



New South Wales

Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005 No 43

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New South Wales

Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005 No 43

Act No 43, 2005

An Act to amend the *Environmental Planning and Assessment Act 1979* and other Acts to facilitate infrastructure and other planning reform; and for other purposes.
[Assented to 16 June 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedules 1–6.

4 Amendment of other Acts and regulations

The Acts and regulations specified in Schedule 7 are amended as set out in that Schedule.

Schedule 1 Major infrastructure and other projects amendments

(Section 3)

[1] Part 3A

Insert after Part 3:

Part 3A Major infrastructure and other projects

Division 1 Preliminary

75A Definitions

In this Part:

approved project means a project to the extent that it is approved by the Minister under this Part, but does not include a project for which only approval for a concept plan has been given.

critical infrastructure project means a project that is a critical infrastructure project, as referred to in section 75C.

development includes an activity within the meaning of Part 5.

major infrastructure development includes development, whether or not carried out by a public authority, for the purposes of roads, railways, pipelines, electricity generation, electricity or gas transmission or distribution, sewerage treatment facilities, dams or water reticulation works, desalination plants, trading ports or other public utility undertakings.

project means development that is declared under section 75B to be a project to which this Part applies.

proponent of a project, means the person proposing to carry out development comprising all or any part of the project, and includes any person certified by the Minister to be the proponent.

75B Projects to which Part applies

(1) **General**

This Part applies to the carrying out of development that is declared under this section to be a project to which this Part applies:

- (a) by a State environmental planning policy, or
- (b) by order of the Minister published in the Gazette.

The carrying out of particular development, or development for a program or plan of works or activities, may be so declared.

(2) **Kinds of projects**

The following kind of development may be declared to be a project to which this Part applies:

- (a) major infrastructure or other development that, in the opinion of the Minister, is of State or regional environmental planning significance,
- (b) major infrastructure or other development that is an activity for which the proponent is also the determining authority (within the meaning of Part 5) and that, in the opinion of the proponent, would (but for this Part) require an environmental impact statement to be obtained under that Part.

(3) **Related development**

If part of any development is a project to which this Part applies, the other parts of the development are (subject to subsection (4)) taken to be a project to which this Part applies.

(4) **Limiting declared development**

The declaration of a project may be limited to an aspect of development (such as the construction of a project), to a particular period of carrying out development or otherwise.

(5) **Amendment or revocation of declaration**

The declaration of a project may be amended or revoked at any time (including before or after an approval for the project is given under this Part).

75C Critical infrastructure projects

Any development that is declared to be a project to which this Part applies may also be declared to be a critical infrastructure project if it is of a category that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons.

Note. In the case of a critical infrastructure project, this Part contains the following additional provisions:

- (a) sections 75K, 75L and 75Q exclude proponent or objector appeals in respect of the determination of an application for approval of the project,
- (b) section 75R excludes with respect to the project all environmental planning instruments (other than SEPPs that specifically relate to the project) and council orders under Division 2A of Part 6,
- (c) section 75T excludes third-party appeals against the project under this Act or other environment protection legislation.

Guidelines with respect to environmental assessment of the project under section 75F can be tailored to the circumstances of the case.

Division 2 Environmental assessment and approval of projects

75D Minister's approval required for projects

- (1) A person is not to carry out development that is a project to which this Part applies unless the Minister has approved of the carrying out of the project under this Part.
- (2) The person is to comply with any conditions to which such an approval is subject.

75E Application for approval of project

- (1) The proponent may apply for the approval of the Minister under this Part to carry out a project.
- (2) The application is to:
 - (a) describe the project, and
 - (b) contain any other matter required by the Director-General.
- (3) The application is to be lodged with the Director-General.
- (4) An application may relate to part only of a project.

75F Environmental assessment requirements for approval

- (1) The Minister may, after consultation with the Minister for the Environment, publish guidelines in the Gazette with respect to environmental assessment requirements for the purpose of the Minister approving projects under this Part (including levels of assessment and the public authorities and others to be consulted).
- (2) When an application is made for the Minister's approval for a project, the Director-General is to prepare environmental assessment requirements having regard to any such relevant guidelines in respect of the project.
- (3) The Director-General is to notify the proponent of the environmental assessment requirements. The Director-General may modify those requirements by further notice to the proponent.
- (4) In preparing the environmental assessment requirements, the Director-General is to consult relevant public authorities and have regard to the need for the requirements to assess any key issues raised by those public authorities.
- (5) The environmental assessment requirements may require an environmental assessment to be prepared by or on behalf of the proponent in the form approved by the Director-General.
- (6) The Director-General may require the proponent to include in an environmental assessment a statement of the commitments the proponent is prepared to make for environmental management and mitigation measures on the site.
- (7) This section is subject to section 75P.

Note. Section 75P enables the Minister to determine environmental assessment requirements for approval to carry out the project or any stage of the project when giving approval to a concept plan for the project under Division 3.

75G Independent hearing and assessment panels

- (1) The Minister may constitute:
 - (a) a panel of experts, or

- (b) a panel of officers representing the Department and other relevant public authorities,
to assess any aspect of a project referred to the panel by the Minister.
- (2) The members of a panel of experts are not to be officers of the Department or of other public authorities having regulatory functions in connection with the project.
 - (3) The members of a panel of officers are to be nominated by the respective chief executive officers of the public authorities that the Minister nominates to constitute the panel.
 - (4) For the purposes of an assessment, a panel may receive or hear submissions from interested persons and submit a report to the Director-General within the time required by the Minister.
 - (5) A panel is to exercise its functions in accordance with arrangements approved by the Minister. However, a panel is not subject to the direction of the Minister on the findings or recommendations in its report.
 - (6) The Department is to provide staff and facilities for the purpose of enabling a panel to exercise its functions.

75H Environmental assessment and public consultation

- (1) The proponent is to submit to the Director-General the environmental assessment required under this Division for approval to carry out the project.
- (2) If the Director-General considers that the environmental assessment does not adequately address the environmental assessment requirements, the Director-General may require the proponent to submit a revised environmental assessment to address the matters notified to the proponent.
- (3) After the environmental assessment has been accepted by the Director-General, the Director-General must, in accordance with any guidelines published by the Minister in the Gazette, make the environmental assessment publicly available for at least 30 days.

Schedule 1 Major infrastructure and other projects amendments

- (4) During that period, any person (including a public authority) may make a written submission to the Director-General concerning the matter.
- (5) The Director-General is to provide copies of submissions received by the Director-General or a report of the issues raised in those submissions to:
 - (a) the proponent, and
 - (b) if the project will require an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—the Department of Environment and Conservation, and
 - (c) any other public authority the Director-General considers appropriate.
- (6) The Director-General may require the proponent to submit to the Director-General:
 - (a) a response to the issues raised in those submissions, and
 - (b) a preferred project report that outlines any proposed changes to the project to minimise its environmental impact, and
 - (c) any revised statement of commitments.
- (7) If the Director-General considers that significant changes are proposed to the nature of the project, the Director-General may require the proponent to make the preferred project report available to the public.

75I Director-General's environmental assessment report

- (1) The Director-General is to give a report on a project to the Minister for the purposes of the Minister's consideration of the application for approval to carry out the project.
- (2) The Director-General's report is to include:
 - (a) a copy of the proponent's environmental assessment and any preferred project report, and
 - (b) any advice provided by public authorities on the project, and

- (c) a copy of any report of a panel constituted under section 75G in respect of the project, and
- (d) a copy of or reference to the provisions of any State Environmental Planning Policy that substantially govern the carrying out of the project, and
- (e) except in the case of a critical infrastructure project—a copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division, and
- (f) any environmental assessment undertaken by the Director-General or other matter the Director-General considers appropriate.

75J Giving of approval by Minister to carry out project

- (1) If:
 - (a) the proponent has duly applied to the Minister for approval under this Part to carry out a project, and
 - (b) the environmental assessment requirements under this Division with respect to the project have been complied with,the Minister may approve or disapprove of the carrying out of the project.
- (2) The Minister, when deciding whether or not to approve the carrying out of a project, is to consider:
 - (a) the Director-General's report on the project and the reports, advice and recommendations contained in the report, and
 - (b) if the proponent is a public authority—any advice provided by the Minister having portfolio responsibility for the proponent, and
 - (c) if the Minister has directed an inquiry be held in accordance with section 119 with respect to the project—any findings or recommendations of the Commission of Inquiry.

- (3) The Minister cannot approve of the carrying out of a project:
 - (a) that is not a critical infrastructure project, and
 - (b) that would (but for this Part) be wholly prohibited under an environmental planning instrument by the operation of section 76B.
- (4) A project may be approved under this Part with such modifications of the project or on such conditions as the Minister may determine.

75K Appeals by proponent

- (1) This section applies to a project if:
 - (a) the project is not a critical infrastructure project, and
 - (b) the proponent is not a public authority, and
 - (c) the project has not been the subject of an inquiry held in accordance with section 119 or of a report of a panel of experts under section 75G, and
 - (d) but for this Part, the provisions of Part 4 would apply to the project.
- (2) A proponent who is dissatisfied with the determination of the Minister with respect to an application by the proponent under this Division may appeal to the Court within 3 months after:
 - (a) the date on which the proponent received notice of the determination of the application in accordance with the regulations, or
 - (b) the date on which the regulations provide that a pending application is taken to have been refused for the purposes only of this section.
- (3) If any such appeal is made, each objector to the application referred to in section 75L is to be given notice by the Minister of that appeal and is, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, entitled to be heard at the hearing of the appeal as if the objector were a party to the appeal.

