would have been valid had the Principal Act, as amended by section 5 and Schedule 4, been in force at the time the act, matter or thing was done or purported to be done, is validated.

**Saving in respect of *Vumbaca v. Baulkham Hills Shire Council***

6. Nothing in section 109A of the Principal Act, as amended by this Act, affects any order of a court made before the date of commencement of that section or anything done in accordance with any such order.

**Questioning of validity of certain environmental planning instruments**

7. (1) Except as provided by subclause (2), section 35 of the Principal Act, as amended by this Act, applies to and in respect of an environmental planning instrument, whether the instrument was made before, on or after the day on which Schedule 7 commenced.

(2) Section 35 of the Principal Act, as amended by this Act, does not apply to or in respect of an environmental planning instrument in relation to the validity of which legal proceedings have been commenced before the day on which Schedule 7 commenced.

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SCHEDULE 9—*continued*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

**Questioning of validity of certain development consents**

8. (1) Except as provided by subclause (2), section 104A of the Principal Act, as amended by this Act, applies to and in respect of a development consent, whether the consent was granted before, on or after the day on which Schedule 7 commenced.

(2) Section 104A of the Principal Act, as amended by this Act, does not apply to or in respect of a development consent in relation to the validity of which legal proceedings have been commenced before the day on which Schedule 7 commenced.

**Regulations**

9. (1) Regulations may be made under the Principal Act containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may take effect as from the date of assent to this Act or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision referred to in subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding any of the foregoing provisions of this Schedule.

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