

Environmental Planning and Assessment Act 1979 No 203

[1979-203]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Contaminated Land Management Act 1997 No 140](#) (not commenced)
 - [Environmental Planning and Assessment Amendment Act 1997 No 152](#) (not commenced)
 - [Fisheries Management Amendment Act 1997 No 153](#) (not commenced)
 - [Protection of the Environment Operations Act 1997 No 156](#) (not commenced)
 - [Darling Harbour Authority Amendment and Repeal Act 1998 No 29](#) (not commenced)
 - [Sydney Cove Redevelopment Authority Amendment Act 1998 No 32](#) (not commenced)
 - [Building and Construction Industry Long Service Payments Amendment Act 1998 No 33](#) (not commenced)
- **See also**
 - [Statute Law \(Miscellaneous Provisions\) Bill 1998](#)

Authorisation

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File last modified 17 June 1998

Environmental Planning and Assessment Act 1979 No 203



New South Wales

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Environmental Planning and Assessment Act 1979 No 203



New South Wales

An Act to institute a system of environmental planning and assessment for the State of New South Wales.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Environmental Planning and Assessment Act 1979*.

2 Commencement

- (1) This section and sections 1 and 155 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 (Repealed)

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

advertised development means development (not being designated development) to which some or all of the provisions of sections 84, 85, 86, 87 (1) and 90 apply by virtue of an environmental planning instrument, as referred to in section 30 (4).

area has the same meaning as it has in the *Local Government Act 1993*.

building includes a structure or a part of a structure.

Commission of Inquiry means a Commission of Inquiry constituted under section 119.

Commissioner of Inquiry means a person appointed and holding office under section 18 and includes the Chairperson of Commissioners of Inquiry and the Deputy

Chairperson of Commissioners of Inquiry.

consent authority, in relation to a development application, means:

- (a) the council having the function to determine the application, or
- (b) where an environmental planning instrument specifies a Minister or public authority (other than a council) as having the function to determine the application—that Minister or public authority, as the case may be.

control, in relation to development or any other act, matter or thing, means:

- (a) consent to, permit, regulate, restrict or prohibit that development or that other act, matter or thing, either unconditionally or subject to conditions, or
- (b) confer or impose on a consent authority functions with respect to consenting to, permitting, regulating, restricting or prohibiting that development or that other act, matter or thing, either unconditionally or subject to conditions.

corporation means the corporation constituted by section 8 (1).

council has the same meaning as it has in the [Local Government Act 1993](#).

Court means the Land and Environment Court.

critical habitat has the same meaning as in the [Threatened Species Conservation Act 1995](#).

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

Department means the Department of Environment and Planning.

designated development means any class or description of development that is declared pursuant to section 29 or 158 to be designated development for the purposes of this Act.

development, in relation to land, means:

- (a) the erection of a building on that land,
- (b) the carrying out of a work in, on, over or under that land,
- (c) the use of that land or of a building or work on that land, and
- (d) the subdivision of that land,

but does not include any development of a class or description prescribed by the

regulations for the purposes of this definition.

development application means an application for consent under Division 1 of Part 4 to carry out development.

development area means land constituted as a development area in accordance with Division 1 of Part 7.

development consent means consent under Division 1 of Part 4 to carry out development.

development standards means provisions of an environmental planning instrument in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,

- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.

Director means the Director-General of the Department of Urban Affairs and Planning holding office as such under Part 2 of the *Public Sector Management Act 1988*.

ecological community has the same meaning as in the *Threatened Species Conservation Act 1995*.

endangered ecological community means an endangered ecological community within the meaning of the *Threatened Species Conservation Act 1995*.

endangered population means an endangered population within the meaning of the *Threatened Species Conservation Act 1995*.

endangered species means an endangered species within the meaning of the *Threatened Species Conservation Act 1995*.

environment includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings.

environmental planning instrument means a State environmental planning policy, a regional environmental plan, or a local environmental plan, and except where otherwise expressly provided by this Act, includes a deemed environmental planning instrument.

functions includes powers, authorities and duties.

habitat has the same meaning as in the *Threatened Species Conservation Act 1995*.

land includes:

- (a) the sea or an arm of the sea,
- (b) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or non-tidal, and
- (c) a river, stream or watercourse, whether tidal or non-tidal.

local environmental plan means a plan made by the Minister under section 70 that is in force.

objector means a person who makes a submission under section 87 by way of objection to a development application to carry out designated development, but does not include a person who makes a submission under that section by way of objection to a development application to carry out development which is not designated development but is a development application to which any of the provisions of that section have been applied.

occupier includes a tenant or other lawful occupant of premises, not being the owner.

officer of the Department means an officer or employee of the Department, and includes the Director.

owner has the same meaning as it has in the [Local Government Act 1993](#).

person includes an unincorporated group of persons or a person authorised to represent that group.

population has the same meaning as in the [Threatened Species Conservation Act 1995](#).

public authority means:

- (a) a public or local authority constituted by or under an Act, or
- (b) a government Department, or
- (c) a statutory body representing the Crown, or
- (d) a chief executive officer within the meaning of the [Public Sector Management Act 1988](#) (including the Director), or
- (e) a statutory State owned corporation (and its subsidiaries) within the meaning of the [State Owned Corporations Act 1989](#), or
- (f) a chief executive officer of a corporation or subsidiary referred to in paragraph (e), or
- (g) a person prescribed by the regulations for the purposes of this definition.

recovery plan has the same meaning as in the [Threatened Species Conservation Act 1995](#).

region means any land that the Minister, under subsection (6), declares to be a region, except as provided by subsection (6A).

regional environmental plan means a plan made by the Minister under section 51 that is in force.

regulation means a regulation made under this Act.

Secretary means the person for the time being holding or acting in:

- (a) a prescribed office in the establishment of the Department, and
- (b) if no office is for the time being prescribed—the office of Secretary to the Department.

species has the same meaning as in the *Threatened Species Conservation Act 1995*.

species impact statement has the same meaning as in the *Threatened Species Conservation Act 1995*.

State environmental planning policy means a policy made by the Governor under section 39 that is in force.

threat abatement plan has the same meaning as in the *Threatened Species Conservation Act 1995*.

threatened species, populations and ecological communities and **threatened species, population or ecological community** have the same meaning as in the *Threatened Species Conservation Act 1995*.

threatening process has the same meaning as in the *Threatened Species Conservation Act 1995*.

vulnerable species has the same meaning as in the *Threatened Species Conservation Act 1995*.

(2) A reference in this Act to:

- (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, or the enlargement or extension of a building or the placing or relocating of a building on land,
- (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, or the enlargement or extension of a work,
- (c) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be work for the purposes of this Act,
- (d) the subdivision of land is a reference to:
 - (i) (without limiting the following provisions of this paragraph) the subdivision of land within the meaning of the *Local Government Act 1919*,
 - (ii) any other division of land into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition, or
 - (iii) the redivision of land, by such a subdivision or by any other division, into different parts which, after the redivision, would be obviously adapted for separate occupation, use or disposition,

and includes a reference to a subdivision effected under Division 1 of Part 2 of the

Strata Schemes (Freehold Development) Act 1973 or Division 1 of Part 2 of the *Strata Schemes (Leasehold Development) Act 1986*, and

- (e) the carrying out of development includes a reference to the erection of a building, the carrying out of a work, the use of land or of a building or work, or the subdivision of land, as the case may require.
- (3) Where functions are conferred or imposed by or under this Act 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.
- (3A) Where functions are conferred or imposed by or under this Act on a public authority, being a government Department or some 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.
- (4) A reference in this Act to the exercise of a function includes, where that function is a duty, a reference to the performance of that duty.
- (5) A reference in this Act to the Director or a council preparing an environmental planning instrument or an environmental study includes a reference to the Director or a council, as the case may be, causing that environmental planning instrument or environmental study to be prepared on the Director's or the council's behalf.
- (6) The Minister may, by order published in the Gazette, declare any land, whether or not consisting of areas or parts of areas, to be a region for the purposes of this Act.

Editorial note—

For orders pursuant to this subsection, see the Historical notes at the end of this Act.

- (6A) However, for the purposes of sections 5A, 77C and 112D, a region is a bioregion defined in a national system of bioregionalisation, being a system that is determined (by the Director-General of National Parks and Wildlife by order published in the Gazette) to be appropriate for those purposes. If the bioregion occurs partly within and partly outside New South Wales, the region consists only of so much of the bioregions as occurs within New South Wales.
- (7) A reference in this Act to a direction is a reference to a direction in writing.
- (8) A power, express or implied, to give a direction under this Act includes a power to revoke or amend the direction.
- (8A) If an environmental planning instrument confers a power on any person or body to make an order (whether or not the order must be in writing), the power includes a

power to amend or repeal an order made in the exercise of the power.