75L Appeals by an objector

- (1) This section applies to a project if:
 - (a) it is not a critical infrastructure project, and
 - (b) there has been no approval of a concept plan for the project under Division 3, and
 - (c) the project has not been the subject of an inquiry held in accordance with section 119 or of a report of a panel of experts under section 75G, and
 - (d) but for this Part, the project would be designated development to which the provisions of Part 4 would apply.
- (2) For the purposes of this section, an objector is a person who has made a submission under section 75H by way of objection to an application for approval under this Division to carry out a project.
- (3) An objector who is dissatisfied with the determination of the Minister under this Division to give approval to carry out a project may appeal to the Court within 28 days after the date on which notice of the determination was given in accordance with the regulations.
- (4) If such an appeal is made, the proponent and the Minister are to be given notice of the appeal, in accordance with rules of court, and are entitled to be heard at the hearing of the appeal as parties to the appeal.

Division 3 Concept plans for certain projects

75M Submission of concept plan for project

- (1) The Minister may authorise or require the proponent to submit a concept plan for a project.
- (2) The concept plan is to:
 - (a) outline the scope of the project and any development options, and
 - (b) set out any proposal for the staged implementation of the project, and

- (c) contain any other matter required by the Director-General.

A detailed description of the project is not required.

- (3) The concept plan is to be lodged with the Director-General.
- (4) If an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, the obligation may be satisfied for a project by the submission and approval of a concept plan in respect of the land concerned (but only if the Minister authorises or requires the submission of the concept plan).

75N Environmental assessment, panel report, public consultation and Director-General's report for concept plan

Sections 75F (Environmental assessment requirements for approval), 75G (Independent hearing and assessment panels), 75H (Environmental assessment and public consultation) and 75I (Director-General's environmental assessment report) apply, subject to the regulations, with respect to approval for the concept plan for a project in the same way as they apply with respect to approval to carry out a project.

75O Giving of approval for concept plan

- (1) If:
 - (a) the proponent submits a concept plan for a project, and
 - (b) the environmental assessment requirements under this Division with respect to giving approval for the concept plan have been complied with,the Minister may give or refuse to give approval for the concept plan for the project.
- (2) The Minister, when deciding whether or not to give approval for the concept plan, is to consider:
 - (a) the Director-General's report on the project and the reports and recommendations contained in the report, and

- (b) if the proponent is a public authority—any advice provided by the Minister having portfolio responsibility for the proponent, and
 - (c) if the Minister has directed an inquiry be held in accordance with section 119 with respect to the project—any findings or recommendations of the Commission of Inquiry.
- (3) The Minister cannot give approval for the concept plan for a project:
 - (a) that is not a critical infrastructure project, and
 - (b) that would (but for this Part) be wholly prohibited under an environmental planning instrument by the operation of section 76B.
- (4) Approval for a concept plan may be given under this Division with such modifications of the project as the Minister may determine.

75P Determinations with respect to project for which concept plan approved

- (1) When giving an approval for the concept plan for a project, the Minister may make any (or any combination) of the following determinations:
 - (a) the Minister may determine the further environmental assessment requirements for approval to carry out the project or any particular stage of the project under this Part (in which case those requirements have effect for the purposes of Division 2),
 - (b) the Minister may determine that approval to carry out the project or any particular stage of the project is to be subject to the other provisions of this Act (in which case the project or that stage of the project ceases to be a project to which this Part applies),
 - (c) the Minister may determine that no further environmental assessment is required for the project or any particular stage of the project (in which case the

Minister may, under section 75J, approve or disapprove of the carrying out of the project or that stage of the project without further application, environmental assessment or report under Division 2).

- (2) If the Minister determines that approval to carry out the project or any particular stage of the project is to be subject to the other provisions of this Act, the following provisions apply:
- (a) the determination of a development application for the project or that stage of the project under Part 4 is to be generally consistent with the terms of the approval of the concept plan,
 - (b) the project or that stage of the project is not integrated development for the purposes of Part 4,
 - (c) any further environmental assessment of the project or that stage of the project under Part 4 or Part 5 is to be undertaken in accordance with the requirements determined by the Minister when approving the concept plan (despite anything to the contrary in that Part),
 - (d) the Minister may, by order, declare that that stage of the project (or any part of it) is exempt or complying development for the purposes of this Act,
 - (e) the Minister may, by order, declare that that stage of the project (or any part of it) is not designated development for the purposes of this Act,
 - (f) the Minister may, by order, revoke or amend (as the case requires) the declaration of the project under this Part.

An order under paragraph (d), (e) or (f) is to be published in the Gazette and has effect according to its tenor.

75Q Appeal by proponent

- (1) This section applies to a project for which a concept plan has been submitted if:
- (a) the project is not a critical infrastructure project, and
 - (b) the proponent is not a public authority, and

- (c) the project has not been the subject of an inquiry held in accordance with section 119 or of a report of a panel of experts under section 75G, and
 - (d) but for this Part, the provisions of Part 4 would apply to the project.
- (2) A proponent who is dissatisfied with the determination of the Minister under this Division to refuse to approve the concept plan for a project (or to modify a concept plan for which approval is given) may appeal to the Court within 3 months after:
- (a) the date on which the proponent received notice of the determination in accordance with the regulations, or
 - (b) the date on which the regulations provide that a pending application is taken to have been refused for the purposes only of this section.
- (3) If the Court allows the appeal, the Minister is to approve the concept plan in the manner determined by the Court. The Court does not have jurisdiction to approve the concept plan or to make or direct the Minister on any determination that may be made under section 75P when giving approval for a concept plan.

Division 4 Application of other provisions of this and other Acts

75R Application of other provisions of Act

- (1) Part 4 and Part 5 do not, except as provided by this Part, apply to or in respect of an approved project (including the declaration of the project as a project to which this Part applies and any approval or other requirement under this Part for the project).
- (2) Part 3 and State environmental planning policies apply to:
 - (a) the declaration of a project as a project to which this Part applies or as a critical infrastructure project, and

- (b) the carrying out of a project, but (in the case of a critical infrastructure project) only to the extent that the provisions of such a policy expressly provide that they apply to and in respect of the particular project.
- (3) Environmental planning instruments (other than State environmental planning policies) do not apply to or in respect of an approved project.

Note. Sections 75J and 75O provide that a project (other than a critical infrastructure project) or a concept plan for such a project cannot be approved under this Part if (but for this Part) it would be development prohibited under any environmental planning instrument. See also section 75I (2) (e).
- (4) Divisions 6 and 6A of Part 4 apply to projects (and the giving of approval for the carrying out of projects under this Part) in the same way as they apply to development and the granting of consent to the carrying out of development under Part 4, subject to any necessary modifications and any modifications prescribed by the regulations. However, a condition cannot be imposed under section 94, 94A or 94F unless that section would have applied if this Part did not apply to the project and a development consent were granted.
- (5) Division 2A of Part 6 applies to a critical infrastructure project only to the extent that the regulations so provide.

75S Erection and occupation of buildings and subdivision of land

- (1) Section 81A applies to an approved project (other than a critical infrastructure project) in the same way as it applies to development subject to a development consent, subject to any necessary modifications and any modifications prescribed by the regulations. For that purpose, a reference in Part 4A to a development consent includes a reference to an approval of a project under this Part.
- (2) However:
 - (a) section 81A does not apply unless that section would have applied if this Part did not apply to the project, and
 - (b) section 81A applies to a critical infrastructure project if the Minister when giving approval under this Part makes it a condition of that approval that section 81A applies.

- (3) Sections 116B and 116G apply to an approved project, but the other provisions of Part 5A do not apply.

75T Third-party appeals—critical infrastructure projects

- (1) This section applies to:
- (a) proceedings in the Court (and orders made by the Court) under Division 3 of Part 6, and
 - (b) proceedings in the Court (and orders made by the Court) under section 252 or 253 of the *Protection of the Environment Operations Act 1997*, and
 - (c) proceedings in the Court (and orders made by the Court) under section 20 (2) of the *Land and Environment Court Act 1979*.
- (2) Proceedings in the Court (and orders made by the Court) cannot be taken or made, except on application made or approved by the Minister:
- (a) to remedy or restrain a breach of this Act (within the meaning of Division 3 of Part 6) arising under this Part in respect of a critical infrastructure project, including the declaration of the project as a project (and a critical infrastructure project) to which this Part applies and any approval or other requirement under this Part for the project, or
 - (b) to enforce any conditions of an approval under this Part for a critical infrastructure project, or
 - (c) to remedy or restrain a breach of this or any other Act arising in respect of the giving of an authorisation of a kind referred to in section 75V (1) for a critical infrastructure project (or in respect of the conditions of such an authorisation).

75U Approvals etc legislation that does not apply

- (1) The following authorisations are not required for an approved project (and accordingly the provisions of any Act that prohibit an activity without such an authority do not apply):

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- (a) the concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of the Act,
 - (b) a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*,
 - (c) an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*,
 - (d) a permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974*,
 - (e) an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act to be repealed by that Act) to clear native vegetation,
 - (f) a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*,
 - (g) a bush fire safety authority under section 100B of the *Rural Fires Act 1997*,
 - (h) a water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the *Water Management Act 2000*.
- (2) Division 8 of Part 6 of the *Heritage Act 1977* does not apply to prevent or interfere with the carrying out of an approved project.
- (3) The following orders or notices cannot be made or given so as to prevent or interfere with the carrying out of an approved critical infrastructure project:
- (a) an interim protection order (within the meaning of the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995*),
 - (b) an order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995* or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*,

- (c) an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*,
- (d) an order under section 124 of the *Local Government Act 1993*.

Note. Under the *National Parks and Wildlife Act 1974*, actions that are essential for carrying out an approved project provide the same defence to actions relating to harm to native fauna (and threatened species) as a development consent under Part 4, or environmental assessment under Part 5, of this Act provide.

