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# Planning Bill 2013 - Exposure Draft

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New South Wales

## Planning Bill 2013

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New South Wales

## Planning Bill 2013

No. , 2013

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### **A Bill for**

An Act relating to planning and sustainable growth in New South Wales.

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See also the Planning Administration Bill 2013.

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# Planning Bill 2013 - Exposure Draft

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Clause 1.1      Planning Bill 2013

Part 1            General

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

## **Part 1    General**

### **Division 1.1    Preliminary**

#### **1.1    Name of Act**

This Act is the *Planning Act 2013*.

#### **1.2    Commencement of Act**

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

#### **1.3    Object of Act [cf s 5]**

- (1) The object of this Act is to promote the following:
  - (a) economic growth and environmental and social well-being through sustainable development,
  - (b) opportunities for early and on-going community participation in strategic planning and decision-making,
  - (c) the co-ordination, planning, delivery and integration of infrastructure and services in strategic planning and growth management,
  - (d) the timely delivery of business, employment and housing opportunities (including for housing choice and affordable housing),
  - (e) the protection of the environment, including:
    - (i) the conservation of threatened species, populations and ecological communities, and their habitats, and
    - (ii) the conservation and sustainable use of built and cultural heritage.
  - (f) the effective management of agricultural and water resources,
  - (g) health, safety and amenity in the planning, design, construction and performance of individual buildings and the built environment,
  - (h) efficient and timely development assessment proportionate to the likely impacts of proposed development,
  - (i) the sharing of responsibility for planning and growth management between all levels of government.
- (2) Sustainable development is achieved by the integration of economic, environmental and social considerations, having regard to present and future needs, in decision-making about planning and development.

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Planning Bill 2013

Clause 1.4

General

Part 1

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## 1.4 Overview of Act

The following represents an overview of this Act:

*[A Diagram to be inserted before the Bill is introduced to provide a visual representation of key elements of the Bill]*

## Division 1.2 Interpretation

### 1.5 Definitions - general [cf s 4]

- (1) Key expressions used in this Act are defined in this Division.
- (2) Schedule 1 contains a Dictionary of expressions used in this Act and other interpretative provisions.

**Note.** The defined expressions apply generally to the planning legislation, which comprises this Act, the *Planning Administration Act 2013* and the instruments under those Acts.

### 1.6 Development [cf s 4]

- (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 the planning control provisions of a local plan.
- (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).

### 1.7 Strategic plans and planning control provisions

- (1) For the purposes of this Act, a **strategic plan** is any of the following:
  - (a) a NSW planning policy,
  - (b) a regional growth plan,
  - (c) a subregional delivery plan,
  - (d) a local plan.

**Note.** See section 3.1 for the definition of the “relevant planning authority” for the purposes of making strategic plans.

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Clause 1.8      Planning Bill 2013

Part 1            General

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- (2) For the purposes of this Act, the *planning control provisions* of a local plan comprise:
- (a) the planning control provisions of the local plan (containing land use zoning, categories of development and other land use provisions) and the instruments that make, amend or replace those provisions, and
  - (b) the provisions of any transitional planning instrument, being environmental planning instruments under the former Act that are taken by this Act to be a part of the planning control provisions of a local plan.

## 1.8 Planning approvals

For the purposes of this Act, a *planning approval* is any of the following:

- (a) a development consent (being a consent under Part 4 to carry out development, and includes a complying development certificate),
- (b) a State infrastructure approval (being an approval under Division 5.2 of Part 5 to carry out State infrastructure development),
- (c) a certificate under Part 8 other than a compliance certificate (being a construction certificate, an occupation certificate, a subdivision works certificate or a subdivision certificate).

## 1.9 Infrastructure plans and contributions

- (1) For the purposes of this Act, an *infrastructure plan* is a local infrastructure plan or a growth infrastructure plan.
- (2) For the purposes of this Act, an *infrastructure contribution* is a local infrastructure contribution, or a regional infrastructure contribution, set out in the contribution provisions of a local plan.
- (3) For the purposes of this Act, a *biodiversity offset contribution* is a biodiversity offset contribution set out in the contribution provisions of a local plan.

## 1.10 Building work and subdivision work

- (1) For the purposes of this Act, *building work* means any physical activity involved in the erection of a building.
- (2) For the purposes of this Act, *subdivision work* means any physical activity authorised to be carried out in connection with subdivision under the conditions of a development consent for the subdivision of land. For the purposes of this subsection, a development consent includes a State infrastructure approval if the regulations under Part 5 apply Part 8 to subdivision work under a State infrastructure approval.



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Planning Bill 2013

Clause 1.11

General

Part 1

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**Note.** See Schedule 1 for the meaning of “subdivision of land”.

## 1.11 Planning bodies

For the purposes of this Act, a *planning body* is any of the following:

- (a) the Planning Ministerial Corporation,
- (b) the Planning Assessment Commission,
- (c) a regional planning panel,
- (d) a subregional planning board,
- (e) a planning committee or panel established by the Minister or the Director-General.

## 1.12 Development likely to significantly affect threatened species

For the purposes of this Act, development is *likely to significantly affect threatened species* if:

- (a) it is carried out in critical habitat, or
- (b) it is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

**Note.** See clause 1.5 of Schedule 1 for the determination of whether proposed action is likely to have such a significant effect. Schedule 1 defines threatened species, populations or ecological communities by reference to the *Threatened Species Conservation Act 1995* or, in the case of fish and marine vegetation, Part 7A of the *Fisheries Management Act 1994*.

## Division 1.3 Development - general provisions

### 1.13 Categories of development

For the purposes of this Act, there are the following categories of development:

- (a) exempt development (being development so declared by a local plan that is exempt from the assessment and approval requirements of this Act),
- (b) complying development (being development so declared by a local plan that requires development consent under Part 4 by a consent authority or certifier),
- (c) regionally significant development (being development so declared by a local plan that requires development consent under Part 4 from a regional planning panel),
- (d) State significant development (being development so declared by a local plan or the Minister that requires development consent under Part 4 from the Minister),

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Clause 1.14      Planning Bill 2013

Part 1            General

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- (e) EIS assessed development (being development so declared by a local plan that requires development consent under Part 4 and an environmental impact statement before consent can be granted, and which gives objectors appeal rights),

**Note.** Some EIS assessed development may also be regionally or State significant development. Under the former Act, a similar category of development was called designated development.

- (f) development requiring development consent under Part 4 (including complying development and regionally or State significant development),
- (g) Part 5 environmental impact assessment development (being relevant development that is subject to environmental impact assessment under Division 5.1 of Part 5),
- (h) State infrastructure development (being development so declared by a local plan or the Minister that requires the approval of the Minister under Division 5.2 of Part 5),
- (i) public priority infrastructure (being development so declared by the Minister under Division 5.3 of Part 5 that does not require further planning approval).

## **1.14 Exempt development** [cf s 76 (2) and (3)]

- (1) The carrying out of exempt development does not require:
  - (a) development consent, or
  - (b) Part 5 environmental impact assessment, or
  - (c) State infrastructure approval, or
  - (d) a certificate under Part 8.
- (2) Exempt development is development that is declared to be exempt development by the planning control provisions of a local plan because of its minor impact.

## **1.15 Development that requires development consent under Part 4** [cf ss 76 (1), 76A]

The carrying out of development requires development consent under Part 4 if:

- (a) the planning control provisions of a local plan provide that the development may be carried out with development consent or declare that it is complying development, and
- (b) the development is not exempt development, and
- (c) the development is not State infrastructure development or public priority infrastructure.

**Note.** See also section 5.10 (5).

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Clause 1.16

General

Part 1

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## **1.16 Development that requires State infrastructure approval under Part 5**

The carrying out of development requires a State infrastructure approval if:

- (a) the development is declared under Division 5.2 of Part 5 to be State infrastructure development, and
- (b) the development is not public priority infrastructure, and
- (c) the development is not exempt development (unless the application for State infrastructure approval specifically includes the development in the application for which approval is sought).

## **1.17 Carrying out development without or contrary to planning approval (other than Part 8 certificate)**

- (1) A person must not carry out development without a planning approval that is required under this Act for the carrying out of that development.
- (2) A person must not, in carrying out development, contravene a planning approval that applies to the carrying out of that development.
- (3) In this section, *planning approval* does not include a certificate under Part 8.

Maximum penalty: Tier 1.

**Note.** For civil enforcement - see Division 10.3 of Part 10.

## **1.18 Building work etc without or contrary to Part 8 certificate**

- (1) In this section, *building work or related activity* means:
  - (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 Part 8 applies.
- (2) A person must not carry out any building work or related activity without a certificate under Part 8 that is required by this Act for that work or activity.
- (3) A person must not, in carrying out any building work or related activity, contravene a certificate under Part 8 that applies to the carrying out of that work or activity.

Maximum penalty: Tier 1.

**Note.** For civil enforcement - see Division 10.3 of Part 10.

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## **1.19    Carrying out development that is prohibited**

- (1) A person must not carry out any development that is prohibited by the planning control provisions of a local plan unless the carrying out of the development is permitted by a strategic compatibility certificate, a State infrastructure approval, as public priority infrastructure or under any provision of this Act.

**Note.** Section 4.30 (4) enables consent for State significant development that is partly prohibited.

- (2) For the purposes of this section, development that the planning control provisions of a local plan declare cannot be carried out with or without development consent is taken to be development prohibited by those provisions.

Maximum penalty: Tier 1.

**Note.** For civil enforcement - see Division 10.3 of Part 10.

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Clause 2.1

Community participation

Part 2

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## Part 2 Community participation

### 2.1 The Community Participation Charter

- (1) The Community Participation Charter comprises the following principles:
  - (a) The community is to be provided with opportunities to participate in planning.
  - (b) The community is to have access to information that is easy to read and obtain so that planning issues and decisions can be better understood.
  - (c) The community is to be provided with opportunities to participate in strategic planning as soon as possible before decisions are made.
  - (d) The community has a right to be informed about planning decisions which affect them.
  - (e) Community participation in development decisions is to be proportionate to the significance and impact of the proposed development.
  - (f) Planning authorities are to seek the views of the community by selecting participation methods that are representative, inclusive and appropriate to the needs of the community.
  - (g) Planning authorities are to make decisions in an open and transparent way and provide the community with reasons for their decisions (including how community views have been taken into account).
- (2) For the purposes of the Community Participation Charter and this Act, ***community participation*** in strategic planning, planning decisions and other planning matters is the process of engaging the community (including industry, businesses, residents, interest groups and organisations) in those planning matters.

### 2.2 Planning authorities and functions to which Charter applies

- (1) The Community Participation Charter applies to the following planning authorities:
  - (a) the Minister,
  - (b) the Director-General,
  - (c) the Planning Assessment Commission,
  - (d) a regional planning panel,
  - (e) a subregional planning board,

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Clause 2.3      Planning Bill 2013

Part 2            Community participation

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- (f) a planning committee or panel established under the *Planning Administration Act 2013* by the Minister or the Director-General,
  - (g) a council,
  - (h) a relevant planning authority under Part 3,
  - (i) a consent authority under Part 4,
  - (j) a determining authority under Division 5.1 of Part 5.
- (2) The Community Participation Charter applies to the exercise of the following planning functions:
- (a) functions under section 2.4 (Community participation plans),
  - (b) strategic planning functions under Part 3,
  - (c) development consent functions under Part 4,
  - (d) environmental impact assessment functions under Division 5.1 of Part 5 if an environmental or species impact statement is required,
  - (e) State infrastructure approval functions under Division 5.2 of Part 5,
  - (f) infrastructure plan functions under Part 7.

## **2.3 Applying the Charter in the exercise of planning functions**

A planning authority is, subject to the planning legislation, to act consistently with the Community Participation Charter when exercising a planning function to which the Charter applies.

## **2.4 Community participation plans**

- (1) This section applies to the following planning authorities:
- (a) the Director-General,
  - (b) the Planning Assessment Commission,
  - (c) a regional planning panel,
  - (d) a subregional planning board,
  - (e) a council,
  - (f) a public authority prescribed by the regulations.
- (2) A planning authority to which this section applies is required to prepare a community participation plan that provides guidance on how it will undertake community participation when exercising planning functions to which the Community Participation Charter applies.
- Note.** Part 1 of Schedule 2 requires a proposed plan to be publicly exhibited for at least 28 days.
- (3) A community participation plan:

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Community participation

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- (a) is to incorporate the mandatory community participation requirements under section 2.6, and
  - (b) is to set out how and when the planning authority will provide other forms of discretionary community participation when exercising planning functions.
- (4) The council need not prepare a separate community participation plan if it includes all the matters required under this section in the community participation plan of the council referred to in section 402 (4) of the *Local Government Act 1993*.
- [Note: The Local Government Act will be amended to replace the term community engagement strategy with community participation plan.]*
- (5) Community participation plans are to be published on the NSW planning website.
  - (6) Community participation plans are to be reviewed periodically.
  - (7) The regulations may make provision for or with respect to the form, content and procedures for making and publishing community participation plans (or any amendment of those plans). The regulations may provide for the inclusion in any such plans of guidelines relating to the responsibilities of the community with respect to community participation.

## **2.5 Public notice of community participation in proposed strategic plans**

- (1) Before a proposed strategic plan is prepared for public exhibition, the planning authority is to give public notice of the ways in which the community can participate in the preparation of the proposed plan.
- (2) The regulations may prescribe the manner in which the public notice is to be given.

## **2.6 Mandatory community participation requirements**

Part 1 of Schedule 2 sets out the mandatory requirements for community participation by planning authorities with respect to the exercise of planning functions to which the Community Participation Charter applies.

**Note.** In the case of proposed planning control provisions, mandatory community participation requirements for the making of the proposed provisions are provided in the gateway determination (see section 3.21).

## **2.7 Online planning services and information**

- (1) The Director-General is to establish and facilitate the online delivery of planning services and information (including the NSW planning website).

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(2) Part 3 of Schedule 2 contains provisions with respect to those matters.



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Clause 3.1

Strategic planning

Part 3

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## Part 3 Strategic planning

### Division 3.1 Introductory and strategic planning principles

#### 3.1 Definition of “relevant planning authority”

In this Part:

*relevant planning authority* for a strategic plan means:

- (a) in the case of a NSW planning policy or regional growth plan - the Director-General, or
- (b) in the case of a subregional delivery plan - the relevant subregional planning board, or
- (c) in the case of a local plan - the relevant planning authority designated under Division 3.3 to prepare and submit to the Minister proposals or provisions for the relevant provisions of the local plan.

**Note.** This Act generally defines a “strategic plan” as a NSW planning policy, a regional growth plan, a subregional delivery plan or a local plan.

#### 3.2 Overview of Part

The following represents an overview of this Part:

*[Diagram 3 to be inserted here]*

#### 3.3 The strategic planning principles

The strategic planning principles that are to guide the preparation of strategic plans are as follows:

- Principle 1:** Strategic plans should promote the State’s economy and productivity through facilitating housing, retail, commercial and industrial development and other forms of economic activity, having regard to environmental and social considerations.
- Principle 2:** Strategic plans are to be integrated with the provision of infrastructure.
- Principle 3:** Strategic plans are to guide all decisions made by planning authorities and allow for streamlined development assessment.
- Principle 4:** Strategic planning is to provide opportunities for early community participation.
- Principle 5:** Planning authorities and State agencies are to co-operate constructively in the preparation and implementation of strategic plans.

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- Principle 6:** Strategic plans should reflect agreed planning outcomes in setting the planning vision for an area.
- Principle 7:** Strategic plans are to be standardised, easy to use and available online.
- Principle 8:** There should be monitoring and reporting of strategic planning outcomes.
- Principle 9:** Strategic plans are to be based on evidence, set realistically deliverable targets and take account of economic, environmental and social considerations.
- Principle 10:** Local plans should facilitate development that is consistent with agreed strategic planning outcomes and should not contain overly complex or onerous controls that may adversely impact on the financial viability of proposed development.

## **Division 3.2    NSW planning policies, regional growth plans and subregional delivery plans**

### **3.4    Preparation and content of NSW planning policies**

- (1) The Director-General may prepare draft NSW planning policies.
- (2) A draft NSW planning policy is to contain principles and policies in relation to strategic planning for the State, including:
  - (a) planning for infrastructure, and
  - (b) development assessment, and
  - (c) other planning related matters.

### **3.5    Preparation and content of regional growth plans**

- (1) The Director-General may prepare a draft regional growth plan for any region in the State.
- (2) A draft regional growth plan is to identify the following:
  - (a) the basis for strategic planning in the region,
  - (b) existing and proposed transport and other infrastructure for the region (including any priority infrastructure),
  - (c) regionally significant areas,
  - (d) targets for achieving the planning outcomes for the region (including housing, employment and environmental targets),
  - (e) actions required to be undertaken by planning authorities to achieve those targets,

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- (f) the basis on which planning authorities are to monitor and report on performance against those targets,
  - (g) the kind of development on any particular land in the region for which biodiversity offset contributions are proposed (unless identified in subregional delivery plans),
  - (h) any other matters the Director-General considers relevant to planning for the region.
- (3) If there is no subregional delivery plan for any part of the region, the draft regional growth plan may identify for that part of the region matters that may be identified in a subregional delivery plan (until there is a subregional delivery plan).

### **3.6 Preparation and content of subregional delivery plans**

- (1) A subregional planning board may prepare a draft subregional delivery plan for the subregion for which it has been established.
- (2) A draft subregional delivery plan is to identify the following:
  - (a) existing and proposed transport and other infrastructure for the subregion (including any priority infrastructure),
  - (b) significant areas in the subregion,
  - (c) how the housing, employment and environmental targets in the relevant regional growth plan are to be achieved in the subregion,
  - (d) proposed growth areas in the subregion and the proposed planning controls that should apply in those growth areas or the strategic planning process that should be undertaken by planning authorities to establish those planning controls,
  - (e) proposed exempt or complying development or development proposed for code assessment in the subregion,
  - (f) the kind of development on any particular land in the subregion for which biodiversity offset contributions are proposed,
  - (g) any other matters the subregional planning board considers relevant to planning for the subregion.
- (3) If there is no regional growth plan for any part of the subregion, the draft subregional delivery plan may identify for that part of the subregion matters that may be identified in a regional growth plan (until there is a regional growth plan).

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## **3.7 Making of NSW planning policies, regional growth plans and subregional delivery plans**

- (1) The relevant planning authority may submit a draft NSW planning policy, regional growth plan or subregional delivery plan it has prepared to the Minister.

**Note.** Part 1 of Schedule 2 requires a draft plan to be publicly exhibited for at least 28 days.

- (2) The Minister may make a NSW planning policy, regional growth plan or subregional delivery plan in the form in which it was submitted or with such modifications as the Minister considers appropriate. The Minister may decide not to make the draft policy or plan.
- (3) When submitting a draft policy or plan to the Minister, the relevant planning authority is to provide the Minister with the following:
- (a) any public submissions (or summary of submissions) that have been made about the draft policy or plan,
  - (b) any submissions that have been made by a public authority about the draft policy or plan,
  - (c) if the Planning Assessment Commission has held a public hearing into the draft policy or plan - the report of and any recommendations made by the Commission about the draft policy or plan.

## **3.8 Implementation of NSW planning policies, regional growth plans and subregional delivery plans**

- (1) A relevant planning authority is to give effect to:
- (a) NSW planning policies when preparing other draft strategic plans, and
  - (b) regional growth plans when preparing draft subregional delivery plans and local plans, and
  - (c) subregional delivery plans when preparing draft local plans.
- (2) In this section, a reference to preparing draft local plans is a reference to preparing draft provisions or proposals for local plans.

## **3.9 Provisions relating to NSW planning policies, regional growth plans and subregional delivery plans**

- (1) In this section, *strategic plan* means a NSW planning policy, regional growth plan or subregional delivery plan.

**Note.** Under the *Land Acquisition (Just Terms Compensation) Act 1991*, proposals identified in any such strategic plan for reservation of land for public purposes do not give rise to owner-initiated acquisition under that Act.

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- (2) A strategic plan is required to be published on the NSW planning website and has effect when so published. A strategic plan may be amended or repealed by a further strategic plan published on the NSW planning website.
- (3) The Minister may make or amend a strategic plan without compliance with the provisions of this Division relating to the conditions precedent to doing so in order to do any one or more of the following:
  - (a) to correct an obvious error or misdescription or to address matters that are of a consequential, transitional, machinery or other minor nature,
  - (b) to deal with matters that the Minister considers do not warrant compliance with those conditions precedent because they will not have any significant adverse impact on the environment or adjoining land,
  - (c) to deal in an expeditious manner with matters that give effect to strategic or infrastructure plans or that are of State, regional or subregional significance.
- (4) The relevant planning authority is to keep strategic plans under regular and periodic review to ensure they continue to achieve the objects of this Act having regard to changing circumstances.

## **Division 3.3 Local plans - general**

### **3.10 Local plans for local government and other areas**

- (1) A local plan is established for development in the local government area of each council (called the [*name of council*] Local Plan).
- (2) A local plan is also established for development in any other area of the State (including the coastal waters of the State) that is declared by the regulations to be a local plan area (called the [*name assigned by the regulations*] Local Plan).
- (3) The regulations may assign an area that is outside a local government area to be part of a specified adjoining local government area for the purposes of the local plan of that adjoining area. For the purposes of the planning legislation, the assigned area is taken to be a part of the local government area concerned.
- (4) The regulations may make transitional provisions relating to local plans when there is a change in the local government area of a council.

### **3.11 Composition of local plans**

A local plan established under this Division comprises the following:

#### **Part 1 - Strategic context:**

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An explanation of how NSW planning policies, regional growth plans and subregional delivery plans are given effect to in the area concerned (having regard to any applicable community strategic plan under section 402 of the *Local Government Act 1993*).

**Part 2 - Planning controls:**

Containing spatial and other provisions for the area concerned relating to land use zoning, the categories of development and other matters for which planning control provisions may be made under this or any other Act.

**Part 3 - Development guides:**

Containing guides with respect to development in the area concerned to give effect to the aims of planning control provisions and the objectives of land use zones, and to facilitate permissible development.

**Part 4 - Contributions:**

Containing provisions relating to the amount of local and regional infrastructure contributions, or biodiversity offset contributions, payable in respect of particular kinds of development in the area concerned.

**3.12 Making, amending or replacing provisions of local plans**

- (1) The Minister may, in accordance with this Part, make, amend or replace any provisions of a local plan.
- (2) The provisions of a local plan (other than the planning control provisions) may be made, amended or replaced by a Ministerial planning order.
- (3) The planning control provisions of a local plan may be made, amended or replaced by an instrument published on the NSW legislation website.

**Note.** Planning control provisions are also to be published on or accessible from the NSW planning website.

- (4) The Minister may delegate under the planning legislation to the council of the area of a local plan or to another public authority the making, amendment or replacement of any provisions of a local plan. The regulations may require the Minister to delegate any such function.

**Note.** Under proposed transitional arrangements, some former environmental planning instruments (such as SEPPs and local environmental plans under the former Act), and some former development control plans and contributions plans, will continue in force as part of the relevant provisions of a local plan.

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## 3.13 Relevant planning authority for provisions of local plan [cf s 54]

- (1) For the purposes of this Division, the *relevant planning authority* for the provisions of a local plan is as follows:
  - (a) the relevant council, subject to paragraphs (b) and (c),
  - (b) for the regional infrastructure or biodiversity offset contribution provisions - the Director-General,
  - (c) if the Minister so directs under subsection (2) for proposed provisions - the Director-General, a regional planning panel or any other person or body prescribed by the regulations.
- (2) The Minister may direct that the Director-General (or other person or body referred to in subsection (1) (c)) is the relevant planning authority for proposed provisions of a local plan in the following cases:
  - (a) the proposed provisions relate to a matter that, in the opinion of the Minister, is of State, regional or subregional planning significance,
  - (b) the Planning Assessment Commission or a regional planning panel has recommended to the Minister that the proposed provisions should be submitted to the Minister for consideration or that the proposed provisions should be made,
  - (c) the council for the area concerned has, in the opinion of the Minister, not carried out its obligations as a relevant planning authority in a satisfactory manner or has failed to comply with a direction of the Minister in relation to its functions as a relevant planning authority,
  - (d) the proposed provisions are to apply to an area that is not within the area of a council.
- (3) The functions of the relevant planning authority with respect to the submission to the Minister of proposed planning control provisions of a local plan are set out in Division 3.4.
- (4) The relevant planning authority may submit to the Minister draft provisions of a local plan (other than planning control provisions) it has prepared. The Minister may make any such provisions of a local plan in the form in which the draft provisions were submitted or with such modifications as the Minister considers appropriate (or decide not to do so).

**Note.** Part 1 of Schedule 2 requires any such draft provisions to be publicly exhibited for at least 28 days.
- (5) A relevant planning authority that is requested by the owner of any land to exercise its functions under this Part in relation to the land may, as a condition of doing so, require the owner to carry out studies or provide

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other information concerning the proposed provisions or to pay the costs of the authority in accordance with the regulations.

**3.14 Making or amendment of provisions of local plan without planning proposal etc and directions to relevant planning authorities** [cf ss 73A, 117 (2)]

The Minister may make, amend or replace any provisions of a local plan without compliance with the requirements of the planning legislation relating to the conditions precedent to doing so in order to do any one or more of the following:

- (a) to correct an obvious error or misdescription or to address matters that are of a consequential, transitional, machinery or other minor nature,
- (b) to deal with matters that the Minister considers do not warrant compliance with those conditions precedent because they will not have any significant adverse impact on the environment or adjoining land,
- (c) to deal with matters that the relevant planning authority has been duly directed to deal with by the Minister but has failed to deal with or to deal with appropriately,
- (d) to deal in an expeditious manner with matters that give effect to strategic plans or infrastructure plans or that are of State, regional or subregional significance,
- (e) to rezone land or make other changes as a consequence of any development that is made permissible with development consent by a strategic compatibility certificate if development consent has been granted for the development,
- (f) to declare the development whose likely effect on threatened species may be assessed in accordance with a biodiversity assessment procedure adopted by the regulations (as referred to in clause 1.5 (2) of Schedule 1).

**3.15 Periodic review and staged repeal of local plans** [cf ss 33B and 73]

- (1) The Minister is to make arrangements for the relevant planning authority to keep local plans under regular and periodic review for the purpose of ensuring that the objects of this Act are, having regard to such changing circumstances as may be relevant, achieved to the maximum extent possible.
- (2) The regulations may establish a staged repeal program for the provisions (or any class of provisions) of local plans to facilitate the replacement of transitional planning control provisions and the regular and periodic review of local plans.



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- (3) The staged repeal program may provide for the repeal of provisions of local plans by the operation of the regulations and for the making of replacement provisions.

## **Division 3.4 Local plans - planning control provisions**

### **3.16 Application of Division**

This Division applies to the planning control provisions of a local plan, and to instruments that make, amend or replace those provisions.

### **3.17 Purposes for which planning control provisions may be made** [cf s 24, 26, 29,31, 53]

Planning control provisions of a local plan may be made for the purposes of achieving any of the objects of this Act and, in particular, for or with respect to any of the following:

- (a) protecting, improving or utilising, to the best advantage, the environment,
- (b) controlling development (including by land use zoning or by prescribing development standards),
- (c) identifying different categories of development for the purposes of this Act (including State infrastructure development, State significant development, regionally significant development, EIS assessed development, complying development and exempt development),
- (d) identifying the consent authority for development for the purposes of Part 4 (if not otherwise identified by this Act),
- (e) identifying whether development does or does not require development consent to be carried out, or is prohibited,
- (f) requiring (before development consent is granted) the concurrence of or consultation with a Minister or other public authority,
- (g) protecting trees,
- (h) protecting native animals and plants, including threatened species, populations and ecological communities, and their habitats,
- (i) encouraging the provision of affordable housing,
- (j) such other matters as are authorised or required to be included in the planning control provisions of a local plan by or under this or any other Act.

**Note.** See, for example, sections 7.19 and 7.26 which authorise the inclusion of provisions requiring satisfactory arrangements for contributions towards the provision of infrastructure or biodiversity offsets.

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**3.18    Owner-initiated acquisition of land zoned for public purposes** [cf s 27, cl 10 of reg]

- (1) This section applies in relation to the planning control provisions of a local plan that zone land for use exclusively for a public purpose (as determined in accordance with section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991*).
- (2) Planning control provisions to which this section applies must specify an authority of the State that will be the relevant authority to acquire the land if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*. An authority of the State cannot be so specified unless it has notified the relevant planning authority that it concurs in those planning control provisions.
- (3) A planning control provision (whenever made and despite any of its terms) cannot require an authority of the State to acquire land, except as required by Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

**3.19    Standardisation of planning control provisions of local plans** [cf s 33A]

- (1) The Governor may, by order published on the NSW legislation website, prescribe the standard form and content of the planning control provisions of a local plan or any part of those provisions (a ***standard instrument***).
- (2) The planning control provisions of a local plan may be made in the form of:
  - (a) a declaration that the applicable mandatory provisions of a standard instrument are adopted, and
  - (b) the prescription of the matters required to be prescribed for the purposes of the application of the mandatory provisions of the standard instrument (such as the adoption of land zoning or other maps or spatial datasets), and
  - (c) the prescription of any other matters permitted to be prescribed by the planning control provisions of a local plan, including non-mandatory provisions of the standard instrument (with or without modification) or additional provisions.
- (3) When planning control provisions of a local plan are made with such a declaration, the provisions have the form and content of the applicable mandatory provisions of the standard instrument and the matters so prescribed.
- (4) If the mandatory provisions of a standard instrument so adopted are amended by a further order under subsection (1) or by an Act after they

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are adopted, the planning control provisions of a local plan are taken (without further amendment) to adopt the amended provisions of the standard instrument on and from the date the amendment to the standard instrument takes effect.

- (5) The order that amends a standard instrument may make provisions of a savings or transitional nature consequent on the amendment of the standard instrument.
- (6) Where a standard instrument has been adopted, the planning control provisions of the local plan (other than the mandatory provisions of the adopted standard instrument) may be amended from time to time by another instrument or in accordance with any Act.
- (7) A standard instrument may:
  - (a) provide that a provision is a mandatory provision only in the circumstances specified in the instrument, and
  - (b) contain requirements or guidance as to the form or content of a non-mandatory provision.
- (8) Subject to this Act and the regulations, the form and subject-matter of the planning control provisions of a local plan are (if there is no applicable standard instrument) to be as determined by the Minister.

**3.20 Relevant planning authority to prepare explanation of and justification for proposed planning control provisions—the planning proposal** [cf s 55]

- (1) Before planning control provisions of a local plan are made, the relevant planning authority is required to prepare a document that explains the intended effect of the proposed provisions and sets out the justification for making the proposed provisions (the *planning proposal*).
- (2) The regulations may make provision with respect to the preparation of a planning proposal.

**3.21 Gateway determination** [cf ss 56, 57]

- (1) After preparing a planning proposal, the relevant planning authority may forward it to the Minister.
- (2) After reviewing the planning proposal, the Minister is to determine the following (a *gateway determination*):
  - (a) whether the matter should proceed (with or without variation),
  - (b) whether the matter should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal),

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- (c) the minimum period of public exhibition for the planning proposal under Part 1 of Schedule 2 (or a determination that no such public exhibition is required),
  - (d) any consultation required with State or Commonwealth public authorities that may be affected by the proposed planning control provisions,
  - (e) whether a public hearing is to be held into the matter by the Planning Assessment Commission,
  - (f) the times within which the various stages of the procedure for the making of the proposed planning control provisions are to be completed by the relevant planning authority.
- (3) The Minister may arrange for the review of a planning proposal (or part of a planning proposal) under this section to be conducted by, or with the assistance of, the Planning Assessment Commission or a regional planning panel.
- (4) The Minister may, at any time, alter a gateway determination.
- (5) A failure to comply with a requirement of a gateway determination in relation to proposed planning control provisions does not prevent the provisions from being made or invalidate the provisions once they are made. However, this subsection does not apply to mandatory public exhibition requirements under Part 1 of Schedule 2.

