

**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

**Environmental Planning and Assessment  
Amendment Bill 2017**

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public consultation draft

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**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

**Environmental Planning and Assessment  
Amendment Bill 2017**

No. , 2017

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**A Bill for**

An Act to amend the *Environmental Planning and Assessment Act 1979*.

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Environmental Planning and Assessment Amendment Bill 2017 [NSW]

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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 2017*.

**2 Commencement**

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

## **Schedule 1      Amendment of Environmental Planning and Assessment Act 1979 No 103—Preliminary**

### **1.1 Principal amendments**

#### **Section 5**

Omit the section. Insert instead:

#### **1.4 Objects of Act**

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the timely delivery of business, employment and housing opportunities (including for housing choice and affordable housing),
- (d) to protect the environment, including the conservation of threatened and other species of native animals and plants,
- (e) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (f) to promote good design in the built environment,
- (g) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (h) to provide increased opportunity for community participation in environmental planning and assessment.

### **1.2 Consequential and statutory revision amendments**

#### **[1] Part 1, section numbering**

Renumber the sections in the Part with decimal numbering commencing with section 1.1.

#### **[2] Section 2 Commencement**

Omit subsections (1) and (2). Insert instead:

This Act commenced on 1 September 1980.

**Note.** The Historical notes set out at the end of the Act on the NSW legislation website sets out the various Acts and instruments that have amended this Act and the dates on which each commenced.

#### **[3] Section 4 Definitions**

Omit the following definitions:

*alignment*  
*bush fire prone land*  
*bush fire prone land map*  
*development*  
*exempt development*  
*functions*

**[4] Section 4 Definitions**

Insert the following definitions in alphabetical order:

**amend** includes alter, vary or substitute (and amend provisions or a document includes amend a map or spatial dataset adopted by or under the provisions or document).

**demolition** of a building or work includes enclosing a public place in connection with the demolition of a building or work.

**development** - see section 1.5

**erection** of a building includes:

- (a) the rebuilding of, the making of alterations to, or the enlargement or extension of, a building, or
- (b) the placing or relocating of a building on land, or
- (c) enclosing a public place in connection with the construction of a building, or
- (e) erecting an advertising structure over a public road, or
- (f) extending a balcony, awning, sunshade or similar structure or an essential service pipe beyond the alignment of a public road,

but does not include any act, matter or thing excluded by the regulations (either generally for the purposes of this Act or only for the purposes of specified provisions of this Act).

**exempt development** - see section 1.6

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**use** of land includes a change of building use.

**work** includes any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act, but does not include a reference to any activity that is specified by a regulation not to be a work for the purposes of this Act.

The **carrying out** of a work includes:

- (a) the renewal of, the making of alterations to, or the enlargement or extension of, a work, or
- (b) enclosing a public place in connection with the carrying out of a work.

**[5] Section 4 (2), (4), (6), (7A), (8A) and (9)**

Omit the subsections.

**[6] Section 4 (8)**

Omit the subsection. Insert instead:

- (8) A power, express or implied, to make or give an order, direction, declaration, determination or other instrument under this Act or under an instrument made under this Act includes a power to revoke or amend the order, direction, declaration, determination or other instrument.

**[7] Section 1.5**

Insert after section 4:

**1.5 Meaning of “development”**

- (1) For the purposes of this Act, **development** is any of the following:

- (a) the use of land,
  - (b) the subdivision of land,
  - (c) the erection of a building,
  - (d) the carrying out of a work,
  - (e) the demolition of a building or work,
  - (f) any other act, matter or thing that may be controlled by an environmental planning instrument.
- (2) However, development does not include any act, matter or thing excluded by the regulations (either generally for the purposes of this Act or only for the purposes of specified provisions of this Act).
- (3) For the purposes of this Act, the *carrying out of development* is the doing of the acts, matters or things referred to in subsection (1).

**Note.** There are the following categories of development under this Act:

- (a) exempt development (development that is exempt from the assessment and consent or approval requirements of this Act),
- (b) development requiring development consent under Part 4, including:
  - (i) complying development (development that complies with pre-determined development standards and requires consent in the form of a complying development certificate by a consent authority or accredited certifier),
  - (ii) development that requires consent by a council or other public authority specified as the consent authority (including by a local planning panel or delegated council staff on behalf of a council),
  - (iii) regionally significant development (development that requires consent by a Sydney district or regional planning panel),
  - (iv) State significant development (development that requires consent by the Independent Planning Commission or the Minister),
  - (v) designated development (development, other than State significant development, that requires an environment impact statement for an application for consent),
  - (vi) integrated development (development that also requires approvals under other legislation that are integrated under general terms of approval),
- (c) development that is an activity requiring environmental assessment under Part 5.1 before it is carried out by a public authority or before a public authority gives approval for the carrying out of the activity,
- (d) State significant infrastructure (including critical State significant infrastructure) requiring approval under Part 5.2 by the Minister.

## 1.6 Exempt development

- (1) The carrying out of exempt development does not require:
- (a) development consent under Part 4, or
  - (b) environmental impact assessment under Division 5.1 of Part 5, or
  - (c) State significant infrastructure approval under Division 5.2 of Part 5, or
  - (d) a certificate under Part 6 (Building and subdivision certification).
- (2) Exempt development is development that is declared to be exempt development by an environmental planning instrument because of its minor impact.

**Consultation note.** Existing exclusions from exempt development of land that is critical habitat (or areas of outstanding biodiversity value on the commencement of the Biodiversity Conservation Act 2016) or that is wilderness will be continued in the environmental planning instrument that declares exempt development.

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Environmental Planning and Assessment Amendment Bill 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 103—Preliminary

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- [8] Section 6 Act to bind the Crown**  
Transfer to the beginning of Part 8 Miscellaneous renumbered as section 10.1.
- [9] Section 33A Standardisation of environmental planning instruments**  
Omit the definition of *amend* in section 33A (10).
- [10] Section 76 Development that does not need consent**  
Omit section 76 (2) and (3).
- [11] Section 79BA Consultation and development consent—certain bush fire prone land**  
Insert “(being land being for the time being recorded as bush fire prone land on a relevant map certified under section 146 (2))” after “bushfire prone land” in section 79BA (1).



## **Schedule 2      Amendment of Environmental Planning and Assessment Act 1979 No 103—Planning administration**

### **2.1 Principal amendments**

#### **[1] Part 2**

Omit Parts 2 and 2A. Insert instead:

### **Part 2      Planning administration**

#### **Division 2.1      Minister and Planning Secretary**

##### **2.1 The Minister**

- (1) The Minister has portfolio responsibility for planning and for the administration of the provisions of this Act allocated to the Minister by an administrative arrangements order under the *Constitution Act 1902*.
- (2) The Minister has the functions conferred or imposed on the Minister under this Act.

##### **2.2 The Planning Secretary**

- (1) The Planning Secretary has departmental responsibility for planning and for the administration of the provisions of this Act allocated to the Minister by an administrative arrangements order under the *Constitution Act 1902*.
- (2) The Planning Secretary has the functions conferred or imposed on the Planning Secretary under this Act.
- (3) The Planning Secretary may provide advice, recommendations and reports to the Minister in connection with the administration of this Act (whether on the Planning Secretary's own initiative or as required by the Minister).
- (4) The Planning Secretary is, in the exercise of any function under this Act, subject to the control and direction of the Minister (except in relation to the contents of any advice, recommendation or report provided to the Minister by the Planning Secretary).

##### **2.3 Panels established by Minister or Planning Secretary**

- (1) The Minister or the Planning Secretary may, by order published on the NSW legislation website, establish panels for the purposes of this Act.
- (2) The chairperson and other members of any such panel are to be appointed by the Minister or the Planning Secretary (as the case requires).
- (3) The functions of any such panel are to be as specified in the order by which it is established, and (without limitation) may include:
  - (a) the investigation of any matter relevant to the administration of this Act, or
  - (b) the provision of advice, recommendations or reports with respect to any such matter for the Minister, the Planning Secretary or other person or body engaged in the administration of this Act.

This subsection does not limit any functions conferred on any such panel by this or any other Act.

- (4) Any such panel is not subject to the direction or control of the Minister or the Planning Secretary (except in relation to the procedure of the panel and any directions under section [117]).
- (5) The order establishing any such panel is to specify the name of the panel. The word “panel” is not required to be included in the name of the panel.
- (6) Schedule 2 contains provisions with respect to the members and procedure of any such panel.
- (7) The regulations may make provision for or with respect to the functions, members and procedure of any such panel.
- (8) Any such panel is a NSW Government agency, unless the order by which it is established provides that it is not a NSW Government agency.  
**Note.** By virtue of section 13A of the *Interpretation Act 1987*, a NSW Government agency has the status, privileges and immunities of the Crown.

## 2.4 Delegation by Minister, Planning Ministerial Corporation or Planning Secretary

- (1) The Minister, the Planning Ministerial Corporation or the Planning Secretary may delegate any of their functions under this Act to:
  - (a) a person employed in the Department of Planning and Environment, or
  - (b) the Greater Sydney Commission, or
  - (c) the Independent Planning Commission, or
  - (d) a Sydney district planning panel, or
  - (e) a regional planning panel, or
  - (f) a public authority or member of staff of a public authority, or
  - (g) a council or member of staff of a council, or
  - (h) a person, or person of a class, authorised for the purposes of this section by the regulations.
- (2) A reference in this section to a function under this Act includes a reference to:
  - (a) a function of the Minister under any other Act that is conferred or imposed on the Minister in his or her capacity as the Minister administering this Act or in connection with the administration of this Act, or
  - (b) a function of the Planning Ministerial Corporation under any other Act, or
  - (c) a function of the Planning Secretary under any other Act that is conferred or imposed on the Planning Secretary in connection with the administration of this Act.
- (3) This section does not authorise the delegation of:
  - (a) the power of delegation conferred by this section, or
  - (b) the function of the Minister under Division 5.2 of determining an application for approval to carry out critical State significant infrastructure, or
  - (c) any function of the Minister conferred by section [117, 118 or 130 (4)].

## **Division 2.2 Planning Ministerial Corporation**

### **2.5 Constitution and functions of Corporation**

- (1) There is constituted by this Act a corporation with the corporate name of the Planning Ministerial Corporation.
- (2) The Planning Ministerial Corporation has such functions as are conferred or imposed on it under this or any other Act.
- (3) The Planning Ministerial Corporation is a NSW Government agency.

### **2.6 Management of Corporation**

- (1) The affairs of the Planning Ministerial Corporation are to be managed by the Planning Secretary in accordance with any directions of the Minister.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Planning Ministerial Corporation by the Planning Secretary, or with the authority of the Planning Secretary, is taken to have been done by the Corporation.
- (3) The regulations may make provision with respect to the seal of the Planning Ministerial Corporation.
- (4) The annual report of the Planning Ministerial Corporation is to be published as part of the annual report of the Department of Planning and Environment.

**Note.** Schedule 2 contains property provisions relating to the Planning Ministerial Corporation and Division 7.3 contains financial provisions relating to the Corporation.

## **Division 2.3 Independent Planning Commission**

### **2.7 Independent Planning Commission**

- (1) There is constituted by this Act a corporation with the corporate name of the Independent Planning Commission of New South Wales.
- (2) The Commission is not subject to the direction or control of the Minister (except in relation to the procedure of the Commission and any directions authorised to be given to the Commission under section [117] or other provision of this Act).
- (3) The Commission is a NSW Government agency.

### **2.8 Members of Commission**

- (1) The Independent Planning Commission is to consist of such members as are appointed by the Minister.
- (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 one area of planning, architecture, heritage, the environment, urban design, land economics, soil or agricultural science, hydro-geology, mining or petroleum development, traffic and transport, law, engineering, tourism or government and public administration.
- (4) In appointing a member of the Commission, the Minister is to have regard to the need to have a range of expertise represented among the Commission's members.
- (5) The Minister may appoint additional members of the Commission for the purposes of exercising specific functions of the Commission. An additional member is not required to have expertise in an area referred to in this section

but is required to have expertise in an area relevant to the functions the member is to exercise.

## 2.9 Functions of Commission

- (1) The Independent Planning Commission has the following functions:
- (a) the functions of the consent authority under Part 4 for State significant or other development that are (subject to this section) conferred on it under this Act,
  - (b) any functions under this Act that are delegated to the Commission,
  - (c) to advise the Minister or the Planning Secretary on any matter on which the Minister or the Planning Secretary requests advice from the Commission,
  - (d) to hold a public hearing into any matter into which the Minister requests the Commission to hold a public hearing,
  - (e) any function of a Sydney district or regional planning panel or a local planning panel in respect of a particular matter that the Minister requests the Commission to exercise (to the exclusion of the panel),
  - (f) if a Sydney district or regional planning panel has not been appointed for any part of the State, any function that is conferred on any such panel under an environmental planning instrument applicable to that part or that is otherwise conferred on any such panel under this Act,
  - (g) any other function conferred or imposed on it under this or any other Act.

**Note.** Division 5 of Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* provides that a subcommittee appointed by the Independent Planning Commission exercises the gateway functions of the Mining and Petroleum Gateway Panel under that Policy.

- (2) The matters on which advice may be provided under subsection (1) (c), or into which a public hearing may be held under subsection (1) (d), include any general or particular planning or development matter, the administration of this Act or any related matter.
- (3) The following consent authority functions of the Commission under Part 4 are to be exercised by the Planning Secretary on behalf of the Commission:
- (a) receiving development applications and determining and receiving fees for the applications,
  - (b) undertaking assessments of the proposed development and providing them to the Commission (but without limiting the assessments that the Commission may undertake),
  - (c) obtaining any concurrence, and undertaking any consultation, that the consent authority is required to obtain or undertake,
  - (d) carrying out the community consultation requirements of Division 2.6,
  - (e) notifying or registering the determinations of the Commission,
  - (f) the functions under section [80A] in relation to the provision of security,
  - (g) the determination of applications to extend the period before consents lapse,
  - (h) any other function prescribed by the regulations.

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

- (1) For the purpose of carrying out any of its functions, the Independent Planning Commission is to be constituted by 3 members.
- (2) The Commission is to be constituted by more than 3 members or less than 3 members if directed to be so constituted by the Minister.
- (3) 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.
- (4) The Commission may, at any time, exercise by the same or different members, one or more of its functions.
- (5) 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 directed to be so constituted by the Minister.

## **2.11 Miscellaneous provisions relating to Commission**

- (1) Schedule 2 contains provisions with respect to the Independent Planning Commission (including with respect to public hearings by, and to the members and procedures of, the Commission).
- (2) The work of the Independent Planning Commission is, subject to this Act, to be allocated by the chairperson of the Commission. The chairperson may nominate another member to allocate the work of the Commission during any period the chairperson is unavailable.
- (3) The Independent Planning Commission may:
  - (a) arrange for the use of the services of any staff or facilities of the Department of Planning and Environment or other public authority, and
  - (b) engage such consultants as it requires to exercise its functions.
- (4) The Independent Planning Commission may, with the approval of the Minister, delegate any function of the Commission under this or any other Act (other than this power of delegation) to any person or body specified in the Minister's approval.

## **Division 2.4 Sydney district and regional planning panels**

### **2.12 Constitution of Sydney district and regional planning panels** (cf previous s 23G)

- (1) The Sydney district planning panels specified in Part 3 of Schedule 2 are constituted for the particular parts of the Greater Sydney Region so specified in relation to each such panel.
- (2) The regional planning panels specified in Part 3 of Schedule 2 are constituted for the particular parts of the State (other than the Greater Sydney Region) so specified in relation to each such panel.
- (3) A Sydney district or regional planning panel is not subject to the direction or control of the Minister (except in relation to the procedure of the panel and any directions authorised to be given to the panel under section [117] or other provision of this Act).
- (4) A Sydney district or regional planning panel is a NSW Government agency.
- (5) The Minister may, by order published on the NSW legislation website, amend Part 3 of Schedule 2 for any of the following purposes:

- (a) to constitute a Sydney district planning panel and to specify the part of the Greater Sydney Region for which it is constituted (including by constituting a single panel for the whole of the Region),
- (b) to constitute a regional planning panel and to specify the part of the State (other than the Greater Sydney Region) for which it is constituted,
- (c) to abolish a Sydney district or regional planning panel,
- (d) to change the name of a Sydney district or regional planning panel or to change the part of the Greater Sydney Region or State for which it is constituted,
- (e) to make savings and transitional provisions consequent on any of the above.

## 2.13 Members of Sydney district and regional planning panels

- (1) A Sydney district planning panel is to consist of the following 5 members:
  - (a) 3 members appointed by the Minister (the *State members*), one of whom is to be a District Commissioner under the *Greater Sydney Commission Act 2015*,
  - (b) 2 nominees of an applicable council (the *council nominees*) who are councillors, members of council staff or other persons nominated by the council.
- (2) A regional planning panel is to consist of the following 5 members:
  - (a) 3 members appointed by the Minister (the *State members*),
  - (b) 2 nominees of an applicable council (the *council nominees*) who are councillors, members of council staff or other persons nominated by the council.
- (3) The State members of a Sydney district or regional planning panel are to be persons who have expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration. In appointing State members, the Minister is to have regard to the need to have a range of expertise represented among the panel's members.
- (4) At least one of the council nominees of a Sydney district or regional planning panel is to be a person who has expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.
- (5) Each applicable council is to nominate 2 persons as council nominees for the purposes of a Sydney district or regional planning panel. If an applicable council fails to nominate one or more council nominees, a Sydney district or regional planning 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.
- (6) For the purposes of exercising the functions of a Sydney district or regional planning panel in relation to a matter, the council nominees on the panel are to be those nominated by the applicable council for the land to which the matter relates.
- (7) In this section:  
*applicable council* means the council of an area that is situated (wholly or partly) in a part of the State for which a Sydney district or regional planning panel is constituted.

## 2.14 Chairperson of Sydney district and regional planning panel

- (1) In the case of a Sydney district planning panel, the State member who is a District Commissioner is to be appointed by the Minister as chairperson of the panel.
- (2) In the case of a regional planning panel, one of the State members is to be appointed by the Minister as chairperson of the panel. The Minister is required to obtain the concurrence of Local Government NSW to the appointment unless Local Government NSW:
  - (a) fails to notify its concurrence or refusal to concur within 21 days of being requested to do so by the Minister, or
  - (b) refuses to concur in the appointment of 2 different persons proposed by the Minister.

## 2.15 Functions of Sydney district and regional planning panels

- (1) A Sydney district or regional planning panel has the following functions:
  - (a) the functions of the consent authority under Part 4 for development that are (subject to this section) conferred on it under this Act,
  - (b) any functions under this Act of a council within its area that are conferred on it under section [118],
  - (c) to advise the Minister or the Planning Secretary as to planning or development matters relating to the part of the State for which it is constituted (or any related matters) if requested to do so by the Minister or the Planning Secretary,
  - (d) any other function conferred or imposed on it under this or any other Act.

**Note.** Under section [118AB], a panel (or the Independent Planning Commission if acting in place of the panel) is, in the exercise of a function referred to in paragraph (b), taken to be the council and is to exercise the function to the exclusion of the council.

- (2) The following consent authority functions of a Sydney district or regional planning panel under Part 4 are to be exercised on behalf of the panel by the council of the area in which the proposed development is to be carried out:
  - (a) receiving development applications and determining and receiving fees for the applications,
  - (b) undertaking assessments of the proposed development and providing them to the panel (but without limiting the assessments that the panel may undertake),
  - (c) obtaining any concurrence, and undertaking any consultation, that the consent authority is required to obtain or undertake,
  - (d) carrying out the community consultation requirements of Division 2.6,
  - (e) notifying or registering the determinations of the panel,
  - (f) the functions under section [80A] in relation to the provision of security,
  - (g) the determination of applications to extend the period before consents lapse,
  - (h) any other function prescribed by the regulations.

## 2.16 Miscellaneous provisions relating to Sydney district and regional planning panels

- (1) Schedule 2 contains provisions with respect to the members and procedure of Sydney district or regional planning panels.

- (2) The regulations may make provision for or with respect to the following:
  - (a) the functions conferred under this Act on a Sydney district or regional planning panel, including its procedures in exercising its functions,
  - (b) without limiting paragraph (a), providing that parties to matters being determined by a Sydney district or regional planning panel are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,
  - (c) the provision of information and reports by Sydney district or regional planning panels.
- (3) The Planning Secretary is, in the annual report of the Department of Planning and Environment, to report on the activities of Sydney district or regional planning panels during the reporting year under section # [current section 118].
- (4) Legal proceedings by or against a Sydney district or regional planning panel are to be taken in the name of the panel and not by or against the members of the panel.
- (5) A Sydney district or regional planning panel may, with the approval of the Minister, delegate any function of the panel under this or any other Act (other than this power of delegation) to:
  - (a) a council, or
  - (b) a local planning panel of a council, or
  - (c) the general manager or other staff of a council,for any area or part of any area for which the Sydney district or regional planning panel is constituted.

## **Division 2.5 Local planning panels**

### **2.17 Constitution of local planning panels**

- (1) A council may constitute one or more local planning panels for the whole or any part of the area of the council.
- (2) The regulations may require a council to establish local planning panels.
- (3) A local planning panel is not subject to the direction or control of the Minister (except in relation to any directions under section # [current section 117]) or of the council (except in relation to the procedure of the panel and the time within which it is to deal with any matter).

### **2.18 Members of local planning panels**

- (1) The members of a local planning panel are to be appointed by the council.
- (2) Each local planning panel is to comprise 3 members, being:
  - (a) an independent person with relevant expertise appointed as the chairperson of the panel, and
  - (b) another independent person with relevant expertise, and
  - (c) a community representative.
- (3) Relevant expertise for the purposes of this section is expertise in at least one area of planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism or government and public administration.



## **2.19 Functions of local planning panels**

- (1) A local planning panel has the following functions:
  - (a) the specified functions of a council as a consent authority under Part 4 that are conferred on it under this Act,
  - (b) to assess any aspect of a development application or planning matter that is to be determined by the council (or its delegate) and is referred to the panel by the council.
- (2) This section does not limit the functions that may be exercised by a local planning panel under this Act.

## **2.20 Miscellaneous provisions relating to local planning panels**

- (1) Schedule 2 contains provisions with respect to the members and procedure of local planning panels.
- (2) The regulations may make provision for or with respect to the following:
  - (a) the functions conferred under this Act on local planning panels, including the procedures of panels in exercising their functions,
  - (b) without limiting paragraph (a), providing that parties are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,
  - (c) the provision of information or reports by councils with respect to the exercise of functions by local planning panels.
- (3) The council is to provide staff and facilities for the purpose of enabling a local planning panel to exercise its functions.
- (4) The council is to monitor the performance of local planning panels appointed by the council.
- (5) A council must provide an annual report to the Planning Secretary as to the following:
  - (a) the number of local planning panels constituted by the council in the preceding year,
  - (b) the matters referred to the panels in the preceding year,
  - (c) the persons appointed to the panels,
  - (d) any other matters relating to the exercise of functions by panels as directed by the Planning Secretary.
- (6) Legal proceedings by or against a local planning panel are to be taken in the name of the panel and not by or against the members of the panel.
- (7) A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council.

