



New South Wales

# Environmental Planning and Assessment Amendment Bill 2008

## Explanatory note

The *Strata Management Legislation Amendment Bill 2008* is cognate with this Bill.

## Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* to implement improvements in the NSW planning system resulting from the proposals contained in the discussion paper released by the Department of Planning in November 2007.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedules 1 - 6.

**Clause 4** is a formal provision that gives effect to the consequential amendments to other Acts set out in Schedule 7.

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Environmental Planning and Assessment Amendment Bill 2008

Explanatory note

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**Clause 5** repeals the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979* as a consequence of the remaining operative provisions of that Act ceasing to have any operation following the amendments proposed by Schedule 1.

**Clause 6** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

[to be completed]

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New South Wales

# Environmental Planning and Assessment Amendment Bill 2008

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Environmental Planning and Assessment Act 1979 No 203 and other Acts and regulations	2
4 Repeal of Miscellaneous Acts (Planning) Repeal and Amendment Act 1979 No 205	2
5 Repeal of Act	2
Schedule 1 Amendments relating to environmental planning	3
1.1 Principal amendments to Environmental Planning and Assessment Act 1979	
1.2 Consequential and other amendments to Environmental Planning and Assessment Act 1979	
1.3 Amendments to Heritage Act 1977 No 136	
1.4 Amendments to Sydney Water Catchment Management Act 1998 No 171	
1.5 Amendments to Water Management Act 2000 No 92	

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

## Contents

---

	Page
Schedule 2	20
2.1	Principal amendments to the Environmental Planning and Assessment Act 1979
2.2	Consequential amendments to the Environmental Planning and Assessment Act 1979
2.3	Amendments to Heritage Act 1977 No 136
2.4	Amendment to Independent Commission Against Corruption Act 1988 No 35
2.5	Amendment to Ombudsman Act 1974 No 68
2.6	Amendment to Public Sector Employment and Management Act 2002 No 43
2.7	Amendment to Statutory and Other Offices Remuneration Act 1975 (1976 No 4)
2.8	Amendment to Water Act 1912 No 44
2.9	Amendments to Water Management Act 2000 No 92
2.10	Amendments to Environmental Planning and Assessment Regulation 2000
Schedule 3	74
3.1	Amendments to Environmental Planning and Assessment Act 1979
3.2	Amendment to Growth Centres (Development Corporations) Act 1974
3.3	Amendments to Environmental Planning and Assessment Regulation 2000
3.4	Amendments to City of Sydney Act 1988 No 48
Schedule 4	110
4.1	Amendments to Environmental Planning and Assessment Act 1979 No 203
4.2	Amendments to Environmental Planning and Assessment Regulation 2000
4.3	Amendments to Strata Schemes (Freehold Development) Act 1973 No 68
4.4	Amendments to Strata Schemes (Leasehold Development) Act 1986 No 219
Schedule 5	126
5.1	Amendments to Environmental Planning and Assessment Act 1979 No 203
5.2	Amendments to Standard Instrument (Local Environmental Plans) Order 2006

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exposure draft

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New South Wales

# Environmental Planning and Assessment Amendment Bill 2008

No , 2008

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## A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* and other Acts and regulations to improve the NSW planning system.

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See also cognate Bills:

*Strata Management Legislation Amendment Bill 2008*

*Building Professionals Amendment Bill 2008*

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Clause 1            Environmental Planning and Assessment Amendment Bill 2008

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Environmental Planning and Assessment Amendment Act 2008*.

**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 and other Acts and regulations**

The *Environmental Planning and Assessment Act 1979* and other Acts and regulations specified in Schedules 1–5 are amended as set out in those Schedules.

**4 Repeal of Miscellaneous Acts (Planning) Repeal and Amendment Act 1979 No 205**

The *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979* is repealed.

**5 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.

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to environmental planning

Schedule 1

---

## **Schedule 1     Amendments relating to environmental planning**

(Section 3)

### **1.1 Principal amendments to Environmental Planning and Assessment Act 1979**

#### **[1] Section 4 Definitions**

Omit the definition of *environmental planning instrument* from section 4 (1).

Insert instead:

*environmental planning instrument* means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 and in force.

#### **[2] Section 4 (1), definition of “regional environmental plan”**

Omit the definition.

#### **[3] Section 4 (1)**

Insert in alphabetical order:

*relevant planning authority*:

- (a) in relation to environmental planning instruments—see section 54, or
- (b) in relation to development control plans—see section 74B.

#### **[4] Section 24 Making of environmental planning instruments**

Insert at the end of the section:

- (2) Environmental planning instruments may be made:
  - (a) by the Governor under Division 2 (called a State environmental planning policy or SEPP), or
  - (b) by the Minister (or delegate) under Division 4 (called a local environmental plan or LEP).

**Note.** Under transitional arrangements made by Schedule 6, some former instruments (such as regional environmental plans, planning scheme ordinances and interim development orders) continue in force and are deemed to be environmental planning instruments.

#### **[5] Section 26 Contents of environmental planning instruments**

Insert after section 26 (3):

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 1 Amendments relating to environmental planning

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- (3A) An environmental planning instrument may make provision for any zoning of land or other provision to have effect only for a specified period or only in specified circumstances.

**[6] Section 33A Standardisation of environmental planning instruments**

Insert after section 33A (8):

- (8A) An 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:
- (a) the instrument adopts the provisions of a standard instrument for the purposes of replacing instruments that apply to the land concerned (being existing instruments that do not adopt the provisions of a standard instrument), and
  - (b) the Minister is of the opinion that the replacement instrument does not make any substantial changes to the general effect of the existing instrument or instruments.

**[7] Section 34A**

Omit the section. Insert instead:

**34A Special consultation procedures concerning threatened species**

- (1) In this section, the *relevant authority* means:
  - (a) in the case of a proposed SEPP—the Director-General, or
  - (b) in the case of a proposed LEP—the relevant planning authority.
- (2) Before an environmental planning instrument is made, the relevant authority must consult with the Director-General of the Department of Environment and Climate Change if, in the opinion of the relevant authority, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be adversely affected by the proposed instrument.
- (3) For the purposes of the consultation, the relevant authority is to provide such information about the proposed instrument as would assist in understanding its effect (including information of the kind prescribed by the regulations).
- (4) The consultation in relation to a proposed local environmental plan is to commence after a decision under section 56 (Gateway determination) that the matter should proceed, unless the regulations otherwise provide.



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to environmental planning

Schedule 1

---

- (5) The Director-General of the Department of Environment and Climate Change may comment to the relevant authority on the proposed instrument within the following period after the consultation commences:
  - (a) the period agreed between that Director-General and the relevant authority,
  - (b) in the absence of any such agreement, the period of 21 days or such other period as is prescribed by the regulations.
- (6) The consultation required by this section is completed when the relevant authority has considered any comments so made.

**[8] Part 3, Division 2**

Omit the Division. Insert instead:

**Division 2 SEPPs**

**37 Governor may make environmental planning instruments (SEPPs)**

- (1) The Governor may make environmental planning instruments for the purpose of environmental planning by the State. Any such instrument may be called a State environmental planning policy (or SEPP).
- (2) Without limiting subsection (1), an environmental planning instrument may be made by the Governor to make provision with respect to any matter that, in the opinion of the Minister, is of State or regional environmental planning significance.

**38 Consultation requirements**

Before recommending the making of an environmental planning instrument by the Governor, the Minister is to take such steps, if any, as the Minister considers appropriate or necessary:

- (a) to publicise an explanation of the intended effect of the proposed instrument, and
- (b) to seek and consider submissions from the public on the matter.

**Note.** See also section 34A.

**[9] Part 3, Division 3 Regional environmental plans**

Omit the Division.

**[10] Part 3, Divisions 4 and 4A**

Omit the Divisions. Insert instead:

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 1 Amendments relating to environmental planning

---

## Division 4 LEPs

### 53 Minister (or delegate) may make environmental planning instrument for local areas (LEPs)

- (1) The Minister (or delegate) may make environmental planning instruments for the purpose of environmental planning:
  - (a) in each local government area, and
  - (b) in such other areas of the State (including the coastal waters of the State) as the Minister determines.
- (2) Any such instrument may be called a local environmental plan (or LEP).

### 54 Relevant planning authority

- (1) For the purposes of this Part, the *relevant planning authority* in respect of a proposed instrument is as follows:
  - (a) the council for the local government area to which the proposed instrument is to apply, subject to paragraph (b),
  - (b) the Director-General or any other person or body prescribed by the regulations if the Minister so directs under subsection (2).
- (2) The Minister may direct that the Director-General (or any other person or body prescribed by the regulations) is the relevant planning authority for a proposed instrument in the following cases:
  - (a) the proposed instrument relates to a matter that, in the opinion of the Minister, is of State or regional environmental planning significance,
  - (b) the proposed instrument makes provision that, in the opinion of the Minister, is consequential on the approval of the concept plan for a project under Part 3A, is consequential on the making of another environmental planning or other instrument or is consequential on changes made to a standard instrument under section 33A,
  - (c) the Planning Assessment Commission or a Joint Regional Planning Panel has recommended to the Minister that the proposed instrument should be made,
  - (d) the council for the local government area concerned has, in the opinion of the Minister, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner,

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to environmental planning

Schedule 1

---

- (e) the proposed instrument is to apply to an area that is not within a local government area (subject to subsection (6)).
- (3) A relevant planning authority that is requested by the owner of any land to exercise its functions under this Division in relation to the land may, as a condition of doing so, require the owner to carry out studies or provide other information concerning the proposal or to pay the costs of the authority in accordance with the regulations.
- (4) The Minister may, in a direction under this section, require a council to provide studies or other information in its possession relating to the proposed instrument to be provided to the person or body specified in the direction as the relevant planning authority for the proposed instrument.
- (5) Two or more relevant local authorities may together exercise the functions under this Division of a relevant planning authority in connection with the making of a single principal or amending instrument in relation to the whole of their combined areas.
- (6) A reference in this section to a local government area includes a reference to an adjoining area that is not within a local government area and that is designated as part of that local government area for the purposes of this Division by the Minister by order published in the Gazette.

**Note.** Section 117 enables directions to be given to councils or other relevant planning authorities on the exercise of functions under this Division in relation to the making of an instrument.

**55 Relevant planning authority to prepare explanation of and justification for proposed instrument - the planning proposal**

- (1) Before an environmental planning instrument is made under this Division, the relevant planning authority is required to prepare a document that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument (the *planning proposal*).
- (2) The planning proposal is to include the following:
  - (a) a statement of the objectives or intended outcomes of the proposed instrument,
  - (b) an explanation of the provisions that are to be included in the proposed instrument,
  - (c) the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117),

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# exposure draft

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 1 Amendments relating to environmental planning

---

- (d) if maps are to be adopted by the proposed instrument (such as maps for proposed land use zones; heritage areas; flood prone land)—a copy of the maps prepared in accordance with the requirements determined under section 33C,
  - (e) details of the community consultation that is to be undertaken before consideration is given to the making the proposed instrument.
- (3) The Director-General may issue requirements with respect to the preparation of a planning proposal.

#### **56 Gateway determination**

- (1) After preparing a planning proposal, the relevant planning authority may forward it to the Minister.
- (2) After a review of the planning proposal, the Minister is to determine the following:
  - (a) whether the matter should proceed (with or without variation),
  - (b) whether the matter should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal),
  - (c) community consultation required before consideration is given to the making of the proposed instrument (*the community consultation requirements*),
  - (d) any consultation required with State or Commonwealth public authorities that will or may be adversely affected by the proposed instrument,
  - (e) whether a public hearing is to be held into the matter by the Planning Assessment Commission or other specified person or body,
  - (f) the times within which the various stages of the procedure for the making of the proposed instrument are to be completed,
  - (g) whether the function under this Division of making a local environmental plan in respect of the matter is to be exercised by the Minister or delegated to the relevant planning authority.Any such delegation may be set out in the determination or made by a separate instrument.
- (3) A determination of the community consultation requirements includes a determination under section 73A (or other provision of

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to environmental planning

Schedule 1

---

this Act) that the matter does not require community consultation.

- (4) The regulations may provide for the categorisation of planning proposals for the purposes of this section, and may prescribe standard community consultation requirements for each such category.
- (5) The Minister may arrange for the review of a planning proposal under this section to be conducted by, or with the assistance of, the Planning Assessment Commission or a Joint Regional Planning Panel:
  - (a) if there has been any delay in the matter being finalised, or
  - (b) if for any other reason the Minister considers it appropriate to do so.
- (6) The relevant planning authority may, at any time, forward a revised planning proposal to the Minister.
- (7) The Minister may, at any time, alter a determination made under this section.
- (8) A failure to comply with the requirements of a determination under this section in relation to a proposed instrument does not invalidate the instrument once it is made.

## **57 Community consultation**

- (1) Before consideration is given to the making of a local environmental plan, the relevant planning authority must consult the community in accordance with the community consultation requirements for the proposed instrument.
- (2) The planning proposal (as revised to comply with the determination under section 56 and in a form approved by the Director-General) is to be made publicly available during the period of community consultation. Detailed provisions may be summarised instead of being set out in full if the Director-General is satisfied that the summary provides sufficient details for community consultation.
- (3) During the period of community consultation, any person may make a written submission to the relevant planning authority concerning the matter (other than any matter that is mandatory under an applicable standard instrument under section 33A).
- (4) The relevant planning authority may (but need not) make publicly available, in accordance with the community

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# exposure draft

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 1 Amendments relating to environmental planning

---

consultation requirements, the submissions made concerning a matter (or a summary of or report on any such submissions).

- (5) If:
  - (a) a person making a submission so requests, and
  - (b) the relevant planning authority considers that the issues raised in a submission are of such significance that they should be the subject of a hearing,the relevant planning authority is to arrange a public hearing on the issues raised in the submission.
- (6) The relevant planning authority may arrange a public hearing on any issue whether or not a person has made a submission concerning the matter.
- (7) A report of any public hearing is to be furnished to the relevant planning authority and may be made publicly available by that authority.
- (8) The consultation required by this section is completed when the relevant planning authority has considered any submissions made concerning the proposed instrument and the report of any public hearing.

#### **58 Relevant planning authority may vary proposals or not proceed**

- (1) The relevant planning authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason.
- (2) If it does so, the relevant planning authority is to forward a revised planning proposal to the Minister.
- (3) Further community consultation under section 57 is not required unless the Minister so directs in a revised determination under section 56.
- (4) The relevant planning authority may also, at any time, request the Minister to determine that the matter not proceed.

#### **59 Making of local environmental plan by Minister**

- (1) The Director-General is to make arrangements for the drafting of any required local environmental plan to give effect to the final proposals of the relevant planning authority. The Director-General is to consult the relevant planning authority, in accordance with the regulations, on the terms of any such draft instrument.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to environmental planning

Schedule 1

---

- (2) The Minister (or the Minister's delegate) may, following completion of community consultation:
  - (a) make a local environmental plan (with or without variation of the proposals submitted by the relevant planning authority) in the terms the Minister (or delegate) considers appropriate, or
  - (b) decide not to make the proposed local environmental plan.
- (3) The Minister (or the Minister's delegate) may defer the inclusion of a matter in a proposed local environmental plan.
- (4) If the Minister (or the Minister's delegate) does not make the proposed local environmental plan or defers the inclusion of a matter in a proposed local environmental plan, the Minister (or delegate) may specify which procedures under this Division the relevant planning authority must comply with before the matter is resubmitted to the Minister (or delegate).

## 60 Regulations

The regulations may make further provision with respect to the making of environmental planning instruments under this Division, including:

- (a) requirements with respect to consultation about proposed instruments by a relevant planning authority with particular persons or bodies, and
- (b) requirements with respect to planning proposals and the submission of other related reports and documents, and
- (c) requirements with respect to advertising in connection with community consultation on proposed instruments, and
- (d) provisions relating to consultation by the Director-General with relevant planning authorities and others on the drafting of proposed instruments, and
- (e) requirements for concurrence of public authorities in relation to the reservation of land for a purpose referred to in section 26 (1) (c).

**Note.** The Interpretation Act 1987 applies to environmental planning instruments.

## [11] Section 73A Expedited amendments of environmental planning instruments

Insert at the end of the section:

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# exposure draft

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 1 Amendments relating to environmental planning

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- (c) deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.

**[12] Section 73A (2)**

Insert at the end of section 73A:

- (2) A reference in this section to an amendment of an instrument includes a reference to the amendment or replacement of a map adopted by an instrument.

**[13] Section 74B Definition (DCPs)**

Omit the definition of *relevant planning authority* in section 74B (1).

Insert instead:

*relevant planning authority*, in relation to any matter, means the council of the area to which the matter relates or the Director-General. However, the council is not the relevant planning authority in relation to a SEPP and the Director-General is not the relevant planning authority in relation to a LEP for which a council is the relevant planning authority under Division 4.

**[14] Section 74C Preparation of development control plans**

Omit section 74C (1) (c) (iv) and insert “or” at the end of section 74C (1) (c) (iii).

## **1.2 Consequential and other amendments to Environmental Planning and Assessment Act 1979**

**[1] Section 4 Definitions**

Omit the definition of *deemed environmental planning instrument* from section 4 (1).

**[2] Section 4 (1), definition of “development control plan”**

Omit the definition. Insert instead:

*development control plan* (or *DCP*) means a development control plan made, or taken to have been made, under Division 6 of Part 3 and in force.

**[3] Section 4 (1), definition of “local environmental plan”**

Omit the definition. Insert instead:



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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to environmental planning

Schedule 1

---

*local environmental plan* (or *LEP*)—see section 24 (2).

**[4] Section 4 (1), definition of “State environmental planning policy”**

Omit the definition. Insert instead:

*State environmental planning policy* (or *SEPP*)—see section 24 (2).

**[5] Section 4 (5)**

Omit the subsection. Insert instead:

- (5) A reference in this Act to an authority or person preparing a document includes a reference to the authority or person causing the document to be prepared on the authority’s or person’s behalf.

**[6] Section 7 Responsibility of Minister**

Omit “local environmental plans” from section 7 (b).

Insert instead “environmental planning instruments”.

**[7] Section 25 Statement of aims etc in environmental planning instruments**

Omit the section.

**[8] Section 26 Contents of environmental planning instruments**

Omit section 26 (2) and (3).

**[9] Section 33A Standardisation of environmental planning instruments**

Omit “Any draft of the instrument that is exhibited under this Act is to set out in full the provisions that are adopted.” from section 33A (3).

**[10] Section 33A (9)**

Omit “or draft instrument”.

**[11] Section 33B Staged repeal and review of environmental planning instruments**

Omit “draft replacement instruments” from section 33B (2) (b).

Insert instead “proposals for replacement instruments”.

**[12] Section 33B (2) (d)**

Omit “and regional environmental plans”.

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# exposure draft

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 1 Amendments relating to environmental planning

---

**[13] Section 33B (4)**

Omit “The Minister may, by order published in the Gazette, make a local environmental plan”.

Insert instead “The Minister may, under Division 4, make a local environmental plan”.

**[14] Section 33B (5) (a)**

Omit “an order making a plan under that subsection is not required to comply with other requirements”.

Insert instead “a local environmental plan made pursuant to that subsection is not required to comply with the conditions precedent in Division 4”.

**[15] Section 33B (5) (b)**

Omit the paragraph.

**[16] Section 33B (5) (c)**

Omit “draft plans,”.

**[17] Section 36 Inconsistency between instruments**

Omit section 36 (1) (a) and (b). Insert instead:

- (a) there is a general presumption that a State environmental planning policy prevails over a local environmental plan or other instrument made before or after that State environmental planning policy, and

**[18] Section 72K Joint exhibition of proposed instrument amendment and advertising of application**

Omit “the preparation and making of a draft environmental planning instrument” from section 72K (1).

Insert instead “the making of a proposed environmental planning instrument”.

**[19] Section 72K (2)**

Omit “the draft environmental planning instrument”.

Insert instead “the documents relating to the proposed environmental planning instrument”.

**[20] Section 72K (3)**

Omit “the draft environmental planning instrument proposes to make”.

Insert instead “the proposed environmental planning instrument makes”.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to environmental planning

Schedule 1

---

- [21] Section 72L Commission of Inquiry**  
Omit “a draft environmental planning instrument”.  
Insert instead “a proposed environmental planning instrument”.
- [22] Section 73 Review of environmental planning instruments**  
Omit “and regional environmental plans”.
- [23] Section 74 Amendment of environmental planning instruments**  
Omit section 74 (2).
- [24] Section 74B Definition (DCPs)**  
Omit “any such draft instrument” from section 74B (2).  
Insert instead “any such proposed instrument”.
- [25] Section 79B Consultation and concurrence**  
Omit “a deemed environmental planning instrument” from section 79B (8).  
Insert instead “a deemed instrument referred to in [*here insert relevant cross reference in transitional schedule*]”.
- [26] Section 79C Evaluation**  
Omit section 79C (1) (a) (ii). Insert instead:  
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- [27] Section 94F Conditions requiring land or contributions for affordable housing**  
Omit “regional environmental plan or” from section 94F (3) (b).
- [28] Section 96A Revocation or modification of development consent**  
Omit section 96A (1) (a) and (b). Insert instead:  
(a) the Director-General, having regard to the provisions of any proposed State environmental planning policy, or  
(b) a council (being the consent authority in relation to the development application referred to in this subsection),

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# exposure draft

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 1 Amendments relating to environmental planning

---

having regard to the provisions of any proposed local environmental plan,

- [29] Section 109A Uses unlawfully commenced**  
Omit “deemed environmental planning instrument” from section 109A (2).  
Insert instead “deemed instrument referred to in [*here insert relevant cross reference in transitional schedule*]”
- [30] Section 117 Directions by Minister**  
Omit “draft” from section 117 (2) (a).
- [31] Section 117 (2) (b)**  
Omit “a draft local environmental plan”.  
Insert instead “a planning proposal”.
- [32] Section 117 (2A) (b), (c)**  
Omit “draft plans” wherever occurring. Insert instead “planning proposals”.
- [33] Section 117 (5)**  
Omit “any draft”. Insert instead “any planning proposal”.
- [34] Section 117 (2B)**  
Insert after section 117 (2A):  
(2B) A reference to a council in subsection (2) and (2A) includes a reference to a relevant planning authority under Division 4 of Part 3 that is not a council.
- [35] Section 148 Disclosure and misuse of information**  
Omit “draft” from section 148 (3) (a). Insert instead “proposed”.
- [36] Section 154 Transfer or amalgamation of land to which environmental planning instrument applies**  
Omit “a draft local environmental plan that has been placed on public exhibition in accordance with section 66” from section 154 (2) (a).  
Insert instead “a planning proposal that has been placed on public exhibition in accordance with Division 4 of Part 3”.
- [37] Schedule 6 Savings, transitional and other provisions**  
Insert after Division 1 of Part 21 (as inserted by Schedule 5) with appropriate clause numbers:

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to environmental planning

Schedule 1

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## **Division 2 Provisions relating to plan making**

### **Subdivision 1 Preliminary**

#### **Definitions**

In this Part:

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

*local environmental plan* means a local environmental plan made under Part 3 of this Act (as in force immediately before the commencement of Schedule 1 to the amending Act).