**3.22 Relevant planning authority may vary proposals or not proceed [cf s 58]**

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

**3.23 Submission of final planning proposal to Minister and drafting of proposed planning control provisions**

- (1) After the completion of mandatory public exhibition and when submitting the final planning proposal to the Minister, the relevant planning authority is to provide the Minister with the following:
  - (a) any public submissions (or summary of submissions) that have been made about the planning proposal during public exhibition,

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- (b) any submissions that have been made by a public authority about the planning proposal,
  - (c) if the Planning Assessment Commission has held a public hearing into the planning proposal - the report of and any recommendations made by the Commission about the planning proposal.
- (2) The Director-General is to make arrangements for the drafting of any required planning control provisions to give effect to the final proposals of the relevant planning authority.

### **3.24 Making of planning control provisions by Minister** [cf s 59]

- (1) The Minister may:
- (a) make planning control provisions of a local plan (with or without variation of the final proposals submitted by the relevant planning authority) in the terms the Minister considers appropriate, or
  - (b) decide not to make the proposed planning control provisions.
- Note.** The Minister may under the *Planning Administration Act 2013* delegate to the relevant planning authority or other authorised person the making of the whole or any part of the proposed planning control provisions. Delegates are to be generally excluded from amending provisions inserted by the Minister and not by a delegate of the Minister.
- (2) The Minister may defer the inclusion of a matter in proposed planning control provisions.
- (3) If the Minister does not make the proposed planning control provisions or defers the inclusion of a matter in the proposed planning control provisions, the Minister may specify which procedures under this Division the relevant planning authority must comply with before the matter is reconsidered by the Minister.

### **3.25 Concurrent planning control amendments and applications for development consent** [cf ss 72I–72K]

- (1) This section applies if an application is made to a consent authority for development consent to carry out development that may only be carried out if the planning control provisions of the local plan applying to the land concerned are appropriately amended.
- (2) Nothing in this Act prevents, subject to this section, the making of that application and its consideration by the consent authority.
- (3) Public exhibition required under Part 1 of Schedule 2 in connection with the making of the proposed planning control provisions and public exhibition or notification required under Part 1 of Schedule 2 in

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connection with that application are to be undertaken together or as closely together as is practicable.

- (4) If the mandatory public exhibition requirements for the proposed planning control provisions are different to the public exhibition requirements for that application, the more extensive requirements apply for both of them.

### **3.26 Suspension of covenants, agreements and instruments by planning control provisions** [cf s 28]

- (1) For the purpose of enabling development to be carried out in accordance with the planning control provisions of a local plan (as in force from time to time) or in accordance with a planning approval granted under this Act, a planning control provision of the local plan may provide that, to the extent necessary to serve that purpose, any agreement, covenant or similar instrument specified in that provision does not apply to any such development or applies subject to the modifications specified in that provision.
- (2) That planning control provision has effect according to its tenor.
- (3) If a Minister is responsible for the administration of the agreement, covenant or similar instrument, that planning control provision is not to be made without the concurrence of that Minister.
- (4) A declaration in that planning control provision as to the concurrence of that Minister is evidence of the concurrence.
- (5) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

### **3.27 Miscellaneous provisions relating to planning control provisions** [cf s 26]

- (1) Mandatory public exhibition is completed for the purposes of this Division when the relevant planning authority has considered any submissions duly made during public exhibition concerning the planning proposal and a report of any public hearing.
- (2) A development guide provision of a local plan (whenever made) has no effect to the extent that:
  - (a) it is the same or substantially the same provision as a planning control provision of the local plan, or
  - (b) it is inconsistent or incompatible with a planning control provision of the local plan.
- (3) The planning control provisions of a local plan do not apply to development to which Part 5 applies unless the provisions determine

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whether development is subject to Part 5 or the provisions are expressly stated to apply to development of that kind.

- (4) The planning control provisions of a local plan may make provision for any zoning of land or other provision to have effect only for a specified period or only in specified circumstances.
- (5) The planning control provisions of a local plan that make provision for or with respect to protecting or preserving trees may make provision for the grant of permission to remove or otherwise affect trees, and for a refusal to grant permission to be treated as a refusal or failure to grant development consent under and for the purposes of Part 4.

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## **Part 4    Development (other than infrastructure) assessment and consent**

### **Division 4.1    Introductory**

#### **4.1    Application: Part 4**

- (1) This Part applies to development that requires development consent under this Part to be carried out.

**Note.** See sections 1.15 and 1.17 for development that requires consent.

- (2) This Part applies to development consent in the form of a complying development certificate, except that Divisions 4.4, 4.5, 4.6 and 4.8 do not apply to an application for a complying development certificate or to a development consent in the form of such a certificate.

**Note.** A complying development certificate for the erection of a building or the subdivision of land also authorises building work or subdivision work without the need for a construction certificate or subdivision works certificate under Part 8. Any other development consent for the erection of a building or the subdivision of land generally does require such a certificate. A complying development certificate or other development consent for the erection of a building does not generally authorise the occupation or use of a building without an occupation certificate (see Part 8).

#### **4.2    Interpretation: Part 4**

In this Part:

*certifier* means a building certifier or subdivision certifier.

**Note.** The Dictionary in Schedule 1 defines “*building certifier*” and “*subdivision certifier*”, which includes the council or other person accredited by the Building Professionals Board.

*code assessment* means the determination of an application for development consent as referred to in section 4.18

*merit assessment* means the determination of an application for development consent as referred to in section 4.19

*staged development application*—see section 4.22.

#### **4.3    Development assessment tracks: Part 4**

- (1) Applications for development consent under this Part may be determined as follows:
- (a) complying development (being the determination by a council or other certifier of an application for a complying development certificate),
  - (b) code assessment (being the code assessment of all or any aspects of development by a consent authority for the determination of an application for development consent),



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- (c) merit assessment (being the merit assessment of all or any aspects of development by a consent authority for the determination of an application for development consent).
- (2) A single development may be the subject of both code assessment for some aspects of the development and merit assessment for other aspects of the development.

**Note.** The categories of development relevant to this Part are set out in Part 1, section 1.13. They include State significant development, regionally significant development, EIS assessed development and complying development.

#### 4.4 Overview: Part 4

The following represents an overview of this Part:

*[diagram to be inserted before Bill introduced to provide a visual representation of the key elements of this Part]*

### Division 4.2 Consent authorities

#### 4.5 Consent authorities

- (1) The **consent authority** for the purposes of development that requires development consent under this Part is as follows:
  - (a) for complying development the subject of an application for a complying development certificate—a certifier,
  - (b) for State significant development—the Minister,
  - (c) for regionally significant development—the regional planning panel for the area in which the development is to be carried out (subject to subsection (2)),
  - (d) for other development—a Minister or public authority declared to be the consent authority by the planning control provisions of a local plan that apply to the development (or the council for the area concerned if there is no consent authority so declared for the development).
- (2) In the case of regionally significant development, the regional planning panel only has the function of determining the application for development consent (and exercising other specified functions of the consent authority as provided by this Act or the regulations). The council for the area is in all other respects the consent authority.
- (3) A public authority has the functions conferred or imposed on it as consent authority by the planning legislation.

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## 4.6 Delegation of consent authority functions

- (1) A public authority may delegate its functions as consent authority under the power of delegation conferred on it by the *Planning Administration Act 2013* or under the powers conferred on it by an Act that authorises the delegation of the functions of the public authority.
- (2) The Minister is required to delegate to the Planning Assessment Commission the functions of determining an application for development consent to any State significant development if the development would have been wholly prohibited but for planning control provisions of a local plan made by the Commission under delegation from the Minister.

## Division 4.3 Complying development

### 4.7 Application for complying development certificate

- (1) An application for a complying development certificate to carry out complying development may be made to a certifier.
- (2) The application may only be made by the owner of the land on which the development is to be carried out or by any other person with the consent of the owner.
- (3) The certifier must first determine:
  - (a) whether the development is a kind of development identified as complying development in the planning control provisions of a local plan, and
  - (b) whether the development complies with the standards or requirements for complying development of that kind in the development guide provisions of the local plan and any other applicable standards or requirements of the planning control provisions of the local plan or the regulations.

### 4.8 Variations from complying development standards and requirements

- (1) A council may, on the application of an applicant for a complying development certificate, issue a certificate (a *variation certificate*) certifying that a variation from a standard or requirement in the development guide provisions of the local plan that is applicable to an aspect of the development is a permissible variation.
- (2) A council may issue a variation certificate for an aspect of a development if it is satisfied that non-compliance with the standard or requirement is not likely to have any significant additional adverse impact on development on the surrounding land.

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- (3) The regulations may provide that a variation certificate is taken to be issued by a council for an aspect of a development specified in the application for the variation certificate if the council fails to determine the application within the time specified by the regulations.
- (4) A variation certificate relating to an application made to a council for a complying development certificate may be issued by the council without an application being made for the variation certificate.

#### **4.9 Determination of applications for complying development certificates**

- (1) A certifier may determine an application for a complying development certificate:
  - (a) by issuing a complying development certificate, or
  - (b) by refusing to issue a complying development certificate.
- (2) The certifier must issue a complying development certificate if the proposed development is complying development and complies with the standards for that complying development in the development guide provisions of the local plan and any other applicable requirements of the planning control provisions of the local plan or the regulations (subject to any permissible variation authorised by a variation certificate under this Division).
- (3) If the proposed development is not complying development or does not comply with any of those applicable standards or requirements, the certifier must refuse to issue a complying development certificate. However, the certifier must before doing so inform the applicant of the applicant's right to seek a variation certificate.
- (4) The regulations may provide that a determination of an application by the certifier must be completed within a specified period after the application was made (or such longer period as may be agreed to by the applicant).

#### **4.10 Building Code of Australia requirements to apply to complying development**

- (1) A certifier must not issue a complying development certificate for building work unless the proposed building (not being a temporary building) will comply with the relevant requirements of the *Building Code of Australia* (as in force at the time the application for the certificate was made).
- (2) This section is subject to the regulations.

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## **4.11 Form of complying development certificate**

- (1) A complying development certificate is to be in the form of a certificate that:
  - (a) states that particular proposed development is complying development and (if carried out as specified in the certificate) will comply with all applicable standards and requirements, and
  - (b) in the case of development involving the erection of a building, identifies the classification of the building in accordance with the *Building Code of Australia*.
- (2) The certificate may indicate different classifications for different parts of the same building.

## **4.12 Conditions of a complying development certificate**

- (1) A complying development certificate is subject to the conditions prescribed by the regulations for the development concerned.
- (2) A complying development certificate is subject to any additional conditions determined by the certifier in accordance with the regulations and endorsed on the certificate.

## **4.13 Duration of complying development certificate**

- (1) A complying development certificate has effect from the date endorsed on the certificate.
- (2) A complying development certificate lapses 5 years after the date endorsed on the certificate.
- (3) However, a complying development certificate does not lapse if the development to which it relates is physically commenced on the land to which the certificate applies within the period of 5 years after the date endorsed on the certificate.
- (4) The 5 year-period cannot be extended by a certifier or a council or any court or tribunal.

## **4.14 Modification of complying development**

- (1) A person who has the benefit of a complying development certificate may apply to a certifier to modify the development the subject of the certificate or the terms of the certificate.
- (2) This Division applies to an application for modification in the same way as it applies to the original application.

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## **Division 4.4 Code and merit assessment**

### **4.15 Application for development consent**

- (1) An application for development consent to carry out development may be made to the relevant consent authority.
- (2) The application may only be made:
  - (a) by the owner of the land on which the development is to be carried out, or
  - (b) by any other person with the consent of that owner, or
  - (c) as otherwise authorised by the regulations.
- (3) A single application for development consent may be made for one or more kinds of development.
- (4) An application may be made to a consent authority for development consent under this Division to carry out complying development and not for a complying development certificate under Division 4.3.

**Note.** Part 1 of Schedule 2 requires certain applications for development consent to be publicly exhibited and contains provisions for the notification of other applications.

### **4.16 Determination of applications for development consent**

- (1) A consent authority may determine an application for development consent:
  - (a) by granting development consent, either unconditionally or subject to conditions, or
  - (b) by refusing to grant development consent.
- (2) The consent authority is to make that determination in accordance with this Division and the other provisions of the planning legislation.
- (3) The consent authority must refuse an application for development consent to the subdivision of land that would, if carried out, result in a contravention of this Act, the *Planning Administration Act 2013*, the planning control provisions of the local plan or the regulations, whether arising in relation to that or any other development.
- (4) A consent authority must not refuse an application for development consent unless it has (in accordance with the regulations):
  - (a) notified the applicant that it intends to refuse the application, and
  - (b) notified the applicant of any changes to the application that the consent authority considers necessary before it will reconsider the application, and

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- (c) considered any submissions made by the applicant in response to the proposed refusal.

This subsection does not apply to the Court when determining an appeal.

- (5) A development consent may be granted:
  - (a) for the development for which the consent is sought, or
  - (b) for that development, except for a specified aspect of that development, or
  - (c) for a specified aspect of that development.
- (6) The consent authority is not required to refuse consent to any specified aspect of development for which development consent is not initially granted under subsection (5), but development consent may subsequently be granted for that aspect of the development.
- (7) 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 of a building if Part 8 requires an occupation certificate to be issued.

## 4.17 Development assessment codes

- (1) A *development assessment code* is a code for development set out in the development guide provisions of a local plan. More than one code may apply to the same development.
- (2) A development assessment code is to describe the performance outcomes for the development and identify any acceptable solutions for achieving those performance outcomes.
- (3) If the planning control provisions of a local plan identify development subject to code assessment, the relevant development assessment code applies to the determination of an application for development consent to carry out the development (subject to section 4.19 (1) (b)).  
**Note.** See also section 4.19 (5) which provides for application of development assessment codes in merit assessment.
- (4) Development assessment codes and any such planning control provisions may describe or identify development to which they apply by reference to a kind of development, to development in a particular area or to any other aspect of development.

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## 4.18 Code assessment

- (1) If an application for development consent adopts an acceptable solution for an aspect of development identified in an applicable development assessment code:
  - (a) the consent authority cannot refuse to grant development consent on grounds related to that aspect of the development, and
  - (b) the consent authority cannot impose conditions that are more onerous than the standards for that acceptable solution.
- (2) If an application for development consent proposes an alternative solution to the acceptable solution for an aspect of development identified in an applicable development assessment code and the alternative solution meets the performance outcome for that aspect of the development:
  - (a) the consent authority cannot refuse to grant development consent on grounds related to that aspect of the development, and
  - (b) the consent authority cannot impose conditions that are more onerous than the standards for that acceptable solution.
- (3) This section does not apply to development (or any aspect of development) that is subject to merit assessment.

**Note.** Section 4.19 (1) (b) requires development subject to code assessment (or any aspect of that development) to be merit assessed if the development (or aspect) does not adopt an acceptable solution or proposes an alternative solution that does not meet the requisite performance outcome.

## 4.19 Merit assessment

- (1) This section applies to the determination of an application for development consent in any of the following cases:
  - (a) the development is not identified in the planning control provisions of a local plan as development subject to code assessment,
  - (b) in the case of development (or an aspect of development) - the development is so identified as development subject to code assessment but the development (or that aspect of development) does not comply with the provisions of section 4.18 that require consent to be given following code assessment under that section,
  - (c) the development is EIS assessed development,
  - (d) the application for development consent is made in reliance on a strategic compatibility certificate under Division 4.7,
  - (e) the development is subject to a requirement for concurrence or consultation under Division 6.2 of Part 6 because it is likely to significantly affect threatened species,

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- (f) the development is subject to one stop referrals and decisions under Division 6.3 of Part 6.
- (2) In determining an application for development consent to which this section applies (other than for State or regionally significant development), a consent authority is to take into consideration the following matters:
  - (a) whether the development is consistent with the strategic context provisions of the local plan and the objectives of the land use zone of the land concerned (including proposed planning control provisions of the local plan that have been publicly exhibited under Part 1 of Schedule 2),
  - (b) any submissions (or a summary of submissions) duly received during public exhibition under Part 1 of Schedule 2 in connection with the application,
  - (c) the likely impacts of the development, including:
    - (i) any environmental impacts on the natural or built environment, and
    - (ii) any economic or social impacts in the locality,
  - (d) the public interest (in particular whether any public benefit outweighs any adverse impact of the development).
- (3) In determining an application for development consent to which this section applies (being State or regionally significant development), a consent authority is to take into consideration the following matters:
  - (a) whether the development is consistent with applicable NSW planning policies, regional growth plans and subregional delivery plans (including any such proposed policies and plans that have been publicly exhibited under Part 1 of Schedule 2),
  - (b) any submissions (or a summary of submissions) duly received during public exhibition under Part 1 of Schedule 2 in connection with the application,
  - (c) the likely impacts of the development, including:
    - (i) any environmental impacts on the natural or built environment, and
    - (ii) any economic or social impacts in the locality,
  - (d) the public interest (in particular whether any public benefit outweighs any adverse impact of the development).
- (4) In the case of an application for development consent that is made in reliance on a strategic compatibility certificate under Division 4.7:
  - (a) the consent authority is also to take into consideration the terms and conditions of the certificate, and



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- (b) the determination of the application is subject to section 4.36 (Development consents to be granted consistently with certificate).
- (5) Development assessment codes (and their acceptable solutions and performance outcomes) are also to be taken into consideration as a guide to appropriate development if those codes relate to the development assessed under this section. The regulations may restrict refusal to grant consent or the imposition of conditions where the development adopts acceptable solutions or satisfies performance outcomes under any such development assessment code.

#### **4.20 EIS assessed development that is not State significant development-additional requirements**

- (1) An application for development consent for EIS assessed development must be accompanied by an environmental impact statement prepared by or on behalf of the applicant in accordance with the regulations.

**Note.** Part 1 of Schedule 2 requires the application (and accompanying EIS) to be publicly exhibited for at least 28 days.

- (2) If submissions have been duly made during the period of public exhibition, the consent authority is not to determine the application until the expiry of the period of 21 days (or other prescribed period) following the date on which a copy of the submissions is forwarded to the Director-General.
- (3) Subsection (2) does not apply:
  - (a) if the consent authority is the Minister or the Director-General, or
  - (b) if the Director-General has waived the requirement that submissions be forwarded to the Director-General for a specified development application or for a specified class of development applications.

- (4) This section does not apply to EIS assessed development that is also State significant development.

**Note.** Division 4.6 requires an EIS for EIS assessed development that is also State significant development.

#### **4.21 Determination must await any PAC review**

- (1) This section applies to an application for development consent where a review by the Planning Assessment Commission in relation to all or any aspect of the development has been requested under the planning legislation by the Minister (whether or not the review includes a public hearing).
- (2) The consent authority must not determine the application until:
  - (a) the review has been conducted, and

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- (b) the consent authority has considered the findings and recommendations of the Planning Assessment Commission, and
- (c) if the Minister is not the consent authority, the consent authority has considered any comments made by the Minister that accompanied those findings and recommendations when they were forwarded to the consent authority.

#### **4.22 Staged development applications and consents** [cf ss 83B, 83C]

- (1) For the purposes of this Part, a *staged development application* is an application for development consent that sets out concept proposals for the development and for which detailed proposals for separate parts of the development are to be the subject of subsequent applications for development consent. The application may set out detailed proposals for the first stage of development.
- (2) An application for development consent is not to be treated as a staged development application unless the applicant requests it to be treated as a staged development application.
- (3) A local plan cannot require the making of a staged development application before development is carried out.
- (4) A staged development application is to be determined in accordance with the applicable provisions relating to applications for development consent (subject to any special provisions that apply to staged development applications).
- (5) If development consent is granted on the determination of a staged development application (a *staged development consent*), the consent does not authorise the carrying out of any part of the development unless:
  - (a) development consent is subsequently granted to carry out that part of the development following a further application for development consent in respect of that part of the development, or
  - (b) the staged development application also provided the requisite details of that part of the development and development consent is granted for that part of the development without the need for further consent.

The terms of a staged development consent are to reflect the operation of this subsection.

- (6) While any staged development consent remains in force, the determination of any further application for development consent for the development concerned cannot be inconsistent with the staged development consent. This subsection does not prevent the

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modification in accordance with this Act of a staged development consent.

#### **4.23 Date from which development consent has effect** [cf s 83]

- (1) A development consent for any development has effect on and from the date that is endorsed on the notice of the development consent given to the applicant under this Act, except as provided by subsection (2).
- (2) A development consent for EIS assessed development has effect on and from the end of 28 days after notice of the decision was given to the applicant under this Act unless:
  - (a) the development consent was granted following a review that included a public hearing by the Planning Assessment Commission, or
  - (b) the development is State significant development.

**Note.** The date of effect of a consent for any such EIS assessed 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 9.

### **Division 4.5 Conditions of development consent**

#### **4.24 Imposition of conditions - general** [cf s 80A]

- (1) The following conditions of development consent may be imposed:
  - (a) a condition that relates to any matter that is required by this Part to be taken into consideration in the assessment of whether the development consent is to be granted,
  - (b) a condition that requires the modification or surrender of a development consent, or an existing or continuing use right under Division 11.4 of Part 11, in relation to the land the subject of the application for development consent,
  - (c) a condition that requires the modification or cessation of development (including the removal of buildings and works used in connection with the development) carried out on the land subject to the application for development consent or on other land,
  - (d) a condition that limits the period during which development may be carried out in accordance with the consent so granted (or that requires the removal of buildings and works at the end of that period),
  - (e) a condition that requires the carrying out of works (relating to any matter that is required by this Part to be taken into consideration in the assessment of whether the development consent is to be

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granted) on land not subject to the application for development consent, if those works are reasonably required and the imposition of the condition complies with the regulations,

- (f) a condition that modifies details of the development,
  - (g) a condition that requires a specified aspect of the development that is ancillary to the core purpose of the development to be carried out to the satisfaction of the consent authority or of a person specified by the consent authority (as determined in accordance with the regulations),
  - (h) a condition that is authorised to be imposed under any other provision of the planning legislation.
- (2) A condition of a development consent has no effect to the extent that:
- (a) it is inconsistent with a condition prescribed by the regulations to which the development consent is made subject by the regulations, or
  - (b) it is substantially the same condition as any such condition prescribed by the regulations.
- (3) A condition of a development consent has no effect to the extent that it requires a compliance certificate under Part 8 to be obtained in respect of any development.

#### **4.25 Conditions that identify outcomes** [cf s 80A (4)]

A development consent may be granted subject to a condition that is expressed in a manner that identifies both of the following:

- (a) one or more express outcomes that the development or a specified aspect of the development must achieve,
- (b) clear criteria against which achievement of the outcome can be assessed.

#### **4.26 “Deferred commencement” conditions** [cf s 80 (3)]

- (1) A development consent may be granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority as to any matter specified in the condition.
- (2) Nothing in the planning legislation prevents a person from doing anything necessary to comply with the condition.

#### **4.27 Reviewable conditions of development consent** [cf s 80A (10B)–(10E)]

- (1) A development consent that is granted subject to a reviewable condition may also be made subject to a further condition that the reviewable condition may be reviewed by the consent authority at any time or at

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intervals specified in the consent and that the reviewable condition may be changed on any such review.

- (2) A decision by a consent authority to change a reviewable condition on a review is taken to be a determination of a development consent for the purposes of this Act.

**Note.** As a consequence, the decision to change the reviewable condition may be subject to review or appeal under Part 9.

- (3) In this section, a **reviewable condition** means any of the following:
- (a) a condition that permits extended hours of operation (in addition to other specified hours of operation),
  - (b) a condition that increases the maximum number of persons permitted in a building (in addition to the maximum number otherwise permitted),
  - (c) a condition of a kind prescribed by the regulations.

#### **4.28 Conditions and arrangements relating to securities for development requirements or damage [cf s 80A (6)–(10)]**

- (1) A development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant for development consent, that the applicant must provide security for the payment of the cost of any one or more of the following:
- (a) making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates,
  - (b) completing any public work (such as road work, curbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,
  - (c) remedying any defects in any such public work that arise within 6 months after the work is completed.
- (2) The security is to be for such reasonable amount as is determined by the consent authority.
- (3) The security may be provided, at the applicant's choice, by way of:
- (a) deposit with the consent authority, or
  - (b) a guarantee satisfactory to the consent authority.
- (4) The security is to be provided before carrying out any work in accordance with the development consent or at such other time as may be agreed to by the consent authority.
- (5) The regulations may limit the security that an applicant for development consent may be required to provide.

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- (6) The funds realised from a security may be paid out to meet any cost for which the security was provided. Any balance remaining is to be refunded to, or at the direction of, the persons who provided the security.

## **Division 4.6    State significant development - additional provisions**

### **4.29    “Call in” of development as State significant development**

- (1) The Minister may, by Ministerial planning order, declare specified development on specified land to be State significant development.
- (2) The Minister may make that declaration only if the Minister has first obtained and made publicly available advice from the Planning Assessment Commission about the State or regional planning significance of the development.
- (3) Any development for which consent is granted (or purports to be granted) by the Minister as State significant development is taken to be State significant development, and to have been such development for the purposes of any application or other matter under this Part in relation to the development.

### **4.30    Environmental impact assessment for, and consent to, State significant development etc**

- (1) An application for development consent for State significant development is (if it is also EIS assessed development) to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in accordance with the regulations.  
**Note.** Part 1 of Schedule 2 requires the application (and accompanying EIS) to be publicly exhibited for at least 28 days.
- (2) In the case of State significant development that is not also EIS assessed development and that is of a class prescribed by the regulations:
  - (a) the Director-General may issue environmental assessment requirements for an application for development consent for that development, and
  - (b) the application is to be accompanied by a statement of the environmental effects of the development prepared by or on behalf of the applicant in accordance with the regulations.
- (3) Development consent may not be granted for State significant development if the development is wholly prohibited by the planning control provisions of the local plan.
- (4) However, development consent may be granted for State significant development despite the development being partly prohibited by the

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planning control provisions of the local plan. If development consent is granted, any such prohibition does not apply to the carrying out of the development.

- (5) If part of a single proposed development that is State significant development requires development consent to be carried out and the other part may be carried out without development consent:
- (a) Divisions 5.1 and 5.2 of Part 5 do not apply to that other part of the proposed development, and
  - (b) that other part of the proposed development is taken to be development requiring development consent under this Part.

This subsection does not apply if the Director-General determines that the other part of the proposed development is not sufficiently related to the State significant development, or if it is specified development on specified land declared to be State infrastructure development by the Minister under Division 5.2 of Part 5.

- (6) The Minister may also grant development consent for State significant development with such modifications of the proposed development as the Minister may determine.
- (7) The Minister in determining an application for development consent for State significant development may impose such conditions on the development consent as the Minister determines, despite any restriction in this Part on the kinds of conditions that may be imposed.

#### **4.31 Staged development applications for State significant development**

- (1) When determining a staged development application to carry out State significant development, the Minister may make any (or any combination) of the following determinations:
- (a) the Minister may determine the further environmental impact assessment requirements for development consent to carry out the subsequent stages of the development (in which case those requirements have effect for the purposes of this Part),
  - (b) the Minister may determine that no further environmental impact assessment is required for development consent to carry out the development or subsequent stages of the development (in which case development consent may be granted or refused without further application or assessment under this Part),
  - (c) the Minister may determine that a subsequent stage of the development is to be complying development, regionally significant development, EIS assessed development, development for which the council is the consent authority or Part 5 environmental impact assessment development (in which

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- case that stage of the development ceases to be State significant development),
- (d) the Minister may determine the conditions that are to apply to any development consent for a subsequent stage of the development that the Minister has determined will not be dealt with as State significant development (in which case the subsequent development consent is to be generally consistent with those conditions),
  - (e) the Minister may determine that the planning control provisions of a local plan that would otherwise prohibit any subsequent stage of the development do not apply when a council or regional planning panel determines an application to carry out that stage of the development (in which case those provisions have effect subject to that determination).
- (2) A determination under this section is taken to form part of the determination of the staged development application.
  - (3) The Minister may vary or revoke a determination under this section on the application of the staged development applicant or a person having the benefit of the staged development consent.

## **Division 4.7      Strategic compatibility certificates - development not permissible under local plan**

### **4.32      Prohibited development permissible with consent if strategic compatibility certificate issued**

- (1) A strategic compatibility certificate is a certificate issued by the Director-General that certifies that the carrying out of specified development on specified land is permissible with development consent under this Part, despite any prohibition on the carrying out of the development under the planning control provisions of the local plan.
- (2) A strategic compatibility certificate has effect as if it formed part of the planning control provisions of the local plan.
- (3) Despite anything to the contrary in the planning control provisions of the local plan, merit assessment under section 4.19 (Merit assessment) applies to the determination of an application for development consent made in reliance on the certificate. Those planning control provisions determine whether the development is EIS assessed development, regionally significant development or State significant development.

### **4.33      Grounds on which certificate may be issued**

A strategic compatibility certificate may be issued for development only if the Director-General is satisfied that:



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- (a) a regional growth plan or subregional delivery plan has been made that applies to the development, and
- (b) the planning control provisions prohibiting the development have not yet been amended to give effect to the relevant provisions of that plan, and
- (c) the development is consistent with that plan, and
- (d) the development will not have any significant adverse impact on likely future uses of the surrounding land.

#### **4.34 Requirements before certificate is issued**

- (1) A strategic compatibility certificate is not to be issued unless an application is duly made for the certificate by the owner of the land concerned or a person who has the consent of the owner to make the application.
- (2) Before issuing a strategic compatibility certificate, the Director-General is to consult the relevant council and seek advice from the applicable regional planning panel.
- (3) In determining an application for the certificate, the Director-General is to take into account:
  - (a) the views of the relevant council, and
  - (b) the advice provided by the regional planning panel.
- (4) The Director-General is required to publish reasons for any determination of an application for a certificate that is contrary to the advice provided by the regional planning panel.

#### **4.35 Conditions and duration of certificate**

- (1) A strategic compatibility certificate may be issued subject to conditions relating to the standards for the development, environmental impact assessment or community participation requirements or other relevant matter.
- (2) The conditions on any matter to which a strategic compatibility certificate is subject replace the otherwise applicable provisions of the planning control provisions of the local plan on that matter.
- (3) An application under this Part for the carrying out of development permitted by a strategic compatibility certificate may only be made in reliance on the certificate within 2 years after the certificate is issued.
- (4) If an application is not made within that period, or if development consent is refused on the determination of an application made within that period (including after any review or appeal), the certificate then ceases to have effect.

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## **4.36      Development consents to be granted consistently with certificate**

- (1) An application for development consent that is made in reliance on a strategic compatibility certificate cannot be refused, and conditions cannot be imposed on the development consent, if the grounds for refusal or the imposition of conditions relate to matters dealt with in the conditions of the certificate.
- (2) This section does not affect the refusal to grant development consent or the imposition of conditions on other grounds.

## **Division 4.8      Modification of development consents**

### **4.37      Who may make application for modification of development consent**

A development consent may be modified under this Division only on the application of the applicant for the development consent or of a person having the benefit of the development consent.

### **4.38      Modifications of development consents**

- (1) A consent authority may modify a development consent granted by the consent authority (subject to and in accordance with the regulations) if:
  - (a) it is satisfied that the development to which the consent as proposed to be modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
  - (b) the development as proposed to be modified is development for which the consent authority may grant development consent in accordance with this Part.
- (2) The obligations of a consent authority under this Part to determine an application for development by granting development consent (and the restrictions on imposing conditions of development consent) extend to applications for the modification of development consents.
- (3) The power of a consent authority to modify a development consent under this section extends to a development consent granted by the Land and Environment Court, but only if the consent authority has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the person.
- (4) The Land and Environment Court may also exercise the powers of a consent authority under this section to modify a development consent granted by the Court.

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## 4.39 Effect of modification of development consent [cf s 96A (4), 96AA(1C)]

The modification of a development consent in accordance with this Division is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent is a reference to a development consent as so modified.

## Division 4.9 Miscellaneous

### 4.40 Long service leave levy

[cf s 85A (10A)]

A certifier is not to give a completed complying development certificate to the applicant unless any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* in respect of the development (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.

Maximum penalty: Tier 3.