## **Division 2.6 Community participation**

### **2.21 Planning authorities and functions subject to community participation requirements**

- (1) This Division applies to the following planning authorities:
  - (a) the Minister,
  - (b) the Planning Secretary,
  - (c) the Greater Sydney Commission,

- (d) the Independent Planning Commission,
  - (e) a Sydney district or regional planning panel,
  - (f) a council,
  - (g) a local planning panel,
  - (h) a determining authority under Part 5,
  - (i) a public authority prescribed by the regulations.
- (2) This Division applies to the exercise of the following planning functions by any such planning authority (*relevant planning functions*):
- (a) planning instrument functions under Part 3,
  - (b) development consent functions under Part 4,
  - (c) environmental impact assessment functions under Division 5.1 if an environmental impact statement is required,
  - (d) State significant infrastructure approval functions under Division 5.2,
  - (e) contribution plan functions under Part 7,
  - (f) any other function under this Act prescribed by the regulations.

## 2.22 Mandatory community participation requirements

- (1) Part 1 of Schedule 1 sets out the mandatory requirements for community participation by planning authorities with respect to the exercise of relevant planning functions.
- Note.** The mandatory requirements include public exhibition for a minimum period, public notification requirements and the giving of reasons for decisions by planning authorities. The regulations under that Schedule may also require community consultation by applicants for consents or other approvals.
- (2) Those mandatory requirements for community participation include any other forms of community participation that are set out in a community participation plan under this Division and that are identified in that plan as mandatory requirements.

## 2.23 Community participation plans—preparation

- (1) A planning authority to which this Division applies is required to prepare a community participation plan about how and when it will undertake community participation when exercising relevant planning functions (subject to this section).
- Note.** Schedule 1 requires a proposed plan to be publicly exhibited for at least 28 days.
- (2) A planning authority is to have regard to the following when preparing a community participation plan:
- (a) The community has a right to be informed about planning matters that affect it.
  - (b) Planning authorities should encourage effective and on-going partnerships with the community to provide meaningful opportunities for community participation in planning.
  - (c) Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.
  - (d) The community should be given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.

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- (e) Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.
  - (f) Members of the community who are affected by proposed major development should be consulted by the proponent before an application for planning approval is made.
  - (g) Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions (including how community views have been taken into account).
  - (h) Community participation methods (and the reasons given for planning decisions) should be appropriate having regard to the significance and likely impact of the proposed development.
- (3) For the purposes of this Division:
- (a) a community participation plan prepared by the Planning Secretary applies to the exercise of relevant planning functions by the Minister, and
  - (b) a general community participation plan prepared by the Planning Secretary applies to the exercise of relevant planning functions by determining authorities under Division 5.1 (other than councils or prescribed public authorities), and
  - (c) the regulations may provide that the community participation plan of a planning authority applies to the exercise of relevant planning functions by another planning authority and that the other planning authority is not required to prepare its own community participation plan.
- (4) A council need not prepare a separate community participation plan if it includes all the matters required under this section in its plan and strategies under section 402 of the *Local Government Act 1993*.

## **2.24 Community participation plans—miscellaneous provisions**

- (1) Community participation plans are to be published on the NSW planning portal.
- (2) If the validity of a community participation plan has not been challenged in proceedings commenced in the Court within 3 months after the plan is published, the plan is taken to have been validly made under this Division.
- (3) Community participation plans are to be reviewed periodically.
- (4) The regulations may make provision for or with respect to:
  - (a) the form, content and procedures for making and publishing community participation plans (or any amendment of those plans), and
  - (b) reports on the implementation of community participation plans.

## **Division 2.7 Miscellaneous**

### **2.25 NSW planning portal and other online services and information**

- (1) The Planning Secretary is to establish and facilitate the online delivery of planning services and information (including the NSW planning portal).
- (2) Schedule 3 contains provisions relating to the NSW planning portal and the online delivery of those services and information.

## 2.26 Obligation of Commission and panels to consult with council about certain decisions

- (1) The Independent Planning Commission or a Sydney district or regional planning 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.
- (2) This section does not apply to the determination of a development application made by a council.

## 2.27 Obligations of councils to assist Commission and panels

- (1) The Independent Planning Commission or a Sydney district or regional planning panel is entitled, on request made to the general manager of a council:
  - (a) to have access to, and to make copies of and take extracts from, records of the council relevant to the exercise of the Commission's or panel's functions, and
  - (b) to the use of the staff and facilities of the council in order to exercise the Commission's or panel's functions, and
  - (c) to any other assistance or action by the council for the purposes of exercising the Commission's or panel's functions.
- (2) The regulations may make provision with respect to assistance and action under this section.

## 2.28 Exclusion of personal liability

A matter or thing done, or omitted to be done, by:

- (a) the Minister, or
- (b) the Planning Secretary, or
- (c) any person employed in the Department of Planning and Environment, or
- (d) an investigation officer under Part 9, or
- (e) a member of a panel established by the Minister or the Planning Secretary under this Part, or
- (f) a member of the Independent Planning Commission, or
- (g) a member of a Sydney district or regional planning panel, or
- (h) a member of a local planning panel, or
- (i) any individual acting under the direction of a person or body referred to above, or
- (j) any individual acting as the delegate of a person or body referred to above,

does not subject the Minister, the Planning Secretary or any such person, officer, member or individual so acting personally to any action, liability, claim or demand if the matter or thing was done, or omitted to be done, in good faith for the purpose of the administration of this Act.

## 2.29 Delegation by public authorities other than councils

- (1) In this section, *public authority* does not include a council.  
**Note.** See sections 377–381 of the *Local Government Act 1993* in relation to the delegation of functions by councils.

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- (2) A public authority may delegate any function of the public authority under this Act (other than this power of delegation) to a member of staff of the public authority. If the public authority is a chief executive officer, the function may be delegated to any member of staff of the public authority of which he or she is the chief executive officer.
- (3) A member of staff of a public authority may delegate any function of the member of staff under this Act (other than this power of delegation) to any other member of staff of the public authority. However, if the function is a delegated function, the function cannot be subdelegated unless subdelegation is authorised by the terms of the original delegation.
- (4) A power conferred by this section is in addition to any other power of delegation of the public authority or member of staff or any power of a person to exercise functions on behalf of the public authority.

## **2.30 Section 381 of Local Government Act 1993 excluded**

Section 381 of the *Local Government Act 1993* does not apply to a delegation under this Act to the general manager or other employee of a council.

## **2.31 Publication of instruments of delegation**

- (1) Any instrument of delegation under this Act by the Minister, the Planning Ministerial Corporation, the Planning Secretary, the Independent Planning Commission, a Sydney district planning panel or a regional planning panel is to be published on the NSW planning portal.
- (2) Failure to comply with this section does not affect the validity of any such delegation.

## **[2] Schedule 1**

Insert in appropriate order:

## **Schedule 1 Community participation requirements**

(Section #)

### **Part 1 Mandatory community participation requirements**

#### **Division 1 Minimum public exhibition periods for plans**

##### **1 Draft community participation plans (Division 2.6)**

28 days.

##### **2 Draft regional or district strategic plans (Division 3.1)**

45 days.

##### **3 Planning proposals for local environmental plans subject to a gateway determination (other than minor proposals that under the gateway determination are excluded from public exhibition) (Division 3.4)**

28 days or, if a different period of public exhibition is specified in the gateway determination for the proposal, the period so specified.

##### **4 Draft development control plans (Division 3.6)**

28 days.

**5 Draft contribution plans (Division 7.1)**

28 days.

**Division 2 Minimum public exhibition periods for development applications and other matters**

**6 Application for development consent (other than for complying development certificate, for designated development or for State significant development)**

14 days.

**7 Application for development consent for designated development**

28 days.

**8 Application for development consent for State significant development**

28 days.

**9 Application for modification of development consent that is required to be publicly exhibited by the regulations**

The period (if any) determined by the consent authority in accordance with the relevant community participation plan.

**10 Environmental impact statement obtained under Division 5.1**

28 days.

**11 Environmental impact statement for State significant infrastructure under Division 5.2**

28 days.

**12 Re-exhibition of any amended application or matter referred to above required by or under this Schedule**

The period (if any) determined by the person or body responsible for publicly exhibiting the application or matter.

**Division 3 Provisions relating to public exhibition**

**13 Publicly exhibited plans, applications etc not to be made or determined until after exhibition period**

- (1) If this Part requires a plan, application or other matter to be publicly exhibited, the plan or application is not to be made or determined (or the other matter finalised) until after the minimum period of public exhibition under this Part.
- (2) If the plan, application or other matter is placed on public exhibition for a specified longer period, the plan or application is not to be made or determined (or the other matter finalised) until after that specified longer period.

**14 Submissions during exhibition period**

- (1) Submissions with respect to a plan, application or other matter may be made during the minimum period of its public exhibition under this Part.
- (2) If the plan, application or other matter is placed on public exhibition for a specified longer period, submissions may be made during that specified longer period.

**15 Exclusion of Christmas/New Year period**

The period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition.

**Note.** See also section 36 (2) of the *Interpretation Act 1987* for the applicable rule where an exhibition period includes a weekend or public holiday.

**16 Rule where more than one exhibition period applies**

If a particular matter has different exhibition or notification periods that apply under this Part, the longer period applies.

**17 Provision relating to public exhibition of EIS**

A public authority is not required to make available for public inspection any part of an environmental impact statement whose publication would, in the opinion of the public authority, be contrary to the public interest because of its confidential nature or for any other reason.

**Division 4 Mandatory notification requirements for applications and decisions**

**18 Development and other applications and decisions—general**

The mandatory notification requirements of development and other applications under this Act and of the making of decisions with respect to those applications under this Act are the requirements prescribed by this Part, or the requirements prescribed by the regulations, as mandatory notification requirements.

**19 Public notification of certain decisions and reasons for the decisions**

- (1) This clause applies to the following decisions:
  - (a) the determination by the Minister (or the Independent Planning Commission) of an application for State significant infrastructure,
  - (b) the determination by the Minister (or the Independent Planning Commission) of a request for a modification of an approval for State significant infrastructure (being a request that was publicly exhibited),
  - (c) the determination by a consent authority of an application for development consent,
  - (d) the determination by a consent authority of an application for the modification of a development consent (being an application that was publicly exhibited),
  - (e) the granting of an approval, or the decision to carry out development, by a determining authority where an environmental impact statement was publicly exhibited under Division 5.1.
- (2) The mandatory notification requirement in relation to a decision to which this clause applies is public notification of:
  - (a) the decision, and
  - (b) the date of the decision, and
  - (c) the reasons for the decision (having regard to any statutory requirements applying to the decision), and
  - (d) how community views were taken into account in making the decision.

## Part 2 General provisions

### 20 Additional or revised mandatory public exhibition and notification requirements

The regulations may amend Part 1 of this Schedule:

- (a) to prescribe additional mandatory requirements for community participation, or
- (b) to make other changes to that Part.

### 21 Regulations relating to public exhibition

- (1) The regulations may set out the method of public exhibition under this Act, how people can make submissions and how people can obtain further information.
- (2) The regulations may specify the requirements for something to be considered a submission for the purposes of this Act.

### 22 Re-exhibition

- (1) The regulations may specify the circumstances in which a plan or other matter is required or not required to be re-exhibited.
- (2) Re-exhibition is not required if the environmental impact of the development has been reduced or not increased.

### 23 Regulations relating to community consultation by applicants for planning approvals

The regulations may require applicants for development consent or other approvals under this Act (or for the modification of any such consent or approval) to undertake community consultation in relation to their applications.

#### [3] Schedule 2

Insert in appropriate order:

## Schedule 2 Provisions relating to planning bodies

(Sections #)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule:

**appoint** means nominate in relation to a council nominee of a Sydney district or regional planning panel.

**member** means the chairperson, council nominee or other member of a planning body.

**planning body** means any of the following:

- (a) the Independent Planning Commission,
- (b) a Sydney district planning panel,
- (c) a regional planning panel,
- (d) a local planning panel,



- (e) a panel established by the Minister or Planning Secretary under section 2.3.

## **Part 2 Independent Planning Commission—public hearings and procedure**

### **2 Definitions**

In this Part:

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

*Commission* means the Independent Planning Commission.

### **3 Public hearings by Commission**

- (1) The Commission must conduct a public hearing if (and only if):
  - (a) the Commission is requested to do so by the Minister under section 2.9 (1) (d), or
  - (b) the Minister has determined in a gateway determination that the Commission is to conduct a public hearing into a planning proposal for provisions of a local environmental plan.
- (2) The Commission must give reasonable notice of the public hearing:
  - (a) by advertisement published in such newspapers as the Commission thinks fit, and
  - (b) by notice in writing to any public authorities that the Commission thinks are likely to have an interest in the subject-matter of the public hearing.
- (3) The notice of a public hearing must contain the following matters:
  - (a) the subject-matter of the public hearing,
  - (b) the time, date and place of the public hearing,
  - (c) a statement that submissions may be made to the Commission in relation to the subject-matter concerned not later than the date specified in the notice (being a date not less than 14 days after the notice is given),
  - (d) if the public hearing relates to an application for development consent— a statement of the effect the public hearing will have on any appeal rights in relation to the application.
- (4) If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that part of any public hearing is to take place in private and give directions as to the persons who may be present.

### **4 Attendance of witnesses and production of documents at public hearings**

- (1) The chairperson of the Commission may require a person:
  - (a) to attend a public hearing of the Commission to give evidence, or
  - (b) to produce to the Commission a document that is relevant to a public hearing conducted by the Commission,at a time, date and place specified in a notice given to the person.
- (2) A person must not, without reasonable excuse, fail to comply with a requirement to attend a public hearing, or to produce a document.  
Maximum penalty: \$11,000.

- (3) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering a written statement.

## **5 Commission may restrict publication of evidence**

- (1) If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that evidence given before the Commission or contained in documents lodged with the Commission is not to be published or may only be published subject to restrictions.
- (2) A person must not, without reasonable excuse, fail to comply with a direction given by the Commission under this clause.  
Maximum penalty: \$11,000.

## **6 Reports by Commission after public hearing**

- (1) The Commission must provide a copy of its findings and recommendations after a public hearing held by it (a *final report*):
- (a) to the Minister or to such other person or body as the Minister may direct, and
  - (b) in the case of proposed development the subject of an application for development consent—to the consent authority and to any public authority whose concurrence is required to the development, and
  - (c) to such other persons as the Commission thinks fit.
- (2) A final report must contain a summary of any submissions received by the Commission in relation to the subject-matter of the public hearing.
- (3) A final report is to be made publicly available on the NSW planning portal within a reasonable time after it has been provided to the Minister or to a person or body directed by the Minister.

## **7 Annual report by Commission**

- (1) The Commission must provide to the Minister an annual report on its operations in the preceding year.
- (2) An annual report is to be made publicly available on a government website within a reasonable time after it has been provided to the Minister.

## **8 Regulations**

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

- (a) the procedures of the Commission, including the procedures for public hearings relating to any or all, or a class, of its functions,
- (b) without limiting paragraph (a), providing that parties are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,
- (c) requiring the provision of information to the Commission for the purposes of a public hearing or the exercise of any of its other functions,
- (d) the provision of information or reports by the Commission.

### **Part 3 Sydney district and regional planning panels— constitution**

#### **9 Constitution of Sydney district planning panels**

The following Sydney district planning panels are constituted for the parts of the Greater Sydney Region (within the meaning of the *Greater Sydney Commission Act 2015*) situated within the local government areas specified in relation to each panel:

- (a) Sydney Central Planning Panel—local government areas of Bayside, Burwood, Canada Bay, Inner West, City of Randwick, Strathfield, City of Sydney, Waverley and Woollahra.
- (b) Sydney North Planning Panel—local government areas of Hornsby, Hunter’s Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Northern Beaches, City of Ryde and City of Willoughby.
- (c) Sydney South Planning Panel—local government areas of Canterbury-Bankstown, Georges River and Sutherland Shire
- (d) Sydney South West Planning Panel—local government areas of Camden, City of Campbelltown, City of Fairfield, City of Liverpool and Wollondilly.
- (e) Sydney West Central Planning Panel—local government areas of City of Blacktown, Cumberland, City of Parramatta and The Hills Shire.
- (f) Sydney West Planning Panel—local government areas of City of Blue Mountains, City of Hawkesbury and City of Penrith.

#### **10 Constitution of regional planning panels**

The following regional planning panels are constituted for the parts of the State situated within the local government areas specified in relation to each panel:

- (a) Hunter and Central Coast Regional Planning Panel—local government areas of Central Coast, Cessnock City, Dungog, Lake Macquarie City, Maitland City, Muswellbrook, Newcastle City, Port Stephens, Singleton and Upper Hunter Shire.
- (b) Northern Regional Planning Panel—local government areas of Armidale Regional, Ballina, Bellingen, Byron, Clarence Valley, Coffs Harbour City, Glen Innes Severn, Gunnedah, Gwydir, Inverell, Kempsey, Kyogle, Lismore City, Liverpool Plains, Mid-Coast, Moree Plains, Nambucca, Narrabri, Port Macquarie-Hastings, Richmond Valley, Tamworth Regional, Tenterfield, Tweed, Uralla and Walcha.
- (c) Southern Regional Planning Panel—local government areas of City of Albury, Bega Valley, Coolamon, Eurobodalla, Goulburn Mulwaree, Greater Hume Shire, Gundagai, Hilltops, Junee, Kiama, Lockhart, Queanbeyan-Palerang Regional, Shellharbour City, Shoalhaven City, Snowy Monaro Regional, Snowy Valleys, Temora, Upper Lachlan Shire, Wagga Wagga City, Wingecarribee, Wollongong City and Yass Valley.
- (d) Western Regional Planning Panel—local government areas of Balranald, Bathurst Regional, Berrigan, Bland, Blayney, Bogan, Bourke, Brewarrina, Broken Hill City, Cabonne, Carrathool, Central Darling, Cobar, Coonamble, Cowra, Edward River, Federation, Forbes, Gilgandra, Griffith City, Hay, Lachlan, Leeton, City of Lithgow, Mid-Western Regional, Murray River, Murrumbidgee, Narrandera,

Narromine, Oberon, Orange City, Parkes, Walgett, Warren,  
Warrumbungle Shire, Weddin, Wentworth and Western Plains  
Regional.

## **Part 4 Provisions relating to members of planning bodies**

### **11 Terms of office of members**

- (1) A member of a planning body holds office, subject to this Act and the regulations, for such period (not exceeding 3 years) as is specified in the member's instrument of appointment.
- (2) That period may be determined by reference to the occurrence of a specified event or the completion of the exercise of particular functions of the planning body.
- (3) A member is eligible (if otherwise qualified) for re-appointment.
- (4) A member of the Independent Planning Commission may not hold office as a member for more than 6 years in total.
- (5) A State member of a Sydney district planning panel may not hold office as a member for more than 9 years in total.

### **12 Full-time or part-time office**

- (1) The Minister may appoint a member of the Independent Planning Commission on either a full-time or part-time basis. The Minister may change the basis of the appointment during the member's term of office.
- (2) The office of a member of any other planning body is a part-time office.

### **13 Deputy chairperson—Sydney district or regional planning panels**

- (1) A Sydney district planning panel or a regional planning panel may elect a deputy chairperson from among its State members (either for the duration of the person's term of office as a member or for a shorter term).
- (2) The deputy chairperson vacates office as deputy chairperson if he or she:
  - (a) is removed from that office by the panel, or
  - (b) resigns that office by instrument in writing addressed to the panel, or
  - (c) ceases to be a member of the panel.

### **14 Remuneration of members**

- (1) A member of a planning body (other than a full-time member of the Independent Planning Commission or a member of a local planning 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.
- (2) A full-time member of the Independent Planning Commission is entitled to be paid:
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

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

## **15 Alternate members (except for Independent Planning Commission)**

- (1) In this clause:  
*appointing authority* for a member of a planning body means the Minister, the Planning Secretary or the council that appointed the member.  
*planning body* does not include the Independent Planning Commission.
- (2) The appointing authority may, from time to time, appoint a person to be the alternate of a member of a planning body, 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 may be appointed as the alternate of 2 or more members, but may represent only one of those members at any meeting of the planning body.
- (6) In the case of State members of a Sydney district or regional planning panel or members of a local planning panel, a number of persons may be appointed as the alternate of one or more members. The person who may act in the place of a member on any particular occasion is the person determined by the chairperson of the panel concerned.
- (7) 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 (or, in the case of a local planning panel, the applicable council) may from time to time determine in respect of the person.
- (8) If the chairperson of a planning body is appointed from among a number of members of the body, the alternate of a member who is the chairperson does not have the member's functions as chairperson unless the appointing authority authorises the alternate to exercise those functions.

## **16 Removal from office of members**

- (1) The Minister may remove a member of a planning body (other than a local planning panel) from office at any time for any reason and without notice. However, the Minister must provide a written statement of the reasons for removing the member from office and make the statement publicly available.
- (2) The Minister may remove a member of a planning body 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) In the case of a council nominee of a Sydney district or regional planning panel, the applicable council may remove the member from office at any time for any reason and without notice. However, the general manager of the applicable council must provide a written statement of the reasons for removing the council nominee from office and make the statement publicly available.

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- (4) In the case of a member of a local planning panel, the applicable council may remove the member from office at any time for any reason and without notice. However, the general manager of the applicable council must provide a written statement of the reasons for removing the member from office and make the statement publicly available.

## **17 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, in the case of a council nominee of a Sydney district or regional planning panel or a member of a local planning panel), addressed to the applicable council, or
  - (d) is removed from office under this or any other Act, or
  - (e) is absent from 3 consecutive meetings of the planning body of which reasonable notice has been given to the member personally or by post, except on leave granted by the planning body or unless the member is excused by the planning body 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) If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

## **18 Chairperson—vacation of office**

- (1) If the chairperson of a planning body is appointed by the Minister or the Planning Secretary from among a number of members of the body, the person vacates office as chairperson if he or she:
- (a) is removed from the office of chairperson by the Minister or the Planning Secretary, or
  - (b) resigns the office of chairperson by instrument in writing addressed to the Minister or the Planning Secretary.
- (2) A person vacates office as chairperson of a planning body if the person vacates office as a member of the body.

## **19 Effect of certain other Acts**

- (1) The statutory provisions relating to the employment of Public Service employees do not apply to the appointment or office 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.

**20 Special provision regarding composition of Sydney district or regional planning panel in the case of coastal protection works**

- (1) This clause applies where a Sydney district or regional planning panel deals with the determination of a development application regarding coastal protection works on land within the coastal zone (within the meaning of the *Coastal Management Act 2016*).
- (2) If any State member of the panel (other than the chairperson) does not have expertise in coastal engineering or coastal geomorphology, the Minister is to appoint an alternate of the member who has that expertise, and that alternate member is to act in the place of the State member when the panel deals with the determination of that development application.

## **Part 5 Provisions relating to procedure of planning bodies**

**21 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 the regulations, to be as determined by the planning body.
- (2) Subject to this clause, a planning body is not bound by the rules of evidence.
- (3) Nothing in this Schedule derogates from any law relating to Crown privilege.

**22 Quorum**

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

**23 Presiding member**

- (1) The chairperson or, in the absence of the chairperson, the deputy chairperson (if any) or a person elected by the members is to preside at a meeting of a planning body.
- (2) In the case of the Independent Planning Commission, the chairperson may appoint a member to preside at a meeting of the Commission, in which case a reference in subclause (1) to the chairperson includes a reference to any such appointed member.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**24 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.

**25 Public meetings**

- (1) 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.

- (2) In the case of a local planning panel, a reference in this clause to the Minister includes a reference to the applicable council.