*regional environmental plan* means a regional environmental plan made under Part 3 of this Act (as in force immediately before the commencement of Schedule 1 to the amending Act).

*State environmental planning policy* means a State environmental planning policy made under Part 3 of this Act (as in force immediately before the commencement of Schedule 1 to the amending Act).

### **Subdivision 2 State environmental planning policies and regional environmental plans**

#### **Continuation in force of SEPPs and REPs as environmental planning instruments**

- (1) All State environmental planning policies and regional environmental plans are, on the commencement of this clause, taken to be environmental planning instruments made by the Governor under Division 2 of Part 3 of this Act, as amended by the amending Act.
- (2) [additional provisions as required]

#### **Review of REPs**

- (1) As soon as practicable after the commencement of this clause, the Minister is to review the provisions of all regional environmental plans.
- (2) An environmental planning instrument (whether a principal or amending instrument) may be made by the Governor under Division 2 of Part 3 of this Act, or by the Minister under Division 4 of that Part, to transfer those existing environmental planning

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 1 Amendments relating to environmental planning

---

provisions (with or without modification) to appropriate principal instruments that apply to the land concerned.

- (3) Any such instrument may be made without compliance with the provisions of Part 3 of this Act relating to the conditions precedent to the making of the instrument.
- (4) [*additional provisions as required*]

### **Subdivision 3 Local environmental plans**

#### **Continuation in force of LEPs as environmental planning instruments**

- (1) All local environmental plans are, on the commencement of this clause, taken to be environmental planning instruments made by the Minister under Division 4 of Part 3 of this Act, as amended by the amending Act.
- (2) The Minister may dispense with any conditions precedent to the making of an environmental planning instrument under that Division if satisfied that the instrument was in the course of preparation before the commencement of this clause and the steps taken before that commencement are sufficient compliance with those conditions precedent.

### **Subdivision 4 Deemed environmental planning instruments**

[*Provisions necessary to carry forward deemed instruments as result of repeal of Miscellaneous Acts (Planning) Repeal and Amendment Act 1979.*]

### **Subdivision 5 Miscellaneous**

#### **Superseded references**

[*Provision to be made to deem references in other Acts and instruments to REPs, etc to be references to the corresponding kind of new environmental planning instrument.*]

## **1.3 Amendments to Heritage Act 1977 No 136**

### **Part 5 Environmental planning instruments affecting certain land**

Omit the Part.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to environmental planning

Schedule 1

---

## **1.4 Amendments to Sydney Water Catchment Management Act 1998 No 171**

### **[1] Section 31 Function of Tribunal**

Omit “with the provisions of the regional environmental plan or plans referred to in section 53”.

Insert instead “with the provisions of the environmental planning instrument that was made pursuant to section 53 before its repeal and that are currently in force”.

### **[2] Section 40 Other documents to be presented to Parliament**

Omit section 40 (1) (d).

### **[3] Section 48 Regulations concerning special areas**

Omit “, including an environmental planning instrument” from section 48 (2).

Insert instead “, other than a SEPP under the *Environmental Planning and Assessment Act 1979*”.

### **[4] Section 52 Regulations concerning controlled areas**

Omit “, including an environmental planning instrument” from section 52 (2).

Insert instead “, other than a SEPP under the *Environmental Planning and Assessment Act 1979*”.

### **[5] Part 5, Division 4 Regional environmental plan**

Omit the Division.

**Note.** Clauses 9 and 23 of the Drinking Water Catchments Regional Environmental Plan No1 relating to conditions precedent to making planning instruments (and made under the authority conferred by the above Division) to be omitted.

## **1.5 Amendments to Water Management Act 2000 No 92**

### **Section 322 Regulations**

Omit “, including an environmental planning instrument” from section 322 (2).

Insert instead “, other than a SEPP under the *Environmental Planning and Assessment Act 1979*”.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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## Schedule 2 Amendments relating to development assessment

(Section 3)

### 2.1 Principal amendments to the Environmental Planning and Assessment Act 1979

#### [1] Section 4 Definitions

Omit the definitions of *Commission of Inquiry* and *Commissioner of Inquiry* from section 4 (1).

#### [2] Section 4 (1), definition of “consent authority”

Omit paragraph (b) of the definition. Insert instead:

- (b) if a provision of this Act, the regulations or an environmental planning instrument specifies a Minister, the Planning Assessment Commission, a joint regional planning panel or public authority (other than a council) as having the function to determine the application—that Minister, Commission, panel or authority, as the case may be.

#### [3] Section 4 (1)

Insert in alphabetical order:

*independent hearing and assessment panel* means a panel constituted under section 23I.

*joint regional planning panel* means a joint regional planning panel constituted under section 23G.

*planning arbitrator* means a planning arbitrator listed on the register of planning arbitrators under section 23K.

*Planning Assessment Commission* means the Planning Assessment Commission constituted under section 23B.

*planning assessment panel* means a panel listed in Schedule 5B.

#### [4] Section 20 Local Government Liaison Committee

Omit the section.

#### [5] Section 22 Establishment of other committees

Omit the section.

#### [6] Section 23 Delegation

Omit “council, or” from section 23 (1) (e).



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

Insert instead “council”.

**[7] Section 23 (1) (f) and (g)**

Omit section 23 (1) (f). Insert instead:

- (f) the Planning Assessment Commission, or
- (g) a joint regional planning panel,

**[8] Section 23 (1A)**

Insert after section 23 (1):

- (1A) A joint regional planning panel may, by instrument in writing and with the approval of the Minister, delegate any of the panel’s functions conferred or imposed by or under this or any other Act to a council for an area situated wholly or partly in a part of the State for which the panel is appointed.

**[9] Section 23 (4), (5) and (6)**

Omit “or Director-General” wherever occurring.

Insert instead “, Director-General or panel”.

**[10] Section 23 (6)**

Omit “his or her”, Insert instead “the”.

**[11] Section 23 (8) (a1)**

Omit section 23 (8) (a1). Insert instead:

- (a1) the function of the Minister under Part 3A of determining whether to approve under section 75J the carrying out of a critical infrastructure project or under section 75O the concept plan for a critical infrastructure project, or

**[12] Part 2A**

Insert after Part 2:

## **Part 2A Other planning bodies**

### **Division 1 Preliminary**

#### **23A Definitions**

In this Part:

*Commission* means the Planning Assessment Commission.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

*regional panel* means a joint regional planning panel.

## **Division 2 Planning Assessment Commission**

### **23B Planning Assessment Commission**

- (1) There is constituted by this Act a body corporate with the corporate name of the Planning Assessment Commission of New South Wales.
- (2) The Commission has such functions as are conferred or imposed on it by or under this or any other Act.
- (3) The Commission is not subject to the direction or control of the Minister, except in relation to the procedures of the Commission and to the extent specifically provided for in this Act.
- (4) The Commission is a statutory body representing the Crown.  
**Note.** By virtue of section 13A of the *Interpretation Act 1987*, a statutory body representing the Crown has the status, privileges and immunities of the Crown.
- (5) Schedule 3 has effect with respect to the Commission.

### **23C Chairperson of Commission**

The affairs of the Commission are to be managed and controlled by the chairperson of the Commission.

**Note.** The chairperson is appointed under Schedule 3.

### **23D Functions of Commission**

- (1) The Commission has the following functions:
  - (a) to determine applications for the approval of projects and concept plans under Part 3A, if those matters are delegated to it by the Minister,
  - (b) if requested to do so by the Minister:
    - (i) to advise the Minister as to planning or development matters, environmental planning instruments or the administration or implementation of the provisions of this Act, or any related matter,
    - (ii) to review any aspect of a project, or a concept plan, under Part 3A,
    - (iii) to review all or any of the environmental aspects of proposed development the subject of a development application (whether or not it is designated development), or a part of any such proposed development,

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- (iv) to review all or any of the environmental aspects of an activity referred to in section 112 (1), or of a part of any such activity,
  - (v) to review a proposal to constitute, alter or abolish a development area under section 132 or 133,
  - (c) any function of a regional panel, an independent hearing and assessment panel or a planning assessment panel conferred on it by order in writing by the Minister,
  - (d) if a regional panel has not been appointed for any part of the State, any function that is conferred on a regional panel under an environmental planning instrument applicable to that part or that is otherwise conferred on a regional panel under this Act.
- (2) For the purposes of subsection (1) (c) and (d), the Commission has all the functions of the panel concerned.
- (3) The Commission cannot employ any staff.
- Note.** Staff to enable the Commission to exercise its functions may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service.
- (4) However, the Commission may:
- (a) arrange, with the approval of the Director-General, for the use of the services of any staff (by secondment or otherwise) of facilities of a Division of the Government Service or a public authority, and
  - (b) with the approval of the Director-General, engage such consultants as it requires to exercise its functions.

## **23E Reviews by, and procedures of, Commission**

The regulations may make provision for or with respect to the following:

- (a) the procedures of the Commission, including the procedures for reviews relating to any or all, or a class, of its functions,
- (b) without limiting paragraph (a), the circumstances in which public hearings are to be held by the Commission,
- (c) without limiting paragraph (a), providing that parties at a review are not to be legally represented or are only to be legally represented in specified circumstances,
- (d) the conferral on the Commission of power to require a person to give evidence or produce documents for the purposes of a hearing,

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

- (e) additional procedural requirements relating to hearings involving a proposed development or activity that may involve the need for an approval under the *Water Management Act 2000*,
- (f) reports of the Commission's findings and recommendations,
- (g) the making of findings and recommendations of the Commission public,
- (h) the provision of information by the Commission.

**23F No appeals against decisions by Commission after public hearings**

- (1) This section has effect despite any other provision of this Act or the regulations.
- (2) An appeal or application for a review under this Act may not be made in respect of a decision of the Commission in exercising a function conferred on the Commission by or under this Act (including a function delegated to it under this Act) if the decision was made by the Commission after a public hearing.
- (3) In this section:  
*appeal* includes a review application under Division 7A of Part 4.

**Division 3 Joint regional planning panels**

**23G Joint regional planning panels**

- (1) The Minister may, by order published in the Gazette, constitute a joint regional planning panel for a particular part of the State specified in the order.
- (2) A regional panel has the following functions:
  - (a) functions as a consent authority that are conferred on it under an environmental planning instrument,
  - (b) any functions that are conferred on it under Division 1AA (Planning administrators and panels) of Part 6,
  - (c) to advise the Minister as to planning or development matters or environmental planning instruments relating to the part of the State for which it is appointed, or any related matters, if requested to do so by the Minister.
- (3) A regional panel has the functions conferred or imposed on it by or under this or any other Act.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- (4) A regional panel is not subject to the direction or control of the Minister, except in relation to the procedures of the regional panel and to the extent specifically provided for in this Act.
- (5) A regional panel is a statutory body representing the Crown.  
**Note.** By virtue of section 13A of the *Interpretation Act 1987*, a statutory body representing the Crown has the status, privileges and immunities of the Crown.
- (6) Schedule 4 has effect with respect to regional panels.

## **23H Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the procedures of a regional panel in exercising its functions,
- (b) the provision of information and reports by regional panels.

## **Division 4 Independent hearing and assessment panels**

### **23I Independent hearing and assessment panels**

- (1) A council may constitute a panel of experts to assess any aspect of a development application or any planning matter referred to the panel by the council.
- (2) A council must constitute a panel of experts to assess any aspect of a development application or any planning matter if an assessment by a panel is required by an environmental planning instrument.
- (3) The members of a panel of experts are to be selected from a list of persons approved for the time being by the Director-General for the purposes of this section.
- (4) For the purposes of an assessment, a panel may receive or hear submissions from interested persons and submit a report to the council within the time required by the council.
- (5) A panel is to exercise its functions in accordance with the regulations and any 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 council is to provide staff and facilities for the purpose of enabling a panel to exercise its functions.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

- (7) A member of a panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **23J Regulations**

The regulations may make provision for or with respect to the procedures of independent hearing and assessment panels.

## **Division 5 Planning arbitrators**

### **23K Planning arbitrators**

- (1) A register of planning arbitrators is to be kept by the Director-General.
- (2) A person is to be listed on the register if approved by the Minister.
- (3) The register may designate planning arbitrators for particular local government areas or particular kinds of development, or both.
- (4) A person may be listed as a planning arbitrator if the person has expertise in 1 or more of planning, architecture, heritage conservation or urban design.
- (5) A planning arbitrator is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the arbitrator.
- (6) The Minister may determine that the whole or part of any remuneration payable under this section to a planning arbitrator who is a member of staff of a council is payable to the council, if the planning arbitrator is paid by the council while exercising functions as a planning arbitrator.

### **23L Regulations**

The regulations may make provision for or with respect to the following:

- (a) the requirements for registration and the appointment and removal of planning arbitrators,
- (b) the procedures of planning arbitrators in exercising their functions,
- (c) regulating the conduct of planning arbitrators,
- (d) regulating the conduct of matters by planning arbitrators in respect of conflicts of interest and prohibiting planning

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

arbitrators from determining matters if there is a conflict of interest,

- (e) complaints about planning arbitrators, including actions to be taken in relation to complaints and planning arbitrators,
- (f) the provision of information or reports by planning arbitrators and councils with respect to functions exercised by planning arbitrators.

## **Division 6 Matters relating to councils and council functions**

### **23M Obligation to consult with council about certain decisions**

The Commission or a regional panel must not exercise a function that will result in the making of a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council until after it has consulted with the council.

### **23N Obligations of councils to assist Commission, regional panels and planning arbitrators**

- (1) The Commission, a regional panel or a planning arbitrator is entitled:
  - (a) to have access to, and to make copies of and take extracts from, records of a council relevant to the exercise of the Commission's, panel's or arbitrator's functions, and
  - (b) to the use of the staff and facilities of a relevant council in order to exercise the Commission's, panel's or arbitrator's functions.
- (2) The general manager of a council must carry out any reasonable direction of the Commission, a regional panel or a planning arbitrator relating to functions of the council being exercised by the Commission, panel or arbitrator.  
Maximum penalty: 10 penalty units.
- (3) A member of a council, or the general manager or other member of staff of a council, must not obstruct the Commission, a regional panel, a planning arbitrator, a member of the Commission or a panel in the exercise of the Commission's, panel's or arbitrator's functions under this Act.  
Maximum penalty: 10 penalty units.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

## **23O Recovery of certain costs**

- (1) A council is to pay to the Director-General out of the council's consolidated fund:
  - (a) the remuneration, costs and expenses of the Commission in respect of the exercise of any functions of a consent authority involving development on land within the area of the council, and
  - (b) any other costs relating to the provision of services to the Commission by the Department in respect of the exercise of any such functions.
- (2) The councils for an area or part of an area situated in a part of the State for which a regional panel has been appointed are to pay to the Director-General, out of the councils' consolidated funds, the remuneration, costs and expenses of the panel and of the Department relating to the costs of administration of the panel.
- (3) A council is to pay out of the council's consolidated fund the remuneration, costs and expenses of any planning arbitrator in respect of the exercise of functions relating to matters involving development on land within the area of the council or of any independent hearing and assessment panel established by the council.
- (4) The Minister may do either or both of the following:
  - (a) exempt a council from payment of any or all of any such remuneration, costs or expenses,
  - (b) resolve any dispute as to the amount of any such remuneration, costs or expenses.

## **23P Indemnity for planning arbitrators**

A council must indemnify a planning arbitrator appointed by it to determine a matter against a liability for costs incurred by the planning arbitrator with respect to an appeal concerning the matter under section 97 or 123.

### **[13] Section 75F Environmental assessment requirements for approval**

Omit "relevant public authorities" from section 75F (4).

Insert instead "such public authorities as relevant guidelines in respect of the project require to be consulted".

### **[14] Section 76A Development that needs consent**

Insert ", or a class of development," after "development" where firstly occurring in section 76A (5).



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

**[15] Section 76A (6)**

Omit the subsection.

**[16] Section 78A Application**

Insert at the end of section 78A (8) (b):

, or

- (c) if the application is in respect of development not referred to in paragraph (a) or (b), a statement of environmental effects prepared by or on behalf of an applicant in accordance with the regulations.

**[17] Section 79AA**

Insert after section 79A:

**79AA Public participation—other development**

- (1) This section applies to development (other than designated development) of a class in respect of which a review application may be made by a person under section 96E.
- (2) Regulations may be made for or with respect to the following:
- (a) notice of development to which this section applies,
- (b) submissions to the consent authority about development to which this section applies.

**[18] Section 80A Imposition of conditions**

Omit “section 97” from section 80A (3).

Insert instead “section 96C, 96D or 97”.

**[19] Section 80A (10B)–(10D)**

Insert after section 80A (10A):

**(10B) Review of hours of operation**

A development consent that is granted subject to a condition specifying hours of operation for the development may be granted subject to a further condition that the consent authority may review those hours at any time or at intervals specified by the consent and that those hours are liable to be changed on any such review.

- (10C) The regulations may make provision for or with respect to the kinds of development that may be subject to a further condition referred to in subsection (10B), the matters that must be included

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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in such a condition and the procedures for a review under such a condition.

- (10D) A decision by a consent authority to change the hours of operation on a review under such a condition is taken to be a determination of a development consent for the purposes of this Act.

**Note.** A review application or an appeal against a determination of a development consent may be made under Division 7A or 8.

**[20] Part 4, Division 3**

Omit the note after the heading to the Division.

**[21] Section 85A Process for obtaining complying development certificates**

Omit section 85A (2).

**[22] Section 85A (7A)–(7C)**

Insert after section 85A (7):

- (7A) The council or an accredited certifier may issue a complying development certificate even though a proposed complying development does not comply with the development standards and conditions referred to in subsection (3), if:
- (a) the non-compliance is of a minor nature, and
  - (b) is not likely to cause any substantial net adverse impact on owners of adjoining or adjacent land or the land on which the development is carried out.
- (7B) A certificate prepared by an accredited certifier for the purposes of subsection (7A) must be lodged with the council and must not be issued by the certifier until:
- (a) the council notifies the certifier that it is satisfied that the non-compliance may be approved under subsection (7A), or
  - (b) after the end of the prescribed period after the certificate is lodged with the council,
- whichever occurs first.
- (7C) If the council notifies an accredited certifier (within the period prescribed under subsection (7B) (b)) that it is not satisfied that the non-compliance may be approved under subsection (7A), the proposed development, as notified by the council, is taken not to be complying development and the certifier must not issue a complying development certificate for it.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

**[23] Section 85A (8)**

Omit “7 days”. Insert instead “the period prescribed by the regulations”.

**[24] Section 85A (11) (c)**

Insert after section 85A (11) (b):

, and

- (c) if the determination is to issue a complying development certificate, the council or accredited certifier must notify any other person, if required to do so by the regulations, in accordance with the regulations.

**[25] Section 86A Duration of complying development certificate**

Insert after section 86A (4):

- (5) The regulations may set out circumstances in which work is or is not taken to be physically commenced for the purposes of this section.

**[26] Part 4, Division 4**

Insert after Division 3:

## **Division 4 Crown developments**

### **88 Definitions**

- (1) In this Division:

*applicable regional panel* for development means the regional panel for the part of the State in which the development is to be carried out.

*Crown development application* means a development application made by or on behalf of the Crown.

*regional panel* means a joint regional planning panel.

- (2) A reference in this Division to the Crown:

- (a) includes a reference to a person who is prescribed by the regulations to be the Crown for the purposes of the Division, and

- (b) does not include a reference to:

- (i) a capacity of the Crown that is prescribed by the regulations not to be the Crown for the purposes of this Division, or
- (ii) a person who is prescribed by the regulations not to be the Crown for the purposes of this Division.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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## **89 Determination of Crown development applications by councils**

A council must not:

- (a) refuse its consent to a Crown development application, except with the written approval of the applicable regional panel, or
- (b) impose a condition on its consent to a Crown development application, except with the written approval of the applicable regional panel or the applicant.

## **89A Referral of Crown development applications by council or applicant**

- (1) The applicant or a council may refer a Crown development application to the applicable regional panel if the council fails to determine a development application within the period prescribed by the regulations after it is lodged with the council.
- (2) When an application is referred to an applicable regional panel by either party, the council must, as soon as practicable after the application is referred, submit to the panel:
  - (a) a copy of the development application, and
  - (b) details of its proposed determination of the development application, and
  - (c) the reasons for the proposed determination, and
  - (d) any relevant reports of another public authority.
- (3) If a referral is made, the applicable regional panel is to exercise the functions of the council as the consent authority for the development application and may determine the application accordingly.
- (4) A decision by an applicable regional panel in determining an application is taken for all purposes to be the decision of the council.