### 4.41 Determination of Crown development applications

- (1) A consent authority (other than the Minister) must not:
  - (a) refuse to grant development consent when determining a Crown development application, or
  - (b) impose a condition on development consent when determining a Crown development application, except with the approval of the applicant.
- (2) If the consent authority fails to determine a Crown development application within the period prescribed by the regulations, the applicant may refer the application to the Director-General.
- (3) A consent authority for a Crown development application may refer the application to the Director-General at any time.
- (4) If a Crown development application is referred to the Director-General, the Minister may exercise the function of the consent authority in determining the application.
- (5) This section applies to applications for modification of a development consent granted on a Crown development application in the same way as it applies to Crown development applications.
- (6) In this section:

**Crown** has the meaning given to that expression by the regulations.

**Crown development application** means an application for development consent, or an application for a complying development certificate, for development to be carried out by or on behalf of the Crown.

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**4.42    When species impact statement required** [cf s 78A (8) (b)]

- (1) If proposed development is likely to significantly affect threatened species, the application for development consent (or an environmental impact statement accompanying the application) is to include or be accompanied by a species impact statement.
- (2) This section does not apply to State significant development.

**4.43    Lapsing of development consent**

- (1) A development consent (other than a complying development certificate) lapses 5 years after the date from which it takes effect.  
**Note.** For lapsing of complying development certificate see section 4.13.
- (2) The period specified by this section is subject to the reductions and changes permitted by Schedule 4.

*[Note: Amendments are to be made to Mining Act, Petroleum (Onshore) Act and Pipelines Act so that if approved development under those Acts includes a road closure, the portfolio Minister for those Acts may transfer the road to the lessee or licensee following the issue of the mining etc title. Upon transfer compensation to the roads authority is to be payable by the lessee or licensee as if there had been a compulsory acquisition.]*

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## **Part 5 Infrastructure and environmental impact assessment**

### **Division 5.1 Environmental impact assessment (except for State or public priority infrastructure)**

#### **5.1 Definitions: Division 5.1 [cf s 110]**

In this Division:

*approval* includes:

- (a) a consent, licence or permission or any form of authorisation, and
- (b) a provision of financial accommodation by a determining authority to another person (not being a provision of any such financial accommodation that is excluded by the regulations from this definition),

but does not include development consent under Part 4, approval under Division 5.2 of this Part, a declaration of public priority infrastructure or any other approval excluded by the regulations.

*determining authority* for relevant development means the Minister or public authority by or on whose behalf the development is or is to be carried out or any Minister or public authority whose approval is required in order to enable the development to be carried out.

*obtain* an environmental impact statement, includes being furnished with such a statement.

#### **5.2 Relevant development to which this Division applies**

- (1) This Division applies to any development other than the following:
  - (a) development for the purposes of public priority infrastructure,
  - (b) any act, matter or thing for which development consent or State infrastructure approval is required or has been obtained,
  - (c) any act, matter or thing that is prohibited under the planning control provisions of a local plan,
  - (d) exempt development,
  - (e) development carried out in compliance with a development control order,
  - (f) any project or development for which an approval from the Minister was obtained under the former Act,
  - (g) development that is excluded from this Division by the regulations.

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- (2) In this Division, the development to which this Division applies is referred to as *relevant development* (but referred to elsewhere in this Act as *Part 5 environmental impact assessment development*).

## **5.3 General duty to consider environmental impact of relevant development**

[cf s 111 (1)]

- (1) A determining authority is, in its consideration of any relevant development, to examine and take into account the matters affecting or likely to affect the environment because of the carrying out of that development.
- (2) The obligation under this section is in addition to any obligation of a determining authority under the other provisions of or made under this Act or any other Act.

## **5.4 Determining authority to obtain and consider EIS for relevant development likely to significantly affect the environment** [cf ss 112, 113]

- (1) A determining authority is not to carry out any relevant development, or grant an approval for any relevant development, that is likely to significantly affect the environment unless:
- (a) the determining authority has obtained and considered an environmental impact statement in respect of the development prepared by or on behalf of the proponent in accordance with the regulations, and
- Note.** Part 1 of Schedule 2 requires the EIS to be publicly exhibited for at least 28 days.
- (b) the determining authority has considered any submissions (or summary of submissions) duly made during the period of public exhibition of the environmental impact statement under Part 1 of Schedule 2, and
- (c) if the determining authority receives notice from the Director-General that the Planning Assessment Commission is to review the relevant development, the review has been undertaken and the determining authority has considered the findings and recommendations of the Commission and any advice of the Minister that has been provided to it, and
- (d) if the determining authority receives notice from the Director-General that the Director-General has decided to undertake an examination of the environmental impact statement, the examination has been undertaken and the determining authority has considered the findings and recommendations in the report of the examination that has been provided to it.

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**Note.** See also Division 6.2 of Part 6 for consultation and concurrence requirements if relevant development likely to significantly affect threatened species.

- (2) The regulations may declare that any relevant development or class of relevant development is taken to significantly affect the environment for the purposes of this section.
- (3) The determining authority is required to provide the Director-General with:
  - (a) a copy of any environmental impact statement under this Division as soon as practicable after it obtains the statement, and
  - (b) as soon as practicable and not less than 21 days before carrying out the relevant development concerned or before granting an approval for the relevant development concerned, a copy of any submissions duly made to it during the public exhibition period of the environmental impact statement.
- (4) The determining authority must, at the time it forwards copies of those submissions to the Director-General, also forward copies of those submissions to the Environment Protection Authority if the activity is a scheduled activity under the *Protection of the Environment Operations Act 1997*.

**5.5 Significant effect on environment requiring EIS includes significant effect on threatened species** [cf s 112 (1), (1B)]

- (1) For the purposes of this Division, relevant development is to be regarded as development likely to significantly affect the environment if it is likely to significantly affect threatened species.
- (2) In that case, the environmental impact statement is to include or be accompanied by a species impact statement.
- (3) If the likely significant effect on threatened species is the only likely significant effect on the environment, a species impact statement may be obtained instead of an environmental impact statement and this Division applies as if references to an environmental impact statement were references to a species impact statement.

**5.6 Decision of determining authority where EIS obtained for relevant development** [cf s 112 (4)]

- (1) A determining authority that is not the proponent of relevant development for which an environmental impact statement has been obtained and considered under this Division may, if satisfied the development will adversely affect the environment:
  - (a) on the grant of approval for the proposed development, impose such conditions or require such modifications as will in its

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opinion eliminate or reduce the adverse effect of the development on the environment, or

(b) refuse to grant approval for the proposed development.

The determining authority is required to give the proponent notice in writing of its reasons for any action taken under this subsection.

- (2) A determining authority that is the proponent of relevant development for which an environmental impact statement has been obtained and considered under this Division may, if satisfied the development will adversely affect the environment:
- (a) modify the proposed development so as to eliminate or reduce the adverse effect of the development on the environment, or
  - (b) refrain from carrying out the proposed development.
- (3) This section has effect despite any other Act or despite any instrument made under this or any other Act.

## **5.7 Review by Planning Assessment Commission** [cf s 114]

If the Planning Assessment Commission has under the planning legislation reviewed relevant development and reported to the Minister:

- (a) the Minister is to consider the findings and recommendations of the Commission and forward to relevant determining authorities a copy of the findings and recommendations and any advice the Minister wishes to give as to whether, in the Minister's opinion:
  - (i) there are no environmental grounds which would preclude the carrying out of the development to which the findings and recommendations relate in accordance with the proponent's proposal, or
  - (ii) there are no environmental grounds which would preclude the carrying out of the development subject to its being modified in the manner specified in the advice, or
  - (iii) there are no environmental grounds which would preclude the carrying out of the development subject to the observance of conditions specified in the advice, or
  - (iv) there are environmental grounds which would preclude the carrying out of the development, and
- (b) any public authority or body to which an appeal may be made by or under any Act in relation to the development is, in deciding the appeal, to consider and take into account the findings and recommendations of the Planning Assessment Commission and any such advice given by the Minister.



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## 5.8 Examination of EIS by Director-General [cf s 113 (5)–(7)]

- (1) This section does not apply to relevant development (or any aspect of relevant development) that the Planning Assessment Commission reviews or is to review under the planning legislation.
- (2) The Director-General may undertake in the Department an examination of an environmental impact statement obtained by a determining authority under this Division and any submissions made under this Division in connection with the relevant development.
- (3) The Director-General is to forward to the determining authority, as soon practicable, a report of the findings of the examination and any recommendations arising from those findings. The Director-General is to make the report public.
- (4) Any public authority or body to which an appeal may be made by or under any Act in relation to the relevant development that is the subject of the examination is, in deciding the appeal, to consider and take into account the report forwarded to the determining authority.

## 5.9 Exemptions [cf s 110E]

This Division does not apply to or in respect of the following:

- (a) a modification of any relevant development (whose environmental effect has already been considered) that will reduce or not increase its overall environmental effect,
- (b) a routine activity (such as the maintenance of infrastructure) if the Minister determines it has a low environmental effect and it is carried out in an approved manner determined by the Minister,
- (c) any relevant development that has been approved, or is to be carried out, by another determining authority after the environmental impact assessment has been carried out in accordance with this Division.

## Division 5.2 State infrastructure development

### 5.10 Declaration of State infrastructure development [cf s 115U]

- (1) For the purposes of this Act, *State infrastructure development* is development that is declared under this section to be State infrastructure development.
- (2) The planning control provisions of a local plan may declare any specified class or description of development to be State infrastructure development.
- (3) The Minister may, by Ministerial planning order, declare specified development on specified land to be State infrastructure development.

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(4) If a single proposed development comprises development that is only partly State infrastructure development so declared, the remainder of the development (if it is not State significant development):

- (a) may be carried out without development consent under Part 4, and
- (b) is also declared to be State infrastructure development.

This subsection does not apply to so much of the remainder of the development that the Director-General determines is not sufficiently related to the State infrastructure development.

(5) Development which (but for this subsection) would be both State infrastructure development and State significant development is:

- (a) State significant development and not State infrastructure development (subject to paragraph (b)), or
- (b) State infrastructure development and not State significant development if it is specified development on specified land declared to be State infrastructure development by the Minister under subsection (3).

**5.11 State infrastructure development not subject to Part 4 or to prohibitions or restrictions in planning control provisions** [cf s 115ZF]

(1) State infrastructure development does not require development consent under Part 4 to be carried out.

**Note.** Section 1.16 requires the approval of the Minister under this Division to the carrying out of State infrastructure development (unless it is exempt development or public priority infrastructure).

(2) State infrastructure development that is approved under this Division is not subject to any prohibition or restriction in the planning control provisions of a local plan on the carrying out of the development (despite anything to the contrary in those provisions).

**Note.** For application of other legislation in relation to State infrastructure development - see Division 6.1 of Part 6.  
For payment of contributions where the proponent of State infrastructure development is not a public authority - see Part 7.

**5.12 Application for approval of State infrastructure development** [cf s 115X]

(1) The proponent may apply for the approval of the Minister under this Division to carry out State infrastructure development.

(2) The application is to:

- (a) describe the State infrastructure development, and
- (b) contain any other matter required by the Director-General.

(3) The application is to be lodged with the Director-General.

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## **5.13 Environmental impact assessment requirements for approval** [cf s 115Y]

- (1) When an application is made for the Minister's approval for State infrastructure development, the Director-General is to prepare environmental impact assessment requirements in respect of the development.
- (2) For the purposes of the environmental impact assessment, the environmental impact assessment requirements must require an environmental impact statement to be prepared by or on behalf of the proponent in accordance with the regulations.
- (3) In preparing the environmental impact assessment requirements, the Director-General is to consult relevant public authorities and have regard to the need to assess any key issues raised by those public authorities.
- (4) The Director-General is to notify the proponent of the environmental impact assessment requirements. The Director-General may modify those requirements by further notice to the proponent.

## **5.14 Environmental impact assessment and public consultation** [cf s 115Z]

- (1) The proponent is to submit to the Director-General the environmental impact statement required under this Division for approval to carry out the State infrastructure development.
- (2) The Director-General may require the proponent to submit a revised environmental impact statement to address the matters notified to the proponent.
- (3) The Director-General is to publicly exhibit the environmental impact statement in accordance with the requirements of Part 1 of Schedule 2.  
**Note.** Part 1 of Schedule 2 requires the EIS to be publicly exhibited for at least 28 days and for making submissions during the public exhibition period.
- (4) The Director-General is to provide copies of submissions duly received by the Director-General or a report of the issues raised in those submissions to:
  - (a) the proponent, and
  - (b) if the State infrastructure development will require an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—the Environment Protection Authority, and
  - (c) any other public authority the Director-General considers appropriate.
- (5) The Director-General may require the proponent to submit to the Director-General:

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- (a) a response to the issues raised in those submissions, and
  - (b) a preferred State infrastructure development report that outlines any proposed changes to the State infrastructure development to minimise its environmental impact or to deal with any other issue raised during the assessment of the application concerned.
- (6) If the Director-General considers that significant changes are proposed to the nature of the State infrastructure development, the Director-General may make the preferred State infrastructure development report available to the public.

**5.15 Director-General's environmental impact assessment report** [cf s 115ZA]

- (1) The Director-General is to give a report on the State infrastructure development to the Minister for the purposes of the Minister's consideration of the application for approval to carry out the development.
- (2) The Director-General's report is to include:
  - (a) a copy of the proponent's environmental impact statement and any preferred State infrastructure development report, and
  - (b) any advice provided by public authorities on the State infrastructure development, and
  - (c) a copy of any report or advice of the Planning Assessment Commission in respect of the State infrastructure development, and
  - (d) any environmental impact assessment undertaken by the Director-General or other matter the Director-General considers appropriate.

**5.16 Giving of approval by Minister to carry out State infrastructure development** [cf s 115ZB]

- (1) If:
  - (a) the proponent makes an application for the approval of the Minister under this Division to carry out State infrastructure development, and
  - (b) the Director-General has given his or her report on the State infrastructure development to the Minister,the Minister may approve or disapprove of the carrying out of the State infrastructure development.
- (2) The Minister, when deciding whether or not to approve the carrying out of State infrastructure development, is to consider:

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- (a) the Director-General's report on the State infrastructure development and the reports, advice and recommendations contained in the report, and
  - (b) any advice provided by the Minister having portfolio responsibility for the proponent, and
  - (c) any findings or recommendations of the Planning Assessment Commission following a public hearing or review in respect of the State infrastructure development.
- (3) State infrastructure development may be approved under this Division with such modifications of the development or on such conditions as the Minister may determine.

## **5.17 Staged State infrastructure development applications** [cf s 115ZD]

- (1) For the purposes of this Division, a *staged State infrastructure development application* is an application for approval of State infrastructure development under this Division that sets out concept proposals for the proposed development, and for which detailed proposals for separate parts of the development are to be the subject of subsequent applications for approval. The application may set out detailed proposals for the first stage.
- (2) If approval is granted under this Division on the determination of a staged State infrastructure development application, the approval does not authorise the carrying out of any part of the State infrastructure development unless:
  - (a) approval is subsequently granted to carry out that part of the development following a further application for approval in respect of that part of the development, or
  - (b) the staged State infrastructure development application also provided the requisite details of that part of the development and approval is granted for that first stage without the need for further approval.
- (3) The terms of an approval granted on the determination of a staged State infrastructure development application are to reflect the operation of subsection (2).

## **5.18 Status of staged State infrastructure development applications and approvals** [cf s 115ZE]

- (1) The provisions of or made under this or any other Act relating to applications for approval and approvals under this Division apply, except as otherwise provided by or under this or any other Act, to a staged State infrastructure development application and an approval granted on the determination of any such application.

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- (2) An approval granted on the determination of a staged State infrastructure development application for State infrastructure development does not have any effect to the extent that it is inconsistent with the determination of any further application for approval in respect of that development.

**5.19 Determinations with respect to development subject to an approved staged State infrastructure development application [cf s 75P]**

- (1) When an approval is granted under this Division on the determination of a staged State infrastructure development application, the Minister may make any (or any combination) of the following determinations:
- (a) the Minister may determine the further environmental impact assessment requirements for approval to carry out the development or any particular stage of the development under this Division (in which case those requirements have effect for the purposes of this Division),
  - (b) the Minister may determine that approval to carry out the development or any particular stage of the development is to be subject to Part 4 of this Act (in which case it ceases to be State infrastructure development and subsection (2) applies),
  - (c) the Minister may determine that approval to carry out the development or any particular stage of the development is to be subject to Division 5.1 of this Part (in which case it ceases to be State infrastructure development and subsection (3) applies),
  - (d) the Minister may determine that no further environmental impact assessment is required for the development or any particular stage of the development (in which case the Minister may, under this Division, approve or disapprove its carrying out without further application, environmental impact assessment or report under this Division).
- (2) If the Minister determines under subsection (1) (b) that approval to carry out the development or any particular stage of the development is to be subject to Part 4, the following provisions apply:
- (a) the determination of a relevant development application under Part 4 is to be generally consistent with the terms of the approval of the staged State infrastructure development application,
  - (b) any development consent under Part 4 is to be granted subject to such conditions as the Minister determines,
  - (c) the provisions of Part 4 relating to EIS assessed development do not apply,

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- (d) that stage of the development (or any part of it) is exempt or complying development for the purposes of Part 4 if the Minister so determines,
  - (e) a planning control provision of a local plan prohibiting or restricting the carrying out of the development or that stage of the development does not have effect if the Minister so determines.
- (3) If the Minister determines under subsection (1) (c) that approval to carry out the development or any particular stage of the development is to be subject to Division 5.1 of this Part, the following provisions apply:
- (a) the development or that stage of the development becomes development that may be carried out without development consent under Part 4,
  - (b) any further environmental impact assessment is to be undertaken in accordance with any requirements determined by the Minister,
  - (c) a planning control provision of a local plan prohibiting or restricting the carrying out of the development or that stage of the development does not have effect if the Minister so determines.
- (4) The Minister may vary or revoke a determination under this section on the application of the proponent.

## **5.20 Modification of Minister's approval [cf s 115Z]**

- (1) In this section:
- Minister's approval* means an approval to carry out State infrastructure development under this Division, and includes an approval granted on the determination of a staged State infrastructure development application.
- modification* of an approval means changing the terms of the approval, including revoking or varying a condition of the approval or imposing an additional condition on the approval.
- (2) The proponent may request the Minister to modify the Minister's approval for State infrastructure development. The Minister's approval for a modification is not required if the development as modified will be consistent with the existing approval under this Division.
- (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental impact assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.

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## **5.21    Validity of action under this Division [cf s 115ZJ]**

Any development that has been approved (or purports to be approved) by the Minister under this Division is taken to be State infrastructure development to which this Division applies, and to have been such development for the purposes of any application or other matter under this Division in relation to the development.

## **5.22    Miscellaneous provisions relating to approvals under this Division [cf s 115ZL]**

- (1) The following documents under this Division in relation to State infrastructure development are to be made publicly available by the Director-General in accordance with the regulations:
  - (a) applications to carry out State infrastructure development,
  - (b) environmental impact assessment requirements for State infrastructure development,
  - (c) environmental impact statements placed on public exhibition and responses provided to the Director-General by the proponent after the end of the public exhibition period,
  - (d) environmental impact assessment reports of the Director-General to the Minister,
  - (e) any advice, recommendations or reports received from the Planning Assessment Commission,
  - (f) approvals to carry out State infrastructure development given by the Minister,
  - (g) any determination made by the Minister in connection with the approval of a staged State infrastructure development application and any modification of any such determination,
  - (h) requests for modifications of approvals given by the Minister and any modifications made by the Minister,
  - (i) any reasons given to the proponent by the Minister as referred to in subsection (2),
  - (j) any other matter prescribed by the regulations.
- (2) The Minister is to give reasons to the proponent for a decision:
  - (a) not to approve State infrastructure development under this Division, or
  - (b) to modify the State infrastructure development for which the proponent has sought approval under this Division, or
  - (c) not to approve a request by the proponent to modify a State infrastructure approval under this Division.



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- (3) An approval under this Division may be subject to a condition that it lapses on a specified date unless specified action with respect to the approval has been taken (such as the commencement of work on the development). Any such condition may be modified to extend the lapsing period.
- (4) An approval under this Division may be surrendered, subject to and in accordance with the regulations, by any person entitled to act on the approval.
- (5) A condition of the approval of State infrastructure development under this Division may require any one or more of the following:
  - (a) the surrender of any other planning approval under this Act (or the former Act) relating to the development or the land concerned,
  - (b) the surrender of any existing or continued use rights under Division 11.4 of Part 11 relating to the development or the land concerned.

## **Division 5.3 Public priority infrastructure**

### **5.23 Declaration of public priority infrastructure**

- (1) The Minister may, by Ministerial planning order, declare that particular development is public priority infrastructure for the purposes of this Act.
- (2) A declaration under this section may only be made if:
  - (a) the particular development is generally of the kind that is identified in a strategic plan (other than a local plan) or in a growth infrastructure plan as priority infrastructure for the area to which the plan applies, or
  - (b) a Minister with portfolio responsibility for the carrying out of the particular development applies for the declaration and the Minister administering this Act is of the opinion that the development is essential for the economic, environmental or social well-being of the State.
- (3) A declaration under this section may provide that future variations of a particular kind in relation to the development are covered by the declaration.
- (4) If a single proposed development comprises development that is only partly public priority infrastructure, the remainder of the development is also declared to be public priority infrastructure. This subsection does not apply to so much of the remainder of the development that the

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Director-General determines is not sufficiently related to the public priority infrastructure.

- (5) The Minister is to make publicly available his or her reasons for making a declaration under this section.
- (6) A declaration under this section is not affected by any subsequent change to a strategic or infrastructure plan on which the declaration was based.

## **5.24 Amendment or revocation of declaration**

- (1) The Minister may, from time to time, amend or revoke a declaration of public priority infrastructure by further Ministerial planning order.
- (2) The declaration may be amended or revoked at any time after it is made. However, a declaration cannot be revoked during or after the carrying out of development for the purposes of the public priority infrastructure concerned.
- (3) The regulations may make provision with respect to the application of the planning legislation as a consequence of the amendment or revocation of a declaration.

## **5.25 Declared public priority infrastructure may be carried out**

- (1) Development for the purposes of public priority infrastructure may be carried out without any planning approval under this Act and despite any provision of or made under the planning legislation, other than this Division.  
**Note.** For application of other legislation - see Division 6.1 of Part 6.
- (2) The Minister may, by an instrument published on the NSW legislation website, make or amend the planning control provisions of a local plan so that the local plan reflects the land use authorised by this section or to change land use and development controls for land in the vicinity of the public priority infrastructure. Any such instrument may zone land for use for the infrastructure.
- (3) Any such planning control provisions may be made or amended without the need to comply with any condition precedent under Part 3 relating to the making or amendment of those provisions.

## **5.26 Project definition report by proponent of public priority infrastructure**

- (1) Before the carrying out of development for the purposes of public priority infrastructure:
  - (a) the proponent is required to prepare a report on the carrying out of that development (the *project definition report*), and

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- (b) the report is to be publicly exhibited for a period of at least 28 days.
- (2) The project definition report is to set out the following:
  - (a) a description of the development (including any staging of the carrying out of the development),
  - (b) the measures that the proponent will take to avoid, minimise or mitigate any adverse impacts of the development,
  - (c) the monitoring, auditing and reporting that the proponent will undertake in relation to the environmental impacts of the development during the construction and operation stages of the development,
  - (d) any other matter prescribed by the regulations.
- (3) Before publicly exhibiting the project definition report, the proponent is to submit a copy of the report to the Director-General and to revise the report to address any matters notified to the proponent by the Director-General and submit a copy of the revised report to the Director-General.
- (4) A copy of the project definition report, as revised by the proponent following public exhibition of the report (including to address any further matters notified to the proponent by the Director-General), is to be published on the NSW planning website.

## **5.27 Application of provisions of this Act to public priority infrastructure**

- (1) The following provisions of this Act (and the ancillary Schedules to this Act that relate to those provisions) do not apply to development for the purposes of public priority infrastructure:
  - (a) Division 1.3 of Part 1,
  - (b) Part 3 (other than provisions relating to the identification of priority infrastructure by strategic plans),
  - (c) Part 4,
  - (d) Divisions 5.1 and 5.2 of this Part,
  - (e) Part 6 (other than Division 6.1),
  - (f) Part 7 (other than provisions relating to the identification of priority infrastructure by growth infrastructure plans),
  - (g) Parts 8 and 9,
  - (h) Part 10 (except section 10.12 and provisions relating to development control orders to the extent they apply to a kind of order that refers specifically to public priority infrastructure).

**Note.** See general order, item 14 of Division 1 of Part 2 of Schedule 10.

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- (2) Despite subsection (1), the regulations may apply particular provisions excluded by subsection (1) to development for the purposes of public priority infrastructure.

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## **Part 6 Concurrences, consultation and other legislative approvals**

### **Division 6.1 Approvals under other legislation-public priority infrastructure, State infrastructure development and State significant development**

#### **6.1 Application and interpretation: Division 6.1**

- (1) This Division applies to the carrying out of:
  - (a) development for the purposes of public priority infrastructure, and
  - (b) State infrastructure development approved under this Act, and
  - (c) State significant development approved under this Act.
- (2) Development for the purposes of public priority infrastructure includes any investigative or other activities that are required to be carried out for the purpose of the preparation of the project definition report for the development.
- (3) For the purposes of this Division:
  - (a) State infrastructure development is approved under this Act if the Minister has under Division 5.2 of Part 5 approved the carrying out of the development, and
  - (b) State significant development is approved under this Act if the Minister has granted development consent to the carrying out of the development under Part 4.

Any such development includes any investigative or other activities that are required to be carried out for the purpose of complying with any environmental impact assessment requirements under this Act in connection with an application for approval to carry out the development.

- (4) A reference in subsection (3) to an approval or consent to the carrying out of development is a reference to an approval or consent as modified from time to time under this Act.
- (5) For the purposes of this Division, *approval* includes a consent, licence or permission or any other form of authorisation.

#### **6.2 Approvals that do not apply to public priority infrastructure, State infrastructure development or State significant development**

- (1) The approvals of the kind set out in Table 1 to this section are not required for the carrying out of development to which this Division applies.

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- (2) Accordingly, the provisions of or made under any Act that would prohibit an activity without any such approval do not apply.

**Table 1: Approvals that do not apply**

Coastal Protection Act 1979	Concurrence of Minister administering Act under Part 3
Fisheries Management Act 1994	Permit referred to in section 201, 205 or 219
Heritage Act 1977	Approval under Subdivision 1 of Division 3 of Part 4 or excavation permit under section 139
National Parks and Wildlife Act 1974	Aboriginal heritage impact permit under section 90
Native Vegetation Act 2003	Approval referred to in section 12 to clear native vegetation (including approval to clear vegetation on State protected land under repealed provisions continued in force under Schedule 3)
Rural Fires Act 1997	Bush fire safety authority under section 100B
Water Management Act 2000	Approval under Part 3 of Chapter 3 (including water use approval, water management work approval and controlled activity approval or aquifer interference approval)

**6.3 Approvals that must be issued consistently for public priority infrastructure, State infrastructure development or State significant development**

- (1) An approval of the kind set out in Table 2 to this section cannot be refused if the approval is necessary for the carrying out of development to which this Division applies.
- (2) In the case of development for public priority infrastructure, any such approval is to be substantially consistent with the authority conferred by Division 5.3 of Part 5 for the carrying out of the development and with the project definition report under that Division.
- (3) In the case of State infrastructure development or State significant development, any such approval is to be substantially consistent with an approval or consent under this Act for the carrying out of the development.
- (4) This section does not apply to:

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- (a) an application for the renewal of any such approval or a renewed approval, or
  - (b) an application for a further such approval or a further approval following the expiry or lapsing of any such approval, or
  - (c) in the case of an environment protection licence under the *Protection of the Environment Operations Act 1997*—any period after the first review of the licence under section 78 of that Act.
- (5) A reference in this section to an approval includes a reference to any conditions of the approval.
- (6) This section applies to a person, court or tribunal that deals with an objection, appeal or review conferred on a person in relation to an approval in the same way as it applies to the person giving the approval.

## Table 2: Approvals that must be issued consistently

Fisheries Management Act 1994	Aquaculture permit under section 144
Mine Subsidence Compensation Act 1961	Approval under section 15
Mining Act 1992	Mining lease under section 63 or 64
Petroleum (Onshore) Act 1991	Production lease under section 42
Pipelines Act 1967	Licence under Part 3
Protection of the Environment Operations Act 1997	Environment protection licence under Chapter 3
Roads Act 1993	Consent under Division 3 of Part 9

## 6.4 Statutory directions, orders etc that cannot be made or given

### (1) Public priority infrastructure

The following directions, orders or notices cannot be made or given so as to prevent or interfere with the carrying out of public priority infrastructure:

- (a) an interim protection order (within the meaning of the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995*),
- (b) an order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995* or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*,

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- (c) a remediation direction under Division 3 (Remediation directions) of Part 6A of the *National Parks and Wildlife Act 1974*,
- (d) an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*,
- (e) an order under section 124 of the *Local Government Act 1993*.

(2) **All development to which Division applies**

The following order cannot be made so as to prevent or interfere with the carrying out of development to which this Division applies:  
an order under section 136 of the *Heritage Act 1977*.

- (3) A direction, order or notice made or given in contravention of this section has no effect.

## **Division 6.2      Concurrences, consultation and other legislative approvals - general provisions**

### **6.5      Consultation with Minister administering threatened species legislation if a Minister is consent authority or determining authority**

[cf s 112B]

- (1) This section applies to the following:
  - (a) development (not being State significant development or complying development) that requires development consent under Part 4 when a Minister is the consent authority,
  - (b) development that requires environmental impact assessment under Division 5.1 of Part 5 when a Minister is the determining authority.
- (2) For the purposes of determining the application for that development consent or of that environmental impact assessment, the Minister concerned is to consult the Minister administering the threatened species legislation if the development is likely to significantly affect threatened species.
- (3) In so consulting, the Minister administering the threatened species legislation is to provide the Minister who is the consent authority or the determining authority with any recommendations made by the Department head of the Department to which the administration of that legislation is assigned.

### **6.6      Concurrence of or consultation with responsible Department administering threatened species legislation if a Minister is not consent authority or determining authority [cf ss 79B, 112C, 112D]**

- (1) This section applies to the following:



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- (a) development (not being State significant development or complying development) that requires development consent under Part 4 when a Minister is not the consent authority,
  - (b) development that requires environmental impact assessment under Division 5.1 of Part 5 when a Minister is not the determining authority.
- (2) The consent authority is not to grant development consent if the development is likely to significantly affect threatened species, unless the consent authority has obtained the concurrence of the Department head of the Department to which the administration of the threatened species legislation is assigned.
- (3) The determining authority is not to carry out the development, or grant an approval to carry out the development, if the development is likely to significantly affect threatened species, unless the determining authority has obtained the concurrence of the Department head of the Department to which the administration of the threatened species legislation is assigned.
- (4) However, if the Minister administering the threatened species legislation considers that it is appropriate, that Minister may elect to act in the place of the relevant Department head. That Minister is required, in giving any concurrence, to consult that Department head and to give public notice of any recommendation of that Department head that the Minister has not accepted.
- (5) In determining whether to give a concurrence under this section, the Department head or Minister (as the case requires) is to have regard to the following:
  - (a) any species impact statement prepared for the development and submissions made in response to it,
  - (b) any assessment report prepared by or on behalf of the proponent,
  - (c) any relevant recovery plan or threat abatement plan,
  - (d) whether the development is likely to reduce the long-term viability of the threatened species, populations or ecological communities in the region,
  - (e) whether the development is likely to accelerate the extinction of the threatened species, populations or ecological communities or place them at risk of extinction,
  - (f) the likely economic and social consequences of granting or of not granting concurrence.
- (6) The terms of a concurrence under this section may be varied by the person who gave the concurrence at the request of the consent authority or determining authority concerned.

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## **6.7 Other consultation and concurrence requirements under planning control provisions [cf s 79B]**

- (1) This section applies to development (not being State significant development or complying development) that requires development consent under Part 4 when the planning control provisions of a local plan require the consent authority to consult with or to obtain the concurrence of a person before granting consent to the development.
- (2) The consent authority is required to consult with or obtain the concurrence of that person unless the consent authority determines to refuse to grant development consent.
- (3) However, if the consent authority is a Minister, then that Minister is required only to consult with that person.
- (4) A person whose concurrence to development is required may:
  - (a) grant concurrence to the development, either unconditionally or subject to conditions, or
  - (b) refuse concurrence to the development.