## **26 Transaction of business outside meetings or by telephone etc**

- (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 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) A 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 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 electronic transmission of the information in the papers concerned.

## **27 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 planning body, 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 planning body.
- (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 company 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 planning body 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 planning body and that record must be open at all reasonable hours to inspection by any person on payment of the fee determined by the planning body.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the planning body otherwise determines:
- (a) be present during any deliberation of the planning body with respect to the matter, or
  - (b) take part in any decision of the planning body with respect to the matter.
- (7) For the purposes of the making of a determination by the planning body 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 planning body for the purpose of making the determination, or
  - (b) take part in the making by the planning body of the determination.
- (8) A contravention of this clause does not invalidate any decision of the planning body.
- (9) This clause extends to a council nominee of a Sydney district or regional planning panel, and the provisions of Part 2 (Duties of disclosure) of Chapter 14 of the *Local Government Act 1993* do not apply to any such nominee when exercising functions as a member of the panel.

## **28 Code of conduct**

- (1) The regulations may prescribe a code of conduct that is applicable to members of a planning body.
- (2) A code of conduct may relate to any conduct (whether by way of act or omission) in carrying out a member's functions that is likely to bring the planning body or its members into disrepute.
- (3) The regulations may authorise a planning body to vary the code of conduct prescribed by the regulations in relation to the members of that planning body.

## **29 Provision of information by planning bodies**

A planning body must provide the Minister with such information and reports as the Minister may, from time to time, request.

## **Part 6 Planning Ministerial Corporation—property provisions**

### **30 General land functions of Corporation**

- (1) For the purposes of this Act, the Planning Ministerial Corporation may, in such manner and subject to such terms and conditions as it thinks fit, sell, lease, exchange or otherwise dispose of or deal with land vested in the Corporation and grant easements or rights-of-way over that land or any part of it.
- (2) Without affecting the generality of subclause (1), the Planning Ministerial Corporation may, in any contract for the sale of land vested in it, include conditions for or with respect to:
  - (a) the erection of any building on that land by the purchaser within a specified period, or
  - (b) conferring on the Corporation an option or right to repurchase that land if the purchaser has failed to comply with a condition referred to in paragraph (a), or
  - (c) conferring on the Corporation an option or right to repurchase that land if the purchaser wishes to sell or otherwise dispose of that land before the expiration of a specified period or requiring the purchaser to pay to the Corporation a sum determined in a specified manner where the Corporation does not exercise that option or right, or
  - (d) the determination of the repurchase price payable by the Corporation pursuant to a condition referred to in paragraph (b) or (c).
- (3) A condition included in a contract of sale pursuant to subclause (2) does not merge in the transfer of title to the land, the subject of the contract of sale, on completion of the sale.
- (4) In addition to other functions conferred or imposed on the Planning Ministerial Corporation under this or any other Act, the Corporation may, for the purposes of this Act:
  - (a) manage land vested in the Corporation, and
  - (b) cause surveys to be made and plans of surveys to be prepared in relation to land vested in the Corporation or in relation to any land proposed to be acquired by the Corporation, and
  - (c) demolish, or cause to be demolished, any building on land vested in the Corporation of which it has exclusive possession, and
  - (d) provide, or arrange, on such terms and conditions as may be agreed upon for the location or relocation of utility services within or adjoining or in the vicinity of land vested in the Corporation, and
  - (e) subdivide and re-subdivide land and consolidate subdivided or re-subdivided land vested in the Corporation, and
  - (f) set out and construct roads on land vested in the Corporation or on land of which the Corporation has exclusive possession, or on any other land with the consent of the person in whom it is vested, and
  - (g) erect, alter, repair and renovate buildings on and make other improvements to or otherwise develop land vested in the Corporation or any other land, with the consent of a person in whom it is vested, and
  - (h) cause any work to be done on or in relation to any land vested in the Corporation or any other land, with the consent of the person in whom

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it is vested, for the purpose of rendering it fit to be used for any purpose for which it may be used under any environmental planning instrument that applies to the land, and

- (i) by notification published in the Gazette, dedicate any land vested in the Corporation as a reserve for public recreation or other public purposes and fence, plant and improve any such reserve.
- (5) In the exercise of any function under subclause (4) (f), consultations are to be held with Roads and Maritime Services, the relevant council and such other persons as the Minister determines.
- (6) In relation to any land (whether vested in the Planning Ministerial Corporation or not), the Corporation may exercise any function that is necessary or convenient to be exercised in, or for any purpose of, the application of any part of a Development Fund established under Division 7.3.

## **31 Power of Corporation to acquire land etc**

- (1) The Planning Ministerial Corporation may, for the purposes of this Act or pursuant to any function conferred or imposed on the Minister or the Planning Secretary by an environmental planning instrument, acquire land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) Without limiting the generality of subclause (1), the Planning Ministerial Corporation may acquire in any manner authorised by that subclause:
  - (a) any land to which an environmental planning instrument applies and which the Minister considers should be made available in the public interest for any purpose, or
  - (b) any land of which that proposed to be acquired under this Schedule forms part, or
  - (c) any land adjoining or in the vicinity of any land proposed to be acquired under this Schedule, or
  - (d) a leasehold or any other interest in land.
- (3) The Planning Ministerial Corporation may acquire, by gift inter vivos, devise or bequest, any property for the purposes of this Act and may agree to the condition of any such gift, devise or bequest.
- (4) The rule of law against remoteness of vesting does not apply to any such condition to which the Planning Ministerial Corporation has agreed.
- (5) If the Planning Ministerial Corporation acquires property under subclause (3), neither an instrument that effects the acquisition nor any agreement pursuant to which the property is acquired is chargeable with duty under the *Duties Act 1997*.
- (6) For the purposes of the *Public Works Act 1912*, any acquisition of land under this clause is taken to be for an authorised work and the Planning Ministerial Corporation is, in relation to that authorised work, taken to be the Constructing Authority. Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed by the Planning Ministerial Corporation.

## **32 Notification of interests**

- (1) The Registrar-General must, at the request of the Planning Ministerial Corporation made in a manner approved by the Registrar-General and on payment of the fee prescribed under the *Real Property Act 1900*, make, in the Register kept under that Act, a recording appropriate to signify:

- (a) that land specified in the request is held subject to a condition authorised under clause #, or
  - (b) that a recording made pursuant to paragraph (a) has ceased to have effect.
- (2) The Planning Ministerial Corporation is not to make a request pursuant to subclause (1) (a) except for the purpose of ensuring compliance with the conditions in the contract of sale under which the land was sold, but the Registrar-General is not to be concerned to inquire whether any such request has been made for that purpose.
- (3) Where a recording pursuant to subclause (1) (a) has been made in respect of any land, the Registrar-General must not register under the *Real Property Act 1900* a transfer of that land to or by a person other than the Planning Ministerial Corporation unless it would be so registrable if this Schedule had not been enacted and unless:
  - (a) a recording pursuant to subclause (1) (b) has been made in respect of the land, or
  - (b) the consent of the Corporation to the transfer has been endorsed on the transfer.
- (4) When a recording is made pursuant to subclause (1) in respect of any land, the Planning Secretary must notify the council in whose area the land is situated of the recording.

## Part 7 Savings and transitional provisions

### 33 Definitions

In this Part:

**amending Act** means the *Environmental Planning and Assessment Amendment Act 2017*.

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**liabilities** means all liabilities, debts and obligations (whether present or future and whether vested or contingent and whether personal or assignable).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent and whether personal or assignable).

### 34 Ministerial corporation sole

- (1) The Planning Ministerial Corporation constituted under this Act is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the corporation constituted as the “Minister administering the *Environmental Planning and Assessment Act 1979*” under section 8 of this Act immediately before the repeal of that section by the amending Act.
- (2) Without limiting the operation of this clause, the assets, rights and liabilities of the corporation so constituted are the assets, rights and liabilities of the Planning Ministerial Corporation.

## **35 Planning Assessment Commission**

- (1) The Independent Planning Commission constituted under this Act is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the Planning Assessment Commission established under section 23B of this Act immediately before the repeal of that section by the amending Act.
- (2) Without limiting the operation of this clause, the assets, rights and liabilities of the Planning Assessment Commission are the assets, rights and liabilities of the Independent Planning Commission constituted under this Act.
- (3) A person holding office as a member of the Planning Assessment Commission immediately before the commencement of this clause is taken to have been appointed as a member of the Independent Planning Commission for the balance of the member's term of office under this Act.

## **36 Sydney planning panels**

- (1) A person holding office as a member of a Sydney planning panel (including a council nominee) under Part 3 of the *Greater Sydney Commission Act 2015* immediately before the commencement of this clause is taken to have been appointed or nominated as a member of the corresponding Sydney district planning panel established under this Act for the balance of the person's term of office.
- (2) A reference in this clause to a member includes a reference to an alternate of a member appointed under the *Greater Sydney Commission Act 2015*.

## **37 Joint regional planning panels**

- (1) A person holding office as a member of a joint regional planning panel (including a council nominee) under section 23G of, and Schedule 4 to, this Act immediately before the commencement of this clause is taken to have been appointed or nominated as a member of the corresponding regional planning panel established under this Act for the balance of the person's term of office.
- (2) A reference in this clause to a member includes a reference to an alternate of a member appointed under this Act.

## **38 Independent hearing and assessment panels**

- (1) A person holding office as a member of an independent hearing and assessment panel under section 23I immediately before the commencement of this clause is taken to have been appointed by the applicable council as a member of a local planning panel under this Act for the balance of the person's term of office.
- (2) A reference in this clause to a member includes a reference to an alternate of a member appointed under this Act.

**Consultation note.** The savings and transitional regulations will enable other panels established by councils to be transitioned to local planning panels under the Act. The savings and transitional regulations will also save pending matters before the PAC or a Sydney or regional planning panel or an independent hearing and assessment panel.

## **[4] Schedule 3**

Insert in appropriate order:

## Schedule 3 NSW planning portal and online delivery of planning services and information

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### 1 Establishment, content and maintenance of NSW planning database

- (1) The NSW planning database is established for the purposes of this Act.
- (2) The NSW planning database is an electronic repository of:
  - (a) documents that are required by or under this Act to be published on the NSW planning portal, and
  - (b) environmental planning instruments, plans or other documents that are required by or under this Act to be published on the NSW legislation website, and
  - (c) spatial datasets or other maps that are adopted or incorporated by way of reference by those instruments, plans or documents, and
  - (d) other documents or information relating to the administration of this Act required to be published on the NSW planning portal by the regulations or by the Planning Secretary.
- (3) The NSW planning database is to maintain historical as well as current versions of documents and other material required to be published on the NSW planning portal.
- (4) The NSW planning database is to be compiled and maintained as determined by the Planning Secretary.
- (5) The NSW planning database may comprise separate databases for different material. Any such separate databases may be compiled and maintained by other agencies, including the legislation database compiled and maintained by the Parliamentary Counsel for publication of environmental planning instruments or other material on the NSW legislation website.

### 2 Public access to documents and information on NSW planning portal

- (1) The Planning Secretary is to make arrangements for documents or other information in the NSW planning database to be published on the NSW planning portal and such other websites as are determined by the Planning Secretary.
- (2) The Planning Secretary may certify the form of such documents or other information that is correct.
- (3) Environmental planning instruments, plans or other documents and information need not be published on the NSW planning portal if they are published on the NSW legislation website (or the website of another agency) and can be readily accessed from the NSW planning portal.
- (4) If the NSW planning portal is not available to publish a document or other information for technical or other reasons, the document or other information may be published on the NSW legislation website.

**Note.** The NSW planning portal is defined by section 4 to mean the website with the URL of [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au), or any other website, used by the Planning Secretary to provide public access to documents or other information in the NSW planning database.

### **3 Regulations and other provisions relating to online planning services and information**

- (1) The regulations may make provision for or with respect to the online delivery of planning services and information, including:
  - (a) the NSW planning portal and other specialised planning portals (including the status of services and information delivered online), and
  - (b) access to information (and the issue of certificates) about land use zoning and development standards relating to particular land, and
  - (c) the lodgment or submission of applications and other things under this Act, and
  - (d) the assessment of categories of development for which there are codified criteria or standards, and
  - (e) the registration of consents, approvals or certificates (or other documents) and their effect on registration, and
  - (f) the notification of the making or determination of applications for (or the issue or grant of) consents, approvals or certificates (or other documents) by means of the NSW planning portal.
- (2) The charges or fees that may be prescribed by the regulations under section [137] extend to charges or fees in relation to the online delivery of planning services and information (including the compilation and maintenance of the NSW planning database, the operation of the NSW planning portal and the enhancement of the NSW planning database and the NSW planning portal).
- (3) For the purpose of facilitating online delivery of planning services and information:
  - (a) the Planning Secretary may determine standard technical requirements with respect to:
    - (i) the preparation of environmental planning instruments, plans or other documents and of any spatial datasets or other maps that are referred to in (or adopted under) those instruments, plans or documents, and
    - (ii) the form of applications for consents, approvals or certificates (or other documents) under this Act and the form of any such consents, approvals or certificates (or other documents), and
  - (b) a council or other planning body is to provide the Secretary, when requested, with electronic files (in a specified format) of any such instruments, plans or other documents (or of any spatial datasets or other maps) prepared or held by it, and
  - (c) a council or other planning body is to implement any standard technical requirements determined by the Planning Secretary to facilitate access to relevant data in the electronic systems maintained by the council or other body or to transfer that data to the NSW planning database.
- (4) The Planning Secretary is to establish on a departmental website an alert facility to enable members of the public to register for the purposes of receiving electronic notification of selected new planning decisions and matters.

## **2.2 Consequential and statutory revision amendments relating to planning bodies**

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

Omit the following definitions from section 4 (1):

*corporation*

*employee of the Department*

*independent hearing and assessment panel*

*joint regional planning panel (or regional panel)*

*Planning Assessment Commission*

*planning assessment panel*

*Secretary*

### **[2] Section 4 Definitions**

Insert the following definitions in section 4 (1) in alphabetical order:

*district or regional planning panel* means a Sydney district planning panel or a regional planning panel constituted under Part 2.

*Independent Planning Commission* means the Independent Planning Commission constituted under Part 2.

*local planning panel* means a local planning panel constituted under Part 2.

*Planning Ministerial Corporation* means the corporation constituted under Part 2.

*Planning Secretary* means the Secretary of the Department of Planning and Environment.

### **[3] Sections 80A (6) (a), 93C (definition of “planning authority”), 93ED (1) (d), 121ZJ (12), 130–132, 137–138, 143 and Schedule 5**

Omit “the corporation” wherever occurring. Insert instead “the Planning Ministerial Corporation”.

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

Omit “, planning assessment panel” from section 118 (1).

### **[5] Section 118 (3) and (4)**

Omit “planning assessment panel or” wherever occurring.

### **[6] Section 118 (5)**

Omit the subsection.

### **[7] Section 118 (7), (7B)**

Omit “or planning assessment panel” wherever occurring.

### **[8] Section 118 (8), (9), (11)**

Omit “or a planning assessment panel” wherever occurring.

### **[9] Section 118AA Planning assessment panels**

Omit the section.



- [10] Section 118AB Functions of planning administrators or panels**  
Omit “, planning assessment panel” from section 118AB (1).
- [11] Section 118AB (2)**  
Omit “or planning assessment panel” and “or panel’s”.
- [12] Section 118AB (3)**  
Omit “or panel”.
- [13] Section 118AC**  
Omit “or planning assessment panel” wherever occurring.
- [14] Section 118AD Council to assist planning administrator or panel**  
Omit “, planning assessment panel” from section 118AD (1) wherever occurring.
- [15] Section 118AD (2A)**  
Omit “or planning assessment panel” and “or panel”.
- [16] Section 118AF Regulations**  
Omit “, planning assessment panel” and “planning assessment panel’s” wherever occurring.
- [17] Section 118AG Protection for exercise of certain functions of Minister**  
Omit “or planning assessment panel” from section 118AG (1).
- [18] Section 148 Disclosure and misuse of information**  
Insert after section 148 (5):  
(6) In this section, “this Act” includes the *Greater Sydney Commission Act 2015*.
- [19] Section 153A Delegation by public authorities**  
Omit the section.
- [20] Section 158 Exclusion of personal liability**  
Omit the section.
- [21] Schedule 3 Planning Assessment Commission**  
Omit the Schedule.
- [22] Schedule 4 Joint Regional Planning Panels**  
Omit the Schedule.
- [23] Schedule 5B Planning Assessment Panels**  
Omit the Schedule.
- 2.3 Consequential and statutory revision amendments relating to community participation**
- [1] Section 29A Advertised development**  
Omit the section.

- [2] **Section 34 Environmental planning instruments-making, operation and inspection**  
Omit section 34 (6), (7), (8) and (10).
- [3] **Section 56 Gateway determination**  
Omit section 56 (2) (c). Insert instead:  
(c) the minimum period of public exhibition of the planning proposal (or a determination that no such public exhibition is required because of the minor nature of the proposal),  
**Note.** Under Schedule 1, the mandatory period of public exhibition is 28 days if a determination is not made under paragraph (c).
- [4] **Section 57 Community consultation**  
Omit the section.
- [5] **Section 74C Preparation of development control plans**  
Omit section 74C (1) (b).
- [6] **Section 74C (1) (c) (i)**  
Omit “or advertised development”.
- [7] **Section 74C (1) (c) (iii)**  
Omit “including advertised development”.
- [8] **Section 75AH Mandatory public exhibition requirements**  
Omit the section.
- [9] **Section 75AL Regulations relating to strategic planning**  
Omit section 75AL (e).
- [10] **Section 79 Public participation - designated development**  
Omit the section.
- [11] **Section 79A Public participation-advertised development and other notifiable development**  
Omit the section.
- [12] **Section 89F Public participation - State significant development**  
Omit the section.
- [13] **Section 102 Non-compliance with certain provisions regarding State significant development**  
Omit section 102 (2) (c).
- [14] **Section 105 Regulations—Part 4**  
Omit section 105 (1) (n).
- [15] **Section 115Z Environmental assessment and public consultation**  
Omit section 115Z (3) and (4).

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**[16] Sections 158B, 158C, 158D and 158E**

Omit the sections.

## **Schedule 3      Amendment of Environmental Planning and Assessment Act 1979 No 103—Planning instruments**

### **3.1 Principal amendments**

**[1] Section 4 (1), definition of “relevant planning authority”**

Omit the definition.

**[2] Section 24 Making of environmental planning instruments**

Omit “by the Governor” and “by the Minister (or delegate), or by the Greater Sydney Commission in the case of the Greater Sydney Region,” from section 24 (2) (a) and (b) respectively. Omit the note to the section.

**[3] Sections 53 and 53A**

Omit the sections. Insert instead (with appropriate decimal section number):

**Making of environmental planning instruments for local areas (LEPs)**

- (1) A local plan-making authority 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 local plan-making authority determines.
- (2) Any such instrument may be called a local environmental plan (or LEP).
- (3) For the purposes of this Division, the following are *local plan-making authorities*:
  - (a) the Minister (except for any area in the Greater Sydney Region),
  - (b) the Greater Sydney Commission for any area in the Greater Sydney Region,
  - (c) a council for its local government area if the gateway determination under this Division authorises the council to make the local environmental plan concerned.

**[4] Section 54**

Omit the section. Insert instead (with appropriate decimal section number):

**Planning proposal authority**

- (1) For the purposes of this Division, the *planning proposal 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) if so directed under subsection (2)—the Planning Secretary, a district or regional planning panel or any other person or body prescribed by the regulations.
- (2) The Minister, or the Greater Sydney Commission in relation to the Greater Sydney Region, may direct that the Planning Secretary (or any such panel, person or body) is the planning proposal authority for a proposed instrument in any of the following cases:

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- (a) the proposed instrument relates to a matter that, in the opinion of the Minister or Greater Sydney Commission, is of State or regional environmental planning significance or of environmental planning significance to a district under Division 3.1,
  - (b) the proposed instrument makes provision that, in the opinion of the Minister or Greater Sydney Commission, is consequential on the making of another environmental planning instrument or is consequential on changes made to a standard instrument under section 33A,
  - (c) the Planning Secretary, the Independent Planning Commission or a district or regional planning panel has recommended that the proposed instrument should be submitted for a determination under section 56 (Gateway determination) or that the proposed instrument should be made,
  - (d) the council for the local government area concerned has, in the opinion of the Minister or Greater Sydney Commission, 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,
  - (e) the proposed instrument is to apply to an area that is not within a local government area.
- (3) A planning proposal 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 or the Greater Sydney Commission 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 the person or body specified in the direction as the planning proposal authority for the proposed instrument.
- (5) Two or more relevant local authorities may together exercise the functions under this Division of a planning proposal 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.

**[5] Sections 55 (1), 56 (1) and (6), 57, 58, 59, 60 (a), 74B (1) (where lastly occurring), 75A (2), 89E (5), 117 (2B)**

Omit “relevant planning authority” wherever occurring. Insert instead “planning proposal authority”.

**[6] Section 55 Planning proposal authority to prepare explanation of and justification for proposed instrument—the planning proposal**

Insert “will give effect to the local strategic planning statement of the council of the area and” after “the proposed instrument” in section 55 (2) (c).

**[7] Section 56 Gateway determination**

Omit “the Minister” from section 56 (1). Insert instead “the Minister or, if the planning proposal relates to the Greater Sydney Region, to the Greater Sydney Commission”.

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**[8] Section 56 (2) (g)**

Insert after section 56 (2) (f):

- (g) if the planning proposal authority is a council—whether the council is authorised to make the proposed instrument and any conditions the council is required to comply with before the instrument is made.

**[9] Section 56 (2), (5), (6) and (7)**

Insert “or Greater Sydney Commission” after “Minister” wherever occurring.

**[10] Section 58 Planning proposal authority may vary proposals or not proceed**

Omit “the Minister” from section 58 (2). Insert instead “the Minister or, if the planning proposal relates to the Greater Sydney Region, to the Greater Sydney Commission”.

**[11] Sections 58 (3) and (4) and 73A (1) (c)**

Insert “or Greater Sydney Commission” after “Minister” wherever occurring.

**[12] Section 59 Making of local environmental plan by local plan-making authority**

Omit “Minister” wherever occurring. Insert instead “local plan-making authority”.

**[13] Section 73 Review of environmental planning instruments**

Insert at the end of the section:

- (2) Every 5 years following such a review, the Planning Secretary is to determine whether relevant State environmental planning policies should be updated and a council is to determine whether relevant local environmental plans should be updated.

**[14] Section 74D Development control plans required or authorised by environmental planning instruments**

Omit “the Minister” from section 74D (5) (b) where firstly occurring. Insert instead “the Minister or, if the plan relates to the Greater Sydney Region, the Greater Sydney Commission”.

**[15] Section 74D (5) (b)**

Omit “the Minister” where secondly occurring. Insert instead “the Minister or the Greater Sydney Commission”.

**[16] Section 74E Miscellaneous provisions relating to development control plans**

Omit section 74E (2).

**[17] Section 74E (2A)**

Insert after section 74E (2):

- (2A) Regulations relating to the form, structure and subject-matter of development control plans may require the standardisation of those plans and, for that purpose, authorise the Minister to publish requirements as to their form, structure and subject-matter which are to be complied with by relevant planning authorities.

**[18] Section 74F Minister or GSC may direct councils with respect to development control plans**

Omit “The Minister” from section 74F (1). Insert instead “The Minister or, if the matter relates to the Greater Sydney Region, the Greater Sydney Commission”.