## **89B Modification of Crown development consents**

This Division applies to an application made by or on behalf of the Crown under section 96 in the same way as it applies to an application for development consent.

## **89C Applicant's rights of appeal**

This Division does not affect any right of an applicant to seek a review or to appeal under Division 7A or 8.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

**[27] Section 95 Lapsing of consent**

Insert “However, the consent does lapse if that work is not substantially commenced within 2 years after that date.” after “this section.” in section 95 (4).

**[28] Section 95 (7)**

Insert after section 95 (6):

- (7) The regulations may set out circumstances in which work is or is not taken to be physically commenced for the purposes of this section.

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

Insert after section 95A (1):

- (1A) If, in granting a development consent that is subject to a deferred commencement condition under section 80 (3), the consent authority specifies a shorter period than 5 years within which the consent will lapse if it is not satisfied as to the matter specified in the condition, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.

**[30] Section 95A (3)**

Omit “subsection (1)”. Insert instead “this section”.

**[31] Section 96 Modification of consents—generally**

Omit “(5), (6) and (7)” from section 96 (1).

Insert instead “(5) and (6) and Divisions 7A and 8”.

**[32] Section 96 (6)**

Omit section 96 (6) and (7). Insert instead:

(6) **Deemed refusals**

The regulations may make provision for or with respect to the following:

- (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,
- (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,
- (c) the effect of a subsequent determination by a consent authority on any review or appeal sought under this Act.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

**[33] Section 96AA Modification by consent authorities of consents granted by the Court**

Omit section 96AA (3) and (4). Insert instead:

- (3) The regulations may make provision for or with respect to the following:
  - (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,
  - (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,
  - (c) the effect of a subsequent determination by a consent authority on any review or appeal sought under this Act.

**[34] Part 4, Division 7A:**

Insert after Division 7 of Part 4:

**Division 7A Reviews of development application determinations by bodies other than the Land and Environment Court**

**96B Definitions**

In this Division:

*applicable regional panel* for development means the regional panel for the part of the State in which the development is to be carried out.

*Commission* means the Planning Assessment Commission.

*deemed refusal*:

- (a) in relation to a development application, means a refusal of a development application taken to have been determined under section 82 (1), or
- (b) in relation to an application to modify a development consent, means a refusal of an application taken to have been determined in accordance with regulations made under section 96 (6) or 96AA (3).

*planning arbitrator matter* means:

- (a) a class of reviewable determinations that is prescribed by the regulations for the purposes of this definition, or
- (b) a determination by a council that a development application may not be considered because further

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

information is required or it does not comply with the provisions of this Act or the regulations.

***regional panel*** means a joint regional planning panel.

***review application*** means an application for a review under this Division.

***reviewable determination*** means:

- (a) a determination of a development application (including a deemed refusal), or
- (b) a determination of an application to modify a development consent (including a deemed refusal), or
- (c) a determination by a consent authority, or a person specified by the consent authority, that the consent authority or person is not satisfied (pursuant to a condition imposed under section 80A (2)) as to a specified aspect of a development that is to be carried out to the satisfaction of the consent authority or person, or
- (d) a determination that a consent authority is not satisfied as to a matter that it must be satisfied about before a “deferred commencement” consent under section 80 (3) can operate, other than a determination of a class prescribed by the regulations for the purposes of this definition.

***reviewing body*** means a planning arbitrator, a regional panel or the Commission.

**96C Applications for review of planning arbitrator matters—applicants**

- (1) The applicant in relation to a planning arbitrator matter may apply to the council for a review of the determination.
- (2) The council must appoint a planning arbitrator to determine an application for a review of a planning arbitrator matter.
- (3) An application for a review of a planning arbitrator matter must be made within the period prescribed by the regulations.
- (4) An application for a review of a reviewable determination cannot be made under this section if an appeal under section 97 (2) has been made against the determination.
- (5) An applicant may amend the development the subject of the original application.
- (6) The prescribed fee must be paid in connection with a review application.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

**96D Applications for reviews of other matters—applicants**

- (1) The applicant in relation to a reviewable determination that is not a planning arbitrator matter and for which the consent authority is a council may request the applicable regional panel to review the determination.
- (2) The applicant in relation to a reviewable determination that is not a planning arbitrator matter and for which the consent authority is a regional panel may request the Commission to review the determination.
- (3) An application for a review of a reviewable determination cannot be made under this section if an appeal under section 97 has been made against the determination.
- (4) An application for a review of a reviewable determination under this section must be made within the period prescribed by the regulations.
- (5) An applicant may amend the development the subject of the original application.
- (6) The prescribed fee must be paid in connection with a review application.

**96E Applications for review—objectors**

- (1) This section applies to a development application of a class prescribed by the regulations for the purposes of this section.
- (2) A person (other than the applicant) who is dissatisfied with a determination of a council to grant consent to a development application may request the applicable regional panel to review the determination.
- (3) A person (other than the applicant) who is dissatisfied with a determination of a regional panel to grant consent to a development application may request the Commission to review the determination.
- (4) An application for a review under this section must be made within the period prescribed by the regulations.
- (5) The prescribed fee must be paid in connection with a review application.
- (6) The regulations may make provision for or with respect to persons who are or who are not qualified to apply for reviews under this section.



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- (7) This section does not apply to a development application in relation to which an appeal may be made by an objector under section 98.

**96F Notification of review applications**

- (1) A regional panel or the Commission must notify a review application in accordance with the regulations, if the regulations so require.
- (2) The regulations may provide that a person given notice under this section is entitled to be heard on the review application.

**96G Procedures for reviews and determinations—applicant and objector reviews**

- (1) A review under this Division by a reviewing body:
- (a) must be held within the period prescribed by the regulations and must be determined within the period prescribed by the regulations, and
  - (b) is to be conducted in accordance with the regulations (if any) or any procedures determined by the Minister.
- (2) Before determining a review application, the reviewing body must consider any submissions made concerning the request for review within any period prescribed by the regulations.
- (3) The reviewing body may consider additional matters not considered by the consent authority in determining the original application.
- (4) If the applicant has made amendments to the development described in the original application, the reviewing body may only conduct a review of a determination of a development application if satisfied that the development, as amended, is substantially the same development as the development described in the original application.
- (5) If review applications concerning the same matter are made by one or more applicants and one or more objectors, the applications are, as far as practicable, to be dealt with together.

**96H Review bodies to have consent authority functions for review**

- (1) A reviewing body has the same functions as the consent authority had, in relation to the original determination or application, for the purposes of determining a review application.

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# exposure draft

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 2 Amendments relating to development assessment

---

- (2) A decision by a reviewing body in determining a review application is taken for all purposes to be the decision of the consent authority.
- (3) This section has effect even if the appointment of a reviewing body or a member of a reviewing body is subsequently found not to have been validly made.

#### **96I Review of unaccepted applications by planning arbitrators**

- (1) If a planning arbitrator determines that a development application that was not accepted by a council should have been dealt with by the council, the planning arbitrator must refer the application to the council for determination.
- (2) The council must determine an application that is referred to it under this section.

#### **96J Decisions on reviews and determinations**

- (1) The reviewing body must give notice of the result of its determination of a review application to the person who applied for the review and, if the person was not the applicant for the consent reviewed, to the applicant, as soon as practicable after the review.
- (2) If the reviewing body grants development consent, or varies the conditions of a development consent or otherwise modifies a development consent, the reviewing body must endorse on the notice the date from which the consent, or the consent as varied, operates.
- (3) If the reviewing body changes a determination, the changed determination replaces the earlier determination as from the date of the review.
- (4) A decision on a review application may not be further reviewed by a reviewing body under this Division.

#### **96K Circumstances in which review application is taken to have been refused**

- (1) A planning arbitrator that has not determined a review application within the period prescribed for the purposes of section 96G (1) is, for the purpose only of section 97, taken to have determined the application by refusing consent on the date on which the period expires.
- (2) Nothing in subsection (1) prevents a planning arbitrator from determining a review application after that period on a review under this Division.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- (3) A determination pursuant to subsection (2) does not, subject to subsection (4), prejudice or affect the continuance or determination of an appeal made under section 97 in respect of a determination that is taken by subsection (1) to have been made.
- (4) If a determination pursuant to subsection (2) is made by granting consent, the consent authority is entitled, with the consent of the applicant and without prejudice to costs, to have an application for review or an appeal made before that consent in respect of a failure to determine the matter withdrawn at any time prior to the determination of that application or appeal.

**96L Improper influence with respect to conduct of planning arbitrator**

- (1) A planning arbitrator must not, on an understanding that he or she will act otherwise than impartially in the exercise of his or her functions as a planning arbitrator, seek or accept, or offer or agree to accept, any benefit of any kind, whether on his or her own behalf or on behalf of any other person.

Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.

- (2) A person must not, on an understanding that a planning arbitrator will act otherwise than impartially in the exercise of his or her functions as a planning arbitrator, give, or offer or agree to give, any benefit of any kind, whether to the planning arbitrator or to any other person.

Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.

**[35] Sections 97–97C**

Omit section 97. Insert instead:

**97 Appeal by an applicant—development applications**

- (1) **Development application determinations (other than planning arbitrator matters)**

An applicant who is dissatisfied with the determination of a consent authority with respect to the applicant's development application (other than in relation to a planning arbitrator matter) may appeal to the Court within 3 months after:

- (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application, or
- (b) the date on which that application is taken to have been determined under section 82 (1).

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

(2) **Development application determinations—planning arbitrator matters where consent authority consents to appeal**

An applicant who is dissatisfied with the determination of a consent authority with respect to the applicant's development application in relation to a planning arbitrator matter may, with the consent of the consent authority, appeal to the Court within 3 months after:

- (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application, or
- (b) the date on which that application is taken to have been determined under section 82 (1).

(3) **Determinations as to modifications of consents (other than planning arbitrator matters)**

An applicant who is dissatisfied with the determination of a consent authority with respect to the applicant's application under section 96 or 96AA (other than in relation to a planning arbitrator matter) may appeal to the Court within 3 months after:

- (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application, or
- (b) the date on which the applicant's application is taken to have been determined in accordance with regulations made under section 96 (6) or 96AA (3).

(4) **Determinations as to modifications of consents—planning arbitrator matters where consent authority consents to appeal**

An applicant who is dissatisfied with the determination of a consent authority with respect to the applicant's application under section 96 or 96AA in relation to a planning arbitrator matter may, with the consent of the consent authority, appeal to the Court within 3 months after:

- (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application, or
- (b) the date on which the applicant's application is taken to have been determined in accordance with regulations made under section 96 (6) or 96AA (3).

(5) **Determinations by planning arbitrators**

An applicant in a planning arbitrator matter who is dissatisfied with the determination of a planning arbitrator with respect to a

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

reviewable decision concerning the applicant's application may appeal to the Court within 3 months after:

- (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of the planning arbitrator, or
- (b) the date on which the applicant's application is taken to have been determined under section 96K.

**(6) Determinations relating to ancillary aspects of consent**

An applicant who is dissatisfied with a decision (other than in relation to a planning arbitrator matter) that a consent authority, or a person specified by the consent authority, is not satisfied (pursuant to a condition imposed under section 80A (2)) as to a specified aspect of the development that is to be carried out to the satisfaction of the consent authority or person may appeal to the Court within 3 months after:

- (a) the consent authority or person notifies the applicant of its decision, or
- (b) the date on which the applicant's request is taken to have been determined under section 80A (3).

**(7) Determinations relating to deferred consents**

An applicant who is dissatisfied with a decision (other than in relation to a planning arbitrator matter) that a consent authority is not satisfied as to a matter that it must be satisfied about before a "deferred commencement" consent under section 80 (3) can operate may appeal to the Court within 3 months after the consent authority notifies the applicant of its decision.

**(8) Appeals to be heard after expiry of objector appeal period**

An appeal under this section relating to a development application for consent to carry out designated development in respect of which an objection has been made in accordance with the regulations must not be heard by the Court until after the expiration of the time within which an objector may appeal to the court under that section.

**(9) Interpretation**

Words and expressions used in this section have the same meaning as they have in Division 7A.

**97A No right to appeal if application for review made**

An appeal cannot be made to the Court under section 97 in relation to a decision (other than under section 97 (5)) if an

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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application has been made under Division 7A in relation to the same decision.

**Note.** Applications for merit reviews may be made under Division 7A in relation to decisions by councils and joint regional planning panels.

## **97B Notice of appeals to be given and right to be heard**

- (1) The consent authority must give notice of an appeal under section 97:
  - (a) to an objector, in the case of an appeal concerning a development application in respect of which the objector may appeal under section 98, or
  - (b) to the relevant Minister or public authority, in the case of an appeal concerning a development application in relation to which the concurrence of a Minister or public authority is required under this Act, or
  - (c) to the relevant approval body (within the meaning of Division 5), in the case of a development application for consent to carry out integrated development that involves the approval body.
- (2) A person or body who is given notice of an appeal under this section 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 person or body were a party to the appeal.

## **97C Costs payable if significant change to development application**

- (1) This section applies to proceedings if the Court, on an appeal by an applicant under section 97:
  - (a) approves a development application that is significantly different from the application the subject of the appeal, and
  - (b) the changes were made at the request of the applicant (whether or not the consent authority objected to those changes).
- (2) In any proceedings to which this section applies, the Court must make an order for the payment by the applicant of the whole of the costs of any other parties to the proceedings.
- (3) The regulations may provide for circumstances in which subsection (2) does not apply.
- (4) In any proceedings to which this section applies, the Court must treat the substantially modified application as a new application and may make a determination to that effect.

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## exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

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(5) This section has effect despite the provisions of any other Act or law.

**[36] Section 118 Appointment of planning administrator, planning assessment panel or regional panel**

Omit “or a panel (or both)” from section 118 (1).

Insert instead “, a planning assessment panel or a regional panel (or all of them)”.

**[37] Section 118 (3)**

Omit “panel”.

Insert instead “planning assessment panel or regional panel”.

**[38] Section 118 (3) (a)**

Omit “under Part 4”.

**[39] Section 118 (3) (b)**

Insert “or as referred to in section 30 of the *Local Government Act 1993*” after “Part 3”.

**[40] Section 118 (4)**

Omit “panel”.

Insert instead “planning assessment panel or regional panel”.

**[41] Section 118 (5) and (7)**

Omit “panel” wherever occurring.

Insert instead “planning assessment panel”.

**[42] Section 118 (7A)—(7C)**

Insert after section 118 (7):

(7A) Functions are to be conferred on a regional panel under this section by order of the Minister published in the Gazette.

(7B) Before appointing a planning administrator or planning assessment panel, or conferring functions under this section on a regional panel, the Minister must notify the council concerned in writing of the proposed action (including the reasons for the proposed action) and request the council to show cause why the action should not be taken.

(7C) The Minister must consider any written submissions made by the council within 21 days of notice being given under subsection

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# exposure draft

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 2 Amendments relating to development assessment

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(7B) and must not take action under this section earlier than 21 days after the notice is given.

**[43] Section 118 (8)**

Omit “panel”.

Insert instead “planning assessment panel, or conferring functions on a regional panel under this section,”.

**[44] Section 118 (9)**

Omit “panel”.

Insert instead “planning assessment panel, or confer functions on a regional panel under this section,”.

**[45] Section 118 (9)**

Omit “those heads of consideration”.

Insert instead “any of those heads of consideration that are relevant”.

**[46] Section 118 (10)**

Omit “make an appointment under subsection (1) (d)”.

Insert instead “take action under this section in the circumstances specified in subsection (1) (d)”.

**[47] Section 118 (11)**

Omit “or a panel”.

Insert instead “or a planning assessment panel, or conferring functions on a regional panel under this section,”.

**[48] Section 118 (12), definition of “failure to comply with obligations under the planning legislation”**

Insert at the end of paragraph (b):

, or

- (c) without limiting paragraph (a), a failure to comply with a determination under section 56, or
- (d) without limiting paragraph (a), a failure to provide access to and the use of staff and facilities to the Planning Assessment Commission, a joint regional planning panel or a planning arbitrator as referred to in section 23N (1), or
- (e) a failure to appoint a planning arbitrator in accordance with section 96C (2).



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

**[49] Section 118AG**

Insert after section 118AF:

**118AG Protection for exercise of certain functions by Minister**

- (1) This section applies to any function (a *protected function*) conferred or imposed on the Minister (including a delegate of the Minister) relating to the appointment of a planning administrator or planning assessment panel, or the conferral of functions on a regional panel, under this Division.
- (2) The exercise by the Minister of any protected function may not be:
  - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
  - (b) restrained, removed or otherwise affected by any proceedings.
- (3) Without limiting subsection (2), that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by the Minister (including a delegate of the Minister), with the provisions of this Division or the rules of natural justice (procedural fairness).
- (4) Accordingly, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the Minister (including a delegate of the Minister), with those provisions or with those rules so far as they apply to the exercise of any protected function.
- (5) This section has effect despite any provision of this Act or other legislation or any other law (whether written or unwritten).
- (6) In this section:

*exercise* of functions includes:

  - (a) the purported exercise of functions, and
  - (b) the non-exercise or improper exercise of functions, and
  - (c) the proposed, apprehended or threatened exercise of functions.

*proceedings* includes:

  - (a) proceedings for an order under section 124, and

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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- (b) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (c) without limiting paragraph (b), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the *Supreme Court Act 1970*.

**[50] Section 158 Exclusion of personal liability**

Omit section 158 (d)–(e). Insert instead:

- (d) a member of the Planning Assessment Commission, a joint regional planning panel or an independent hearing and assessment panel, or
- (e) a planning arbitrator, or

**[51] Section 158**

Omit “the Commissioner of Inquiry, a panel member”.

Insert instead “a planning arbitrator, a member, a panel member”.

**[52] Schedules 3 and 4**

Omit Schedules 3 and 5. Insert instead:

## **Schedule 3 Planning Assessment Commission**

(Section 23B (5))

### **Part 1 General**

#### **1 Definitions**

In this Part:

*chairperson* means the person appointed by the Minister as the chairperson of the Commission.

*Commission* means the Planning Assessment Commission.

*member* means a member of the Commission.

### **Part 2 Members**

#### **2 Members**

- (1) The Commission is to consist of the chairperson and not less than 3 and not more than 8 members appointed by the Minister.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- (2) One member of the Commission is, in the instrument of appointment, to be appointed as chairperson of the Commission.
- (3) Each member is to have expertise in at least 1 of planning, architecture, heritage conservation, environmental conservation, urban design, property development, land economics, transport or government and public administration.

### **3 Additional casual members**

The Minister may appoint additional members of the Commission for the purposes of exercising specific functions of the Commission.

### **4 Constitution of Commission for particular matters**

- (1) For the purpose of carrying out any of its functions, the Commission is to be constituted by 3 members. The regulations may prescribe circumstances in which the Commission may be constituted by more than 3 members or less than 3 members.
- (2) The members for the purpose of exercising a function of the Commission are, subject to any directions of the Minister, to be determined by the chairperson.
- (3) The Commission may, at any time, exercise by the same members or different members, one or more of its functions.
- (4) For the purpose of exercising any of its functions, the Commission is to be constituted by specified members, or members with specified qualifications or expertise, if a direction to that effect is given by the Minister.

### **5 Terms of office of members**

- (1) Subject to this Part and the regulations, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment.
- (2) The period under subclause (1) may be determined by reference to the occurrence of a specified event or the completion of the exercise of particular functions of the Commission.
- (3) A member is eligible to be reappointed.

### **6 Basis of office**

- (1) The office of chairperson may be a full-time or a part-time office.
- (2) The office of any other member is a part-time office.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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## 7 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## 8 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
  - (e) is absent from 3 consecutive meetings of the Commission of which reasonable notice has been given to the member personally or by post, except on leave granted by the Commission or unless the member is excused by the Commission for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.

## 9 Filling of vacancy in office of member

If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

## **10 Chairperson**

The chairperson vacates office as chairperson if he or she:

- (a) is removed from that office by the Minister, or
- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be a member of the Commission.

## **11 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the Commission, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.

(2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the member, or
- (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
- (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.

(3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):

- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or corporation or other body, or
- (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
- (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

- (4) A disclosure by a member at a meeting of the Commission that the member, or a spouse, de facto partner, relative, partner or employer of the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Commission.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Commission otherwise determines:
- (a) be present during any deliberation of the Commission with respect to the matter, or
  - (b) take part in any decision of the Commission with respect to the matter.
- (7) For the purposes of the making of a determination by the Commission under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Commission for the purpose of making the determination, or
  - (b) take part in the making by the Commission of the determination.
- (8) A contravention of this clause does not invalidate any decision of the Commission.

## **12 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## Schedule 4 Joint Regional Planning Panels

(Section 23G (6))

### Part 1 General

#### 1 Definitions

In this Part:

***applicable council*** means the council of an area that is situated (wholly or partly) in a part of the State for which a regional panel is appointed.

***chairperson*** means the person appointed by the Minister as the chairperson of a joint regional planning panel.

***council nominee*** means a person nominated as a member of a regional panel by an applicable council.

***member*** means a member of a regional panel.

***regional panel*** means a joint regional planning panel.

***State member*** means a member appointed by the Minister.

### Part 2 Members

#### 2 Members

(1) A regional panel is to consist of the following 5 members:

(a) 3 persons appointed by the Minister, each having expertise in at least 1 of planning, architecture, heritage conservation, environmental conservation, urban design, property development, land economics, transport, tourism or government and public administration,

(b) 2 or more council nominees of an applicable council, at least one of whom has expertise in planning or architecture.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

- (2) One State member is, in the instrument of appointment, to be appointed as chairperson of the regional panel.
- (3) Each applicable council is to nominate 2 persons as council nominees for the purposes of the regional panel, at least one of whom has expertise in planning or architecture.
- (4) If an applicable council fails to nominate 1 or more council nominees, a regional panel is not required to include 2 council nominees for the purposes of exercising its functions in relation to the area of the council concerned.