In deciding whether to grant concurrence, the person must take into consideration only the matters that the planning control provisions concerned require that person to take into account.

- (5) A consent authority that grants consent to the carrying out of development for which a concurrence has been granted must grant the consent subject to any conditions of the concurrence. This does not affect the right of the consent authority to impose other conditions not inconsistent with the conditions of the concurrence or to refuse consent.
- (6) If the person whose concurrence to development is required fails to inform the consent authority of the decision concerning concurrence within the time allowed by the regulations for doing so, the consent authority may determine the development application without the concurrence of that person.

## **6.8 Consultation and development consent—certain bush fire prone land [cf s 79BA]**

- (1) This section applies to development (not being State significant development or complying development) that requires development consent under Part 4, being development for any purpose other than:
  - (a) a subdivision of land that could lawfully be used for residential or rural residential purposes, or
  - (b) development for a special fire protection purpose (within the meaning of section 100B of the *Rural Fires Act 1997*).

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- (2) Development consent cannot be granted for the carrying out of development to which this section applies on bush fire prone land unless the consent authority:
  - (a) is satisfied that the development conforms to the specifications and requirements prescribed or adopted by the regulations for the purposes of this section, or
  - (b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.
- (3) If the consent authority is satisfied that the development does not conform to the relevant specifications and requirements, the consent authority may, despite subsection (2), grant consent to the carrying out of the development but only if it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.
- (4) The regulations may exclude development from the application of this section subject to compliance with any requirements of the regulations. The regulations may (without limiting the requirements that may be made):
  - (a) require the issue of a certificate by the Commissioner of the NSW Rural Fire Service or other qualified person in relation to the bush fire risk of the land concerned, and
  - (b) authorise the payment of a fee for the issue of any such certificate.

**6.9 Minister may amend local plan for purpose of removing consultation, concurrence and other legislative provisions** [cf s 28]

- (1) This section applies to:
  - (a) any consultation or concurrence requirement imposed by this Division, or
  - (b) any consultation or concurrence requirement imposed by planning control provisions referred to in this Division, or
  - (c) the statutory provisions that require any approval of the kind set out in Table 3 to Division 6.3, or
  - (d) any provision of or made under any other Act that relates to the carrying out of development to which Part 4 or Part 5 applies (being a provision declared by the regulations to be a statutory provision to which this section applies).

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- (2) The Minister may, for the purpose of facilitating the carrying out of any particular development or any particular kind of development, amend the planning control provisions of a local plan to provide that a consultation or concurrence requirement, or a relevant statutory provision, to which this section applies does not apply to that development.
- (3) Any such amendment requires the approval of the Minister with portfolio responsibility for the matter that is the subject of the relevant consultation or concurrence requirement or for the relevant statutory provision. This subsection does not apply to an amendment of consultation or concurrence requirements referred to in subsection (1) (b).
- (4) The Minister may, under Part 3, amend the planning control provisions of the relevant local plan for any of the following purposes:
  - (a) to impose additional or alternative environmental impact assessment requirements or conditions that apply to that development,
  - (b) to prescribe matters to be included in an application for planning approval for that development,
  - (c) to prescribe matters to be taken into account in determining any such application,
  - (d) to prescribe standard conditions of development consent that are to apply to any consent for that development,
  - (e) to prescribe any other matter relating to the assessment, determination or carrying out of that development.
- (5) If any such amendment prescribes standard conditions of a development consent:
  - (a) the development consent is taken to be subject to those conditions, whether or not they are set out in the development consent, and
  - (b) any other conditions of development consent imposed by the consent authority that are inconsistent with the standard conditions, or that deal with the same matter as and are more onerous than the standard conditions, do not have any effect, and
  - (c) the standard conditions imposed cannot be modified without the approval of the Minister.
- (6) The Minister may amend the provisions of a local plan for the purposes of this section without compliance with the provisions of the planning legislation relating to the conditions precedent to doing so.

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- (7) This section has effect despite any provisions of or made under this Act requiring the relevant consultation or concurrence and despite the relevant statutory provisions of or made under any other Act.

## **Division 6.3 One stop referrals and decisions for other legislative approvals and for concurrences and consultation**

### **6.10 Application and interpretation: Division 6.3**

- (1) This Division applies to development that requires development consent under Part 4 (other than State significant development or complying development) and that:
- (a) requires any approval of the kind set out in Table 3 to this Division, or
  - (b) is subject to any consultation or concurrence requirement imposed by Division 6.2 or by any planning control provision of a local plan referred to in Division 6.2.

The regulations may prescribe circumstances in which this Division does not apply.

- (2) In this Division:
- approval body** means the person or body that may, under the relevant Act, grant an approval of the kind set out in Table 3 to this Division.
- first renewal** of an approval means, in the case of an environment protection licence under the *Protection of the Environment Operations Act 1997*, the first review of the licence under section 78 of that Act.
- give** an approval, includes grant or issue an approval.
- one stop referrals development** means development to which this Division applies.

### **6.11 Referral to and consultation by Director-General**

- (1) The consent authority is required to refer a copy of any application for development consent for proposed one stop referrals development to the Director-General (unless the consent authority has determined to refuse to grant development consent).
- (2) The regulations may require the provision of information to the Director-General and the payment of any part of the fee for the development application to the Director-General.
- (3) The Director-General is, when exercising functions under this Division, required to have regard to any advice on the matter that is provided by the relevant approval body or other relevant person or body for whom the Director-General acts under this Division.

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- (4) The Director-General may, when exercising functions under this Division in respect of more than one legislative approval or matter, issue or give combined general terms of approval, concurrence or advice.

## **6.12 One stop referrals and decisions for other legislative approvals**

- (1) If proposed one stop referrals development requires an approval of the kind set out in Table 3 to this Division, the Director-General is to determine, in accordance with the relevant Act relating to the approval, whether the approval should be given and, if so, the general terms of any such approval. For the purposes of this subsection, the Director-General acts in the place of (and as if he or she were) the approval body that would otherwise give that approval.
- (2) If the consent authority grants development consent for the proposed one stop referrals development, the consent is to be consistent with the general terms of approval of the Director-General of which the consent authority has been informed. For that purpose, the consent authority has the power to impose any condition that could be imposed under the relevant Act by the approval body on the giving of the approval under that Act.
- (3) The consent authority is not to grant development consent for the proposed one stop referrals development if the Director-General informs the consent authority that general terms of approval will not be issued because he or she has determined that the approval should not be given under the relevant Act.
- (4) If the consent authority grants development consent for the proposed one stop referrals development, the approval body must give the approval under the relevant Act if an application for that approval is made within 3 years of the grant of development consent and the development consent is still in force. The approval is to be substantially consistent with the general terms of approval determined by the Director-General.
- (5) This section does not limit the imposition of conditions (including conditions as to security) by the approval body on the giving of an approval that are not inconsistent with the development consent for the one stop referrals development.
- (6) This section does not apply to or limit the giving of approval by the approval body pursuant to an application for renewal of an approval or the exercise by the approval body of any of its other functions, such as the issuing of orders, the suspension or cancellation of an approval or the prosecution of offences.

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- (7) However, an approval body must not vary the terms of an approval subject to this section before the expiration, lapsing or first renewal of the approval (whichever first occurs) in a manner that is inconsistent with the relevant general terms of approval. This subsection does not apply to a variation that is consistent with a modification made to the conditions of the development consent.
- (8) The regulations may provide that any public or other notice requirements for an application for approval under a relevant Act are taken to be satisfied by public notice given in relation to the determination of the application for development consent.
- (9) This section does not affect any rights of objection, review or appeal of an applicant for approval under a relevant Act, but this section applies to a person, court or tribunal that deals with any such objection, review or appeal in the same way as it applies to the person giving the approval.
- (10) The Director-General is to notify the relevant approval body of a determination made by the Director-General under this section.
- (11) The consent authority is to notify the Director-General and relevant approval bodies of its determination of an application to carry out one stop referrals development.
- (12) This section has effect despite the provisions of or made under any other Act that relates to the giving of an approval to which this section applies.

## **6.13 One stop referrals and decisions for consultation and concurrences**

- (1) If proposed one stop referrals development requires any concurrence imposed by Division 6.2 or by the planning control provisions of a local plan referred to in Division 6.2, the Director-General is, in accordance with this Act or the relevant planning control provisions, to give or refuse to give that concurrence in the place of (and as if he or she were) the person or body that would otherwise give or refuse to give concurrence.
- (2) If the proposed one stop referrals development requires any consultation imposed by Division 6.2 or by the planning control provisions of a local plan referred to in Division 6.2, the Director-General is, in accordance with this Act or the relevant planning control provisions, to give consideration to the matter and provide any relevant advice in the place of (and as if he or she were) the person or body with whom the consent authority was otherwise required to consult.
- (3) The consent authority is to notify the Director-General and relevant persons or bodies on whose behalf the Director-General has acted under

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this section of his or her determination of an application to carry out one stop referrals development.

- (4) This section has effect despite any other provisions of or made under this Act requiring the relevant consultation or concurrence.

## 6.14 Special heritage provision

A consent authority is not to refuse development consent on heritage grounds for one stop referrals development if the same development is the subject of an approval under Subdivision 1 of Division 3 of Part 4 of the *Heritage Act 1977*.

**Table 3: One stop referrals and decisions for legislative approvals**

Fisheries Management Act 1994	Permit referred to in section 144, 201, 205 or 219
Heritage Act 1977	Approval under Subdivision 1 of Division 3 of Part 4
Mine Subsidence Compensation Act 1961	Approval under section 15
Mining Act 1992	Mining lease under section 63 or 64
National Parks and Wildlife Act 1974	Aboriginal heritage impact permit under section 90
Native Vegetation Act 2003	Development consent referred to in section 12 to clear native vegetation (including consent to clear vegetation on State protected land under repealed provisions continued in force under Schedule 3)
Petroleum (Onshore) Act 1991	Production lease under section 42
Protection of the Environment Operations Act 1997	Environment protection licence under Chapter 3
Roads Act 1993	Consent under Division 3 of Part 9
Rural Fires Act 1997	Bush fire safety authority under section 100B
Water Management Act 2000	Approval under Part 3 of Chapter 3 (including water use approval, water management work approval and controlled activity approval or aquifer interference approval)



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## Part 7 Infrastructure and other contributions

### Division 7.1 Introductory

#### 7.1 Definitions

In this Part:

**biodiversity offset contribution** means a contribution imposed under Division 7.4.

**growth infrastructure plan** means a growth infrastructure plan made under Division 7.3 for regional infrastructure in a subregion of the State.

**infrastructure contribution** means a local infrastructure contribution or regional infrastructure contribution.

**local infrastructure** means each of the following:

- (a) local roads,
- (b) local drainage works,
- (c) open space,
- (d) community facilities.

**local infrastructure contribution** means a contribution imposed under Division 7.2.

**local infrastructure plan** means a local infrastructure plan made under Division 7.2 for local infrastructure in a local government area.

**local plan** means the contribution provisions of a local plan.

**planning agreement** means a planning agreement provided for in Division 7.5.

**public authority** includes any Minister.

**regional infrastructure** means each of the following:

- (a) regional or State roads,
- (b) land for drainage,
- (c) transport infrastructure,
- (d) regional open space,
- (e) educational establishments.

**regional infrastructure contribution** means a contribution imposed under Division 7.3.

#### 7.2 Application of Part

- (1) This Part applies to development that requires development consent under Part 4.

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**Note.** This Part accordingly applies where a consent authority grants development consent, including where a council or other certifier grants a complying development certificate.

- (2) This Part also applies to State infrastructure development that requires approval under Part 5 and that is not carried out by or on behalf of a public authority in the same way as it applies to development that requires development consent under Part 4, subject to any necessary modifications and any modifications prescribed by the regulations.

## 7.3 Principles for infrastructure contributions

The following are the principles for infrastructure contributions for the purposes of this Part:

**Principle 1:** The local or regional infrastructure that is proposed to be funded by an infrastructure contribution should be able to be provided within a reasonable time.

**Principle 2:** The impact of the proposed infrastructure contribution on the affordability of housing should be considered.

**Principle 3:** The proposed infrastructure contribution should be based on a reasonable apportionment between existing demand and new demand for local or regional infrastructure to be created by the proposed development to which the contribution relates.

**Principle 4:** The proposed infrastructure contribution should be based on a reasonable estimate of the cost of proposed local or regional infrastructure.

**Principle 5:** The estimates of demand for each item of local or regional infrastructure to which the infrastructure contribution relates should be reasonable.

**Note.** See Schedule 7 for the making of regulations with respect to transparency and accountability relating to development contributions and with respect to planning agreements and other matters.

## Division 7.2 Local infrastructure contributions

### 7.4 Local infrastructure contributions for proposed development

- (1) A consent authority can impose a local infrastructure contribution on development to fund the provision by a council of local infrastructure in the area in which development is proposed to be carried out.
- (2) In this Division, the *provision* of local infrastructure includes:

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- (a) the extension or augmentation of local infrastructure and recoupment of the cost of providing, extending or augmenting local infrastructure, and
  - (b) the exercise of any function of a council in connection with the administration of this Division (including the carrying out of any research or investigation and the preparation of any report, study or instrument in connection with the administration of this Division).
- (3) A local infrastructure contribution is imposed by means of a condition of development consent for the development concerned.

## **7.5 Contributions to be in accordance with contributions provisions of local plan**

- (1) A local infrastructure contribution must be in accordance with the local plan for the area, that is:
- (a) a local infrastructure contribution can only be imposed in respect of development or a class of development that the local plan provides can be the subject of a local infrastructure contribution, and
  - (b) the amount of a local infrastructure contribution is to be determined in accordance with the local plan.
- (2) A local infrastructure contribution is imposed in respect of the local infrastructure that the local infrastructure plan provides is to be the subject of the local infrastructure contribution. Accordingly, a local infrastructure contribution cannot be imposed unless there is a local infrastructure plan.
- (3) Despite subsections (1) and (2), if the Minister is the consent authority, the Minister can impose a local infrastructure contribution that is not in accordance with the local plan for the area but must have regard to that local plan and the local infrastructure plan when imposing the contribution.

## **7.6 Kinds of local infrastructure contributions—direct and indirect**

- (1) There are 2 kinds of local infrastructure contribution, as follows:
- (a) a *direct contribution*, which is a contribution requiring the payment of money as a reasonable contribution towards the provision of local infrastructure,
  - (b) an *indirect contribution*, which is a contribution requiring the payment of an amount of money that is a percentage of the capital investment value of the proposed development or that is calculated by reference to the area of the proposed development or calculated in a manner authorised by the regulations.

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- (2) An indirect contribution cannot be imposed in respect of development that is subject to a direct contribution (that is, only one or the other can be imposed).
- (3) Once a direct contribution has been imposed in respect of development comprising the subdivision of land (the *initial development*), no direct or indirect contribution can be imposed in respect of other development on that land unless that other development will or is likely to increase the demand for local infrastructure beyond the increase in demand attributable to the initial development.
- (4) For the purposes of a direct contribution, the cost of providing existing local infrastructure is that cost as indexed in accordance with the regulations.
- (5) For the purposes of an indirect contribution, the regulations may make provision for or with respect to the means by which the capital investment value or the area of the proposed development is to be estimated or determined.

## 7.7 Nexus for contributions

- (1) A direct contribution for the provision, extension or augmentation of local infrastructure within an area can only be imposed if the consent authority is satisfied that the development concerned will or is likely to require the provision of or increase the demand for that local infrastructure.
- (2) A direct contribution for recoupment of the cost of providing existing local infrastructure within the area can only be imposed if:
  - (a) the consent authority is satisfied that the development concerned will, if carried out, benefit from the provision of the existing local infrastructure, and
  - (b) the existing local infrastructure was (at any time, whether before or after the commencement of this Act) provided within the area by a council in preparation for or to facilitate the carrying out of development in the area.
- (3) For an indirect contribution there is not required to be any connection between the development the subject of the contribution and the object of expenditure of any money required to be paid.

## 7.8 Payment of local infrastructure contributions

- (1) A local infrastructure contribution is payable to the council (the *relevant council*) of the area in which the development concerned is to be carried out.

**Note.** Payment to the council is required even if the council is not the consent authority.

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- (2) The time for payment of a local infrastructure contribution is as required by the local plan.

*[Provision to be included to enable deferral of the payment of local infrastructure contributions up to the transfer of the land to which they relate and to ensure that contributions are paid before the land can be transferred (whether by statutory charge on the land or otherwise).]*

- (3) The relevant council can accept the dedication of land or the carrying out of works-in-kind in part or full payment of a local infrastructure contribution. Land dedicated in satisfaction of a local infrastructure contribution is to be transferred to the relevant council.
- (4) The local plan can provide for the indexation of local infrastructure contributions under the plan by providing for a contribution to increase at a specified rate of indexation between the date the contribution is imposed and the date of payment of the contribution. The amount payable in satisfaction of a contribution is to be increased in accordance with the indexation provisions of the local plan.

## 7.9 Use of local infrastructure contributions

- (1) A council is to hold any money paid to it in satisfaction of a local infrastructure contribution for the purpose for which the contribution was imposed and apply the money towards that purpose. Money paid for different purposes may be pooled and applied progressively for those purposes.
- (2) Land dedicated in satisfaction of a local infrastructure contribution is to be made available by the council for the purpose for which the contribution was imposed.
- (3) The money paid in satisfaction of a local infrastructure contribution includes any additional amount earned from investment of that money and any proceeds of sale of land received in satisfaction of a local infrastructure contribution.
- (4) If the Minister considers that a council is not complying with this section in a timely manner, the Minister may direct the council on how the money held by the council is to be applied to further the local infrastructure requirements of the relevant subregion and the council is required to comply with any such direction. A direction is to be consistent with the infrastructure priorities in the subregional delivery plan and may require money collected in one local government area to be applied in another local government area in the subregion.

**Note.** The *Planning Administration Act 2013* enables the Minister to delegate to a subregional planning board the power to give directions to a council under this subsection.

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- (5) Money is to be applied, and land made available, under this section within 3 years for the purposes for which the contribution was imposed. The Minister may extend that period by 3 years in a particular case at the request of the council.

## **7.10 Complying development**

- (1) A local plan must specify whether or not a local infrastructure contribution for which the plan provides is to be imposed on development when a complying development certificate is issued for the development.
- (2) A certifier (other than a council) cannot accept the dedication of land or the carrying out of works-in-kind in payment of a local infrastructure contribution.
- (3) A certifier must impose a condition on a complying development certificate requiring payment of a local infrastructure contribution if the local plan so requires (with the amount of the contribution to be as required by the local plan).
- (4) If a certifier fails to impose the necessary condition, such a condition has effect as if it had been imposed by the certifier.

## **7.11 Local infrastructure plans**

- (1) A council may prepare a draft local infrastructure plan for its area and submit the draft plan to the Minister.
- (2) In preparing a draft local infrastructure plan, the council must have regard to the principles for infrastructure contributions (established by section 7.3) and to any applicable NSW planning policy.
- (3) A local infrastructure plan is to identify the local infrastructure for which a local infrastructure contribution is to be imposed. The plan may also identify other infrastructure for the area.
- (4) The Minister may make a local infrastructure plan in the form in which it was submitted or with such modifications as the Minister considers appropriate. The Minister may decide not to make the draft plan.  
**Note.** Part 1 of Schedule 2 requires any such draft plan to be publicly exhibited for at least 28 days.
- (5) In making a local infrastructure plan, the Minister must have regard to the principles for infrastructure contributions (established by section 7.3) and to any applicable NSW planning policy.
- (6) A local infrastructure plan is required to be published on the NSW planning website.

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- (7) A local infrastructure plan may be amended or repealed by a further local infrastructure plan published on the NSW planning website.

## **7.12 Cross-boundary issues**

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

## **7.13 Local infrastructure may be provided outside NSW**

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

## **7.14 Appeals**

- (1) A condition of development consent that imposes a local infrastructure contribution as a direct contribution may be disallowed or amended by the Land and Environment Court on appeal under Part 9 because it is not reasonable in the particular circumstances of the case, even if it was in accordance with the local plan and the local infrastructure plan. The Court cannot disallow or amend the local plan.
- (2) A condition of development consent that imposes a local infrastructure contribution as an indirect contribution that is in accordance with the local plan cannot be disallowed or amended by the Land and Environment Court on appeal under Part 9.

## **Division 7.3 Regional infrastructure contributions**

### **7.15 Imposition of regional infrastructure contributions**

- (1) A local plan can impose a regional infrastructure contribution on development as a contribution towards the provision of regional infrastructure by the State.

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- (2) In this Division, the *provision* of regional infrastructure includes:
  - (a) the extension or augmentation of regional infrastructure and recoupment of the cost of providing, extending or augmenting regional infrastructure, and
  - (b) any action of a public authority in connection with the exercise of any statutory function under the planning legislation in connection with regional infrastructure, including the carrying out of any research or investigation and the preparation of any report, study or instrument.
- (3) The local plan is to specify the development or class of development in respect of which a regional infrastructure contribution is imposed, the amount of the contribution, the time for payment of the contribution and any indexation of that amount at the date of payment.

*[Provision to be included to enable deferral of the payment of regional infrastructure contributions up to the transfer of the land to which they relate and to ensure that contributions are paid before the land can be transferred (whether by statutory charge on the land or otherwise).]*
- (4) The amount of a regional infrastructure contribution can only be a percentage of the capital investment value of the proposed development or calculated by reference to the area of the proposed development or calculated in a manner authorised by the regulations. The regulations may make provision for or with respect to the means by which the capital investment value or area of proposed development is to be estimated or determined.
- (5) The regional infrastructure for which a regional infrastructure contribution can be imposed extends to regional infrastructure outside the subregion concerned or outside New South Wales.
- (6) A regional infrastructure contribution is in addition to any local infrastructure contribution imposed under Division 7.2.

## **7.16 How regional infrastructure contributions are imposed**

- (1) The consent authority for development on which a regional infrastructure contribution is imposed is to impose the contribution as a condition of development consent for the development.
- (2) If a consent authority fails to impose the necessary condition on development consent, such a condition has effect as if it had been imposed by the consent authority.



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## **7.17 Payment of regional infrastructure contributions**

- (1) A regional infrastructure contribution (and any proceeds of sale of land accepted in payment of a regional infrastructure contribution) are payable into:
  - (a) the Regional Contributions Fund under Division 7.6, subject to paragraph (b), or
  - (b) in the case of regional infrastructure contributions for land for drainage or land for regional open space - the Planning Growth Fund for the region under Schedule 1 to the *Planning Administration Act 2013*.

**Note.** Division 7.6 provides for payments from the Regional Contributions Fund for the provision of regional infrastructure identified in a growth infrastructure plan.

- (2) The Minister may accept the dedication of land or the carrying out of works-in-kind in part or full payment of a regional infrastructure contribution but only if the land or work relates to the regional infrastructure to which the contribution relates.
- (3) The Minister may sell all or part of any land received under this Division in respect of a contribution or direct the transfer of any such land to a public authority that is to provide, or has provided, infrastructure in relation to the development or class of development to which the contribution relates.

## **7.18 Complying development**

- (1) The local plan must specify whether or not a regional infrastructure contribution for which the local plan provides is to be imposed on development when a complying development certificate is issued for the development.
- (2) A certifier must impose a condition on a complying development certificate requiring payment of a regional infrastructure contribution if the local plan so requires (with the amount of the contribution to be as required by the local plan).
- (3) If a certifier fails to impose the necessary condition, such a condition has effect as if it had been imposed by the certifier.
- (4) A certifier cannot accept the dedication of land or the carrying out of works-in-kind in payment of a regional infrastructure contribution.

## **7.19 Planning control provisions of local plan for satisfactory arrangements for regional infrastructure**

- (1) The planning control provisions of a local plan can include provision to the effect that development consent is not to be granted for specified development or development of a specified class unless arrangements

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satisfactory to the Director-General have been made for the making of a contribution towards the provision of regional infrastructure by the State in relation to the development.

- (2) In deciding for the purposes of any such provision whether satisfactory arrangements have been made for the making of a contribution towards the provision of regional infrastructure by the State in relation to development, the Director-General must have regard to the principles for infrastructure contributions (established by section 7.3).
- (3) If a regional infrastructure contribution is imposed in respect of development as a condition of development consent, a contribution towards the provision of regional infrastructure in respect of the development cannot be required under the planning control provisions of the local plan.

## **7.20 Growth infrastructure plans**

- (1) The Director-General may prepare a draft growth infrastructure plan for any subregion of the State and submit the draft plan to the Minister.  
**Note.** Part 1 of Schedule 2 requires any such draft plan to be publicly exhibited for at least 28 days.
- (2) A growth infrastructure plan is to identify the regional infrastructure for which a regional infrastructure contribution may be imposed. The plan may also identify priority infrastructure for the region and other infrastructure for the subregion.
- (3) A growth infrastructure plan is to include a contestability assessment, being an assessment of the opportunities for infrastructure identified in the plan to be provided and operated by the private sector.
- (4) The Minister may make a growth infrastructure plan in the form in which it was submitted or with such modifications as the Minister considers appropriate. The Minister may decide not to make the draft plan.
- (5) The making of a growth infrastructure plan requires the concurrence of the Treasurer or (if the cost of the infrastructure concerned is less than \$30 million) the Secretary of the Treasury.
- (6) In making a growth infrastructure plan, the Minister must have regard to the principles for infrastructure contributions (established by section 7.3).
- (7) A growth infrastructure plan is required to be published on the NSW planning website.
- (8) A growth infrastructure plan may be amended or repealed by a further growth infrastructure plan published on the NSW planning website.

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

- (1) A condition of development consent that imposes a regional infrastructure contribution in accordance with the local plan may not be disallowed or amended by the Land and Environment Court on appeal under Part 9.
- (2) A condition of development consent that imposes a regional infrastructure contribution cannot be modified without the approval of the Minister.

## **Division 7.4 Biodiversity offset contributions**

### **7.22 Imposition of biodiversity offset contributions**

- (1) A local plan can impose a biodiversity offset contribution on development as a contribution towards the conservation or enhancement of the natural environment of the State.
- (2) The local plan is to specify the development or class of development in respect of which a biodiversity offset contribution is imposed, the amount of the contribution, the time for payment of the contribution and any indexation of that amount at the date of payment.
- (3) The natural environment for which a biodiversity offset contribution can be imposed extends to natural environment outside the locality of the proposed development.
- (4) A biodiversity offset contribution is in addition to any local or regional infrastructure contribution imposed under this Part.

**Note.** Sections 3.5 and 3.6 require regional growth plans and subregional delivery plans to identify any proposed biodiversity offsets in connection with development to which the plans apply and the kinds of development for which they are proposed.

### **7.23 How biodiversity offset contributions are imposed**

- (1) The consent authority for development on which a biodiversity offset contribution is imposed is to impose the contribution as a condition of development consent for the development.
- (2) If a consent authority fails to impose the necessary condition on development consent, such a condition has effect as if it had been imposed by the consent authority.

### **7.24 Payment of biodiversity offset contributions**

- (1) A biodiversity offset contribution (and any proceeds of sale of land accepted in payment of a biodiversity offset contribution) are payable into the Biodiversity Offset Fund under section # of the *Threatened Species Conservation Act 1995*.

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**Note.** Amendments to that Act will establish the Fund in the special deposits account, with offset contributions for the aquatic natural environment kept separately within the Fund. The Fund will be applied for purposes determined by the relevant Minister administering the threatened species legislation that will conserve or enhance the natural environment of the State, having regard to the relevant subregional delivery plan.

- (2) A Minister administering the threatened species legislation may accept the dedication of land, or the carrying out of environmental works or activities that conserve or enhance the natural environment of the State, in part or full payment of a biodiversity offset contribution.
- (3) A Minister administering the threatened species legislation may sell all or part of any land received under this Division in respect of a contribution.

## **7.25 Complying development**

- (1) The local plan must specify whether or not a biodiversity offset contribution for which the plan provides is to be imposed on development when a complying development certificate is issued for the development.
- (2) A certifier must impose a condition on a complying development certificate requiring payment of a biodiversity offset contribution if the local plan so requires (with the amount of the contribution to be as required by the local plan).
- (3) If a certifier fails to impose the necessary condition, such a condition has effect as if it had been imposed by the certifier.
- (4) A certifier cannot accept the dedication of land or the carrying out of works or activities in payment of a biodiversity offset contribution.

## **7.26 Planning control provisions of local plan for satisfactory arrangements for biodiversity offsets**

- (1) The planning control provisions of a local plan can include provision to the effect that development consent is not to be granted for specified development or development of a specified class unless arrangements satisfactory to the Director-General have been made for a biodiversity offset contribution towards the conservation or enhancement of the natural environment in connection with the development.
- (2) If a biodiversity offset contribution is imposed in respect of development as a condition of development consent, such a contribution in respect of the development cannot be required under the planning control provisions of the local plan.

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## 7.27 Restrictions on appeals and changes to conditions

- (1) A condition of development consent that imposes a biodiversity offset contribution in accordance with a local plan may not be disallowed or amended by the Land and Environment Court on appeal under Part 9.
- (2) A condition of development consent that imposes a biodiversity offset contribution cannot be modified without the approval of a Minister administering the threatened species legislation.

## Division 7.5 Planning agreements

### 7.28 Developers can enter into planning agreements

- (1) A *planning agreement* is a voluntary agreement between one or more public authorities and a person (the *developer*) under which the developer is required to dedicate land free of cost, pay money, or to carry out public or other works, or any combination of them, to be used for or applied towards the following:
  - (a) the provision of infrastructure that is identified in a local infrastructure plan or growth infrastructure plan,
  - (b) the provision of infrastructure that is identified in a Ministerial planning order where there is no local infrastructure plan applying to the land concerned or where there is no growth infrastructure plan applying to the land concerned,
  - (c) the provision of affordable housing that is identified in a strategic plan,
  - (d) the conservation or enhancement of the natural environment of the State.
- (2) The developer must be:
  - (a) a person who has sought a change to or the making or revocation of the planning control provisions of a local plan, or
  - (b) a person who has made, or proposes to make, a development application, or
  - (c) a person who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.
- (3) When entering into a planning agreement that relates to the provision of infrastructure, a public authority must have regard to the principles for infrastructure contributions (established by section 7.3).
- (4) In this Division, the *provision* of infrastructure includes:
  - (a) the extension or augmentation of infrastructure and the recoupment of the cost of providing, extending or augmenting infrastructure, and

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- (b) the funding of recurrent expenditure relating to the provision, extension or augmentation of infrastructure, and
- (c) any action of a public authority in connection with the exercise of any statutory function under the planning legislation, including the carrying out of any research or investigation and the preparation of any report, study or instrument.

## **7.29 Planning agreements can limit contribution requirements**

- (1) A planning agreement can exclude the application in respect of development of any provision of Division 7.2 (Local infrastructure contributions), Division 7.3 (Regional infrastructure contributions) or Division 7.4 (Biodiversity offset contributions), subject to the following restrictions:
  - (a) a planning agreement cannot exclude the application of a provision of Division 7.2 in respect of development unless the consent authority for the development or the Minister is a party to the agreement,
  - (b) a public authority is not to enter into a planning agreement excluding the application of Division 7.3 unless the public authority is the Minister or does so with the approval of the Minister,
  - (c) a public authority is not to enter into a planning agreement excluding the application of Division 7.4 unless the public authority is a Minister administering the threatened species legislation or does so with the approval of any such Minister.
- (2) If a planning agreement excludes the application of any provision of Division 7.2, 7.3 or 7.4 to particular development, a consent authority cannot impose a contribution in respect of that development under the excluded provisions (except in respect of the application of any part of those provisions that is not excluded by the agreement).

## **7.30 Use of planning agreement contributions**

- (1) A public authority is to hold any money paid to it under a planning agreement for the purpose for which the payment was required and apply the money towards that purpose. Money paid for different purposes may be pooled and applied progressively for those purposes.
- (2) Land dedicated under a planning agreement is to be made available by the public authority for the purpose for which the dedication was required.
- (3) The money paid under a planning agreement includes any additional amount earned from investment of that money.