75V Approvals etc legislation that must be applied consistently

- (1) An authorisation of the following kind cannot be refused if it is necessary for carrying out an approved project and is to be substantially consistent with the approval under this Part:
 - (a) an aquaculture permit under section 144 of the *Fisheries Management Act 1994*,
 - (b) an approval under section 15 of the *Mine Subsidence Compensation Act 1961*,
 - (c) a mining lease under the *Mining Act 1992*,
 - (d) a production lease under the *Petroleum (Onshore) Act 1991*,
 - (e) an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act),
 - (f) a consent under section 138 of the *Roads Act 1993*.
- (2) If:
 - (a) the Minister determines when giving approval for a concept plan under section 75P that approval to carry out the project or any particular stage of the project is to be subject to the other provisions of this Act, and
 - (b) development consent to carry out the project or that stage of the project is given under Part 4,

an authorisation of the kind referred to in subsection (1) or section 75U (1) cannot be refused if it is necessary for carrying out the project or that stage of the project and is to be substantially consistent with the development consent.

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- (3) This section does not apply to or in respect of:
 - (a) an application for the renewal of an authorisation or a renewed authorisation, or
 - (b) an application for a further authorisation or a further authorisation following the expiry or lapsing of an authorisation, or
 - (c) in the case of an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—any period after the first review of the licence under section 78 of that Act.
- (4) A reference in this section to an authorisation or approval includes a reference to any conditions of the authorisation or approval.
- (5) This section applies to a person, court or tribunal that deals with an objection, appeal or review conferred on a person in relation to an authorisation in the same way as it applies to the person giving the authorisation.

Division 5 Miscellaneous

75W Modification of Minister's approval

- (1) In this section:

Minister's approval means an approval to carry out a project under this Part, and includes an approval of a concept plan.

modification of approval means changing the terms of a Minister's approval, including:

 - (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and
 - (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.
- (2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.

- (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.
- (5) The proponent of a project to which section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request within 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.
- (6) Subsection (5) does not apply to a request to modify:
 - (a) an approval granted by or as directed by the Court on appeal, or
 - (b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.
- (7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan.

75X Miscellaneous provisions relating to approvals under this Part

- (1) If the proponent of a project (or proposed project) is the Minister or the corporation constituted by section 8 (1), the project must be the subject of an inquiry held in accordance with section 119 or of a report of a panel of experts under section 75G.
- (2) The following documents under this Part in relation to a project are to be made publicly available by the Director-General:
 - (a) applications to carry out projects,
 - (b) environmental assessment requirements for a project determined by the Director-General or the Minister,

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- (c) environmental assessment reports of the Director-General to the Minister,
 - (d) approvals to carry out projects given by the Minister,
 - (e) concept plans submitted for the Minister's approval (and approvals of concept plans),
 - (f) requests for modifications of approvals given by the Minister and any modifications made by the Minister.
- (3) The Minister may, but is not required to, give reasons to the proponent for:
- (a) any disapproval, or conditions or modifications, of a project, or
 - (b) any disapproval, or modifications of, a concept plan for a project, or
 - (c) any conditions of approval of a modification of the approval of a project.
- (4) The validity of an approval or other decision under this Part cannot be questioned in any legal proceedings in which the decision may be challenged except those commenced in the Court within 3 months after public notice of the decision was given.
- (5) The only requirement of this Part that is mandatory in connection with the validity of an approval of a project or of a concept plan for a project is a requirement that an environmental assessment with respect to the project is made publicly available under section 75H (or under that section as applied by section 75N). This subsection does not affect the operation of section 75T in relation to a critical infrastructure project.

75Y Lapsing of approvals

- (1) An approval under this Part may be subject to a condition that it lapses on a specified date unless specified action with respect to the approval has been taken (such as the commencement of work on the project or the submission of an application for approval to carry out a project for which concept approval has been given).

- (2) Any such condition may be modified under this Part to extend the lapsing period. The Minister is to review the approval before extending the lapsing period and may make other modifications to the approval (whether or not requested by the proponent).

75Z Regulations for purposes of Part

The regulations may make provision for or with respect to the approval of projects (and concept plans for projects) under this Part and to approved projects (and concept plans), including:

- (a) prescribing time limits for dealing with applications or other matters under this Part and deeming acceptance or rejection of applications or other matters if those time limits are not complied with, and
- (b) requiring owners of land on which projects are proposed to be carried out to consent to applications for approvals under this Part, and
- (c) providing for public exhibition, notification and public registers of applications for approvals under this Part (or for the modification of approvals) and of the determination of those applications, and
- (d) the fees for applications and the exercise of functions under this Part.

75ZA Transitional arrangements

- (1) Development may be declared to be a project to which this Part applies even though action has been taken under Part 4 or Part 5 before the declaration (whether before or after the commencement of this Part) for the purposes of authorising the carrying out of the development under this Act.
- (2) However, on the declaration being made, any development consent under Part 4 or approval under Part 5 that authorises the carrying out of the development ceases to have effect. The consent or approval is revived if the declaration is subsequently revoked without any approval of the project under this Part.

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- (3) If the declaration of a project under this Part is revoked after approval has been given under this Part to carry out the project, the approval is (subject to the regulations) taken to be a development consent for the project granted under Part 4.

[2] Section 4 Definitions

Omit the definitions of *local development* and *State significant development* from section 4 (1).

[3] Section 23 Delegation

Insert after section 23 (1) (c):

- (c1) a development corporation under the *Growth Centres (Development Corporations) Act 1974* or an officer or employee of any such corporation for the purposes of that Act,
- (c2) any other public authority or an officer or employee of any other public authority,

[4] Section 23 (8) (a1)

Insert after section 23 (8) (a):

- (a1) the function of the Minister under Part 3A of determining whether to approve the carrying out of a project or the concept plan for a project, or

[5] Section 23 (8) (b)

Omit “, 88A, 89” and “, by Division 4 of Part 5”.

[6] Section 72A Making of application

Omit “or sections 88A and 89” wherever occurring in section 72A (2).

[7] Section 72I Application of Division

Insert at the end of the section:

- (2) This Division also applies in respect of applications and approvals under Part 3A, and references to a development application, a consent authority or a consent are to be construed accordingly.

[8] Section 76A Development that needs consent

Omit section 76A (3), (4), (6) (a), (7), (8) and (9).

[9] Section 76A (5)

Omit “local”.

[10] Section 77 Application of Division

Omit paragraph (a) of the note to the section.

[11] Section 79C Evaluation

Insert at the end of section 79C (1):

Note. See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

[12] Section 82A Review of determination

Omit the note to section 82A (1).

[13] Part 4, Division 4 Additional procedures concerning State significant development

Omit the Division.

[14] Section 91A Development that is integrated development

Omit “local” from section 91A (1).

[15] Section 92 State significant development that is integrated development

Omit the section.

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[16] Section 95A Extension of lapsing period for 1 year

Omit “, except where the application is made in respect of a consent granted by the Minister under section 88A or 89,” from section 95A (3).

[17] Section 95B Extension of lapsing period for consent for State significant development

Omit the section.

[18] Section 96 Modification of consents—generally

Omit “, (6A)” from section 96 (1) and “or (6A)” from section 96 (7).

[19] Section 96 (6)

Omit “Except in the case of State significant development, an”.

Insert instead “An”.

[20] Section 96 (6A)

Omit the subsection.

[21] Section 110 Definitions

Omit “under Division 4” from section 110 (2).

Insert instead “under Part 3A”.

[22] Section 110D Transitional—amendment of list of vulnerable species

Omit section 110D (3) and (4).

[23] Section 112 Decision of determining authority in relation to certain activities

Omit section 112 (1) (c1).

[24] Section 112 (6)

Insert “(other than Part 3A)” after “of this Act”.

[25] Section 112 (6A)

Omit the subsection.

[26] Section 113 Publicity and examination of environmental impact statements

Omit “or Division 4 applies” from section 113 (5).

[27] Part 5, Division 4 Minister administering this Act to be approving authority instead of proponent where EIS prepared

Omit the Division.

[28] Section 115P Approval of Minister administering this Act required for designated fishing activity where Fisheries Minister is or is declared to be proponent

Omit section 115P (3). Insert instead:

- (3) The regulations may make provisions for or with respect to approvals under this section of the Minister administering this Act.

[29] Section 115R Application of other provisions of this Act

Insert after section 115R (3):

- (3A) A designated fishing activity cannot be declared to be a project to which Part 3A applies.

[30] Section 119 Public inquiry

Insert at the end of section 119 (1) (d):

- , or
- (e) all or any of the environmental aspects of a project under Part 3A.

[31] Section 158 Exclusion of personal liability

Insert after section 158 (d):

- (d1) a member of a panel constituted under section 75G, or

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[32] Section 158

Insert “a panel member,” after “the Commissioner of Inquiry,”.

[33] Schedule 6 Savings, transitional and other provisions

Insert in appropriate Divisional order (and with appropriate clause numbers) in the Part of the Schedule inserted by Schedule 6 to this Act:

Division 2 Major infrastructure and other projects amendments

Pending or previous matters under Division 4 of Part 5

- (1) Despite its repeal by Schedule 1 to the 2005 Amending Act, Division 4 of Part 5 of this Act continues to apply to and in respect of the carrying out of any activity for which the Minister’s approval under that Division was sought before its repeal.
- (2) If the activity is a project to which Part 3A of this Act applies:
 - (a) subclause (1) applies to the activity (unless the instrument that declares it a project otherwise provides), and
 - (b) Part 3A of this Act does not apply to the activity while Division 4 of Part 5 of this Act continues to apply to the activity (subject to subclause (3)).
- (3) The approval of the Minister for an activity that was given under Division 4 of Part 5 of this Act before its repeal (or under that Division as continued by subclause (1)) is taken to be an approval under Part 3A of this Act, and that Part (sections 75U and 75V excepted) applies accordingly.
- (4) Until regulations are made under section 115P (3) (as substituted by the 2005 Amending Act), the provisions of Division 4 of Part 5 of this Act continue to apply (with necessary modifications) to approvals under that section of the Minister administering this Act.

State significant development matters

- (1) If a development application for State significant development is pending on the commencement of Part 3A of this Act, the application is to be determined (unless withdrawn by the applicant) as if the amendments made to this Act by Schedule 1 to the 2005 Amending Act had not been made.
- (2) A reference in any Act or instrument to State significant development within the meaning of this Act is taken to be a reference to a project to which Part 3A of this Act applies.