### **3 Rotation of council nominees**

- (1) For the purposes of exercising the functions of a regional panel in relation to a matter, the council nominees appointed to the regional panel are to be those nominated by the applicable council for the land to which the matter relates.
- (2) Subject to this Part, a council nominee remains eligible to participate as a member of the regional panel for such period (not exceeding 3 years) as is specified in the nominee's instrument of nomination, but is eligible (if otherwise qualified) for re-nomination.

### **4 Terms of office of State members**

- (1) Subject to this Part, a State member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) The period under subclause (1) may be determined by reference to the occurrence of a specified event.

### **5 Basis of office**

The office of a member is a part-time office.

### **6 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **7 Deputy chairperson**

- (1) The members of a regional panel may elect a State member to be the deputy chairperson of the regional panel.



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- (2) The person may be elected for the duration of the person's term of office as a member or for a shorter term.

## **8 Alternates**

- (1) The Minister may, from time to time, appoint a person to be the alternate of a State member, and may revoke any such appointment.
- (2) An applicable council may, from time to time, appoint a person to be the alternate of a member nominated by the council, and may revoke any such appointment.
- (3) In the absence of a member, the member's alternate may, if available, act in the place of the member.
- (4) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (5) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (6) A person may be appointed as the alternate of 2 or more members, but has only one vote at any meeting of the regional panel.

## **9 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister or applicable council, as the case requires, or
  - (d) in the case of a council nominee, is removed from office by an applicable council under this clause or by the Minister under subclause (2), or
  - (e) in the case of a State member, is removed from office by the Minister or by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
  - (f) is absent from 3 consecutive meetings of the regional panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the panel or unless the member is excused by the panel for having been absent from those meetings, or

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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- (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (h) becomes a mentally incapacitated person, or
  - (i) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.
  - (3) The Minister may remove a State member from office for any or no reason and without notice.
  - (4) An applicable council may remove any of its council nominees from office for any or no reason and without notice.

## **10 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

## **11 Chairperson**

- (1) The chairperson vacates office as chairperson if he or she:
  - (a) is removed from that office by the Minister, or
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member of the regional panel.
- (2) The Minister may at any time remove the chairperson from office as chairperson for any or no reason and without notice.

## **12 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the regional panel, and

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## exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,  
the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the regional panel.
- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
- (a) the member, or
  - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
  - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or corporation or other body, or
  - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
  - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
- (4) A disclosure by a member at a meeting of the regional panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the regional panel in a book kept for the purpose and

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the regional panel.

- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
  - (a) be present during any deliberation of the panel with respect to the matter, or
  - (b) take part in any decision of the panel with respect to the matter.
- (7) For the purposes of the making of a determination by the regional panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the panel for the purpose of making the determination, or
  - (b) take part in the making by the panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the regional panel.

### **13 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **2.2 Consequential amendments to the Environmental Planning and Assessment Act 1979**

### **[1] Part 2, Division 4**

Omit the Division.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- [2] Section 75G Independent hearing and assessment panels**  
Omit the section.
- [3] Section 75I Director-General's environmental assessment report**  
Omit "a panel constituted under section 75G" from section 75I (2) (c).  
Insert instead "the Planning Assessment Commission,".
- [4] Section 75J Giving of approval by Minister to carry out project**  
Omit section 75J (2) (c). Insert instead:  
(c) any findings or recommendations of the Planning Assessment Commission following a review in respect of the project.
- [5] Section 75K Appeals by proponent**  
Omit section 75K (1) (c). Insert instead:  
(c) the project has not been the subject of a review by the Planning Assessment Commission,
- [6] Section 75L Appeals by an objector**  
Omit section 75L (1) (c). Insert instead:  
(c) the project has not been the subject of a review by the Planning Assessment Commission,
- [7] Section 75N Environmental assessment, panel report, public consultation and Director-General's report for concept plan**  
Omit ", 75G (Independent hearing and assessment panels)".
- [8] Section 75O Giving of approval for concept plan**  
Omit section 75O (2) (c). Insert instead:  
(c) any findings or recommendations of the Planning Assessment Commission following a review in respect of the project.
- [9] Section 75Q Appeal by proponent**  
Omit section 75Q (1) (c). Insert instead:  
(c) the project has not been the subject of a review by the Planning Assessment Commission, and

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

- [10] Section 75S Erection and occupation of buildings and subdivision of land**  
Omit section 75S (3). Insert instead:
- (3) Section 109R applies to an approved project, but section 109S does not apply.
- [11] Section 75X Miscellaneous provisions relating to approvals under this Part**  
Omit “an inquiry held in accordance with section 119 or of a report of a panel of experts under section 75G” from section 75X (1).  
Insert instead “a review by the Planning Assessment Commission”.
- [12] Section 80 Determination**  
Omit “**Commission of Inquiry**” from the heading to clause 80 (6).  
Insert instead “**Planning Assessment Commission review**”.
- [13] Section 80 (6)**  
Omit “directed that an inquiry be held, in accordance with section 119,”.  
Insert instead “requested that a review be held by the Planning Assessment Commission”.
- [14] Section 80 (6) (b) (i)**  
Omit “inquiry”. Insert instead “review”.
- [15] Section 80 (6) (b) (ii), 112 (1) (d) and 114 (a) and (b)**  
Omit “Commission of Inquiry” wherever occurring.  
Insert instead “Planning Assessment Commission”.
- [16] Section 80 (7) and (8)**  
Omit the subsections. Insert instead:
- (7) If the Minister has requested that a review be held by the Planning Assessment Commission in relation to any proposed designated development the subject of a development application, the Minister is to determine the application after the review has been held and the Minister has considered the findings and recommendations of the Commission.
- [17] Section 81A Effects of development consents and commencement of development**  
Omit “section 116G” from section 81A (6). Insert instead “section 109R”.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

**[18] Section 82 Circumstances in which consent is taken to have been refused**

Omit “section 97” from section 82 (1).

Insert instead “section 96C, 96D or 97”.

**[19] Section 82 (2)**

Omit “on a review under section 82A”.

Insert instead “following a review under Division 7A”.

**[20] Section 82 (3)**

Insert “a review application made under Division 7A or” before “an appeal”.

**[21] Section 82 (4)**

Omit the subsection. Insert instead:

- (4) If a determination pursuant to subsection (2) is made by granting consent, the consent authority is entitled, with the consent of the applicant and without prejudice to costs, to have an application for review or an appeal made before that consent in respect of a failure to determine the matter withdrawn at any time prior to the determination of that application or appeal.

**[22] Section 82A**

Omit the section.

**[23] Section 83 Date from which consent operates**

Omit “section 82A (7)” from section 83 (1) (a).

Insert instead “section 96J (2)”.

**[24] Section 83 (1) (b) (i)**

Omit “an inquiry by a Commission of Inquiry”.

Insert instead “a review by the Planning Assessment Commission”.

**[25] Section 83 (2)**

Insert “a review application has been made under Division 7A or” before “an appeal”.

**[26] Section 83 (3)**

Omit the subsection. Insert instead:

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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- (3) A consent referred to in subsection (1) or (2) is void and, except for the purposes of Division 7A or section 97 or 98, is taken never to have been granted, if:
- (a) development consent is refused on a review application under section 96C or 96D or an appeal under section 97, or
  - (b) the effect of a decision on a review application under section 96E or an appeal under section 98 is that development consent is refused.

**[27] Section 83 (4)**

Insert “or 96K” after “section 82”.

**[28] Section 83 (6)**

Omit the subsection.

**[29] Section 90 Application of this Division**

Omit “to which Part 5A applies” from section 90 (2).

Insert instead “made by or on behalf of the Crown (within the meaning of Division 4)”.

**[30] Section 92A Effect of giving notice**

Insert “or a regulation made under section 79AA” after “or 79A” in section 92A (a).

**[31] Part 4, Division 8, heading**

Omit “Appeals”. Insert instead “Appeals to the Court”.

**[32] Section 104 Appeals and other provisions relating to development consents after order of court**

Insert “Division 7A and” before “sections 97 and 98” wherever occurring.

**[33] Section 104A Voluntary surrender of development consent**

Insert “a review application under Division 7A or” before “an appeal” in section 104A (2).

**[34] Section 105 Regulations—Part 4**

Omit section 105 (1) (p1).

**[35] Part 4A, Division 1, heading**

Insert after the heading to Part 4A:



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

## **Division 1      Certification of work and other matters**

**[36]    Section 109J Restriction on issue of subdivision certificates**

Insert “or person who has made a submission in accordance with the regulations under section 79AA” after “objector” in section 109J (1) (g) where firstly occurring.

**[37]    Section 109J (1) (g) (i)**

Insert “or person” after “objector”.

**[38]    Section 109J (1) (g) (ii)**

Omit the subparagraph. Insert instead:

- (ii) if a review application under section 96E, or an appeal, has been made by the objector or person within that time, the application or appeal has been finally determined,

**[39]    Section 109K Appeals against failure or refusal to issue Part 4A certificates**

Insert “or other development in respect of which a review application may be made under section 96E” after “designated development” wherever occurring in section 109K (3) (c) and (d).

**[40]    Section 109K (3) (d) (ii)**

Insert “a review application may be made under section 96E or” before “an appeal”.

**[41]    Section 109K (3) (d) (iii)**

Omit the subparagraph. Insert instead:

- (iii) if such an application or appeal is made, within 14 days after the final determination of the application or appeal,

**[42]    Part 4A, Division 2, heading**

Insert before section 109R (as renumbered by this Schedule):

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

## **Division 2 Crown building work and other Crown development**

- [43] Section 112 Decision of determining authority in relation to certain activities**  
Omit “directed that an inquiry be held in accordance with section 119” from section 112 (1) (d).  
Insert instead “requested that a review be held by the Planning Assessment Commission”.
- [44] Section 112 (1) (d)**  
Omit “inquiry” where secondly occurring.  
Insert instead “review”.
- [45] Section 113 Publicity and examination of environmental impact statements**  
Omit “directed that an inquiry be held, in accordance with section 119” from section 113 (5).  
Insert instead “requested that a review be held by the Planning Assessment Commission”.
- [46] Section 114 Consideration of findings and recommendations of Planning Assessment Commission**  
Omit “directed that an inquiry be held, in accordance with section 119”.  
Insert instead “requested that a review be held by the Planning Assessment Commission”.
- [47] Section 115M Public inquiry into designated fishing activity**  
Omit “direct an inquiry under section 119” from section 115M (1).  
Insert instead “request that a review be held by the Planning Assessment Commission”.
- [48] Section 115M (2)**  
Omit “Commission of Inquiry that has conducted the inquiry”.  
Insert instead “Planning Assessment Commission”.
- [49] Section 115M (3)**  
Omit “an inquiry”. Insert instead “a review”.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- [50] **Section 115O Determination with respect to environmental assessment**  
Omit “a Commission of Inquiry” from section 115O (3) (c).  
Insert instead “the Planning and Assessment Commission”.
- [51] **Part 5A, heading and sections 116A–116F and 116H**  
Omit the heading and sections.
- [52] **Section 116G Building, demolition and incidental work**  
Insert in alphabetical order in section 116G (1):  
*Crown* has the same meaning as it has in Division 4 of Part 4.
- [53] **Section 116GA Crown development for public entertainment**  
Insert in alphabetical order in section 116GA (1):  
*Crown* has the same meaning as it has in Division 4 of Part 4.
- [54] **Sections 116G and 116GA**  
Renumber as sections 109R and 109S, respectively.
- [55] **Section 117C Definitions**  
Omit the definition of *panel*. Insert instead in alphabetical order:  
*regional panel* means a joint regional planning panel.
- [56] **Section 118AA Planning assessment panels**  
Omit “panel” wherever occurring in section 118AA (2)–(6) and (8)–(11).  
Insert instead “planning assessment panel”.
- [57] **Section 118AA (7) and (7A)**  
Omit section 118AA (7). Insert instead:  
(7) Part 2 of Schedule 5B has effect with respect to the members of planning assessment panels.  
(7A) The regulations may make provision for or with respect to the procedures of planning assessment panels.
- [58] **Section 118AB Functions of planning administrators or planning assessment panels**  
Omit “or panel” from section 118AB (1).  
Insert instead “, planning assessment panel or regional panel”.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

- [59] **Section 118AB (2)**  
Omit “or panel”.  
Insert instead “or planning assessment panel”.
- [60] **Section 118AC Costs of planning administrator or planning assessment panel**  
Omit “or panel” wherever occurring.  
Insert instead “or planning assessment panel”.
- [61] **Section 118AD Council to assist planning administrator or panel**  
Omit “or panel” wherever occurring in section 118AD (1).  
Insert instead “, planning assessment panel or regional panel”.
- [62] **Section 118AE Annual report on activities of planning administrators and panels**  
Omit “and panels” wherever occurring.  
Insert instead “and planning assessment panels”.
- [63] **Section 118AF Regulations**  
Omit “or panel” wherever occurring.  
Insert instead “, planning assessment panel or regional panel”.
- [64] **Section 118AF (a) and (b)**  
Omit “or panel’s” wherever occurring.  
Insert instead “, planning assessment panel’s or regional panel’s”.
- [65] **Part 6, Division 2, heading**  
Omit “**Public inquiries and settlement**”. Insert instead “**Settlement**”.
- [66] **Sections 119–120A**  
Omit the sections.
- [67] **Section 121 Settlement of disputes**  
Omit “a Commissioner of Inquiry” from section 121 (3).  
Insert instead “a member of the Planning Assessment Commission”.
- [68] **Section 132 Constitution of development areas**  
Omit section 132 (7). Insert instead:

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- (7) If the Minister has requested that a review be held by the Planning Assessment Commission with respect to the proposal, the Minister must not determine the application until after:
- (a) the review has been held, and
  - (b) the Minister has considered the findings and recommendations of the Commission following the review.

**[69] Section 152 Right to be heard**

Omit “Where”.

Insert instead “Except as provided by this Act or the regulations,”.

**[70] Schedule 5B Planning assessment panels**

Omit Division 3 of Part 2.

**[71] Schedule 6 Savings, transitional and other provisions**

Insert in appropriate order and with appropriate clause numbering:

**Division 3 Provisions relating to development assessment**

**Commissioners of Inquiry**

- (1) A person who held office as a Commissioner of Inquiry immediately before the repeal of section 119 by the amending Act ceases to hold office on that repeal.
- (2) A Commissioner of Inquiry is not entitled to any remuneration or compensation because of the loss of that office as a consequence of the amendments made by the amending Act.

**Application to existing development applications**

- (1) The amendment made to section 78A by the amending Act applies to or in respect of a development application made, but not determined by a consent authority, before the commencement of that amendment.
- (2) The amendments made to sections 85A and 96 and Division 8 of Part 4 by the amending Act, and Division 7A of Part 4 as inserted by the amending Act, do not apply to or in respect of a development application made, or development consent granted, before the commencement of these amendments.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

---

- (3) The amendments made to sections 86A, 95 and 95A by the amending Act apply to or in respect of a development consent granted before the commencement of those amendments.

## **2.3 Amendments to Heritage Act 1977 No 136**

### **[1] Section 4 Definitions**

Omit the definition of *Commissioner of Inquiry* from section 4 (1).

Insert instead in alphabetical order:

*Planning Assessment Commission* has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

### **[2] Sections 34 (1) (c), (2), 71 and 78**

Omit “a Commissioner of Inquiry” wherever occurring.

Insert instead “the Planning Assessment Commission”.

### **[3] Section 34 (1) (c)**

Omit “an inquiry”. Insert instead “a review”.

### **[4] Section 34 (2)**

Omit “Commissioner of Inquiry provides the Commissioner’s report”.

Insert instead “Commission provides its report”.

### **[5] Sections 71 (a) and 78 (a)**

Omit “Commissioner” wherever occurring.

Insert instead “Commission”.

### **[6] Sections 72 and 79**

Omit “the Commissioner of Inquiry” wherever occurring.

Insert instead “the Planning Assessment Commission”.

### **[7] Sections 73 (1) (d) and 79A (1) (d)**

Omit “Commissioner of Inquiry concerned” wherever occurring.

Insert instead “Planning Assessment Commission”.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

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## **2.4 Amendment to Independent Commission Against Corruption Act 1988 No 35**

### **Section 74C Reports relating to local government and planning authorities**

Insert after section 74C (3B):

- (3C) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the removal from office under the *Environmental Planning and Assessment Act 1979* of a member of the Planning Assessment Commission or of a joint regional planning panel or a planning arbitrator because of corrupt conduct by the member or planning arbitrator.

## **2.5 Amendment to Ombudsman Act 1974 No 68**

### **Section 5 Definitions**

Insert “or planning arbitrator” after “certifier” in paragraph (f1) of the definition of *public authority* in section 5 (1).

## **2.6. Amendment to Public Sector Employment and Management Act 2002 No 43**

### **Schedule 2 Executive positions (other than non-statutory SES positions)**

Omit from Part 3:

Chairman of Commissioners of Inquiry (under the *Environmental Planning and Assessment Act 1979*) (2 positions)

Deputy Chairman of Commissioners of Inquiry (under the *Environmental Planning and Assessment Act 1979*)

## **2.7 Amendment to Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

### **Schedule 2 Public offices**

Omit “Commissioner of Inquiry (under the *Environmental Planning and Assessment Act 1979*)” from Part 1.

## **2.8 Amendment to Water Act 1912 No 44**

### **[1] Section 11A Determination of applications affected by reviews by Planning Assessment Commission**

Omit “a Commission of Inquiry has given a section 120A notice” from section 11A (1).

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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Insert instead “the Planning Assessment Commission has given notice of a review under the *Environmental Planning and Assessment Act 1979*”.

**[2] Section 11A (2) (a)**

Omit “Commission of Inquiry”.

Insert instead “Planning Assessment Commission”.

**[3] Section 11A (2)**

Omit “section 120A”.

**[4] Section 11A (2) (b) and (3)**

Omit “Commission of Inquiry’s section 119 report” wherever occurring.

Insert instead “Commission’s report under the *Environmental Planning and Assessment Act 1979*”.

**[5] Section 11A (6)**

Omit the subsection.

**[6] Section 171A Determination of applications affected by reviews by Planning Assessment Commission**

Omit “a Commission of Inquiry has given a section 120A notice” from section 171A (1).

Insert instead “the Planning Assessment Commission has given notice of a review under the *Environmental Planning and Assessment Act 1979*”.

**[7] Section 171A (2) (a)**

Omit “Commission of Inquiry”.

Insert instead “Planning Assessment Commission”.

**[8] Section 171A (2)**

Omit “section 120A”.

**[9] Section 171A (2) (b) and (3)**

Omit “Commission of Inquiry’s section 119 report” wherever occurring.

Insert instead “Commission’s report under the *Environmental Planning and Assessment Act 1979*”.

**[10] Section 171A (6)**

Omit the subsection.



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

## **2.9 Amendments to Water Management Act 2000 No 92**

**[1] Section 94 Determination of applications affected by reviews by Planning Assessment Commission**

Omit “a Commission of Inquiry has given a section 120A notice” from section 94 (1).

Insert instead “the Planning Assessment Commission has given notice of a review under the *Environmental Planning and Assessment Act 1979*”.

**[2] Section 94 (2) (a)**

Omit “Commission of Inquiry”.

Insert instead “Planning Assessment Commission”.

**[3] Section 94 (2)**

Omit “section 120A”.

**[4] Section 94 (2) (b) and (3)**

Omit “Commission of Inquiry’s section 119 report” wherever occurring.

Insert instead “Commission’s report under the *Environmental Planning and Assessment Act 1979*”.

**[5] Section 94 (4)**

Omit the subsection.

## **2.10 Amendments to Environmental Planning and Assessment Regulation 2000**

**[1] Clause 51 Rejection of development applications**

Omit “7” from clause 51 (1).

Insert instead “14”.

**[2] Part 6, Division 14**

Insert after Division 13:

### **Division 14 Operational review conditions**

**124A Application of Division**

This Division applies to a further condition imposed under section 80A (10B) of the Act (in this Division called an *operating hours review condition*).

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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**124B Development for which operating hours review condition may be imposed**

- (1) Development consent for the following purposes may be the subject of an operating hours review condition:
  - (a) entertainment facilities,
  - (b) hotel or motel accommodation,
  - (c) nightclubs,
  - (d) pubs,
  - (e) registered clubs.
- (2) Words and expressions used in this clause have the same meaning as they have in the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

**124C Matters to be included in consent**

A consent that is subject to an operating hours review condition must include the following:

- (a) a statement that the consent is subject to the condition and the purpose of the condition,
- (b) that the consent authority is to carry out the reviews,
- (c) when, or at what intervals, the reviews are to be carried out.

**124D Review procedures**

- (1) The consent authority must give the operator of a development subject to an operating hours review condition not less than 14 days written notice that a review is to be carried out under the condition.
- (2) The consent authority may notify such other persons as it thinks fit of the review.
- (3) The consent authority must take into account any submissions made by a person that are received within 14 days after notice is given to the person of a review.

**Note.** Under section 80A (10D) of the Act, a decision to change the hours of operation of a development is taken to be a determination of a development consent and is subject to the notification and appeal provisions under the Act in relation to such a determination.

**[3] Clause 264 Council to maintain a register of development applications and consents**

Insert after clause 264 (2) (m):

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

---

- (ma) in the case of a consent subject to a condition under section 80A (10B), the outcome of any review carried out under the condition,

**[4] Part 16B**

Insert after Part 16A:

## **Part 16B Planning bodies and planning arbitrators**

### **268C Definitions**

In this Part:

*planning body* means the Planning Assessment Commission, a joint regional planning panel or a planning assessment panel.