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## **7.31 Parties to planning agreements**

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

## **7.32 Limitations on planning agreements**

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

## **7.33 Contents of planning agreements**

- (1) A planning agreement must provide for the following:
  - (a) a description of the land to which the agreement applies,
  - (b) a description of the change to or the making or revocation of the planning control provisions of the local plan, or a description of the development, to which the agreement applies,
  - (c) the nature and extent of the contribution to be made by the developer under the agreement, the time or times by which the contribution is to be made and the manner by which the contribution is to be made,
  - (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of Divisions 7.2, 7.3 and 7.4 to the development,
  - (e) if the agreement does not exclude the application to the development of provisions of Division 7.2 for imposing a direct contribution, whether benefits under the agreement are or are not to be taken into consideration in connection with imposing such a contribution,
  - (f) the terms of an offer referred to in section 7.35 (3) relating to the agreement,
  - (g) a mechanism for the resolution of disputes under the agreement,

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- (h) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.
- (2) There is not required to be any connection between the development to which a planning agreement applies and the object of expenditure of any money required to be paid by the agreement.  
**Note.** See section 7.30, which requires money paid under a planning agreement to be applied for the purpose for which it was paid.

## **7.34 Registered planning agreements to run with land**

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

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

- (1) A planning control provision of a local plan (other than a provision of a transitional planning instrument made before 8 July 2005) has no effect to the extent that the provision:



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- (a) expressly requires a planning agreement to be entered into before a development application can be made, considered or determined, or
  - (b) expressly prevents a development consent from being granted or having effect unless or until a planning agreement is entered into.
- (2) A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.
  - (3) However, a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with the development application, or a change to or the amendment or revocation of the planning control provisions of the local plan sought by the developer for the purposes of making the development application.
  - (4) An offer referred to in subsection (3) must include all the matters for which a planning agreement must make provision under this Part.
  - (5) In this section, *planning agreement* includes any agreement (however described) containing provisions similar to those contained in a planning agreement.

## **7.36 No appeals**

- (1) A person cannot appeal to the Land and Environment Court under Part 9 against the failure of a public authority to enter into a planning agreement or against the terms of a planning agreement.
- (2) This section does not affect the jurisdiction of the Land and Environment Court under Division 10.3 of Part 10 (Civil enforcement proceedings).

## **7.37 Procedures and other requirements relating to planning agreements**

- (1) The Minister may determine:
  - (a) the procedures to be followed in negotiating a planning agreement, or
  - (b) the publication of those procedures, or
  - (c) other standard requirements with respect to planning agreements.
- (2) A determination made in respect of a particular case is to be made by notice in writing served on the public authority concerned.
- (3) A determination made generally or in a particular class of cases is to be made by Ministerial planning order.

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## Division 7.6 Regional Contributions Fund

### 7.38 Definition

In this Division:

*the Fund* means the Regional Contributions Fund established under this Division.

### 7.39 Establishment of Fund

- (1) There is to be established in the Special Deposits Account a fund called the Regional Contributions Fund.
- (2) The Fund is to be administered by the Secretary of the Treasury. The Secretary is to consult the Director-General in relation to the administration of the Fund.
- (3) The Secretary of the Treasury is also responsible for investing or making arrangements for investment of money in the Fund.

### 7.40 Payments into Fund

The following is to be paid into the Fund:

- (a) money, and the proceeds of sale of any land, received in payment of a regional infrastructure contribution under Division 7.3 (unless required by that Division to be paid into the Planning Growth Fund for the region under Schedule 1 to the *Planning Administration Act 2013*),
- (b) any money appropriated by Parliament for the purposes of the Fund,
- (c) the proceeds of the investment of money in the Fund,
- (d) any other money required to be paid into the Fund by the planning legislation or any other legislation.

### 7.41 Payments out of Fund

- (1) The assets of the Fund can be applied for the following purposes (and only those purposes):
  - (a) payments to public authorities and other persons for the provision of regional infrastructure identified in a growth infrastructure plan to be the subject of a regional infrastructure contribution,
  - (b) any money required to meet administrative expenses in relation to the Fund,
  - (c) all other money directed or authorised to be paid from the Fund by the planning legislation.

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- (2) Priorities for expenditure from the Fund in a region are to be determined in consultation with any relevant subregional planning board.

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## Part 8    Building and subdivision

### Division 8.1    Introductory

#### 8.1    Interpretation: Part 8

In this Part:

**building work** -see section 1.10.

**certifier** means a building certifier or subdivision certifier.

**Note.** The Dictionary in Schedule 1 contains the following definitions of building certifier and subdivision certifier:

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

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

**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 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** - see section 1.10.

**Note.** The Dictionary in Schedule 1 includes a complying development certificate in the definition of "development consent" for the purposes of the Act.

#### 8.2    Kinds of certificates under Part 8

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.
- (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:

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

## 8.3 Functions of building certifiers and subdivision certifiers

- (1) A building certifier has the following functions:
  - (a) issuing construction certificates for building work,
  - (b) carrying out inspections of building work,

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- (c) issuing occupation certificates,
- (d) preparing and providing building manuals to the owners of buildings,
- (e) any other function conferred or imposed on a building certifier under this or any other Act.

**Note.** The regulations are authorised to confer functions on a building certifier of the kind set out in s 109E (3) of the former Act.

- (2) A subdivision certifier has the following functions:
  - (a) issuing subdivision works certificates for subdivision work,
  - (b) carrying out inspections of subdivision work,
  - (c) issuing subdivision certificates,
  - (d) any other function conferred or imposed on a subdivision certifier under this or any other Act.
- (3) A building certifier or subdivision certifier must not issue a certificate under this Part in any case in which this Part provides that the certificate is not to be issued.

Maximum penalty: Tier 3.

## **Division 8.2    Building work and certificates relating to building**

### **8.4    Requirements before building work commences [cf s 81A]**

- (1) The following requirements apply before the commencement of building work in accordance with a development consent:
  - (a) the person having the benefit of the development consent has appointed a building certifier for the building work,
  - (b) the building certifier has, no later than 2 days before the building work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) 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 building 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:

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- (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 building 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 building certifier if that is 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.
- (2) A person must not fail to make an appointment or give a notice that the person is required to make or give under subsection (1).  
Maximum penalty: Tier 3.
- (3) For the purposes of subsection (1) (a), 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.
- (4) This section does not apply to Crown building work that is certified under this Part to comply with the *Building Code of Australia*.

## 8.5 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*.

**Note.** Section 1.18 makes it an offence if a person does building work without a construction certificate that is required by this section.

## 8.6 Restriction on issue of construction certificate [cf s 109F]

- (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,

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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.

## **8.7 Requirement for occupation certificate** [cf ss 109H (1), 109M, 109N]

- (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.

**Note.** Section 1.18 makes it an offence if a person engages in any activity without an occupation certificate that is required by this section.

- (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 compliance certificate for the completion of the erection of the new building 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
  - (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.



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## **8.8 Restrictions on issue of occupation certificates** [cf s 109H]

- (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.

## **8.9 Effect of occupation certificate on earlier occupation certificates** [cf s 109I]

- (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.

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## **Division 8.3 Subdivision work and certificates relating to subdivision**

### **8.10 Requirements before subdivision work commences**

- (1) The following requirements apply before the commencement of subdivision work in accordance with a development consent:
  - (a) the person having the benefit of the development consent has appointed a subdivision certifier for the subdivision work,
  - (b) the subdivision certifier has, no later than 2 days before the subdivision work commences:
    - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
    - (ii) 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 subdivision certifier if that is not the council, of the person's intention to commence the subdivision work.
- (2) A person must not fail to make an appointment or give a notice that the person is required to make or give under subsection (1).  
Maximum penalty: Tier 3.
- (3) For the purposes of subsection (1) (a), 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.
- (4) This section does not apply to Crown building work that is certified under this Part to comply with the *Building Code of Australia*.

### **8.11 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*.

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**Note.** Section 1.18 makes it an offence if a person does subdivision work without a subdivision works certificate that is required by this section.

**8.12 Restriction on issue of subdivision works certificate** [cf s 109F]

- (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.

**8.13 Restriction on issue of subdivision certificates** [cf s 109J]

- (1) A subdivision certificate must not be issued for a subdivision unless:
  - (a) the subdivision is not prohibited by or under this Act, and
  - (b) in the case of subdivision that may not be carried out except with development consent, a development consent 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 under Part 7 applies, all the requirements of the agreement that, by its terms, are required to be complied with before a subdivision certificate is 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 that relates to land within a water supply authority's area of operations, the applicant has obtained a certificate of water supply compliance from the water supply authority with respect to the subdivision of the land, and
  - (g) in the case of subdivision the subject of an order made by the Court under section 40 of the *Land and Environment Court Act*

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- 1979 concerning the provision of drainage easements, all such drainage easements have been acquired by the council as referred to in that order, and
- (h) 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.
- (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.
- (4) In this section:
- certificate of water supply compliance***, in relation to a water supply authority, means a certificate of compliance issued by the water supply authority under the Act under which the water supply authority is constituted.
- water supply authority*** means:
- (a) the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority within the meaning of the *Water Management Act 2000*, or
  - (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

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## Division 8.4 Compliance certificates

### 8.14 Requirement for compliance certificate [cf s 109C]

- (1) A compliance certificate is required in relation to building work or subdivision work in such circumstances as are prescribed by the regulations.

**Note 1.** 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. See also section 8.7 (2) (a) (ii).

**Note 2.** Section 4.24 (3) provides that a condition of development consent has no effect to the extent it requires a compliance certificate to be obtained in respect of any development.

- (2) 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.

### 8.15 Persons who may issue compliance certificates

A compliance certificate may be issued by:

- (a) a certifier, or

**Note.** A certifier includes a council.

- (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.

### 8.16 Restriction on issue of compliance certificates [cf s 109G]

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

## Division 8.5 Liability for defective building or subdivision work

### 8.17 Definitions [cf s 109Z1]

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.

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*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.

**8.18    Limitation on time when action for defective building or subdivision work may be brought [cf s 109ZK]**

- (1) A civil action for loss or damage arising out of or in connection with defective building work or defective subdivision work may not be brought more than:
  - (a) in the case of residential building work - 6 years, or
  - (b) in any other case - 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 building 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*.

**8.19    Division not to affect rights to recover damages for death or personal injury [cf s 109ZL]**

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.

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## Division 8.6 Miscellaneous

### 8.20 Owners building manual

- (1) The certifier who issues an occupation certificate for a building that is of a class prescribed by the regulations is to prepare and provide to the owner of the building a building manual for the building in accordance with the requirements of the regulations. The regulations may extend the circumstances in which a certifier is required to prepare and provide a building manual under this section.

*Note: Classes 1b to 9 of the BCA are currently proposed to be covered by 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 ongoing compliance in relation to the building concerned),
  - (c) the inspection of building manuals.

### 8.21 Crown building, demolition and incidental work [cf s 109R]

- (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 Part 5 environmental impact assessment development, 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) 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.
- (3) A Minister, by order in writing, may at any time 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

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(b) does apply, but with such exceptions and modifications as may be specified.

(4) 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.

(5) A determination of a Minister has effect according to its tenor.

## **8.22 Certifiers may be satisfied as to certain matters** [cf s 109O]

(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 a local plan or the terms of a development consent.

## **8.23 Satisfaction as to compliance with conditions precedent to the issue of certificates** [cf s 109P]

(1) A person who exercises functions under the planning legislation 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.

## **8.24 Directions by certifiers** [cf s 109EB (uncommenced)]

(1) A reference in this section to a non-compliance in respect of an aspect of development is a reference to:

(a) a failure to comply with a condition of a development consent (or a construction or subdivision works certificate) relating to the manner in which construction of that aspect of development is



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- carried out on the relevant site (including, for example, a condition relating to the hours during which construction may be carried out or the measures to be taken to reduce impacts on adjoining land), and
- (b) any matter arising during the course of carrying out that aspect of development that would prevent the issuing of an occupation certificate or a subdivision certificate in respect of that aspect of development.
- (2) If a certifier for an aspect of development becomes aware of any non-compliance in respect of the aspect of development, the certifier must issue (or, if the 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.
- (3) If a 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 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.
- (4) The regulations may make provision for or with respect to the following:
- (a) the procedure for issuing notices under this section,
  - (b) requirements in relation to follow-up action,
  - (c) the keeping of records in relation to notices given and follow-up action taken,
  - (d) requirements for any matter or record relating to a notice or follow-up action to be notified to specified persons.
- (5) In this section:
- certifier*** includes any person authorised to issue a compliance certificate under this Part.

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## **Part 9    Reviews and appeals**

### **Division 9.1    Introductory**

#### **9.1    Interpretation: Part 9**

In this Part:

*appeal* means an appeal to the Court under Divisions 9.3, 9.4, 9.5 and 9.6.

*Court* means the Land and Environment Court.

*review* means a review by a consent authority under Division 9.2.

### **Division 9.2    Reviews**

#### **9.2    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, a regional planning panel or the Planning Assessment Commission acting as delegate of the Minister,
  - (b) the determination of an application for the modification of a development consent by a council, a regional planning panel or the Planning Assessment Commission 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) EIS assessed development,
  - (c) development that is subject to one stop referrals and decisions under Division 6.3 of Part 6,
  - (d) Crown development (referred to in section 4.41),
  - (e) a determination or decision that was made after a public hearing into the matter by the Planning Assessment Commission.
- (3) A determination or decision reviewed under this Division is not subject to further review under this Division.

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

- (1) An applicant 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) If there is a right of appeal to the Court against a determination, the determination cannot be reviewed under this Division:
  - (a) after the period within which such an appeal may be made has expired if no appeal was made, or
  - (b) after the Court has disposed of an appeal against the determination.
- (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 as the consent authority is to be conducted by the council or by another delegate of the council who is not subordinate to the delegate who made the determination or decision. The review of a determination or decision made by the council is to be conducted by the council and not by a delegate.
- (5) If an independent hearing and assessment panel acted as the delegate of the council as the consent authority in respect of a determination or decision subject to review under this Division, the panel is also to act as delegate of the council in reviewing the determination or decision.
- (6) If the Planning Assessment Commission acted as the delegate of the Minister as the consent authority in respect of a determination or decision subject to review under this Division, the Commission is also to act as delegate of the Minister in reviewing the determination or decision.

## **9.4 Outcome of review**

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

## **9.5 Miscellaneous provisions relating to reviews**

- (1) The regulations may make provision for or with respect to reviews under this Division, including:

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- (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.

**Note.** Division 11.2 of Part 11 enables regulations to prescribe the fee for a request for a 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 a development application is changed on review, the development 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 is made on the review.
- (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 9.3    Appeals - development consents**

### **9.6    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 9.2.
- (3) There is no right of appeal under this Division against the following decisions:

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- (a) a decision of a consent authority under this Act in relation to the carrying out of any development that is made after a public hearing by the Planning Assessment Commission into the carrying out of that development,
- (b) the determination of, or a failure to determine, an application for a complying development certificate,
- (c) a decision of a council to issue or not to issue a variation certificate for complying development.

**Note.** See sections 7.14 and 7.21 for restrictions on the power of the Court to vary conditions of development consent relating to infrastructure contributions.

## **9.7 Appeal by applicant—applications for development consent** [cf s 97]

- (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 of 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 EIS assessed development in respect of which an objector may appeal under this Division may not be heard until after the expiration of the period within which the objector may appeal to the Court.

## **9.8 Appeal by an objector -EIS assessed development applications** [cf s 98]

- (1) This section applies to the determination of an application for development consent for EIS assessed 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.

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**9.9 Appeal by applicant—modifications of development consent** [cf s 97AA]

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.

**9.10 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 of notification of the decision appealed against or after the date of deemed refusal under section 9.11.
- (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.

**9.11 Circumstances in which consent taken to have been refused for purposes of appeal rights** [cf s 82]

- (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.

**9.12 Notice of appeals to be given and right to be heard** [cf s 97A]

- (1) The following are entitled to be given notice of an appeal made under this Division and to be heard at the hearing of the appeal as if they were a party to the appeal:
  - (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,

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- (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) an approval body for a legislative approval to which one stop referrals and decisions apply under Division 6.3 of Part 6, 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) Notice of appeal and any entitlement to be heard under this section is to be in accordance with any applicable rules of Court.
  - (4) In this section, a reference to an application for development consent includes an application to modify a development consent.

## **9.13 Effect of appeals on operation of consents** [cf s 83 (2)–(5)]

- (1) If the granting of a development consent is the subject of an appeal made under this Division, the consent does not have effect. This subsection does not apply to State significant development.
- (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 and that consent takes effect from the date of that decision.
- (3) A development consent is void if:
  - (a) development consent is refused on an appeal under this Division, or
  - (b) the effect of a decision on an appeal by an objector under this Division is that development consent is refused.
- (4) A development consent is taken to have effect 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

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a final determination made by another court that has not fixed that date.

**9.14 Powers of Court on appeals** [cf s 39 Land and Environment Court Act]

- (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.

*[Note: Provisions equivalent to those currently in section 39 (6A) of the Land and Environment Court Act also to be included in this section.]*

**9.15 Miscellaneous provisions relating to appeals under this Division** [cf s 97B, s 39A Land and Environment Court Act]

- (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.



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- (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.
- (4) If the determination or decision appealed against under this Division was made by a regional 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 regional planning panel.
- (5) If the Minister (for Crown development) exercised the functions of the council as consent authority 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.

*[Note: Provision to be made Land and Environment Court Act to allow Commissioners to assist the Court in Class 4 matters and to provide for fast track appeals and other matters outlined in the White Paper.]*

## **Division 9.4 Appeals - Part 8 certificates**

### **9.16 Appeals against failure or refusal to issue Part 8 certificates** [cf s 109K]

- (1) An appeal may be made to the Court against the following decisions of a council:
  - (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.

### **9.17 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,

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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 9.5    Appeals - development control orders**

### **9.18    Appeals concerning orders [cf s 121ZK]**

- (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 or related to the development control order as the Court thinks fit.

### **9.19    Awarding of compensation concerning orders [cf s 121ZL]**

- (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

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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 may not 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.

## **9.20 Effect of appeal on order** [cf s 121ZN]

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 9.6 Appeals - miscellaneous**

### **9.21 Appeal concerning decisions on security for development requirements or damage** [cf s 98A]

- (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 4.28.
- (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 be made within 6 months after the applicant for development consent received notice of the decision.

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- (4) An appeal under subsection (2) (b) or (c) may 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.

**9.22 Appeals against refusal to extend consent lapsing period** [cf s 95A (3)]

- (1) This section applies to an application under clause 4.1 of Schedule 4 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 must 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).

**9.23 Appeals concerning compliance cost notices** [cf s 121ZKA]

- (1) A person on whom a compliance cost notice is served 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.

**9.24 Appeals with respect to building information certificates** [cf s 149F]

- (1) An applicant:

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- (a) who is dissatisfied with a council's refusal to issue a building information certificate, 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 the application,
- may appeal to the Court.
- (2) The appeal must 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) it may direct the council to issue a building information certificate in such terms and on such conditions as the Court thinks fit,
    - (b) it may revoke, alter or confirm a notice to supply information,
    - (c) it may make any other order that it considers appropriate.

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## **Part 10 Enforcement**

### **Division 10.1 Ministerial enforcement powers**

#### **10.1 Directions by the Minister [cf s 117]**

- (1) The Minister may direct a public authority or a person or body having functions under the planning legislation (including under a local plan) to exercise those functions at or within such times as are specified in the direction.
- (2) The Minister may direct a council to provide the Minister, in the manner and at the times specified in the direction, with reports, containing such information as the Minister may direct, on the council's performance in relation to planning and development matters.
- (3) A public authority, person, body or council to whom a direction is given under this section must comply, and is authorised by this section to comply, with the direction in accordance with the terms of the direction.
- (4) A direction under this section may be given:
  - (a) if it is given to a particular body or person - by written notice, or
  - (b) if it is given to a class of bodies or persons - by Ministerial planning order.
- (5) Before giving a direction under this section, the Minister is to consult with the responsible Minister concerned.
- (6) Before giving a direction under subsection (2), the Minister is also to consult with the Local Government and Shires Association of New South Wales and any other industry organisation the Minister considers to be relevant, in relation to the information that the Minister is proposing to seek.

#### **10.2 Departmental investigations into councils' performance [cf s 117A]**

- (1) The Director-General may request that an investigation be authorised under section 430 of the *Local Government Act 1993* into any aspect of a council's performance of its functions under the planning legislation that the Director-General considers requires investigation.
- (2) The Director-General is to be provided with advice on the outcome of any such investigation from the person who authorised the investigation.
- (3) The Director-General may report and make recommendations to the Minister following the receipt of that advice.

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## **10.3 Settlement of planning disputes** [cf s 121]

- (1) In this section, a *planning dispute* is a dispute about the operation of, or the exercise of functions under, the planning legislation.
- (2) If a planning dispute arises between the Director-General and a public authority (other than a council), a party to the dispute may submit that dispute to the Premier for settlement in accordance with this section.
- (3) If a planning dispute arises between a public authority (other than a council) and another public authority (other than a council), a party to the dispute may submit that dispute to the Premier for settlement in accordance with this section.
- (4) If a planning dispute arises between the Director-General or other public authority and a council, a party to the dispute may submit that dispute to the Minister for settlement in accordance with this section.
- (5) On the submission of a planning dispute to the Premier or the Minister under this section, the Premier or Minister may appoint a member of the Planning Assessment Commission to hold an inquiry and make a report to the Premier or the Minister with respect to that dispute or may himself or herself arrange for an inquiry to be held with respect to the dispute.
- (6) After the completion of the inquiry and the report of the inquiry, the Premier or the Minister, may make such order with respect to the planning dispute, having regard to the public interest and to the circumstances of the case, as the Premier or the Minister thinks fit.
- (7) An order made by the Premier or the Minister under this section may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
- (8) A party to a planning dispute is to comply (and is authorised to comply) with an order of the Premier or Minister under this section.
- (9) The provisions of any other Act relating to the settlement of disputes that are inconsistent with this section do not apply to the settlement of a planning dispute.

## **Division 10.2 Development control orders**

### **10.4 Orders that may be given** [cf s 121B]

- (1) The development control orders that may be given under this Act are as follows:
  - (a) general orders in accordance with the table to Division 1 of Part 2 of Schedule 10,
  - (b) fire safety orders in accordance with the table to Division 2 of Part 2 of Schedule 10,

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(c) brothel closure orders in accordance with the table to Division 3 of Part 2 of Schedule 10.

(2) The regulations may amend those tables.

### **10.5 Relevant enforcement authorities who may give orders** [cf ss 121B, 121C]

(1) Development control orders may be given by the following (a *relevant enforcement authority*):

(a) the Minister or the Director-General, but only in connection with public priority infrastructure, State infrastructure development, State significant development or any other development for which the Minister or Director-General is or has been the consent authority,

(b) a council,

(c) a consent authority (not being a council), 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 infrastructure development or public priority infrastructure may only be given by the Minister or the Director-General.

(3) A development control order may not 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*.



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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*.

[*Note: Above provision to be extended to national parks and other reserves under the NPW Act, State forests/flora reserves, marine parks, aquatic reserves etc*]

- (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.

## 10.6 Provisions relating to orders

Part 2 of Schedule 10 contains provisions relating to the giving of orders and related matters.

## 10.7 Failure to comply with order - offence [cf s 125]

- (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.

**Note.** For civil enforcement - see Division 10.3 of Part 10.

**Note.** Schedule 10 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 Part 11, Division 11.3.

## Division 10.3 Civil enforcement proceedings

### 10.8 Definitions [cf s 122]

In this Division:

**breach** of this Act means:

- (a) a contravention of or failure to comply with this Act, and
- (b) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act.

**judicial review proceedings** means proceedings in the Land and Environment Court in the exercise of the jurisdiction to which section 20 (2) of the *Land and Environment Court Act 1979* applies.

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***third-party environmental appeal proceedings*** means proceedings for an order under section 252 or 253 of the *Protection of the Environment Operations Act 1997*.

***this Act*** includes:

- (a) the *Planning Administration Act 2013*, and
- (b) the regulations under this Act or under the *Planning Administration Act 2013*, and
- (c) the planning control provisions of a local plan, and
- (d) a planning approval, including a condition of a planning approval, and
- (e) a development control order, and
- (f) a planning agreement referred to in Part 7.

## **10.9 Restraint etc of breaches of this Act** [cf s 123]

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act.
- (2) Proceedings under this section may be brought:
  - (a) whether or not any right of the person has been or may be infringed by or as a consequence of that breach, and
  - (b) whether or not proceedings have been instituted for an offence against this Act.
- (3) Proceedings under this section may be brought by a person:
  - (a) on the person's own behalf, or
  - (b) on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (4) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (5) This section is subject to the other provisions of this Division.

**Note.** Part 3 of Schedule 10 contains special evidentiary provisions relating to proceedings under this Division (eg proceedings with respect to backpackers' hostels and brothels).

## **10.10 Orders of the Court** [cf s 124]

- (1) If the Land and Environment Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained

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by order of the Court, be committed, the Court may make such order as it thinks fit to remedy or restrain the breach.

- (2) Without limiting the powers of the Court under this section, an order made under this section may:
  - (a) if the breach comprises a use of any building, work or land—restrain that use, or
  - (b) if the breach comprises the erection of a building or the carrying out of a work—require the demolition or removal of that building or work, or
  - (c) if the breach has the effect of altering the condition or state of any building, work or land—require the reinstatement, so far as is practicable, of that building, work or land to the condition or state the building, work or land was in immediately before the breach.
- (3) If a breach of this Act would not have been committed but for the failure to obtain a planning approval, the Court, on application being made by the defendant, may:
  - (a) adjourn the proceedings to enable an application to be made to obtain that approval, and
  - (b) in its discretion, by interlocutory order, restrain the continuance of the breach while the proceedings are adjourned.
- (4) The functions of the Court under this section are in addition to and not in derogation from any other functions of the Court (including under Division 3 of Part 3 of the *Land and Environment Court Act 1979*).
- (5) This section is subject to the other provisions of this Division.

**10.11 Time within which validity of planning control provisions, planning approvals etc may be challenged [cf ss 35,101, 115ZJ (1)]**

- (1) In this section:

***legal proceedings*** means proceedings for an order under this Division, third-party environmental appeal proceedings, judicial review proceedings and any other proceedings (other than criminal proceedings).

***planning provisions*** means the planning control or other provisions of a local plan, any other strategic plan or any infrastructure plan.
- (2) The validity of any planning provisions cannot be questioned in any legal proceedings, except those commenced in the Land and Environment Court within 3 months after the date of their publication.
- (3) If public notice of the granting of a planning approval is given in accordance with this Act by or on behalf of the person who granted the approval, the validity of the planning approval cannot be questioned in

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any legal proceedings, except those commenced in the Land and Environment Court within 3 months after the date on which public notice was so given.

- (4) In this section, a reference to the validity of a planning approval includes a reference to the validity of any decision made in connection with the granting of the approval.
- (5) If some of the provisions contained in an instrument are declared invalid in any legal proceedings, the remaining provisions are not invalid merely because they are contained in the same instrument.
- (6) This section does not authorise legal proceedings in respect of a matter that are excluded by this Division merely because this section refers to the commencement of legal proceedings in relation to the matter.

## **10.12 Exclusion of legal proceedings** [cf ss 102, 115ZK, 115ZJ (2)]

- (1) Proceedings for an order under this Division, third-party environmental appeal proceedings or judicial review proceedings cannot be instituted in respect of any of the following (except in relation to an application made or approved by the Minister):
  - (a) the declaration of public priority infrastructure or any amendment or revocation of such a declaration,
  - (b) a breach of Division 5.3 of Part 5 (including in relation to a project definition report for any public priority infrastructure),
  - (c) a breach of this or any other Act arising in respect of the giving of an approval of the kind referred to in Table 2 to section 6.3 in relation to public priority infrastructure (or in respect of the conditions of such an approval).
- (2) The following provisions are not mandatory, and accordingly proceedings for an order under this Division, third-party environmental appeal proceedings or judicial review proceedings cannot be instituted to invalidate an instrument or decision under the planning legislation because of a breach of those provisions (or to prevent any such instrument or decision being made):
  - (a) the provisions of Part 2 (other than a requirement of Part 1 of Schedule 2),
  - (b) any provisions of the planning legislation concerning the conditions precedent to the making, amending or replacing of the provisions of a local plan or of any other strategic plan or of any infrastructure plan (other than a requirement of Part 1 of Schedule 2),

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- (c) any provisions of Part 4 relating to development consent for State significant development (other than a requirement of Part 1 of Schedule 2),
  - (d) any provisions of Part 5 relating to approval for State infrastructure development (other than a requirement of Part 1 of Schedule 2).
- (3) This section applies despite any other provision of this Act or any other Act or law.

**10.13 Special provision where development consent tainted by corruption [cf s 124A]**

- (1) For the purposes of this section, a decision of a consent authority to grant or modify a development consent is tainted by corrupt conduct:
- (a) 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 suspension of the development consent or modification with a view to its revocation because of serious corrupt conduct by the consent authority or by a councillor or other officer or member of staff of the consent authority in connection with the grant of the consent or modification, or
  - (b) if criminal proceedings are instituted against the consent authority or against a councillor or other officer or member of staff of the consent authority for serious corrupt conduct in connection with the grant of the consent or modification, or
  - (c) if the consent authority, councillor or other officer or member of staff makes an admission of such serious corrupt conduct.
- (2) A breach of this Act that may be remedied or restrained in proceedings instituted under this Division includes a decision of a consent authority to grant or modify a development consent that is tainted by corrupt conduct. Section 10.11 (Time within which validity of planning control provisions, planning approvals etc may be challenged) does not apply to any such proceedings.
- (3) If a decision of a consent authority to grant or modify a development consent is tainted by corrupt conduct, the Minister may, without prior notice or inquiry, suspend the decision pending the institution and determination of proceedings for an order under this Division in respect of the decision. The Minister is to give the consent authority and the applicant for the grant or modification of the development consent written notice of the suspension as soon as practicable after it is imposed.

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- (4) A suspension imposed by the Minister may be lifted by the Minister at any time and is taken to be lifted if the proceedings concerned are not instituted within 6 months after the suspension is imposed.
- (5) The Land and Environment Court may, in proceedings to which this section applies, suspend the decision of a consent authority to grant or modify a development consent pending the determination of the proceedings. The Court may lift a suspension imposed by the Minister under this section.
- (6) The Land and Environment Court may, in proceedings to which this section applies, revoke the decision of a consent authority to grant or modify a development consent if:
  - (a) the decision is tainted by corrupt conduct, and
  - (b) the Court is satisfied that the revocation of the decision will not significantly disadvantage any person affected by the decision who was not a party to the corrupt conduct.

The Court retains its discretion in proceedings to which this section applies as to whether to revoke a decision that is tainted by corrupt conduct.

- (7) A development consent for the erection of a building, the carrying out of a work or the demolition of a building or work (or a modification of any such consent) is not to be suspended or revoked under this section if the building, work or demolition authorised by the development consent (or by the modification) has been substantially commenced.
- (8) Compensation is not payable by the Minister or the State for any loss suffered by a person because:
  - (a) a decision is suspended under this section (whether or not the Land and Environment Court decides to revoke the decision), or
  - (b) a decision is revoked under this section.
- (9) This section applies:
  - (a) to decisions made by a consent authority before or after the commencement of this section, and
  - (b) to serious corrupt conduct, and to criminal proceedings instituted or admissions made in respect of serious corrupt conduct, before or after that commencement.
- (10) In this section:  
***serious corrupt conduct*** means corrupt conduct (within the meaning of the *Independent Commission Against Corruption Act 1988*) that may constitute a serious indictable offence.

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## Division 10.4 Criminal offences and proceedings

### 10.14 Maximum penalty - Tier 1 [cf s 126]

- (1) If **Tier 1** is specified as the maximum penalty at the end of a provision (or a number of provisions) of this Act or the *Planning Administration Act 2013*, 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:
    - (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 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 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 penalty is specified in this Act or the *Planning Administration Act 2013* but does not apply because of subsection (2), then a Tier 2 maximum penalty applies instead.

### 10.15 Maximum penalty - Tier 2 [cf s 126]

If **Tier 2** is specified as the maximum penalty at the end of a provision (or a number of provisions) of this Act or the *Planning Administration Act 2013*, 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

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- (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.