- (9) A reference in this Act to a prescribed form includes a reference to a form that is to the effect of that prescribed form.
- (10) A reference in this Act to any act, matter or thing as specified in an environmental planning instrument includes a reference to any act, matter or thing that is of a class or description as specified in such an instrument.
- (11) A reference in this Act to the granting of consent includes a reference to the granting of consent subject to conditions.
- (12) 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.

4A (Repealed)

5 Objects

The objects of this Act are:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and co-ordination of communication and utility services,
 - (iv) the provision of land for public purposes,
 - (v) the provision and co-ordination of community services and facilities, and
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats,
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

5A Significant effect on threatened species, populations or ecological communities, or

their habitats

For the purposes of this Act and, in particular, in the administration of sections 77, 90 and 112, the following factors must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats:

- (a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted 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 life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised,
- (c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed,
- (d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community,
- (e) whether critical habitat will be affected,
- (f) whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region,
- (g) whether the development or activity proposed is of a class of development or activity that is recognised as a threatening process,
- (h) whether any threatened species, population or ecological community is at the limit of its known distribution.

6 Act to bind Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Part 2 Administration

Division 1 The Minister

7 Responsibility of the Minister

Without affecting the functions that the Minister has apart from this section, the Minister is charged with the responsibility of promoting and co-ordinating environmental planning

and assessment for the purpose of carrying out the objects of this Act and, in discharging that responsibility, shall have and may exercise the following functions:

- (a) to carry out research into problems of environmental planning and assessment and disseminate information including the issue of memoranda, reports, bulletins, maps or plans relating to environmental planning and assessment,
- (b) to advise councils upon all matters concerning the principles of environmental planning and assessment and the implementation thereof in local environmental plans,
- (c) to promote the co-ordination of the provision of public utility and community services and facilities within the State,
- (d) to promote planning of the distribution of population and economic activity within the State,
- (e) to investigate the social aspects of economic activity and population distribution in relation to the distribution of utility services and facilities, and
- (f) to monitor progress and performance in environmental planning and assessment, and to initiate the taking of remedial action where necessary.

8 Minister to be corporation sole for certain purposes

- (1) The Minister is, for the purpose of exercising those functions expressed to be conferred or imposed on the corporation by or under this or any other Act, hereby incorporated as a corporation sole with the corporate name “Minister administering the *Environmental Planning and Assessment Act 1979*”.
- (2) The corporation:
 - (a) has perpetual succession,
 - (b) shall have an official seal,
 - (c) may take proceedings, and be proceeded against, in its corporate name,
 - (d) may do and suffer all other things that a body corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which the corporation is constituted, and
 - (e) is, for the purpose of any Act, a statutory body representing the Crown.
- (3) The seal of the corporation shall not be affixed to any instrument or document except in the presence of the Minister, or an officer of the Department for the time being authorised by the Minister for the purpose, who shall attest by his or her signature the fact and date of the affixing of the seal.

- (4) All courts and persons acting judicially:
 - (a) shall take judicial notice of the seal of the corporation that has been affixed to any instrument or document,
 - (b) shall, until the contrary is proved, presume that the seal was properly affixed.
- (5) For the purposes of section 81 of the *Public Works Act 1912*, the corporation shall be deemed to be a Constructing Authority.

9 Power to acquire land etc

- (1) The corporation may, for the purposes of this Act or pursuant to any function conferred or imposed on the Minister or the Director by any environmental planning instrument, acquire land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) Without limiting the generality of subsection (1), the corporation may acquire in any manner authorised by that subsection:
 - (a) any land to which an environmental planning instrument applies and which the Minister considers should be made available in the public interest for any purpose,
 - (b) any land of which that proposed to be acquired under this Part forms part, or
 - (c) any land adjoining or in the vicinity of any land proposed to be acquired under this Part, or
 - (d) a leasehold or any other interest in land.
- (3) The corporation may acquire, by gift inter vivos, devise or bequest, any property for the purposes of this Act and may agree to the condition of any such gift, devise or bequest.
- (4) The rule of law against remoteness of vesting shall not apply to any such condition to which the corporation has agreed.
- (5) Where the corporation acquires property under subsection (3):
 - (a) neither an instrument that effects the acquisition nor any agreement pursuant to which the property is acquired is chargeable with duty under the *Stamp Duties Act 1920*, and
 - (b) the property, or the value of the property, shall not be included in the dutiable estate of the donor or testator for the purposes of assessing death duty under that Act.

10 Application of *Public Works Act 1912*

- (1) For the purposes of the *Public Works Act 1912*, any acquisition of land under section 9 is taken to be for an authorised work and the corporation is, in relation to that authorised work, taken to be the Constructing Authority.
- (2) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.

11 Functions of corporation

- (1) For the purposes of this Act, the corporation may, in such manner and subject to such terms and conditions as it thinks fit, sell, lease, exchange or otherwise dispose of or deal with land vested in the corporation and grant easements or rights-of-way over that land or any part thereof.
- (2) Without affecting the generality of subsection (1), the corporation may, in any contract for the sale of land vested in it, include conditions for or with respect to:
 - (a) the erection of any building on that land by the purchaser within a specified period,
 - (b) conferring on the corporation an option or right to repurchase that land if the purchaser has failed to comply with a condition referred to in paragraph (a),
 - (c) conferring on the corporation an option or right to repurchase that land if the purchaser wishes to sell or otherwise dispose of that land before the expiration of a specified period or requiring the purchaser to pay to the corporation a sum determined in a specified manner where the corporation does not exercise that option or right, or
 - (d) the determination of the repurchase price payable by the corporation pursuant to a condition referred to in paragraph (b) or (c).
- (3) A condition included in a contract of sale pursuant to subsection (2) does not merge in the transfer of title to the land, the subject of the contract of sale, on completion of the sale.
- (4) In addition to other functions conferred or imposed on the corporation by or under this or any other Act, the corporation may, for the purposes of this Act:
 - (a) manage land vested in the corporation,
 - (b) cause surveys to be made and plans of surveys to be prepared in relation to land vested in the corporation or in relation to any land proposed to be acquired by the corporation,
 - (c) (Repealed)

- (d) demolish, or cause to be demolished, any building on land vested in the corporation of which it has exclusive possession,
 - (e) provide, or arrange, on such terms and conditions as may be agreed upon for the location or relocation of utility services within or adjoining or in the vicinity of land vested in the corporation,
 - (f) subdivide and re-subdivide land and consolidate subdivided or re-subdivided land vested in the corporation,
 - (g) set out and construct roads on land vested in the corporation or on land of which the corporation has exclusive possession, or on any other land with the consent of the person in whom it is vested,
 - (h) erect, alter, repair and renovate buildings on and make other improvements to or otherwise develop land vested in the corporation or any other land, with the consent of a person in whom it is vested,
 - (i) cause any work to be done on or in relation to any land vested in the corporation or any other land, with the consent of the person in whom it is vested, for the purpose of rendering it fit to be used for any purpose for which it may be used under any environmental planning instrument which applies to the land, and
 - (j) by notification published in the Gazette, dedicate any land vested in the corporation as a reserve for public recreation or other public purposes and fence, plant and improve any such reserve.
- (5) Notwithstanding anything in any Act, upon the publication, pursuant to subsection (4) (c), of a notification closing a public road or part thereof, the estate or interest therein of any person or public authority shall vest in the corporation freed and discharged from any trusts affecting it immediately before that publication and freed and discharged from any rights of the public or any person thereto as a public road or highway.
- (6) In the exercise of any function under subsection (4) (c) or (g), consultations shall be held with the Traffic Authority of New South Wales, the relevant council and such other persons as the Minister determines.

12 Notification of interests

- (1) The Registrar-General shall, at the request of the corporation made in a manner approved by the Registrar-General and on payment of the fee prescribed under the [Real Property Act 1900](#), make, in the Register kept under that Act, a recording appropriate to signify:
- (a) that land specified in the request is held subject to a condition authorised under section 11 (2), or

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

Division 2 The Director

13 Director of Planning

- (1) (Repealed)
- (2) The Director shall, in the exercise of any function conferred upon the Director by or under this Act (except in relation to the contents of a recommendation or report made by the Director to the Minister), be subject to the control and direction of the Minister.
- (3) (Repealed)
- (4) A reference in any Act or statutory instrument, or in any other instrument, to the Director of Environment and Planning or to the Director of Planning is to be read as a reference to the Director under this Act.

