

Passed by both Houses



New South Wales

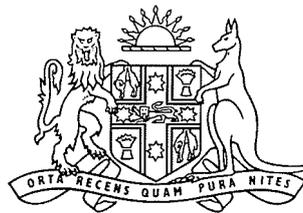
Environmental Planning Legislation Amendment Bill 2006

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	2
4 Amendment of City of Sydney Act 1988 No 48	2
5 Amendment of other Acts	2
6 Repeal of Act	2
Schedule 1 Amendment of Environmental Planning and Assessment Act 1979	3
Schedule 2 Amendment of City of Sydney Act 1988	21
Schedule 3 Amendment of other Acts	25

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Environmental Planning Legislation Amendment Bill 2006

Act No , 2006

An Act to amend the *Environmental Planning and Assessment Act 1979* with respect to the certification of development, development contributions, major projects and other miscellaneous matters; to amend the *City of Sydney Act 1988* with respect to the Central Sydney Planning Committee; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Environmental Planning Legislation Amendment Act 2006*.

2 Commencement

- (1) This Act commences on the date of assent to this Act except as provided in subsection (2).
- (2) The following provisions of this Act commence on a day or days to be appointed by proclamation:
 - (a) Schedule 1 [6]–[31] and [42]–[46],
 - (b) Schedule 3.3 and 3.4.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

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

4 Amendment of City of Sydney Act 1988 No 48

The *City of Sydney Act 1988* is amended as set out in Schedule 2.

5 Amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

[1] Section 4 Definitions

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

Department means the Department of Planning.

[2] Section 75B Projects to which Part applies

Insert “(including by an order that amends such a policy)” after “Gazette” in section 75B (1) (b).

[3] Section 75B (1)

Insert “or a class of” after “particular”.

[4] Section 75B (3)

Insert “only” after “If” and “The development is to be dealt with under this Part as a single project.” after “applies.”.

[5] Section 75C Critical infrastructure projects

Insert at the end of the section:

- (2) Section 75B applies to a declaration under this section in the same way as it applies to a declaration under that section. The declaration of a critical infrastructure project under this section may (but need not) be made at the same time or by the same method as the declaration under section 75B relating to the project.

[6] Section 75I Director-General’s environmental assessment report

Insert at the end of section 75I (2) (f):

, and

- (g) a statement relating to compliance with the environmental assessment requirements under this Division with respect to the project.

[7] Section 75J Giving of approval by Minister to carry out project

Omit section 75J (1) (a) and (b). Insert instead:

- (a) the proponent makes an application for the approval of the Minister under this Part to carry out a project, and
- (b) the Director-General has given his or her report on the project to the Minister,

[8] Section 75J (2) (a)

Insert “(and the statement relating to compliance with environmental assessment requirements)” after “recommendations”.

[9] Section 75J (3)

Omit the subsection. Insert instead:

- (3) In deciding whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

[10] Section 75J (5)

Insert after section 75J (4):

- (5) The conditions of approval for the carrying out of a project may require the proponent to comply with any obligations in a statement of commitments made by the proponent (including by entering into a planning agreement referred to in section 93F).

[11] Section 75M Application for approval of concept plan for project

Omit “submit a concept plan” from section 75M (1), “The concept plan” (wherever occurring) from section 75M (2) and (3) and “the submission” (wherever occurring) from section 75M (4).

Insert instead, respectively, “apply for approval of a concept plan”, “The application” and “an application for approval”.

[12] Section 75M (3A)

Insert after section 75M (3):

- (3A) A single application may be made for approval of a concept plan for a project and for approval to carry out any part or aspect of the project. In that case, environmental assessment requirements, public consultation and reports under this Division and Division 2 with respect to the project may be combined.

[13] Section 75O Giving of approval for concept plan

Omit section 75O (1) (a) and (b). Insert instead:

- (a) the proponent makes an application for the approval of the Minister under this Part of a concept plan for a project, and
- (b) the Director-General has given his or her report on the project to the Minister,

[14] Section 75O (2) (a)

Insert “(and the statement relating to compliance with environmental assessment requirements)” after “recommendations”.

[15] Section 75O (3)

Omit the subsection. Insert instead:

- (3) In deciding whether or not to give approval for the concept plan for a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for a concept plan for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

[16] Section 75O (4)

Omit “with such modifications of the project”.

Insert instead “with such modifications of the concept plan”.

[17] Section 75O (5)

Insert after section 75O (4):

- (5) Approval for the concept plan may be given under this Division subject to satisfactory arrangements being made, before final approval is given for the project or any stage of the project under this Part or under the other provisions of this Act, for the purpose

of fulfilling the obligations in a statement of commitments made by the proponent (including by entering into a planning agreement referred to in section 93F).

[18] Section 75P Determinations with respect to project for which concept plan approved

Insert after section 75P (1):

- (1A) The further requirements for approval to carry out the project or any part of the project that the Minister may determine under subsection (1) (a) are not limited to matters that the Director-General may require under Division 2.

Note. The Minister may, for example, require a design competition for any building that is part of the project.

[19] Section 75P (2) (a1)

Insert after section 75P (2) (a):

- (a1) any consent granted for the project or that stage of the project under Part 4 is to be subject to such conditions as the Minister directs for the purpose of fulfilling the obligations in a statement of commitments submitted by the proponent (in which case those conditions cannot be modified without the approval of the Minister and a person cannot appeal to the Court under this Act in respect of the direction or any such conditions imposed by the consent authority),

[20] Section 75P (2) (c1)

Insert after section 75P (2) (c):

- (c1) a provision of an environmental planning instrument prohibiting or restricting the carrying out of the project or that stage of the project under Part 4 (other than a project of a class prescribed by the regulations) does not have effect if the Minister so directs,

[21] Section 75Q Appeal by proponent

Omit “a concept plan has been submitted” from section 75Q (1).