Special heritage provision with respect to Opera House

- (1) Section 75U (as inserted by the 2005 Amending Act), in so far as it excludes the requirement for an approval under Part 4 of the *Heritage Act 1977*, does not apply to the carrying out of any development in connection with the Opera House that is a project to which Part 3A applies.
- (2) In that case, section 75V applies instead as if an approval under Part 4 of the *Heritage Act 1977* were included in section 75V (1).

Schedule 2 Planning instruments amendments

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

development control plan means a development control plan prepared (or taken to have been prepared) under Division 6 of Part 3.

[2] Section 26 Contents of environmental planning instruments

Insert at the end of the section:

- (4) An environmental planning instrument that makes provision for or with respect to protecting or preserving trees or other vegetation may make provision:
 - (a) for development control plans to specify the species or kinds of trees or other vegetation included in or excluded from the relevant provisions, and
 - (b) for the grant of permission to remove or otherwise affect trees or other vegetation, and for a refusal to grant permission to be treated as a refusal or failure to grant development consent under and for the purposes of Part 4.

[3] Section 33 Model provisions

Omit the section.

[4] Sections 33A–33C

Insert after section 33:

33A Standardisation of local and other environmental planning instruments

- (1) The Governor may, by order published in the Gazette, prescribe the standard form and content of local environmental plans or other environmental planning instruments (a *standard instrument*).
- (2) An environmental planning instrument may be made in the form of:
 - (a) a declaration that the applicable mandatory provisions of a standard instrument are adopted, and
 - (b) the prescription of the matters required to be prescribed for the purposes of the application of the mandatory provisions of the standard instrument (such as the adoption of land zoning or other maps), and
 - (c) the prescription of any other matters permitted to be prescribed by an environmental planning instrument, including non-mandatory provisions of the standard instrument (with or without modification) or additional provisions.
- (3) When an environmental planning instrument is made with such a declaration, the instrument has the form and content of the applicable mandatory provisions of the standard instrument and the matters so prescribed. Any draft of the instrument that is exhibited under this Act is to set out in full the provisions that are adopted.
- (4) If the mandatory provisions of a standard instrument so adopted are amended by a further order under subsection (1) after they are adopted, the environmental planning instrument is taken (without further amendment) to adopt the amended provisions of the standard instrument on and from the date the amendment to the standard instrument takes effect.
- (5) The order that amends a standard instrument may make provision of a savings or transitional nature consequent on the amendment of the standard instrument.

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- (6) Where a standard instrument has been adopted, the provisions of the environmental planning instrument (other than the mandatory provisions of the adopted standard instrument) may be amended from time to time by another environmental planning instrument or in accordance with any Act.
- (7) A standard instrument may:
 - (a) provide that a provision is a mandatory provision only in the circumstances specified in the instrument, and
 - (b) contain requirements or guidance as to the form or content of a non-mandatory provision.
- (8) The adoption of the provisions of a standard instrument in an environmental planning instrument is taken to be a matter of State environmental planning significance for the purposes of this Act.
- (9) Subject to this Act and the regulations, the form and subject-matter of an environmental planning instrument or draft instrument is (if there is no applicable standard instrument) to be as determined by the Minister.
- (10) In this section:

amend includes alter or vary.

form includes structure.

33B Staged repeal and review of environmental planning instruments

- (1) In order to facilitate the staged implementation of standard instruments and the periodic review of existing instruments, the Minister may, by order published in the Gazette, establish a staged repeal program for existing environmental planning instruments.
- (2) The staged repeal program may include provision for or with respect to the following:
 - (a) the repeal of designated environmental planning instruments at specified times during the period of the program,

- (b) requirements for the preparation and making of replacement instruments (including the times by which draft replacement instruments are to be submitted to the Director-General or the Minister),
 - (c) the postponement of the repeal of particular instruments when the making of a replacement instrument is delayed,
 - (d) the periodic review by a council of environmental planning instruments (other than State environmental planning policies and regional environmental plans) applying in its area and the submission of reports of each review to the Director-General.
- (3) At the time specified by the staged repeal program for the repeal of a designated environmental planning instrument, the instrument is repealed by the operation of this section.
- (4) The Minister may, by order published in the Gazette, make a local environmental plan to take effect on the repeal of an instrument under this section pending the making of a replacement instrument in accordance with this Act. Any such plan made by the Minister is to adopt the mandatory provisions of a standard instrument (with the prescriptions the Minister considers necessary in the particular circumstances).
- (5) For the purposes of subsection (4):
- (a) an order making a plan under that subsection is not required to comply with other requirements for the making of an environmental planning instrument, and
 - (b) public notice is to be given of the proposed plan for such period as the Minister considers appropriate and submissions invited on the proposed plan during that period, and
 - (c) the council is to provide the Minister, when requested, with copies of any draft plans, maps or other relevant documents prepared or held by the council.

The Minister may direct the council to pay to the Director-General such amount as the Director-General determines will meet the reasonable costs incurred on behalf of

the Minister by the Department for the purposes of making the plan under subsection (4).

Note. See section 118 (1A) in relation to the power to appoint an administrator to exercise plan-making functions when a council fails to comply with the requirements of the staged repeal program for the preparation or making of a replacement instrument.

33C Public access to environmental planning instruments and related documents

For the purpose of facilitating electronic or other public access to environmental planning instruments and any development control plans, contributions plans or other documents under this Act:

- (a) the Minister may determine standard technical requirements with respect to the preparation of those instruments, plans or other documents and of the maps or other documents that are referred to in (or adopted under) them, and
- (b) a council is to provide the Director-General, when requested, with copies and electronic files (in a specified format) of any such instruments, plans, maps or other documents prepared or held by the council.

[5] Section 36 Inconsistency between instruments

Omit section 36 (1), (2) and (3). Insert instead:

- (1) In the event of an inconsistency between environmental planning instruments and unless otherwise provided:
 - (a) there is a general presumption that a State environmental planning policy prevails over a regional environmental plan or local environmental plan made before or after the policy, and
 - (b) there is a general presumption that a regional environmental plan prevails over a local environmental plan made before or after the regional environmental plan, and

- (c) the general presumptions of the law as to when an Act prevails over another Act apply to when one kind of environmental planning instrument prevails over another environmental planning instrument of the same kind.

[6] Section 38 Format of State environmental planning policies

Omit the section.

[7] Section 51A Development control plans

Omit the section.

[8] Section 52 Format of regional environmental plan or draft plan

Omit the section.

[9] Section 65 Certificate of Director-General

Insert after section 65 (1):

- (1A) A certificate is not to be issued under this section unless the Director-General is satisfied that the draft local environmental plan has been prepared in accordance with any applicable standard instrument under section 33A. This subsection does not limit the grounds on which a certificate may be refused or the draft plan may be required to be amended under this section.

Note. Section 117 also empowers the Minister to give directions as to the principles to be observed in the preparation of, or the provisions to be included in, draft local environmental plans.

[10] Section 66 Public exhibition of draft local environmental plan

Omit section 66 (1) (b) (ii) and (iii). Insert instead:

- (ii) a copy of any standard instrument, environmental planning instrument or direction under section 117 that substantially governs the content and operation of the draft local environmental plan (or provide for access to such a copy), and

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- (iii) a statement to the effect that any such standard instrument, environmental planning instrument or direction substantially governs the content and operation of the draft local environmental plan and that any submissions made pursuant to section 67 should be made having regard to that fact,

[11] Section 68 Consideration of submissions

Insert after section 68 (8):

- (9) After a draft local environmental plan has been submitted to the Director-General under this section:
 - (a) the council and the Director-General may (on one or more occasions) agree to the council making changes to the draft plan and resubmitting it under this section, or
 - (b) the Director-General may (on one or more occasions) return the draft plan so that the council can make changes to accord with any applicable standard instrument under section 33A or to take into account any directions under section 117.

This subsection applies whether or not a report under section 69 has been furnished in respect of the draft plan.

[12] Section 69 Report by Director-General

Insert at the end of the section:

- (2) The Director-General is not to furnish a report to the Minister under this section unless the Director-General is satisfied that the draft local environmental plan has been prepared in accordance with any applicable standard instrument under section 33A. This subsection does not limit the matters that the Director-General is required to consider for the purposes of a report.

[13] Section 71 Format of local environmental plan or draft plan

Omit the section.

[14] Section 72 Development control plans

Omit the section.

[15] Section 73A

Insert after section 73:

73A Minor amendments of environmental planning instruments

An amending environmental planning instrument may be made under this Part without compliance with the provisions of this Part relating to the conditions precedent to the making of the instrument if the instrument, if made, would amend or repeal a provision of a principal instrument in order to do any one or more of the following:

- (a) correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,
- (b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature.

[16] Section 74A

Insert after section 74:

74A Application of Division

This Division is subject to sections 33A and 33B.

[17] Part 3, Division 6

Insert after Division 5 of Part 3:

Division 6 Development control plans

74B Definition

(1) In this Division:

relevant planning authority means:

- (a) in relation to local environmental plans applying to land in (or development in) a local government area—the council of the area, and
- (b) in relation to other environmental planning instruments (or development in the area to which they apply)—the Director-General.

(2) A reference in this Division to an environmental planning instrument includes a reference to any such draft instrument.

74C Preparation of development control plans

(1) The relevant planning authority may prepare a development control plan (or cause such a plan to be prepared) if it considers it necessary or desirable:

- (a) to make more detailed provision with respect to development to achieve the purpose of an environmental planning instrument applying to the land concerned, or
- (b) to identify development as advertised development (so as to make additional but not inconsistent requirements to those imposed by the regulations in relation to development applications), or
- (c) to provide for (or exclude) public or particular advertising or notification of any of the following:
 - (i) a development application for specified development (other than designated development or advertised development),

- (ii) a request for the review of a determination of a development application where the applicant for review makes amendments to the development described in the original development application,
 - (iii) an application for the modification of a development consent for specified development (including advertised development but not designated development),
 - (iv) an application for a complying development certificate, or
- (d) in the case of a council—to specify criteria (in addition to but not inconsistent with any criteria prescribed by the regulations) that the council is to take into consideration in determining whether or not to give an order under Division 2A of Part 6, or
- (e) to make provision for anything permitted by this Act to be prescribed by a development control plan.