### **268D General procedure**

- (1) The procedure for the calling of meetings of a planning body and for the conduct of business at those meetings is, subject to this Act and any directions by the Minister, to be as determined by the planning body.
- (2) Subject to this clause, the planning body is not bound by the rules of evidence.
- (3) Nothing in this Part derogates from any law relating to Crown privilege.

### **268E Quorum**

The quorum for a meeting of a planning body is a majority of its members for the time being (including the chairperson).

### **268F Presiding member**

- (1) The chairperson (or, in the absence of the chairperson, a person elected by the members) is to preside at a meeting of a planning body.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **268G Voting**

A decision supported by a majority of the votes cast at a meeting of a planning body at which a quorum is present is the decision of the planning body.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 2 Amendments relating to development assessment

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## **268H Public meetings**

A planning body may (unless the Minister otherwise directs) conduct its meetings in public, and is required to do so for the conduct of any business that is required to be conducted in public by a direction of the Minister.

## **268I Transaction of business outside meetings or by telephone**

- (1) A planning body may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the planning body for the matter for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the planning body.
- (2) The planning body may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the chairperson and each member of the planning body have the same voting rights as they have at an ordinary meeting of the planning body.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the planning body.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **268J First meeting**

The Minister may call the first meeting of the planning body in such manner as the Minister thinks fit.

## **268K Planning arbitrators**

- (1) A planning arbitrator is to remain on the register of planning arbitrators for a period not exceeding 3 years, but is eligible to be relisted on that register.
- (2) The Minister may remove a planning arbitrator from the register of planning arbitrators if the Independent Commission Against Corruption, in a report referred to in section 74C of the

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## exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development assessment

Schedule 2

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*Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the planning arbitrator from office because of corrupt conduct by the planning arbitrator.

- (3) A planning arbitrator may be removed from the register of planning arbitrators by the Minister at any time without notice and for no reason.
- (4) A planning arbitrator is not entitled to any remuneration or compensation because of removal from office under this clause.

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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## Schedule 3 Amendments relating to development contributions

(Section 3)

### 3.1 Amendments to Environmental Planning and Assessment Act 1979

#### [1] Section 75O Giving of approval for concept plan

Omit “planning agreement referred to in section 93F” from section 75O (5).

Insert instead “planning agreement under Division \*4 of Part \*9”.

#### [2] Section 75R Application of other provisions of Act

Omit section 75R (4). Insert instead:

- (4) Part \*9 applies to projects (and the giving of approval for the carrying out of projects under this Part) in the same way as it applies 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 a provision of Division 2, 3 or 5 of Part \*9 unless the provision would have applied if this Part did not apply to the project and a development consent were granted.

#### [3] Part 4, Divisions 6 and 6A

Omit the Divisions.

#### [4] Part 9

Insert as Part 9:

**Note.** Part 9 is an interim Part number for the purposes of public consultation. The numbering of the Part (and the consequent numbering of sections within the Part) will be reviewed following public consultation.

## Part 9 Provision of public infrastructure

### Division 1 Preliminary

#### 901 Definitions

- (1) In this Part:

*community infrastructure*—see section \*902.

*community infrastructure contribution* means a development contribution required by a consent authority under Division 2.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

---

**contributions plan** means a contributions plan approved under this Part.

**development contribution** means:

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

**Note.** Development contributions for community infrastructure are provided for in Division 2 and development contributions for public infrastructure are provided for in Division 3.

**development corporation** means a development corporation constituted under Part 2 of the *Growth Centres (Development Corporations) Act 1974*.

**growth centre** has the same meaning as it has in the *Growth Centres (Development Corporations) Act 1974*.

**planning agreement** means a voluntary planning agreement provided for in Division 4.

**planning authority** means:

- (a) a council, or
- (b) the Minister, or
- (c) the corporation, or
- (d) a development corporation, or
- (e) a public authority declared by the regulations to be a planning authority for the purposes of this Part.

**public infrastructure**—see section \*902.

**State contributions area** means land for the time being described in Schedule 5A.

**State infrastructure contribution** means a State infrastructure contribution determined by the Minister under Division 3.

- (2) Words and expressions used in Schedule 1 have the same meanings as they have in this Part.

## 902 Community and public infrastructure

- (1) In this Part:

**community infrastructure** means public amenities and public services, but does not include water supply or sewerage services.

**public infrastructure** includes:

- (a) public amenities and public services, and
- (b) affordable housing, and
- (c) transport infrastructure,

but does not include water supply or sewerage services.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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- (2) In this Part, *provision of public infrastructure* includes:
- (a) the provision, extension and augmentation of (or the recoupment of the cost of providing, extending or augmenting) public infrastructure, and
  - (b) the funding of recurrent expenditure relating to the provision, extension and augmentation of public infrastructure, and
  - (c) the conservation or enhancement of the natural environment, and
  - (d) any action of a planning authority in connection with the exercise of any statutory function under this Act, including the carrying out of any research or investigation and the preparation of any report, study or instrument.

### **903 Key considerations for development contributions**

The following are the key considerations for development contributions for the purposes of this Part:

- (a) Can the public infrastructure that is proposed to be funded by a development contribution be provided within a reasonable time?
- (b) What will be the impact of the proposed development contribution on the affordability of the proposed development?
- (c) Is the proposed development contribution based on a reasonable apportionment between existing demand and new demand for public infrastructure to be created by the proposed development to which the contribution relates?
- (d) Is the proposed development contribution based on a reasonable estimate of the cost of proposed public infrastructure?

### **904 Accountability**

- (1) The regulations may make provision for or with respect to requiring the collection and publication by planning authorities of information concerning the provision of public infrastructure and the determination, collection, application and use of development contributions under this Part.
- (2) The information required to be collected and published can include (but is not limited to):
  - (a) details of the amounts of monetary contributions paid and the purposes for which they were paid,



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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- (b) details of the purposes for which monetary contributions have been applied by a planning authority,
  - (c) details of the time frame for the provision of community infrastructure to which any contributions plan approved by the planning authority relates,
  - (d) details of any borrowings or other arrangements made by a planning authority for the provision of public infrastructure,
  - (e) the amount and other details of any monetary contributions that have not been applied for the purpose for which they were paid and that continue to be held by a planning authority.
- (3) The regulations can, for example, require the publication of information by a planning authority by requiring inclusion of the information in any annual or other report of the planning authority.

**905 Use of development contributions**

- (1) A consent authority or planning authority is to hold any monetary contribution paid under this Part (including under a planning agreement) for the purpose for which the payment was required, and apply the money towards that purpose within a reasonable time.
- (2) Money paid under this Part for different purposes may be pooled and applied progressively for those purposes, subject to the requirements of any relevant contributions plan.
- (3) Money paid as an indirect contribution under Division 2 is to be applied (subject to any relevant provisions of a contributions plan) towards the provision, extension or augmentation of community infrastructure or towards recouping the cost of the provision, extension or augmentation of community infrastructure.
- (4) Land dedicated under this Part is to be made available by the consent authority or planning authority for the purpose for which the dedication was required and within a reasonable time.
- (5) A reference in this section to a monetary contribution includes a reference to any additional amount earned from its investment.
- (6) This section is subject to any direction of the Minister under this Part.
- (7) This section does not apply in respect of any of the following:

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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- (a) monetary contributions paid, and the proceeds of the sale of land dedicated, under Division 2 (Community infrastructure contributions) in respect of development within a growth centre that is specified in Schedule 3 (Community Infrastructure Trust Fund areas) to the *Growth Centres (Development Corporations) Act 1974*,  
**Note.** Section 25 of the *Growth Centres (Development Corporations) Act 1974* requires these contributions to be paid into a Community Infrastructure Trust Fund.
- (b) a State infrastructure contribution under Division 3,
- (c) a development contribution under Division 5 (Development contributions for affordable housing).

## **Division 2 Community infrastructure contributions**

### **906 Direct and indirect contributions for community infrastructure**

- (1) A consent authority can require the following development contributions in respect of development:  
*direct contributions*, being either or both of the following:
  - (a) a reasonable development contribution for the provision, extension or augmentation of community infrastructure within the area,
  - (b) a reasonable monetary contribution towards recoupment of the cost of providing existing community infrastructure within the area.*indirect contributions*, being the payment of a monetary contribution that is a percentage of the proposed cost of carrying out the development.
- (2) An indirect contribution cannot be required in relation to development if a direct contribution is required in relation to that development.

### **907 Councils require contributions plan**

- (1) A council cannot require a community infrastructure contribution unless it is of a kind allowed by, and is determined in accordance with, a contributions plan approved by the Council.
- (2) The Minister may, by direction in writing given in a particular case, authorise a council to require a community infrastructure contribution even though it is not of a kind allowed by, or is not determined in accordance with, a contributions plan approved by the Council.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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- (3) A council and the Minister must have regard to the key considerations for development contributions established by section \*903 when approving a contributions plan or giving a direction under this section.

**908 Councils limited to contributions for key community infrastructure**

- (1) A council's contributions plan cannot allow the council to require a community infrastructure contribution unless the community infrastructure is:
- (a) *key community infrastructure* (being community infrastructure prescribed by the regulations as key community infrastructure), or
  - (b) *additional community infrastructure* (being community infrastructure other than key community infrastructure) that the Minister has approved for the council under this section.
- (2) The Minister may on application by a council approve particular community infrastructure or a kind of community infrastructure as additional community infrastructure for the council.
- (3) The Minister may by direction in writing to one or more councils direct that (despite any other provision of this section or the regulations) a contributions plan of the council may permit the council to require a community infrastructure contribution for specified additional community infrastructure.
- (4) In determining whether to grant approval or give a direction under this section, the Minister must have regard to the key considerations for development contributions established by section \*903.
- (5) The regulations may:
- (a) limit the kinds of infrastructure that may be the subject of an approval or direction of the Minister of additional community infrastructure for the purposes of this section, and
  - (b) require a council that applies for the approval of the Minister under this section to provide specified information and documents (such as a business plan and independent assessment of the business plan) in support of or otherwise in connection with the application.

**909 Nexus for direct contributions**

- (1) A direct contribution for the provision, extension or augmentation of community infrastructure within an area can

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 3 Amendments relating to development contributions

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only be required if the consent authority is satisfied that the development concerned will or is likely to require the provision of or increase the demand for that community infrastructure.

- (2) A direct contribution towards recoupment of the cost of providing existing community infrastructure within the area can only be required if:
  - (a) the consent authority is satisfied that the development concerned will, if carried out, benefit from the provision of the existing public infrastructure, and
  - (b) the existing public infrastructure was (at any time, whether before or after the date of commencement of this Part) provided within the area by a consent authority in preparation for or to facilitate the carrying out of development in the area.
- (3) For the purposes of a direct contribution, the cost of providing existing community infrastructure is that cost as indexed in accordance with the regulations.
- (4) A direct contribution cannot be required if the community infrastructure concerned is, in whole or in part, infrastructure provided, or to be provided, in relation to the development out of State infrastructure contributions.

#### **910 Nexus for indirect contributions**

- (1) The validity of an indirect contribution is not affected by there being no connection between the development the subject of the indirect contribution and the object of expenditure of any money required to be paid.
- (2) A consent authority cannot require payment of an indirect contribution in relation to development on land in a State contributions area except with the approval of the Minister or a development corporation designated by the Minister to give approvals under this subsection.
- (3) The regulations may make provision for or with respect to indirect contributions, including:
  - (a) the means by which the proposed cost of carrying out development is to be estimated or determined, and
  - (b) the maximum percentage of an indirect contribution.
- (4) The Minister may by direction to a consent authority in the case of a particular development application permit the consent authority to require payment of an indirect contribution of a percentage in excess of any maximum percentage fixed by the

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## exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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regulations. The Minister's direction may also include requirements for the public notification of any such permission, including notification in any contributions plan of the consent authority.

**911 Minister's directions about community infrastructure contributions**

- (1) The Minister may, generally or in any particular case or class of cases, direct a consent authority as to:
  - (a) the community infrastructure in relation to which a requirement for a community infrastructure contribution may or may not be imposed, and
  - (b) in the case of a requirement for a direct contribution requiring the payment of a monetary contribution—the means by which or the factors in relation to which the amount of the contribution may or may not be calculated or determined, and the maximum amount of any such contribution, and
  - (c) the things that may or may not be accepted as a material public benefit for the purposes of a requirement for a direct contribution, and
  - (d) the type or area of development in respect of which a community infrastructure contribution may or may not be imposed and the maximum percentage of an indirect contribution, and
  - (e) the time within which community infrastructure contributions in the form of monetary contributions under this Division are to be applied (including a direction as to what constitutes a reasonable time for the provision of community infrastructure funded by community infrastructure contributions under this Division), and
  - (f) the use of community infrastructure contributions in the form of monetary contributions for purposes other than those for which they were paid, and
  - (g) the preparation of joint contributions plans by 2 or more councils.
- (2) A consent authority to which a direction is given under this section must comply with the direction in accordance with its terms.
- (3) A consent authority must not, in granting development consent in relation to which a direction under this section applies, impose a condition that is not in accordance with the terms of the direction,

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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despite the other provisions of this Part and despite the provisions of any contributions plan.

- (4) Directions in force under this section are to be made publicly available on the website of the Department.

## **912 Development contribution provisions in planning instruments**

- (1) An environmental planning instrument (*EPI*) must not include provision that requires as a condition of development consent or as a precondition to the grant of development consent:
- (a) the making of a development contribution for the provision of public infrastructure of any kind in connection with the carrying out of the development concerned, or
  - (b) the making of satisfactory arrangements for the making of such a development contribution.
- (2) This section does not apply to any provision of an EPI authorised by Division 3.
- (3) This section does not prevent an EPI from including a provision to the effect that development consent must not be granted for development unless the consent authority is satisfied that specified public infrastructure is available or that adequate arrangements have been made to make that public infrastructure available.
- (4) This section does not apply to any provision that is in force immediately before the commencement of this section.

## **913 Procedural matters**

Part 1 of Schedule 1 has effect in relation to community infrastructure contributions.

## **Division 3 State infrastructure contributions**

### **914 State infrastructure contributions in special contribution areas**

- (1) For any land in a State contributions area, the Minister may determine that development contributions (*State infrastructure contributions*) are to be made for the provision of public infrastructure in relation to development or a class of development on the land.
- (2) The Minister is to determine the level and nature of State infrastructure contributions. A State infrastructure contribution may be determined as a contribution of a specified amount or of

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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a percentage of the proposed cost of carrying out development or any class of development.

- (3) In determining the level and nature of a State infrastructure contribution, the Minister must have regard to the key considerations for development contributions established by section 903.
- (4) A State infrastructure contribution can extend to the provision of public infrastructure outside a State contributions area or outside New South Wales.

**915 Restrictions on State infrastructure determinations**

This determination by the Minister of a State infrastructure contribution as a specified amount (but not as a percentage of the proposed cost of carrying out development) is subject to the following requirements:

- (a) the contribution must as far as reasonably practicable be reasonable having regard to the cost of the provision of public infrastructure in relation to the development or class of development concerned,
- (b) a State infrastructure contribution for the provision of public infrastructure outside the State contributions area concerned is not to be determined unless the Minister is of the opinion that the need for that public infrastructure arises as a result of the development concerned,
- (c) the Minister must consult the Treasurer if the cost of the infrastructure concerned exceeds \$30 million.

**916 State infrastructure contributions in addition to community infrastructure contributions**

A requirement for a State infrastructure contribution is in addition to any requirement for a community infrastructure contribution under Division 2.

**917 Provision in EPIs for satisfactory arrangements for State infrastructure**

- (1) An environmental planning instrument can include provision to the effect that development consent is not to be granted for specified development or development of a specified class unless arrangements satisfactory to the Director-General have been made for the making of a development contribution for the provision of public infrastructure by the State in relation to the development.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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- (2) In deciding for the purposes of any such provision whether satisfactory arrangements have been made for the making of a development contribution for the provision of public infrastructure by the State in relation to development, the Director-General must have regard to the key considerations for development contributions established by section \*903.
- (3) If a State infrastructure contribution is required in respect of development, a development contribution for the provision of public infrastructure in respect of the development cannot be required under a provision of an environmental planning instrument.

## **918 Procedural matters**

Part 2 of Schedule 1 has effect in relation to State infrastructure contributions.

## **Division 4 Voluntary planning agreements**

### **919 Developers can enter into planning agreements**

- (1) A *planning agreement* is a voluntary agreement between one or more planning authorities and a person (the *developer*) under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards the provision of public infrastructure or another public purpose.
- (2) The developer must be:
  - (a) a person who has sought a change to or the making or revocation of an environmental planning instrument, or
  - (b) a person who has made, or proposes to make, a development application, or
  - (c) a person who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.

### **920 Planning authority must have regard to key considerations for development contributions**

When entering into a planning agreement a planning authority must have regard to the key considerations for development contributions established by section \*903.



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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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**921 Council planning agreements limited to key community infrastructure**

- (1) A planning agreement entered into by a council cannot apply in respect of public infrastructure unless the infrastructure is:
  - (a) *key community infrastructure* (being community infrastructure prescribed by the regulations as key community infrastructure), or
  - (b) *additional community infrastructure* (being community infrastructure other than key community infrastructure) that the Minister has approved for the council under this section.
- (2) The Minister may on application by a council approve particular community infrastructure or a kind of community infrastructure as additional community infrastructure for the council for the purposes of a planning agreement.
- (3) The Minister may by direction in writing to a council direct that (despite any other provision of this section or the regulations) a planning agreement entered into by the council can apply in respect of specified additional community infrastructure.
- (4) In determining whether to grant approval or give a direction under this section, the Minister must have regard to the key considerations for development contributions established by section \*903.
- (5) The regulations may:
  - (a) limit the kinds of infrastructure that may be the subject of an approval or direction of the Minister of additional community infrastructure for the purposes of this section, or
  - (b) require a council that applies for the approval of the Minister under this section to provide specified information and documents (such as a business plan and independent assessment of the business plan) in support of or otherwise in connection with such an application.

**922 Planning agreements can limit other development contribution requirements**

- (1) A planning agreement can exclude the application in respect of development of any provision of Division 2 (Community infrastructure contributions) or of Division 3 (State infrastructure contributions), subject to the following restrictions:

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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- (a) a planning agreement cannot exclude the application of a provision of Division 2 in respect of development unless the consent authority for the development or the Minister is a party to the agreement,
  - (b) a planning authority is not to enter into a planning agreement excluding the application of Division 3 unless the planning authority is the Minister or does so with the approval of the Minister or a development corporation designated by the Minister to give such approvals.
- (2) If a planning agreement excludes the application of any provision of Division 2 or 3 to particular development, a consent authority cannot require a development contribution in respect of that development under the excluded provisions (except in respect of the application of any part of those provisions that is not excluded by the agreement).
- (3) A planning agreement can exclude benefits under a planning agreement from being taken into consideration in connection with requiring a direct contribution under Division 2, and such an exclusion has effect accordingly.

**923 Procedural matters**

Part 3 of Schedule 1 has effect in relation to planning agreements.

**Division 5 Development contributions for affordable housing**

**924 Conditions requiring land or contributions for affordable housing**

- (1) A State environmental planning policy may identify that there is a need for affordable housing within an area.
- (2) A consent authority may grant development consent for development within such an area subject to a condition requiring a reasonable development contribution to be used for the purpose of providing affordable housing, but only if:
  - (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
  - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
  - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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- (d) the regulations provide for this section to apply to the application for development consent.
- (3) The reasonableness of a development contribution is to be determined having regard to the following:
  - (a) the extent of the need in the area for affordable housing,
  - (b) the scale of the proposed development,
  - (c) any other dedication or contribution required to be made by the applicant under this Division, or under Division 2 as a direct contribution.
- (4) A condition may be imposed under this section only if:
  - (a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and
  - (b) the condition is authorised to be imposed by a local environmental plan or State environmental planning policy, and is in accordance with a scheme for dedications or contributions set out in or adopted by the policy or plan.
- (5) A condition is not to be imposed under this section in relation to development that is within a State contributions area.

**925 Other contributions to be taken into account**

A consent authority that proposes to impose a condition in accordance with this Division must take into consideration any land or other sum of money that the applicant has previously dedicated free of cost, or previously paid, for the purpose of affordable housing within the area otherwise than as a condition of a consent.

**926 Other conditions concerning affordable housing**

This Division does not prevent the imposition on a development consent of other conditions relating to the provision, maintenance or retention of affordable housing. Such conditions may require, but are not restricted to, the imposition of covenants (including positive covenants) or the entering into of contractual or other arrangements.

**927 Use of affordable housing contributions**

- (1) A development contribution made in accordance with a condition imposed under this Division must:

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# exposure draft

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 3 Amendments relating to development contributions

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- (a) in the case of land, be made available by the consent authority for the purposes of affordable housing within a reasonable time, or
  - (b) in the case of a monetary contribution, be held by the consent authority (together with any additional amount earned from its investment) for the purpose for which the payment was required and applied by the consent authority for the purposes of affordable housing in the area or an adjoining area within a reasonable time, or
  - (c) in either case, transfer the land or pay the monetary contribution in accordance with any applicable direction of the Minister under this section.
- (2) The Minister may give a direction, that applies generally or in any particular case or class of cases, to a consent authority:
- (a) requiring it to transfer to a person nominated by the Minister land contributed under this Division, or
  - (b) requiring it to pay to a person nominated by the Minister a monetary contribution contributed under this Division.
- (3) A person nominated under this section by the Minister must:
- (a) make available any land transferred to the person under this Division for the purposes of affordable housing within a reasonable time or (if the Minister so directs) within a time directed by the Minister, and
  - (b) apply any monetary contribution paid to the person under this Division (and any additional amount earned from its investment) for the purposes of affordable housing in the area concerned or in an adjoining area within a reasonable time.