Insert instead “an application for approval of a concept plan has been made”.

[22] Section 75R Application of other provisions of Act

Omit the note to section 75R (3). Insert instead:

Note. See sections 75J (3) and 75O (3) in relation to the application of such instruments when an application for approval of a project or a concept plan is being considered.

[23] Section 75R (3A)

Insert after section 75R (3):

(3A) The Minister may, by order published in the Gazette, amend an environmental planning instrument to authorise the carrying out of any of the following development (or to remove or modify any provisions of the instrument that purport to prohibit or restrict the carrying out of any of the following development):

- (a) development that is an approved project,
- (b) development that is a project for which a concept plan has been approved (whether or not approval for carrying out the project or any part of the project is subject to this Part).

[24] Section 75S Erection and occupation of buildings and subdivision of land

Insert before section 75S (1):

(1A) For the purposes of this section, a relevant provision is section 81A, section 109M or any other provision of this Act relating to the issue of subdivision certificates.

[25] Section 75S (1)

Omit "Section 81A". Insert instead "A relevant provision".

[26] Section 75S (2)

Omit the subsection. Insert instead:

- (2) However:
 - (a) a relevant provision does not apply unless that provision would have applied if this Part did not apply to the project, and
 - (b) a relevant provision applies to a critical infrastructure project if the Minister when giving approval under this Part makes it a condition of that approval that the provision applies.

[27] Section 75U Approvals etc legislation that does not apply

Insert "or State protected land" after "clear native vegetation" in section 75U (1) (e).

[28] Section 75U (4)

Insert after section 75U (3) (after the note):

- (4) A reference in this section to an approved project includes a reference to any investigative or other activities that are required to be carried out for the purpose of complying with any environmental assessment requirements under this Part in connection with an application for approval to carry out the project or of a concept plan for the project.

[29] Section 75X Miscellaneous provisions relating to approvals under this Part

Omit “concept plans submitted for the Minister’s approval” from section 75X (2) (e).

Insert instead “applications for the Minister’s approval of concept plans”.

[30] Section 75YA

Insert after section 75Y:

75YA Surrender of approvals and consents

- (1) An approval under this Part may be surrendered, subject to and in accordance with the regulations, by any person entitled to act on the approval.
- (2) A condition of the approval of a project under this Part may require any one or more of the following:
 - (a) the surrender under subsection (1) of any other approval under this Part relating to the project or the land concerned,
 - (b) the surrender under section 104A of any development consent relating to the project or the land concerned,
 - (c) the surrender, subject to and in accordance with the regulations, of a right conferred by Division 10 of Part 4 relating to the project or the land concerned.

[31] Section 75ZA Savings, transitional and other provisions

Omit section 75ZA (2) and (3). Insert instead:

- (2) The regulations may make provision for or with respect to the effect of any such action under Part 4 or Part 5 after the declaration is made or to the effect of the revocation of a

declaration after an approval has been given under this Part. In particular, the regulations may make provision for or with respect to:

- (a) the termination or consolidation of consents or approvals under Part 4 or Part 5, and
 - (b) the revival of consents or approvals under Part 4 or Part 5 or the preservation of the effect of approvals under this Part, and
 - (c) the recognition of any environmental assessment under Part 4 or Part 5 for the purposes of this Part or of any environmental assessment under this Part for the purposes of Part 4 or Part 5.
- (3) Any development that has been approved by the Minister under this Part (at any time after the commencement of this Part) is taken to be a project to which this Part applies, and to have been such a project for the purposes of any application, concept plan or other matter under this Part in relation to the development.
- (4) Subsection (3) extends to things that purport to be done under this Part.

[32] Section 78A Application

Omit “1–6, 8, 9” from section 78A (3). Insert instead “1–5”.

[33] Section 78A (3), note

Omit the note to the subsection.

[34] Section 93D Relationship to planning instruments

Omit “(other than section 93I)”.

[35] Section 93F Planning agreements

Insert after section 93F (3):

- (3A) A planning agreement cannot exclude the application of section 94 or 94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement.

[36] Section 93I Circumstances in which planning agreements can or cannot be required to be made

Omit “application.” from section 93I (3) (b). Insert instead:

application,

or that is in the terms of a commitment made by the proponent in a statement of commitments made under Part 3A.

[37] Section 94CA

Insert after section 94C:

94CA Public service or public amenity may be provided outside NSW

A condition may, with the written approval of the Minister, be imposed under section 94 or 94A for the provision of a public amenity or public service on land in another State or Territory if the area in which the development the subject of the condition is to be carried out adjoins the other State or Territory.

[38] Section 94ED Provision of infrastructure

Insert at the end of section 94ED (1) (c):

and

- (d) the Minister, corporation, Department or Director-General doing any one or more of the following:
 - (i) carrying out of any research or investigation,
 - (ii) preparing any report, study or instrument,
 - (iii) doing any other matter or thing in connection with the exercise of any statutory function under this Act,

[39] Section 94ED (2)

Insert “or within New South Wales” after “contributions area”.