14 (Repealed)

15 Functions of the Director

In addition to the functions conferred or imposed on the Director by or under this or any other Act, the Director may, for the purposes of this Act:

- (a) submit to the Minister such proposals with respect to environmental planning and assessment as the Director considers necessary or appropriate, including proposals for the development and use of land, whether or not in conjunction with the provision of utility services and public transport facilities, and
- (b) consider and furnish reports to and advise and make recommendations to the Minister

upon any matter or proposal relating to the development and use of land or to environmental planning and assessment which may be referred to the Director by the Minister.

Division 3 The Department

16 (Repealed)

17 Use of services of public authorities

For the purpose of exercising any functions of the Minister, corporation, Department or Director under this or any other Act, the Director may, with the approval of the Minister and of the public authority concerned and on such terms as may be arranged, make use of the services of any officers, employees or servants of any public authority.

Division 4 Commissioners of Inquiry

18 Commissioners of Inquiry

- (1) The Governor may appoint a person to be the Chairperson of Commissioners of Inquiry, a person to be the Deputy Chairperson of Commissioners of Inquiry and persons to be Commissioners of Inquiry.
- (2) Subject to this section, Schedule 1 has effect in respect of the Chairperson of Commissioners of Inquiry, the Deputy Chairperson of Commissioners of Inquiry and each Commissioner of Inquiry in the same way as it has effect in respect of the Director.
- (3) The Governor may appoint a person under subsection (1) to be a Commissioner of Inquiry for the purposes only of a particular inquiry directed to be held by the Minister.
- (4) Where a person is appointed as referred to in subsection (3):
 - (a) the person shall be paid such remuneration and allowances as may be determined in respect of the person by the Minister, and
 - (b) clauses 3, 5, 6, 8 (e), 9, 10 and 11 of Schedule 1 shall not apply to or in respect of the person.
- (5) Without affecting the functions of Commissioners of Inquiry under section 119, the Minister may make use of the services of any Commissioner in the administration of this Act or any other Act administered by the Minister.

Division 5 Committees

19 (Repealed)

20 Local Government Liaison Committee

- (1) A Local Government Liaison Committee is hereby established.
- (2) The functions of the Committee shall be to advise the Minister on the following matters:
 - (a) the means to ensure effective co-ordination of the activities and programmes of public authorities and councils in the achievement of the objects of this Act,
 - (b) policies and procedures relating to the functions of councils under this Act,
 - (c) the needs of councils in connection with their responsibilities under this Act for information, advice and procedures relating to environmental planning and assessment,
 - (d) local environmental planning policies and procedures, and
 - (e) such other matters as may be referred to the Committee by the Minister or the Director.
- (3) Schedules 3 and 5 apply in relation to the Committee.

21 (Repealed)

22 Establishment of other committees

- (1) The Director may establish committees, in addition to those established by this Act.
- (2) The function of a committee established under subsection (1) shall be to advise the Minister on such matters as may be referred to it by the Minister or the Director.
- (3) The Director may appoint one of the members of a committee established under subsection (1) as Chairperson of the committee.
- (4) Schedule 5 applies in relation to a committee established under subsection (1).

Division 6 Delegation

23 Delegation

- (1) The Minister, corporation or Director may, by instrument in writing, under seal (in the case of the corporation), delegate any of the Minister's, the corporation's or the Director's functions conferred or imposed by or under this or any other Act as are specified in the instrument to:
 - (a) any officer of the Department,
 - (b) any officer, employee or servant of whose services the Director makes use in pursuance of this or any other Act,

- (c) any committee or subcommittee established under this Act,
- (d) a council,
- (e) an officer or employee of a council, or
- (f) a Commissioner of Inquiry,

and may, by such an instrument, revoke wholly or in part any such delegation.

- (2) A function, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.
- (4) Notwithstanding any delegation under this section, the Minister, corporation or Director, as the case may be, may continue to exercise all or any of the functions delegated.
- (5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Minister, corporation or Director, as the case may be, and shall be deemed to have been done or suffered by the Minister, corporation or Director, as the case may be.
- (6) An instrument purporting to be signed by a delegate of the Minister, corporation or Director, in his or her capacity as such a delegate, shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Minister, corporation or Director, as the case may be, under seal (in the case of the corporation), and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Minister, corporation or Director, as the case may be, under this section.
- (7) The Secretary shall cause to be published in the Gazette a notice setting out the details of any instrument referred to in subsection (1), but this subsection does not affect the provisions of subsection (1).
- (8) Nothing in this section authorises the delegation of:
 - (a) the power of delegation conferred by this section, or
 - (b) any function of the Minister conferred by section 89, 101, 117 or 118 or by Division 4 of Part 5.
- (9) Any matter or thing done and any contract entered into by a person acting in

accordance with a delegation under this section shall not, if the matter or thing was done or the contract was entered into in good faith for the purpose of exercising the function delegated, subject the person to any action, liability, claim or demand.

Part 3 Environmental planning instruments

Division 1 General

24 Making of environmental planning instruments and the application of objects thereto

Without affecting the generality of any other provisions of this Act, an environmental planning instrument may be made in accordance with this Part for the purposes of achieving any of the objects of this Act.

25 Statement of aims etc in environmental planning instruments

- (1) An environmental planning instrument shall state the aims, objectives, policies and strategies whereby that environmental planning instrument is designed to achieve any of the objects of this Act.
- (2) Except as provided by subsection (3), a statement referred to in subsection (1) does not affect the construction or effect of any other provision of the environmental planning instrument in which the statement is made.
- (3) Where a provision of an environmental planning instrument is genuinely capable of different interpretations, that interpretation which best meets the aims, objectives, policies and strategies stated in that instrument shall be preferred.
- (4) A failure to comply in any respect with subsection (1) does not affect the validity, construction or effect of an environmental planning instrument.
- (5) This section does not apply in the case of a deemed environmental planning instrument.

26 Contents of environmental planning instruments

- (1) Without affecting the generality of section 24 or any other provision of this Act, an environmental planning instrument may make provision for or with respect to any of the following:
 - (a) protecting, improving or utilising, to the best advantage, the environment,
 - (b) controlling (whether by the imposing of development standards or otherwise) development,
 - (c) reserving land for use for the purposes of open space, a public place or public reserve within the meaning of the [Local Government Act 1993](#), a national park or other land reserved or dedicated under the [National Parks and Wildlife Act 1974](#), a

public cemetery, a public hospital, a public railway, a public school or any other purpose that is prescribed as a public purpose for the purposes of this section,

- (d) controlling the demolition of buildings or works,
 - (e) protecting or preserving trees or vegetation,
 - (e1) protecting and conserving native animals and plants, including threatened species, populations and ecological communities, and their habitats,
 - (f) controlling any act, matter or thing for or with respect to which provision may be made under paragraph (a) or (e),
 - (g) controlling advertising,
 - (h) such other matters as are authorised or required to be included in the environmental planning instrument by this or any other Act.
- (2) If land declared to be critical habitat is land to which an environmental planning instrument described in subsection (3) applies, the instrument must be amended as soon as practicable after the declaration to identify the land that is critical habitat.
- (3) The environmental planning instruments described in this subsection are regional environmental plans and local environmental plans that:
- (a) are principal instruments, as distinct from amending instruments (that is, principal instruments contain provisions apart from citation, commencement, a statement of their relationship with other instruments, a description, by reference or otherwise, of the land to which they apply and savings and transitional provisions), and
 - (b) make provision for the development of land that is identified by a map or a description, and
 - (c) are prepared or made before or after the commencement of Part 3 of the *Threatened Species Conservation Act 1995*.

27 Reservation of land for public purposes

- (1) Where an environmental planning instrument reserves land for use exclusively for a purpose referred to in section 26 (c), that environmental planning instrument shall make provision for or with respect to the acquisition of that land by a public authority unless the land is owned by a public authority and is held by that public authority for that purpose.
- (2) Nothing in this section shall be construed as authorising or requiring an environmental planning instrument to contain a provision empowering or purporting to empower the compulsory acquisition of land.

28 Suspension of laws etc by environmental planning instruments

- (1) In this section, **regulatory instrument** means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made.
- (2) For the purpose of enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent granted under this Act, an environmental planning instrument may provide that, to the extent necessary to serve that purpose, a regulatory instrument specified in that environmental planning instrument shall not apply to any such development or shall apply subject to the modifications specified in that environmental planning instrument.
- (3) A provision referred to in subsection (2) shall have effect according to its tenor, but only if the Governor has, before the making of the environmental planning instrument, approved of the provision.
- (4) Where a Minister is responsible for the administration of a regulatory instrument referred to in subsection (2), the approval of the Governor for the purposes of subsection (3) shall not be recommended except with the prior concurrence in writing of that Minister.
- (5) A declaration in the environmental planning instrument as to the approval of the Governor as referred to in subsection (3) or the concurrence of a Minister as referred to in subsection (4) shall be prima facie evidence of the approval or concurrence.