Note. See for example section 26 (4) (a).

- (2) Only one development control plan made by the same relevant planning authority may apply in respect of the same land. This subsection does not apply to:
- (a) a plan prepared for the purposes of subsection (1) (d) or for any other purpose prescribed by the regulations, or
 - (b) a plan prepared for the purpose of amending an existing plan.

If this subsection is not complied with, all the development control plans concerned have no effect.

Note. A planning authority may prepare one development control plan for the whole of its area or one plan for each precinct or locality in its area, or prepare one plan for a site (and exclude that site from the area to which other plans apply).

- (3) A development control plan may adopt by reference the provisions of another development control plan.
- (4) A development control plan may amend, substitute or revoke another development control plan.

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- (5) A provision of a development control plan (whenever made) has no effect to the extent that:
 - (a) it is the same or substantially the same as the provision of an environmental planning instrument applying to the same land, or
 - (b) it is inconsistent with a provision of any such instrument or its application prevents compliance with a provision of any such instrument.

74D Development control plans required or authorised by environmental planning instruments

- (1) An environmental planning instrument may require or permit a development control plan to be prepared before any particular development or kind of development may be carried out (and make provision with respect to the preparation and content of any such plan).
- (2) Any such development control plan may outline the development of all the land to which it applies.
- (3) Any such development control plan may be prepared (and submitted to the relevant planning authority) by the owners of the land to which it applies or by such percentage of those owners as the environmental planning instrument concerned allows. A person authorised by those owners may act on their behalf for the purposes of this subsection.
- (4) The relevant planning authority may make a development control plan submitted to it under this section, including with such changes as it thinks fit.
- (5) If the relevant planning authority refuses to make a development control plan submitted to it under this section (or delays by more than 60 days to make a decision on whether to make the plan):
 - (a) the owners may make a development application despite the requirement of the environmental planning instrument concerned for the preparation of a development control plan, or

- (b) the Minister may act in the place of the relevant planning authority to make the plan (with or without modification), but only if the environmental planning instrument concerned authorises the Minister to do so.
- (6) The regulations may extend the period of 60 days referred to in subsection (5) in connection with any failure by the owners to provide further information required by the relevant planning authority for the purposes of making the plan.

Note. Section 75M provides that a concept plan may be submitted for a project to which Part 3A applies as an alternative to a development control plan required by an environmental planning instrument. Section 83C provides that a staged development application may be made for development requiring consent under Part 4 as an alternative to a development control plan required by an environmental planning instrument.

74E Miscellaneous provisions relating to development control plans

- (1) The regulations may make provision for or with respect to development control plans, including:
 - (a) the form, structure and subject-matter of development control plans, and
 - (b) the procedures for the preparation, public exhibition, making, amendment and repeal of development control plans, and
 - (c) the fees payable to the relevant planning authority by owners submitting draft development control plans under section 74D.
- (2) The staged repeal program under section 33B may be extended to development control plans, and for that purpose a reference in that section to an environmental planning instrument is taken to include a reference to a development control plan.
- (3) An environmental planning instrument may exclude or modify the application of development control plans in respect of land to which the instrument applies (whether the plan was prepared before or after the making of the instrument).
- (4) A development control plan must be available for public inspection (without charge):

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- (a) at the principal office of the relevant planning authority that prepared the plan, and
- (b) in such other manner as is prescribed by the regulations.

[18] Sections 82A (4) (a), 96 (1A) (c) and (2) (c), 96AA (1) (b) and 121F

Omit “under section 72” wherever occurring.

[19] Section 117 Directions by Minister

Insert after section 117 (2):

(2A) A direction under subsection (2):

- (a) may be given to a particular council or to councils generally, and
- (b) may require the inclusion in draft plans of provisions to achieve or give effect to particular principles, aims, objectives or policies, and
- (c) may require draft plans to be strictly consistent or substantially consistent with the terms of the direction (or provide for the circumstances in which an inconsistency can be justified).

Any such direction may be given to councils generally by its publication in the Gazette or on a website maintained by the Department (or both).

[20] Section 117 (5)

Insert after section 117 (4):

- (5) A local environmental plan (or any draft or purported plan) cannot in any court proceedings be challenged, reviewed, called into question, prevented from being made or otherwise affected on the basis of anything in a direction under subsection (1) or (2).

[21] Section 118 Appointment of environmental planning administrator

Insert after section 118 (1):

- (1A) In addition to the circumstances in which an appointment may be made under subsection (1), the Minister may appoint a person under that subsection to administer the functions of the council with respect to the making of local environmental plans if the council fails to comply with the requirements of the staged repeal program under section 33B with respect to the preparation or making of a replacement local environmental plan.

[22] Schedule 6 Savings, transitional and other provisions

Insert in appropriate Divisional order (and with appropriate clause numbers) in the Part of the Schedule inserted by Schedule 6 to this Act:

Division 3 Planning instruments amendments

Review of SEPPs and REPs

- (1) The Minister may, by order published in the Gazette, transfer any provisions of State environmental planning policies or regional environmental plans (with or without modification) to the principal local environmental plans for the local government areas to which the existing provisions apply.
- (2) Subclause (1) does not prevent an environmental planning instrument being made to transfer any of those existing provisions in respect of a particular local area.
- (3) The transfer of any of those existing provisions is taken to be matter of State environmental planning significance for the purposes of this Act.

Standard instruments

The Director-General may issue a certificate under section 65 or furnish a report under section 69 (despite sections 65 (1A) and 69 (2), as inserted by the 2005 Amending Act) if the Director-General is satisfied that:

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- (a) significant council resources have been expended in the preparation of the draft instrument before the prescription of the relevant standard instrument, or
- (b) the draft instrument makes a necessary amendment of a principal environmental planning instrument made before the prescription of the relevant standard instrument, or a necessary amendment of an instrument referred to in paragraph (a),

and the Director-General is satisfied that satisfactory arrangements have been made for the making of a replacement instrument in accordance with the relevant standard instrument.

Model provisions

- (1) Model provisions made under section 33 (as in force immediately before its repeal by the 2005 Amending Act) continue in force for the purposes of any existing environmental planning instruments that adopt those model provisions.
- (2) The Minister may, by order published in the Gazette, amend or revoke any of those model provisions, and section 33 (2) (as so in force) applies accordingly.

Development control plans

- (1) A development control plan made under section 51A or 72 and in force immediately before the repeal of that section by the 2005 Amending Act is taken to be a development control plan made under Division 6 of Part 3 (as inserted by that Act).
- (2) Section 74C (as inserted by the 2005 Amending Act) does not render invalid any provision of a development control plan that is continued in force by subclause (1) during the period until a development control plan is made under section 74C in respect of the land concerned.
- (3) Anything done under section 51A or 72 immediately before its repeal by the 2005 Amending Act in connection with a proposed development control plan is taken to have been done under Division 6 of Part 3 (as inserted by that Act).

- (4) Regulations made for the purposes of section 51A or 72 and in force immediately before the repeal of that section by the 2005 Amending Act are taken to have been made for the purposes of Division 6 of Part 3 (as inserted by that Act).

Master plans under existing instruments

- (1) This clause applies to any provision of an environmental planning instrument that is in force on the commencement of this clause and that requires, before the grant of development consent, a master plan (within the meaning of clause 92A of the *Environmental Planning and Assessment Regulation 2000* as in force before its amendment by the 2005 Amending Act) for the land concerned.
- (2) While that provision continues in force, it is to be construed as requiring a development control plan under section 74D (as inserted by the 2005 Amending Act) with respect to the matters required to be included in the master plan, and in accordance with the procedures provided for making the master plan, by the environmental planning instrument.
- (3) Any master plan made under that provision before the commencement of this clause is taken to be a development control plan under section 74D (as inserted by the 2005 Amending Act).

Section 117 (2) directions

- (1) Directions given under section 117 (2) before the commencement of section 117 (2A) by the 2005 Amending Act cease to have effect on that commencement.
- (2) However, those directions continue in force for the purposes of any draft local environmental plan that is the subject of a certificate under section 65 issued before that commencement.

Schedule 3 Development consent amendments

(Section 3)

[1] Section 79C Evaluation

Insert “(unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved)” after “consent authority” in section 79C (1) (a) (ii).

[2] Section 80 Determination

Omit the heading to section 80 (4). Insert instead:

(4) **Total or partial consent**

[3] Section 80 (5)

Omit the subsection. Insert instead:

(5) The consent authority is not required to refuse consent to any specified part or aspect of development for which development consent is not initially granted under subsection (4), but development consent may subsequently be granted for that part or aspect of the development.

Note. See also Division 2A for special procedures concerning staged development applications.

[4] Part 4, Division 2A

Insert after Division 2 of Part 4:

Division 2A Special procedures concerning staged development applications

83A Application of this Division

This Division applies to staged development applications and to consents granted on the determination of those applications.

83B Staged development applications

- (1) For the purposes of this Act, a *staged development application* is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may set out detailed proposals for the first stage of development.
- (2) A development application is not to be treated as a staged development application unless the applicant requests it to be treated as a staged development application.
- (3) If consent is granted on the determination of a staged development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:
 - (a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or
 - (b) the staged development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.
- (4) The terms of a consent granted on the determination of a staged development application are to reflect the operation of subsection (3).

83C Staged development applications as alternative to dcp required by environmental planning instruments

- (1) An environmental planning instrument cannot require the making of a staged development application before development is carried out.

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- (2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a staged development application in respect of that land.

Note. Section 74D (5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.