[40] Section 94EE Minister to determine development contributions

Insert after section 94EE (3):

- (3A) The determination of the Minister is to identify what part (if any) of a development contribution, that is to be imposed as a condition under this Subdivision, is for the provision of infrastructure by a council or for any one or more of the matters set out in section 94ED (1) (d).
- (3B) Any part of a development contribution identified in accordance with subsection (3A):
 - (a) is, for the purposes of Subdivision 5, taken not to be received by the consent authority under this Subdivision, and
 - (b) is not to be taken into account in calculating the cost of infrastructure for the purposes of subsection (2) (b), and

- (c) is, if the part is identified as being for the provision of infrastructure by a council, to be provided to the council and is to be held and applied by the council in accordance with section 93E, and
- (d) is, if the part is identified as being for any one or more of the matters set out in section 94ED (1) (d), to be provided to the Department and is to be held and applied by the Department in accordance with section 93E.

[41] Section 95 Lapsing of consent

Insert after section 95 (5):

- (6) Despite any other provision of this section, a development consent that is subject to a deferred commencement condition under section 80 (3) lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within 5 years from the grant of the consent or, if a shorter period is specified by the consent authority, within the period so specified.

[42] Section 109E Principal certifying authorities

Insert after section 109E (1):

- (1AA) The council must, if appointed under subsection (1), accept that appointment.

[43] Section 109EA Replacement of principal certifying authorities

Insert after section 109EA (1):

- (1A) If the relevant authority approves the appointment of the council to replace another person as the principal certifying authority, the council must accept that appointment.

[44] Sections 109F (1) and 109G

Omit “the certifying authority is satisfied that” wherever occurring.

[45] Section 109H

Omit the section. Insert instead:

109H Restrictions on issue of occupation certificates

- (1) There are two kinds of occupation certificates, as follows:
 - (a) an *interim occupation certificate* that authorises a person to commence occupation or use of a partially completed new building, or to commence a new use of part of a building resulting from a change of building use for an existing building,
 - (b) a *final occupation certificate* that authorises a person to commence occupation or use of a new building, or to commence a new use of a building resulting from a change of building use for an existing building.

It is not necessary for an interim occupation certificate to be issued before a final occupation certificate is issued with respect to the same building.

- (2) An occupation certificate must not be issued unless any preconditions to the issue of the certificate that are specified in a development consent or complying development certificate have been met.
- (3) An interim occupation certificate must not be issued to authorise a person to commence to occupy or use a partially completed new building unless:
 - (a) a development consent or complying development certificate is in force with respect to the building, and
 - (b) in the case of a building erected pursuant to a development consent but not a complying development certificate, a construction certificate has been issued with respect to the plans and specifications for the building, and
 - (c) the partially completed building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - (d) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

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- (4) An interim occupation certificate must not be issued to authorise a person to commence a new use of part of a building resulting from a change of building use for an existing building unless:
- (a) a development consent or complying development certificate is in force with respect to the change of building use, and
 - (b) the part of the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - (c) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (5) A final occupation certificate must not be issued to authorise a person to commence occupation or use of a new building unless:
- (a) a development consent or complying development certificate is in force with respect to the building, and
 - (b) in the case of a building erected pursuant to a development consent but not a complying development certificate, a construction certificate has been issued with respect to the plans and specifications for the building, and
 - (c) the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - (d) such other matters as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (6) A final occupation certificate must not be issued to authorise a person to commence a new use of a building resulting from a change of building use for an existing building unless:
- (a) a development consent or complying development certificate is in force with respect to the change of building use, and
 - (b) the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
 - (c) such other matters as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

- (7) In this section:
new building includes an altered portion of, or an extension to, an existing building.

[46] Section 109J

Omit the section. Insert instead:

109J Restriction on issue of subdivision certificates

- (1) A subdivision certificate must not be issued for a subdivision unless:
- (a) the subdivision is not prohibited by or under this Act, and
 - (b) in the case of subdivision that may not be carried out except with development consent, a development consent (or, in the case of complying development, a complying development certificate) is in force with respect to the subdivision, and
 - (c) in the case of subdivision for which a development consent has been granted, the applicant has complied with all conditions of the consent that, by its terms, are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision, and
 - (d) in the case of subdivision for which a “deferred commencement” consent under section 80 (3) has been granted, the applicant has satisfied the consent authority concerning all matters as to which the consent authority must be satisfied before the consent can operate, and
 - (e) in the case of subdivision that relates to land within a water supply authority’s area of operations, the applicant has obtained a certificate of compliance from the water supply authority with respect to the subdivision of the land, and
 - (f) in the case of subdivision the subject of an order made by the Court under section 40 of the *Land and Environment Court Act 1979* concerning the provision of drainage easements, all such drainage easements have been acquired by the council as referred to in that section, and
 - (g) in the case of subdivision the subject of a development consent for which the consent authority is required by the regulations to notify any objector:
 - (i) at least 28 days have elapsed since the objector was notified, or
 - (ii) if an appeal has been made by the objector within that time, the appeal has been finally determined.

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- (2) Without limiting subsection (1), a subdivision certificate must not be issued for a subdivision that involves subdivision work unless:
- (a) the work has been completed, or
 - (b) agreement has been reached between the applicant for the certificate and the consent authority:
 - (i) as to the payment by the applicant to the consent authority of the cost of carrying out the work, and
 - (ii) as to when the work will be completed by the consent authority, or
 - (c) agreement has been reached between the applicant for the certificate and the consent authority:
 - (i) as to the security to be given by the applicant to the consent authority with respect to the work to be completed, and
 - (ii) as to when the work will be completed by the applicant.
- (3) Subsection (2) does not prohibit the issue of a subdivision certificate for part only of land that may be subdivided in accordance with a development consent as long as the requirements of that subsection have been complied with in relation to that part.
- (4) In this section:
- certificate of compliance***, in relation to a water supply authority, means a certificate of compliance issued by the water supply authority under the Act under which the water supply authority is constituted.
- water supply authority*** means:
- (a) the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority within the meaning of the *Water Management Act 2000*, or
 - (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

[47] Section 109M Occupation and use of new building requires occupation certificate

Omit “(4)” from section 109M (1).