29 Designated development: declaration by environmental planning instruments

An environmental planning instrument may contain provisions declaring any class or description of development (whether by reference to the type, purpose or location of development or otherwise) to be designated development for the purposes of this Act.

30 Consents and concurrences

- (1) Without limiting the generality of section 26 (b), an environmental planning instrument may provide that development specified therein:
 - (a) may be carried out without the necessity for consent under this Act being obtained therefor, or
 - (b) may not be carried out except with consent under this Act being obtained therefor.
- (2) Where provision is made in accordance with subsection (1) (b), the instrument may provide that a development application in respect of development specified in the instrument shall not be determined by the granting of consent under this Act, except with the concurrence of such Minister or public authority as is specified in the instrument to the carrying out of the development.

- (3) An environmental planning instrument which makes provision in accordance with subsection (2) shall state the matters which shall be taken into consideration in deciding whether concurrence should be granted.
- (4) Without limiting the generality of section 26 (b), an environmental planning instrument may, subject to the regulations, provide that the provisions of sections 84, 85, 86, 87 (1) and 90 apply to and in respect of development (not being designated development) specified in the instrument in the same way as those provisions apply to and in respect of designated development.
- (5) (Repealed)

31 Prohibitions

Without limiting the generality of section 26 (b), an environmental planning instrument may provide that development specified therein is prohibited.

32 Authorisation of matters under environmental planning instruments

An environmental planning instrument may be made so as to authorise any matter or thing to be from time to time determined, applied or regulated by such Minister or public authority as is specified in the environmental planning instrument.

33 Model provisions

- (1) An environmental planning instrument may, by reference, adopt wholly or partially any set of model provisions made by the Minister by order published in the Gazette.
- (2) Where model provisions have been adopted in accordance with subsection (1) and those provisions are subsequently:
 - (a) amended—the provisions in their amended form shall apply, or
 - (b) revoked—the provisions shall cease to apply,except to the extent that those provisions or the environmental planning instrument otherwise provide.
- (3) The Minister may take such steps as the Minister considers appropriate or necessary to publicise draft model provisions or draft amendments to model provisions and to seek and consider submissions from the public before the Minister makes the provisions or amendments, as the case may be.

34 Environmental planning instruments—making, operation and inspection

- (1) Expressions used in an environmental planning instrument shall, unless the contrary intention appears, have the same meanings respectively as they have in this Act.
- (2) Judicial notice shall be taken of an environmental planning instrument and of the date

of its publication.

- (3) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of an environmental planning instrument have been complied with and performed.
- (4) The amendment or the alteration, variation or repeal, whether in whole or in part, of any environmental planning instrument does not affect:
 - (a) the previous operation of the instrument or anything duly suffered, done or commenced under the instrument,
 - (b) any right, privilege, obligation or liability acquired, accrued or incurred under the instrument, or
 - (c) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation or liability,and any such investigation, legal proceedings or remedy may be instituted, continued and enforced as if the amendment, alteration, variation or repeal had not occurred.
- (5) An environmental planning instrument shall:
 - (a) be published in the Gazette, and
 - (b) take effect on and from the date of publication or a later date specified in the instrument.
- (6) A copy of every environmental planning instrument shall be available for public inspection, without charge, at the office of the Department during ordinary office hours.
- (7) The Secretary shall furnish each council affected by an environmental planning instrument with a copy of the instrument as soon as practicable after it is made.
- (8) A copy of each environmental planning instrument that has been furnished to a council by the Secretary shall be available for public inspection, without charge, at:
 - (a) the office of the council during ordinary office hours, and
 - (b) such other premises operated or controlled by the council and at such times as may be prescribed.
- (9) An environmental planning instrument shall be deemed to have been published in the Gazette notwithstanding that any planning map or other instrument or material referred to, embodied or incorporated in the environmental planning instrument is not so published.
- (10) A reference in subsections (6), (7) and (8) to a copy of an environmental planning

instrument includes a reference to any planning map or other prescribed instrument or material referred to, embodied or incorporated in the instrument.

34A Consultation with Director-General of National Parks and Wildlife about preparation of studies or instruments

- (1) The Director must consult with the Director-General of National Parks and Wildlife before preparing:
 - (a) a draft State environmental planning policy, or
 - (b) an environmental study or a draft regional environmental plan,if, in the opinion of the Director, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the draft policy, environmental study or draft plan.
- (2) A council must consult with the Director-General of National Parks and Wildlife before preparing:
 - (a) an environmental study, or
 - (b) a draft local environmental plan,if, in the opinion of the council, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the environmental study or draft plan.
- (3) For the purpose of the consultation, the Director or council must provide the following information to the Director-General of National Parks and Wildlife:
 - (a) the reasons for deciding to prepare the draft environmental planning instrument or the environmental study,
 - (b) the proposed aims, objectives, policies and strategies whereby the draft instrument is designed to achieve any of the objects of this Act,
 - (c) a description of the land to which the draft instrument or the study is intended to apply,
 - (d) the types of matters to be dealt with in the draft instrument or the study.
- (4) For the purposes of the consultation, the Director or council may provide any other information that, in the Director's or council's opinion, would assist in understanding the draft environmental planning instrument or the environmental study.
- (5) The Director-General of National Parks and Wildlife may comment to the Director or council on the preparation of the draft environmental planning instrument or the environmental study within 40 days after the information required to be provided

under subsection (3) is provided.

- (6) The consultation required by this section is completed when the Director or council has considered any comments so made.

35 Validity of instruments

The validity of an environmental planning instrument shall 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.

36 Inconsistency between instruments

- (1) In the event of an inconsistency between environmental planning instruments, then, to the extent of the inconsistency and unless otherwise provided:
 - (a) there is no general presumption that an environmental planning instrument of one kind prevails over an environmental planning instrument of another kind, and
 - (b) the provisions of a later environmental planning instrument prevail over those of an earlier environmental planning instrument, whether of the same or a different kind.
- (2) A State environmental planning policy prevails over a regional environmental plan or a local environmental plan made before or after the policy to the extent of any inconsistency, if the policy expressly so provides.
- (3) A regional environmental plan prevails over a local environmental plan made before or after the regional environmental plan to the extent of any inconsistency, if the regional environmental plan expressly so provides.
- (4) Nothing in this section prevents an environmental planning instrument from being expressly amended by a later environmental planning instrument, of the same or a different kind, to provide for the way in which an inconsistency between them is to be resolved.

Division 2 State environmental planning policies

37 Decision or direction to prepare draft State environmental planning policy

- (1) The Director may, after consultation with such public authorities as the Director determines, prepare a draft State environmental planning policy with respect to such matters as are, in the opinion of the Director, of significance for environmental planning for the State, and may submit it to the Minister.
- (2) The Minister may, after consultation with such Ministers as the Minister determines, cause to be prepared by the Director for submission to the Minister a draft State environmental planning policy with respect to any matter specified by the Minister,

being a matter which is, in the opinion of the Minister, of significance for environmental planning for the State.

38 Format of State environmental planning policies

Subject to this Act and the regulations, the format, structure and subject-matter of a State environmental planning policy or draft State environmental planning policy shall be as determined by the Minister.

39 Making of State environmental planning policies by the Governor

- (1) The Minister may, on the submission to the Minister by the Director of a draft State environmental planning policy, recommend to the Governor the making of a State environmental planning policy:
 - (a) in accordance with that draft State environmental planning policy submitted to the Minister, or
 - (b) in accordance with that draft State environmental planning policy with such alterations as the Minister thinks fit,or the Minister may decide not to make that recommendation.
- (2) The Minister shall take such steps, if any, as the Minister considers appropriate or necessary to publicise a draft State environmental planning policy and to seek and consider submissions from the public before the Minister makes such a recommendation.
- (3) The Minister may not make such a recommendation except with respect to such matters as are, in his or her opinion, of significance for environmental planning for the State.
- (4) The Governor may make a State environmental planning policy in accordance with a recommendation made under this section.
- (5) A State environmental planning policy shall apply to the State or such part of the State as is described in the policy.