**[19] Section 74F (2)–(6)**

Insert “or the Greater Sydney Commission” after “Minister” wherever occurring.

**[20] Section 3.#**

Insert after section 75AI (with appropriate decimal section number):

**Local strategic planning statements of councils**

- (1) The council of an area must prepare and publish a local strategic planning statement and review the statement at least every 5 years.
- (2) The statement must include or identify the following:
  - (a) the basis for strategic planning in the area, having regard to economic, social and environmental matters,
  - (b) the planning priorities for the area that are consistent with any strategic plan applying to the area and any applicable community strategic plan under section 402 of the *Local Government Act 1993*,
  - (c) the actions required for achieving those planning priorities,
  - (d) the basis on which the council is to monitor and report on the implementation of those actions.
- (3) The Planning Secretary may issue requirements with respect to the preparation and publication of local strategic planning statements.

## **3.2 Consequential and statutory revision amendments**

**[1] Part 3 Heading**

Omit the heading. Insert instead:

## **Part 3 Planning instruments**

**Note.** This Part deals with the following planning instruments:

- (a) strategic plans (comprising regional strategic plans, district strategic plans and local strategic planning statements),
- (b) environmental planning instruments (comprising State environmental planning policies and local environmental plans),
- (c) development control plans.

**[2] Part 3, Division 3.1 heading**

Insert after the heading to Part 3:

### **Division 3.1 Strategic plans**

**[3] Part 3B Strategic planning (as amended by this Schedule)**

- (a) convert the Part to Division 3.1 and transfer it in appropriate order to Part 3, and
- (b) change any reference in the Act to Part 3B of the Act to Division 3.1 of Part 3, and
- (c) change any reference to “this Part” in the transferred Part to “this Division”.

**[4] Part 3, section numbering**

Renumber the sections in the Part (as amended by this Act) with decimal numbering commencing with section 3.1; and amend any cross-references to those sections in the Act accordingly.

**[5] Part 3, Division numbering**

Amend any cross-references in the Act to Divisions 1, 2, 4, 4B and 6 as references to Divisions 3.2, 3.3, 3.4, 3.5 and 3.6 respectively.

**[6] Part 3, Division 1, heading**

Omit the heading. Insert instead:

**Division 3.2 Environmental planning instruments—general**

**[7] Part 3, Division 2, heading**

Omit the heading. Insert instead:

**Division 3.3 Environmental planning instruments—SEPPs**

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

Omit the section.

**[9] Section 37 Governor may make environmental planning instruments (SEPPs)**

Omit “Part 3B”. Insert instead “Division 3.1”.

**[10] Part 3, Division 4, heading**

Omit the heading. Insert instead:

**Division 3.4 Environmental planning instruments—LEPs**

**[11] Section 54 Relevant planning authority**

Omit “Part 3B”. Insert instead “Division 3.1”.

**[12] Part 3, Division 4B, heading**

Omit the heading. Insert instead:

**Division 3.5 Planning instrument amendments and development applications**

**[13] Section 72I Application of Division**

Omit section 72I (2).

**[14] Part 3, Division 5 Review and amendment of environmental planning instruments**

Transfer section 73 (as amended by this Schedule) and section 73A after section 33A. Omit the remaining provisions of the Division.

**[15] Part 3, Division 6, heading**

Omit the heading. Insert instead:

**Division 3.6 Development control plans (DCPs)**

**[16] Part 3B Strategic planning**

Omit “regional plan” and “district plan” wherever occurring. Insert instead “regional strategic plan” and “district strategic plan” respectively.



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# public consultation draft

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Environmental Planning and Assessment Amendment Bill 2017 [NSW]  
Schedule 3 Amendment of Environmental Planning and Assessment Act 1979 No 103—Planning  
instruments

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**[17] Section 75AA Interpretation**

Omit “a plan” from the definition of *regional plan*. Insert instead a “a regional strategic plan”.

**[18] Section 75AB Declaration of regions and districts**

Omit “by order published on the NSW planning portal” wherever occurring. Insert instead “by order published on the NSW legislation website”.

## Schedule 4 Amendment of Environmental Planning and Assessment Act 1979 No 103—Development assessment and consent

### 4.1 Principal amendments

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

Omit the definition. Insert instead:

*consent authority*—see section [76A].

[2] **Section 76A Development that needs consent**

Insert at the end of section 76A (1):

Maximum penalty: Tier 1 monetary penalty.

[3] **Section 76A (6)–(8)**

Insert after section 76A (5):

(6) **Consent authority**

For the purposes of this Act, the *consent authority* is as follows:

- (a) in the case of State significant development—the Independent Planning Commission (if the development is of a kind for which the Commission is declared the consent authority by an environmental planning instrument) or the Minister (if the development is not of that kind),
- (b) in the case of development of a kind that is declared by an environmental planning instrument as regionally significant development for the purposes of this section—the Sydney district or regional planning panel for the area in which the development is to be carried out,
- (c) in the case of development of a kind that is declared by an environmental planning instrument as development for which a public authority (other than a council) is the consent authority—that public authority,
- (d) in the case of any other development—the council of the area in which the development is to be carried out.

**Note.** Certain consent authority functions of the Independent Planning Commission are exercisable on its behalf by the Planning Secretary (see section 2.9 (3)) and certain consent authority functions of a Sydney district or regional planning panel are exercisable on its behalf by the council of the area concerned (see section 2.16 (2)).

- (8) The Minister may give directions to councils under section [117] on the circumstances in which the function of determining development applications is to be exercised on behalf of the council by a local planning panel and the circumstances in which the function is to be exercised by a delegate of the council. Any such direction:

- (a) may deal with the persons who may comprise a local planning panel or who may be delegates of the council, and
- (b) is subject to any requirement made by the regulations.

**Consultation note.** The savings and transitional regulations will deem any development application panel previously established by a council (whether under this Act or under the *Local Government Act 1993*) to have been established pursuant to such a Ministerial direction and to continue subject to any such direction.

**[4] Section 76B Development that is prohibited**

Insert at the end of section 76B:

Maximum penalty: Tier 1 monetary penalty.

**[5] Section 78A Application**

Insert after section 78A (6):

- (6A) The functions of a council under subsections (3) - (6) in relation to a development application may be exercised by a local planning panel or delegate that has the function of determining the development application on behalf of the council.

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

Insert after section 80A (4):

**(4A) Conditions replaced by other legislative controls**

A development consent for the carrying of development may be granted subject to specified conditions that cease to have effect on the issue of an authorisation under another Act relating to that development (or any part of it) if the consent authority is satisfied that the matters regulated by those conditions will be adequately addressed by such an authorisation when it is issued.

**(4B) Conditions relating to financial assurance**

A development consent may be granted subject to a condition of a kind described in Part 9.4 of the *Protection of the Environment Operations Act 1997* to secure or guarantee funding for or towards the carrying out of works or programs required by or under the consent. The regulations may restrict the imposition of any such condition and may make provisions with respect to any such condition of the kind set out in that Part (including in relation to the calling on and use of any financial assurance).

**Consultation note.** Consideration is to be given to whether special provisions should be made with respect to conditions relating to offsets for the impacts of proposed development.

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

Insert after section 85A (1):

- (2) The regulations may specify the kind of development for which an accredited certifier is not authorised to issue a complying development certificate.

**[8] Section 85A (9A)**

Insert after section 85A (9):

**(9A) “Deferred commencement” certificate**

A complying development certificate may be granted subject to a condition that the certificate is not to operate until the applicant satisfies the council or certifier who issued the certificate, in accordance with the regulations, as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.

**[9] Section 4.#**

Insert after section 87 (with appropriate decimal section number):

## **Validity of complying development certificate**

Without limiting the powers of the Court under section 124 (1), the Court may by order under that section declare that a complying development certificate is invalid if:

- (a) proceedings for the order are brought within 3 months after the issue of the certificate, and
- (b) the certificate authorises the carrying out of development for which the Court determines that a complying development certificate is not authorised to be issued.

### **[10] Section 89D**

Omit the section. Insert instead (with appropriate decimal section number):

#### **Staged State significant development**

If a staged development application is made in respect of State significant development:

- (a) the consent authority may determine that a subsequent stage of the development is to be determined by the relevant council as consent authority, and
- (b) that stage of the development ceases to be State significant development and that council becomes the consent authority for that stage of the development.

### **[11] Sections 89E (1) and 89F**

Omit “Minister” wherever occurring. Insert instead “consent authority”.

### **[12] Section 91A Development that is integrated development**

Insert after section 91A (4):

- (4A) The Planning Secretary may act on behalf of an approval body for the purposes of informing the consent authority under this section whether or not the approval body will grant the approval, or of the general terms of its approval, if:
  - (a) the Planning Secretary is authorised to do so by the regulations because of the failure of the approval body to do so or because of an inconsistency in the general terms of approval of 2 or more approval bodies, and
  - (b) the Planning Secretary has taken into consideration assessment requirements prescribed by the regulations as State assessment requirements.

The decision of the Planning Secretary is taken, for the purposes of this Division, to be the decision of the approval body, unless the approval body has informed the consent authority of its own decision on the matter.

### **[13] Section 91A (5)**

Omit “If the approval body fails”. Insert instead “If the approval body and the Planning Secretary fail”.

**[14] Section 96 Modification of consents - generally**

Insert “The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.” at the end of section 96 (3).

**[15] Section 96 (3A)**

Insert after section 96 (3):

- (3A) If, after the grant of development consent, any part of the development is carried out in contravention of the consent, the consent may not be modified (except under subsection (1)) in order to authorise that part of the development.

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

Insert “The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.” at the end of section 96AA (1A).

**[17] Section 105 Regulations - Part 4**

Insert after section 105 (1) (f):

- (f1) the reimbursement of the costs incurred by councils in investigating and enforcing compliance with the requirements of this Act relating to complying development by a levy on applicants for complying development certificates and the procedures for the imposition and collection of the levies,
- (f2) authorising officers of a council to suspend the carrying out of work under a complying development certificate (for a period not exceeding 7 days) pending an investigation into compliance of the work with applicable development standards,

**[18] Section 122C Minister may require monitoring or environmental audits by imposition of conditions on approved projects**

Omit section 122C (2) and (3). Insert instead:

- (2) A condition requiring monitoring or an environmental audit:
- (a) may be imposed at the time of the approval of the project or at any time afterwards, and
- (b) may be varied or revoked at any time.

The imposition of a condition after the approval of a project, or the variation or revocation of a condition, is to be effected by a notice in writing served on the proponent of the project by the Minister.

**Consultation note.** Consideration is to be given to the imposition of monitoring or environmental audit conditions for particular categories of projects that have already been approved.

**[19] Schedule 4A Development for which regional panels may be authorised to exercise consent authority functions of councils**

Omit the Schedule.

## 4.2 Consequential and statutory revision amendments

### [1] Part 4, section numbering

Renumber the sections in the Part (as amended by this Act) with decimal numbering commencing with section 4.1 and amend any cross references to those sections in the Act accordingly.

### [2] Part 4 Heading

Omit the heading. Insert instead:

## Part 4 Development assessment and consent

### [3] Part 4, Divisions 1, 2, 2A, 3, 4, 4.1, 5, 7, 9 and 10

Renumber the Divisions as Divisions 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9 and 4.10 respectively, and amend any cross references to those Divisions in the Act accordingly.

### [4] Part 4, Division 2 heading

Insert “(except complying development)” after “needs consent”.

### [5] Section 79B Consultation and concurrence

Omit “(unless the relevant environmental planning instrument is a deemed instrument referred to in Division 2 of Part 21 of Schedule 6)” from section 79B (8).

### [6] Section 89H, note

Omit the note.

### [7] Section 94D (4) Section 94 or 94A conditions imposed by Minister or Secretary in growth centres, council areas etc

[consequential amendment to be made]

### [8] Section 94EF (2) Special infrastructure contributions

[consequential amendment to be made]

## **Schedule 5      Amendment of Environmental Planning and Assessment Act 1979 No 103—Infrastructure and environmental impact assessment**

### **5.1 Principal amendments**

#### **[1] Part 5, Division 5.3**

Insert at the end of Part 5 (with appropriate decimal section numbers):

#### **Division 5.3      Infrastructure corridors—concurrences and notifications**

##### **Designation of “infrastructure corridors”**

- (1) A State environmental planning policy may designate land to be an infrastructure corridor for the purposes of this Division if it has been set aside for future use as a road, railway, public transit way, electricity transmission line, pipeline or other linear infrastructure.
- (2) Land may not be so designated unless:
  - (a) the land is zoned for that future use under an environmental planning instrument, or
  - (b) the land is identified for that future use under a strategic plan under Division 3.1, or
  - (c) the land is identified in an environmental planning instrument as requiring the concurrence of a public authority before consent is granted to development on the land if the public authority is required to take into account the likely impact of the development on that future use.

##### **Concurrence and notification requirements for activities within infrastructure corridors**

- (1) A State environmental planning policy may require a determining authority to obtain the concurrence of a specified public authority (or to notify a specified public authority) before carrying out an activity, or granting an approval in relation to an activity, within an infrastructure corridor.
- (2) A specified public authority may refuse concurrence if it is satisfied that the activity concerned will unreasonably interfere with the use for which the infrastructure corridor has been set aside (including unreasonably increasing the cost of constructing and operating the infrastructure for that use).
- (3) A determining authority that fails to comply with the requirements of a State environmental planning policy under this Division in relation to an activity is taken not to have complied with its obligations for environmental assessment of the activity under this Part.

##### **Review of decisions to refuse concurrence**

- (1) If the specified public authority refuses concurrence under this Division, the determining authority concerned may seek a review of the refusal:
  - (a) if the specified public authority is not a Minister—by the Planning Secretary, or
  - (b) if the specified public authority is a Minister or is the Planning Secretary—by the Minister administering this Act.

- (2) On such a review, the Planning Secretary or the Minister administering this Act may confirm the refusal or act in the place of the specified authority and give concurrence.

## 5.2 Consequential and statutory revision amendments

### [2] Part 5, heading

Omit the heading. Insert instead:

## Part 5 Infrastructure and environmental impact assessment

### [3] Part 5 Environmental assessment

Convert Part 5 (except for Division 5 of the Part) to Division 5.1 of the Part (with the following heading); renumber Divisions 1, 2 and 3 of the Part as Subdivisions 1, 2 and 3 of Division 5.1; renumber the sections in the Part (as amended by this Act) with decimal numbering commencing with section 5.1 (and rename and renumber any cross references in the Act accordingly):

### Division 5.1 Environmental impact assessment (except for State significant infrastructure)

#### [4] Part 5.1 State significant infrastructure

Convert Part 5.1 to Division 5.2 of Part 5 (with the following heading); renumber Divisions 1, 2, 3, 4 and 5 of the Part as Subdivisions 1, 2, 3, 4 and 5 of Division 5.2; renumber the section in the Part (as amended by this Act) with decimal numbering that continues the decimal numbering in Division 5.1 (and rename and renumber any cross references in the Act accordingly):

### Division 5.2 State significant infrastructure

**Consultation note.** Provision will be included in the savings and transitional regulations to deem any reference to Part 5 of the Act in other Acts and instruments to be a reference to Division 5.1 of Part 5 and to deem any reference to Part 5.1 of the Act to be a reference to Division 5.2 of Part 5.

#### [5] Part 5, Division 5 Environmental assessment of fishing activities

Omit the Division and transfer it to the *Fisheries Management Act 1994* after Schedule 1A as Schedule 1AA (with the following heading); rename sections in the Division as clauses and renumber them commencing with clause 1; convert any reference in the Division to the *Fisheries Management Act 1994* to a reference to “this Act”; insert “of the *Environmental Planning and Assessment Act 1979*” after any reference in the Division to a provision of that Act; rename and renumber any cross references in the Division accordingly; and amend Part 1A of the *Fisheries Management Act 1994* by omitting “Division 5 of Part 5 of the EPA Act” wherever occurring and by inserting instead “Schedule 1AA”:

## Schedule 1AA Environmental assessment of designated fishing activities

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## Schedule 6 Amendment of Environmental Planning and Assessment Act 1979 No 103—Building and subdivision certification

### 6.1 Principal amendment

#### Part 6

Insert in appropriate Part order:

### Part 6 Building and subdivision certification

**Consultation note.** The administration of this Part is proposed to be allocated to the Minister for Innovation and Better Regulation

#### Division 6.1 Preliminary

##### 6.1 Definitions: Part 6

In this Part:

**accredited certifier** means the holder of a certificate of accreditation as an accredited certifier under the *Building Professionals Act 2005* acting in relation to matters to which the accreditation applies.

**building work** means any physical activity involved in the erection of a building.

**certifier** means a council or an accredited certifier.

**change of building use** means a change of the use of a building from a use as a class of building recognised by the *Building Code of Australia* to a use as a different class of building recognised by the *Building Code of Australia*.

**new building** includes an altered part of, or an extension to, an existing building.

**principal certifier** for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

**principal contractor** for building work means the person responsible for the overall co-ordination and control of the carrying out of the building work.

**residential building work, owner-builder, contractor licence**—see *Home Building Act 1989*.

**subdivision work** means any physical activity authorised to be carried out in connection with a subdivision under the conditions of a development consent for the subdivision of land. For the purposes of this definition, a development consent includes an approval for State significant infrastructure if the regulations under Part 5 apply this Part to subdivision work under such an approval.

**Note.** Section 4 (Definitions) includes a complying development certificate in the definition of **development consent** for the purposes of this Act.

##### 6.2 Meaning of “subdivision” of land

- (1) For the purposes of this Act, **subdivision** of land means the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:

- (a) by conveyance, transfer or partition, or

- (b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.
  - (2) Without limiting subsection (1), **subdivision** of land includes the procuring of the registration in the office of the Registrar-General of:
    - (a) a plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919*, or
    - (b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes Development Act 2015*.
- Note.** The definition of **plan of subdivision** in section 195 of the *Conveyancing Act 1919* extends to plans of subdivision for lease purposes (within the meaning of section 23H of that Act) and to various kinds of plan under the *Community Land Development Act 1989*.
- (3) However, **subdivision** of land does not include:
    - (a) a lease (of any duration) of a building or part of a building, or
    - (b) the opening of a public road, or the dedication of land as a public road, by the Crown, a statutory body representing the Crown or a council, or
    - (c) the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or
    - (d) a division of land effected by means of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or
    - (e) the procuring of the registration in the office of the Registrar-General of:
      - (i) a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of section 195 of the *Conveyancing Act 1919*, or
      - (ii) a strata plan of consolidation or a building alteration plan within the meaning of the *Strata Schemes Development Act 2015*.

## Division 6.2 Certificates required under this Part

### 6.3 Work or activity that requires certificate under this Part

- (1) A person must not carry out any of the following work or activity without a certificate under this Part that is required by this Part for that work or activity:
  - (a) building work, or
  - (b) subdivision work, or
  - (c) the occupation or use of a building (including a change of use), or
  - (d) the subdivision of land, or
  - (e) any other activity to which this Part applies.
- (2) A person must not, in carrying out any such work or activity, contravene a certificate under this Part that applies to the carrying out of the work or activity.
- (3) A certificate under this Part is not required for the carrying out of exempt development.
- (4) This section does not apply to a compliance certificate.

Maximum penalty: Tier 1 monetary penalty.

**Note.** For civil enforcement—see Division 9.5.

## 6.4 Kinds of certificates under this Part

There are the following kinds of certificates under this Part:

- (a) **construction certificate**—a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the regulations.

**Note.** See also section 54 of the *Strata Schemes Development Act 2015* for requirement for construction certificate in connection with issue of strata certificate for proposed strata plan.

- (b) **subdivision works certificate**—a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the regulations.

- (c) **occupation certificate**—a certificate that authorises:

- (i) the occupation and use of a new building in accordance with a development consent, or
- (ii) a change of building use for an existing building in accordance with a development consent.

When issued, an occupation certificate is taken to be part of the development consent to which it relates.

- (d) **subdivision certificate**—a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

When issued, a subdivision certificate is taken to be part of the development consent that authorised the carrying out of the subdivision.

**Note.** Section 195A of the *Conveyancing Act 1919* requires a person to lodge a subdivision certificate when lodging a plan of subdivision for registration under that Act.

- (e) **compliance certificate**—a certificate to the effect that:

- (i) specified building work or subdivision work has been completed as specified in the certificate and complies with specified plans and specifications or with specified standards or requirements (a **completion of work compliance certificate**), or

**Note.** A completion of work compliance certificate may be an authorised alternative in certain cases to an occupation certificate.

- (ii) a condition with respect to specified building work or subdivision work (being a condition attached to a planning approval) has been complied with, or

- (iii) a specified building or proposed building has a specified classification identified in accordance with the *Building Code of Australia*, or

- (iv) any specified aspect of development (including design of development) complies with standards or requirements specified in the certificate with respect to the development, or

- (v) any specified aspect of development complies with the requirements of provisions prescribed by the regulations.

**Note.** A complying development certificate is a form of development consent that is issued under Part 4 that authorises the carrying out of complying development. Unlike other development consents, construction certificates or subdivision works certificates are not required for building or subdivision work authorised by a development consent in the form of a complying development certificate.

## 6.5 Functions of certifiers (including principal certifiers)

- (1) A certifier has the following functions in relation to building work:
  - (a) issuing construction certificates for building work,

- (b) carrying out inspections of building work (but only if the certifier is the principal certifier or the inspection is carried out with the approval of the principal certifier),
- (c) issuing occupation certificates (but only if the certifier is the principal certifier),
- (d) issuing completion of work compliance certificates (but only if the certifier is the principal certifier).

**Note.** Section 6.27 requires principal certifier who issues an occupation certificate to ensure that a building manual is provided to the owner of the building.

- (2) A certifier has the following functions in relation to subdivision work:
  - (a) issuing subdivision works certificates for subdivision work (but only if the certifier is the principal certifier),
  - (b) carrying out inspections of subdivision work (but only if the certifier is the principal certifier or the inspection is carried out with the approval of the principal certifier),
  - (c) issuing subdivision certificates (but only if the certifier is a council or is an accredited certifier in a case in which an environmental planning instrument authorises an accredited certifier to issue the certificate).
- (3) A certifier also has any other functions conferred or imposed on the certifier under this or any other Act.

**Note.** A certifier has the function of issuing complying development certificates under Part 4.
- (4) A certifier must not issue a certificate under this Part:
  - (a) in any case in which this Part provides that the certificate is not to be issued, or
  - (b) in any case in which the function of issuing the certificate is not conferred on the certifier by this Part.

Maximum penalty: Tier 3 monetary penalty.
- (5) The Minister may provide guidance to certifiers on the exercise of their functions under this Part.