- (3) Any such staged development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.

83D Status of staged development applications and consents

- (1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a staged development application and a development consent granted on the determination of any such application.

Note. Applicable provisions in respect of staged development applications include provisions relating to designated development, integrated development and regulations made under section 105.

- (2) While any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent.
- (3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a staged development application.

Note. See section 95 (2) which prevents a reduction in the 5 year period of a development consent.

[5] Section 91 What is “integrated development”?

Insert in alphabetical order of Acts in section 91 (1):

<i>Mining Act 1992</i>	ss 63, 64	grant of mining lease
<i>Petroleum (Onshore) Act 1991</i>	s 9	grant of production lease

[6] Section 95 Lapsing of consent

Omit section 95 (1) and (2). Insert instead:

- (1) A development consent lapses 5 years after the date from which it operates.
- (2) However, a consent authority may reduce that period of 5 years in granting development consent. This subsection does not apply to development consent granted to a staged development application under Division 2A for development that requires a subsequent development application and consent.

[7] Section 105 Regulations—Part 4

Omit section 105 (1) (j). Insert instead:

- (j) the preparation, contents, form and submission of environmental impact statements and statements of environmental effects,

[8] Schedule 6 Savings, transitional and other provisions

Insert in appropriate Divisional order (and with appropriate clause numbers) in the Part of the Schedule inserted by Schedule 6 to this Act:

Division 4 Development consent amendments

Section 80 (5)—staged development conditional consents

- (1) The substitution of section 80 (5) by the 2005 Amending Act does not affect a condition of a development consent that requires another development consent before development may be carried out.
- (2) Section 95 (as in force immediately before the amendment of that section by the 2005 Amending Act) continues to apply to a development consent that is subject to such a condition.

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Schedule 3 Development consent amendments

Staged development applications as alternative to master plans

Section 83C (as inserted by the 2005 Amending Act) applies as if a reference in that section to a provision of an environmental planning instrument that requires a development control plan included a reference to any such provision made before the commencement of this clause that requires a master plan.

Schedule 4 Environmental assessment amendments

(Section 3)

[1] Section 110A Nomination of nominated determining authority

Omit “(subsection (3) excepted)” from section 110A (2) (b).

[2] Section 110A (3)

Insert after section 110A (2):

- (3) A determining authority (other than the nominated determining authority) is required to forward to the nominated determining authority a copy of any submissions made to it under section 113 (2) and to provide other information to the nominated determining authority, as required by the regulations, to enable the nominated determining authority to co-ordinate the preparation and furnishing of reports in relation to the activity or activity of the specified class or description.

[3] Section 111A

Insert after section 111:

111A Exemption

A determining authority is not under a duty under section 111 (despite its terms) to consider the environmental impact of the following activities:

- (a) a modification of an activity, whose environmental impact has already been considered, that will reduce its overall environmental impact,
- (b) a routine activity (such as the maintenance of infrastructure) that the Minister determines has a low environmental impact and that is carried out in accordance with a code approved by the Minister,

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Schedule 4 Environmental assessment amendments

- (c) an activity (or part of an activity) that has been approved, or is to be carried out, by another determining authority after environmental assessment in accordance with this Part.

Note. Section 75P(2) (c) makes alternative arrangements for environmental assessment under this Part for projects for which a concept plan is approved under Part 3A and which is then made subject to this Part.

[4] Sections 113 and 115

Omit “representations” wherever occurring. Insert instead “submissions”.

[5] Schedule 6 Savings, transitional and other provisions

Insert in appropriate Divisional order (and with appropriate clause numbers) in the Part of the Schedule inserted by Schedule 6 to this Act:

Division 5 Environmental assessment amendments

Application of section 111A (Exemptions)

Section 111A (as inserted by the 2005 Amending Act) extends to an activity that was carried out or began to be carried out before the commencement of that section.

Schedule 5 Enforcement amendments

(Section 3)

[1] Part 6, Division 1A, heading

Omit the heading. Insert instead:

Division 1A Local enforcement powers

[2] Section 118A Power of entry

Omit section 118A (2) and (2A).

[3] Sections 118B, 118C (3) (c), 118D, 118E (2), 118F (1), 118G, 118H, 118I (2), 118K (1) and 118L (1)

Omit “, the Minister or the Director-General” wherever occurring.

[4] Section 118B Inspections and investigations

Omit “, the Minister’s or the Director-General’s”.

[5] Section 118C Notice of entry

Omit “, the Minister, the Director-General” from section 118C (1).

[6] Section 118E Notification of use of force or urgent entry

Omit “, Minister or Director-General (whichever authorised the person to enter the premises under section 118C (3) or 118D (1))”.

[7] Section 118R (5)

Omit “by the Director-General” .

[8] Section 121A Definitions

Insert in alphabetical order:

consent authority includes, in the case of a project to which Part 3A applies, the Minister.

Schedule 5 Enforcement amendments

development consent includes, in the case of a project to which Part 3A applies, an approval under that Part to carry out the project.

[9] Section 121B Orders that may be given by consent authority or by Minister etc

Insert before section 121B (1) (a):

- (aa) the Minister or the Director-General (but only in connection with a project to which Part 3A applies), or

[10] Section 121B (1), Table

Insert at the end of the Table to section 121B (1):

18 To do or refrain from doing any act to remedy or restrain a breach of Part 3A or of an approval under that Part	The breach has occurred, is occurring or is likely to occur	The person who caused, is causing or is likely to cause the breach, or the person entitled to act on the approval
---	---	---

[11] Section 121B (3)

Insert after section 121B (2):

- (3) An order under item 18 of the Table to subsection (1) may only be given by the Minister or the Director-General.

[12] Section 121D Circumstances in which compliance with secs 121F–121K is required

Insert at the end of section 121D (b):

, or

- (c) an order given by the Minister or the Director-General in connection with a project to which Part 3A applies.

[13] Section 121O Development consent or approval not required to comply with order

Insert “Part 3A for approval or” before “Part 4”.

[14] Section 121ZF Modification of orders

Omit “if the person”.

Insert instead “but, except in the case of an order given by the Minister or the Director-General, only if the person”.

[15] Section 121ZG Revocation of orders

Insert before section 121ZG (1):

- (1A) An order given by the Minister may be revoked by the Minister at any time, and an order given by the Director-General may be revoked by the Minister or the Director-General at any time.

[16] Section 121ZQ

Insert after section 121ZP:

121ZQ Continuing effect of orders

- (1) An order that specifies a time by which, or period within which, the order must be complied with continues to have effect until the order is complied with even though the time has passed or the period has expired.
- (2) This section does not apply to the extent that any requirement under an order is revoked.

[17] Part 6, Divisions 2B and 2C

Insert before Division 3 of Part 6:

**Division 2B Monitoring and environmental audits—
approved projects**

122A Application of Division

- (1) This Division applies to the carrying out of a project approved under Part 3A.
- (2) This Division does not affect the other provisions of this Act.

122B Nature of monitoring and environmental audits

- (1) For the purposes of this Division, *monitoring* of a project is the monitoring of the carrying out of the project to provide data on compliance with the approval of the project or on the project's environmental impact.
- (2) For the purposes of this Division, an *environmental audit* of a project is a periodic or particular documented evaluation of an approved project to provide information to the proponent of the project and to the persons administering this Act on compliance with the approval of the project or on the project's environmental management or impact.
- (3) A reference in this section to compliance with the approval of a project includes a reference to compliance with:
 - (a) the conditions to which the approval of the project is subject, and
 - (b) the requirements of this Act and of relevant provisions of any other Act referred to in Division 4 of Part 3A.

122C Minister may require monitoring or environmental audits by imposition of conditions on approved project

- (1) The Minister may, by the imposition of conditions on the approval for a project, require monitoring or an environmental audit or audits to be undertaken to the satisfaction of the Minister by the proponent of the project.
- (2) A condition requiring monitoring or an environmental audit may be imposed at the time the approval for the project is given or at any other time by notice in writing to the proponent of the project.
- (3) Any such condition imposed by notice may be varied or revoked by a similar notice.

122D Provisions relating to conditions for monitoring and environmental audits

- (1) A condition requiring monitoring may require:
 - (a) the provision and maintenance of appropriate measuring and recording devices for the purposes of the monitoring, and

- (b) the analysis, reporting and retention of monitoring data, and
 - (c) certification of the monitoring data (including the extent to which the terms and conditions of any approval have or have not been complied with).
- (2) A condition requiring an environmental audit must specify the purpose of the audit. Such a condition may require:
- (a) the conduct of the audit by the proponent or by an independent person or body approved by the Minister or the Director-General (either periodically or on particular occasions), and
 - (b) preparation of written documentation during the course of the audit, and
 - (c) preparation of an audit report, and
 - (d) certification of the accuracy and completeness of the audit report, and
 - (e) production to the Minister of the audit report.

122E Offences

- (1) **False or misleading information in monitoring or audit report**
A person must not include information in (or provide information for inclusion in):
- (a) a report of monitoring data, or
 - (b) an audit report produced to the Minister in connection with an environmental audit,
- if the person knows that the information is false or misleading in a material respect.
- (2) **Information not included in monitoring or audit report**
The proponent of an approved project must not fail to include information in (or provide information for inclusion in):
- (a) a report of monitoring data, or
 - (b) an audit report produced to the Minister in connection with an environmental audit,
- if the proponent knows that the information is materially relevant to the monitoring or audit.

(3) **Retention of monitoring data or audit documentation**

The proponent of an approved project must:

- (a) retain any monitoring data in accordance with the relevant condition of the approval for at least 5 years after it was collected, and
- (b) retain any documentation required to be prepared by the proponent in connection with an environmental audit for a period of at least 5 years after the audit report concerned was produced to the Minister, and
- (c) produce during that period any such documentation on request to an authorised officer under Division 2C.