Division 3 Regional environmental plans

40 Decision or direction to prepare draft regional environmental plan

- (1) The Director may prepare a draft regional environmental plan in respect of a region or part of a region and with respect to such matters as are, in the opinion of the Director, of significance for environmental planning for the region to which, or to part of which, that plan is intended to apply.
- (2) The Minister may cause to be prepared by the Director for submission to the Minister

a draft regional environmental plan with respect to any matter specified by the Minister, being a matter which is, in the opinion of the Minister, of significance for environmental planning for the region to which, or to part of which, that plan is intended to apply.

41 Preparation of environmental study

- (1) The Director shall, before commencing to prepare a draft regional environmental plan or at any time during the course of its preparation, prepare an environmental study of the land to which the draft regional environmental plan is intended to apply.
- (2) The environmental study referred to in subsection (1) shall have regard to such matters, relating to the environment of the region to which, or to part of which the draft regional environmental plan is intended to apply, as the Director determines.

42, 43 (Repealed)

44 Preparation of draft regional environmental plan

In the preparation of a draft regional environmental plan, the Director shall, within such time as the Minister may determine:

- (a) cause any State environmental planning policy to be considered so far as it may affect or be affected by the subject-matter of the draft regional environmental plan, and
- (b) prepare the plan having regard to the environmental study prepared by the Director under section 41.
- (c)-(e) (Repealed)

45 Notification

- (1) In the preparation of an environmental study or a draft regional environmental plan, the Director, to the extent required by this section, is to notify the information specified in subsection (2) to the following:
 - (a) each council whose area or part of whose area is situated in the region or part of the region to which that study or draft plan applies,
 - (b) the Local Government Liaison Committee,
 - (c) such other public authorities, other bodies (including authorities of the Commonwealth or other States) and other persons as the Director determines.
- (2) The information to be notified is the following:
 - (a) the reasons for deciding to prepare the environmental study or the draft regional environmental plan,
 - (b) the general aims and objectives of the study or draft plan,

- (c) a general description of the land or area to which the study or draft plan is intended to apply,
 - (d) such other matters (if any) as the Director thinks fit.
- (3) Information about an environmental study and information about a draft regional environmental plan may be notified under this section at the same time or at different times.
- (4) A person to whom information is notified under this section may comment to the Director on the preparation of the environmental study or draft regional environmental plan within 28 days after the Director notifies the information.

46 Information from public authorities

To facilitate the preparation of an environmental study or a draft regional environmental plan, a public authority:

- (a) shall, if requested in writing to do so by the Director, furnish such information and provide such assistance as may reasonably be required by the Director in the preparation of the study or plan, and
- (b) shall notify the Director of any information or any actual or proposed activity or work that, in its opinion, is relevant to the study or plan,

and a public authority is hereby empowered to the extent necessary to comply with the provisions of this section.

47 Public exhibition of draft regional environmental plan

When a draft regional environmental plan has been prepared, the Director shall:

- (a) give public notice, in a form and manner determined by the Director, of the places at which, the dates on which, and the times during which, the environmental study prepared by the Director under section 41 of the land to which the draft regional environmental plan applies and the draft regional environmental plan may be inspected by the public,
- (b) publicly exhibit that environmental study and draft regional environmental plan at the places, on the dates and during the times set out in the notice,
- (c) publicly exhibit such other matters as the Director considers appropriate or necessary to better enable the draft plan and its implications to be understood, and
- (d) specify, in the notice, the period during which submissions may be made to the Secretary in accordance with section 48.

48 Submissions

Any person may, during the period referred to in section 47 (d), make submissions in writing to the Secretary with respect to the draft regional environmental plan publicly exhibited under section 47 (b).

49 Consideration of submissions and amendment of draft plan

- (1) The Director shall cause any submissions made under section 48 to be considered and:
 - (a) may, if the Director thinks fit, direct that an inquiry be held, in accordance with section 119, by a Commission of Inquiry appointed under section 119 (2), with respect to any matter relating to the draft regional environmental plan whether or not arising from any submission,
 - (b) may amend the draft regional environmental plan by making changes whether or not of substance and whether or not as a consequence of the consideration of any such submissions or of the findings and recommendations of any such Commission of Inquiry,
 - (c) may (but need not) publicly exhibit that amended draft regional environmental plan together with a written explanation of the reasons for the amendments, at such places, on such dates and during such times as the Director determines, and
 - (d) where an amended draft regional environmental plan is exhibited under paragraph (c), shall cause public notice to be given in a form and manner determined by the Director, specifying the period during which submissions may be made to the Secretary in accordance with section 48 as applied by subsection (2).
- (2) Where the Director causes an amended draft regional environmental plan to be publicly exhibited in accordance with subsection (1) (c), section 48 and subsection (1) apply to and in respect of that amended draft regional environmental plan in the same way as they apply to and in respect of a draft regional environmental plan.

50 Submission of draft regional environmental plan to the Minister

- (1) Subject to subsection (2), the Director shall submit to the Minister the draft regional environmental plan, with any amendments made in accordance with section 49.
- (2) In submitting the draft regional environmental plan, the Director may exclude certain provisions thereof or exclude from the application thereof part of the region to which that draft plan applied (in this section referred to as **the deferred matter**) which, in the Director's opinion, require or requires further consideration but which should not prejudice the consideration by the Minister of the draft plan as submitted.
- (3) A draft regional environmental plan submitted under subsection (1) shall be

accompanied by a report by the Director on the draft plan, on any submissions made under section 48 and on any inquiry referred to in section 49 (1) (a) in relation to the draft plan.

- (4) The Director may subsequently take action under section 49 and this section in respect of the deferred matter which for the purposes of those sections shall be deemed to be a draft regional environmental plan.

51 Making of regional environmental plans by the Minister

- (1) The Minister may, on the submission to the Minister by the Director of a draft regional environmental plan:

(a) make a regional environmental plan:

(i) in accordance with the draft regional environmental plan submitted to the Minister, or

(ii) in accordance with the draft regional environmental plan with such alterations as the Minister thinks fit,

(b) direct that action be taken in accordance with subsection (4), or

(c) decide not to proceed with the draft regional environmental plan.

- (1A) Without limiting subsection (1) (a) (ii), the alterations that may be made by the Minister to the draft regional environmental plan may comprise changes of substance and may arise from submissions or from a finding or recommendation of a Commission of Inquiry or otherwise from the Minister's consideration of the matters in the draft plan.

- (2) The Minister may not make a regional environmental plan except with respect to such matters as are, in his or her opinion, of significance for environmental planning for the region or part of the region to which that regional environmental plan applies.

- (3) A regional environmental plan shall apply to such region or part of the region as is described in the plan.

- (4) The Minister may direct the Director to publicly exhibit a draft regional environmental plan with such alterations as the Minister specifies, and the provisions of this section and sections 47, 48, 49 and 50 shall, with any necessary adaptations, apply to that plan.

51A Development control plans

- (1) The Director may prepare a development control plan, or cause such a plan to be prepared, for a part or parts of the land to which a regional environmental plan or a draft regional environmental plan applies, if the Director considers it necessary or

desirable to provide more detailed provisions than are contained in the plan or draft plan for that part or those parts of the land.

- (2) The format, structure, subject-matter and procedures for the preparation, public exhibition, approval, amendment and repeal of such a development control plan are to be as prescribed by the regulations.
- (3) Such a development control plan must generally conform to the provisions of the regional environmental plan or draft regional environmental plan which applies to the land to which the development control plan applies.
- (4) A development control plan prepared in accordance with this section must be available for public inspection, without charge, at:
 - (a) the head office of the Department, and
 - (b) any regional office of the Department situated within the region to which, or to part of which, the regional environmental plan or draft regional environmental plan applies.

52 Format of regional environmental plan or draft plan

Subject to this Act and the regulations, the format, structure and subject-matter of a regional environmental plan or draft regional environmental plan shall be as determined by the Minister.

Division 4 Local environmental plans

53 Definition

Where 2 or more councils decide to join in the preparation of a draft local environmental plan under section 54 (2), a reference in this Division:

- (a) except in section 54, to a council includes a reference to those councils, and
- (b) to an area includes a reference to the areas of those councils.

54 Decision to prepare draft local environmental plan

- (1) A council may decide to prepare a draft local environmental plan in respect of the whole or any part of the land within its area.
- (2) Two or more councils may decide to join in the preparation of a draft local environmental plan in respect of the whole or any part of the land within their areas.
- (3) Where 2 or more councils decide to join in the preparation of a draft local environmental plan under subsection (2), they shall enter into an agreement for the purpose of preparing that draft local environmental plan.

- (4) A council or councils, as the case may be, shall inform the Secretary of the decision to prepare a draft local environmental plan and of the land to which it is intended to apply.
- (5) Following the decision to prepare a draft local environmental plan, the council or councils may, subject to and in accordance with this Division, prepare the plan.