## **Division 6 State Infrastructure Fund**

### **928 Definition**

In this Part:

*the Fund* means the State Infrastructure Fund established under this Division.

### **929 Establishment of Fund**

- (1) There is to be established in the Special Deposits Account a fund called the State Infrastructure Fund.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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- (2) The Fund is to be administered by the Secretary of the Treasury. The Secretary is to consult the Director-General in relation to the administration of the Fund.

**930 Payments into Fund**

The following is to be paid into the Fund:

- (a) monetary contributions, and the proceeds of sale of any land, received by a consent authority as a State infrastructure contribution under Division 3,
- (b) any money appropriated by Parliament for the purposes of the Fund,
- (c) the proceeds of the investment of money in the Fund,
- (d) any other money required to be paid into the Fund by or under this or any other Act or the regulations under this Act.

**931 Payments out of Fund**

- (1) The following is to be paid from the Fund:

- (a) payments to public authorities for the provision of public infrastructure in relation to development,
- (b) any money required to meet administrative expenses in relation to the Fund,
- (c) all other money directed or authorised to be paid from the Fund by this Act or by the regulations under this Act.

- (2) The assets of the Fund can only be applied for the purposes referred to in subsection (1).

**932 Investment of money in Fund**

The money in the Fund may be invested:

- (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Department to invest the money, in any other manner approved by the Treasurer.

**[5] Schedule 1**

Insert as Schedule 1:

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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## **Schedule 1 Provisions relating to development contributions**

(Sections \*913, 918, 923)

### **Part 1 Community infrastructure contributions**

#### **1 Development contributions to be imposed by condition of consent**

A requirement for a community infrastructure contribution is to be imposed by means of a condition on development consent for the development concerned.

#### **2 Appeals**

- (1) A condition of development consent that imposes a direct contribution may be disallowed or amended by the Court on appeal because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with a contributions plan or direction of the Minister. The Court is not authorised to disallow or amend the contributions plan or direction.
- (2) A condition of development consent that imposes an indirect contribution that is of a kind allowed by, and determined in accordance with, a contributions plan (or a direction of the Minister under this Part) may not be disallowed or amended by the Court on appeal.
- (3) A person cannot appeal to the Court under this Act (despite section 123 or any other provision of this Act) in respect of:
  - (a) the approving, amending or repealing of a contributions plan by the Minister under clause \*7 (Minister's directions about contributions plans), or
  - (b) the reasonableness in the particular circumstances of a requirement for a community infrastructure contribution that is determined in accordance with any such contributions plan.

#### **3 Dedication of land or provision of material public benefit in satisfaction of development contribution requirement**

A consent authority may accept the dedication of land or the provision of a material public benefit in part or full satisfaction of a requirement for a community infrastructure contribution other than an indirect contribution.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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## **4 Other contributions to be taken into account**

A consent authority that proposes to require a community infrastructure contribution in respect of development must take into consideration any land, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority, other than:

- (a) a benefit provided as a condition of the grant of development consent under this Act, or
- (b) a benefit excluded from consideration by a planning agreement.

## **5 Contribution requirements under other Acts**

- (1) Compliance with a requirement for a community infrastructure contribution in relation to development operates to satisfy a requirement imposed by a public authority under any other Act (in relation to or in connection with that development) for the dedication of land or payment of money in respect of the provision of public infrastructure, to the extent of the value of the land dedicated or the amount of money paid in compliance with the requirement.
- (2) The regulations may make provision for the determination in accordance with the regulations of the value for the purposes of this clause of the land dedicated in compliance with the requirement.

## **6 Making of contributions plans**

- (1) A council, or 2 or more councils, may, subject to and in accordance with the regulations, prepare and approve a contributions plan for the purpose of imposing requirements for community infrastructure contributions.
- (2) If a contributions plan authorises the imposition of a requirement for an indirect contribution, the plan is to specify the type or area of development in respect of which an indirect contribution may be imposed and is to preclude the imposition of a requirement for a direct contribution in respect of that type or area of development.
- (3) The regulations may make provision for or with respect to the preparation and approval of contributions plans, including the format, structure and subject-matter of plans.
- (4) A council must, within 14 days after approving a contributions plan, provide the Minister with a copy of the plan.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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## **7 Minister's directions about contributions plans**

- (1) The Minister may direct a council to provide the Minister with a draft of a contributions plan for review by the Minister before the council approves the plan. The council is not to approve the contributions plan until the Minister has notified the council that the Minister's review of the plan has been completed.
- (2) The Minister may, by direction in writing to a council, approve, amend or repeal a contributions plan on behalf of the council.
- (3) Alternatively, the Minister may direct a council in writing to approve, amend or repeal a contributions plan in the time and manner specified in the direction. The Minister may then, by direction in writing to the council, approve, amend or repeal the contributions plan on behalf of the council if the council fails to do so in accordance with the direction.
- (4) The approval, amendment or repeal of a contributions plan by the Minister has effect as if done by the council.
- (5) In approving, amending or repealing a contributions plan under this clause the Minister is not subject to the regulations.

## **8 Operation of contributions plan if consent authority not a council**

- (1) A consent authority that is not a council can require a development contribution even if it is not of a kind allowed by, or is not determined in accordance with, a contributions plan.
- (2) If there is a contributions plan that applies to the whole or any part of the area in which development is to be carried out, a consent authority that is not a council must however have regard to the contributions plan before imposing the requirement.

## **9 Judicial notice, validity etc**

- (1) Judicial notice is to be taken of a contributions plan and of the date on which the plan came into effect.
- (2) It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a contributions plan have been complied with and performed.
- (3) The validity of any procedure required to be followed in making or approving a contributions plan is not to be questioned in any legal proceedings except those commenced in the Court by any person within 3 months after the date on which the plan came into effect.



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

---

- (4) The amendment or repeal, whether in whole or in part, of a contributions plan does not affect the previous operation of the plan or anything duly done under the plan.

## **10 Contributions plans—complying development**

- (1) In relation to an application made to an accredited certifier for a complying development certificate, a contributions plan:
- (a) is to specify whether or not the accredited certifier must, if a complying development certificate is issued, impose a condition requiring a community infrastructure contribution, and
  - (b) can only authorise the imposition by an accredited certifier of a condition requiring a direct contribution that requires the payment of a monetary contribution, and
  - (c) must specify the amount of the monetary contribution that an accredited certifier must so impose or the precise method by which the amount is to be determined.
- (2) If an accredited certifier fails to comply with such a requirement of a contributions plan, the consent authority may impose the necessary condition on the complying development certificate and it has effect as if it had been imposed by the accredited certifier.
- (3) This clause does not limit anything for which a contributions plan may make provision in relation to a consent authority.

## **11 Cross-boundary issues**

- (1) A requirement for a community infrastructure contribution may be imposed for the benefit (or partly for the benefit) of an area that adjoins the local government area in which the development is to be carried out.
- (2) Any monetary contribution payable pursuant to such a requirement is to be apportioned among the relevant councils:
- (a) in accordance with any joint or other contributions plan approved by those councils, or
  - (b) if provision is not made for the apportionment in any such plan—in accordance with the terms of the development consent for the development.
- (3) Any dispute between the councils concerned is to be referred to the Director-General and resolved in accordance with any direction given by the Director-General.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

---

## 12 Public infrastructure may be provided outside NSW

A requirement for a direct contribution may, with the written approval of the Minister, be imposed for the provision of public infrastructure on land in another State or Territory if the area in which the development the subject of the requirement is to be carried out adjoins the other State or Territory.

## 13 Community infrastructure contributions imposed by Minister or Director-General in growth centres etc

- (1) This clause applies where the Minister or the Director-General, as the consent authority, imposes a requirement for a community infrastructure contribution in relation to:
  - (a) land within a growth centre, or
  - (b) other land within one or more council areas.
- (2) This Schedule and Part \*9 apply to land within a growth centre as if references in this Schedule and that Part to the area were references to the growth centre.
- (3) Any monetary contribution paid as a community infrastructure contribution:
  - (a) must be paid by the Minister or Director-General to the corporation for the growth centre or to the councils of the areas concerned, and
  - (b) must (together with any additional amount earned from its investment) be applied within a reasonable time for the purpose for which it was required.
- (4) This clause does not apply in respect of a monetary contribution in respect of development within a growth centre that is specified in Schedule 3 (Community Infrastructure Trust Fund areas) to the *Growth Centres (Development Corporations) Act 1974*.

**Note.** Section 25 of the *Growth Centres (Development Corporations) Act 1974* requires these community infrastructure contributions to be paid into a Community Infrastructure Trust Fund.

## Part 2 State infrastructure contributions

### 14 How State infrastructure contributions are imposed

- (1) Having determined a State infrastructure contribution for development, the Minister may direct a consent authority to require the State infrastructure contribution for the development. The consent authority must comply by requiring the contribution as a condition of development consent for the development.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

---

**Note.** If the Minister is the consent authority, the Minister may impose the condition without such a direction.

- (2) If a consent authority given a direction to require a State infrastructure contribution fails to comply with the direction in accordance with its terms, the Minister may impose the necessary condition on development consent and it has effect as if it had been imposed by the consent authority.

## **15 Consultation on proposed State infrastructure contributions**

- (1) In determining the level and nature of State infrastructure contributions in respect of development within a particular State contributions area, the Minister may:
- (a) consult with owners of land in the State contributions area and other relevant stakeholders, or consult with a panel of those owners and stakeholders established by the Minister, or
  - (b) publicly exhibit within the State contributions area a proposal in relation to the level of State infrastructure contributions and seek submissions within a reasonable time in relation to that proposal.
- (2) The Minister's determination of a State infrastructure contribution:
- (a) is to contain reasons for the level and nature of the contribution, and
  - (b) is to be made publicly available by the Minister.

## **16 Restrictions on appeals and changes to conditions**

- (1) A person cannot appeal to the Court under this Act (including section 123) in respect of a determination or direction of the Minister, or a condition imposed by a consent authority or the Minister, under Division 3 of Part \*9 or under this Part.
- (2) A condition imposed by a consent authority or the Minister under Division 3 of Part \*9 cannot be modified without the approval of the Minister.

## **17 Dedication of land or material public benefit in satisfaction of contribution**

The consent authority may, with the consent of the Minister, accept the dedication of land or the provision of a material public benefit in partial or full satisfaction of a condition of development consent that requires a State infrastructure contribution.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

---

**18 Special provision for council infrastructure and other components of development contributions**

- (1) The Minister's determination of a State infrastructure contribution is to identify what part (if any) of the contribution is for the provision of public infrastructure by a council or for any action of a planning authority in connection with the exercise of any statutory function under this Act.
- (2) Any part of a State infrastructure contribution identified under this clause:
  - (a) is, for the purposes of Division 6 (State Infrastructure Fund) of Part \*9, deemed not to have been received by the consent authority under that Part, and
  - (b) is not to be taken into account in calculating the cost of public infrastructure for the purposes of the requirement that the Minister consult the Treasurer when the cost of public infrastructure exceeds \$30 million, and
  - (c) is, if the part is identified as being for the provision of public infrastructure by a council, to be provided to the council and is to be held and applied by the council in accordance with section \*905 (Use of development contributions), and
  - (d) is, if the part is identified as being for any action of a planning authority in connection with the exercise of any statutory function under this Act, to be provided to the Department and is to be held and applied by the Department in accordance with section \*905.

**19 Land contributed as State infrastructure contribution**

The Minister may direct a consent authority to sell all or part of any land it receives as a State infrastructure contribution or to transfer any such land to a public authority that is to provide, or has provided, public infrastructure in relation to the development to which the land relates or the class of development to which that development belongs.

**20 Minister may make, amend or repeal State contributions areas**

- (1) The Minister may, by order published in the Gazette, amend Schedule 5A for the purpose of:
  - (a) creating a State contributions area, or
  - (b) repealing a State contributions area, or
  - (c) changing a State contributions area.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

---

- (2) The Minister is to consult with the Treasurer before amending Schedule 5A.
- (3) Any such order may contain savings and transitional provisions.
- (4) Any such order takes effect on the day that it is published in the Gazette or such later date as may be specified in the order.

## **Part 3 Planning agreements**

### **21 Parties to planning agreements**

- (1) Any Minister, public authority or other person approved by the Minister is entitled to be an additional party to a planning agreement and to receive a benefit under the agreement on behalf of the State.
- (2) A council is not precluded from entering into a joint planning agreement with another council or other planning authority merely because it applies to any land not within, or any purposes not related to, the area of the council.

### **22 Limitations on planning agreements**

- (1) A planning agreement cannot impose an obligation on a planning authority to grant development consent, or to exercise any function under this Act in relation to a change to or the making or revocation of an environmental planning instrument.
- (2) A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach a provision of this Act, an environmental planning instrument or a development consent applying to the land concerned.

### **23 Contents of planning agreements**

- (1) A planning agreement must provide for the following:
  - (a) a description of the land to which the agreement applies,
  - (b) a description of the change to or the making or revocation of the environmental planning instrument, or the development, to which the agreement applies,
  - (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
  - (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

---

application of Divisions 2 and 3 of Part \*9 to the development,

- (e) if the agreement does not exclude the application to the development of provisions of Division 2 of Part \*9 for requiring a direct contribution, whether benefits under the agreement are or are not to be taken into consideration in connection with requiring such a contribution,
  - (f) a mechanism for the resolution of disputes under the agreement,
  - (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.
- (2) There is not required to be any connection between the development to which a planning agreement applies and the object of expenditure of any money required to be paid by the agreement.

**Note.** See section \*905, which requires money paid under a planning agreement to be applied for the purpose for which it was paid within a reasonable time.

## 24 Registered planning agreements to run with land

- (1) A planning agreement can be registered under this clause if the following persons agree to its registration:
  - (a) if the agreement relates to land under the *Real Property Act 1900*—each person who has an estate or interest in the land registered under that Act, or
  - (b) if the agreement relates to land not under the *Real Property Act 1900*—each person who is seised or possessed of an estate or interest in the land.
- (2) On lodgment by a planning authority of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register the planning agreement:
  - (a) by making an entry in the relevant folio of the Register kept under the *Real Property Act 1900* if the agreement relates to land under that Act, or
  - (b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*.
- (3) A planning agreement that has been registered by the Registrar-General under this clause is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

---

- (4) A reference in this clause to a planning agreement includes a reference to any amendment or revocation of a planning agreement.

**25 Circumstances in which planning agreements can or cannot be required to be made**

- (1) A provision of an environmental planning instrument (being a provision made after 8 July 2005) has no effect to the extent that the provision:
- (a) expressly requires a planning agreement to be entered into before a development application can be made, considered or determined, or
  - (b) expressly prevents a development consent from being granted or having effect unless or until a planning agreement is entered into.
- (2) A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.
- (3) However, a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with:
- (a) the development application, or a change to or the amendment or revocation of an environmental planning instrument sought by the developer for the purposes of making the development application, or
  - (b) a commitment made by the proponent in a statement of commitments made under Part 3A.
- (4) In this clause, *planning agreement* includes any agreement (however described) containing provisions similar to those contained in a planning agreement.

**26 Appeals**

- (1) A person cannot appeal to the Court under this Act against the failure of a planning authority to enter into a planning agreement or against the terms of a planning agreement.
- (2) This clause does not affect the jurisdiction of the Court under section 123 (Restraint etc of breaches of this Act).

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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## 27 Determinations or directions by Minister

The Minister may, generally or in any particular case or class of cases, determine or direct any other planning authority as to:

- (a) the procedures to be followed in negotiating a planning agreement, or
- (b) the publication of those procedures, or
- (c) other standard requirements with respect to planning agreements.

## 28 Regulations—planning agreements

The regulations may make provision for or with respect to planning agreements, including the following:

- (a) the form of planning agreements,
- (b) the subject-matter of planning agreements,
- (c) the making, amendment and revocation of planning agreements, including the giving of public notice and inspection by the public,
- (d) requiring the provision to a planning authority of a copy of a planning agreement and any amendment or notice of revocation of a planning agreement,
- (e) the public inspection of planning agreements after they have been made.

## [6] Schedule 5A Special contributions areas

Omit the heading to the Schedule. Insert instead:

### **Schedule 5A State contributions areas**

## [7] Schedule 6 Savings, transitional and other provisions

Insert as Division 4 of Part 21 with appropriate clause numbers:

### **Division 4 Provisions relating to development contributions**

#### **Definitions**

In this Division:

*former contributions provisions* means the provisions of Division 6 or 6A of Part 4 as in force before their repeal by the amending Act.



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

---

*new contributions provisions* means the provisions of Part \*9 and Schedule \*1.

## **Savings and transitional regulations**

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

## **Existing contributions conditions, agreements and actions**

- (1) A condition of development consent imposed under the former contributions provisions is taken to have been imposed under the corresponding provision of the new contributions provisions.
- (2) A planning agreement in force under the former contributions provisions immediately before the repeal of those provisions by the amending Act is taken to be a planning agreement under the corresponding provisions of the new contributions provisions.
- (3) Any action taken by the Minister or a consent authority under or for the purposes of the former contributions provisions is, to the extent that the action has any force or effect immediately before the repeal of those provisions by the amending Act, taken to be an action of the Minister or consent authority under and for the purposes of the corresponding provision of the new contributions provisions.
- (4) A reference in this Act to a State infrastructure contribution includes a reference to a special infrastructure contribution (being a contribution provided for under Subdivision 4 of Division 6 of Part 4) paid or required to be paid by a condition of development consent imposed before the commencement of this clause.
- (5) The new contributions provisions extend to levies paid or payable under the former contributions provisions as if those levies were monetary contributions paid or payable under the new contributions provisions.

## **Existing contributions plans**

- (1) A contributions plan in force under the former contributions provisions immediately before the commencement of this clause (an *existing contributions plan*) is repealed on:
  - (a) 30 June 2009, unless paragraph (b) or (c) applies, or
  - (b) 30 June 2015 in the case of a contributions plan that provides for development contributions only in respect of key community infrastructure, or

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## exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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- (c) 30 June 2015 in the case of a contributions plan that is designated by the Minister under this clause as a **preserved contributions plan** for the purposes of this clause.
- (2) The Minister may, by order published in the Gazette, designate an existing contributions plan as a preserved contributions plan for the purposes of this clause if the Minister is satisfied that the plan provides for a community infrastructure contribution in respect of community infrastructure that is:
- (a) the subject of a contract with the council for its construction, or
  - (b) the subject of a loan or other debt financing arrangement with a bank or other recognised financial institution for its forward funding, or
  - (c) the subject of a commitment for its construction in the council's budget for the 2007–08 financial year, or
  - (d) for which land acquisition has been commenced by the council, either by exchange of contracts for purchase or a compulsory acquisition process.
- (3) The Minister may call on councils to submit contributions plans (along with supporting information) by a specified date for consideration for designation by the Minister as preserved contributions plans.
- (4) Until its repeal (either by the council or by operation of this clause), a provision of an existing contributions plan of a council may (despite section \*908) allow the council to require a community infrastructure contribution for community infrastructure that is not key community infrastructure.
- (5) Subclause (4) does not apply to any provision of a contributions plan that results from the amendment of the contributions plan after the commencement of this clause unless the effect of the amendment is only to:
- (a) update a works schedule to reflect revised construction costs or the completion of works on the schedule, or
  - (b) make minor or consequential amendments arising from any change to an environmental planning instrument or a development control plan.
- (6) In this clause:
- key community infrastructure** means community infrastructure that is key community infrastructure for the purposes of section \*908.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

---

## **State Infrastructure Fund**

The State Infrastructure Fund established by the amending Act under the new contributions provisions is a continuation of the Special Contributions Areas Infrastructure Fund established under the former contributions provisions.

### **3.2 Amendments to Growth Centres (Development Corporations) Act 1974**

#### **[1] Sections 25 and 26**

Insert after section 24:

#### **25 Community Infrastructure Trust Fund**

- (1) There is established by this section a fund called the Community Infrastructure Trust Fund.
- (2) The Fund is to be administered by the Secretary of the Treasury. The Secretary is to consult the Director-General in relation to the administration of the Fund.
- (3) The following is to be paid into the Fund:
  - (a) monetary contributions paid under, and the proceeds of the sale of land dedicated under, Division 2 (Community infrastructure contributions) of Part \*9 of the *Environmental Planning and Assessment Act 1979* in respect of development within a growth centre that is specified in Schedule 3 (Community Infrastructure Trust Fund areas),
  - (b) any money appropriated by Parliament for the purposes of the Fund,
  - (c) the proceeds of the investment of money in the Fund,
  - (d) any other money required to be paid into the Fund by or under this or any other Act or the regulations under this Act.
- (4) The following is to be paid from the Fund:
  - (a) payments to public authorities for the provision of public infrastructure in relation to development,
  - (b) any money required to meet administrative expenses in relation to the Fund,
  - (c) all other money directed or authorised to be paid from the Fund by this Act or by the regulations under this Act.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

---

- (5) The assets of the Fund can only be applied for the purposes referred to in this section.
- (6) Money in the Fund may be kept in one or more financial institutions.
- (7) The money in the Fund may be invested:
  - (a) in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power on the Department to invest the money, in any other manner approved by the Treasurer.
- (8) The Secretary of the Treasury may delegate any function of the Secretary under this section (other than this power of delegation) to the chief executive of a growth centre that is specified in Schedule 3.

**26 Minister may make, amend or repeal Community Infrastructure Trust Fund areas**

- (1) The Minister may, by order published in the Gazette, amend Schedule 3 for the purpose of:
  - (a) including a reference to a growth centre, or
  - (b) removing a reference to a growth centre, or
  - (c) changing a reference to a growth centre.
- (2) Any such order may contain savings and transitional provisions.
- (3) Any such order takes effect on the day that it is published in the Gazette or such later date as may be specified in the order.