[48] Section 110E

Insert after section 110D:

110E Exemptions for certain activities

Sections 111 and 112 do not apply to or in respect of the following (despite the terms of those sections):

- (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,
- (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.

[49] Section 111A Exemption

Omit the section.

[50] Section 116D Reference of undetermined applications to Minister

Omit “60 days” from section 116D (1). Insert instead “40 days”.

[51] Section 116E Negotiating determination of development application

Omit “40 days” from section 116E (4) (c) and “40-day” from section 116E (5).
Insert instead, respectively, “21 days” and “21-day”.

[52] Section 122J Powers of authorised officers to enter premises

Omit “or police officers” from section 122J (3).
Insert instead “, police officers or other persons”.

[53] Section 122S Power of authorised officers to require answers and record evidence

Insert after section 122S (2):

- (3) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.

- (4) The place and time at which a person may be required to attend under subsection (3) is to be:
 - (a) a place or time nominated by the person, or
 - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised officer that is reasonable in the circumstances.
- (5) An authorised officer may cause any questions and answers to questions given under this section to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (6) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer.
- (7) A copy of any such record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.
- (8) A record may be made under this section despite the provisions of any other law.

[54] Section 127 Proceedings for offences

Insert after section 127 (5):

- (5A) However, proceedings for any such offence may also be commenced within, but not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer within the meaning of Division 2C of Part 6.
- (5B) If subsection (5A) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an authorised officer is the date specified in the information or application, unless the contrary is established.
- (5C) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.

[55] Section 137 Charges and fees fixed by regulation

Insert after section 137 (1):

- (1A) The regulations may prescribe charges or fees, and prescribe the circumstances in which a person or body becomes liable for any such charge or fee, if the Minister, corporation, Department or Director-General carries out any research or investigation, prepares any report, study or instrument or does any other matter or thing in connection with the exercise of any statutory function under this Act, either at the request of the person or body or for the benefit of the person or body.

Note. Such functions may include making an environmental planning instrument.

[56] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Environmental Planning Legislation Amendment Act 2006

[57] Schedule 6

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

**Part Environmental Planning Legislation
Amendment Act 2006**

Definition

In this Part:

amending Act means the *Environmental Planning Legislation Amendment Act 2006*.

Savings and transitional regulations

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

Part 3A matters

- (1) The amendments made by Schedule 1 [3], [4] and [5] to the amending Act apply to declarations made (or purporting to be made) before the commencement of those amendments.
- (2) The amendment made by Schedule 1 [12] to the amending Act applies only to applications lodged after the commencement of the amendment.

- (3) The other amendments to Part 3A of this Act made by Schedule 1 to the amending Act extend to matters pending under Part 3A on the commencement of those amendments.
- (4) A concept plan that was submitted before the commencement of the amendments made by Schedule 1 [11], [18] and [25] to the amending Act may continue to be dealt with after that commencement as if it were an application for approval of a concept plan.

Planning agreements—exclusion of section 94 or 94A

Section 93F (3A), as inserted by the amending Act, applies only to a planning agreement that is entered into after the commencement of that subsection and that was the subject of public notice under section 93G after that commencement.

Contributions for public service or amenity outside NSW

Section 94CA, as inserted by the amending Act, extends to permit contributions provided for a public amenity or service, as a result of a condition allowed under a contributions plan that is in force before the commencement of that section, to be applied, with the written approval of the Minister, to an equivalent, similar or related public amenity or service.

Lapsing of consent

A development consent granted before the commencement of section 95 (6), as inserted by the amending Act, that is subject to a deferred commencement condition under section 80 (3), lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within:

- (a) 5 years after the date consent was granted, or
- (b) 2 years after the date of the commencement of section 95 (6),

whichever is the later.

Occupation certificates

Section 109H, as substituted by the amending Act, does not apply to or in respect of an application for an occupation certificate made, but not determined, before that substitution and that section, as in force immediately before that substitution, continues to apply to and in respect of any such application.

Subdivision certificates

Section 109J, as substituted by the amending Act, does not apply to or in respect of an application for a subdivision certificate made, but not determined, before that substitution and that section, as in force immediately before that substitution, continues to apply to and in respect of any such application.

Reference of undetermined applications to the Minister

Section 116D, as amended by the amending Act, does not apply to an application made, but not determined, before that amendment and that section, as in force immediately before that amendment, continues to apply to any such application.

Negotiating determination of development application

Section 116E, as amended by the amending Act, does not apply to an application made, but not determined, before that amendment and that section, as in force immediately before that amendment, continues to apply to any such application.

Time limit for bringing proceedings

Section 127 (5A)–(5C), as inserted by the amending Act, apply only in respect of offences alleged to have been committed after the commencement of those subsections.

Schedule 2 Amendment of City of Sydney Act 1988

(Section 4)

[1] Section 4 Definitions

Insert after section 4 (2):

- (3) Notes included in this Act do not form part of this Act.

[2] Section 31 Definitions

Insert in alphabetical order:

RailCorp means Rail Corporation New South Wales.

[3] Section 32 Relationship of this Part and other provisions to Planning Act

Omit “This Part and Schedule 1 shall be” from section 32 (1).

Insert instead “This Part, section 61 and Schedule 1 are to be”.