## **10.16 Maximum penalty - Tier 3** [cf s 126]

If **Tier 3** is specified as the maximum penalty at the end of a provision (or a number of provisions) of this Act or the *Planning Administration Act 2013*, 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
- (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.

**Note.** Section 11.1 provides that the regulations may create offences and impose a penalty for an offence against the regulations not exceeding \$110,000.

## **10.17 Proceedings for offences** [cf s 127 (1)–(4)]

- (1) Proceedings for an offence against the planning legislation may be dealt with summarily before the Local Court or before the Land and Environment Court in its summary jurisdiction.
- (2) If proceedings for an offence are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is, despite any other provision of the planning legislation, \$110,000 or the maximum monetary penalty provided for the offence, whichever is the lesser.

## **10.18 Criminal and civil enforcement proceedings in respect of same matter** [cf s 127 (7) and (8)]

- (1) A person is not to be convicted of an offence against the planning legislation where the matter constituting the offence, at the date on which the conviction would but for this subsection be made:



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- (a) is the subject of proceedings for an order under Division 10.3, which proceedings have not been concluded, or
  - (b) is the subject of an order made under Division 10.3.
- (2) Nothing in subsection (1) (a) precludes a conviction being made where those proceedings are concluded otherwise than by the making of an order under Division 10.3.

**10.19 Time within which proceedings may be commenced** [cf s 127 (5)–(6)]

- (1) Proceedings for an offence against the planning legislation may be commenced not later than 2 years after the date on which the offence is alleged to have been committed.
- (2) Proceedings for an offence against the planning legislation may also be commenced within, but not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of any relevant investigation officer.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant investigation officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any relevant investigation officer is the date specified in the court attendance notice or application, unless the contrary is established.
- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (5) In this section:
  - evidence** of an offence means evidence of any act or omission constituting the offence.
  - investigation officer** means an investigation officer within the meaning of Part 8 of the *Planning Administration Act 2013*, whether or not the person has the functions of an investigation officer in connection with the offence concerned.
  - relevant investigation officer** means:
    - (a) in relation to proceedings for an offence instituted by or with the consent of the Director-General or other member of the staff of the Department - any investigation officer who is a member of the staff of the Department, or
    - (b) in relation to proceedings for an offence instituted by or with the consent of a council or a member of staff of a council - any investigation officer who is a member of staff of that council, or

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- (c) in relation to proceedings for an offence instituted by any other person - any investigation officer.

**10.20 Penalty notices for certain offences** [cf s 127A]

- (1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence under the planning legislation, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice:
  - (a) may be served personally or by post, or
  - (b) if it relates to an offence involving the use of a vehicle, may be addressed to the owner (without naming the owner or stating the owner's address) and may be served by leaving it on or attaching it to the vehicle.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences, and
  - (d) prescribe different amounts of penalties for the same offence, including, in the case of a continuing offence, different amounts of penalties for different periods during which the offence continues.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

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- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section, *authorised person* means a person who is declared by the regulations to be an authorised person for the purposes of this section or who belongs to a class of persons so declared.

## 10.21 Ancillary offences

A person who:

- (a) aids, abets, counsels or procures another person to commit, or
- (b) conspires to commit,

an offence under another provision of the planning legislation is guilty of an offence against that other provision and is liable, on conviction, to the same penalty applicable to an offence against that other provision.

## 10.22 Offence - false or misleading information

- (1) A person who provides information in connection with a planning matter that the person knows, or ought reasonably to know, to be false or misleading in a material particular is guilty of an offence.  
Maximum penalty: Tier 3.
- (2) For the purposes of this section, a person provides information in connection with a planning matter if:
- (a) the person is an applicant for a planning approval (or for the modification of a planning approval) and the information is provided by the applicant in or in connection with the application, or
  - (b) the person is engaged by any such applicant and the information is provided by that person for the purposes of the application, or
  - (c) the person is a proponent of proposed development and the information is provided in or in connection with a formal request to the Minister, a council, the Director-General or other planning authority for the making of provisions of a strategic or other plan or Ministerial planning order under this Act in relation to the proposed development, or
  - (d) the person provides information in connection with any other matter or thing under the planning legislation that the regulations declare to be the provision of information in connection with a planning matter for the purposes of this section.
- (3) An environmental impact statement or other document is part of information provided in connection with a matter if it forms part of or

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accompanies the matter or is subsequently submitted in support of the matter.

**Note.** The Crimes Act 1900 contains other offences relating to false and misleading information: section 192G (Intention to defraud by false or misleading statement-maximum penalty 5 years imprisonment); sections 307A, 307B and 307C (False or misleading applications/information/documents -maximum penalty 2 years imprisonment or \$22,000, or both).

## **10.23 Continuing obligations under orders etc** [cf s 125 (5)]

- (1) A requirement of an order, notice or other instrument under the planning legislation to do or cease to do something before a particular time or within a specified period continues, after the time has expired or the period has ended, until it is complied with or the instrument is revoked.
- (2) This section does not apply if, in the context, the planning legislation does not require continuing compliance.

## **10.24 Miscellaneous provisions**

- (1) Part 8.3 of the *Protection of the Environment Operations Act 1997* (Court orders in connection with offences) applies to an offence against the planning legislation in the same way as it applies to an offence against that Act or the regulations under that Act, but only in relation to proceedings before the Land and Environment Court and subject to any modifications prescribed by the regulations.

**Note.** The regulations are intended to exclude provisions relating to the payment of money into the Environmental Trust and the provision of financial assurances to the EPA. An offence under section 251 of that Act in relation to an order will become an offence against this Act.
- (2) Where a person is guilty of an offence against the planning legislation involving the destruction of or damage to a tree, the court dealing with the offence may, in addition to or in substitution for any pecuniary penalty imposed or liable to be imposed, direct that person:
  - (a) to plant new trees and maintain those trees to a mature growth, and
  - (b) to provide security for the performance of any obligation imposed under paragraph (a).
- (3) In determining the sentence for a person who has previously been found guilty of an offence that arises from a failure to comply with a brothel closure order or the unlawful use of premises for the purposes of a brothel, a court must take into account the fact of the previous offence as an aggravating factor and is, accordingly, to impose a higher sentence than it would otherwise impose.

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## Part 11 Miscellaneous

### Division 11.1 Regulations

#### 11.1 Regulations generally [cf s 157]

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations that may be made in connection with a particular Part of this Act may be made separately or by amending the corresponding Schedule to this Act relating to ancillary provisions for that Part (whether by addition to, or by omission or amendment of, the ancillary provisions of that Schedule).
- (3) The regulations may create offences punishable by a penalty not exceeding \$110,000.
- (4) The regulations may make provision for or with respect to any matter that, by a provision of this Act, is to be or may be determined by the Minister or Director-General. Any such determination of the Minister or Director-General is subject to the provisions of those regulations.
- (5) A regulation may apply, adopt or incorporate any publication as in force from time to time.

#### 11.2 Specific regulation-making powers

The regulations may, in particular, make provision for or with respect to the matters set out in Part 1 of Schedule 11. Other regulation-making powers are contained in other provisions of this Act.

#### 11.3 Savings and transitional regulation-making powers

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, the *Planning Administration Act 2013* or any Act that amends this Act or that Act, or consequent on the making or amendment of provisions or instruments under this Act or that Act.  
**Note.** See Schedule 12 for specific savings and transitional provisions consequent on the enactment of this Act and other matters.
- (2) Any such provision of the regulations has effect despite anything to the contrary in Schedule 12. The regulations may make separate savings and transitional provisions or amend Schedule 12 to consolidate the savings and transitional provisions.

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- (3) Any such provision of the regulations may, if the regulations so provide, take effect from the date of assent to the Act (or making of the provision or instrument) concerned or a later date.
- (4) To the extent to which any such provision of the regulations 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.

## **Division 11.2 Fees and charges**

### **11.4 Fees and charges to which this Division applies**

- (1) This Division applies to the fees payable under the planning legislation by a person who makes an application for a planning approval or information certificate or who seeks the exercise of any other function under the planning legislation.
- (2) This Division also applies to fees for services provided in connection with the administration of the planning legislation by the Minister, the Planning Ministerial Corporation, the Director-General or other planning bodies.
- (3) Those fees include, but are not limited to, the administrative costs of services provided under the planning legislation and the costs associated with the functions of the Minister, the Planning Ministerial Corporation, the Director-General or other planning bodies.

### **11.5 Prescription of fees and charges and their payment**

The regulations may make provision for or with respect to the amount (or the determination of the amount) of fees and charges to which this Division applies, the time the fees and charges are due for payment and the payment and recovery of those fees and charges.

## **Division 11.3 Planning and building information certificates**

### **11.6 Information certificates to which this Division applies** [cf ss 121ZP, 149, 149A–149G]

This Division applies to the following certificates (an *information certificate*):

- (a) planning information certificates,

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(b) building information certificates.

**Note.** The regulations on information in planning information certificates will include information relating to the issue of development control orders for which a separate information certificate is currently provided for under section 121ZP of the former Act.

## **11.7 Who may apply for information certificates**

- (1) Any person may apply for a planning information certificate in relation to a parcel of land.
- (2) 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.

## **11.8 Making of applications for information certificates**

- (1) Applications for 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 information certificates.

**Note.** Division 11.2 of Part 11 enables the regulations to prescribe the fee for an application for a certificate.

## **11.9 Issue of information certificates**

- (1) A council is (subject to this Division) required to issue an 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 an information certificate is issued.

## **11.10 Nature and effect of planning information certificates**

- (1) A planning information certificate is a certificate that specifies the matters relating to the land to which the certificate relates as are prescribed by the regulations (whether arising under this or any other Act or otherwise).
- (2) A council may, in a planning information certificate, include advice on such other relevant matters affecting the land of which it may be aware.

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- (3) For the purpose of any proceedings for an offence against the planning legislation which may be taken against a person who has obtained a planning information certificate or who might reasonably be expected to rely on that certificate, that certificate is, in favour of that person, conclusively presumed to be true and correct.

**Note.** A planning information certificate does not preclude civil enforcement proceedings under this Act to remedy or restrain a breach of this Act if the certificate is not in fact correct.

- (4) A council does not incur any liability in respect of any advice provided in good faith under subsection (2). However, this subsection does not apply to advice provided in relation to contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land within the meaning of Division 11.5.

## 11.11 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 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.



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- (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.

## **11.12 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 11.11.

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- (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 11.4 Existing uses

### 11.13 Definition of “existing use” etc [cf s 106]

- (1) In this Division, *existing use* means:
  - (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of a planning instrument which would have the effect of prohibiting that use, and
  - (b) the use of a building, work or land:
    - (i) for which development consent was granted before the commencement of a provision of a planning instrument having the effect of prohibiting the use, and
    - (ii) for which development was carried out, within 1 year after the date on which that provision commenced, in accordance with the terms of the development consent and to such an extent as to ensure that the development consent would not lapse.

For the purposes of this definition, a use prohibited by a planning instrument is to be regarded as prohibited despite provisions of this Act that enable development prohibited by planning instruments to be carried out.

- (2) In this Division, *planning instrument* means the planning control provisions of a local plan, including a transitional planning instrument.

### 11.14 Continuance of and limitations on existing use [cf s 107]

- (1) Nothing in this Act, the regulations or a planning instrument prevents the continuance of an existing use.

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- (2) Subsection (1) is subject to any express provision of this Act or the regulations to the contrary.
- (3) Nothing in subsection (1) authorises:
  - (a) any alteration or extension to or rebuilding of a building or work, or
  - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the planning instrument concerned, or
  - (c) without affecting paragraph (a) or (b), any enlargement, expansion or intensification of an existing use, or
  - (d) the continuance of the use concerned in breach of any planning approval in force under this Act in relation to that use or any condition imposed or applicable to that planning approval (including a condition relating to the modification or surrender of the existing use), or
  - (e) the continuance of the use concerned if it is abandoned.
- (4) Without limitation, a use is presumed to be abandoned (unless the contrary is established) if it ceases to be actually used for a continuous period of 12 months.

## **11.15 Regulations respecting existing use [cf s 108]**

- (1) The regulations may make provision for or with respect to existing uses and, in particular, for or with respect to:
  - (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and
  - (b) the change of an existing use to another use, and
  - (c) the enlargement or expansion or intensification of an existing use.
- (2) The provisions of any such regulations that are in force have effect as if they were part of the planning control provisions of each local plan (*the incorporated provisions*).
- (3) A planning instrument may contain provisions extending, expanding or supplementing the incorporated provisions, but any such provisions that, but for this subsection, would derogate from the incorporated provisions have no force or effect while the incorporated provisions remain in force.
- (4) Any right or authority granted by the incorporated provisions or any provisions of a planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect

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of an existing use which commenced pursuant to a consent of the Minister under section 4.41 (Determination of Crown development applications) to a development application for consent to carry out prohibited development.

**11.16 Continuance of and limitations on other lawful uses** [cf s 109]

- (1) Nothing in a planning instrument operates so as to require development consent to be obtained under this Act for the continuance of a use of a building, work or land for a lawful purpose for which it was being used immediately before the coming into force of the instrument or so as to prevent the continuance of that use except with development consent under this Act being obtained.
- (2) Nothing in subsection (1) authorises:
  - (a) any alteration or extension to or rebuilding of a building or work, or
  - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the planning instrument concerned, or
  - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of the use concerned, or
  - (d) the continuance of the use concerned in breach of any planning approval in force under this Act in relation to that use or any condition imposed or applicable to that approval (including a condition relating to the modification or surrender of the existing use), or
  - (e) the continuance of the use concerned if it is abandoned.
- (3) Without limitation, a use is presumed to be abandoned (unless the contrary is established) if it ceases to be actually used for a continuous period of 12 months.

**11.17 Uses unlawfully commenced** [cf s 109A]

The use of a building, work or land which was unlawfully commenced is not rendered lawful by the occurrence of any subsequent event except:

- (a) the commencement of a planning instrument which permits the use without the need to obtain development consent, or
- (b) the granting of development consent to that use.

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## **11.18 Saving of effect of existing development consents** [cf s 109B]

- (1) Nothing in a planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a development consent that has been granted and is in force.
- (2) This section:
  - (a) applies to development consents lawfully granted before or after the commencement of this Act, and
  - (b) does not prevent the lapsing or modification, in accordance with this Act, of a development consent, and
  - (c) has effect despite anything to the contrary in this Division.

## **Division 11.5 Contaminated land liability**

### **11.19 Definitions** [cf s 145A]

In this Division:

***contaminated land*** means land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

***planning authority*** means the public authority or other person or body responsible for exercising a planning function.

***planning function*** means:

- (a) the making, amendment or repeal of any provisions of a local plan or of any other strategic plan or the preparation of a draft plan or proposal under Part 3 for that purpose, or
- (b) determining an application for a planning approval or a modification of a planning approval, or
- (c) furnishing advice or information in an information certificate, or
- (d) any function under the planning legislation prescribed by the regulations, or
- (e) anything incidental or ancillary to the carrying out of any of the above functions.

### **11.20 Exemption from liability—contaminated land** [cf s 145B]

- (1) A planning authority does not incur any liability in respect of anything done or omitted to be done in good faith by the authority in duly exercising any planning function of the authority in so far as it relates to

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contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land.

- (2) Without limiting any other circumstance in which a planning authority may have acted in good faith, a planning authority is (unless the contrary is proved) taken to have acted in good faith if the thing was done or omitted to be done substantially in accordance with the contaminated land planning guidelines in force under this Division at the time the thing was done or omitted to be done.
- (3) The protection conferred on a planning authority by this section extends to its employees and agents and to the members of any governing body of the planning authority.

## **11.21 Contaminated land planning guidelines** [cf s 145C]

- (1) For the purposes of this Division, the Minister may, from time to time, issue planning guidelines relating to contaminated land (the *contaminated land planning guidelines*).
- (2) The regulations may make provision with respect to the making of contaminated land planning guidelines, including the public exhibition of draft guidelines.
- (3) The contaminated land planning guidelines (and any amendment or replacement of those guidelines) are to be published on the NSW planning website.

## **Division 11.6 Bush fire prone land**

### **11.22 Bush fire prone land** [cf s 146]

- (1) If a bush fire risk management plan applies to land within the area of a council, the council must, every 5 years:
  - (a) request the Commissioner of the NSW Rural Fire Service to designate land (if any) within the area that the Commissioner considers, having regard to the bush fire risk management plan, to be bush fire prone land, and
  - (b) must record any land so designated on a map.
- (2) The Commissioner of the NSW Rural Fire Service must, if satisfied that the land designated by the Commissioner has been recorded by the council on a map, certify the map as a bush fire prone land map for the area of the council.
- (3) The Commissioner of the NSW Rural Fire Service may, in accordance with the regulations, review the designation of land on a bush fire prone land map for an area at any time after the map is certified and revise the map accordingly. The revised map:

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- (a) becomes the bush fire prone land map for the area on being certified by the Commissioner, and
  - (b) is to be provided to the council by the Commissioner.
- (4) Land recorded for the time being as bush fire prone land on a bush fire prone land map for an area is bush fire prone land for the area for the purposes of this or any other Act.
- (5) The bush fire prone land map for an area is to be available for public inspection during normal office hours for the council.
- (6) In this section:  
*bush fire risk management plan* has the same meaning as it has in the *Rural Fires Act 1997*.  
*map* includes spatial dataset.  
**Note.** Division 8 of Part 4 of the *Rural Fires Act 1997* contains provisions relating to the carrying out of development and bush fire hazard reduction work on bush fire prone land.

## Division 11.7 General miscellaneous

**Note.** The following additional miscellaneous provisions are contained in Schedule 11:  
Paper subdivisions (Part 2 of Schedule 11).

### 11.23 Act to bind Crown [cf s 6]

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### 11.24 Disclosure of political donations [cf s 147]

- (1) The object of this section is to require the disclosure of relevant political donations or gifts when planning applications are made to minimise any perception of undue influence by:
- (a) requiring public disclosure of the political donations or gifts at the time planning applications (or public submissions relating to them) are made, and
  - (b) providing the opportunity for appropriate decisions to be made about the persons who will determine or advise on the determination of the planning applications.

Political donations or gifts are not relevant to the determination of any such planning application, and the making of political donations or gifts does not provide grounds for challenging the determination of any such planning application.

**Note.** This Act makes provision for planning applications to be referred to various bodies for advice or determination. Section 10.13 makes special

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provision where development consent is tainted by corruption. The *Local Government Act 1993* makes provision with respect to voting by local councillors with a conflict of interest in any matter before the council.

(2) In this section:

**gift** means a gift within the meaning of Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981*.

**Note.** A gift includes a gift of money or the provision of any other valuable thing or service for no consideration or inadequate consideration.

**local councillor** means a councillor (including the mayor) of the council of a local government area.

**relevant planning application** means:

- (a) a formal request to the Minister, a council or the Director-General to initiate the making of provisions of a local plan in relation to development on a particular site, or
- (b) a formal request to the Minister or the Director-General for development on a particular site to be made State significant development or State infrastructure development, or
- (c) an application for approval of State infrastructure development (or for the modification of the approval for any such development), or
- (d) an application for development consent under Part 4 (or for the modification of a development consent), or
- (e) any other application or request under or for the purposes of the planning legislation that is prescribed by the regulations as a relevant planning application,

but does not include:

- (f) an application for (or for the modification of) a complying development certificate, or
- (g) an application or request made by a public authority on its own behalf or made on behalf of a public authority, or
- (h) any other application or request that is excluded from this definition by the regulations.

**relevant public submission** means a written submission made by a person objecting to or supporting a relevant planning application or any development that would be authorised by the granting of the application.

**reportable political donation** means a reportable political donation within the meaning of Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981* that is required to be disclosed under that Part.

**Note.** Reportable political donations include those of or above \$1,000.

(3) A person:



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- (a) who makes a relevant planning application to the Minister or the Director-General is required to disclose all reportable political donations (if any) made within the relevant period to anyone by any person with a financial interest in the application, or
- (b) who makes a relevant public submission to the Minister or the Director-General in relation to the application is required to disclose all reportable political donations (if any) made within the relevant period to anyone by the person making the submission or any associate of that person.

The relevant period is the period commencing 2 years before the application or submission is made and ending when the application is determined.

- (4) A person who makes a relevant planning application to a council is required to disclose the following reportable political donations and gifts (if any) made by any person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined:
  - (a) all reportable political donations made to any local councillor of that council,
  - (b) all gifts made to any local councillor or employee of that council.

A reference in this subsection to a reportable political donation made to a local councillor includes a reference to a donation made at the time the person was a candidate for election to the council.

- (5) A person who makes a relevant public submission to a council in relation to a relevant planning application made to the council is required to disclose the following reportable political donations and gifts (if any) made by the person making the submission or any associate of that person within the period commencing 2 years before the submission is made and ending when the application is determined:
  - (a) all reportable political donations made to any local councillor of that council,
  - (b) all gifts made to any local councillor or employee of that council.

A reference in this subsection to a reportable political donation made to a local councillor includes a reference to a donation made at the time the person was a candidate for election to the council.

- (6) The disclosure of a reportable political donation or gift under this section is to be made:
  - (a) in, or in a statement accompanying, the relevant planning application or submission if the donation or gift is made before the application or submission is made, or

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- (b) if the donation or gift is made afterwards, in a statement to the person to whom the relevant planning application or submission was made within 7 days after the donation or gift is made.
- (7) For the purposes of this section, a person has a financial interest in a relevant planning application if:
  - (a) the person is the applicant or the person on whose behalf the application is made, or
  - (b) the person is an owner of the site to which the application relates or has entered into an agreement to acquire the site or any part of it, or
  - (c) the person is associated with a person referred to in paragraph (a) or (b) and is likely to obtain a financial gain if development that would be authorised by the application is authorised or carried out (other than a gain merely as a shareholder in a company listed on a stock exchange), or
  - (d) the person has any other interest relating to the application, the site or the owner of the site that is prescribed by the regulations.
- (8) For the purposes of this section, persons are associated with each other if:
  - (a) they carry on a business together in connection with the relevant planning application (in the case of the making of any such application) or they carry on a business together that may be affected by the granting of the application (in the case of a relevant planning submission), or
  - (b) they are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
  - (c) one is a director of a body corporate and the other is any such related body corporate or a director of any such related body corporate, or
  - (d) they have any other relationship prescribed by the regulations.
- (9) The disclosure of reportable political donations under this section is to include disclosure of the following details of each such donation made during the relevant disclosure period:
  - (a) the name of the party or person for whose benefit the donation was made,
  - (b) the date on which the donation was made,
  - (c) the name of the donor,
  - (d) the residential address of the donor (in the case of an individual) or the address of the registered or other official office of the donor (in the case of an entity),

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(e) the amount (or value) of the donation.

**Note.** The above details are the details required to be disclosed of political donations under Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981*.

- (10) The disclosure of gifts under this section is to include disclosure of the following details of each such gift made during the relevant disclosure period:
- (a) the name of the person to whom the gift was made,
  - (b) the date on which the gift was made,
  - (c) the name of the person who made the gift,
  - (d) the residential address of the person who made the gift (in the case of an individual) or the address of the registered or other official office of the person who made the gift (in the case of an entity),
  - (e) the amount (or value) of the gift.
- (11) This section only requires the disclosure of a political donation or gift by person in accordance with this section that the person knows, or ought reasonably to know, was made and is required to be disclosed under this section.
- (12) Disclosures of reportable political donations and gifts under this section are to be made available to the public on, or in accordance with arrangements notified on:
- (a) a website maintained by the Department (in the case of planning applications or submissions made to the Minister or the Director-General), or
  - (b) a website maintained by the council (in the case of planning applications or submissions made to that council).

The disclosures are to be made so available within 14 days after the disclosures are made under this section.

Maximum penalty: The maximum penalty under Part 6 of the *Election Funding, Expenditure and Disclosures Act 1981* for making a false statement in a declaration of disclosures lodged under that Part.

## **11.25 Proof of ownership of land** [cf s 151]

In any legal proceedings under the planning legislation, in addition to any other method of proof available:

- (a) evidence that the person proceeded against is rated in respect of any land to any rate under the *Local Government Act 1993*, otherwise than as a rate paying lessee, is, until the contrary is proved, evidence that the person is the owner of the land, or

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- (b) a certificate issued by the Registrar-General as to the proprietor or owner of any land at a particular time or during a particular period is, until the contrary is proved, evidence that the person described in the certificate as the proprietor or owner of the land was the owner of that land at the relevant time or period.

**11.26 Right to be heard-legal representation** [cf s 152]

- (1) If the planning legislation confers a right on a person to be heard, the person is entitled to be heard personally or to be represented by an Australian legal practitioner or an agent.
- (2) That entitlement is subject to the regulations.

**11.27 Service of documents** [cf s 153]

- (1) A document that is authorised or required by or under the planning legislation to be served on any person may be served by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or
    - (iv) by sending it by electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
  - (b) in the case of a body corporate:
    - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
    - (ii) sending it by facsimile transmission to the facsimile number of the body corporate, or
    - (iii) by sending it by electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person.

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- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

**11.28 Review of legislation**

- (1) The Minister is to review this Act and the *Planning Administration Act 2013* to determine whether the policy objectives of the Acts remain valid and whether the terms of the Acts remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**11.29 Repeal of Environmental Planning and Assessment Act 1979 and regulations under that Act**

The *Environmental Planning and Assessment Act 1979* and the regulations under that Act are repealed.

**Note.** Consequential amendments to other Acts and instruments are to be included in a separate amending Act.

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Schedule 1      General—ancillary provisions

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## Schedule 1      General—ancillary provisions

### 1.1 Dictionary [cf s 4]

In this Act:

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

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

**area**, in relation to council, has the same meaning as it has in the *Local Government Act 1993*.

**biodiversity offset contribution**—see section 1.9.

**brothel** means a brothel within the meaning of the *Restricted Premises Act 1943*, other than premises used or likely to be used for the purposes of prostitution by no more than one prostitute.

**building** includes:

- (a) part of a building, and
- (b) any temporary or permanent structure or part of any such structure,

but does not include a (or part of a) manufactured home, moveable dwelling or associated structure.

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

**Building Code of Australia** means the official publication known as the *Building Code of Australia*, as in force in New South Wales from time to time.

**building information certificate** means a building information certificate under Division 11.3 of Part 11.

**Building Professionals Board** means the Building Professionals Board constituted under the *Building Professionals Act 2005*.

**building work** - see section 1.10.

**bush fire prone land** means land recorded for the time being as bush fire prone land on a bush fire prone land map for the area concerned that is certified under Division 11.6 of Part 11.

**certifier** means a building certifier or a subdivision certifier.

**change of building use** - see section 8.1.

**community participation** - see section 2.1 (2).

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General—ancillary provisions

Schedule 1

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***complying development*** means development requiring development consent declared by the planning control provisions of a local plan to be complying development.

***complying development application*** means an application for a complying development certificate.

***complying development certificate*** means a consent under Part 4 to carry out complying development that is granted following a complying development application.

***consent authority*** - see section 4.5.

***controlling*** development or other thing includes permitting, regulating, restricting or prohibiting the development or other thing, or conferring functions on a person or body to do so.

***critical habitat*** means critical habitat within the meaning of the threatened species legislation.

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

***Department*** means the Department of Planning and Infrastructure.

***development*** - see section 1.6.

***development assessment code*** - see section 4.17.

***development consent*** means a consent under Part 4 to carry out development, and includes a complying development certificate.

***development control order*** means an order under Division 10.2 of Part 10.

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

***EIS assessed development*** means development requiring development consent declared by the planning control provisions of a local plan to be EIS assessed development.

***environment*** includes all aspects of the surroundings of humans, whether affecting any humans as individuals or in their social groupings.

***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
- (d) erecting an advertising structure over a public road, or
- (e) extending a balcony, awning, sunshade or similar structure or an essential service pipe beyond the alignment of a public road.

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**exempt development** means development declared by the planning control provisions of a local plan to be exempt development because of its minor impact.

**former Act** means the *Environmental Planning and Assessment Act 1979*.

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

**information certificate** means a planning information certificate or a building information certificate.

**infrastructure contribution** - see section 1.9

**infrastructure plan** - see section 1.9

**land** includes:

- (a) the sea and any other body of water, and
- (b) a building on the land.

**Ministerial planning order** means an order made by the Minister and published on the NSW planning website.

**NSW planning website** means the website with the URL of [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au), or any other website, used by the Director-General to provide public access to documents or other information in the NSW planning database.

**objector** - see section 9.8 (2).

**owner** has the same meaning it has in the *Local Government Act 1993*.

**Part 5 environmental impact assessment development** means relevant development that is subject to environmental impact assessment under Division 5.1 of Part 5.

**planning approval** - see section 1.8.

**Planning Assessment Commission** means the Planning Assessment Commission established under Part 4 of the *Planning Administration Act 2013*.

**planning body** - see section 1.11.

**planning control provisions** - see section 1.7 (2).

**planning information certificate** means a planning information certificate under Division 11.3 of Part 11.

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

- (a) this Act and the instruments under this Act,
- (b) the *Planning Administration Act 2013* and the instruments under that Act.

**Planning Ministerial Corporation** means the corporation established under Part 3 of the *Planning Administration Act 2013*.



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**premises** includes:

- (a) a building, or
- (b) a (or part of a) manufactured home, moveable dwelling or associated structure, or
- (c) land or place (whether enclosed or built on or not), or
- (d) a vehicle, vessel or aircraft.

**proponent** of development means the person proposing to carry out all or any of the development, and includes any person determined by the Director-General (or taken under this Act) to be the proponent.

**public authority** means:

- (a) a public or local authority constituted by or under an Act, or
- (b) a government Department, or
- (c) a NSW government agency or statutory body representing the Crown, or
- (d) a chief executive officer within the meaning of the *Public Sector Employment and Management Act 2002* (including the Director-General), or
- (e) a statutory State owned corporation (and its subsidiaries) within the meaning of the *State Owned Corporations Act 1989* or its chief executive officer, or
- (f) a person or body declared by the regulations to be a public authority for the purposes of all or any specified provisions of the planning legislation.

**public priority infrastructure** - see Division 5.3 of Part 5.

**public road** means a public road within the meaning of the *Roads Act 1993*.

**region** means an area declared to be a region under clause 1.2.

**regional planning panel** means a regional planning panel established under Part 5 of the *Planning Administration Act 2013*.

**regionally significant development** means development requiring development consent declared by the planning control provisions of a local plan to be regionally significant development.

**relevant planning authority** for the preparation of a strategic plan - see section 3.1.

**species impact statement** means a species impact statement prepared in accordance with the threatened species legislation.

**State infrastructure approval** means an approval for carrying out State infrastructure development under Division 5.2 of Part 5.

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**State infrastructure development** means development declared by the planning control provisions of a local plan (or by the Minister under section 5.10) to be State infrastructure development - see section 5.10.

**State significant development** means development requiring development consent declared by the planning control provisions of a local plan (or by the Minister under section 4.29) to be State significant development.

**strategic compatibility certificate** means a strategic compatibility certificate in force under Division 4.7 of Part 4.

**strategic plan** - see section 1.7 (1).

**subdivision** of land - see clause 1.4 of this Schedule.

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

**subdivision work** - see section 1.10.

**subregion** means an area declared to be a subregion under clause 1.2.

**subregional planning board** means a subregional planning board established under Part 6 of the *Planning Administration Act 2013*.

**temporary structure** includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure.

**threatened species, populations and/or ecological communities** has the meaning given by the threatened species legislation, but does not include a vulnerable ecological community (except so much of the community as comprises a threatened species or endangered population).

**threatened species legislation** means the *Threatened Species Conservation Act 1995* or, in the case of fish or marine vegetation, Part 7A of the *Fisheries Management Act 1994*.

**Tier 1, Tier 2, Tier 3** in relation to an offence, indicates the maximum penalty that a court may impose for the offence- see sections 10.14-10.16 for the relevant maximum amounts.

**transitional planning instrument** means an environmental planning instrument, or deemed environmental planning instrument, under the former Act that is continued in force on the commencement of this Act under Schedule 12.

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

**wilderness area** means a wilderness area within the meaning of the *Wilderness Act 1987*.

**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

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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 rebuilding 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.