(4) **Penalty**

Despite section 126, the maximum penalty for an offence under section 125 arising under this Division is:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

122F Self-incriminatory information and use of information

- (1) Information must be supplied by a person in connection with a report of monitoring or an environmental audit, and this Division applies to any such information that is supplied, whether or not the information might incriminate the person.
- (2) Any information in monitoring data or in an audit report or other documentation supplied to the Minister in connection with an environmental audit may be taken into consideration by the Minister and used for the purposes of this Act.
- (3) Without limiting the above, any such information:
 - (a) is admissible in evidence in any prosecution of the proponent of an approved project for any offence (whether under this Act or otherwise), and
 - (b) may be disclosed by the Minister by publishing it in such manner as the Minister considers appropriate.

Division 2C Departmental enforcement powers

Subdivision 1 Preliminary

122G Purposes for which powers under Division may be exercised

- (1) Powers may be exercised under this Division for the following purposes:
 - (a) for enabling the Minister or Director-General to exercise their functions under this Act,
 - (b) for determining whether there has been compliance with or a contravention of this Act, the regulations, any environmental planning instrument, any approval under Part 3A or any development consent under Part 4 or any document or requirement issued or made under this Act,
 - (c) for obtaining information or records for purposes connected with the administration of this Act,
 - (d) generally for administering this Act and securing the objects of this Act.
- (2) Powers are not to be exercised under this Division for the purpose only of investigating the exercise of the statutory functions of a council under this Act.
- (3) Nothing in this Division affects any function under any other part of this Act or under any other Act.

122H Definitions: Division 2C

In this Division:

authorised officer means a person appointed under section 122I.

occupier of premises means the person who has the management or control of the premises.

records includes plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise).

122I Appointment of authorised officers

- (1) The Director-General may appoint any person (including a class of persons) as an authorised officer for the purposes of this Division.
- (2) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.
- (3) Every authorised officer is to be provided with an identification card as an authorised officer by the Director-General.
- (4) In the course of exercising the functions of an authorised officer under this Division, the officer must, if requested to do so by any person affected by the exercise of any such function, produce the officer's identification card to the person.

Subdivision 2 Powers of entry and search of premises

122J Powers of authorised officers to enter premises

- (1) An authorised officer may enter:
 - (a) any premises at which the authorised officer reasonably suspects that any industrial, agricultural or commercial activities are being carried out—at any time during which those activities are being carried out there, and
 - (b) any other premises—at any reasonable time.
- (2) A power to enter premises conferred by this Subdivision authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.
- (3) Entry may be effected under this Subdivision by an authorised officer with the aid of such authorised officers or police officers as the authorised officer considers necessary and with the use of reasonable force.
- (4) Entry may be effected to any premises with the authority of a search warrant under section 122M.

122K Entry into residential premises only with permission or warrant

This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 122M.

122L Powers of authorised officers to do things at premises

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Division, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any of the following:
 - (a) examine and inspect any works, plant or other article,
 - (b) take and remove samples,
 - (c) make such examinations, inquiries and tests as the authorised officer considers necessary,
 - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
 - (e) require records to be produced for inspection,
 - (f) examine and inspect any records,
 - (g) copy any records,
 - (h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
 - (i) do any thing that a person authorised by a council is empowered to do under Division 1A,
 - (j) do any other thing the authorised officer is empowered to do under this Division.
- (3) The power to seize anything connected with an offence includes a power to seize:
 - (a) a thing with respect to which the offence has been committed, and
 - (b) a thing that will afford evidence of the commission of the offence, and

Schedule 5 Enforcement amendments

- (c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

122M Search warrants

(1) **Application for search warrant**

An authorised officer may apply to an authorised justice for the issue of a search warrant if the authorised officer believes on reasonable grounds that a provision of or made under this Act is being or has been contravened at any premises.

(2) **Issue of search warrant**

An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:

- (a) to enter the premises, and
(b) to exercise any function of an authorised officer under this Division.

(3) **Application of Search Warrants Act 1985**

Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

(4) **Definition**

In this section:

authorised justice has the same meaning as in the *Search Warrants Act 1985*.

122N Assistance to be given to authorised officers

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Division in connection with any premises.
- (2) The Director-General may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.

- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

122O Care to be taken and compensation

- (1) In the exercise of a power of entering or searching premises under this Subdivision, the authorised officer must do as little damage as possible.
- (2) The State must compensate all interested parties for any damage caused by an authorised officer in exercising a power of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.

Subdivision 3 Power to obtain information or records

122P Application of Subdivision

This Subdivision applies whether or not a power of entry under this Division is being or has been exercised.

122Q Requirement to provide information and records

- (1) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter within the responsibilities and functions of the Minister or Director-General under this Act.
- (2) A notice under this Subdivision must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

122R Provisions relating to records

- (1) A notice under this Subdivision may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.

Schedule 5 Enforcement amendments

- (2) The body or person to whom any record is furnished under this Subdivision may take copies of it.
- (3) If any record required to be furnished under this Subdivision is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

122S Power of authorised officers to require answers

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required in connection with any matter within the responsibilities and functions of the Minister or Director-General under this Act to answer questions in relation to those matters.
- (2) The Minister or Director-General may require a corporation to nominate a director or officer of the corporation who is authorised to represent the corporation for the purposes of answering questions under this section.

Subdivision 4 General

122T Criminal proceedings relating to compliance with requirements under this Division

- (1) A person is not guilty of an offence under section 125 in respect of a neglect or failure to comply with a requirement made of the person under this Division if the person satisfies the court that the person had a lawful excuse for doing so.
- (2) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Division that the person knows is false or misleading in a material respect.
- (3) A person must not wilfully delay or obstruct an authorised officer in the exercise of the authorised officer's powers under this Division.
- (4) Despite section 126, the maximum penalty for an offence under section 125 arising under this Division is:

- (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

122U Provisions relating to requirements to furnish records, information or answer questions

(1) Warning to be given on each occasion

A person is not guilty of an offence of failing to comply with a requirement under this Division to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

(2) Self-incrimination not an excuse

A person is not excused from a requirement under this Division to furnish records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.

(3) Information or answer not admissible if objection made

However, any information furnished or answer given by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Division) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.

(4) Records admissible

Any record furnished by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

Schedule 5 Enforcement amendments

(5) **Further information**

Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Division is not inadmissible on the ground:

- (a) that the record or information had to be furnished or the answer had to be given, or
- (b) that the record or information furnished or answer given might incriminate the person.

122V Miscellaneous provisions relating to notices

- (1) More than one notice under a provision of this Division may be given to the same person.
- (2) A notice given under this Division may be revoked or varied by a subsequent notice or notices (including by extending the time for compliance with the notice).
- (3) A notice may be given under this Division to a person in respect of a matter or thing even though the person is outside the State or the matter or thing occurs or is located outside the State, so long the matter or thing affects the environment of this State.

[18] Section 153 Notices

Insert at the end of section 153 (1) (b):

, or

- (c) by sending it by facsimile or electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person.

Schedule 6 Minor amendments

(Section 3)

[1] Section 4 Definitions

Omit the definition of *Department* from section 4 (1). Insert instead:

Department means the Department of Infrastructure, Planning and Natural Resources.

[2] Section 4 (1), definition of “Director-General”

Omit the definition. Insert instead:

Director-General means the Director-General of the Department.

[3] Section 4 (1)

Insert in alphabetical order:

ecologically sustainable development has the same meaning it has in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

[4] Section 13 Director-General of Department of Infrastructure, Planning and Natural Resources

Insert “or to the Director-General of the Department of Urban Affairs and Planning” after “Director of Planning” in section 13 (4).

[5] Section 32 Authorisation of matters under environmental planning instruments

Omit the section.

[6] Section 34 Environmental planning instruments—making, operation and inspection

Omit section 34 (1)–(4).

Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005 No 43

Schedule 6 Minor amendments

[7] Section 34, note

Insert at the end of section 34:

Note. An environmental planning instrument is an instrument for the purposes of the *Interpretation Act 1987*, and accordingly standard provisions under that Act applying to statutory instruments apply to environmental planning instruments.

[8] Section 45 Notification

Omit section 45 (1) (b).

[9] Sections 79B (5) (g), 112D (1) (g) and 112E (f)

Omit “(as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*)” wherever occurring.

[10] Section 115H Principles guiding administration of Division

Omit “(as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*)”.

[11] Section 117A Inquiry into councils by Director-General of Department of Local Government

Omit “Department of Planning” wherever occurring.

Insert instead “Department of Infrastructure, Planning and Natural Resources”.

[12] Section 117A (1)

Omit “environmental planning”.

[13] Section 155 Application of section 26 of the Interpretation Act 1987

Omit the section.

[14] Section 156 Statute law revision (sec 16)

Omit the section.

[15] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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(Infrastructure and Other Planning Reform) Act 2005*

[16] Schedule 6

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Environmental Planning and Assessment
Amendment (Infrastructure and Other
Planning Reform) Act 2005**

Division 1 Preliminary

Definition

In this Part:

2005 Amending Act means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

Savings and transitional regulations

Regulations made under Part 1 of this Schedule have effect despite anything to the contrary in this Part.

Schedule 7 Amendment of other Acts and regulation

(Section 4)

7.1 Building and Construction Industry Long Service Payments Act 1986 No 19

Section 3 Definitions

Insert after section 3 (2):

- (3) A reference within the Act to a development consent under the *Environmental Planning and Assessment Act 1979* includes a reference to an approval under Part 3A of that Act.

7.2 Duties Act 1997 No 123

Section 162S Improved vacant land

Insert “, and includes an approval under Part 3A of that Act” at the end of the definition of *development consent* in section 162S (3).

7.3 Environmental Planning and Assessment Regulation 2000

[1] Clause 17 For what matters may a development control plan provide?

Omit the clause.

[2] Clause 92A Preliminary planning: sections 79C (1) (a) (iv) and 80 (11) of the Act

Omit clause 92A (1) (d) and (2) (d) and the definition of *master plan* in clause 92A (5).