[4] Section 34

Omit the section. Insert instead:

34 Members of Planning Committee

- (1) The Planning Committee is to consist of the following 7 members:
- (a) the Lord Mayor of Sydney,
 - (b) 2 councillors of the City of Sydney elected by the City Council,
 - (c) 4 persons (2 of whom are senior State government employees and 2 of whom are not State or local government employees) appointed by the Minister administering Part 4 of the Planning Act, each having expertise in at least one of architecture, building, civic design, construction, engineering, transport, tourism, the arts, planning or heritage.
- (2) The Minister administering Part 4 of the Planning Act is to obtain the concurrence of the Minister administering the *Public Works Act 1912* before appointing a senior State government employee under subsection (1) (c) if the employee is appointed because of his or her expertise in architecture or civic design.
- (3) At least one of the senior State government employees appointed under subsection (1) (c) must be either the Director-General of the Department of Planning or a senior executive officer of the Department of Planning.

[5] Section 41 Consultation with Minister or public authority

Insert “or RailCorp” after “City Council” in section 41 (1).

[6] Section 41 (2)

Omit “section 84”. Insert instead “section 79C”.

[7] Section 42 Minister or public authority may make representations

Insert “(other than RailCorp)” after “A Minister or public authority” in section 42 (1).

[8] Section 43 Representations to be taken into consideration

Omit “section 90 (1)” from section 43 (1). Insert instead “section 79C”.

[9] Section 45

Omit the section. Insert instead:

45 Section 79B of the Planning Act not to apply

Section 79B of the Planning Act does not apply to or in respect of major development except in respect of a requirement in an environmental planning instrument that consent not be granted to the development without the consent, permission, approval or concurrence of RailCorp.

[10] Section 61 Development contributions

Insert at the end of the section:

Note. Section 32 (1) provides that this section is to be construed with, and as if it formed part of, the Planning Act.

[11] Schedule 1 The Planning Committee

Omit “(e)” from the definition of *appointed member* in clause 1.

Insert instead “(c)”.

[12] Schedule 1, clause 1, definition of “elected member”

Omit “(c)”. Insert instead “(b)”.

[13] Schedule 1, clause 4 (2)–(5)

Omit the subclauses. Insert instead:

- (2) The City Council may appoint an alternate for each of the elected members of the Planning Committee.
- (3) The Minister administering Part 4 of the Planning Act may appoint alternates for the appointed members of the Planning

Committee and the appointment of any such alternate may specify the circumstances in which the person so appointed is to act as an alternate.

- (4) A person, other than a person appointed under subclause (3), may not be an alternate member for more than one member of the Planning Committee at the same time.
- (5) A person may not act in the office of more than one member of the Planning Committee at the same time.

[14] Schedule 1, clause 6

Insert “, or alternate,” after “An appointed member”.

[15] Schedule 1, clause 6

Omit “the appointed member”. Insert instead “the member or alternate”.

[16] Schedule 1, clause 6 (2)

Insert at the end of the clause:

- (2) Remuneration under this clause is not to be paid to an appointed member, or alternate, who is a State government employee.

[17] Schedule 1, clauses 15A and 16

Omit clause 16. Insert instead:

15A Inclusion of items in agenda for meeting

Any 2 members of the Planning Committee may notify the Chairperson of a matter or topic to be included in the agenda for a meeting of the Committee and the Chairperson is to ensure that the matter or topic is included in the agenda.

16 Application of Local Government Act 1993 to meetings

The following provisions apply to and in respect of the members of the Planning Committee in the same way as they apply to and in respect of councillors of a council, except in so far as provision is otherwise made by or under this Act:

- (a) Part 1 of Chapter 4 and Division 2 of Part 2 of Chapter 12 of the *Local Government Act 1993*,
- (b) the regulations made under that Act (but only in so far as those regulations apply to the conduct of council meetings and the conduct of councillors in respect of such meetings).

[18] Schedule 3 Savings, transitional and other provisions

Omit clause 29 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
- this Act
- City of Sydney Amendment Act 1997*
- Local Government Legislation Amendment (Elections) Act 1998*
- Environmental Planning Legislation Amendment Act 2006* (but only to the extent that it amends this Act)

[19] Schedule 3, Part 10

Insert after Part 9:

**Part 10 Provisions consequent on enactment of
Environmental Planning Legislation
Amendment Act 2006**

32 Definition

In this Part:

amending Act means the *Environmental Planning Legislation Amendment Act 2006*.

33 Members of Planning Committee

A person who was a member of the Planning Committee immediately before the substitution of section 34 by the amending Act continues to be a member despite that substitution until such time as the person ceases to be a member in accordance with this Act.

34 Concurrence of RailCorp

Sections 41 (1) and 42 (1), as amended by the amending Act, and section 45, as substituted by that Act, do not apply to or in respect of a development application lodged, but not determined, before the commencement of Schedule 2 to the amending Act and those sections, as in force immediately before that commencement, continue to apply to and in respect of any such application.

Schedule 3 Amendment of other Acts

(Section 5)

3.1 Building Professionals Act 2005 No 115

Schedule 3 Amendment of Acts and regulation

Insert after proposed section 109EA (2) in Schedule 3.2 [11]:

- (3) If the Building Professionals Board approves the appointment of the relevant council to replace another person as the principal certifying authority under subsection (1) (a), the council must accept that appointment.

3.2 Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001 No 93

[1] Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

Omit “an approved amusement device (within the meaning of the *Liquor Act 1982*) or poker machine (within the meaning of the *Registered Clubs Act 1976*)” from paragraph (b) of the definition of *place of public entertainment* in item [1].