## Division 6.3 Building work and certificates relating to building

### 6.6 Requirements before building work commences

- (1) A development consent does not authorise building work until a certifier has been appointed as the principal certifier for the work by (or with the approval of) the person having the benefit of the development consent or other person authorised by the regulations.
- (2) The following requirements apply before the commencement of building work in accordance with a development consent:
  - (a) the principal certifier has, no later than 2 days before the building work commences, notified the consent authority and the council (if the council is not the consent authority) of his or her appointment as the principal certifier,
  - (b) the principal certifier has, no later than 2 days before the building work commences, notified the person having the benefit of the development consent of any inspections that are required to be carried out in respect of the building work,

- (c) the person carrying out the building work has notified the principal certifier that the person will carry out the building work as an owner-builder, if that is the case,
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
    - (ii) notified the principal certifier of the appointment, and
    - (iii) unless that person is the principal contractor, notified the principal contractor of any inspections that are required to be carried out in respect of the building work,
  - (e) the person having the benefit of the development consent has given at least 2 days notice to the council, and the principal certifier if not the council, of the person's intention to commence the erection of the building,
  - (f) any other requirements of the regulations have been complied with.
- (3) A person must not fail to give a notice that the person is required to give under this section.  
Maximum penalty: Tier 3 monetary penalty.
- (4) For the purposes of subsection (1), the person having the benefit of a development consent does not include any contractor or other person who will carry out the building work unless the contractor or other person is the owner of the land on which the work is to be carried out.
- (5) This section does not apply to Crown building work that is certified under this Part to comply with the *Building Code of Australia*.

## 6.7 Requirement for construction certificate

- (1) A construction certificate is required for the erection of a building in accordance with a development consent.
- (2) However, a construction certificate is not required for the following:
  - (a) the erection of a building in accordance with a complying development certificate,
  - (b) Crown building work that is certified under this Part to comply with the *Building Code of Australia*.

## 6.8 Restriction on issue of construction certificate

- (1) A construction certificate must not be issued with respect to the plans and specifications for any building work unless:
  - (a) the requirements of the regulations have been complied with, and
  - (b) any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.
- (2) A construction certificate has no effect if it is issued after the building work to which it relates is physically commenced on the land to which the relevant development consent applies.

## 6.9 Requirement for occupation certificate

- (1) An occupation certificate is required for:
  - (a) the commencement of the occupation or use of the whole or any part of a new building, or
  - (b) the commencement of a change of building use for the whole or any part of an existing building.
- (2) However, an occupation certificate is not required:
  - (a) for the commencement of the occupation or use of a new building:
    - (i) for any purpose if the erection of the building is or forms part of exempt development or development that does not otherwise require development consent, or
    - (ii) that is the subject of a completion of work compliance certificate in circumstances in which that certificate is an authorised alternative to an occupation certificate (such as a swimming pool or altered part of an existing building), or
    - (iii) by such persons or in such circumstances as may be prescribed by the regulations, or
    - (iv) that has been erected by or on behalf of the Crown or by or on behalf of a person prescribed by the regulations, or
  - (b) for the commencement of a change of building use for the whole or any part of an existing building:
    - (i) if the change of building use is or forms part of exempt development or development that does not otherwise require development consent, or
    - (ii) by such persons or in such circumstances as may be prescribed by the regulations, or
    - (iii) if the existing building has been erected by or on behalf of the Crown or by or on behalf of a person prescribed by the regulations.

## 6.10 Restrictions on issue of occupation certificates

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

- (3) An occupation certificate must not be issued to authorise a person to commence a new use of a building (or of part of a building) resulting from a change of building use for an existing building unless:
- (a) a development consent is in force with respect to the change of building use, and
  - (b) the building (or part of the building) is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
  - (c) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

#### **6.11 Effect of occupation certificate on earlier occupation certificates**

- (1) An occupation certificate for a building revokes any earlier occupation certificate for that building.
- (2) An occupation certificate for a part of a building revokes any earlier occupation certificate to the extent to which it applies to that part.

### **Division 6.4 Subdivision work and certificates relating to subdivision**

#### **6.12 Requirements before subdivision work commences**

- (1) A development consent does not authorise subdivision work until a certifier has been appointed as the principal certifier for the work by (or with the approval of) the person having the benefit of the development consent or other person authorised by the regulations.
- (2) The following requirements apply before the commencement of subdivision work in accordance with a development consent:
  - (a) the principal certifier has, no later than 2 days before the subdivision work commences, notified the consent authority and the council (if the council is not the consent authority) of his or her appointment as the principal certifier,
  - (b) the principal certifier has, no later than 2 days before the subdivision work commences, notified the person having the benefit of the development consent of any inspections that are required to be carried out in respect of the subdivision work,
  - (c) the person having the benefit of the development consent has given at least 2 days notice to the council, and the principal certifier if not the council, of the person's intention to commence the subdivision work.
- (3) A person must not fail to give a notice that the person is required to give under this section.  
Maximum penalty: Tier 3 monetary penalty.
- (4) For the purposes of subsection (1), the person having the benefit of a development consent does not include any contractor or other person who will carry out the subdivision work unless the contractor or other person is the owner of the land on which the work is to be carried out.
- (5) This section does not apply to Crown building work that is certified under this Part to comply with the *Building Code of Australia*.

## **6.13 Requirement for subdivision works certificate**

- (1) A subdivision works certificate is required for the carrying out of subdivision work in accordance with a development consent.
- (2) However, a subdivision works certificate is not required for the following:
  - (a) subdivision work carried out in accordance with a complying development certificate,
  - (b) Crown building work that comprises subdivision work and that is certified under this Part to comply with the *Building Code of Australia*.

## **6.14 Restriction on issue of subdivision works certificate**

- (1) A subdivision works certificate must not be issued with respect to the plans and specifications for any subdivision work unless:
  - (a) the requirements of the regulations have been complied with, and
  - (b) any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.
- (2) A subdivision works certificate has no effect if it is issued after the subdivision work to which it relates is physically commenced on the land to which the relevant development consent applies.

## **6.15 Restrictions on issue of subdivision certificates**

- (1) A subdivision certificate must not be issued for a subdivision unless:
  - (a) the subdivision is not prohibited by or under this Act, and
  - (b) in the case of subdivision that cannot be carried out except with development consent, a development consent is in force with respect to the subdivision, and
  - (c) in the case of subdivision for which a development consent has been granted, all the conditions of the development consent that, by its terms, are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision have been complied with, and
  - (d) in the case of subdivision of land to which a planning agreement referred to in Part 7 applies, all the requirements of the agreement that, by its terms, are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision have been complied with, and
  - (e) in the case of subdivision for which the operation of the development consent has been deferred under Part 4, the applicant has satisfied the consent authority concerning all matters as to which the consent authority must be satisfied before the development consent can operate, and
  - (f) in the case of subdivision the subject of a development consent for which the consent authority is required by or under this Act to notify any objector:
    - (i) at least 28 days have elapsed since the objector was notified, or
    - (ii) if an appeal has been made by the objector within that time, the appeal has been finally determined.



- (2) Without limiting subsection (1), a subdivision certificate must not be issued for a subdivision that involves subdivision work unless:
- (a) the work has been completed, or
  - (b) agreement has been reached between the applicant for the certificate and the consent authority:
    - (i) as to the payment by the applicant to the consent authority of the cost of carrying out the work, and
    - (ii) as to when the work will be completed by the consent authority, or
  - (c) agreement has been reached between the applicant for the certificate and the consent authority:
    - (i) as to the security to be given by the applicant to the consent authority with respect to the work to be completed, and
    - (ii) as to when the work will be completed by the applicant,and such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (3) Subsection (2) does not prevent the issue of a subdivision certificate for part only of land that may be subdivided in accordance with a development consent as long as the requirements of that subsection have been complied with in relation to that part.

## Division 6.5 Compliance certificates

### 6.16 Requirement for compliance certificate

- (1) A compliance certificate is required in relation to building work or subdivision work in such circumstances as are prescribed by the regulations.
- Note.** For example, the regulations require compliance certificates to be obtained for certain fire safety aspects of development before a complying development certificate, construction certificate or occupation certificate can be issued and require compliance certificates to be obtained for certain alternative solutions to the BCA before a complying development certificate can be issued.
- (2) A condition of a development consent has no effect to the extent that it requires a compliance certificate to be obtained in respect of any development.
- (3) A certifier may obtain a compliance certificate from another person in relation to building work or subdivision work for which the certifier is responsible even if a compliance certificate is not required.

### 6.17 Persons who may issue compliance certificates

A compliance certificate may be issued by:

- (a) a certifier, or
- (b) a person of a class prescribed by the regulations as being authorised to issue a compliance certificate in relation to the matters to be certified.

### 6.18 Restriction on issue of compliance certificates

The regulations may prevent the issue of particular kinds of compliance certificates for building work or subdivision work unless a consent, approval or certificate is in force under this Act with respect to the building or subdivision to which the work relates.

## **Division 6.6 Liability for defective building or subdivision work**

### **6.19 Definitions**

In this Division:

**building work** includes the design or inspection of building work and the issue of a complying development certificate or a certificate under this Part in respect of building work.

**civil action** includes a counter-claim.

**subdivision work** includes the design or inspection of subdivision work and the issue of a complying development certificate or a certificate under this Part in respect of subdivision work.

### **6.20 Limitation on time when action for defective building or subdivision work may be brought**

- (1) A civil action for loss or damage arising out of or in connection with defective building work or defective subdivision work cannot be brought more than 10 years after the date of completion of the work.
- (2) Building work is taken to be completed on:
  - (a) the date on which an occupation certificate is issued that authorises the occupation of the building or part of the building for which the work was carried out (or if an occupation certificate is not required, the date on which a compliance certificate is issued for the completed building work), or
  - (b) if no such certificate has been issued—the date on which a required inspection of the completed building work was carried out by a certifier, or
  - (c) if no such certificate has been issued and no such inspection carried out—the date on which the building or part of the building for which the work was carried out is first occupied or used.
- (3) Subdivision work is taken to be completed on:
  - (a) if the work was completed before the issue of a subdivision certificate in respect of the subdivision for which the work was carried out—the date on which that certificate is issued, or
  - (b) if the work was completed after the issue of that certificate—the date on which a compliance certificate is issued that certifies the work has been completed.
- (4) This section has effect despite any other Act or law, but does not operate to extend any period of limitation under the *Limitation Act 1969* or the *Home Building Act 1989*.

### **6.21 Division not to affect rights to recover damages for death or personal injury**

Nothing in this Division applies to or affects any right to recover damages for death or personal injury arising out of or concerning defective building work or subdivision work.

## **Division 6.7 Building information certificates**

### **6.22 Who may apply for building information certificates**

The following persons may apply for a building information certificate in relation to a building:

- (a) the owner of the land on which the building is erected,
- (b) any other person with the consent of the owner of that land,
- (c) the purchaser under a contract for the sale of property that comprises or includes the building, or the purchaser's Australian legal practitioner or agent,
- (d) a public authority that has notified the owner of that land of its intention to apply for the certificate.

## 6.23 Making of applications for building information certificates

- (1) Applications for building information certificates are to be made to the council for the area in which the land to which the application relates is situated.
- (2) The regulations may provide for the procedure for making and dealing with applications for building information certificates.  
**Note.** Division 7.4 enables the regulations to prescribe the fee for an application for a certificate.
- (3) The regulations may assign an area that is outside a local government area to be part of a specified adjoining local government area in relation to building information certificates. For the purposes of this Division, the assigned area is taken to be a part of the local government area concerned.

## 6.24 Issue of building information certificates

- (1) A council is (subject to this Division) required to issue a building information certificate as soon as practicable after an application for the certificate is made to the council.
- (2) The regulations may prescribe the form and manner in which a building information certificate is issued.

## 6.25 Issue, nature and effect of building information certificate

- (1) A building information certificate is to be issued by a council only if it appears that:
  - (a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the *Local Government Act 1993*:
    - (i) to order the building to be repaired, demolished, altered, added to or rebuilt, or
    - (ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or
    - (iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or
  - (b) there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.
- (2) A building information certificate is a certificate that states that the council will not make an order or take proceedings referred to in subsections (3) and (4).
- (3) A building information certificate operates to prevent the council:
  - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and

- (b) from taking civil proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, in relation to matters existing or occurring before the date of issue of the certificate.
- (4) A building information certificate operates to prevent the council, for a period of 7 years from the date of issue of the certificate:
  - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
  - (b) from taking civil proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, in relation to matters arising only from the deterioration of the building as a result solely of fair wear and tear.
- (5) However, a building information certificate does not operate to prevent a council from making a development control order that is a fire safety order.
- (6) An order or proceeding that is made or taken in contravention of this section is of no effect.

## **6.26 Miscellaneous provisions relating to building information certificates**

- (1) A building information certificate may apply to the whole or to part only of a building.
- (2) On receipt of an application for a building information certificate, the council may, by notice in writing served on the applicant, require the applicant to supply it with such information (including building plans, specifications, survey reports and certificates) as may reasonably be necessary to enable the proper determination of the application.
- (3) If the applicant is able to provide evidence that no material change has occurred in relation to the building since the date of a survey certificate which, or a copy of which, is supplied to the council by the applicant, the council is not entitled to require the applicant to supply a more recent survey certificate.
- (4) If the council refuses to issue a building information certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.
- (5) The reasons must be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building information certificate.
- (6) The council must not refuse to issue or delay the issue of a building information certificate by virtue of the existence of a matter that would not entitle the council to make any order or take any proceedings of the kind referred to in section 6.25 (1) (a) (Issue, nature and effect of building information certificate).
- (7) Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building information certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work.
- (8) The council must keep a record of building information certificates issued.
- (9) A person may inspect the record at any time during the ordinary office hours of the council.

- (10) A person may obtain a copy of a building information certificate from the record with the consent of the owner of the building.

## Division 6.8 Miscellaneous

### 6.27 Owners building manual

- (1) A certifier is not to issue an occupation certificate for a building that is of a class prescribed by the regulations unless a building manual for the building has been prepared and provided to the owner of the building in accordance with the requirements of the regulations.
- (2) The regulations may make provision for or with respect to building manuals and, in particular, for or with respect to the following:
- (a) the preparation, form and maintenance of building manuals,
  - (b) the content of a building manual (including requirements that a building manual identify in a consolidated format matters for on-going compliance in relation to the building concerned),
  - (c) the inspection of building manuals,
  - (d) extending the circumstances in which a building manual is required to be prepared and provided under this section.

### 6.28 Crown subdivision, building, demolition and incidental work

- (1) In this section:
- Crown** has the meaning given to that expression by the regulations.
- Crown building work** means development (other than exempt development), or an activity that is subject to environmental impact assessment under Division 5.1, by the Crown that comprises:
- (a) the erection of a building, or
  - (b) the demolition of a building or work, or
  - (c) the doing of anything that is incidental to the erection of a building or the demolition of a building or work.
- (2) In the case of a subdivision carried out by the Crown, a reference in this Part to a certifier in relation to that subdivision includes a reference to a person acting on behalf of the Crown.
- (3) Crown building work cannot be commenced unless the Crown building work is certified by or on behalf of the Crown to comply with the *Building Code of Australia* in force as at:
- (a) the date of the invitation for tenders to carry out the Crown building work, or
  - (b) in the absence of tenders, the date on which the Crown building work commences, except as provided by this section.
- (4) A Minister may at any time, by Ministerial planning order, determine in relation to buildings generally or a specified building or buildings of a specified class that a specified provision of the *Building Code of Australia*:
- (a) does not apply, or
  - (b) does apply, but with such exceptions and modifications as may be specified.

The determination has effect according to its tenor.

- (5) A determination of a Minister applies only to:
  - (a) a building erected on behalf of the Minister, or
  - (b) a building erected by or on behalf of a person appointed, constituted or regulated by or under an Act administered by the Minister.
- (6) The application of this section is subject to the regulations.

## **6.29 Certifiers may be satisfied as to certain matters**

- (1) For the purpose of enabling a certificate under this Part (or a complying development certificate) to be issued, the regulations may provide that any requirement for a consent authority or council to be satisfied as to any specified matter is taken to have been complied with if the person or body issuing the certificate is satisfied as to that matter.
- (2) This section applies whether the requirement is imposed by or under this Act, the regulations or an environmental planning instrument or the terms of a development consent.

## **6.30 Satisfaction as to compliance with conditions precedent to the issue of certificates**

- (1) A person who exercises functions under this Act in reliance on a certificate under this Part or complying development certificate is entitled to assume:
  - (a) that the certificate has been duly issued, and
  - (b) that all conditions precedent to the issuing of the certificate have been duly complied with, and
  - (c) that all things that are stated in the certificate as existing or having been done do exist or have been done,and is not liable for any loss or damage arising from any matter in respect of which the certificate has been issued.
- (2) This section does not apply to a certifier (other than a council) in relation to any certificate that he or she has issued.

## **6.31 Directions by principal certifiers**

- (1) If a principal certifier for an aspect of development becomes aware of any non-compliance to which this section applies in respect of the aspect of development, the principal certifier must issue (or, if the principal certifier is a council, may issue) a notice in writing to the person responsible for carrying out that aspect of the development:
  - (a) identifying the matter that has resulted or would result in the non-compliance, and
  - (b) directing the person to take specified action within a specified period to remedy the matter.
- (2) If a principal certifier gives a direction under this section and the direction is not complied with within the time specified in the notice containing the direction, the principal certifier who issued the direction (if not the consent authority) 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) non-compliances to which this section applies,
  - (b) the procedure for issuing notices under this section,

- (c) requirements in relation to follow-up action,
- (d) the keeping of records in relation to notices given and follow-up action taken,
- (e) requirements for any matter or record relating to a notice or follow-up action to be notified to specified persons.

### **6.32 Validity of certificates under this Part**

Without limiting the powers of the Court under section 124 (1), the Court may by order under that section declare that a certificate under this Part (other than an occupation certificate) is invalid if:

- (a) proceedings for the order are brought within 3 months after the issue of the certificate, and
- (b) the plans and specifications or standards of building work or subdivision work specified in the certificate are not consistent with the development consent for the building work or subdivision work.

### **6.33 Regulations: Part 6**

- (1) The regulations may make provision for or with respect to the carrying out of building work or subdivision work and, in particular, for or with respect to the following:
  - (a) requirements to comply with provisions of the *Building Code of Australia* or other specified standards in relation to building work or subdivision work,
  - (b) applications for and the issue of certificates under this Part,
  - (c) the form and contents of certificates under this Part,
  - (d) conditions of certificates under this Part,
  - (e) modification of certificates under this Part,
  - (f) exempting classes of manufactured homes or temporary structures from requirements relating to construction certificates or occupation certificates,
  - (g) inspection of building work and subdivision work,
  - (h) the functions of certifiers under this Part,
  - (i) the replacement of certifiers,
  - (j) exemptions in relation to the requirement to obtain a certificate under this Part,
  - (k) the keeping of records in relation to building work or subdivision work,
  - (l) notices and information to be given in relation to the carrying out of building work and subdivision work,
  - (m) the procedure for dealing with complaints about building work or subdivision work.
- (2) The regulations may apply the provisions of this Part to State significant infrastructure.

### **6.34 Regulations: smoke alarms in buildings providing sleeping accommodation**

- (1) The regulations may make provision for or with respect to:
  - (a) the installation of one or more smoke alarms in buildings in which persons sleep, and

- (b) the maintenance of smoke alarms installed in such buildings, and
  - (c) prohibiting persons from removing or interfering with the operation of smoke alarms installed in such buildings.
- (2) The regulations made under this section may (without limitation) do any one or more of the following:
- (a) specify the kinds of buildings in which smoke alarms are to be installed,
  - (b) specify the kinds of smoke alarms to be installed,
  - (c) specify where a smoke alarm is to be located,
  - (d) specify the maintenance that may be required in relation to a smoke alarm that has been installed,
  - (e) specify circumstances in which development consent is not required in relation to the installation of a smoke alarm,
  - (f) specify circumstances in which the consent of an owners corporation (within the meaning of the *Strata Schemes Management Act 2015*) is not required in relation to the installation of a smoke alarm.

**Consultation note.** The relevant regulations will be amended to continue the maximum penalty of \$550 for an offence against these regulations under current section 146A.

## **6.35 Existing building and other Part 4A certificates [to be transferred to Saving and transitional regulations]**

- (1) A certificate issued under Part 4A of the former Act is taken to be a certificate issued under Part 6 of the Act.
- (2) Part 4A of the former Act continues to apply to an application for a certificate under that Part pending on the commencement of the Amending Act. Subclause (1) extends to a certificate issued on the determination of any such application.

**Note.** The regulations will provide other circumstances in which Part 4A of the former Act continues to apply in relation to complying development or development subject of a construction certificate.

## **6.2 Consequential and statutory revision amendments**

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

Omit the following definitions:

*accredited certifier*

*building work*

*certifying authority*

*compliance certificate*

*critical stage inspections*

*occupation certificate*

*Part 4A certificate*

*principal certifying authority*

*subdivision certificate*

*subdivision of land*

*subdivision work*



**[2] Section 4 Definitions**

Insert the following definitions in alphabetical order:

*accredited certifier*—see Part 6.

*building work*—see Part 6.

*certifier*—see Part 6.

**Note.** Under Part 6, a certifier is a council or the holder of a certificate of accreditation as an accredited certifier under the *Building Professionals Act 2005* acting in relation to matters to which the accreditation applies.

*subdivision of land*—see Part 6.

*subdivision work*—see Part 6.

**[3] Section 4B Subdivision of land**

Omit the section.

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

Omit section 80A (10A). Insert at the end of the section:

**Note.** Section 6.16 (2) provides that a condition of consent has no effect to the extent that it requires a compliance certificate to be obtained in respect of any development.

**[5] Section 81A**

Omit the section. Insert instead (with appropriate decimal section number):

**Consent for erection of building authorises use of building**

A development consent that authorises the erection of a building (but not the use of the building once erected) is sufficient to authorise the use of the building when erected for the purpose for which it was erected if that purpose was specified in the application for development consent. This section does not authorise the occupation of such a building if Part 6 requires an occupation certificate to be issued.

**[6] Section 85A Process for obtaining complying development certificate**

Omit section 85A (1). Insert instead:

- (1) An applicant may, in accordance with the regulations, apply to a council or accredited certifier for a complying development certificate.

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

Omit the section.

**[8] Section 101 Validity of development consents and complying development certificates**

Omit “an accredited certifier”. Insert instead “a certifier”.

**[9] Part 4A Certification of development**

Omit the Part.

**[10] Part 4C Liability and insurance**

Omit the Part.

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# public consultation draft

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Environmental Planning and Assessment Amendment Bill 2017 [NSW]  
Schedule 6 Amendment of Environmental Planning and Assessment Act 1979 No 103—Building and subdivision certification

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- [11] Section 117B Action that may be taken against council following investigation**  
Omit “an accredited certifier” or “a certifying authority” wherever occurring. Insert instead “a certifier”.
- [12] Section 117B (11)**  
Omit “principal certifying authority”. Insert instead “principal certifier”.
- [13] Section 121H Notice to be given of proposed order**  
Omit “principal certifying authority” wherever occurring. Insert instead “principal certifier”
- [14] Section 146A Smoke alarms in buildings providing sleeping accommodation**  
Omit the section.
- [15] Section 149A Building certificates; section 19B Applications for building certificates; section 149C Supply of information in connection with applications for building certificates; section 149D Obligations of council to issue building certificate; section 149E Effect of building certificate; section 149F Appeals with respect to building certificates; section 149G Record of building certificates**  
Omit the sections.
- [16] Section 157 Regulations**  
Omit “certifying authority” from section 157 (1) (g). Insert instead “certifier”.

## **Schedule 7      Amendment of Environmental Planning and Assessment Act 1979 No 103—Infrastructure contributions and finance**

### **7.1 Principal amendments**

**[1] Sections 93F (1) (b), 93I (1) (a), 93I (3) (b)**

Insert “or application for a complying development certificate” after “development application” wherever occurring.