**[2] Schedule 3**

Insert after Schedule 2:

**Schedule 3 Community infrastructure trust fund areas**

(Section \*26)

- 1** All those pieces or parcels of land shown edged heavy red on the map entitled “North West Growth Centre” and the map entitled “South West Growth Centre (Version 2)”, copies of which are deposited in the office of the Growth Centres Commission.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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## **3.3 Amendments to Environmental Planning and Assessment Regulation 2000**

### **[1] Clause 25D**

Omit clause 25D. Insert instead:

#### **25D Public notification of planning agreements**

- (1) A planning agreement cannot be entered into, amended or revoked unless:
  - (a) public notice has been given of the proposed agreement, amendment or revocation, and
  - (b) an explanatory note for the proposed agreement, amendment or revocation has been made available for inspection by the public for a period of not less than 28 days.
- (2) If a proposed planning agreement or amendment of a planning agreement is changed after public notice is given of the proposed agreement or amendment but the change does not result in a significant reduction in the public benefit to be provided by the developer under the proposed agreement or amendment:
  - (a) no further public notice is required under this clause of the proposed agreement or amendment, and
  - (b) the requirement that an explanatory note for the proposed agreement or amendment be made available does not require that an explanatory note be made available for the proposed agreement or amendment as changed.
- (3) If the proposed planning agreement, amendment or revocation is in connection with a development application or a project application, the responsible planning authority is to ensure that the required public notice of the proposed agreement, amendment or revocation is given:
  - (a) in the case of an agreement in connection with a development application:
    - (i) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of the development application that is required to be given by a consent authority for a development application by or under the Act, or
    - (ii) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of the development application that is required to be given by a consent authority for a

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## exposure draft

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### Environmental Planning and Assessment Amendment Bill 2008

#### Schedule 3 Amendments relating to development contributions

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- development application by or under the Act and in the manner determined by the planning authorities that are parties to the agreement, or
- (b) in the case of an agreement in connection with a project application:
    - (i) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of an environmental assessment in connection with the application that is required to be given by the Director-General by or under the Act, or
    - (ii) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of an environmental assessment for the project that is required to be given by the Director-General by or under the Act and in the manner determined by the planning authorities that are parties to the agreement.
  - (4) If the proposed planning agreement, amendment or revocation is in connection with a proposed change to a local environmental plan, the responsible planning authority is to ensure that the required public notice of the proposed agreement, amendment or revocation is given:
    - (a) if practicable, as part of and contemporaneously with, and in the same manner as, any public notice of the relevant draft local environmental plan that is required to be given under section 66 (1) of the Act, or
    - (b) if it is not practicable for notice to be given contemporaneously, as soon as possible after any public notice of the relevant draft local environmental plan that is required to be given under section 66 (1) of the Act and in the manner determined by the planning authorities that are parties to the agreement.
  - (5) In the case of a planning agreement of a kind other than an agreement referred to in subclause (1), (2) or (3) of which public notice is required to be given under this clause, the Director-General is to ensure that public notice of the proposed agreement, amendment or revocation is given not less than 28 days before the agreement is entered into or amended or revoked and in the manner determined by the planning authorities that are parties to the agreement.
  - (6) The public notice of a proposed agreement, amendment or revocation must specify the arrangements relating to inspection

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

---

by the public of copies of the explanatory note for the proposed agreement, amendment or revocation.

- (7) In this clause:
- explanatory note* means an explanatory note prepared in accordance with clause 25E.
- project application* has the same meaning as it has in Part 1A.
- responsible planning authority* for a proposed planning agreement or the amendment or revocation of a planning agreement is the planning authority that proposes to enter into the planning agreement or the agreement that revokes or amends the planning agreement.

**[2] Clause 25E Explanatory note**

Omit clause 25E (5) and (6). Insert instead:

- (5) If a council is not a party to a planning agreement that applies to the area of the council, a copy of the explanatory note must be provided to the council when a copy of the agreement is provided to the council under clause 25EA.

**[3] Clause 25EA**

Insert after clause 25E:

**25EA Copies of planning agreements to be provided to Minister and council**

- (1) If the Minister is not a party to a planning agreement, the relevant planning authority that is a party to the agreement must provide to the Minister:
- (a) a copy of the agreement within 14 days after the agreement is entered into, and
  - (b) if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and
  - (c) if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs.
- (2) If a council is not a party to a planning agreement that applies to the area of the council, the relevant planning authority that is a party to the agreement must provide to the council:
- (a) a copy of the agreement within 14 days after the agreement is entered into, and
  - (b) if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 3 Amendments relating to development contributions

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- (c) if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs.
- (3) A planning authority that has entered into one or more planning agreements must, while any such planning agreements remain in force, include in its annual report particulars of compliance with and the effect of the planning agreements during the year to which the report relates.

**[4] Clauses 31A and 31B**

Insert after clause 31:

**31A Key community infrastructure and additional community infrastructure**

- (1) The following community infrastructure is prescribed as key community infrastructure for the purposes of sections \*908 and \*921 of the Act:
  - (a) local roads,
  - (b) local bus infrastructure,
  - (c) local parks,
  - (d) local sporting, recreational, cultural, civic and social services facilities,
  - (e) drainage and stormwater management works,
  - (f) land for any community infrastructure (except land for riparian corridors),
  - (g) district infrastructure of the kind referred to in paragraphs (a)–(d) but only if there is a direct connection with the development to which a contribution relates.
- (2) Community infrastructure comprising land for riparian corridors cannot be approved under section \*908 or \*921 as additional community infrastructure.

**31B Material to be provided by council seeking approval for additional community infrastructure contributions**

A council requesting the Minister's approval under section \*908 or \*921 of the Act to the making of a contributions plan or the entering into of a planning agreement providing for community infrastructure contributions for additional community infrastructure must provide to the Minister:

- (a) a business plan that establishes how the additional community infrastructure concerned can be fully funded by the council and can be provided and fully operational



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to development contributions

Schedule 3

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within the period to be specified in the contributions plan or planning agreement, and

- (b) a report (provided by a suitably qualified person who is independent of the council) that assesses the proposed development contributions against the key considerations for development contributions for the purposes of Part \*9 of the Act.

### **3.4 Amendments to City of Sydney Act 1988 No 48**

#### **[1] Section 61 Development contributions**

Omit section 61 (1). Insert instead:

- (1) Despite Part \*9 of the Planning Act, a contributions plan prepared and approved under that Part in respect of the whole or any part of the land to which the *Central Sydney Local Environmental Plan 1996* applies may authorise the imposition of a condition that the applicant for development consent pay a levy to the City Council of 1% of the cost, as estimated by the consent authority, of the proposed development.

#### **[2] Section 61 (4) (a)**

Omit “Division 6 of Part 4”.

Insert instead “Part \*1 of Schedule \*1”.

#### **[3] Section 61 (5)**

Omit “Part 4”. Insert instead “Part \*9”.

#### **[4] Section 61 (7)**

Omit the subsection. Insert instead:

- (7) A condition authorised by this section is not affected by the enactment of the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*. However, this section ceases to apply if a contributions plan is prepared and approved under Part \*9 of the Planning Act that authorises a requirement for an indirect contribution under Division \*2 of that Part in relation to the land to which this section applies.

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 4 Amendments relating to certification of development

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## **Schedule 4 Amendments relating to certification of development**

(Section 3)

### **4.1 Amendments to Environmental Planning and Assessment Act 1979 No 203**

#### **[1] Section 80A Imposition of conditions**

Insert after section 80A (6) (c):

- (d) ensuring compliance with the terms of the development consent during the carrying out of any building work or subdivision work.

#### **[2] Section 80A (7A)**

Insert after section 80 (7):

- (7A) Despite subsection (7), if the regulations make provision for or with respect to the maximum amount of security that may be required for a purpose referred to in section 80A (6) (d), the security required for any such purpose is not to exceed the maximum amount determined in accordance with the regulations.

#### **[3] Section 80A (10)**

Omit the subsection. Insert instead:

- (10) The funds realised from a security may:
  - (a) be paid out to meet any cost referred to in subsection (6) (a)–(c), and
  - (b) be paid out to meet any cost referred to in subsection (6) (d), but only in the circumstances prescribed by the regulations.
- (10AA) Any balance of the funds realised from a security remaining after meeting the costs referred to in subsection (10) is to be refunded to, or at the direction of, the persons who provided the security.
- (10AB) A person who provides security for the purposes referred to in subsection (6) (d) is entitled to request the release of any such balance of funds realised from the security only after:
  - (a) the date of issue of an occupation certificate or subdivision certificate (as the case may be) as a result of the building work or subdivision work concerned, or

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to certification of development

Schedule 4

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(b) in the case of building work where no occupation certificate is issued, after the date of the first lawful occupation or use of a building or part of a building resulting from that building work.

(10AC) If the consent authority has paid out any of those funds for a purpose referred to in subsection (6) (d), the consent authority must, within 14 days after receiving a request under subsection (10AB) for the release of the funds, give written reasons to the person who provided the security as to why the consent authority considers it was entitled to use those funds.

**[4] Section 81A Effects of development consents and commencement of development**

Insert “, and the principal certifying authority if that is not the council,” after “council” wherever occurring in section 81A (2) (c) and (4) (c).

**[5] Section 81A (7)**

Omit “300 penalty units”. Insert instead “1,000 penalty units”.

**[6] Section 86 Commencement of complying development**

Insert “, and the principal certifying authority if that is not the council,” after “council” wherever occurring in section 86 (1) (b) and (2) (b).

**[7] Section 98A Appeal concerning security**

Insert “that relates to security of a kind referred to in section 80A (6) (a)–(c)” after “subsection (1) (b)” in section 98A (3).

**[8] Section 98A (4)**

Insert after section 98A (3):

(4) An appeal with respect to a failure or refusal referred to in subsection (1) (b) that relates to security of a kind referred to in section 80A (6) (d) may be made within 6 months after the date after which the person who provided the security may request the release of funds realised from the security under section 80A (10AB).

**[9] Section 109D Certifying authorities**

Insert after section 109D (1):

(1A) For the purposes of subsection (1) (d) (iv), an environmental planning instrument that identifies subdivision in respect of which a subdivision certificate may be issued by an accredited

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 4 Amendments relating to certification of development

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certifier may place restrictions on the issue of such certificates by accredited certifiers.

**[10] Section 109E Principal certifying authorities**

Omit section 109E (1). Insert instead:

- (1) The person having the benefit of a development consent or complying development certificate for development:
  - (a) is to appoint a principal certifying authority in respect of building work involved in the development and a principal certifying authority in respect of subdivision work involved in the development, and
  - (b) may appoint only the consent authority, the council or an accredited certifier as the principal certifying authority for the building work or subdivision work, and
  - (c) may appoint the same principal certifying authority for both types of work or different certifying authorities.

**[11] Section 109EA Replacement of principal certifying authorities**

Omit section 109EA (1) (b). Insert instead:

- (b) the current principal certifying authority, the proposed principal certifying authority and a person who is eligible to appoint a principal certifying authority for the development agree.

**[12] Section 109EB**

Insert after section 109EA:

**109EB Directions by certifying authorities**

- (1) If a certifying authority in relation to any aspect of development becomes aware of any matter that would result in that aspect of the development not complying with the development consent or a construction certificate for that aspect of the development, the certifying authority must issue a notice in writing to the person responsible for carrying out that aspect of the development:
  - (a) identifying the matter that would result in the non-compliance, and
  - (a) directing the person to take specified action within a specified period to remedy the matter.
- (2) If a certifying authority gives a direction under this section and the direction is not complied with within the time specified in the notice containing the direction, the certifying authority that

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to certification of development

Schedule 4

---

issued the direction is, within the period prescribed by the regulations, to send a copy of the notice to the consent authority and to notify the consent authority of the fact that the direction has not been complied with.

- (3) The regulations may make provision for or with respect to the following:
- (a) the procedure for issuing notices under this section,
  - (b) requirements in relation to follow-up action,
  - (c) the keeping of records in relation to notices given and follow-up action taken,
  - (d) requirements for any matter or record relating to a notice or follow-up action to be notified to specified persons.

*[Regulations to be prepared in relation to the matters referred to in proposed section 109EB (3).]*

**[13] Section 109IA**

Insert after section 109I:

**109IA Design certificates required for certain aspects of development**

- (1) A Part 4A certificate must not be issued in relation to any aspect of development required by the regulations to be designed by a person holding accreditation under the *Building Professionals Act 2005* unless:
- (a) that aspect of the development was designed by the holder of a certificate of accreditation under that Act that authorises the holder to prepare such designs, and
  - (b) the holder has issued a design certificate in relation to the design certifying that he or she prepared the design and in doing so complied with the relevant requirements of this Act and the regulations.
- (2) The regulations may make provision for or with respect to any of the following:
- (a) the preparation of designs referred to in this section,
  - (b) the form and content of design certificates issued for the purposes of this section,
  - (c) requirements relating to the preparation of such design certificates.

*[Regulations to be prepared prescribing matters relating to designs and design certificates.]*

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 4 Amendments relating to certification of development

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**[14] Section 109L Accredited certifiers may issue notices requiring work to be carried out**

Omit the section.

**[15] Section 109PA**

Insert after section 109P:

**109PA Certifying authorities may apply for advice**

- (1) Before issuing a construction certificate for building work or subdivision work, a certifying authority may make an application to the consent authority for advice as to whether, in the opinion of the consent authority, the design and construction of any building or work to which the certificate relates is consistent with the relevant development consent.
- (2) Before issuing an occupation certificate for a building or part of a building, a certifying authority may make an application to the consent authority for advice as to whether, in the opinion of the consent authority, the design and construction of the building is consistent with the relevant development consent or complying development certificate.
- (3) If the consent authority does not deal with an application made to it under this section within 14 days of receiving the application, the consent authority is taken to have given advice that the building, part of the building or work concerned is consistent with the relevant development consent or complying development certificate.
- (4) If a consent authority has given advice under this section that the design and construction of a building, part of a building or work is consistent with the relevant development consent or complying development certificate, a construction certificate or occupation certificate issued in reliance on that advice may not be challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings at the request of the consent authority on the basis that the design and construction of the building (or part) or work concerned is not consistent with the relevant development consent or complying development certificate.
- (5) The regulations may make provision for or with respect to applications for advice under this section, the form in which advice is to be given under this section and fees in connection with the making of such applications and the giving of advice.
- (6) In this section:

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to certification of development

Schedule 4

---

- (a) a reference to the *design and construction* of a building is, in relation to the issue of a construction certificate, a reference to the design and construction of the building as depicted in the plans and specifications furnished to the certifying authority and as described in any other information furnished to the certifying authority in accordance with the regulations, and
- (b) a reference to a building, part of a building or work being consistent with a development consent or complying development certificate is a reference to the building, part or work being consistent with the development consent or complying development certificate as determined in accordance with the regulations (if any).

**[16] Section 109Q Regulations under Part 4A**

Omit section 109Q (1) (a). Insert instead:

- (a) the documents to be provided to, and the matters to be notified to, a consent authority, council or certifying authority for the purposes of this Part,

*[Regulations to be prepared prescribing matters that must be notified to consent authorities, councils and certifying authorities.]*

**[17] Section 109Q (1) (c)–(e)**

Insert after section 109Q (1) (b):

- (c) applications for Part 4A certificates,
- (d) the form and content of Part 4A certificates,
- (e) the manner in which complaints in respect of development are to be dealt with by certifying authorities.

**[18] Section 109ZK Limitation on time when building action or subdivision action may be brought**

Omit section 109ZK (1). Insert instead:

- (1) Despite any Act or law to the contrary, a building action may not be brought in relation to any building work:
  - (a) more than 10 years after the date on which the relevant final occupation certificate is issued, or
  - (b) in a case where no occupation certificate is issued, more than 10 years after:
    - (i) the last date on which the building work was inspected by a certifying authority, or

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 4 Amendments relating to certification of development

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- (ii) if no such inspection has been conducted, the date on which that part of the building in relation to which the building work was carried out is first occupied or used.
- (1A) Despite any Act or law to the contrary, a subdivision action may not be brought in relation to any subdivision work more than 10 years after:
- (a) in the case of work completed before the relevant subdivision certificate is issued, the date on which the relevant subdivision certificate is issued, or
  - (b) in the case of work completed after the relevant subdivision certificate is issued, the date on which the compliance certificate that certifies that the work has been completed is issued.

**[19] Section 118A Power of entry**

Insert “(other than section 118BA)” after “this Division” in section 118A (2C).

**[20] Section 118BA**

Insert after section 118B:

**118BA Power of authorised persons to require answers and record evidence**

- (1) A person authorised to enter premises under this Division (*an authorised person*) may require an accredited certifier, a person carrying out building work or subdivision work or any other person whom the authorised person suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required to enable the council concerned to exercise its functions under this Act to answer questions in relation to those matters.
- (2) An authorised person 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.
- (3) An authorised person may, by notice in writing, require a person referred to in subsection (1) 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:



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## exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to certification of development

Schedule 4

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- (a) a place and 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 person that is reasonable in the circumstances.
- (5) An authorised person may cause any questions and answers to questions given under this section to be recorded if the authorised person 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 person.
- (7) A copy of any such record must be provided by the authorised person 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.

**[21] Sections 118N**

Omit the section. Insert instead:

**118N Obstruction of authorised persons**

A person must not:

- (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an authorised person under this Division, or
- (b) wilfully delay, hinder or obstruct an authorised person in the exercise of the authorised person's functions under this Division, or
- (c) furnish an authorised person with information that the person knows (or ought reasonably to know) is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

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

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

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# exposure draft

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## Environmental Planning and Assessment Amendment Bill 2008

### Schedule 4 Amendments relating to certification of development

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- |    |   |     |   |  |
|----|---|-----|---|--|
| 19 | To cease carrying out specified building work | (a) | Building work is being carried out in contravention of this Act                   | Owner of land or any person apparently engaged in carrying out the building work |
|    |   | (b) | Building work is being carried out that affects the support of adjoining premises |  |

#### [23] Section 121CA

Insert after section 121C:

##### **121CA Compliance cost notices**

- (1) A person (*the relevant authority*) who gives an order under this Division to another person may, by notice in writing served on the other person, require the other person to pay all or any reasonable costs and expenses incurred by the relevant authority in connection with:
  - (a) monitoring action under the order, and
  - (b) ensuring that the order is complied with, and
  - (c) any other associated matters.
- (2) A notice under subsection (1) is to specify the amount required to be paid and a reasonable period within which the amount is to be paid or, if the regulations prescribe the period to be allowed for payment, that period.
- (3) The relevant authority may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (4) If the person given a compliance cost notice complies with the notice but was not the person who was responsible for the situation giving rise to the issue of the notice, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who was responsible.
- (5) The regulations may make provision for or with respect to the following:
  - (a) the issue of compliance cost notices,

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to certification of development

Schedule 4

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- (b) the form of compliance cost notices,
- (c) limiting the amounts that may be required to be paid under compliance cost notices or the matters in respect of which costs and expenses may be required to be paid under those notices.

**[24] Section 121D Circumstances in which compliance with sections 121F–121K is required**

Omit section 121D (a). Insert instead:

- (a) order No 8 or No 19 in the Table to section 121B (1), or

**[25] Section 121ZKA**

Insert after section 121ZK:

**121ZKA Appeals concerning compliance cost notices**

- (1) A person on whom a notice under section 121CA is served may appeal against the notice to the Local Court within 28 days after the service of the notice on the person.
- (2) If an appeal is lodged under section 121ZK against an order in relation to which a compliance cost notice has been issued:
  - (a) an appeal may be lodged against the compliance cost notice in the same way as, and at the same time as, the appeal against the order, and
  - (b) the Court may deal with the appeal against the compliance cost notice at the same time as it deals with the appeal against the order.
- (3) On hearing an appeal against a compliance cost notice, the Local Court or the Court may:
  - (a) revoke the notice, or
  - (b) modify the notice, or
  - (c) make any other order with respect to the notice as the Court thinks fit.

**[26] Section 157 Regulations**

Insert at the end of section 157 (1) (f):

, or

- (g) the documents to be provided to, and the matters to be notified to, a consent authority, council or certifying authority under this Act.

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 4 Amendments relating to certification of development

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**[27] Schedule 6 Savings, transitional and other provisions**

Insert in appropriate order in Part 21 with appropriate clause numbering:

**Division 5 Provisions relating to certification**

**Section 109L notices**

Section 109L is taken to continue to have effect in relation to notices served under that section before its repeal.

**Section 109ZK**

The amendment made to section 109ZK by the amending Act does not apply to any building work or subdivision work commenced before the commencement of the amendment.

*[Further savings and transitional provisions to be included in relation to certification amendments.]*

**4.2 Amendments to Environmental Planning and Assessment Regulation 2000**

**[1] Clause 129B**

Insert after clause 129A:

**129B Restriction on issue of complying development certificate**

- (1) A certifying authority must not issue a complying development certificate for development unless the certifying authority has carried out a site inspection.
- (2) The certifying authority must keep a record of the inspection including details of:
  - (a) the address of the property at which the inspection was carried out, and
  - (b) the type of inspection, and
  - (c) the date on which it was carried out, and
  - (d) the certifying authority's name and accreditation number or, if the certifying authority is a body corporate, the name and accreditation number of the accredited certifier who carried out the inspection on behalf of the body corporate.

**[2] Clause 139 Applications for construction certificates**

Insert after clause 139 (1):

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to certification of development

Schedule 4

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- (1A) The application may only be made by a person who is eligible to appoint a principal certifying authority for the relevant development.

**[3] Clause 143B**

Insert after clause 143A:

**143B Restriction on issue of certain construction certificates without inspection**

- (1) A certifying authority must not issue a construction certificate for development on a site which affects an existing building unless the certifying authority has carried out an inspection of the building before the development is commenced.
- (2) The certifying authority must keep a record of the inspection including details of:
  - (a) the address of the property at which the inspection was carried out, and
  - (b) the type of inspection, and
  - (c) the date on which it was carried out, and
  - (d) the certifying authority's name and accreditation number or, if the certifying authority is a body corporate, the name and accreditation number of the accredited certifier who carried out the inspection on behalf of the body corporate.