55 Directions from Minister for the preparation of local environmental plan

- (1) The Minister may direct a council, or 2 or more councils jointly, to perform any function conferred or imposed on it or them under section 54 or any other provision of this Division within such time or period as is specified in the direction.
- (2) Where a direction is given under subsection (1), no function performed after the expiration of any time or period specified in the direction shall thereby be rendered void or otherwise ineffective.
- (3) Nothing in this section affects the operation of section 117.
- (4) Following the direction to prepare a draft local environmental plan, the council or councils shall, subject to and in accordance with this Division, prepare the plan.

56 (Repealed)

57 Preparation of environmental study

- (1) Where a council decides to prepare a draft local environmental plan or is directed to do so by the Minister under section 55, it shall prepare an environmental study of the land to which the draft local environmental plan is intended to apply.
- (2) A council shall prepare an environmental study in accordance with such specifications, if any, relating to the form, content and preparation of the study as have been notified to the council by the Director and are then applicable.
- (3) (Repealed)
- (4) The environmental study referred to in subsection (1) shall be prepared with regard to such matters, relating to the environment of the area to which the draft local environmental plan is intended to apply, as the council, subject to the specifications, determines.
- (5) Where, in relation to a request or submission made by or on behalf of a person to a council, an environmental study referred to in subsection (1) of particular land is prepared by the council for the purposes of a draft local environmental plan to enable the carrying out of development on the land, the council may, subject to and in accordance with the regulations, recover the costs and expenses, determined in accordance with the regulations, incurred in the preparation of the environmental study, from the person.

58-60 (Repealed)

61 Council's responsibilities in preparing draft local environmental plan

The council shall prepare a draft local environmental plan having regard to the environmental study prepared by the council under section 57.

62 Consultation

In the preparation of an environmental study or a draft local environmental plan, the council shall consult with:

- (a) such public authorities or bodies (including authorities of the Commonwealth or other States) as, in its opinion, will or may be affected by that draft local environmental plan,
- (b) where the draft local environmental plan applies to land adjoining a boundary between the council's area and another area—the council of that other area, and
- (c) such other persons as the council determines.

63 Information from public authorities

To facilitate the preparation of an environmental study or a draft local environmental plan, a public authority:

- (a) shall, if requested in writing to do so by the council, furnish such information and provide such assistance as it deems proper to assist the council in the preparation of the study or plan, and
- (b) shall notify the council of any information or any actual or proposed activity or work that, in its opinion, is relevant to the study or plan,

and a public authority is hereby empowered to the extent necessary to comply with the provisions of this section.

64 Submission of copy of draft local environmental plan to Department

When a draft local environmental plan has been prepared, the council shall submit a copy of the draft plan to the Secretary, together with a statement specifying the names of the public authorities, bodies and other persons the council has consulted with pursuant to section 62.

65 Certificate of Director

- (1) Where the Secretary receives a copy of a draft local environmental plan from a council under section 64, the Director may cause to be issued to the council a certificate certifying that the draft plan may be publicly exhibited in accordance with section 66.
- (2) A certificate issued under this section may be granted subject to the condition that

the draft local environmental plan be amended in the manner specified in the certificate before it is publicly exhibited in accordance with section 66.

- (3) Where a certificate is not issued under this section, the Director shall return the draft plan to the council, giving the reasons why the certificate was not issued, and directing the council to amend the draft plan in such a manner as to enable a certificate to be issued, or to take such other action as is appropriate.
- (4) The council shall comply with a direction given under subsection (3).

66 Public exhibition of draft local environmental plan

- (1) Where a council receives a certificate under section 65 with respect to a draft local environmental plan, it shall, after complying with any condition subject to which the certificate was granted and subject to the regulations:
 - (a) give public notice, in a form and manner determined by the council, of the place at which, the dates on which, and the times during which, the environmental study prepared by the council under section 57 of the land to which the draft local environmental plan applies and the draft local environmental plan may be inspected by the public,
 - (b) publicly exhibit at the place, on the dates and during the times set out in the notice:
 - (i) a copy of that environmental study and draft local environmental plan,
 - (ii) a copy of any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft local environmental plan is intended to apply, and
 - (iii) if such a policy, plan or direction does so apply—a statement to the effect that the policy, plan or direction referred to in subparagraph (ii) substantially governs the content and operation of the draft local environmental plan and that any submission made pursuant to section 67 should be made having regard thereto,
 - (c) specify, in the notice, the period (being a period which is or includes the period referred to in subsection (2)) during which submissions may be made to the council in accordance with section 67, and
 - (d) publicly exhibit such other matter as it considers appropriate or necessary to better enable the draft plan and its implications to be understood.
- (2) A draft local environmental plan shall be publicly exhibited for a period being not less than the prescribed period.
- (3) Where, for the purposes of informing the public generally, a council decides to

publicly exhibit a draft local environmental plan otherwise than in accordance with subsection (1), or to publicly exhibit any other matter which could be construed or represented as having a similar purpose to a draft local environmental plan, it shall at the same time publicly exhibit a statement to the effect that the exhibition is not to be regarded as an exhibition for the purposes of this Act.

67 Making of submissions

Any person may, during the period referred to in section 66 (1) (c), make submissions in writing to the council with respect to the provisions of a draft local environmental plan publicly exhibited under section 66 (1) (b).

68 Consideration of submissions

(1) Where:

- (a) a person making a submission so requests, and
- (b) the council considers that the issues raised in a submission are of such significance that they should be the subject of a hearing before the council decides whether and, if so, what alterations should be made,

the council shall, in the prescribed manner, arrange a public hearing in respect of the submission.

(2) A report of the public hearing shall be furnished to the council and the council shall make public the report.

(3) The council shall consider the submission and the report furnished pursuant to subsection (2) and may make any alterations it considers are necessary to the draft local environmental plan arising from its consideration of submissions or matters raised at any public hearing.

(3A) An alteration made by a council pursuant to subsection (3) need not relate to a submission.

(3B) The council may (but need not) give public notice of and publicly exhibit, wholly or in part, a draft local environmental plan that has been altered pursuant to subsection (3). The provisions of this section and sections 66 and 67, with any necessary adaptations, apply to any such exhibition of a draft plan, but not so as to require a further certificate under section 65.

(4) The council shall, subject to and except as may be provided by the regulations, submit to the Secretary:

- (a) details of all submissions,
- (b) the report of any public hearing,

- (c) the draft local environmental plan and the reasons for any alterations made to the plan pursuant to subsection (3), and
- (d) a statement:
 - (i) to the effect that the provisions of sections 66 and 67 and this section relating to public involvement in the preparation of the draft plan have been complied with,
 - (ii) specifying the environmental planning instruments and directions under section 117 that have been taken into consideration,
 - (iii) giving details of any inconsistency between the draft plan and any instrument or direction referred to in subparagraph (ii) and the reasons justifying the inconsistency, and
 - (iv) giving details of the reasons justifying the exclusion of provisions of the draft plan under subsection (5) or the exclusion from the application of the draft plan of any land under that subsection.
- (5) In submitting the draft local environmental plan, the council may exclude certain provisions thereof or exclude from the application thereof part of the land to which the draft plan applied (in this section referred to as ***the deferred matter***) which, in its opinion, require or requires further consideration but which should not prejudice the consideration by the Director and the Minister of the draft plan as submitted.
- (6) The council may subsequently take action under this section in respect of the deferred matter, without having to publicly re-exhibit that deferred matter, as if it were a draft local environmental plan.
- (7) More than one public hearing may be held in respect of any submissions, and one hearing may be held in respect of more than one submission.
- (8) The regulations may make provision for or with respect to the conduct of a public hearing.

69 Report by Director

The Director shall furnish a report to the Minister as to:

- (a) whether the draft local environmental plan submitted under section 68 (4) is inconsistent with any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft plan applies,
- (b) if there is such an inconsistency—whether the inconsistency is justifiable in the circumstances,

- (c) whether the provisions of sections 66, 67 and 68 relating to public involvement in the preparation of the draft plan have been complied with,
- (d) the relationship between the draft plan, and other proposed and any existing environmental planning instruments, and any relevant directions under section 117, applying to the land to which the draft plan applies, and
- (e) such other matters (if any) relating to the draft plan as the Director thinks appropriate.