**[2] Section 93K Determinations or directions by Minister**

Insert after section 93K (b):

- (b1) the method of determining the extent of the provision of the public benefit to be made by the developer under a planning agreement, or

**[3] Section 94EE Minister to determine development contributions**

Insert after section 94EE (1):

- (1A) This section extends to complying development. In that case, a reference in this Subdivision to the consent authority includes a reference to a certifier.

**[4] Section 94EE (3)**

Insert “or in the form of the carrying out of works or the supply of land for the provision of the infrastructure” after “any class of development”.

**[5] Section 94EF Special infrastructure contributions**

Omit section 94EF (1). Insert instead:

- (1) The Minister may direct a consent authority to impose a condition on the grant of development consent in relation to development within a special contributions area to which a determination under section [94EE] applies for the purpose of giving effect to the determination.
- (1A) The direction may set out the terms of the condition that is to be imposed, including the following:
  - (a) a condition that declares that a development contribution is to be made in accordance with the relevant determination under section [94EE],
  - (b) a condition that requires the person having the benefit of the development consent to obtain a determination by the Planning Secretary as to whether a development contribution is required under section [94EE] and of the obligations arising under that section.
- (1B) A direction to a consent authority under this section may be given by the publication of the direction on the NSW planning portal or in the Gazette.

**[6] Section 94EF (3)**

Omit “the Minister may impose the condition”. Insert instead “the condition is taken to have been imposed in the terms required by the direction”.

**[7] Section 94EK Payments into Fund**

Omit “by a consent authority” wherever occurring.

## 7.2 Consequential and statutory revision amendments

### [1] Section 4 (1) definition of “affordable housing”

Omit the definition. Insert instead:

*affordable housing* means (subject to the regulations) housing for very low income households, low income households or moderate income households.

### [2] Part 4, Division 6 Development contributions

Renumber and transfer the Division to Part 7 as Division 7.1, and renumber the sections in the Division (as amended by this Act) with decimal numbering commencing with section 7.1 (and amend any cross-references to the Division or sections in the Act accordingly).

### [3] Part 4, Division 6A Conditions requiring land or contributions for affordable housing

Renumber and transfer the Division to Part 7 as Division 7.2 (with the heading “Affordable housing contributions”), and renumber the sections in the Division (as amended by this Act) with decimal numbering following the sections in renumbered Division 7.1 (and amend any cross-references to the Division or sections in the Act accordingly).

### [4] Part 7, Division 1 Funds

Renumber the Division as Division 7.3 and renumber the sections in the Division (as amended by this Act) with decimal numbering following the sections in renumbered Division 7.2 (and amend any cross-references to the Division or sections in the Act accordingly).

### [5] Part 7, Division 2 Fees and charges

Renumber the Division as Division 7.4 and renumber the sections in the Division (as amended by this Act) with decimal numbering following the sections in renumbered Division 7.3 (and amend any cross-references to the Division or sections in the Act accordingly).

### [6] Part 7, Division 3 Loans

Omit the Division. Transfer section 143 (with appropriate decimal numbering) to the end of Division 1 of Part 7.

### [7] Part 7, Division 4 General

Omit the Division.

## Schedule 8 Amendment of Environmental Planning and Assessment Act 1979 No 103—Reviews and appeals

### 8.1 Principal amendments

#### [1] Section 83

Omit the section. Insert instead (with appropriate decimal section number):

##### **Date from which development consent has effect**

- (1) A development consent has effect on and from the date it is registered on the NSW planning portal, except as provided by subsection (2).
- (2) A development consent for designated development has effect on and from the end of 28 days after the date it is registered on the NSW planning portal unless:
  - (a) the development consent was granted following a public hearing by the Independent Planning Commission, or
  - (b) the development is State significant development.

**Note.** The date of effect of a consent for any such designated development is delayed by the period within which an objector may appeal to the Land and Environment Court against the grant of consent.
- (3) This section is subject to Part 8 (Reviews and appeals).

#### [2] Part 8

Insert in appropriate order:

## Part 8 Reviews and appeals

### Division 8.1 Introductory

#### 8.1 Definitions: Part 8

In this Part:

*appeal* means an appeal to the Court under Divisions 8.3, 8.4, 8.5 and 8.6.

**Note.** Section 4 defines *court* as the Land and Environment Court.

*review* means a review by a consent authority under Division 8.2.

### Division 8.2 Reviews

#### 8.2 Determinations and decisions subject to review

- (1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:
  - (a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel, by the Independent Planning Commission or by any other person acting as delegate of the Minister,
  - (b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel, by the Independent Planning Commission or by any other person acting as delegate of the Minister,

- (c) the decision of a council to reject and not determine an application for development consent.
- (2) However, a determination or decision in connection with an application relating to the following is not subject to review under this Division:
  - (a) a complying development certificate,
  - (b) designated development,
  - (c) Crown development (referred to in Division 4.6),
  - (d) a determination or decision that was made after a public hearing into the matter by the Independent Planning Commission.
- (3) A determination or decision reviewed under this Division is not subject to further review under this Division.

### **8.3 Application for and conduct of review**

- (1) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.
- (2) A determination or decision cannot be reviewed under this Division:
  - (a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or
  - (b) after the Court has disposed of an appeal against the determination or decision.
- (3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.
- (4) The review of a determination or decision made by a delegate of a council is to be conducted:
  - (a) by the council (unless the determination or decision may only be made by a local planning panel or delegate of the council), or
  - (b) by another delegate of the council who is not subordinate to the delegate who made the determination or decision.
- (5) The review of a determination or decision made by a local planning panel is also to be conducted by the panel.
- (6) The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.
- (7) The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.
- (8) The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.
- (9) The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.

## **8.4 Outcome of review**

After conducting its review of a determination or decision, the consent authority may confirm or change the determination or decision.

## **8.5 Miscellaneous provisions relating to reviews**

- (1) The regulations may make provision for or with respect to reviews under this Division, including:
  - (a) specifying the person or body with whom applications for reviews are to be lodged and by whom applications for reviews and the results of reviews are to be notified, and
  - (b) setting the period within which reviews must be finalised, and
  - (c) declaring that a failure to finalise a review within that time is taken to be a confirmation of the determination or decision subject to review.
- (2) The functions of a consent authority in relation to a matter subject to review under this Division are the same as the functions in connection with the original application or determination.
- (3) If a decision to reject an application for development consent is changed on review, the application is taken to have been lodged on the date the decision is made on the review.
- (4) If a determination is changed on review, the changed determination replaces the earlier determination on the date the decision made on the review is registered on the NSW planning portal.
- (5) Notice of a decision on a review to grant or vary development consent is to specify the date from which the consent (or the consent as varied) operates.
- (6) A decision after the conduct of a review is taken for all purposes to be the decision of the consent authority.
- (7) If on a review of a determination the consent authority grants development consent or varies the conditions of a development consent, the consent authority is entitled (with the consent of the applicant and without prejudice to costs) to have an appeal against the determination made by the applicant to the Court under this Part withdrawn at any time prior to the determination of that appeal.

## **Division 8.3 Appeals—development consents**

### **8.6 Decisions subject to appeal to Court under this Division**

- (1) A decision of a consent authority under Part 4 in relation to an application for development consent or a development consent is (if this Division so provides) subject to appeal to the Court under this Division.
- (2) A decision subject to appeal includes a decision made after a review under Division 8.2.
- (3) There is no right of appeal under this Division against the following decisions:
  - (a) a decision of the Independent Planning Commission as consent authority under this Act in relation to the carrying out of any development that is made after a public hearing by the Commission into the carrying out of that development,
  - (b) the determination of, or a failure to determine, an application for a complying development certificate.

**Note.** See sections # and # for restrictions on the power of the Court to vary conditions of development consent relating to development contributions.

## **8.7 Appeal by applicant—applications for development consent**

- (1) An applicant for development consent who is dissatisfied with the determination of the application by the consent authority may appeal to the Court against the determination.
- (2) For the purposes of this section, the determination of an application by a consent authority includes:
  - (a) any decision subsequently made by the consent authority or other person about an aspect of the development that under the conditions of development consent was required to be carried out to the satisfaction of the consent authority or other person, or
  - (b) any decision subsequently made by the consent authority as to a matter of which the consent authority must be satisfied before a deferred commencement consent can operate.
- (3) An appeal under this section relating to an application for development consent to carry out designated development in respect of which an objector may appeal under this Division cannot be heard until after the expiration of the period within which the objector may appeal to the Court.

## **8.8 Appeal by an objector—designated development applications**

- (1) This section applies to the determination of an application for development consent for designated development (including any such development that is State significant development), being a determination to grant development consent, either unconditionally or subject to conditions.
- (2) A person who duly made a submission by way of objection during the public exhibition of the application for development consent (an *objector*) and who is dissatisfied with the determination of the consent authority to grant consent may appeal to the Court against the determination.

## **8.9 Appeal by applicant—modifications of development consent**

An applicant for the modification of a development consent who is dissatisfied with the determination of the application by the consent authority may appeal to the Court against the determination.

## **8.10 Time within which appeals may be made**

- (1) An appeal under this Division (except by an objector) may only be made within 6 months after the date the decision appealed against is notified or registered on the NSW planning portal or after the date of deemed refusal under section 8.11.
- (2) An appeal under this Division by an objector may only be made within 28 days after the date the objector is notified of the decision appealed against.

## **8.11 Circumstances in which consent taken to have been refused for purposes of appeal rights**

- (1) A consent authority that has not determined an application for development consent (or for the modification of a development consent) within the period prescribed by the regulations for the determination of the application is, for the purpose only of this Division, taken to have determined the application by



refusing development consent (or to modify development consent) when that period ends.

- (2) Subsection (1) does not prevent a consent authority from determining an application after the end of that period.
- (3) Any such determination of an application does not affect the continuation or determination of an appeal made under this Division against the deemed refusal of consent (or modification of consent) under subsection (1).
- (4) If any such determination of an application results in the grant of development consent (or the modification of development consent), the consent authority is entitled, with the consent of the applicant and without prejudice to costs, to have the appeal withdrawn at any time prior to the determination of the appeal.

## **8.12 Notice of appeals to be given and right to be heard**

- (1) The following are entitled to be given notice of an appeal made under this Division:
  - (a) an objector, in the case of an appeal by an applicant concerning an application for development consent in respect of which the objector has a right of appeal under this Division,
  - (b) an applicant for development consent and the consent authority, in the case of an appeal under this Division by an objector concerning the application for development consent,
  - (c) a Minister or public authority, in the case of an appeal concerning an application for development consent in respect of which the concurrence of the Minister or public authority is required under this Act,
  - (d) the relevant approval body (within the meaning of Division 4.#), in the case of an application for development consent that involves the approval body.
- (2) Any such notice of appeal is to be given by the relevant consent authority.
- (3) Anyone who is given any such notice of appeal is, on application to the Court within 28 days after the notice is given, entitled to be heard at the hearing of the appeal if not already a party to the proceedings.
- (4) In this section, a reference to an application for development consent includes an application to modify a development consent.

## **8.13 Effect of appeals on operation of consents**

- (1) If the granting of a development consent for development (other than State significant development) is the subject of an appeal made under this Division, the consent ceases to have effect.
- (2) A development consent that is granted, or confirmed, as a result of a decision on an appeal under this Division is taken to be a development consent duly granted under Part 4. Any such development consent takes effect, subject to any order of the Court, on and from the date the decision is registered on the NSW planning portal (except in the case of the confirmation of a development consent for State significant development).
- (3) If the effect of a decision on appeal is that development consent is refused, any development consent granted ceases to have any effect.
- (4) Despite anything to the contrary in this section, a development consent is taken to have effect on and from the date fixed by:

- (a) a court (whether or not the Land and Environment Court) that finally determines an appeal on a question of law which confirms the validity of, or results in the granting of, the development consent, or
- (b) the Land and Environment Court, if the validity of a development consent granted by that Court is confirmed by, or the development consent is granted by that Court as a result of, such a final determination made by another court that has not fixed that date.

#### **8.14 Powers of Court on appeals**

- (1) In addition to any other functions and discretions that the Court has apart from this subsection, the Court has, for the purposes of hearing and disposing of an appeal under this Division, all the functions and discretions which the consent authority whose decision is the subject of the appeal had in respect of the matter the subject of the appeal.
- (2) The decision of the Court on an appeal under this Division is, for the purposes of this or any other Act or instrument, taken to be the final decision of that consent authority and is to be given effect to accordingly.
- (3) If the consent authority was under this Act required to consult or obtain the concurrence of another person or body before making the decision the subject of an appeal under this Division:
  - (a) the Court may determine the appeal whether or not the consultation has taken place and whether or not the concurrence has been granted, and
  - (b) in a case where the concurrence has been granted—the Court may vary or revoke any conditions imposed by that person or body or may impose any conditions that could have been imposed by that person or body.
- (4) If an appeal under this Division relates to integrated development:
  - (a) the Court may determine the appeal whether or not the consent authority has obtained general terms of approval from each relevant approval body, and
  - (b) the Court is not bound to refuse an application for development consent because a relevant approval body has decided that general terms of approval will not be determined or has decided not to grant a relevant approval, and
  - (c) the Court may determine an appeal even though a development consent granted as a result of the appeal is inconsistent with the general terms of approval of a relevant approval body.

#### **8.15 Miscellaneous provisions relating to appeals under this Division**

- (1) Separate appeals under this Division with respect to the determination of an application for development consent are, as far as practicable, to be heard together.
- (2) On an appeal under this Division, the Court may, at any time on the application of a person or of its own motion, order the joinder of a person as a party to the appeal if the Court is of the opinion:
  - (a) that the person is able to raise an issue that should be considered in relation to the appeal but would not be likely to be sufficiently addressed if the person were not joined as a party, or
  - (b) that:
    - (i) it is in the interests of justice, or
    - (ii) it is in the public interest,

that the person be joined as a party to the appeal.

- (3) If the Court on an appeal by an applicant under this Division allows the applicant to file an amended application for development consent (other than to make a minor amendment), the Court must make an order for the payment by the applicant of those costs of the consent authority that have been thrown away as a result of the amendment of the application for development consent. This subsection does not apply to proceedings to which section 34AA of the *Land and Environment Court Act 1979* applies.
- (4) If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.
- (5) If the Minister exercised the functions of the council as consent authority (for Crown development) in respect of a determination or decision appealed against under this Division, the council is to be the respondent to the appeal but is subject to the control and direction of the Minister in connection with the conduct of the appeal. The council is to give notice of the appeal to the Minister.

## **Division 8.4 Appeals—building and subdivision certification**

### **8.16 Appeals against failure or refusal to issue certificate under Part 6**

- (1) An appeal may be made to the Court against the following decisions of a council under Part 6:
  - (a) a decision to refuse to issue a construction certificate, occupation certificate, subdivision works certificate or subdivision certificate,
  - (b) a decision to issue any such certificate subject to conditions.
- (2) The appeal may be made by the applicant for the certificate concerned.
- (3) An appeal may only be made within 6 months after the date on which the decision was made.

### **8.17 Deemed refusal for purposes of appeal**

- (1) For the purposes only of an appeal under this Division, a council is taken to have made a decision to refuse to issue a certificate (a *deemed refusal*) if it has failed to issue the certificate to the applicant within the period prescribed by the regulations.
- (2) Nothing in subsection (1) prevents a council from determining an application for a construction certificate, occupation certificate, subdivision works certificate or subdivision certificate after the expiration of the applicable period specified in that subsection.
- (3) A determination made after the expiration of that applicable period does not affect the continuance or determination of an appeal made under this Division in respect of a deemed refusal.
- (4) If a determination is made after the applicable period to grant the certificate concerned, the council is entitled, with the consent of the applicant and without prejudice to costs, to have any appeal under this Division against a deemed refusal withdrawn at any time prior to the determination of that appeal.

## **Division 8.5 Appeals—development control orders**

### **8.18 Appeals concerning orders**

- (1) A person who is given a development control order may appeal to the Court against the order.
- (2) However, a person may not appeal against a fire safety order given by an authorised fire officer (other than an order that prevents a person using or entering premises).
- (3) The appeal may only be made:
  - (a) within 28 days after the development control order is given to the person, or
  - (b) if an order is given subsequently that forms part of the development control order, within 28 days after the subsequent order is given to the person.
- (4) On hearing an appeal, the Court may:
  - (a) revoke the development control order, or
  - (b) modify the development control order, or
  - (c) substitute for the development control order any other order that the relevant enforcement authority who gave the order could have given, or
  - (d) find that the development control order is sufficiently complied with, or
  - (e) make such order with respect to compliance with the development control order as the Court thinks fit, or
  - (f) make such other order with respect to the development control order as the Court thinks fit.

### **8.19 Awarding of compensation concerning orders**

- (1) The Court, on the hearing of an appeal or otherwise, has a discretion to award compensation to a person to whom a development control order is given for any expense incurred by the person as a consequence of the order, including the cost of any investigative work or reinstatement carried out by the person as a consequence of the order.
- (2) Compensation is to be awarded only if the person seeking the compensation satisfies the Court that the giving of the development control order was unsubstantiated or the terms of the order were unreasonable.
- (3) A claim for compensation cannot be made more than 28 days after the date on which the Court gives its decision on the appeal or more than 3 months after the date of the development control order if an appeal is not made against the order.
- (4) Compensation under this section is to be awarded against the relevant enforcement authority who gave the development control order.

### **8.20 Effect of appeal on order**

If an appeal is duly made to the Court against a development control order, the appeal does not effect a stay of the order.

## Division 8.6 Appeals—miscellaneous

### 8.21 Appeal concerning decisions on security for development requirements or damage

- (1) This section applies in connection with a decision of a consent authority or council relating to security of the kind referred to in section # [current s 80A (6)].
- (2) The applicant for development consent to which the security relates, or a person having the benefit of the consent, who is dissatisfied with the decision may appeal to the Court as follows:
  - (a) an appeal may be made against a decision of the consent authority with respect to the provision of the security (otherwise than by the imposition of a condition of development consent),
  - (b) an appeal may be made against the failure or refusal of the consent authority to release a security held by it,
  - (c) an appeal may be made against the failure or refusal of a council to release a security held by it that has been provided in accordance with a condition of a complying development certificate.

**Note.** The right to appeal against the imposition of a condition of development consent is excluded because this Part provides separately for appeals against any such condition.

- (3) An appeal under subsection (2) (a) may only be made within 6 months after the applicant for development consent received notice of the decision.
- (4) An appeal under subsection (2) (b) or (c) may only be made:
  - (a) except as provided by paragraph (b), within 6 months after the work to which the security relates has been completed, or
  - (b) if the security is provided in respect of contingencies that may arise on or after completion of the work to which the security relates, not earlier than 3 months and not later than 6 months after the completion of the work.

### 8.22 Appeals against refusal to extend consent lapsing period

- (1) This section applies to an application under section [ 95A] for the extension of the period after which a development consent lapses.
- (2) The applicant for the extension who is dissatisfied with the determination of the application, or the failure of the consent authority to determine the application within the period prescribed by the regulations, may appeal to the Court.
- (3) The appeal can only be made within 6 months after the date on which the person is given notice of the decision appealed against or the end of the deemed refusal period referred to in subsection (2).

### 8.23 Appeals against revocation or modification of development consent

- (1) This section applies to a decision of the Planning Secretary or a council under section [96A] to revoke or modify a development consent.
- (2) The applicant for the consent, or any other person entitled to rely on the consent, may appeal to the Court against the revocation or modification of the consent.

- (3) The appeal can only be made within 3 months after the date on which the revocation or modification of the consent takes effect.
- (4) On hearing the appeal, the Court may:
  - (a) confirm the revocation or modification, or
  - (b) vary the revocation or modification, or
  - (c) cancel the revocation or modification.

## **8.24 Appeals concerning compliance cost notices**

- (1) A person on whom a compliance cost notice is served under Part 12 of Schedule 5 (Development control orders) may appeal against the notice to the Court within 28 days after the service of the notice on the person.
- (2) If an appeal is lodged 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 development control order concerned, 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 development control order.
- (3) On hearing an appeal against a compliance cost notice, 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.

## **8.25 Appeals with respect to building information certificates**

- (1) An applicant:
  - (a) who is dissatisfied with a council's refusal to issue a building information certificate under Part 6, or
  - (b) who is dissatisfied with a council's failure to issue a building information certificate within the period prescribed by the regulations, or
  - (c) who is dissatisfied with a notice from the council to supply information in connection with an application for a building information certificate, may appeal to the Court.
- (2) The appeal can only be made within 6 months after the date on which the person is given notice of the decision appealed against or the end of the deemed refusal period referred to in subsection (1).
- (3) On hearing the appeal, the Court may do any one or more of the following:
  - (a) direct the council to issue a building information certificate in such terms and on such conditions as the Court thinks fit,
  - (b) revoke, alter or confirm a notice to supply information,
  - (c) make any other order that it considers appropriate.

## **8.26 Regulations**

The regulations may make provision for or with respect to reviews and appeals under this Part, and in particular the procedure with respect to any such review or appeal.

## 8.2 Consequential and statutory revision amendments

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

Omit the note to section 80A (10D). Insert instead:

**Note.** Accordingly, an application for review or appeal under Part 8 may be made in relation to a decision to change a reviewable condition.

### [2] Section 82 Circumstances in which consent taken to have been refused

Omit the section.

### [3] Sections 82A-82D Reviews of determinations

Omit the sections.

### [4] Section 85A Process for obtaining complying development certificates

Omit section 85A (10). Insert after section 85A (6):

**Note.** Part 8 provides that there is no right of review or appeal in relation to a determination of, or a failure to determine, an application for a complying development certificate.

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

Omit section 95A (3).

### [6] Section 96AB Review where modification application refused or conditions imposed

Omit the section.

### [7] Section 96A Revocation or modification of development consent

Omit section 96A (5) and (6).

### [8] Part 4, Division 8 Appeals and related matters

Omit the Division.

### [9] Section 104 Appeals and other provisions relating to development consents after order of Court

Omit “sections 97 and 98” wherever occurring. Insert instead “Part 8”.

### [10] Section 104A Voluntary surrender of development consent

Omit section 104A (2). Insert instead:

- (2) A development consent may be surrendered under this section even if, on an appeal under Part 8, the consent has ceased to be, or does not become, effective.

## **Schedule 9      Amendment of Environmental Planning and Assessment Act 1979 No 103—Implementation and enforcement**

### **9.1 Principal amendments**

#### **[1] Section 9.#**

Insert after section 117BA (with appropriate decimal section number):

#### **Enforcement of undertakings**

- (1) The Planning Secretary may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Minister, the Planning Secretary or a public authority has a function under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Planning Secretary. The consent of the Planning Secretary is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (3) The Planning Secretary may apply to the Court for an order under subsection (4) if the Planning Secretary considers that the person who gave the undertaking has breached any of its terms.
- (4) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
  - (a) an order directing the person to comply with that term of the undertaking,
  - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
  - (d) an order requiring the person to prevent, control, abate or mitigate any actual or likely damage to the built or natural environment caused by the breach,
  - (e) an order requiring the person to make good any actual or likely damage to the built or natural environment caused by the breach,
  - (f) any other order the Court considers appropriate.