Insert instead “an approved gaming machine within the meaning of the *Gaming Machines Act 2001*”.

[2] Schedule 2, item [5]

Omit “1–6, 8, 9”. Insert instead “1–5”.

[3] Schedule 2, item [5]

Omit “5, 6, 8, 9”. Insert instead “5”.

[4] Schedule 2, item [6]

Omit the item.

[5] Schedule 2, items [10A] and [10B]

Insert after item [10]:

[10A] Section 157 Regulations

Insert after section 157 (1) (d):

- (d1) temporary structures, or

(d2) places of public entertainment, or

[10B] Section 157 (1) (d3)

Insert after section 157 (1) (d2) (as inserted by item [10A]):

(d3) domestic oil or solid fuel heating appliances (other than portable appliances), or

[6] Schedule 2, item [15]

Omit proposed clause 40 (4). Insert instead:

(4) This clause ceases to have effect 2 years after the date on which it commences.

[7] Schedule 2, item [15]

Omit proposed clause 41 (3). Insert instead:

(3) This clause ceases to have effect 2 years after the date on which it commences.

3.3 Strata Schemes (Freehold Development) Act 1973 No 68

[1] Section 37 Approval of proposed strata plans, certain subdivisions and conversions of lots into common property

Omit section 37 (1) and (1A). Insert instead:

- (1) Subject to this Division, a local council must, on application made to it for a strata certificate in respect of a proposed strata plan that does not include a development lot or lots, issue to the applicant a strata certificate in respect of that plan if:
 - (a) where the land proposed to be subdivided is situated within a water supply authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and
 - (b) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi), (vii) and (viii) are satisfied:
 - (i) a construction certificate has been issued under the *Environmental Planning and Assessment Act 1979* with respect to the erection of any building containing any proposed lots to which the strata plan relates,
 - (ii) the proposed lots illustrated by that plan substantially correspond with parts of any such building shown in the building plans accompanying

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- the construction certificate and designated in those building plans as being intended for separate occupation,
- (iii) any such building was completed not more than 12 months, or such longer period as the local council may in any particular case fix, before the application for the strata certificate under this subsection was made to the certifier,
 - (iv) separate occupation of the proposed lots illustrated by the strata plan will not contravene the provisions of the *Environmental Planning and Assessment Act 1979* or of any environmental planning instrument within the meaning of that Act,
 - (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan,
 - (vi) having regard to the circumstances of the case and the public interest, the local council is satisfied that the subdivision to which the plan relates will not interfere with the existing or likely future amenity of the neighbourhood,
 - (vii) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice of a kind referred to in, or given under, a provision referred to in subsection (1B),
 - (viii) if the local council has made an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979* in relation to the land proposed to be subdivided—the order has been complied with or an appeal against the order has been made under section 121ZK of that Act and the Land and Environment Court has refused to confirm the order.
- (1A) Subject to this Division, a local council must, on application made to it for a strata certificate in respect of a proposed strata plan that includes a development lot or lots, or of a proposed strata plan of subdivision of a development lot, issue to the applicant a strata certificate in respect of that plan if:
- (a) the requirements of subsection (1) (a) and (b) are satisfied, and

- (b) the plan and any building containing proposed lots to which the plan relates:
 - (i) satisfy any applicable development consent conditions, and
 - (ii) give effect to the stage of the strata development contract to which they relate.

[2] Section 37 (1B)

Omit “subsection (1) (b) (iv)”. Insert instead “subsection (1) (b) (vii)”.

[3] Section 37 (3) (c) and (4) (b)

Omit “subsection (1) (b) (i), (ii) and (iii), as if the reference in subsection (1) (b)” wherever occurring.

Insert instead “subsection (1) (b) (iv), (v) and (vi), as if the reference in subsection (1)”.

[4] Section 37 (6) (a)

Omit “subsection (1) (b) (iii)”. Insert instead “subsection (1) (b) (vi)”.

[5] Section 37A

Omit the section. Insert instead:

37A Approvals by accredited certifiers

- (1) An accredited certifier may issue a strata certificate in respect of a proposed strata plan, proposed strata plan of subdivision or proposed notice of conversion in accordance with this section.
- (2) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that does not include a development lot or lots if:
 - (a) there is a relevant development consent in force, and
 - (b) all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with, and
 - (c) where the land proposed to be subdivided is situated within a water supply authority’s area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and

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- (d) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi) and (vii) are satisfied:
- (i) a construction certificate has been issued under the *Environmental Planning and Assessment Act 1979* with respect to the erection of any building containing any proposed lots to which the strata plan relates,
 - (ii) the proposed lots illustrated by that plan substantially correspond with parts of any such building shown in the building plans accompanying the construction certificate and designated in those building plans as being intended for separate occupation,
 - (iii) any such building was completed not more than 12 months, or such longer period as the relevant local council may in any particular case fix, before the application for the strata certificate under this subsection was made to the certifier,
 - (iv) separate occupation of the proposed lots illustrated by the strata plan will not contravene the provisions of the *Environmental Planning and Assessment Act 1979* or of any environmental planning instrument within the meaning of that Act,
 - (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan,
 - (vi) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice of a kind referred to in, or given under, a provision referred to in section 37 (1B),
 - (vii) if the relevant local council has made an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979* in relation to the land proposed to be subdivided—the order has been complied with or an appeal against the order has been made under section 121ZK of that Act and the Land and Environment Court has refused to confirm the order.