70 Making of local environmental plan

- (1) After considering the Director's report made under section 69, the Minister may:
 - (a) make a local environmental plan:
 - (i) in accordance with the draft local environmental plan as submitted by the council under section 68 (4), or
 - (ii) in accordance with that draft plan with such alterations as the Minister thinks fit relating to any matter which in the opinion of the Minister is of significance for State or regional environmental planning,
 - (b) direct that action be taken in accordance with subsection (3), or
 - (c) decide not to proceed with the draft local environmental plan.
- (1A) Without limiting subsection (1) (a) (ii), the alterations that may be made by the Minister relating to any matters which in the opinion of the Minister are of significance for State or regional environmental planning may comprise changes of substance to the draft local environmental plan and may arise from submissions or otherwise from the Minister's consideration of the matters in the draft plan.
- (2) A local environmental plan shall apply to such area or part of such area as is described in that plan.
- (3) The Minister may (but need not) direct the council to publicly exhibit, wholly or in part, a draft local environmental plan that has been altered pursuant to this section or section 68, and the provisions of this section and sections 66, 67, 68 and 69 shall, with any necessary adaptations, apply to that plan.
- (4) Where the Minister decides to make a plan in accordance with subsection (1), the Minister may exclude certain provisions thereof or exclude from the application thereof part of the land to which the draft plan applied (in this section referred to as **the deferred matter**) which, in his or her opinion, require or requires further consideration but which should not prejudice the making of the local environmental plan.

- (5) The Minister may subsequently take action in accordance with this section in respect of the deferred matter as if it were a draft local environmental plan submitted under section 68 (4).
- (6) Where the Minister decides not to proceed with a draft local environmental plan under subsection (1) (c), the Minister shall give such directions to the council as the Minister considers necessary in relation to that decision.
- (7) The Minister shall inform the council of his or her decision under subsection (1) and, except where the Minister decides to make a local environmental plan in accordance with the draft local environmental plan as submitted by the council under section 68 (4), the reasons therefor, and may at the same time give directions to the council as to the procedure to be followed in connection with making his or her decision known to the public.
- (8) Notwithstanding anything in this section and without affecting the power to make alterations pursuant to subsection (1), the Minister may make a local environmental plan with such alterations as the Minister thinks fit, being alterations that do not affect the substance of the provisions of the plan as submitted by the council or as altered pursuant to subsection (1).

71 Format of local environmental plan or draft plan

Subject to this Act and the regulations, the format, structure and subject-matter of a local environmental plan or draft local environmental plan shall be as determined by the Minister and notified to the council concerned.

72 Development control plans

- (1) Where a council considers it necessary or desirable to provide more detailed provisions than are contained in a local environmental plan or a draft local environmental plan in respect of a part or parts of the land to which that plan or draft plan, as the case may be, applies, it may prepare or cause to be prepared a development control plan.
- (2) The format, structure, subject-matter and procedures for the preparation, public exhibition, approval, amendment and repeal of such a development control plan shall be as prescribed.
- (3) Such a development control plan shall generally conform to the provisions of the local environmental plan or the draft local environmental plan which applies to the land to which the development control plan applies.
- (4) A development control plan prepared in accordance with this section shall be available for public inspection, without charge, at:
 - (a) the office of the council during ordinary office hours, and

- (b) such other premises operated or controlled by the council and at such times as may be prescribed.

Division 4A Applications for the preparation of local environmental plans

72A Making of application

- (1) A person may make an application under this Division to a council for the preparation of a local environmental plan by the council to enable the carrying out of any prescribed residential development on any prescribed land within its area.
- (2) Such an application may only be made if the development the subject of the application is:
 - (a) development which, but for this Division or sections 100A and 101, cannot be carried out either with or without development consent, or
 - (b) development the carrying out of which, but for this Division or sections 100A and 101, is prohibited under this Act.
- (3) Such an application:
 - (a) shall be made in the prescribed form and manner, and
 - (b) shall be accompanied by a development application made in accordance with section 77 for consent to carry out the development.

72B Preparation of local environmental plan and advertising of development application

- (1) Where an application is made under this Division, the council shall:
 - (a) with respect only to the land the subject of the accompanying development application, prepare a draft local environmental plan to enable the carrying out, with the council's consent, of the development the subject of the application, and
 - (b) prepare the draft plan in the terms determined by the Minister and notified to the council, and
 - (c) provide in the draft plan, except where the development is designated development, that the provisions of sections 84, 85, 86, 87 (1) and 90 apply to and in respect of the development in the same way as those provisions apply to and in respect of designated development, and
 - (d) not later than 14 days after lodgment of the application or after the Minister notifies the council of the terms of the draft plan, whichever is the later, exhibit the draft plan in accordance with section 66, and
 - (e) if the development is not designated development—not later than 14 days after

lodgment of the application, notify the accompanying development application in accordance with section 84 or 85 as if it was an application to carry out designated development, and

(f) if the development is designated development—not later than 34 days after lodgment of the application, complete the notification of the accompanying development application in accordance with section 84 or 85.

(2) Any person may:

(a) in accordance with section 67, make submissions with respect to the draft local environmental plan, and

(b) in accordance with section 87 (1), inspect and make submissions with respect to the accompanying development application.

(3) Except in the case of a person making a submission in respect of an application to carry out designated development, a person making a submission is not an objector for the purposes of this Act.

72C Consideration and making of plan

(1) The council shall consider:

(a) any submission made in accordance with section 67, and

(b) any matters prescribed by the regulations,

and shall decide whether, in its opinion, the draft local environmental plan should be made.

(2) If the council decides that the draft local environmental plan should be made, it shall, within 14 days of its decision, submit to the Director:

(a) the draft plan, and

(b) a statement to the effect that the provisions of section 72B relating to public involvement in connection with the draft plan have been complied with.

(3) On receipt of the draft local environmental plan and the statement, the Director shall arrange for the draft plan to be published in the Gazette, with such alterations as the Director thinks fit, being alterations that do not affect the substance of the provisions of the plan.

(4) The draft local environmental plan shall take effect on and from the date of its publication in the Gazette as if it were a local environmental plan made under section 70 by the Minister.

72D Determination of development application by council

- (1) If the council decides that the draft local environmental plan should be made, the council shall determine the accompanying development application as if the draft plan were in force.
- (2) In determining the accompanying development application, the council shall take into consideration (in addition to the matters required to be considered under section 90 (1)):
 - (a) any submissions made under section 72B, and
 - (b) any matters prescribed by the regulations.
- (3) If the council decides that the draft local environmental plan should not be made, the council shall refuse consent to the accompanying development application.
- (4) Section 96 applies to the accompanying development application whether or not the council makes a decision about the making of the draft local environmental plan.
- (5) Nothing in this Act or in any environmental planning instrument prevents the council from determining the accompanying development application in accordance with this Division.

72E Appeals

- (1) If an appeal is made under section 97 (1) in respect of a development application to which this Division applies, each person who made a submission under section 87 in respect of the application shall be given notice by the council of that appeal and shall, on application made to the Court in accordance with rules of Court within 28 days after the date of the notice, be entitled to be heard at the hearing of the appeal as if the person were a party to the appeal.
- (2) The Court shall make its decision on an appeal under section 97 (1) or 98 (1) in respect of the development application as if the draft local environmental plan were in force.

72F Making of local environmental plan following decision of Court

- (1) If the decision of the Court on an appeal has the effect of granting consent either unconditionally or subject to conditions to the carrying out of the development the subject of the development application, the registrar of the Court shall notify the Director accordingly.
- (2) If the Director has not already done so, the Director shall arrange for the draft local environmental plan which the development application accompanied to be published in the Gazette, with such alterations as the Director thinks fit, being alterations that do not affect the substance of the provisions of the plan.

- (3) The draft local environmental plan shall take effect on and from the date of its publication in the Gazette as if it were a local environmental plan made under section 70 by the Minister.

72G Date from which consent operates

A consent granted by a council or by a decision of the Court to a development application to which this Division applies shall be taken:

- (a) to have been granted under Division 1 of Part 4, and
- (b) to become effective in accordance with section 93 and to operate from the date on which it becomes effective in accordance with that section or the date on which the draft local environmental plan which the development application accompanied is published in the Gazette, whichever is the later.

72H Application of Divisions 1 and 5 and Part 4

Divisions 1 and 5 and Part 4 apply to and in respect of a local environmental plan prepared under this Division and a development application made under this Division:

- (a) except to the extent provided by this Division, and
- (b) except to the extent of any inconsistency between a provision of those Divisions or that Part and a provision of this Division.

Division 4B Instrument amendments and development applications

72I Application of Division

This Division applies if a development application is made to a consent authority for consent to carry out development that may only be carried out if an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended.

72J Making and consideration of certain development applications

Nothing in this Act prevents:

- (a) the making of a development application to a consent authority for consent to carry out development that may only be carried out if an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended, or
- (b) the consideration by a consent authority of such a development application, subject to this Division.