#### **[2] Part 6, Division 9.3**

Omit Division 2A of Part 6. Insert instead:

### **Division 9.3      Development control orders**

#### **9.33 Orders that may be given**

- (1) The development control orders that may be given under this Act are as follows:
  - (a) general orders in accordance with the table to Part 1 of Schedule 5,
  - (b) fire safety orders in accordance with the table to Part 2 of Schedule 5,



- (c) brothel closure orders in accordance with the table to Part 3 of Schedule 5.
- (2) The regulations may amend those tables.
- (3) A reference in those tables to a *planning approval* is a reference to a development consent, an approval for State significant infrastructure or a certificate under Part 6 (other than a compliance certificate).

### 9.34 Relevant enforcement authorities who may give orders

- (1) Development control orders may be given by the following (a *relevant enforcement authority*):
  - (a) the Minister or the Planning Secretary, but only in connection with State significant development, State significant infrastructure or any other development for which the Minister, the Planning Secretary or the Independent Planning Commission is or has been the consent authority,
  - (b) a council,
  - (c) a consent authority (not being the Independent Planning Commission, a Sydney district or regional planning panel, a council or an accredited certifier), but only in connection with development for which the authority is or has been the consent authority,
  - (d) in the case of fire safety orders (and without limiting the authority of other persons or bodies to give those orders)—the Commissioner of Fire and Rescue NSW or a member of staff of Fire and Rescue NSW, or a member of a permanent fire brigade, who is for the time being authorised by the Minister administering the *Fire Brigades Act 1989* to give fire safety orders (an *authorised fire officer*),
  - (e) in the case of brothel closure orders (and without limiting the authority of other persons or bodies to give those orders)—a person or body exercising planning or regulatory functions in respect of the area in which the premises are situated and authorised by the Minister to give brothel closure orders.
- (2) A development control order in connection with State significant infrastructure may be given only by the Minister or the Planning Secretary.
- (3) A development control order cannot be given in respect of the following land unless the written consent of the Minister has first been obtained:
  - (a) vacant Crown land within the meaning of the *Crown Lands Act 1989*,
  - (b) a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*,
  - (c) a common within the meaning of the *Commons Management Act 1989*.

The Minister must not give consent in respect of vacant Crown land or a reserve within the meaning of Part 5 of the *Crown Lands Act 1989* until after the Minister has consulted the Minister administering the *Crown Lands Act 1989*.

- (4) A copy of any development control order given by a relevant enforcement authority other than a council is to be provided by that authority to the council for the area concerned.

### 9.35 Provisions relating to orders

Part 4 of Schedule 5 contains provisions relating to the giving of orders and related matters.

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# public consultation draft

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Environmental Planning and Assessment Amendment Bill 2017 [NSW]  
Schedule 9 Amendment of Environmental Planning and Assessment Act 1979 No 103—Implementation and enforcement

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## 9.36 Failure to comply with order—offence

- (1) A person to whom a development control order is given or is taken to have been given must comply with the terms of the order.
- (2) It is a sufficient defence to a prosecution for an offence against this section if the defendant satisfies the court that the defendant was unaware of the fact that the matter in respect of which the offence arose was the subject of an order.

Maximum penalty: Tier 1 monetary penalty.

**Note 1.** For civil enforcement—see Division 9.5.

**Note 2.** Schedule 5 provides that a development control order that is given to a person binds a successor in title or occupation of the land concerned and is taken to have been given to the successor. Information about outstanding orders can be obtained under this Act by prospective successors—see section # [former section 149].

### [3] Schedule 5

Insert in appropriate order:

## Schedule 5 Development control orders

### Part 1 General orders

Column 1	Column 2	Column 3
To do what?	When?	To whom?
1 <b>Stop Use Order</b> To stop using premises or a building Not to conduct or to stop conducting an activity on the premises	Premises are being used: <ul style="list-style-type: none"><li>• for a prohibited purpose, or</li><li>• for a purpose for which a planning approval is required but has not been obtained, or</li><li>• in contravention of a planning approval.</li></ul> Building is being used: <ul style="list-style-type: none"><li>• inconsistently with its classification under this Act or the <i>Local Government Act 1993</i>, and</li><li>• in a manner that constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and</li><li>• in a manner that is not regulated or controlled under any other Act by a public authority.</li></ul> Premises are being used for an activity (that would or would be likely to require planning approval) that: <ul style="list-style-type: none"><li>• constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and</li><li>• is not regulated or controlled under any other Act by a public authority.</li></ul>	<ul style="list-style-type: none"><li>• The owner of premises or building</li><li>• The person using the premises or building</li></ul>

# public consultation draft

Environmental Planning and Assessment Amendment Bill 2017 [NSW]  
 Schedule 9 Amendment of Environmental Planning and Assessment Act 1979 No 103—Implementation and enforcement

Column 1	Column 2	Column 3
To do what?	When?	To whom?
2 <b>Stop Work Order</b> To stop building work or subdivision work carried out in contravention of this Act	Building work or subdivision work is carried out: <ul style="list-style-type: none"> <li>• in contravention of this Act, or</li> <li>• in a manner that would affect the support of adjoining premises.</li> </ul>	<ul style="list-style-type: none"> <li>• Owner of the land</li> <li>• Any person apparently engaged in the work</li> </ul>
3 <b>Demolish Works Order</b> To demolish or remove a building	A building: <ul style="list-style-type: none"> <li>• requiring a planning approval is erected without approval, or</li> <li>• requiring approval under the <i>Local Government Act 1993</i> is erected without approval, or</li> <li>• is or is likely to become a danger to the public, or</li> <li>• is so dilapidated that it is prejudicial to persons or property in the neighbourhood.</li> </ul>	Owner of building
4 <b>Stop Demolition Order</b> To stop demolishing, or not to demolish, a building	Demolition requiring a planning approval is being carried out, or would be carried out, without approval or in contravention of an approval.	<ul style="list-style-type: none"> <li>• The owner of premises</li> <li>• The person carrying out the demolition or likely to carry out the demolition</li> </ul>
5 <b>Repair Order</b> To repair or make structural alterations to a building	The building is or is likely to become a danger to the public or is so dilapidated that it is prejudicial to the occupants, persons or property in the neighbourhood.	Owner of building
6 <b>Remove Advertising Order</b> To modify, demolish or remove an advertisement and any associated structure	The advertisement is: <ul style="list-style-type: none"> <li>• unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed, or</li> <li>• displayed contrary to a provision made by or under this Act, or</li> <li>• associated with a structure erected contrary to a provision made by or under this Act.</li> </ul>	<ul style="list-style-type: none"> <li>• The owner of premises displaying the advertisement or on which the associated structure is erected</li> <li>• The person responsible for the display of the advertisement and erection of the associated structure</li> </ul>

# public consultation draft

Environmental Planning and Assessment Amendment Bill 2017 [NSW]  
 Schedule 9 Amendment of Environmental Planning and Assessment Act 1979 No 103—Implementation and enforcement

Column 1	Column 2	Column 3
To do what?	When?	To whom?
7 <b>Public Safety Order</b> To erect or install structures or appliances necessary for public safety	A building: <ul style="list-style-type: none"> <li>• is about to be erected, or</li> <li>• is dangerous to persons or property on or in a public place, or</li> <li>• is about to be demolished.</li> </ul> Works are: <ul style="list-style-type: none"> <li>• about to be carried out, or</li> <li>• about to be demolished.</li> </ul>	The owner or occupier of the land
8 <b>Evacuate Premises Order</b> To stop using premises or to evacuate premises	A person who has failed to comply with a Stop Use Order issued because the use constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety.	The person to whom the Stop Use Order was given
9 <b>Exclusion Order</b> To leave premises or not to enter premises	A person who has failed to comply with a Stop Use Order issued because the use constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety.	Any person
10 <b>Restore Works Order</b> To restore premises to the condition in which they were before unlawful building or other works occurred	An unauthorised building has been the subject of a Demolish Works Order or unauthorised works have been carried out.	<ul style="list-style-type: none"> <li>• The owner of the premises</li> <li>• Any person entitled to act on a planning approval, or acting in contravention of a planning approval</li> </ul>
11 <b>Compliance Order</b> To comply with a planning approval for the carrying out of works	A planning approval has not been complied with.	<ul style="list-style-type: none"> <li>• The owner of the premises</li> <li>• Any person entitled to act on a planning approval, or acting in contravention of a planning approval</li> </ul>
To do whatever is necessary so that any building or part of a building that has been unlawfully erected complies with relevant development standards	Building has been unlawfully erected and does not comply with relevant development standards.	The owner of the premises
To carry out works associated with subdivision	Authorised subdivision works, or works agreed to by the applicant, have not been carried out.	The person required to carry out the works
12 <b>Repair or Remove Works Order</b> To repair or remove a building in a public place	The building is unlawfully situated wholly or partly in a public place.	Owner or occupier of the building

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# public consultation draft

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Environmental Planning and Assessment Amendment Bill 2017 [NSW]  
Schedule 9 Amendment of Environmental Planning and Assessment Act 1979 No 103—Implementation and enforcement

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	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>To do what?</b>	<b>When?</b>	<b>To whom?</b>
13	<b>Complete Works Order</b> To complete authorised works under a planning approval within a specified time	The authorised works have commenced, but have not been completed, before the planning approval has lapsed.	The owner of the relevant land

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## Part 2 Fire safety orders

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
1	To do or stop doing things for the purposes of ensuring or promoting adequate fire safety or fire safety awareness	When provision for fire safety or fire safety awareness is inadequate to: <ul style="list-style-type: none"><li>• prevent fire, or</li><li>• suppress fire, or</li><li>• prevent the spread of fire.</li></ul> To ensure or promote the safety of persons in the event of fire. When lack of maintenance of the premises or the use of the premises constitutes a significant fire hazard.	The owner of the premises or, in the case of a place of shared accommodation, the owner or manager
2	To stop doing an activity on premises, including on premises used for the purposes of shared accommodation	The activity is or is likely to be: <ul style="list-style-type: none"><li>• a life threatening hazard, or</li><li>• a threat to public health or public safety,</li></ul> and the activity is not regulated or controlled under any other Act by a public authority.	Any person apparently engaged in promoting, conducting or carrying out the activity
3	To stop the use of premises or to evacuate premises, or not to enter the premises	When an order under item 1 or 2 above has already been served and has not been complied with.	Any person

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### Part 3 Brothel closure orders

Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
<p>1 To stop using premises as a brothel, including to specifically stop using the premises for:</p> <ul style="list-style-type: none"><li>• sexual acts or services in exchange for payment, or</li><li>• massage services (other than genuine remedial or therapeutic massage services) in exchange for payment, or</li><li>• adult entertainment involving nudity, indecent acts or sexual activity in exchange for payment or ancillary to other goods or services.</li></ul> <p>To prohibit using the premises for any of the above uses if those uses are prohibited under an environmental planning instrument or require planning approval and no approval has been granted.</p> <p>To comply with the conditions of a planning approval for the use of premises as a brothel.</p>	<p>When premises are being used for a purpose that is prohibited.</p> <p>When premises are being used for a purpose for which a planning approval is required but has not been obtained.</p> <p>When premises are being used in contravention of a planning approval.</p>	<p>The owner of the premises, or the person using premises for the purpose specified in the order.</p> <p>The person entitled to act on a planning approval who is acting in contravention of the approval.</p> <p>Any person apparently in control of, or managing, or assisting in the control or management of, the brothel.</p>

### Part 4 Provisions relating to development control orders

#### 1 Order may specify standards and work that will satisfy those standards

- (1) A relevant enforcement authority may give a development control order that does the following instead of specifying in the order the things the person to whom the order is given must do or refrain from doing:
  - (a) specifies the standard that the premises concerned are required to meet,
  - (b) indicates the nature of the work that, if carried out, would satisfy that standard.
- (2) The relevant enforcement authority may, in any such development control order, require the owner or occupier to prepare and submit to the relevant enforcement authority, within the period specified in the order, particulars of the work the owner or occupier considers necessary to make provision for such matters as may be so specified.
- (3) The relevant enforcement authority must, within 28 days after those particulars of work are submitted to the authority:
  - (a) accept the particulars without modification or with such modifications as the authority thinks fit, or
  - (b) reject the particulars.

- (4) If the relevant enforcement authority accepts the particulars of work without modification, the authority must as soon as possible order the owner to carry out that work.
- (5) If the relevant enforcement authority accepts the particulars of work with modifications or rejects the particulars, or if an owner fails to submit particulars of work as required under this clause, the authority must:
  - (a) prepare, within 3 months after the acceptance, rejection or failure, particulars of the work that the authority considers necessary to make provision for the matters specified in the order given to the owner, and
  - (b) order the owner to carry out that work.
- (6) An order under this clause is not invalid merely because of the failure of the relevant enforcement authority that gave the order to accept or reject any particulars of work or prepare particulars of any work within the period required by this clause.
- (7) A relevant enforcement authority may recover from an owner as a debt the authority's expenses of preparing particulars of work under this clause.
- (8) An order under this clause forms part of the development control order to which it relates.

## **2 Orders that make or are likely to make residents homeless**

- (1) If a development control order will or is likely to have the effect of making a resident homeless, the relevant enforcement authority proposing to give the order must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality.
- (2) If the resident is not able to arrange satisfactory alternative accommodation in the locality, the relevant enforcement authority must provide the resident with:
  - (a) information as to the availability of satisfactory alternative accommodation in the locality, and
  - (b) any other assistance that the person considers appropriate.

## **3 Orders affecting heritage items**

- (1) This clause applies to an item of the environmental heritage:
  - (a) to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies or to which an order under section 136 of that Act applies, or
  - (b) that is identified as such an item in an environmental planning instrument.
- (2) A relevant enforcement authority must not give a development control order in respect of an item of the environmental heritage until after the authority has considered the impact of the order on the heritage significance of the item.
- (3) A relevant enforcement authority must not give a development control order in respect of an item of the environmental heritage to which subclause (1) (a) applies until after the authority has given notice of the proposed order to the Heritage Council and has considered any submissions duly made by the Heritage Council.
- (4) The Heritage Council may, by instrument in writing, exempt a relevant enforcement authority from the requirements of subclause (3), either unconditionally or subject to conditions. Any such exemption may be varied or revoked by the Heritage Council by further instrument in writing.

- (5) The Heritage Council may make a submission about a proposed order:
  - (a) within 28 days after it is given notice by the relevant enforcement authority, or
  - (b) if, within 28 days after it is given notice by the relevant enforcement authority, the Heritage Council requests that a joint inspection of the item be made, within 28 days after the joint inspection is made.
- (6) This clause does not apply to:
  - (a) a general order not to demolish or cease demolishing a building if given in an emergency, or
  - (b) a general order of a kind prescribed by the regulations, or
  - (c) a brothel closure order.

#### **4 Giving and taking effect of orders**

- (1) A development control order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service or a later time specified in the order.
- (2) The copy of the development control order is to be accompanied by a notice stating:
  - (a) that the person to whom the order is addressed may appeal to the Land and Environment Court against the order, and
  - (b) the period within which an appeal may be made.

#### **5 Reasons for orders to be given**

- (1) A relevant enforcement authority that gives a development control order must give the person to whom the order is addressed the reasons for the order.
- (2) The reasons may be given in the development control order or in a separate instrument.
- (3) The reasons must be given when the development control order is given, except in an emergency. In an emergency, the reasons may be given the next working day.

### **Part 5 Process for giving orders**

#### **6 Natural justice requirements**

- (1) Before giving a development control order, a relevant enforcement authority must comply with clauses 2, 8 and 9 and Part 7 of this Schedule.
- (2) Subclause (1) does not apply to the following development control orders:
  - (a) a general order (under item 2, Part 1 of this Schedule),
  - (b) a fire safety order (under item 2, Part 2 of this Schedule),
  - (c) an order given, and expressed to be given, in an emergency,
  - (d) an order given by the Minister or the Planning Secretary in connection with State significant infrastructure.

**Note.** Part 8 of this Schedule has special provisions relating to fire safety orders and Part 9 has special provisions relating to brothel closure orders.



## **7 Effect of compliance**

A relevant enforcement authority that complies with clauses 2, 8 and 9 and Part 7 of this Schedule is taken to have observed the rules of procedural fairness.

## **Part 6 Notices to be given**

### **8 Notice to be given of proposed order to person who will be subject to order**

- (1) Before giving a development control order, a relevant enforcement authority must give notice to the person to whom the proposed order is directed of the following:
  - (a) the intention to give the order,
  - (b) the terms of the proposed order,
  - (c) the period proposed to be specified as the period within which the order is to be complied with,
  - (d) that the person to whom the order is proposed to be given may make representations to the relevant enforcement authority as to why the order should not be given or as to the terms of or period for compliance with the order.
- (2) The notice may provide that the representations are to be made to the relevant enforcement authority or a nominated person on a nominated date, being a date that is reasonable in the circumstances of the case. In the case of a council this may be to a specified committee of the council on a specified meeting date or to a specified employee of the council on or before a specified date.

### **9 Notice to be given to other persons and bodies of proposed order**

#### **(1) Notice to other consent authorities**

If a council proposes to give a development control order in relation to development for which another person is the consent authority, the council must give the other person notice of its intention to give the order.

#### **(2) Notice to certifier**

If a council proposes to give a development control order in relation to building work or subdivision work for which the council is not the certifier, the council must give the certifier notice of its intention to give the order.

### **10 Notice of fire safety orders to be given to Commissioner of Fire and Rescue NSW**

A relevant enforcement authority must immediately give notice to the Commissioner of Fire and Rescue NSW after giving a fire safety order.

### **11 Notice of giving of complete works order**

A relevant enforcement authority must, on or as soon as practicable after the day on which the authority gives a complete works order, send a copy of the order to:

- (a) such persons (if any) as are, in the opinion of the authority, likely to be disadvantaged by the giving of the order, and
- (b) such persons (if any) as are referred to in the regulations for the purposes of this clause.

## **12 Details of orders and notices to be given to councils**

- (1) A relevant enforcement authority (other than a council) who gives a notice or an order under this Part must immediately give a copy of the notice or order to the council.
- (2) The relevant enforcement authority, if requested by the council, must immediately inform the council whether or not the notice is outstanding or the order is in force and of any action proposed to be taken by the relevant enforcement authority in relation to the notice or order.

## **Part 7 Representations concerning proposed orders**

### **13 Making of representations**

- (1) A person who is given notice under clause 8 of the intention to give a development control order may make representations concerning the proposed order in accordance with the notice.
- (2) For the purpose of making the representations, the person may be represented by an Australian legal practitioner or agent.

### **14 Hearing and consideration of representations**

The relevant enforcement authority that intends to give the development control order or the nominated person is required to hear and to consider any representations made under this Part.

### **15 Procedure after hearing and consideration of representations**

- (1) After hearing and considering any representations made concerning the proposed development control order, the relevant enforcement authority or the nominated person may determine:
  - (a) to give an order in accordance with the proposed order, or
  - (b) to give an order in accordance with modifications made to the proposed order, or
  - (c) not to give an order.
- (2) If the determination is to give a development control order in accordance with modifications made to the proposed order, the relevant enforcement authority is not required to give notice under this Part of the proposed order as so modified.

## **Part 8 Special provisions relating to fire safety orders**

### **16 Powers of fire brigades**

- (1) An authorised fire officer who inspects a building in accordance with section 9.# (Fire brigades inspection powers) may give:
  - (a) a fire safety order (under item 1) if the order does not require the carrying out of any structural work to the premises concerned, or
  - (b) a fire safety order (under item 2) if the premises concerned are a place of shared accommodation, or
  - (c) a fire safety order (under item 3) if a person to whom an order under paragraph (a) or (b) is given has failed to comply with the order.
- (2) Clauses 2, 6, 8, 9 and 31 and Part 7 of this Schedule do not apply to a development control order given in accordance with this clause in

circumstances which the authorised fire officer believes constitute an emergency or a serious risk to safety.

- (3) For the purpose of giving such a development control order, an authorised fire officer may exercise such of the powers of a relevant enforcement authority under this Part as are specified in the fire officer's authorisation under this clause.
- (4) In exercising a power under this Part, an authorised fire officer may be accompanied and assisted by a police officer.
- (5) An authorised fire officer must forward a copy of a development control order given in accordance with this clause to the relevant council.

## 17 Inspection reports by fire brigades

- (1) If the Commissioner of Fire and Rescue NSW carries out an inspection of a building under section 9.# (Fire brigades inspection powers), the Commissioner must furnish to the council of the area in which the building is located:
  - (a) a report of the inspection, and
  - (b) if of the opinion that adequate provision for fire safety has not been made concerning the building, such recommendations as to the carrying out of work or the provision of fire safety and fire-fighting equipment as the Commissioner considers appropriate.
- (2) A council must:
  - (a) table any report and recommendations it receives under this clause at the next meeting of the council, and
  - (b) at any meeting of the council held within 28 days after receiving the report and recommendations or at the next meeting of the council held after the tabling of the report and recommendations, whichever is the later, determine whether it will exercise its powers to give a fire safety order.
- (3) A reference in subclause (2) to a meeting of a council does not include a reference to a special meeting of the council unless the special meeting is called for the purpose of tabling any report and recommendations or making any determination referred to in that subclause.
- (4) A council must give notice of a determination under this clause to the Commissioner of Fire and Rescue NSW.

## Part 9 Special provisions relating to brothel closure orders

### 18 Interpretation

- (1) In this Part:  
*brothel closure order* means a brothel closure order under Part 3 of this Schedule.
- (2) This Part has effect despite any other provision of this Schedule.  
**Note.** Failure to comply with a brothel closure order is an offence (see section #).

## **19 Procedure relating to making of brothel closure orders**

### **(1) Natural justice requirements not applicable**

A person who gives a brothel closure order is not required to comply with clauses 2, 8 and 9 and Part 7 of this Schedule.

### **(2) Additional prohibitions may be included**

A brothel closure order may also prohibit the use of the premises for specified related sex uses, if the use of the premises for the specified uses is a prohibited development or a development for which planning approval is required but has not been obtained.

### **(3) Additional persons to whom order may be given**

In addition to any other person to whom a brothel closure order may be given, a brothel closure order may be given to any person apparently in control of or managing, or assisting in the control or management of, the brothel.

## **20 Compliance with brothel closure orders**

### **(1) Period for compliance**

A brothel closure order must specify a period of not less than 5 working days within which the order must be complied with.

### **(2) Defences**

It is a sufficient defence to a prosecution for an offence that arises from a failure to comply with a brothel closure order if the defendant satisfies the court that:

- (a) in a case where the defendant is the owner of the premises, the defendant has taken all reasonable steps to evict the persons operating the brothel or using the premises for the specified related sex uses, or
- (b) in all cases, the defendant has taken all reasonable steps to prevent the use of the premises as a brothel or for the specified related sex uses.

## **21 Appeals**

Regulations may be made for or with respect to the following matters:

- (a) the conferral of jurisdiction on the Local Court with respect to appeals against brothel closure orders,
- (b) removing the right to appeal under Part 8 of this Schedule if an appeal is made to the Local Court against a brothel closure order under the regulations,
- (c) the conferral of jurisdiction on the Land and Environment Court with respect to appeals from decisions of the Local Court on appeals against brothel closure orders,
- (d) the modification of provisions of the *Crimes (Appeal and Review) Act 2001* for the purposes of appeals referred to in paragraph (c).

## **Part 10 Modification and revocation of orders**

### **22 Modification of orders**

- (1) A relevant enforcement authority that gives a development control order may, at any time, modify the order (including a modification of the period specified for compliance with the order).

- (2) Except in the case of a development control order given by the Minister or the Planning Secretary, a modification may only be made if the person to whom the order is given agrees to that modification.