## 1.2 Regions and subregions [cf s 4 (6)]

The Minister may, by Ministerial planning order, declare any area of the State (or parts of areas of the State) to be a region or subregion for the purposes of the planning legislation.

## 1.3 Interpretation Act 1987 provisions

The *Interpretation Act 1987* contains provisions that affect the interpretation and operation of this Act.

### Note.

1. Section 21 - defined terms that apply to this Act include:

[*key defined terms to be listed with their defined meaning*]

**person** includes an individual, a corporation and a body corporate or politic.

2. The provisions of the Interpretation Act 1987 that apply to instruments apply to instruments under this Act and various sections applying to statutory rules also apply to instruments making or amending planning control provisions - see section 5 (6) of that Act.

3. Section 49 contains provisions relating to the delegation of functions under the planning legislation.

## 1.4 Meaning of “subdivision of land” [cf s 4B]

- (1) For the purposes of this Act, *subdivision* of land means the division of land into two 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 subclause (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 (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

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**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 (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

## 1.5 Determination of whether proposed development likely to significantly affect threatened species [cf s 5A]

- (1) The following is to be taken into account for the purposes of determining under this Act whether proposed development is likely to significantly affect threatened species (unless this clause or another provision of this Act provides that it is not likely to do so or unless it is carried out in critical habitat):
- (a) in the case of a threatened species, whether the proposed development is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
  - (b) in the case of an endangered population, whether the proposed development is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,

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- (c) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development:
  - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
  - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
- (d) in relation to the habitat of a threatened species, population or ecological community:
  - (i) the extent to which habitat is likely to be removed or modified as a result of the proposed development, and
  - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development, and
  - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality,
- (e) whether the proposed development is likely to have an adverse effect on critical habitat (either directly or indirectly),
- (f) whether the proposed development is consistent with the objectives or actions of a recovery plan or threat abatement plan,
- (g) whether the proposed development constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.

The assessment guidelines under section 94A of the *Threatened Species Conservation Act 1995* or, in the case of fish and marine vegetation, section 220ZZA of the *Fisheries Management Act 1994* apply to the determination of whether any such proposed development is likely to significantly affect threatened species.

- (2) Proposed development is not likely to significantly affect threatened species for the purposes of this Act if:
  - (a) the proposed development is not likely to do so as determined by a biodiversity assessment procedure adopted by the regulations for the purposes of this clause (being a procedure approved by the Ministers administering the threatened species legislation and set out in the regulations or published in the Gazette), and

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- (b) the proposed development is of a kind that the planning control provisions of the local plan declare may be assessed in accordance with that procedure.

**Note.** The planning control provisions are to apply to development subject to either Part 4 or 5 of this Act.

- (3) If a determination under subclause (2) that proposed development is not likely to significantly affect threatened species is based on measures to avoid, mitigate or offset the effect of the development, the terms and conditions of any planning approval for the development are to reflect those measures or measures having substantially the same effect.

**Note.** Development is taken not to significantly affect threatened species if:

- (a) the development is to be carried out on biodiversity certified land under the threatened species legislation, or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the *Threatened Species Conservation Act 1995*.

#### 1.6 Miscellaneous interpretation provisions [cf s 4 (2)–(14)]

- (1) Where functions are conferred or imposed under the planning legislation on a council:
  - (a) except as provided in paragraph (b), those functions may be exercised in respect of an area by the council of that area, or
  - (b) if the functions are conferred or imposed in respect of part of an area, those functions may be exercised in respect of that part by the council of that area.
- (2) Where functions are conferred or imposed under the planning legislation on a public authority that is a Department or other unincorporated group of persons, those functions may be exercised by a person who is authorised to exercise those functions on behalf of the public authority.
- (3) A reference in this Act (or in an instrument made under this Act) to an order or determination is (if the order or determination is not required to be published on the NSW planning website) a reference to an order or determination published on that website or (if not so published) in writing.
- (4) A power, express or implied, under the planning legislation to make an order or determination includes a power to revoke or amend the order or determination.
- (5) A reference in this Act to any act, matter or thing as specified in an instrument under this Act includes a reference to any act, matter or thing that is of a class or description as specified in such an instrument.
- (6) A reference in this Act to the granting of consent or approval includes a reference to the granting of consent or approval subject to conditions.

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- (7) Without affecting the generality of section 8 (b) of the *Interpretation Act 1987*, a reference in this Act to the owner or lessee of land includes a reference to joint or multiple owners or lessees of land.

## **1.7 Resolving inconsistencies in declarations of categories of development**

- (1) Development declared by the planning control provisions of a local plan to be exempt development is not exempt development if other planning control provisions of the local plan that prevail in the event of inconsistency prohibit that development or provide that the development cannot be carried out without development consent.
- (2) Development does not require development consent under the planning control provisions of a local plan if other planning control provisions that prevail in the event of inconsistency prohibit that development being carried out or permit that development to be carried out without development consent.
- (3) Development is not prohibited by the planning control provisions of a local plan if other planning control provisions that prevail in the event of inconsistency permit that development to be carried out with or without development consent.

## **1.8 Notes and diagrams**

Notes in this Act, or diagrams set out in sections 1.4, 3.2 and 4.4 do not form part of this Act.

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Schedule 2 Community participation—ancillary provisions

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## **Schedule 2 Community participation—ancillary provisions**

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

#### **Division 1 Minimum public exhibition periods for strategic and other plans**

**2.1 Draft strategic plans (other than planning control provisions of local plans)**

28 days.

**2.2 Draft infrastructure plans**

28 days.

**2.3 Draft community participation plans**

28 days.

**2.4 Draft amendment to any of the above plans**

The period specified in the relevant community participation plan.

**2.5 Planning proposal for planning control provisions of local plans**

The period specified in the gateway determination for the proposal.

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

**2.6 Application for development consent for code assessed development in respect of any aspect of the development that requires merit assessment because it does not meet relevant performance outcomes**

The period (if any) determined by the consent authority in accordance with the relevant community participation plan (but not less than 14 days if a period is determined).

**2.7 Application for development consent made in reliance on a strategic compatibility certificate**

28 days.

**2.8 Application for development consent for development that is not code assessed development and that requires merit assessment**

14 days.



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**2.9 Application for development consent for EIS assessed development**

28 days.

**2.10 Application for development consent for State significant development that requires merit assessment**

28 days.

**2.11 Application for modification of development consent that was subject to merit assessment**

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

**2.12 Application for modification of development consent that was subject to code assessment where modified development does not meet relevant standards etc and would have required merit assessment**

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

**2.13 Environmental impact statement (or species impact statement) obtained under Division 5.1 of Part 5**

28 days.

**2.14 Environmental impact statement for State infrastructure development under Division 5.2 of Part 5**

28 days.

**2.15 Re-exhibition of any amended application or matter referred to above**

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**

**2.16 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.

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#### **2.17 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.

#### **2.18 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 applicable rule where an exhibition period includes a weekend or public holiday.

#### **2.19 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.

#### **2.20 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.

#### **2.21 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.

### **Division 4 Notification requirements for applications and decisions**

#### **2.22 Development and other applications and decisions**

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 the regulations.

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## Part 2 General provisions

### 2.23 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.

### 2.24 Copyright in documents used for purposes of planning legislation - indemnification [cf proposed s 158A]

- (1) A relevant person who is not entitled to copyright in a document that is part of a planning matter is taken to have indemnified all persons using the document for the purposes of the planning legislation against any claim or action in respect of a breach of copyright in the document.
- (2) For the purposes of this clause:
  - (a) an application for a planning approval (or to modify a planning approval) under this Act or the former Act is a planning matter, and the applicant is the relevant person, and
  - (b) an environmental impact statement or a statement of environmental effects under this Act or the former Act (including any preferred infrastructure report) is a planning matter, and the proponent of the development is the relevant person, and
  - (c) a planning proposal under Part 3 (or under the former Act) is a planning matter, and the person preparing the proposal is the relevant person, and
  - (d) a planning agreement under this Act or the former Act is a planning matter, and the developer under the agreement is the relevant person, and
  - (e) a matter or thing under the planning legislation that is declared by the regulations for the purposes of this clause is a planning matter, and the person declared by the regulations is the relevant person in respect of that matter or thing.
- (3) For the purposes of this clause, a document is part of a planning matter if it forms part of or accompanies the planning matter, or is subsequently submitted by the relevant person in support of the planning matter or is exhibited or made public in accordance with a requirement made by or under the planning legislation in relation to the planning matter.
- (4) The regulations may limit the operation of this clause.

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- (5) This clause extends to planning matters in paper or electronic form.
- (6) This clause extends to a planning matter that was made or submitted before the commencement of this clause.

## **Part 3 Online delivery of planning services and information**

**Note.** Further legislative provisions may be made to facilitate the electronic register of consents and other on-line service delivery outlined in the White Paper.

### **2.25 Establishment, content and maintenance of NSW planning database**

- (1) The NSW planning database is established for the purposes of the planning legislation.
- (2) The NSW planning database is an electronic repository of:
  - (a) documents that are required under the planning legislation to be published on the NSW planning website, and
  - (b) the planning control provisions of local plans or other documents that are required under the planning legislation to be published on the NSW legislation website, and
  - (c) maps or spatial datasets that are adopted or incorporated by way of reference by those provisions or documents, and
  - (d) other documents or information relating to the administration of the planning legislation required to be published on the NSW planning website by the regulations or by the Director-General.

**Note.** Matters required to be published on the NSW planning website include Ministerial planning orders, instruments of delegation, community participation plans, NSW planning policies, regional growth plans, subregional delivery plans, various provisions of local plans, infrastructure plans, declarations of public priority infrastructure.

- (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 website.
- (4) The NSW planning database is to be compiled and maintained as determined by the Director-General.
- (5) Any part of the NSW planning database that comprises the planning control provisions of local plans or other material published on the NSW legislation website may be compiled and maintained in the legislation database that is compiled and maintained by the Parliamentary Counsel for publication on that website.

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## **2.26 Public access to documents and information on the NSW planning website (the planning portal)**

- (1) The Director-General is to make arrangements for documents or other material in the NSW planning database to be published on the NSW planning website and such other websites as are determined by the Director-General.
- (2) The Director-General may certify the form of such documents or other information that is correct.
- (3) Planning control provisions of a local plan or other documents and information need not be published on the NSW planning website if they are published on the NSW legislation website and can be readily accessed from the NSW planning website.
- (4) If the NSW planning website is not available to publish a document or other information for technical or other reasons, the document or other information may be published in the Gazette.

**Note.** The NSW planning website is defined by Schedule 1 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 Director-General to provide public access to documents or other information in the NSW planning database.

## **2.27 Regulations and other provisions relating to online planning services and information [cf s 33C]**

- (1) The regulations may make provision for or with respect to the online delivery of planning services and information, including:
  - (a) the NSW planning website and other specialised planning portals (including the status of services and information delivered online), and
  - (b) access to information (and issue of certificates) about land use zoning and development standards or guides relating to particular land, and
  - (c) the lodgement or submission of applications and other things under the planning legislation, and
  - (d) the assessment of categories of development for which there are codified criteria or standards, and
  - (e) the registration of planning approvals (including provision for approvals to have effect on registration).
- (2) For the purpose of facilitating online delivery of planning services and information:
  - (a) the Director-General may determine standard technical requirements with respect to:

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- (i) the preparation of strategic and other plans, or other documents and of any maps or spatial datasets that are referred to in (or adopted under) them, and
  - (ii) the form of applications for planning approvals and planning approvals, and
- (b) a council or other planning body is to provide the Director-General, when requested, with electronic files (in a specified format) of any such plans, other documents, maps or spatial datasets prepared or held by it.

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Strategic planning—ancillary provisions

Schedule 3

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## **Schedule 3 Strategic planning—ancillary provisions**

### **3.1 Regulations: Part 3 [cf s 60]**

The regulations may make provision with respect to strategic plans, including:

- (a) the appointment and functions of relevant planning authorities under Part 3 of this Act, and
- (b) the procedure for the preparation and making of strategic plans or provisions of those plans, and
- (c) the form, structure and content of the provisions of a local plan (including the standardisation of those provisions), and
- (d) requirements with respect to planning proposals for proposed planning control provisions and the submission of other related reports and documents, and
- (e) special consultation requirements with respect to planning proposals for proposed planning control provisions, and
- (f) requirements for referrals to or concurrences of public authorities in relation to specified provisions of a planning proposal, and
- (g) special requirements with respect to the exercise of the functions of consent authorities where proposed development may affect the Sydney drinking water catchment.

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Schedule 4 Development (other than infrastructure) assessment and consent—ancillary provisions

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## **Schedule 4 Development (other than infrastructure) assessment and consent—ancillary provisions**

### **4.1 Lapsing of consent** [cf s 95 (2)–(7)]

- (1) A consent authority may reduce the period of 5 years when a development consent lapses as referred to in section 4.43. This subclause does not apply to development consent granted to a staged development application for development that requires a subsequent development application and consent.
- (2) Such a reduction may not be made so as to cause:
  - (a) a development consent to erect or demolish a building or to subdivide land to lapse within 2 years after the date from which the consent operates, or
  - (b) a development consent of a kind prescribed by the regulations to lapse within the period prescribed by the regulations in relation to the consent.
- (3) Development consent for:
  - (a) the erection of a building, or
  - (b) the subdivision of land, or
  - (c) the carrying out of a work,does not lapse if building or subdivision work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this clause.
- (4) Development consent for development other than that referred to in subclause (3) does not lapse if the use of any land, building or work the subject of that consent is actually commenced before the date on which the consent would otherwise lapse.
- (5) Despite any other provision of this clause, a development consent that is subject to a deferred commencement condition lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within 5 years from the grant of the consent or, if a shorter period is specified by the consent authority, within the period so specified.

### **4.2 Extension of lapsing period for 1 year** [cf s 95A]

- (1) If, in granting a development consent, the consent authority reduces the period after which the consent lapses to less than 5 years, the applicant or any other person who has the benefit of the consent may apply to the consent authority, before the period expires, for an extension of 1 year.



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(2) The consent authority may grant the extension if satisfied that the applicant has shown good cause.

(3) This clause does not apply to a complying development certificate.

**4.3 Voluntary surrender of development consents** [cf s 104A]

*[provision to be included]*

**4.4 Provisions relating to invalidity of development consents etc**

*[provision to be included consolidating ss 103 and 104 and ss 25A-25E of Land and Environment Court Act]*

**4.5 Concurrent determination of applications for approval of activities under Local Government Act 1993** [cf s 78A (3)–(7)]

*[provision to be included]*

**4.6 Regulations—Part 4** [cf ss 105, 85 (5)]

- (1) The regulations may make provision for or with respect to the following:
- (a) any matter that is necessary or convenient to be done before making an application for development consent,
  - (b) the persons who may make applications for development consent,
  - (c) the making, consideration and determination of applications for development consent that are made by or on behalf of the Crown, public authorities and persons prescribed by the regulations,
  - (d) requiring the New South Wales Aboriginal Land Council to consent to applications for the modification of development consents relating to land owned by Local Aboriginal Land Councils,
  - (e) the form of applications for development consent,
  - (f) applications for strategic compatibility certificates and the determination of those applications,
  - (g) requirements concerning the issue of complying development certificates,
  - (h) the form of complying development consents and variation certificates,
  - (i) the documents and information required to accompany applications for development consent, including documents that will assist the consent authority in assessing the environmental impact of development,

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Schedule 4      Development (other than infrastructure) assessment and consent—ancillary provisions

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- (j) the preparation, contents, form and submission of environmental impact statements and statements of environmental effects,
- (k) the documents and information required to accompany statements of environmental effects and environmental impact statements,
- (l) additional matters of a procedural nature that are to be complied with before an application for development consent may be determined,
- (m) the modification or surrender of a development consent, or of an existing use right, in accordance with a condition of a development consent,
- (n) conditions to be imposed on development consents,
- (o) procedures relating to the determination of matters required to be determined or approved under a condition of a development consent,
- (p) the kinds of development that may be subject to a condition permitting the review of another condition, the matters that must be included in such a condition and the procedures for a review under such a condition,
- (q) procedures relating to the referral of Crown development applications to the Director-General and the determination of such applications,
- (r) the modification of development consents (including with respect to environmental assessment requirements),
- (s) the periods within which specified aspects of the environmental planning control process must be completed and the variation of those periods,
- (t) the provision by councils of certificates relating to the application of development guides to particular land or in particular circumstances,
- (u) the effect of a failure to comply with any requirement of the regulations.

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## **Schedule 5 Infrastructure and environmental impact assessment—ancillary provisions**

### **Part 1 Provisions relating to environmental impact assessment under Division 5.1 of Part 5**

#### **5.1 Application**

This Part applies in relation to the environmental impact assessment requirements of Division 5.1 of Part 5 (referred to in this Part as *Part 5 environmental impact assessment*).

#### **5.2 Nomination of determining authority [cf s 110A]**

- (1) If the approval of more than one determining authority is required in relation to any relevant development (either in respect of the carrying out of the development or the granting of an approval in respect of the development), the Minister may, by Ministerial planning order, nominate a determining authority to be the nominated determining authority for the relevant development, or class of relevant development, for the purposes of Part 5 environmental impact assessment.
- (2) If there is a nominated determining authority for relevant development, that nominated authority may exercise the following functions on behalf of the other determining authorities in relation to that relevant development:
  - (a) furnishing a copy of the environmental impact statement to the Director-General,
  - (b) publicly exhibiting the environmental impact statement and receiving and forwarding submissions made in response to the public exhibition.
- (3) A determining authority (other than the nominated determining authority) is required to forward to the nominated determining authority a copy of any submissions made to it in response to the public exhibition and provide other information to the nominated determining authority, as required by the regulations, to enable the nominated determining authority to co-ordinate the preparation and furnishing of reports in relation to the relevant development.
- (4) If there is a nominated determining authority for any relevant development, any other determining authority for the development need not inquire into whether the nominated determining authority has complied with the functions that it exercises under this clause on behalf of that other determining authority.

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## **5.3 Determining authorities taken to be proponents of relevant development** [cf s 110B]

- (1) For the purposes of Part 5 environmental impact assessment, a proponent of development is taken to include the following:
  - (a) the Forestry Corporation of New South Wales in respect of forestry activities authorised by that Corporation on land under the management of that Corporation,
  - (b) any determining authority which the Minister determines in writing to be the proponent of a particular relevant development or which the regulations declare to be the proponent of relevant development of the kind specified in the regulations.
- (2) In any such case, a reference in Division 5.1 of Part 5 and in this Part to a determining authority carrying out development includes a reference to the Forestry Corporation or such a determining authority granting an approval for the development.

## **5.4 Particular matters to which determining authorities to have regard for purposes of Part 5 environmental impact assessment** [cf ss 110C, 111 (2), 112A]

For the purposes of Part 5 environmental impact assessment, a determining authority is to have regard to the following to the extent that it is relevant to the assessment:

- (a) critical habitat,
- (b) any recovery plan or threat abatement plan for the purposes of assessing in a species impact statement any effect on a threatened species, population or ecological community, or its habitat,
- (c) any conservation agreement entered into under the *National Parks and Wildlife Act 1974* that applies to any of the land concerned (and any plan of management under that Act for the land subject to the conservation agreement),
- (d) any joint management agreement entered into under the threatened species legislation that applies to any of the land concerned,
- (e) any biobanking agreement entered into under Part 7A of the *Threatened Species Conservation Act 1995* that applies to any of the land concerned.

## **5.5 Regulations** [cf s 115]

The regulations may make provision for or with respect to Part 5 environmental impact assessment, including the following:

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- (a) the matters to be taken into account when consideration is being given to the likely effect of any relevant development on the environment,
- (b) the preparation, contents, form and submission of environmental impact statements,
- (c) the examination of environmental impact statements,
- (d) the effect of amendments to the lists of threatened species, populations and ecological communities during Part 5 environmental impact assessment.

## **Part 2 Provisions relating to State infrastructure development under Division 5.2 of Part 5**

### **5.6 Application**

This Part applies in relation to State infrastructure development and approvals under Division 5.2 of Part 5.

### **5.7 Biobanking—special provisions [cf s 115ZC]**

- (1) The Minister may approve State infrastructure development subject to a condition that requires the proponent to acquire and retire (in accordance with Part 7A of the *Threatened Species Conservation Act 1995*) biodiversity credits of a number and class (if any) specified by the Minister in the approval. This subclause applies whether or not a biobanking statement under Part 7A of that Act was obtained in respect of the development.
- (2) The Minister may approve an arrangement under which:
  - (a) the retirement of some or all of the biodiversity credits is deferred pending the completion of any rehabilitation or restoration action proposed to be taken on the site of the State infrastructure development, after the development has been substantially completed, that will restore or improve the biodiversity values affected by the development, and
  - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister administering the *Threatened Species Conservation Act 1995*.
- (3) Division 7 of Part 7A of the *Threatened Species Conservation Act 1995* applies in respect of any such arrangement as if it were a deferred retirement arrangement approved under that Division.
- (4) If a biobanking statement was obtained in respect of State infrastructure development, the Minister may approve the development subject to a

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Schedule 5 Regulations for purposes of Division 5.2 of Part 5

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condition that requires the proponent to comply with any conditions of the biobanking statement.

**Note.** The conditions of a biobanking statement may require the proponent to retire biodiversity credits in respect of the State infrastructure development in order to ensure that it maintains or improves biodiversity values, or to carry out other onsite measures to minimise any negative impact of the development on biodiversity values.

- (5) A person cannot appeal to the Land and Environment Court in respect of a condition imposed by the Minister under subclause (4).

## **5.8 Regulations for purposes of Division 5.2 of Part 5**

The regulations may make provision for or with respect to State infrastructure development and approvals of State infrastructure development under Division 5.2 of Part 5, including the following:

- (a) the requirements and procedures for making applications for approvals under that Division,
- (b) requiring owners of land on which State infrastructure development is proposed to be carried out to consent to applications for approvals under that Division,
- (c) the amendment of applications for approvals under that Division,
- (d) the preparation, notification and modification of requirements for environmental impact assessment of State infrastructure development,
- (e) the requirements for environmental impact statements under that Division,
- (f) the assessment of applications for approval under that Division,
- (g) requiring the New South Wales Aboriginal Land Council to consent to applications for approvals under that Division on land owned by Local Aboriginal Land Councils, if the consent of the Local Aboriginal Land Council concerned is required as owner of the land,
- (h) providing for public exhibition, notification and public registers of applications for approvals under that Division (or for the modification of approvals) and of the determination of those applications,
- (i) the effect of the revocation of the declaration of development as State infrastructure development,
- (j) the application of provisions of Part 8 to State infrastructure development.

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Schedule 5

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## **Part 3 Provisions relating to public priority infrastructure**

### **5.9 Application**

This Part applies in relation to public priority infrastructure under Division 5.3 of Part 5.

### **5.10 Regulations**

The regulations may make provision for or with respect to public priority infrastructure, including the following:

- (a) the declaration of public priority infrastructure,
- (b) project definition reports (including the modification of any such report at the request of the proponent),
- (c) the carrying out of development for the purposes of public priority infrastructure,
- (d) the application of provisions of Part 8 to public priority infrastructure,
- (e) any matter for or with respect to which regulations may be made in relation to public priority infrastructure.

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Schedule 6      Concurrences, consultation and other legislative approvals—ancillary provisions

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## **Schedule 6      Concurrences, consultation and other legislative approvals—ancillary provisions**

*[At this stage this Schedule does not contain any provisions.]*



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Infrastructure and other contributions—ancillary provisions

Schedule 7

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## **Schedule 7    Infrastructure and other contributions— ancillary provisions**

### **7.1    Regulations: Transparency and accountability**

- (1) The regulations may make provision for or with respect to requiring the collection and publication by public authorities of information concerning the provision of infrastructure and the determination, collection, application and use of infrastructure or other contributions under Part 7 of this Act.
- (2) The information required to be collected and published can include (but is not limited to):
  - (a) details of the amounts of monetary infrastructure or other contributions paid and the purposes for which they were paid, and
  - (b) details of the purposes for which monetary infrastructure or other contributions have been applied by a public authority, and
  - (c) details of the time frame for the provision of infrastructure for which any local infrastructure plan or growth infrastructure plan provides, and
  - (d) details of any borrowings or other arrangements made by a public authority for the provision of infrastructure, and
  - (e) the amount and other details of any monetary contributions or other contributions that have not been applied for the purpose for which they were paid and that continue to be held by a public authority.
- (3) The regulations can, for example, require the publication of information by a public authority by requiring inclusion of the information in any annual or other report of the public authority.
- (4) The regulations may also provide for the auditing of the administration of local infrastructure contributions by councils.

### **7.2    Regulations—planning agreements**

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

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

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Schedule 7      Regulations—planning agreements

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- (e) the public inspection of planning agreements after they have been made.

### **7.3 Regulations - form etc of infrastructure plans**

The regulations may make provision for or with respect to the preparation and approval of local infrastructure plans and growth infrastructure plans, including the format, structure and subject-matter of plans.

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Building and subdivision—ancillary provisions

Schedule 8

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## Schedule 8 Building and subdivision—ancillary provisions

### 8.1 Regulations: Part 8 [cf s 109Q]

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) the applications for and the issue of certificates under Part 8,
- (c) the form and contents of certificates under Part 8,
- (d) conditions of certificates under Part 8,
- (e) modification of certificates under Part 8,
- (f) inspection of building work and subdivision work,
- (g) the functions of certifiers under Part 8,
- (h) the replacement of building certifiers and subdivision certifiers,
- (i) exemptions in relation to the requirement to obtain a certificate under Part 8,
- (j) the keeping of records in relation to building work or subdivision work,
- (k) notices and information to be given in relation to the carrying out of building work and subdivision work,
- (l) the procedure for dealing with complaints about building work or subdivision work.

**Note.** Regulations authorised under Part 5 enable regulations to apply provisions of Part 8 to State infrastructure development and development for the purposes of public priority infrastructure.

### 8.2 Smoke alarms in buildings providing sleeping accommodation [cf s 146A]

- (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 clause may (without limitation) do any one or more of the following:

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Schedule 8 Building and subdivision—ancillary provisions

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- (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 1996*) is not required in relation to the installation of a smoke alarm.
- (3) In this clause:  
**building** includes a manufactured home, a moveable dwelling or associated structure and includes a building erected before the commencement of this clause.

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Reviews and appeals—ancillary provisions

Schedule 9

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## **Schedule 9    Reviews and appeals—ancillary provisions**

### **9.1    Regulations**

The regulations may make provision for or with respect to reviews and appeals under Part 9, and in particular the procedure with respect to any such review or appeal.

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Schedule 10 Enforcement—ancillary provisions

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## Schedule 10 Enforcement—ancillary provisions

### Part 1 Ministerial enforcement matters

#### 10.1 Appointment of regional planning panel or administrator to exercise council's functions [cf ss 118–118AG]

- (1) The Minister may appoint a regional planning panel to exercise functions of a council if:
  - (a) the Minister is of the opinion that the council has failed to comply with its obligations under the planning legislation, or
  - (b) the Minister is of the opinion that the performance of a council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters, the time taken or in any other respect (having regard to criteria published by the Minister for the purposes of this clause), or
  - (c) the council agrees to the appointment, or
  - (d) a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988* recommends that consideration be given to the appointment because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of functions conferred or imposed on the council by or under the planning legislation.
- (2) A regional planning panel may be appointed to exercise only all or any particular function or class of functions of the council:
  - (a) as a consent authority, or
  - (b) in relation to the making or amendment of provisions of local plans or other plans under this Act, or
  - (c) as a certifier, or
  - (d) of any other kind prescribed by the regulations.
- (3) A regional planning panel may not exercise the functions of a council for a continuous period of more than 5 years. The Minister is to review the appointment of the panel after the period of 2 years after the appointment was made.
- (4) Before appointing a regional planning panel to exercise the functions of a council, the Minister must notify the council concerned in writing of the proposed action (including the reasons for the proposed action) and request the council to show cause why the action should not be taken.
- (5) The Minister must consider any written submissions made by the council within 21 days of notice being given under subclause (4) and

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must not take action under this clause earlier than 21 days after the notice is given.

- (6) Before appointing a regional planning panel to exercise the functions of a council, the Minister is to obtain the concurrence of the Minister for Local Government.
- (7) The Minister may take action under this clause in the circumstances specified in subclause (1) (d) without conducting an inquiry or complying with subclauses (4) - (6) but, in that case, the Minister is to inquire into the matter as soon as practicable with a view to confirming or revoking the appointment.
- (8) The Minister must, as soon as reasonably practicable after appointing a regional planning panel to exercise the functions of a council, make the reasons for that appointment publicly available.
- (9) The Minister may appoint an administrator or administrators instead of appointing a regional planning panel under this clause. In that case, a reference in this clause and clause 10.2 to a panel is taken to be a reference to that administrator or those administrators.
- (10) In this clause:  
*failure to comply with obligations under the planning legislation* includes:
  - (a) a failure to carry into effect or enforce the provisions of the planning legislation (including a local plan) or a direction given by the Minister under a power conferred by the planning legislation in relation to the exercise of functions under the planning legislation, or
  - (b) without limiting paragraph (a), a failure to comply with a gateway determination for a planning proposal under Part 3 of this Act, or
  - (c) without limiting paragraph (a), a failure to provide access to and the use of staff and facilities to the Planning Assessment Commission or a regional planning panel as required by the planning legislation.

*serious corrupt conduct* means corrupt conduct (within the meaning of the *Independent Commission Against Corruption Act 1988*) that may constitute a serious indictable offence, being conduct in connection with the exercise or purported exercise of the functions of a councillor.

## 10.2 Functions of regional planning panels [cf s 118AB]

- (1) During the period of appointment, the regional planning panel:
  - (a) is to exercise the functions of the council under the planning legislation that are specified in the order of appointment, and

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- (b) is, in the exercise of those functions, taken to be the council, and
  - (c) is to exercise those functions to the exclusion of the council except to the extent that the order of appointment provides otherwise, and
  - (d) is, in the exercise of those functions, to give priority to particular functions to the extent that the order of appointment so provides.
- (2) This clause has effect even if the appointment of the regional planning panel is subsequently found not to have been validly made.
- (3) This clause applies to the Planning Assessment Commission in the same way as it applies to a regional planning panel if, under the planning legislation, the Commission exercises the relevant functions of the panel.

#### **10.3 Protection for exercise of certain functions by Minister** [cf s 118AG]

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



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*proceedings* includes:

- (a) proceedings for an order under Division 10.3 of Part 10 of this Act, and
- (b) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (c) without limiting paragraph (b), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the *Supreme Court Act 1970*.

#### 10.4 Suspension of council's functions as a certifier [cf s 117B]

- (1) If the Building Professionals Board has made its final report of the results of an investigation under section 45 of the *Building Professionals Act 2005* in relation to a council publicly available and is of the opinion that the council has not taken appropriate action about a matter investigated, the Board may:
  - (a) make recommendations to the Director-General of the Department of Premier and Cabinet as to the measures that it considers appropriate to be taken in relation to the matter, or
  - (b) recommend to the Minister that the Minister take action against the council under this clause.

**Note.** Section 45 of the *Building Professionals Act 2005* enables the Building Professionals Board to investigate the work and activities of a council in its capacity as a certifier.
- (2) The Minister may, on the recommendation of the Board under this clause and following consultation with the Minister administering the *Local Government Act 1993*, make an order suspending a council's authority to exercise all or specified functions of a certifier.
- (3) A council must comply with an order under this clause that relates to the council.
- (4) Despite any other provision of the planning legislation, a council that is the subject of an order must not exercise any function of a certifier while the council's authority to exercise that function is suspended by operation of the order.
- (5) An order does not operate to suspend a council's authority to exercise the functions of a certifier in relation to any matter being dealt with by the council as a certifier before the commencement of the order, unless the order provides otherwise.
- (6) An order may contain provisions of a savings or transitional nature consequent on the suspension contained in the order.