**[4] Clause 145 Compliance with development consent and Building Code of Australia**

Omit "not inconsistent with" wherever occurring in clause 145 (1) (a) and (2).  
Insert instead "consistent with".

**[5] Clause 149 Applications for occupation certificates**

Insert after clause 149 (2A):

- (2B) The application may only be made by a person who is eligible to appoint a principal certifying authority for the relevant development.

**[6] Clause 154D**

Insert after clause 154C:

**154D Compliance with development consent**

A certifying authority must not issue an occupation certificate (whether interim or final) for a building or part of a building

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 4 Amendments relating to certification of development

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unless the design and construction of the building or part are consistent with the relevant development consent or complying development certificate.

**[7] Clause 157 Applications for subdivision certificates**

Insert after clause 157 (2):

- (2A) The application may only be made:
- (a) by the owner of the land to which the application relates, or
  - (b) by any other person, with the consent in writing of the owner of that land.

**[8] Clause 162A Critical stage inspections required by section 109E (3) (d)**

Omit clause 162A (4) (a), (5) (a) and (6) (a).

**[9] Clause 162A (7)**

Omit the subclause.

**[10] Clause 162A (7A)**

Insert before clause 162A (8):

- (7A) After the commencement of this subclause, the following inspections of building work must be made in addition to those required by the other provisions of this clause for the building work:
- (a) in the case of a swimming pool, after the construction of the swimming pool is completed and before the pool is filled with water,
  - (b) in the case of a class 2, 3, 4, 5, 6, 7, 8 or 9 building, after excavation for, and prior to the placement of, any footings,
  - (c) in the case of a class 2, 3, 4, 5, 6, 7, 8 or 9 building, before all walls, floors and ceilings required by the Building Code of Australia to have a fire-resistance level specified in that Code are enclosed,
  - (d) in the case of a class 2, 3, 4, 5, 6, 7, 8 or 9 building, before all walls, floors and ceilings required by the Building Code of Australia to comply with sound insulation requirements specified in that Code are enclosed.

**[11] Clause 162C Progress inspection unavoidably missed**

Omit clause 162C (5). Insert instead:

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to certification of development

Schedule 4

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- (5) As soon as practicable after becoming aware that an inspection, other than a final inspection, has been missed, the principal certifying authority:
  - (a) must notify that fact to the person who appointed the principal certifying authority and in the case of work for which a principal contractor is required to be appointed, the principal contractor or, in the case of work being done by an owner builder, the owner builder, and
  - (b) must send a copy of the record made under this clause to the person who appointed the principal certifying authority.

**[12] Clause 260 What is the fee for a building certificate?**

Insert after clause 260 (3):

- (3A) An additional fee determined in accordance with subclause (3B) may be charged for an application for a building certificate in relation to a building where the applicant for the certificate is the person who erected the building or on whose behalf the building was erected and any of the following circumstances apply:
  - (a) where a development consent, complying development certificate or construction certificate was required for the erection of the building and no such consent or certificate was obtained,
  - (b) where a penalty notice has been issued for an offence under section 76A (1) of the Act in relation to the erection of the building and the person to whom it was issued has paid the penalty required by the penalty notice in respect of the alleged offence (or if the person has not paid the penalty and has not elected to have the matter dealt with by a court, enforcement action has been taken against the person under Division 3 or 4 of Part 4 of the *Fines Act 1996*),
  - (c) where order No 2, 12, 13, 15 or 18 in the Table to section 121B (1) of the Act has been given in relation to the building unless the order has been revoked on appeal,
  - (d) where a person has been found guilty of an offence under the Act in relation to the erection of the building,
  - (e) where the court has made a finding that the building was erected in contravention of a provision of the Act.
- (3B) The additional fee payable under subclause (3A) is the total of the following amounts:

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 4 Amendments relating to certification of development

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- (a) the amount of the maximum fee that would be payable if the application were an application for development consent, or a complying development certificate (if appropriate), authorising the erection or alteration of any part of the building to which the application relates that has been erected or altered in contravention of the Act in the period or 24 months immediately preceding the date of the application,
  - (b) the amount of the maximum fee that would be payable if the application were an application to the council for a construction certificate relating to the erection or alteration of any part of the building to which the application relates that has been erected or altered in contravention of the Act in the period of 24 months immediately preceding the date of the application.
- (3C) If an application for a building certificate is made in relation to part only of a building, a reference in subclause (3A) to a building is taken to be a reference to the part of a building that is the subject of the application.

**[13] Schedule 1 Forms**

Omit clause 5 (g).

**4.3 Amendments to Strata Schemes (Freehold Development)  
Act 1973 No 68**

**[1] Section 36A**

Insert after section 36:

**36A Persons who may apply for strata certificate**

An application for a strata certificate may only be made:

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

**[2] Section 37AA**

Insert after section 37A:

**37AA Requirements relating to issue of strata certificates**

A council or accredited certifier is to be satisfied before issuing a strata certificate that any inspections required by the regulations have been carried out.



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Amendments relating to certification of development

Schedule 4

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## **4.4 Amendments to Strata Schemes (Leasehold Development) Act 1986 No 219**

### **[1] Section 65A**

Insert after section 65:

#### **65A Persons who may apply for strata certificate**

An application for a strata certificate may only be made:

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

### **[2] Section 66AA**

Insert after section 66A:

#### **66AA Requirements relating to issue of strata certificates**

A council or accredited certifier is to be satisfied before issuing a strata certificate that any inspections required by the regulations have been carried out.

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 5 Miscellaneous amendments

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## Schedule 5 Miscellaneous amendments

(Section 3)

### 5.1 Amendments to Environmental Planning and Assessment Act 1979 No 203

#### [1] Section 4 Definitions

Omit the definition of *place of public entertainment* from section 4 (1).

#### [2] Section 4 (1), definition of “public entertainment”

Insert at the end of the definition:

and includes entertainment (other than by means of gaming machines) provided in registered clubs or in premises licensed to sell liquor, but does not include entertainment of a kind that is excluded from this definition by the regulations.

#### [3] Section 9A

Insert after section 9:

##### **9A Acquisition of land in connection with urban renewal proposals or urban land releases**

- (1) The corporation, or a designated authority authorised by the Minister, may acquire land for the purposes of, or in connection with, an urban renewal proposal or an urban land release, if of the opinion that the proposal or release will result in a net public benefit.
- (2) An interest in land acquired under subsection (1), may, for the purpose of facilitating the urban renewal proposal or urban land release, be re-sold to, or be conferred on, another person (including a person other than a public authority), whether for profit or otherwise.
- (3) The corporation or a designated authority authorised by the Minister may acquire land that forms part of, or adjoins or lies in the vicinity of, land subject to an urban renewal proposal or urban land release by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (4) A designated authority may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Miscellaneous amendments

Schedule 5

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- (5) The Minister must not approve the giving of a proposed acquisition notice unless the Minister has given public notice of the proposed acquisition in the manner prescribed by the regulations and has considered any submissions received in relation to the acquisition within 30 days of the notice being given.
- (6) This section is in addition to any powers of a council to acquire land under the *Local Government Act 1993*.
- (7) In this section:  
**designated authority** means:
- (a) a council,
  - (b) the Sydney Harbour Foreshore Authority,
  - (c) the Sydney Olympic Park Authority,
  - (d) the Redfern-Waterloo Authority,
  - (e) a development corporation established under the *Growth Centres (Development Corporations) Act 1974*,
  - (f) Landcom.
- land** includes an interest in land.

**[4] Section 10 Application of Public Works Act 1912**

Insert “or 9A or clause 7 of Schedule 7” after “section 9” in section 10 (1).

**[5] Section 10 (1)**

Insert “or any other authority acquiring the land under those provisions” after “corporation”.

**[6] Section 108 Regulations respecting existing use**

Omit “an existing use for the purpose of a place of public entertainment” from section 108 (1) (d).

Insert instead “an existing use for the purpose of public entertainment”.

**[7] Section 109 Continuance of and limitation on other lawful uses**

Omit “for the purpose of a place of public entertainment” from section 109 (4).

Insert instead “for the purpose of public entertainment”.

**[8] Section 116GA Crown development for public entertainment**

Omit “the use of a building as a place of public entertainment” from the definition of *Crown development for public entertainment* in section 116GA (1).

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 5 Miscellaneous amendments

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Insert instead “the use of a building for the purpose of public entertainment”.

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

Omit “any building that is used as a place of public entertainment” from item 13A of the Table.

Insert instead “a building that is used for public entertainment”.

**[10] Section 155**

Insert after section 154:

**155 Paper subdivisions**

Schedule 7 has effect.

**[11] Section 157 Regulations**

Omit “places of public entertainment” from section 157 (1) (d2).

Insert instead “development for the purposes of public entertainment”.

**[12] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Environmental Planning and Assessment Amendment Act 2008*

**[13] Schedule 6, Part 21**

Insert after Part 20:

## **Part 21 Environmental Planning and Assessment Amendment Act 2008**

### **Division 1 Preliminary**

**117 Interpretation**

In this Part:

*amending Act* means the *Environmental Planning and Assessment Amendment Act 2008*.

**118 Savings and transitional regulations**

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

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Miscellaneous amendments

Schedule 5

---

**[14] Schedule 6**

[Provision to be included to preserve the operation of the existing definition of “places of public entertainment” in regulations and planning instruments until such time as the regulations or instruments are suitably amended.]

**[15] Schedule 7**

Insert after Schedule 6:

## **Schedule 7 Paper subdivisions**

(Section 155)

### **1 Definitions**

In this Schedule:

*development plan*—see clause 6.

*planning purpose*—see clause 3 (1) (e).

*relevant authority* for subdivision land means the authority designated by a subdivision order as the relevant authority for the land.

*subdivision land* means land subject to a subdivision order.

*subdivision order* means an order under clause 3.

*subdivision works* means works for the following purposes:

- (a) roads,
- (b) water supply, sewerage services and drainage,
- (c) telecommunications,
- (d) electricity supply.

### **2 Subdivision authorities**

Any of the following authorities may be designated in a subdivision order as the relevant authority for the subdivision land:

- (a) the corporation,
- (b) a council,
- (c) Landcom,
- (d) a development corporation established under the *Growth Centres (Development Corporations) Act 1974*,
- (e) any other body prescribed by the regulations.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 5 Miscellaneous amendments

---

### 3 Subdivision orders

- (1) The Minister may, by order published in the Gazette:
  - (a) declare specified land to be subdivision land, and
  - (b) specify the relevant authority for the subdivision land, and
  - (c) specify the functions (if any) under this Schedule conferred on the relevant authority, and
  - (d) specify the conditions (if any) to which the exercise of those functions are subject, and
  - (e) specify the purpose for which the order is made (the *planning purpose*), and
  - (f) specify the subdivision works (if any) to be undertaken by the relevant authority in respect of the subdivision land.
- (2) The Minister may make a subdivision order only if:
  - (a) the Minister is of the opinion that it is necessary to do so to promote and co-ordinate the orderly and economic use and development of the land affected by the order, and
  - (b) the land has been subdivided, is held by more than one separate owner and is land for which no provision or inadequate provision has been made for subdivision works, and
  - (c) that land is subject to an environmental planning instrument, or a draft environmental planning instrument, that will give effect to the proposed planning purpose, and
  - (d) the Minister has consulted with the proposed relevant authority, any other Minister responsible for that authority and the council of the area in which the land is situated, and
  - (e) the Minister is satisfied that a development plan for the land affected by the order has been prepared, or will be prepared, by the relevant authority in accordance with this Schedule, and
  - (f) at least 60% of the owners of that land, and the owners of 60% of that land, have consented to the proposed development plan.

### 4 Functions of relevant authority

- (1) A relevant authority has the functions conferred on it by a subdivision order.
- (2) A relevant authority may only exercise functions conferred on it under a subdivision order for the purposes of, or purposes

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Miscellaneous amendments

Schedule 5

---

ancillary to, a planning purpose for which those functions were conferred.

- (3) Functions conferred on a relevant authority by a subdivision order are in addition to any other functions conferred on the authority under any other law.
- (4) Clauses 7–13 set out the functions that may be conferred on a relevant authority under a subdivision order but do not otherwise confer those functions on a relevant authority.

## **5 Obligations of relevant authority**

A relevant authority must, in accordance with the subdivision order and any development plan applicable to the subdivision land, give effect to the planning purpose specified in the order and must undertake or arrange for the undertaking of any subdivision works specified in the order.

## **6 Development plans**

- (1) An authority referred to in clause 2 may, and must at the request of the Minister, prepare a development plan for subdivision land or proposed subdivision land.
- (2) A development plan is to contain the following matters:
  - (a) a proposed plan of subdivision for the land,
  - (b) details of subdivision works to be undertaken for the land,
  - (c) details of the costs of the subdivision works and of the proposed means of funding those works,
  - (d) details of the proportion of those costs to be borne by the individual owners of the land and of the manner in which the owners are to meet those costs (including details of any proposed voluntary land trading scheme or voluntary contributions or, if voluntary measures are not agreed to by owners, of compulsory land acquisition or compulsory contributions),
  - (e) rules as to how entitlement to compensation for land that is compulsorily acquired is to be calculated,
  - (f) rules as to the distribution of any surplus funds after the completion of subdivision works for the land,
  - (g) any other matters prescribed by the regulations.
- (3) Regulations may be made for or with respect to procedures for the preparation, public exhibition, adoption, publication, amendment and repeal of development plans.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 5 Miscellaneous amendments

---

- (4) Any rules as to the calculation of compensation contained in a development plan must be consistent with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (5) The validity of a development plan must not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date of its publication in the Gazette.

## **7 Land acquisition powers**

- (1) A relevant authority may, for a planning purpose specified in a subdivision order, acquire subdivision land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) A relevant authority may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.
- (3) If land is acquired under this clause and the compensation provided for that acquisition is in accordance with the rules set out in a development plan adopted by a relevant authority, the following provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* do not apply in respect of the acquisition of that land:
  - (a) section 45 (1) (b), (2) and (3),
  - (b) section 64, to the extent that it requires a person entitled to compensation to agree to the provision of compensation in the form of land or of the carrying out of works,
  - (c) Division 5 of Part 3 (Objections and appeals to Land and Environment Court).
- (4) The Valuer-General must determine compensation to be offered to a person under the *Land Acquisition (Just Terms Compensation) Act 1991* in respect of land acquired under this clause in accordance with the rules set out in any applicable development plan adopted by a relevant authority for the land.
- (5) Subclause (4) has effect despite any provision of the *Land Acquisition (Just Terms Compensation) Act 1991*.

## **8 Other powers to acquire and dispose of land**

A relevant authority may sell, lease, exchange, mortgage or otherwise deal with or dispose of subdivision land vested in the authority, or an interest in that land, and may grant easements, rights-of-way or covenants over that land.



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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Miscellaneous amendments

Schedule 5

---

## **9 Contribution powers**

- (1) A relevant authority may, by notice in writing, require an owner of subdivision land to make a reasonable monetary contribution for the provision, extension or augmentation of subdivision works.
- (2) A requirement under this clause must be in accordance with the development plan applicable to the subdivision land.
- (3) A contribution cannot be required under this clause if the owner concerned has provided a voluntary contribution (whether a monetary or other contribution) for the provision, extension or augmentation of subdivision works in accordance with the development plan applicable to the subdivision land or an agreement with the relevant authority or if there is no development plan applicable to the land.
- (4) Compliance with a requirement for a contribution under this clause, or a voluntary contribution made in accordance with a development plan, operates to satisfy a requirement imposed by a public authority under any other Act (in relation to or in connection with the subdivision land) for the dedication of land or the payment of money in respect of the provision of subdivision works, to the extent of the value of the land dedicated or the amount of money paid in compliance with the requirement.
- (5) The regulations may make provision for the determination in accordance with the regulations of the value for the purposes of this clause of the land dedicated or traded to the authority in accordance with a development plan.
- (6) A contribution required to be made under this clause may be in addition to any other contribution required to be made under this Act.

## **10 Use of monetary contributions**

- (1) A monetary contribution paid to a relevant authority by the owner of subdivision land for subdivision works, and the proceeds of any sale of subdivision land by a relevant authority, are to be paid by the authority to a fund approved by the Minister.
- (2) The following may be paid from any fund to which those contributions are paid:
  - (a) payments to persons or bodies with respect to the provision of subdivision works,

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 5 Miscellaneous amendments

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- (b) payments in connection with the exercise of functions by the relevant authority for the planning purpose specified in the subdivision order,
- (c) payments for the whole or part of compensation payable under clause 7,
- (d) payments for the distribution of any surplus funds after the completion of subdivision works and any other payments under this clause,
- (e) any money required to meet the administrative expenses of the relevant authority in relation to its functions under the subdivision order.

## 11 Powers to carry out subdivision works

- (1) The relevant authority may carry out, or arrange for the carrying out of, subdivision works with respect to subdivision land.
- (2) The relevant authority may enter into contracts and other arrangements for the carrying out of subdivision works.
- (3) A relevant authority may make a development application to carry out development on subdivision land for the purposes of subdivision works without the consent of the owner of the land.
- (4) The consent authority may grant consent to any such development application even if the owner of the land has failed to consent to the application.
- (5) In this clause, *subdivision works* includes the carrying out of any research or investigation related to the provision or augmentation of subdivision works.

## 12 Roads powers

- (1) A road within subdivision land cannot be provided, opened, dedicated, closed (within the meaning of Part 4 of the *Roads Act 1993*) or realigned by the Crown, a public authority or any person except with the consent of the relevant authority.
- (2) A private road, or part of a private road, within subdivision land cannot be:
  - (a) provided, opened, closed or realigned, or
  - (b) regulated in its use, or
  - (c) used for a purpose other than a road,except with the consent of the relevant authority.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Miscellaneous amendments

Schedule 5

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## **13 Ancillary powers**

A relevant authority has, for the purpose of any other functions conferred under this Schedule, the following functions:

- (a) the authority may enter into agreements with the owners of subdivision land for the purposes of a land trading scheme or the payment of voluntary contributions or for other purposes connected with the authority's functions under the subdivision order,
- (b) the authority may cause surveys to be made, and plans of survey to be prepared, in relation to subdivision land or proposed subdivision land (whether or not vested in the authority),
- (c) the authority may manage subdivision land vested in the authority,
- (d) the authority may subdivide and re-subdivide land, and consolidate subdivided or re-subdivided land vested in the authority,
- (e) with the consent of the owner or occupier of the land, a person authorised in writing by the authority may enter subdivision land or proposed subdivision land.

## **14 Other powers of entry**

A person authorised in writing by the relevant authority may, without the consent of the owner or occupier of subdivision land or proposed subdivision land and in accordance with the regulations, enter that land:

- (a) for a planning purpose, or
- (b) in connection with the carrying out of subdivision works or research or investigation relating to proposed subdivision works, or
- (c) in connection with the preparation of, or research or investigation for the purposes of, a development plan or proposed development plan.

## **15 Failure to pay contributions**

A monetary contribution required to be paid by an owner of subdivision land under clause 9 may be recovered by the relevant authority in any court of competent jurisdiction as a debt due to the relevant authority by the owner.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Schedule 5 Miscellaneous amendments

---

## 16 Voluntary contributions agreements to run with land

- (1) A *voluntary contributions agreement* is a voluntary agreement between a relevant authority and a person who owns subdivision land under which the owner is required to pay a monetary contribution to be used for or applied for subdivision works.
- (2) A voluntary contributions agreement can be registered under this clause if the following persons agree to its registration:
  - (a) if the agreement relates to land under the *Real Property Act 1900*—each person who has an estate or interest in the land registered under that Act, or
  - (b) if the agreement relates to land not under the *Real Property Act 1900*—each person who is seised or possessed of an estate or interest in the land.
- (3) On lodgment by a relevant authority of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register the voluntary contributions agreement:
  - (a) by making an entry in the relevant folio of the Register kept under the *Real Property Act 1900* if the agreement relates to land under that Act, or
  - (b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*.
- (4) A voluntary contributions agreement that has been registered by the Registrar-General under this clause is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.
- (5) A reference in this clause to a voluntary contributions agreement includes a reference to any amendment or revocation of a voluntary contributions agreement.

## 17 State taxes

- (1) State tax is not chargeable in respect of any matter or thing done by a relevant authority in the exercise of its functions under this Schedule if the Minister, with the approval of the Treasurer, exempts the authority from payment of any or all State taxes.
- (2) In this clause, *State tax* means duty under the *Duties Act 1997* or any other tax, duty, rate (including a local government rate), fee or other charge imposed by or under any Act or law of the State, other than payroll tax.

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# exposure draft

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Environmental Planning and Assessment Amendment Bill 2008

Miscellaneous amendments

Schedule 5

---

## **18 Obstruction of authorised persons**

A person must not obstruct, hinder or interfere with a person authorised in writing by a relevant authority in the exercise of the person's functions or functions of the authority under this Schedule.

Maximum penalty: 100 penalty units.

## **19 Regulations**

Regulations may made for or with respect to the following matters:

- (a) the manner in which consent to a development plan is to be given by owners of land,
- (b) information to be provided to the Minister by, and reports by, relevant authorities.

## **5.2 Amendments to Standard Instrument (Local Environmental Plans) Order 2006**

### **[1] Standard instrument at end of Order**

Omit the definition of *place of public entertainment* from the Dictionary.

### **[2] Standard instrument, Dictionary, definition of "public entertainment"**

Insert at the end of the definition of *public entertainment* in the note to the definition of *public entertainment*:

and includes entertainment (other than by means of gaming machines) provided in registered clubs or in premises licensed to sell liquor, but does not include entertainment of a kind that is excluded from this definition by the regulations.