## **23 Revocation of orders**

- (1) A development control order given by the Minister may be revoked by the Minister at any time, and an order given by the Planning Secretary may be revoked by the Minister or the Planning Secretary at any time.
- (2) A development control order given by a consent authority may be revoked by the consent authority at any time.
- (3) A development control order given by a council may be revoked by the council at any time.
- (4) A development control order given by an authorised fire officer may be revoked by an authorised fire officer at any time.

## **24 Minister may revoke or modify a council's order**

- (1) The Minister may revoke or modify a development control order given by a council.
- (2) Notice of the revocation or modification must be given to the council and the person to whom the development control order was given.
- (3) The revocation or modification takes effect from the date specified in the Minister's notice. The date may be the date on which the order was given by the council or a later date.
- (4) The Minister may prohibit a council from re-making a development control order that is revoked or modified under this clause, totally or within such period or except in accordance with such terms and conditions (if any) as the Minister may specify.
- (5) Notice of a prohibition may be given in the same notice as notice of the revocation or modification of a development control order or in a separate notice.

## **25 Limitation on Minister's orders**

The Minister must not take any action under clause 24 that is inconsistent with, or has the effect of revoking or modifying, a development control order given by the council unless the Minister is of the opinion that:

- (a) it is necessary because of an emergency, or
- (b) it is necessary because of the existence or reasonable likelihood of a serious risk to health or safety, or
- (c) the order relates to a matter of State or regional significance, or
- (d) the order relates to a matter in which the intervention of the Minister is necessary in the public interest.

# **Part 11 Effect of orders and compliance with orders**

## **26 Effect of order on successors in title**

A development control order given to a person binds any person claiming through or under or in trust for or in succession to the person or who is a subsequent owner or occupier to the person, as if the order had been given to that person.

**27 Period for compliance with order**

- (1) A development control order must specify a reasonable period within which the terms of the order are to be complied with.
- (2) However, a development control order may require immediate compliance with its terms in circumstances which the person who gives the order believes constitute a serious risk to health or safety or an emergency.

**28 Continuing effect of orders**

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

**29 Development consent or approval not required to comply with order**

A person who carries out work in compliance with a requirement of a development control order does not have to make an application under this Act for consent or approval to carry out the work.

**30 Compliance with order under clause 1 (2)**

A person complies with a requirement of an order under clause 1 (2) by submitting to the relevant enforcement authority that gives the order such matters as the person would be required to submit if applying to a consent authority for development consent to carry out the work.

**31 Compliance with orders by occupiers or managers**

If an occupier or manager complies with a development control order, the occupier or manager may (unless the occupier or manager has otherwise agreed):

- (a) deduct the cost of so complying (together with interest at the rate currently prescribed by the Supreme Court rules in respect of unpaid judgment debts) from any rent payable to the owner, or
- (b) recover the cost (and that interest) from the owner as a debt in any court of competent jurisdiction.

**32 Occupier of land may be required to permit owner to carry out work**

- (1) A relevant enforcement authority that gives a development control order may order the occupier of any land to permit the owner of the land to carry out specified work on the land, being work that is, in the relevant authority's opinion, necessary to enable the requirements of this Act or the regulations or of any development control order to be complied with.
- (2) An occupier of land on whom such an order is served must, within 2 days after the order is served, permit the owner to carry out the work specified in the order.
- (3) If an order under this clause is in force, the owner of the land concerned is not guilty of an offence arising from his or her failure to comply with the requirements of this Act or the regulations, or of any development control order, that is caused by the occupier of the land refusing to permit the owner to carry out the work specified in the order.

- (4) Subclause (3) applies only if the owner of the land satisfies the Court that the owner has, in good faith, tried to comply with the requirements concerned.

### **33 Failure to comply with order—carrying out of work by consent authority**

- (1) A relevant enforcement authority that gives a development control order may do all such things as are necessary or convenient to give effect to the terms of the order (including the carrying out of any work required by the order) if the person to whom the order was given fails to comply with the terms of the order.
- (2) The relevant enforcement authority may exercise the relevant authority's functions under this clause irrespective of whether the person required to comply with the order has been prosecuted for an offence against this Act.
- (3) In any proceedings before the Land and Environment Court that are brought by a relevant enforcement authority that gave a development control order to a person as a result of the person's failure to comply with the order, the Court may, at any stage of the proceedings, order the relevant enforcement authority to exercise the authority's functions under this clause. Having made such an order, the Court may continue to hear and determine the proceedings or may dismiss the proceedings.
- (4) If the Minister or the Planning Secretary gave the development control order, the Minister's or Planning Secretary's functions under this clause may be exercised by the Planning Ministerial Corporation.

### **34 Recovery of expenses by relevant enforcement authority for carrying out work**

- (1) If a relevant enforcement authority takes action under clause 33 to give effect to a development control order by demolishing a building, the authority may remove any materials concerned.
- (2) The relevant enforcement authority may sell those materials but only if the relevant authority's expenses in giving effect to the terms of the development control order are not paid to the authority within 14 days after removal of the materials.
- (3) If the proceeds of such a sale exceed the expenses incurred by the relevant enforcement authority in relation to the demolition and the sale, the relevant authority:
- (a) may deduct out of the proceeds of the sale an amount equal to those expenses, and
  - (b) must pay the surplus to the owner on demand.
- (4) If the proceeds of sale do not exceed those expenses, the relevant enforcement authority:
- (a) may retain the proceeds, and
  - (b) may recover the deficiency (if any) together with the authority's costs of recovery from the owner as a debt.
- (5) Materials removed that are not saleable may be destroyed or otherwise disposed of.
- (6) A relevant enforcement authority that carries out work under clause [33] in relation to development for which an amount of security has been provided to the authority:
- (a) may be recompensed for the work from the security if the security is more than the costs of carrying out the work, and

- (b) must pay any surplus remaining to the person entitled to it on demand.
- (7) Any expenses incurred under this clause by a relevant enforcement authority that gave a development control order, together with all associated costs, may be recovered by the authority in any court of competent jurisdiction as a debt due to the authority by the person required to comply with the order.
- (8) The expenses are to be reduced by the amount of any proceeds of any sale under this clause or the amount of any security provided in respect of development to which the order relates.
- (9) Nothing in this clause affects the owner's right to recover any amount from any lessee or other person liable for the expenses concerned.
- (10) The recovery of costs and expenses by a relevant enforcement authority under this clause does not include the costs and expenses of court proceedings, but nothing in this clause prevents the authority from receiving costs as between party and party in respect of those proceedings.

### **35 Enforcement of orders by cessation of utilities**

- (1) This clause applies in relation to a failure to comply with any of the following development control orders:
  - (a) a brothel closure order,
  - (b) a stop use order in respect of such classes of residential, tourist or other development as are prescribed by the regulations.
- (2) In this clause, the *Court* means the Land and Environment Court and, in relation to a brothel closure order, includes the Local Court.
- (3) If a person fails to comply with a development control order to which this clause applies, the Court may, on the application of the person who gave the order, make an order (a *utilities order*) directing that a provider of water, electricity or gas to the premises concerned cease to provide those services.
- (4) A utilities order is not to be made in respect of a failure to comply with a development control order that is a stop use order unless the Court is satisfied that the failure has caused or is likely to cause a significant adverse impact on health, safety or public amenity.
- (5) A utilities order may apply to the whole or part of the premises.
- (6) A utilities order ceases to have effect on the date specified in the utilities order, or 3 months after the order is made, whichever occurs first.
- (7) An application for a utilities order must not be made unless not less than 7 days notice of the proposed application is given to the following persons:
  - (a) any person to whom the development control order was given,
  - (b) any provider of water, electricity or gas to the premises who is affected by the application,
  - (c) any owner or occupier of the premises.
- (8) An owner or occupier of premises, or a provider of water, electricity or gas to premises, who is affected by an application for a utilities order is entitled to be heard and represented in proceedings for the order.
- (9) In determining whether to make a utilities order, the Court is to take into consideration the following matters:
  - (a) the effects of the failure to comply with the development control order,
  - (b) the uses of the premises,



- (c) the impact of the order on the owner, occupier or other users of the premises,
  - (d) whether health, safety or public amenity will be adversely affected by the order,
  - (e) any other matter the Court thinks appropriate.
- (10) A utilities order must not be made for premises, or any part of premises, used for residential purposes unless the regulations authorise the making of a utilities order.
- (11) A provider of water, electricity or gas must comply with a utilities order, despite any other law or agreement or arrangement applying to the provision of water, electricity or gas to the premises, or part of the premises, concerned.
- (12) No compensation is payable to any person for any damage or other loss suffered by that person because of the making or operation of a utilities order or this clause.
- (13) A provider of water, electricity or gas must not, during a period that a utilities order is in force in relation to premises, or part of premises, require payment for the provision of water, electricity or gas services to the premises or part of the premises (other than services related to the implementation of the order).
- (14) The Court may make a utilities order when it determines an appeal against a development control order, if subclauses (7) and (8) have been complied with.

## Part 12 Compliance cost notices

### 36 Compliance cost notices

- (1) A relevant enforcement authority that gives a development control order to a person may also serve a compliance cost notice on the person.
- (2) A **compliance cost notice** is a notice in writing requiring the person on whom it is served to pay all or any reasonable costs and expenses incurred by the relevant enforcement authority in connection with:
- (a) monitoring action under the development control order, and
  - (b) ensuring that the development control order is complied with, and
  - (c) any costs or expenses relating to an investigation that leads to the giving of the development control order, and
  - (d) any costs or expenses relating to the preparation or serving of the notice of the intention to give the development control order, and
  - (e) any other matters associated with the development control order.
- (3) A compliance cost notice 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.
- (4) The relevant enforcement authority may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (5) If the person on whom a compliance cost notice is served 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.
- (6) The regulations may make provision for or with respect to the following:

- (a) the issue of compliance cost notices,
- (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.

## Part 13 Miscellaneous

### 37 Combined orders

A person who gives a development control order may include 2 or more orders in the same instrument.

### 38 Orders may be given to 2 or more persons jointly

If appropriate in the circumstances of the case, a development control order may direct 2 or more people to do the thing specified in the order jointly.

### 39 Notice in respect of land or building owned or occupied by more than one person

- (1) If land, including land on which a building is erected, is owned or occupied by more than one person:
  - (a) a development control order in respect of the land or building is not invalid merely because it was not given to all of those owners or occupiers, and
  - (b) any of those owners or occupiers may comply with such a development control order without affecting the liability of the other owners or occupiers to pay for or contribute towards the cost of complying with the order.
- (2) Nothing in this Part affects the right of an owner or occupier to recover from any other person all or any of the expenses incurred by the owner or occupier in complying with such a development control order.

## 9.2 Consequential and statutory revision amendments

### [1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*development control order* means an order under Division 9.3.

### [2] Section 4, definition of "owner"

Omit “and includes, in Division 2A of Part 6, in relation to a building, the owner of the building or the owner of the land on which the building is erected”.

### [3] Section 4 (1), definition of “Tier 1 maximum penalty, Tier 2 maximum penalty or Tier 3 maximum penalty”

Omit the definition. Insert instead:

*Tier 1, Tier 2 or Tier 3 monetary penalty*, in relation to an offence, indicates the maximum monetary penalty that a court may impose for the offence—see section 9.# [125A-125C] for the relevant maximum amounts.

### [4] Section 74C Preparation of development control plans

Omit “an order under Division 2A of Part 6” from section 74C (1) (d). Insert instead “a development control order”.

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**[5] Section 110 Definition of “activity”**

Omit “an order under Division 2A” from section 110 (1) (j) of the definition. Insert instead “a development control order”.

**[6] Section 115ZF Application of other provisions of Act**

Omit “Division 2A of Part 6 does not apply to critical State significant infrastructure” from section 115ZF (4). Insert instead “A development control order cannot be given in relation to critical State significant infrastructure”.

**[7] Part 6 Implementation and enforcement**

Re-number and transfer the Part as Part 9 and re-number the sections in the Part (as amended by this Act and the Planning Administration Act) with decimal numbering commencing with section 9.1. Re-number Divisions 1 and 1AA as Division 9.1, Division 1C as Division 9.2, Division 2B as Division 9.4, Division 3 as Division 9.5 and Division 4 as Division 9.6. Amend any cross-references in the Act to the Part, the Divisions of the Part or sections accordingly.

**[8] Part 6 (renumbered as Part 9), Divisions 1 and 1AA**

Merge the Divisions into a single Division with the following heading:

**Division 9.1 Ministerial and other enforcement powers**

**[9] Section 117C Definitions**

Omit the section.

**[10] Part 6 (renumbered as Part 9), Division 1C heading**

Omit the heading. Insert instead:

**Division 9.2 Investigative powers of departmental or council officers**

**[11] Section 119M Offences**

Omit section 119M (4). Insert at the end of the section:  
Maximum penalty: Tier 3 monetary penalty.

**[12] Part 6 (renumbered as Part 9), Division 2 Settlement of disputes**

Omit the Division. Transfer section 121 in the Division to Part 10 (Miscellaneous) as the second section of that Part numbered as section 10.2.

**[13] Section 122 Definitions**

Omit “an order under Division 2A” from section 122 (b) (v). Insert instead “a development control order”.

**[14] Part 6 (renumbered as Part 9), Division 2B, heading**

Omit the heading. Insert instead:

**Division 9.4 Monitoring and environmental audits**

**[15] Section 122A Application of Division**

Omit section 122A (1) and (1A). Insert instead:

(1) This Division applies to:

- (a) the carrying out of State significant development that has development consent under Part 4, and
- (b) the carrying out of State significant infrastructure approved under Division 5.2 of Part 5, and
- (c) the carrying out of a project that was approved under Part 3A when that Part was in force or continued in operation.

In this Division, any such development, infrastructure or project is referred to as a project.

**[16] Section 122B (3) (a)**

Omit “referred to in Division 4 of Part 3A”. Insert instead “referred to in Division 5.2”.

**[17] Section 122E Offences relating to monitoring and environmental audits**

Omit section 122EM (4). Insert at the end of the section:

Maximum penalty: Tier 3 monetary penalty.

**[18] Part 6 (renumbered as Part 9), Division 3, heading**

Omit the heading. Insert instead:

### **Division 9.5 Civil enforcement proceedings**

**[19] Part 6 (renumbered as Part 9), Division 4, heading**

Omit the heading. Insert instead:

### **Division 9.6 Criminal offences and proceedings**

**[20] Section 125 Offences against this Act and the regulations**

Omit section 125 (1)–(3).

**Consultation note.** All relevant offences against the Act or regulations will be identified and the appropriate maximum penalty specified at the end of each relevant provision constituting the offence.

**[21] Section 125 (4)**

Omit “an order under Division 2A”. Insert instead “a development control order”.

**[22] Sections 125A, 125B and 125C**

Omit the sections. Insert instead (with appropriate decimal section numbers):

**Maximum monetary penalty—Tier 1, Tier 2 or Tier 3**

- (1) If *Tier 1*, *Tier 2* or *Tier 3* is specified as the maximum monetary penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and liable to a monetary penalty not exceeding the relevant penalty specified in this section. If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified.

**Maximum penalty—Tier 1**

- (1) If *Tier 1* is specified as the maximum monetary penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and (subject to subsection (2)) liable to a penalty not exceeding:
  - (a) in the case of a corporation:

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- (i) \$5 million, and
      - (ii) for a continuing offence—a further \$50,000 for each day the offence continues, or
    - (b) in the case of an individual:
      - (i) \$1 million, and
      - (ii) for a continuing offence—a further \$10,000 for each day the offence continues.
  - (2) A Tier 1 maximum monetary penalty applies only if the prosecution establishes (to the criminal standard of proof):
    - (a) that the offence was committed intentionally, and
    - (b) that the offence:
      - (i) caused or was likely to cause significant harm to the environment, or
      - (ii) caused the death of or serious injury or illness to a person.
- For the Tier 1 maximum monetary penalty to apply, the court attendance notice or application commencing the proceedings must allege that those factors apply to the commission of the offence.
- (3) If a Tier 1 maximum monetary penalty is specified in this Act but does not apply because of subsection (2), then a Tier 2 maximum penalty applies instead.
  - (4) If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified.

## Maximum penalty—Tier 2

- (1) If **Tier 2** is specified as the maximum penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and liable to a penalty not exceeding:
  - (a) in the case of a corporation:
    - (i) \$2 million, and
    - (ii) for a continuing offence—a further \$20,000 for each day the offence continues, or
  - (b) in the case of an individual:
    - (i) \$500,000, and
    - (ii) for a continuing offence—a further \$5,000 for each day the offence continues.
- (2) If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified.

## Maximum penalty—Tier 3

- (1) If **Tier 3** is specified as the maximum penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and liable to a penalty not exceeding:
  - (a) in the case of a corporation:
    - (i) \$1 million, and
    - (ii) for a continuing offence—a further \$10,000 for each day the offence continues, or

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- (b) in the case of an individual:
  - (i) \$250,000, and
  - (ii) for a continuing offence—a further \$2,500 for each day the offence continues.
- (2) If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified.

**Note.** Section # [157 (1A)] provides that the regulations may create offences and impose a maximum monetary penalty for an offence against the regulations not exceeding \$110,000.

**[23] Section 147 Disclosure of political donations and gifts**

Omit “A person is guilty of an offence under section 125 in connection with the obligations under this section only if the person fails to make a disclosure of a political donation or gift in accordance with this section” from section 147 (11). Insert instead “A person is guilty of an offence against this section if the person fails to make a disclosure of a political donation or gift in accordance with this section”.

**[24] Section 148 Disclosure and misuse of information**

Omit “an order under Division 2A of Part 6” from section 148 (3) (d). Insert instead “a development control order”.

**[25] Section 148 (5)**

Omit the subsection. Insert at the end of the section:

Maximum penalty: Tier 3 monetary penalty or imprisonment for 6 months, or both.

**[26] Section 148B (2)**

Omit the subsection. Insert at the end of section 148B (1):

Maximum penalty: Tier 3 monetary penalty.

**[27] Section 157 Regulations**

Insert after section 157 (1):

- (1A) The regulations may create offences punishable by a monetary penalty not exceeding \$110,000.

## **Schedule 10 Amendment of Environmental Planning and Assessment Act 1979 No 103—Miscellaneous**

### **10.1 Principal amendments**

**[1] Section 157 Regulations**

Omit “fire safety” from section 157 (1) (d). Insert instead “fire and building safety”.

**[2] Section 159**

Omit the section. Insert instead (with appropriate decimal section number):

**Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any Act or instrument that amends this Act (whether before or after the commencement of this section).
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **10.2 Consequential and statutory revision amendments**

**[1] Part 7A Liability in respect of contaminated land**

Convert Part 7A to Schedule 6 to the Act (with the following heading); rename sections in the Part as clauses and renumber them commencing with clause 1; and rename and renumber any cross references accordingly:

#### **Schedule 6 Liability in respect of contaminated land**

**[2] Part 8 Miscellaneous**

Renumber Part 8 as Part 10; renumber the sections in the Part (as amended by this Act) with decimal numbering commencing with section 10.1; and renumber any cross references accordingly.

**[3] Section 155**

Omit the section. Insert instead (with appropriate decimal section number):

**Paper subdivisions**

- (1) The regulations may make provision for or with respect to subdivisions to which Schedule 5 applied immediately before its repeal by the *Environmental Planning and Assessment Amendment Act 2017*.

- (2) In particular, regulations may be made with respect to any matter in relation to which that Schedule (or regulations under that Schedule) made provision immediately before its repeal.

**[4] Section 10.#**

Insert after section 155 (with appropriate decimal section number):

**Liability in respect of contaminated land**

Schedule 6 contains provisions relating to liability in respect of contaminated land.

**[5] Schedule 5 Paper subdivisions**

Omit the Schedule.

**Consultation note.** The provisions of this Schedule are being transferred to the regulations under the Act.

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

Omit the Schedule.

**Consultation note.** The provisions of this Schedule are being transferred to the regulations under the Act.

**[7] Schedule 6A Transitional arrangements-repeal of Part 3A**

Omit the Schedule.

**Consultation note.** The provisions of this Schedule are being transferred to the regulations under the Act. The transferred provisions are to be amended to prevent any further modification of approvals for transitional Part 3A projects under the former Part 3A modification provisions, to enable those projects to become State significant development or State significant infrastructure and to make provision with respect to any outstanding Part 3A concept plans.

**[8] Schedule 7 Transferred provisions**

Omit the Schedule.

**Consultation note.** The provisions of this Schedule are being transferred to the regulations under the Act.



## **Schedule 11 Consequential amendments of other Acts and instruments**

### **11.1 Building Professionals Act 2005 No 115**

**Consultation note.** Consequential amendments to be made.

### **11.2 Greater Sydney Commission Act 2015 No 57**

#### **[1] Section 3 Definitions**

Omit the definition of *Sydney planning panel*. Insert instead:

*Sydney district planning panel* means a Sydney district planning panel constituted under Part 2 of the Planning Act.

#### **[2] Section 11 Delegation of Commission's functions**

Omit section 11 (3) (f) and (g). Insert instead:

- (f) a regional planning panel constituted under Part 2 of the Planning Act,
- (f) the Independent Planning Commission constituted under Part 2 of the Planning Act,

#### **[3] Part 3 Sydney planning panels**

Omit the Part.

### **11.3 Heritage Act 1977 No 136**

#### **[1] Sections 4, 34, 36, 71, 72, 73, 78, 79, 79A**

Omit "Planning Assessment Commission" wherever occurring. Insert instead "Independent Planning Commission".

### **11.4 Independent Commission Against Corruption Act 1988 No 35**

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

Omit section 74C (3C). Insert instead:

- (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 Independent Planning Commission, of a Sydney district or regional planning panel or of a local planning panel because of corrupt conduct by the member.

### **11.5 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007**

#### **[1] Clause 17N**

Omit the clause. Insert instead:

#### **17N Constitution of Gateway Panel**

- (1) The Independent Planning Commission is to constitute a subcommittee of the Commission as the Mining and Petroleum Gateway Panel.

- (2) The Commission must consult with the Minister for Planning, the Minister for Resources and Energy and the Minister for Primary Industries on the proposed membership of the Gateway Panel.

**[2] Clause 17P**

Omit the clause. Insert instead:

**17P Members of Gateway Panel**

- (1) The Gateway Panel is to consist of not less than 3 persons appointed by the Independent Planning Commission. A member of the Commission may be appointed as a member of the Gateway Panel.
- (2) A person is qualified for appointment as a member of the Gateway Panel if the person has expertise in any one or more of the disciplines of agricultural science, hydrogeology or mining and petroleum development.
- (3) In appointing the members of the Gateway Panel, the Commission is to ensure, as far as practicable, that the members have expertise in a mix of the disciplines referred to in subclause (2).
- (4) One of the members of the Gateway Panel is, by the member's instrument of appointment or a further instrument signed by the Commission, to be appointed as the chairperson of the Panel.

**[3] Clause 17R Term and other conditions of office**

Omit "Minister" wherever occurring. Insert instead "Independent Planning Commission".

**[4] Clause 17T Procedure at meetings**

Omit "Minister". Insert instead "Independent Planning Commission".

**11.6 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

**Schedule 2 Public offices**

Omit "Planning Assessment Commission". Insert instead "Independent Planning Commission".

## **Schedule 12 Repeal of Acts**

The following Acts are repealed:

*Environmental Planning and Assessment Amendment Act 2008* No 36

*Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* No 22

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

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