- (3) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that includes a development lot or development lots, or in respect of a proposed strata plan of subdivision of a development lot, if:
 - (a) the requirements of subsection (2) (a)–(d) are satisfied, and
 - (b) the plan and any building containing proposed lots to which the plan relates:
 - (i) satisfy any applicable development consent conditions, and
 - (ii) give effect to the stage of the strata development contract to which they relate.
- (4) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 5 (7) (a) if:
 - (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied, and
 - (b) the body corporate concerned has certified that by resolution passed at a general meeting it agrees to the proposed subdivision.
- (5) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 5 (7) (b), (c) or (d) if:
 - (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied, and
 - (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision.
- (6) An accredited certifier must issue a strata certificate in respect of a proposed notice of conversion if:
 - (a) the requirements of subsection (2) (a) and (b) are satisfied, and
 - (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision.
- (7) Despite any other provision of this section, a strata certificate must not be issued by an accredited certifier unless all regulations with respect to the provision of such certificates have been complied with.

[6] Section 38 Encroachments

Omit “it is satisfied that” from section 38 (1).

[7] Section 38 (1) (c)

Insert “it is satisfied that” before “retention”.

[8] Section 38 (1A)

Omit the subsection. Insert instead:

- (1A) An accredited certifier must refuse to issue a strata certificate in respect of a proposed strata plan or strata plan of subdivision if any building illustrated by that plan encroaches on to a public place unless:
- (a) the plan clearly indicates the existence of the encroachment and its nature and extent, and
 - (b) either one of the following matters is satisfied:
 - (i) the building complies with any relevant development consent in force with respect to the building with the encroachment,
 - (ii) any relevant development consent in force with respect to the subdivision the subject of the plan specifies the existence of the encroachment.

[9] Schedule 4 Transitional and savings provisions

Insert after Part 5:

**Part 6 Transitional provisions relating to the
Environmental Planning Legislation
Amendment Act 2006**

1 Strata certificates

Division 4 of Part 2, as amended by the *Environmental Planning Legislation Amendment Act 2006*, does not apply to or in respect of an application for a strata certificate made, but not determined, before the commencement of Schedule 3.3 to that Act and that Division, as in force immediately before that commencement, continues to apply to and in respect of any such application.

3.4 Strata Schemes (Leasehold Development) Act 1986 No 219

[1] Section 66 Approval of proposed strata plans, certain subdivisions and conversions of lots into common property

Omit section 66 (1). Insert instead:

- (1) Subject to this Division, a local council must, on application made to it for a strata certificate in respect of a proposed strata plan that does not include a development lot or lots, issue to the applicant a strata certificate in respect of that plan if:
 - (a) where the land proposed to be subdivided is situated within a water supply authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and
 - (b) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi), (vii) and (viii) are satisfied:
 - (i) a construction certificate has been issued under the *Environmental Planning and Assessment Act 1979* with respect to the erection of any building containing any proposed lots to which the strata plan relates,
 - (ii) the proposed lots illustrated by that plan substantially correspond with parts of any such building shown in the building plans accompanying the construction certificate and designated in those building plans as being intended for separate occupation,
 - (iii) any such building was completed not more than 12 months, or such longer period as the local council may in any particular case fix, before the application for the strata certificate under this subsection was made to the certifier,
 - (iv) separate occupation of the proposed lots illustrated by the strata plan will not contravene the provisions of the *Environmental Planning and Assessment Act 1979* or of any environmental planning instrument within the meaning of that Act,
 - (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan,

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- (vi) having regard to the circumstances of the case and the public interest, the local council is satisfied that the subdivision to which the plan relates will not interfere with the existing or likely future amenity of the neighbourhood,
 - (vii) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice of a kind referred to in, or given under, a provision referred to in subsection (1A),
 - (viii) if the local council has made an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979* in relation to the land proposed to be subdivided—the order has been complied with or an appeal against the order has been made under section 121ZK of that Act and the Land and Environment Court has refused to confirm the order.

[2] Section 66 (1A)

Omit “subsection (1) (b) (iv) and (c) (iv)”.

Insert instead “subsection (1) (b) (vii)”.

[3] Section 66 (2)

Omit the subsection. Insert instead:

- (2) Subject to this Division, a local council must, on application made to it for a strata certificate in respect of a proposed strata plan that includes a development lot or lots, or of a proposed strata plan of subdivision of a development lot, issue to the applicant a strata certificate in respect of that plan if:
 - (a) the requirements of subsection (1) (a) and (b) are satisfied, and
 - (b) the plan and any building containing proposed lots to which the plan relates:
 - (i) satisfy any applicable development consent conditions, and
 - (ii) give effect to the stage of the strata development contract to which they relate.

[4] Section 66 (4) (c)

Omit “subsection (1) (b) (i), (ii) and (iii) or subsection (1) (c) (i), (ii) and (iii), as if the reference in subsection (1) (b) or (c)”.

Insert instead “subsection (1) (b) (iv), (v) and (vi), as if the reference in subsection (1)”.

[5] Section 66 (5) (b)

Omit “subsection (1) (b) (i), (ii) or (iii) and subsection (1) (c) (i), (ii) and (iii) as if the reference in subsection (1) (b) or (c)”.

Insert instead “subsection (1) (b) (iv), (v) and (vi), as if the reference in subsection (1)”.

[6] Section 66 (7) (a)

Omit “subsection (1) (b) (iii) or (1) (c) (iii)”.

Insert instead “subsection (1) (b) (vi)”.