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- (7) Without limiting subclause (6), an order may contain provisions for or with respect to the following:
  - (a) the way in which any pending matter being dealt with by the relevant council as a certifier is to be completed, including, for example, enabling the council to complete any such matter or providing for the matter to be completed by another certifier,
  - (b) directing any fee paid to the council to act as a certifier in relation to any pending matter to be refunded,
  - (c) directing the council to pay any fees required to be paid to another certifier to complete any pending matter being dealt with by the council as a certifier.
- (8) The Minister must revoke an order if satisfied that the relevant council has implemented measures to address the matters that led to the making of the order.
- (9) Nothing prevents the Minister from amending an order made under this clause by another order, including amending the first order to change the functions of a certifier to which the first order relates.
- (10) An order under this clause must be in writing and published in the Gazette and takes effect on the day on which it is published in the Gazette or on a later day specified in the order.

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## Part 2 Development control orders

### Division 1 General orders

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>To do what?</b>	<b>When?</b>	<b>To whom?</b>
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	<p>Premises are being used:</p> <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> <p>Building is being used:</p> <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> <p>Premises are being used for an activity (that would, or would be likely to require planning approval) that:</p> <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>
2	<b>Stop Work Order</b> To stop building work or subdivision work carried out in contravention of this Act	<p>Building work or subdivision work is carried out:</p> <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>

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Column 1	Column 2	Column 3
To do what?	When?	To whom?
<p>3    <b>Demolish Works Order</b> To demolish or remove a building</p>	<p>A building:</p> <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 1919</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>	<p>Owner of building</p>
<p>4    <b>Stop Demolition Order</b> To stop demolishing, or not to demolish a building</p>	<p>Demolition requiring a planning approval is being carried out, or would be carried out, without approval or in contravention of an approval.</p>	<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>
<p>5    <b>Repair Order</b> To repair or make structural alterations to a building</p>	<p>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.</p>	<p>Owner of building</p>
<p>6    <b>Remove Advertising Order</b> To modify, demolish or remove an advertisement and any associated structure</p>	<p>The advertisement is:</p> <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>

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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>
<p>7 <b>Public Safety Order</b> To erect or install structures or appliances necessary for public safety</p>	<p>A building:</p> <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> <p>Works are:</p> <ul style="list-style-type: none"> <li>• about to be carried out, or</li> <li>• about to be demolished.</li> </ul>	<p>The owner or occupier of the land</p>
<p>8 <b>Evacuate Premises Order</b> To stop using premises or to evacuate premises</p>	<p>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.</p>	<p>The person to whom the Stop Use Order was given</p>
<p>9 <b>Exclusion Order</b> To leave premises or not to enter premises</p>	<p>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.</p>	<p>Any person</p>
<p>10 <b>Restore Works Order</b> To restore premises to the condition in which they were before unlawful building or other works occurred</p>	<p>An unauthorised building has been the subject of a Demolish Works Order or unauthorised works have been carried out.</p>	<ul style="list-style-type: none"> <li>• The owner of the premises</li> <li>• Any person entitled to act on a planning approval, or is acting in contravention of a planning approval</li> </ul>

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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>
<p>11    <b>Compliance Order</b> To comply with a planning approval for the carrying out of works</p>	<p>A planning approval has not been complied with.</p>	<ul style="list-style-type: none"> <li>• The owner of the premises</li> <li>• Any person entitled to act on a planning approval, or is acting in contravention of a planning approval</li> </ul>
<p>To do whatever is necessary so that any building or part of a building that has been unlawfully erected complies with relevant development standards</p>	<p>Building has been unlawfully erected and does not comply with relevant development standards.</p>	<p>The owner of the premises</p>
<p>To carry out works associated with subdivision</p>	<p>Authorised subdivision works, or works agreed to by the applicant have not been carried out.</p>	<p>The person required to carry out the works</p>
<p>12    <b>Repair or Remove Works Order</b> To repair or remove a building in a public place</p>	<p>The building is unlawfully situated wholly or partly in a public place.</p>	<p>Owner or occupier of the building</p>
<p>13    <b>Complete Works Order</b> To complete authorised works under a planning approval within a specified time</p>	<p>The authorised works have commenced, but have not been completed before the planning approval has lapsed.</p>	<p>The owner of the relevant land</p>

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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>
14	<p><b>Public Priority Infrastructure Order</b></p> <p>To take or refrain from taking specified actions to ensure compliance with measures and other requirements in a project definition report relating to the carrying out development for the purposes of public priority infrastructure</p>	<p>The measures or other requirements are not being complied with.</p>	<p>The proponent or other person carrying out the development</p>

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### **Division 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	<p>To do or stop doing things for the purposes of ensuring or promoting adequate fire safety or fire safety awareness.</p>	<p>When provision for fire safety or fire safety awareness is inadequate to:</p> <ul style="list-style-type: none"> <li>• prevent fire, or</li> <li>• prevent fire, suppress fire, or</li> <li>• prevent the spread of fire.</li> </ul> <p>To ensure or promote the safety of persons in the event of fire.</p> <p>When lack of maintenance of the premises or the use of the premises constitutes a significant fire hazard.</p>	<p>The owner of the premises or, in the case of a place of shared accommodation, the owner or manager</p>
2	<p>To stop doing an activity on premises, including on premises used for the purposes of shared accommodation</p>	<p>The activity is or is likely to be:</p> <ul style="list-style-type: none"> <li>• a life threatening hazard, or</li> <li>• a threat to public health or public safety,</li> </ul> <p>and the activity is not regulated or controlled under any other Act by a public authority.</p>	<p>Any person apparently engaged in promoting, conducting or carrying out the activity</p>

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Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
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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### Division 3      Brothel closure orders

Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
1	To stop using premises as a brothel, including to specifically stop using the premises for: <ul style="list-style-type: none"> <li>• sexual acts or services in exchange for payment</li> <li>• massage services (other than genuine remedial or therapeutic massage services) in exchange for payment</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 the local plan 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>	When premises are being used for a purpose that is prohibited. When premises are being used for a purpose for which a planning approval is required but has not been obtained. When premises are being used in contravention of a planning approval.
		The owner of the premises, or the person using premises for the purpose specified in the order. The person entitled to act on a planning approval who is acting in contravention of the approval. Any person apparently in control of, or managing, or assisting in the control or management of, the brothel.

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## **Division 4 Provisions relating to development control orders**

### **10.5 Order may specify standards and work that will satisfy those standards** [cf ss 121P, 121R]

- (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 who gave the order to accept or reject any particulars of work or prepare particulars of any work within the period required to do so 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.

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- (8) An order under this clause forms part of the development control order to which it relates.

#### **10.6 Orders that make or are likely to make residents homeless** [cf s 121G]

- (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.

#### **10.7 Orders affecting heritage items** [cf s 121S]

- (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 the planning control provisions of a local plan.
- (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

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- (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) [order No 8, 10 or 11 in the former Table], or
  - (c) a brothel closure order.

## **10.8 Giving and taking effect of orders** [cf ss 121N, 121U]

- (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.

## **10.9 Reasons for orders to be given** [cf s 121L]

- (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.

## **Division 5 Process for giving orders**

### **10.10 Natural justice requirements** [cf s 121D]

- (1) Before giving a development control order, a relevant authority must comply with clauses 10.6, 10.12 and 10.13 and Division 7.
- (2) Subclause (1) does not apply to the following development control orders:
  - (a) a general order (under item 2),
  - (b) a fire safety order (under item 2),

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- (c) an order given, and expressed to be given, in an emergency,
- (d) an order given by the Minister or the Director-General in connection with public priority infrastructure or State infrastructure development.

**Note.** Division 8 has special provisions relating to fire safety orders and Division 9 has special provisions relating to brothel closure orders.

## **10.11 Effect of compliance** [cf s 121E]

A relevant authority that complies with clauses 10.6, 10.12 and 10.13 and Division 7 is taken to have observed the rules of procedural fairness.

## **Division 6 Notices to be given**

### **10.12 Notice to be given of proposed order to person who will be subject to order** [cf s 121H (1)–(3)]

- (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 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 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.

### **10.13 Notice to be given to other persons and bodies of proposed order** [cf s 121H (4) and (5)]

#### **(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.

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(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.

**10.14 Notice of fire safety orders to be given to Commissioner of Fire and Rescue NSW** [cf s 121ZB]

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

**10.15 Notice of giving of complete works order** [cf s 121X]

A relevant authority must, on or as soon as practicable after the day on which the relevant 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 relevant 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.

**10.16 Details of orders and notices to be given to councils** [cf s 121ZE]

- (1) A relevant 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 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 authority in relation to the notice or order.

## **Division 7 Representations concerning proposed orders**

**10.17 Making of representations** [cf s 121I]

- (1) A person who is given notice under clause 10.12 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.

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**10.18 Hearing and consideration of representations** [cf s 121J]

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

**10.19 Procedure after hearing and consideration of representations** [cf s 121K]

- (1) After hearing and considering any representations made concerning the proposed development control order, the relevant 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 authority is not required to give notice under this Part of the proposed order as so modified.

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

**10.20 Powers of fire brigades** [cf s 121ZC]

- (1) An authorised fire officer who inspects a building in accordance with section 50 (Fire brigades inspection powers) of the *Planning Administration Act 2013* 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 10.6, 10.10, 10.12, 10.13 and 10.35 and Division 7 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 authority under this Part as are specified in the fire officer's authorisation under this clause.

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- (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.

## 10.21 Inspection reports by fire brigades [cf s 121ZD]

- (1) If the Commissioner of Fire and Rescue NSW carries out an inspection of a building under section 50 (Fire brigades inspection powers) of the *Planning Administration Act 2013*, 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.

## Division 9 Special provisions relating to brothel closure orders

### 10.22 Interpretation [cf s 121ZR]

- (1) In this Division:  
**brothel closure order** means a brothel closure order under Division 3.
- (2) This Division has effect despite any other provision of this Part.  
**Note.** Failure to comply with a brothel closure order is an offence (see section 10.7).

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## **10.23 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 10.6, 10.12 and 10.13 and Division 7.

### **(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.

## **10.24 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.

## **10.25 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 9 if an appeal is made to the Local Court against a brothel closure order under the regulations,



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- (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).

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

### **10.26    Modification of orders** [cf s 121ZF]

- (1) A relevant authority who 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 Director-General, a modification may only be made if the person to whom the order is given agrees to that modification.

### **10.27    Revocation of orders** [cf s 121ZG]

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

### **10.28    Minister may revoke or modify a council's order** [cf s 121ZH]

- (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.

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- (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.

#### **10.29 Limitation on Minister's orders** [cf s 121ZI]

The Minister must not take any action under clause 10.28 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.

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

#### **10.30 Effect of order on successors in title** [cf s 121Y]

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.

#### **10.31 Period for compliance with order** [cf s 121M]

- (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.

#### **10.32 Continuing effect of orders** [cf s 121ZQ]

- (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.

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**10.33 Development consent or approval not required to comply with order** [cf s 121Q]

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.

**10.34 Compliance with order under Division 4** [cf s 121Q]

A person complies with a requirement of an order under clause 10.5 (2) by submitting to the relevant authority who 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.

**10.35 Compliance with orders by occupiers or managers** [cf s 121Z]

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.

**10.36 Occupier of land may be required to permit owner to carry out work** [cf s 121ZA]

- (1) A relevant authority who 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.

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

[cf s 121ZJ (1) and (10)–(12)]

- (1) A relevant authority who 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 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 authority who 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 authority to exercise the relevant 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 Director-General gave the development control order, the Minister's or Director-General's functions under this clause may be exercised by the Planning Ministerial Corporation.

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

- (1) If a relevant authority takes action under clause 10.37 to give effect to a development control order by demolishing a building, the relevant authority may remove any materials concerned.
- (2) The relevant 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 relevant authority within 14 days after removal of the materials.
- (3) If the proceeds of such a sale exceed the expenses incurred by the relevant 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 authority:
  - (a) may retain the proceeds, and
  - (b) may recover the deficiency (if any) together with the relevant authority's costs of recovery from the owner as a debt.

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- (5) Materials removed that are not saleable may be destroyed or otherwise disposed of.
- (6) A relevant authority who carries out work under clause 10.37 in relation to development for which an amount of security has been provided to the relevant 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 authority who gave a development control order, together with all associated costs, may be recovered by the relevant authority in any court of competent jurisdiction as a debt due to the relevant 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 authority under this clause does not include the costs and expenses of court proceedings, but nothing in this clause prevents the relevant authority from receiving costs as between party and party in respect of those proceedings.

## **10.39 Enforcement by order of the Court**

- (1) If a person fails to comply with a development control order in relation to an activity carried on at any premises, the Land and Environment Court may, on the application of the person who gave the order, make an order (an *enforcement order*) directing the person to whom the order was given, the owner or occupier of the premises or a person managing or apparently engaged in carrying on the activity to take specified action for the enforcement of the development control order.
- (2) An enforcement order may only be made if the Court is satisfied that the carrying on of the activity has caused or is likely to cause a significant adverse impact on public amenity, health or safety.
- (3) 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,

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- (c) the impact of the order on the owner, occupier or other users of the premises (and in particular whether appropriate alternative accommodation is available for persons who may not be able to continue to reside at the premises because of the order),
  - (d) whether the health or safety of any person, or of the public, will be adversely affected by the order,
  - (e) any other matter the Court thinks appropriate.
- (4) An enforcement order may apply to all or any part of those activities.
  - (5) An enforcement order ceases to have effect on the date specified in order.
  - (6) An application for an enforcement 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 owner or occupier of the premises.
  - (7) An owner or occupier of premises who is affected by an application for an enforcement order is entitled to be heard and represented in proceedings for the order.
  - (8) No compensation is payable to any person for any damage or other loss suffered by that person because of the making or operation of an enforcement order or this clause.
  - (9) The Land and Environment Court may make an enforcement order when it determines an appeal against a development control order, if subclause (6) has been complied with.

#### **10.40 Enforcement of orders by cessation of utilities [cf s 121ZS]**

- (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.

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- (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 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 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.

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- (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 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.

## Division 12 Compliance costs notices

### 10.41 Compliance cost notices [cf s 121CA]

- (1) A relevant authority who 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 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 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,



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- (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.

## **Division 13    Miscellaneous**

### **10.42    Combined orders** [cf s 121T]

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

### **10.43    Orders may be given to two or more persons jointly** [cf s 121V]

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

### **10.44    Notice in respect of land or building owned or occupied by more than one person** [cf s 121W]

- (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.

## **Part 3    Civil enforcement - ancillary evidentiary provisions**

### **10.45    Evidence of use of premises as backpackers' hostel** [cf s 124AA]

- (1) This clause applies to proceedings before the Land and Environment Court for an order under Division 10.3 of Part 10 to remedy or restrain a breach of this Act in relation to the use of premises as a backpackers' hostel.
- (2) In any proceedings to which this clause applies, the Land and Environment Court may rely on circumstantial evidence to find that particular premises are used as a backpackers' hostel.

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**Note.** Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including the depositing of luggage) that is consistent with the use of the premises for a backpackers' hostel,
- (b) evidence of the premises being advertised expressly or implicitly for the purposes of a backpackers' hostel (including advertisements on or in the premises, newspapers, directories or the Internet),
- (c) evidence relating to internal and external signs and notices at the premises (including price lists, notices to occupants and offers of services) that is consistent with the use of the premises for a backpackers' hostel,
- (d) evidence of the layout of rooms, and the number and arrangement of beds, at the premises that is consistent with the use of the premises for a backpackers' hostel.

#### **10.46 Proceedings relating to use of premises as brothel [cf s 124AB]**

##### **(1) Application**

This clause applies to proceedings before the Land and Environment Court for an order under Division 10.3 of Part 10 to remedy or restrain a breach of this Act in relation to the use of premises as a brothel. Subclauses (5) and (6) extend to any such proceedings in relation to all brothels within the meaning of the *Restricted Premises Act 1943*.

##### **(2) Adjournments to obtain consent only in exceptional circumstances**

The Land and Environment Court may not adjourn the proceedings to which this clause applies to enable an application for a planning approval to be made unless it is of the opinion that the adjournment is justified because of the exceptional circumstances of the case. The fact that it is intended to make an application for approval, or that an application for approval has been made, is not by itself an exceptional circumstance.

##### **(3) Time for making application for approval limited to 10 days**

If the Land and Environment Court adjourns the proceedings to enable an application for a planning approval to be made, the proceedings must be brought back before the Court if the application is not made within 10 working days of the adjournment.

##### **(4) Only one adjournment**

The Land and Environment Court may make only one adjournment of particular proceedings to enable an application for a planning approval to be made.

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(5) **Finding may be made on circumstantial evidence**

In any proceedings [to which this clause applies], the Land and Environment Court:

- (a) may rely on circumstantial evidence to find that particular premises are used as a brothel, and
- (b) may make such a finding without any direct evidence that the particular premises are used as a brothel.

(6) However, the presence in any premises of articles or equipment that facilitate or encourage safe sex practices does not of itself constitute evidence of any kind that the premises are used as a brothel.

**Note.** Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including number, gender and frequency) that is consistent with the use of the premises for prostitution,
- (b) evidence of appointments with persons at the premises for the purposes of prostitution that are made through the use of telephone numbers or other contact details that are publicly advertised,
- (c) evidence of information in books and accounts that is consistent with the use of the premises for prostitution,
- (d) evidence of the arrangement of, or other matters relating to, the premises, or the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

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## **Schedule 11 Miscellaneous—ancillary provisions**

### **Part 1 Miscellaneous regulation-making powers**

#### **11.1 Regulations - miscellaneous [cf s 157]**

Regulations may be made, in particular, for or with respect to the following:

- (a) exempting specified or classes of persons, premises or other matters from any specified provision of the planning legislation,
- (b) any function conferred by the planning legislation on any person,
- (c) requiring information, particulars, returns and statistics to be furnished to the Director-General by councils and the time and mode of furnishing and the manner of verifying them,
- (d) the form, time, manner and mode of giving notices under the planning legislation,
- (e) the content, form, erection, maintenance and removal of signs relating to the carrying out of development or persons involved with the carrying out of development,
- (f) obligations on persons regarding fire and building safety,
- (g) temporary structures,
- (h) entertainment venues (including in connection with the existing use of premises),
- (i) the purposes, objectives, provision and maintenance of affordable housing, including:
  - (i) means for determining whether a household is a very low income, low income or moderate income household (for example, by reference to income statistics produced by the Australian Bureau of Statistics), and
  - (ii) means for determining affordable housing costs payable in respect of affordable housing (for example, by reference to percentages of household income),
- (j) the documents to be provided to, and the matters to be notified to, a consent authority, council or certifier under the planning legislation.

### **Part 2 Paper subdivisions**

#### **11.2 Definitions**

In this Part:

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***development plan***—see clause 11.7.

***development plan costs*** means the following:

- (a) the costs of obtaining or preparing any reports,
- (b) the amount of any contributions, fees or other charges applicable to the proposed subdivision or subdivision works,
- (c) administrative costs of the relevant authority relating to the development plan,
- (d) any other costs prescribed by the regulations for the purposes of this definition.

***planning purpose***—see clause 11.4 (1) (c).

***relevant authority*** for subdivision land means the authority designated by a subdivision order as the relevant authority for the land.

***subdivision land*** means land subject to a subdivision order.

***subdivision order*** means an order under clause 11.4.

***subdivision works*** means works for the following purposes:

- (a) roads,
- (b) water supply, sewerage services and drainage,
- (c) telecommunications,
- (d) electricity supply,
- (e) any other purpose prescribed by the regulations for the purposes of this definition.

## **11.3 Subdivision authorities**

Any of the following authorities may be designated in a subdivision order as the relevant authority for the subdivision land:

- (a) the Planning Ministerial Corporation,
- (b) a council,
- (c) Landcom,
- (d) a development corporation established under the *Growth Centres (Development Corporations) Act 1974*,
- (e) any other body prescribed by the regulations.

## **11.4 Subdivision orders**

- (1) The Minister may, by Ministerial planning order:
  - (a) declare specified land to be subdivision land, and
  - (b) specify the relevant authority for the subdivision land, and

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- (c) specify the purpose for which the order is made (the *planning purpose*), and
  - (d) specify the functions (if any) under this Part conferred on the relevant authority, and
  - (e) specify the conditions (if any) to which the exercise of those functions are subject, and
  - (f) specify the subdivision works (if any) to be undertaken by the relevant authority in respect of the subdivision land.
- (2) The Minister may make a subdivision order only if:
- (a) the Minister is of the opinion that it is desirable to do so to promote and co-ordinate the orderly and economic use and development of the land affected by the order, and
  - (b) the land has been subdivided and is held by more than one owner and the Minister is satisfied that the land is land for which no provision or inadequate provision has been made for subdivision works, and
  - (c) that land is subject to a planning control provision of a local plan, or a planning proposal, that will facilitate the proposed planning purpose, and
  - (d) the Minister has consulted with the proposed relevant authority, any other Minister responsible for that authority and the council of the area in which that land is situated, and
  - (e) the Minister is satisfied that a development plan for that land has been prepared by the relevant authority in accordance with this Part, and
  - (f) the Minister has considered any provisions of the development plan that modify or disapply the provisions of Division 4 of Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991*, and
  - (g) at least 60% of the total number of owners of that land, and the owners of at least 60% of the total area of that land, have consented to the proposed development plan.
- (3) For the purposes of subclause (2) (b) and (g), two or more owners of the same lot are to be treated as one owner.
- (4) The Minister may repeal a subdivision order only if the Minister:
- (a) has consulted with the relevant authority for the subdivision land and the council of the area in which the land is situated, and
  - (b) is satisfied that notice of the proposed repeal has been given to the owners of the land subject to the order in the manner prescribed by the regulations.

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- (5) Subclause (2) (g) does not apply to an order amending a subdivision order.

## **11.5 Functions of relevant authority**

- (1) A relevant authority has the functions conferred on it by a subdivision order.
- (2) A relevant authority may only exercise functions conferred on it under a subdivision order for the purposes of, or purposes ancillary to, the planning purpose specified in the subdivision order.
- (3) Functions conferred on a relevant authority by a subdivision order are in addition to any other functions conferred on the authority under any other law.
- (4) Clauses 11.8–11.14 set out the functions that may be conferred on a relevant authority under a subdivision order but do not otherwise confer those functions on a relevant authority.
- (5) A relevant authority may not exercise functions under clause 11.8 or 11.10 unless there is a development plan in force in relation to the subdivision land.

## **11.6 Obligations of relevant authority**

A relevant authority must, in accordance with the subdivision order and any development plan applicable to the subdivision land, give effect to the planning purpose specified in the order and must undertake or arrange for the undertaking of any subdivision works specified in the order.

## **11.7 Development plans**

- (1) An authority referred to in clause 11.3 may, and must at the request of the Minister, prepare a development plan for subdivision land or proposed subdivision land.
- (2) A development plan is to contain the following matters:
- (a) a proposed plan of subdivision for the land,
  - (b) details of subdivision works to be undertaken for the land,
  - (c) details of the costs of the subdivision works and of the proposed means of funding those works,
  - (d) details of the development plan costs,
  - (e) details of the proportion of the costs referred to in paragraphs (c) and (d) to be borne by the owners of the land and of the manner in which the owners may meet those costs (including details of any proposed voluntary land trading scheme or voluntary

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- contributions or, if voluntary measures are not agreed to by owners, of compulsory land acquisition or compulsory contributions),
- (f) rules as to the form of compensation for land that is compulsorily acquired and how entitlement to compensation is to be calculated,
  - (g) rules as to the distribution of any surplus funds after the completion of subdivision works for the land,
  - (h) any other matters prescribed by the regulations.
- (3) Regulations may be made for or with respect to procedures for the preparation, public notification, adoption, publication, amendment and repeal of development plans.
  - (4) Without limiting subclause (3), the regulations may require the consent of the owners of subdivision land to be obtained to proposed amendments to the applicable development plan in the circumstances, and in the manner, specified by the regulations.
  - (5) The validity of a development plan must not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date of its publication in the Gazette.

#### **11.8 Land acquisition powers**

- (1) A relevant authority may, for a planning purpose specified in a subdivision order, acquire subdivision land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) A relevant authority may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.
- (3) If compensation provided for that acquisition is in accordance with the rules set out in a development plan in force in relation to the land:
  - (a) sections 44 (2), 45 (3), 49–51, 64, 66 (4) and 68 (2) of the *Land Acquisition (Just Terms Compensation) Act 1991* do not apply in relation to compensation other than monetary compensation, and
  - (b) all or any provisions of Division 4 of Part 3 of that Act do not apply, or apply with modifications, if the development plan so provides.
- (4) The rules set out in a development plan may provide that all or any of the provisions of Division 4 of Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* do not apply to the determination of



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compensation under that plan, or apply with such modifications as are set out in that plan.

- (5) If the rules set out in a development plan make provision as referred to in subclause (4), the Valuer-General must determine compensation to be offered to a person under the *Land Acquisition (Just Terms Compensation) Act 1991* in respect of land acquired under this clause in accordance with the rules set out in any applicable development plan adopted by a relevant authority for the land.
- (6) For the purposes of this clause, a reference in the *Land Acquisition (Just Terms Compensation) Act 1991* to an amount of compensation includes a reference to compensation other than monetary compensation and a reference to payment of compensation includes a reference to the provision of such compensation.
- (7) Subclauses (3)–(6) have effect despite any provision of the *Land Acquisition (Just Terms Compensation) Act 1991*.

## **11.9 Other powers to acquire and dispose of land**

A relevant authority may sell, lease, exchange, mortgage or otherwise deal with or dispose of subdivision land vested in the authority, or an interest in that land, and may grant easements, rights-of-way or covenants over that land.

## **11.10 Contribution powers**

- (1) A relevant authority may, by notice in writing, require an owner of subdivision land to make a reasonable monetary contribution for the provision, extension or augmentation of subdivision works and the development costs.
- (2) A requirement under this clause must be in accordance with the development plan applicable to the subdivision land.
- (3) The amount payable by the owner of subdivision land under this clause is to be reduced by the amount or value of any voluntary contribution (whether a monetary or other contribution) made by the owner for the provision, extension or augmentation of subdivision works and the development costs in accordance with the development plan applicable to the subdivision land or an agreement with the relevant authority.
- (4) Compliance with a requirement for a contribution under this clause, or a voluntary contribution made in accordance with a development plan, operates to satisfy any other requirement imposed by a public authority under this or any other Act (in relation to or in connection with the subdivision land) for the dedication of land or the payment of money in respect of the provision of the same subdivision works, to the extent of

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the value of the land dedicated or the amount of money paid in compliance with the requirement.

- (5) The regulations may make provision for the determination of the value for the purposes of this clause of the land dedicated or traded to the authority in accordance with a development plan.
- (6) A contribution required to be made under this clause may be in addition to any other contribution required to be made under the planning legislation.

#### **11.11 Use of monetary contributions and other amounts**

- (1) The following are to be paid by the authority to a fund or funds approved by the Minister:
  - (a) a monetary contribution paid to a relevant authority by the owner of subdivision land for subdivision works or development costs,
  - (b) any money paid by the relevant authority to meet contribution amounts under the development plan in respect of land acquired by the authority under this Part,
  - (c) the proceeds of any disposal by the relevant authority of land acquired under this Part.
- (2) The following may be paid from any fund to which contributions or amounts are paid under this clause:
  - (a) payments to persons or bodies with respect to the provision of subdivision works,
  - (b) payments in connection with the exercise of functions by the relevant authority for the planning purpose specified in the subdivision order,
  - (c) payments for the whole or part of compensation payable under clause 11.8 and any payments required to be made under the *Land Acquisition (Just Terms Compensation) Act 1991*,
  - (d) payments for the distribution of any surplus funds after the completion of subdivision works and any other payments under this clause,
  - (e) any money required to meet the administrative expenses of the relevant authority in relation to its functions under the subdivision order.

#### **11.12 Powers to carry out subdivision works**

- (1) The relevant authority may carry out, or arrange for the carrying out of, subdivision works with respect to subdivision land.

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- (2) The relevant authority may enter into contracts and other arrangements for the carrying out of subdivision works.
- (3) A relevant authority may make a development application to carry out development on subdivision land for the purposes of subdivision works without the consent of the owner of the land.
- (4) The consent authority may grant consent to any such development application even if the owner of the land has failed to consent to the application.
- (5) In this clause, *subdivision works* includes the carrying out of any research or investigation related to the provision or augmentation of subdivision works.

## 11.13 Roads powers

- (1) A road within subdivision land cannot be provided, opened, dedicated, closed (within the meaning of Part 4 of the *Roads Act 1993*) or realigned by the Crown, a public authority or any person except with the consent of the relevant authority.
- (2) A private road, or part of a private road, within subdivision land cannot be:
  - (a) provided, opened, closed or realigned, or
  - (b) regulated in its use, or
  - (c) used for a purpose other than a road,except with the consent of the relevant authority.

## 11.14 Ancillary powers

A relevant authority has, for the purpose of any other functions conferred under this Part, the following functions:

- (a) the authority may enter into agreements with the owners of subdivision land for the purposes of a voluntary land trading scheme or the provision of voluntary contributions or for other purposes connected with the authority's functions under the subdivision order,
- (b) the authority may cause surveys to be made, and plans of survey to be prepared, in relation to subdivision land or proposed subdivision land (whether or not vested in the authority),
- (c) the authority may manage subdivision land vested in the authority in accordance with the development plan,
- (d) the authority may carry out research or investigation relating to subdivision works or proposed subdivision works,

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- (e) the authority may (subject to this Act) subdivide and re-subdivide land, and consolidate subdivided or re-subdivided land vested in the authority,
- (f) with the consent of the owner or occupier of the land, a person authorised in writing by the authority may enter subdivision land or proposed subdivision land.

#### **11.15 Power to investigate land for subdivision order proposals**

An authority specified in clause 11.3 may, before a subdivision order is made:

- (a) cause surveys to be made, and plans of survey to be prepared, in relation to proposed subdivision land (whether or not vested in the authority), and
- (b) carry out research or investigation relating to proposed subdivision works.

#### **11.16 Other powers of entry**

- (1) An authorised person may, without the consent of the owner or occupier of subdivision land or proposed subdivision land and in accordance with the regulations:
  - (a) enter that land for a planning purpose, or
  - (b) enter that land in connection with the carrying out of subdivision works or research or investigation relating to proposed subdivision works, or
  - (c) enter that land in connection with the preparation of, or research or investigation for the purposes of, a development plan or proposed development plan.
- (2) In this clause, *authorised person* means the following persons:
  - (a) a person authorised in writing by a relevant authority,
  - (b) a person authorised in writing by the Minister in connection with the exercise of the powers of an authority under clause 11.15.

#### **11.17 Failure to pay contributions**

A monetary contribution required to be paid by an owner of subdivision land under clause 11.10 may be recovered by the relevant authority in any court of competent jurisdiction as a debt due to the relevant authority by the owner.

#### **11.18 Voluntary contributions agreements to run with land**

- (1) A *voluntary contributions agreement* is a voluntary agreement between a relevant authority and a person who owns subdivision land

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under which the owner is required to pay a monetary contribution to be used for or applied for subdivision works or development costs.

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

## 11.19 State taxes

- (1) State tax is not chargeable in respect of any matter or thing done by a relevant authority in the exercise of its functions under this Part if the Minister, with the approval of the Treasurer, exempts the authority from payment of any or all State taxes.
- (2) In this clause, **State tax** means duty under the *Duties Act 1997* or any other tax, duty, rate (including a local government rate), fee or other charge imposed by or under any Act or law of the State, other than payroll tax.

## 11.20 Regulations

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

- (a) the manner in which consent to a development plan is to be given by owners of land,

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- (b) information to be provided to the Minister by, and reports by, relevant authorities,
- (c) the effect of the repeal or amendment of a subdivision order, or of the amendment of a development plan,
- (d) the obstruction of or interference with authorities or persons exercising functions under this Part.

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Savings, transitional and other provisions

Schedule 12

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## **Schedule 12 Savings, transitional and other provisions**

**Drafting note.** Relevant provisions will be included in this Schedule and in regulations. The provisions will include:

- (a) Recognition of public exhibition and notification undertaken under former Act for pending planning and other development proposals carried over from former Act.
- (b) Continuation in force as part of the relevant local plan of former environmental planning instruments (such as SEPPs and LEPs under former Act) or other relevant instruments pending review and revision for the purposes of the new Act.
- (c) Preservation of existing conditions relating to contributions for affordable housing. Continuation in force of contribution plans under former Act (including special schemes for rental housing, Green Square, Ultimo-Pyrmont and Redfern-Waterloo.)