7.4 Fisheries Management Act 1994 No 38

[1] Section 201 Circumstances in which a person may carry out dredging or reclamation work

Insert at the end of section 201 (2) (b):

, or

- (c) work excluded from the operation of this section by the regulations.

[2] Section 220ZF Defences

Insert after section 220ZF (1) (b) (ii):

- (iii) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or

7.5 Forestry and National Park Estate Act 1998 No 163

Section 36 Application of Environmental Planning and Assessment Act 1979

Insert after section 36 (2):

- (2A) Forestry operations cannot be declared to be a project under Part 3A of the *Environmental Planning and Assessment Act 1979* during any period that an integrated forestry operations approval applies to those operations.

7.6 Heritage Act 1977 No 136

[1] Section 56 Definitions

Insert “an application under Part 3A or” after “not being” in paragraph (a) of the definition of *prescribed application*.

Environmental Planning and Assessment Amendment (Infrastructure and
Other Planning Reform) Act 2005 No 43

Schedule 7 Amendment of other Acts and regulation

[2] Section 66 Application of Subdivision

Insert “Part 3A and” after “1979 (“.

7.7 Interpretation Act 1987 No 15

[1] Section 3 Definitions

Insert “or an environmental planning instrument” after “statutory rule” in the definition of *instrument* in section 3 (1).

[2] Section 5 Application of Act

Insert after section 5 (5):

- (6) The provisions of sections 24, 28, 29, 30, 30B, 33, 42, 43, 69A, 75 and 80 that apply to a statutory rule also apply to an environmental planning instrument.

[3] Section 21 Meaning of commonly used words and expressions

Insert in section 21 (1) in alphabetical order:

environmental planning instrument means an environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979*.

[4] Section 45 Presumption of validity of certain instruments

Insert at the end of paragraph (b) of the definition of *instrument* in section 45 (2):

- , or
(c) an environmental planning instrument,

7.8 Land and Environment Court Act 1979 No 204

Section 17 Class 1—environmental planning and protection appeals

Insert “75K, 75L, 75Q, 75W (5),” before “95A” in section 17 (d).

7.9 Lord Howe Island Act 1953 No 39

Section 15A

Omit the section. Insert instead:

15A Application of EPA Act

- (1) Parts 4, 4A and 5A and Division 2A of Part 6 of the *Environmental Planning and Assessment Act 1979* apply to the Island as if a reference to the consent authority were a reference to the Board.
- (2) For the purposes of that Act:
 - (a) the Island is taken to be a region within the meaning of that Act, and
 - (b) the Board is taken to be the council of an area situated in that region.

7.10 Mine Subsidence Compensation Act 1961 No 22

Section 15 Mine subsidence districts

Insert after section 15 (8):

- (8A) A person does not commit an offence against this section for anything done within a mine subsidence district that is excluded from the operation of this section by the regulations.

Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005 No 43

Schedule 7 Amendment of other Acts and regulation

7.11 Mining Act 1992 No 29

[1] Section 65 Development consents under Environmental Planning and Assessment Act 1979

Insert “(being a mining lease granted and a development consent given before the commencement of Schedule 7.9 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*)” after “has been given” in section 65 (3).

[2] Section 65 (3) (a)

Insert “, as in force immediately before that commencement” after “Schedule 1”.

[3] Section 74 Mining unaffected by Environmental Planning and Assessment Act 1979

Omit the section.

[4] Section 110 Councils and development consents

Omit section 110 (2).

[5] Section 239 Rehabilitation etc of area damaged by mining

Insert at the end of the section:

- (5) This section has effect despite anything to the contrary in section 93 of the *Environmental Planning and Assessment Act 1979*.

[6] Section 381 Prospecting unaffected by epis

Omit “the *Environmental Planning and Assessment Act 1979* or” and “that Act or”.

[7] Section 381

Insert at the end of the section:

- (2) A reference in this section to an environmental planning instrument does not include a reference to a State environmental planning policy made on or after the commencement of this subsection.

[8] Schedule 1, Part 2, Division 1, heading

Omit the heading. Insert instead:

Division 1 Notification of Government agencies where development consent not required for mining

[9] Schedule 1, clause 4A

Insert before clause 5:

4A Application of Division

This Division does not apply to the grant of a mining lease if a development consent (or approval under Part 3A of the *Environmental Planning and Assessment Act 1979*) is required before the land is used for obtaining minerals.

[10] Schedule 1, Part 2, Division 2, heading

Omit the heading. Insert instead:

Division 2 Landowner consent not required where development consent required for mining

[11] Schedule 1, clauses 13 and 15

Omit the clauses.

7.12 National Parks and Wildlife Act 1974 No 80

[1] Section 91AA Director-General may make stop work order

Insert at the end of section 91AA (4) (c):

, or

- (d) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*.

[2] Section 98 Harming protected fauna, other than threatened species, endangered populations or endangered ecological communities

Insert at the end of section 98 (5) (c):

, or

- (d) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*.

[3] Section 99A Directions relating to protected fauna

Insert after section 99A (6) (c):

- (c1) in relation to anything essential for carrying out a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or

[4] Section 118A Harming or picking threatened species, endangered populations or endangered ecological communities

Insert after section 118A (3) (b) (iii):

- (iv) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or

[5] Section 118C Damage to critical habitat

Insert after section 118C (5) (b) (iii):

- (iv) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or

[6] Section 118D Damage to habitat of threatened species, endangered populations or endangered ecological communities

Insert after section 118D (2) (b) (iii):

- (iv) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or

[7] Section 156A Offence of damaging reserved land

Insert after section 156A (2) (c) (ii):

- (iii) a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, or

7.13 Petroleum (Onshore) Act 1991 No 84

[1] Section 46 Application of Part 5 of Environmental Planning and Assessment Act 1979

Omit the section.

[2] Section 47

Omit the section. Insert instead:

47 Application of epis

- (1) If a person is authorised under this Act to carry out operations authorised under a petroleum title other than a production lease:
 - (a) nothing in, or done under, an environmental planning instrument operates so as to prevent the holder of the title carrying out any such operations on the land comprised in the title, and
 - (b) to the extent to which anything in, or done under, any such instrument would so operate, it is of no effect in relation to the holder.

Schedule 7 Amendment of other Acts and regulation

- (2) A reference in this section to an environmental planning instrument does not include a reference to a State environmental planning policy made on or after the commencement of this subsection.

[3] Section 48 Application of this Division to Government bodies where development consent etc not required

Omit section 48 (1). Insert instead:

- (1) This Division does not apply to the grant of a production lease if a development consent (or approval under Part 3A of the *Environmental Planning and Assessment Act 1979*) is required before the land is used for the purpose of obtaining petroleum.

[4] Section 54A

Insert before section 55:

54A Division applies only where development consent etc not required

This Division does not apply to the grant of a production lease if a development consent (or approval under Part 3A of the *Environmental Planning and Assessment Act 1979*) is required before the land is used for the purpose of obtaining petroleum.

[5] Section 62 Definitions

Omit the definition of *operational condition*.

[6] Section 63 Applicant for lease required to obtain development consent

Omit the section.

[7] Section 65 Avoidance of certain conditions imposed on grant of development consent

Omit the section.

[8] Section 66 Environmental Planning and Assessment Act 1979 not otherwise to affect operations

Omit the section.

[9] Section 67

Omit the section. Insert instead:

67 Development consent under Environmental Planning and Assessment Act 1979

- (1) This section applies if development consent is required for the use of land for the purpose of obtaining petroleum.
- (2) The Minister must not grant a production lease over the land unless an appropriate development consent is in force in respect of the land.

[10] Section 68 Certain consents and conditions still operative

Omit the section.

[11] Section 76 Rehabilitation etc of area damaged by operations

Insert at the end of the section:

- (5) This section has effect despite anything to the contrary in section 93 of the *Environmental Planning and Assessment Act 1979*.

7.14 Redfern–Waterloo Authority Act 2004 No 107

[1] Section 28 Authority as approval body for State infrastructure or other significant projects

Omit “that is declared to be State significant development for the purpose of” from section 28 (1).

Insert instead “that is declared to be a project for the purposes of Part 3A of”.

[2] Section 28 (2) and (3)

Omit “consent authority” and “development” wherever occurring.

Insert instead “approval body” and “project”, respectively.

[3] Section 28A

Insert after section 28:

28A Planning agreements with respect to development

The Minister and the Authority are taken to be planning authorities for the purposes of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

[4] Sections 29, 30 and 31

Omit “that is State significant development” from sections 29 (1), 30 (1) and 31 (1) wherever occurring.

Insert instead “that is a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies”.

[5] Section 30 (2)

Insert “(as applied by section 75R (4) of that Act)” after “1979”.

[6] Section 30 (2) and (5)

Omit “in relation to development” wherever occurring.

Insert instead “in relation to a project”.

[7] Section 30 (4)

Omit the subsection.

[8] Section 31 (2), (4) and (8)

Omit “consent authority”, “development to which this section applies” and “development consent” wherever occurring.

Insert instead “approval body”, “a project to which this section applies” and “approval”, respectively.

[9] Section 32

Omit “State significant development” from section 32 (2).

Insert instead “a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies”.

7.15 Roads Act 1993 No 33

[1] Section 64 RTA may exercise functions of roads authority with respect to certain roads

Insert after section 64 (1):

(1A) The RTA may, for the purposes of the carrying out of a project approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, exercise the functions of a roads authority with respect to any road.

[2] Section 64 (2)

Omit “classified”.

7.16 Rural Fires Act 1997 No 65

Section 100B Bush fire safety authorities

Insert after section 100B (5) (a):

(a1) does not include the carrying out of any development excluded from the operation of this section by the regulations, and

7.17 Water Management Act 2000 No 92

Chapter 2, Part 3, Division 10 Regional environmental plans

Omit the Division.

[Minister's second reading speech made in—
Legislative Assembly on 27 May 2005
Legislative Council on 9 June 2005]

BY AUTHORITY