[7] Section 66 (7A)

Insert after section 66 (7):

- (7A) For the purposes of subsections (1), (2), (4), (5) and (7), if an Act provides that Part 4 of the *Environmental Planning and Assessment Act 1979* does not apply to the carrying out of the development on the land to which the strata plan relates, a reference in subsection (1) (b) (iv) or (v) to the *Environmental Planning and Assessment Act 1979* or an environmental planning instrument is taken to be a reference to the Act under which development consent to the carrying out of development on that land may be granted or an instrument made under that Act as the case requires.

[8] Section 66A

Omit the section. Insert instead:

66A Approvals by accredited certifiers

- (1) An accredited certifier may issue a strata certificate in respect of a proposed strata plan, proposed strata plan of subdivision or proposed notice of conversion in accordance with this section.
- (2) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that does not include a development lot or lots if:
 - (a) there is a relevant development consent in force, and

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- (b) all conditions of the development consent that, by its terms, are required to be complied with before a strata certificate may be issued have been complied with, and
 - (c) where the land proposed to be subdivided is situated within a water supply authority's area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, and
 - (d) the requirements of subparagraphs (i), (ii) and (iii) or the requirements of subparagraphs (iv), (v), (vi) and (vii) are satisfied:
 - (i) a construction certificate has been issued under the *Environmental Planning and Assessment Act 1979* with respect to the erection of any building containing any proposed lots to which the strata plan relates,
 - (ii) the proposed lots illustrated by that plan substantially correspond with parts of any such building shown in the building plans accompanying the construction certificate and designated in those building plans as being intended for separate occupation,
 - (iii) any such building was completed not more than 12 months, or such longer period as the relevant local council may in any particular case fix, before the application for the strata certificate under this subsection was made to the certifier,
 - (iv) separate occupation of the proposed lots illustrated by the strata plan will not contravene the provisions of the *Environmental Planning and Assessment Act 1979* or of any environmental planning instrument within the meaning of that Act,
 - (v) any consent required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan,
 - (vi) the land proposed to be subdivided is not the subject of any outstanding order, requirement or notice of a kind referred to in, or given under, a provision referred to in section 66 (1A),
 - (vii) if the relevant local council has made an order of the kind referred to in Order No 6 in the Table to section 121B of the *Environmental Planning and Assessment Act 1979* in relation to the land proposed to be subdivided—the order has been complied with

or an appeal against the order has been made under section 121ZK of that Act and the Land and Environment Court has refused to confirm the order.

- (3) An accredited certifier must issue a strata certificate in respect of a proposed strata plan that includes a development lot or development lots, or in respect of a proposed strata plan of subdivision of a development lot, if:
 - (a) the requirements of subsection (2) (a)–(d) are satisfied, and
 - (b) the plan and any building containing proposed lots to which the plan relates:
 - (i) satisfy any applicable development consent conditions, and
 - (ii) give effect to the stage of the strata development contract to which they relate.
- (4) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 4 (7) (a) if:
 - (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied (as if the reference in subsection (2) (d) (iv) or (v) is a reference to the plan to which the application for certification relates), and
 - (b) the body corporate concerned has certified that by resolution passed at a general meeting it agrees to the proposed subdivision.
- (5) An accredited certifier must issue a strata certificate in respect of a plan illustrating a proposed subdivision (not being a proposed subdivision of a development lot) referred to in section 4 (7) (b), (c) or (d) if:
 - (a) the requirements of subsection (2) (a), (b) and (d) (iv) and (v) are satisfied (as if the reference in subsection (2) (d) (iv) or (v) is a reference to the plan illustrating the proposed subdivision), and
 - (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision.
- (6) An accredited certifier must issue a strata certificate in respect of a proposed notice of conversion if:
 - (a) the requirements of subsection (2) (a) and (b) are satisfied, and

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- (b) the body corporate concerned has certified that by special resolution passed by the body corporate it agrees to the proposed subdivision.
 - (7) For the purposes of subsections (2)–(5), if an Act provides that Part 4 of the *Environmental Planning and Assessment Act 1979* does not apply to the carrying out of the development on the land to which the strata plan relates, a reference in subsection (2) (d) (iv) or (v) to the *Environmental Planning and Assessment Act 1979* or an environmental planning instrument is taken to be a reference to the Act under which development consent to the carrying out of development on that land may be granted or an instrument made under that Act as the case requires.
 - (8) Despite any other provision of this section, a strata certificate must not be issued by an accredited certifier unless all regulations with respect to the provision of such certificates have been complied with.

[9] Section 67 Encroachments

Omit “it is satisfied that” from section 67 (1).

[10] Section 67 (1) (c)

Insert “it is satisfied that” before “retention”.

[11] Section 67 (1A)

Omit the subsection. Insert instead:

- (1A) An accredited certifier must refuse to issue a strata certificate in respect of a proposed strata plan or strata plan of subdivision if any building illustrated by that plan encroaches on to a public place unless:
 - (a) the plan clearly indicates the existence of the encroachment and its nature and extent, and
 - (b) either one of the following matters is satisfied:
 - (i) the building complies with any relevant development consent in force with respect to the building with the encroachment,
 - (ii) any relevant development consent in force with respect to the subdivision the subject of the plan specifies the existence of the encroachment.

[12] Schedule 5 Transitional and savings provisions

Insert after Part 4:

**Part 5 Transitional provisions relating to the
Environmental Planning Legislation
Amendment Act 2006**

1 Strata certificates

Division 7 of Part 2, as amended by the *Environmental Planning Legislation Amendment Act 2006*, does not apply to or in respect of an application for a strata certificate made, but not determined, before the commencement of Schedule 3.4 to that Act and that Division, as in force immediately before that commencement, continues to apply to and in respect of any such application.