72K Joint exhibition of instrument and advertising of application

- (1) Public notice that is required to be given under this Act in connection with the preparation and making of a draft environmental planning instrument and notice that is required to be given under this Act of a development application in circumstances where this Division applies are to be given by the same notice.
- (2) The period during which the public may inspect the draft environmental planning instrument and the development application, if those periods are different, is to be the longer of them.
- (3) If the draft environmental planning instrument proposes to make the development the subject of the development application designated development, the period for public inspection of the development application that is to be relevant in determining the period for public inspection under subsection (2) is the period relevant to the inspection of a development application for designated development.

72L Commission of Inquiry

Nothing in this Act prevents the Minister from directing that a single inquiry be held, in accordance with section 119, by a Commission of Inquiry into both a draft environmental planning instrument and a development application that are being dealt with under this Division.

Division 5 Review and amendment of environmental planning instruments

73 Review of environmental planning instruments

The Director shall keep State environmental planning policies and regional environmental plans, and councils shall keep their local environmental plans and development control 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.

74 Amendment of environmental planning instruments

- (1) An environmental planning instrument may be amended in whole or in part by a subsequent environmental planning instrument whether of the same or a different type.
- (2) A subsequent environmental planning instrument shall be made in accordance with the provisions of this Part except that:
 - (a) where the subsequent instrument is a regional environmental plan—the provisions of sections 41 and 44 (b) shall not apply, unless the Minister directs to the contrary, or

(b) where the subsequent instrument is a local environmental plan—the provisions of sections 57 and 61 shall not apply, unless the Director directs to the contrary.

(3) In this section, **amended** includes altered, varied or repealed.

Part 4 Environmental planning control

Division 1 General

75 Definition

- (1) In this Part, a reference to development includes a reference to any other act, matter or thing referred to in section 26 which is controlled by an environmental planning instrument.
- (2) A provision of this Part that applies to or in respect of designated development also applies, but only in accordance with and to the extent provided by section 30 (4) and (5), to or in respect of development (not being designated development) specified in an environmental planning instrument pursuant to section 30 (4).

76 Restriction on development

- (1) Subject to this Act, where an environmental planning instrument provides that development specified therein may be carried out without the necessity for consent under this Act being obtained therefor, a person shall not carry out that development on land to which that provision applies except in accordance with the provisions of that instrument.
- (2) Subject to this Act, where an environmental planning instrument provides that development specified therein may not be carried out except with consent under this Act being obtained therefor, a person shall not carry out that development on land to which that provision applies unless:
 - (a) that consent has been obtained and is in force under this Act, and
 - (b) the development is carried out in accordance with the provisions of any conditions subject to which that consent was granted and of that instrument.
- (3) Subject to this Act, where an environmental planning instrument provides that development specified therein is prohibited, a person shall not carry out that development on land to which that provision applies.

76A Consent authorities to have regard to register of critical habitat

Each consent authority must have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the [Threatened Species Conservation Act 1995](#) when exercising its functions under this Act.

77 Making of development applications

- (1) A development application may be made only by:
 - (a) the owner of the land to which that development application relates, or
 - (b) any person, with the consent in writing of the owner of the land to which that development application relates.
- (2) Notwithstanding subsection (1) (b), a development application may be made by a lawful occupier of Crown lands within the meaning of the *Crown Lands Consolidation Act 1913* with respect to the whole or any part of any such land lawfully contracted to be sold to the occupier without the consent in writing or otherwise of:
 - (a) where the lands are not within an irrigation area within the meaning of that Act—the Minister for Lands, or
 - (b) where the lands are within such an irrigation area—the Minister for the time being administering the *Irrigation Act 1912*.
- (2A) Notwithstanding subsection (1) (b), the consent in writing of the owner of the land to which a development application relates is not required where the applicant is a public authority and the public authority has, before making the application, served a copy of the application on the owner.
- (3) A development application shall:
 - (a) be made to the consent authority,
 - (b) be made in the prescribed form and manner,
 - (c) where the application is not in respect of designated development, contain, or, as may be provided by the regulations, be accompanied by, such information and particulars as may be prescribed,
 - (d) where the application is in respect of designated development, be accompanied by an environmental impact statement in the prescribed form prepared by or on behalf of the applicant, and
 - (d1) if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, be accompanied by a species impact statement prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*,
 - (e) be accompanied by such fee determined by the consent authority (not exceeding the maximum amount, if any, prescribed in relation thereto) or, where a fee is prescribed, by that prescribed fee.

- (3A) A development application shall not be made in respect of land that is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*) unless any consent to the development required under that Act has been obtained.
- (3B) The consent authority may reject a development application within 7 days after its receipt if it is not clear as to the development consent sought or if it is not easily legible. An application so rejected is taken not to have been made and the application fee is to be refunded.
- (4) The consent authority shall forward a copy of the development application referred to in subsection (3) to the council where the council is not the consent authority.
- (4A) (Repealed)
- (5) The consent authority shall forward to the Secretary (where the Minister or Director is not the consent authority) and to the council (where the council is not the consent authority) a copy of the environmental impact statement referred to in subsection (3) (d), together with a copy of the application to which it relates.
- (6) The regulations may make provision for or with respect to the amendment or variation of development applications.
- (7) A development application may be withdrawn at any time prior to its determination by the consent authority by service on the consent authority of a notice to that effect in writing signed by the applicant.
- (8) An application withdrawn under subsection (7) shall, without prejudice to the question whether the fee paid under subsection (3) should be refunded (which matter shall be at the absolute discretion of the consent authority), be deemed for the purposes of this Act (section 85 excepted) never to have been made.
- (9) Upon an application being made under this section the applicant, not being entitled to copyright, shall be deemed to have indemnified all persons using the application and documents in accordance with this Act, against any claim or action in respect of breach of copyright.

77A Concurrence of or consultation with Director-General of National Parks and Wildlife in certain cases

- (1) If development consent is required for development on land that is, or is a part of, critical habitat, development consent must not be granted without the concurrence of the Director-General of National Parks and Wildlife.
- (2) If development consent is required for development and that development is likely to significantly affect a threatened species, population or ecological community, or its habitat, consent must not be granted without the concurrence of the Director-General of National Parks and Wildlife.

- (3) Despite subsections (1) and (2), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may:
 - (a) elect to act in the place of the Director-General of National Parks and Wildlife for the purposes of those subsections, or
 - (b) review and amend any recommendations that the Director-General proposes to make, or any advice that the Director-General proposes to offer, for the purposes of those subsections.
- (4) Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under this section in the same way as they apply to and in respect of the granting of concurrence required by an environmental planning instrument.
- (5) Despite subsections (1) and (2), if a Minister is the consent authority, development consent must not be granted unless the Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*.
- (6) The Minister administering the *Threatened Species Conservation Act 1995* must provide the Minister who is the consent authority with any recommendations made by the Director-General of National Parks and Wildlife concerning determination of such a development application and, if that Minister does not accept any one or more of the recommendations, that Minister must include in the determination the recommendations not accepted and that Minister's reasons for not accepting them.
- (7) A decision with respect to a development consent or concurrence referred to in this section, by whoever made, must include the reasons for which it was made.
- (8) A copy of the reasons referred to in this section must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.
- (9) Despite any inconsistent provisions in sections 102 and 103, but without otherwise affecting those sections, development consent of the kind referred to in subsection (1) or (2) is not to be modified (except in the case of a minor modification) unless the requirements of this section and section 77C concerning concurrence have been complied with in relation to the proposed modification as if that proposed modification were an application for development consent.

77B Determination by Minister without concurrence of or consultation with Director-General of National Parks and Wildlife

- (1) Despite section 77A, if the Minister is of the opinion that it is expedient in the public interest to do so, having regard to matters that in the opinion of the Minister are of significance for State or regional environmental planning, the Minister may determine a development application in accordance with section 101 and without the

concurrence of, or consultation with, the Director-General of National Parks and Wildlife (or the concurrence of, or consultation with, the Minister administering the *Threatened Species Conservation Act 1995* if that Minister acts under section 77A).

- (2) However, in making such a determination, the Minister is to consult with the Minister administering the *Threatened Species Conservation Act 1995* if the development the subject of the development application is on land that is, or is a part of, critical habitat or is likely to significantly affect an endangered species, population or ecological community, or its habitat.
- (3) The Minister administering the *Threatened Species Conservation Act 1995* must provide the Minister with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination of the development application and, if the Minister does not accept any one or more of the recommendations, the Minister must include in the determination the recommendations not accepted and the Minister's reasons for not accepting them.
- (4) A copy of the reasons referred to in this section must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.

77C Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

In deciding whether or not concurrence should be granted under section 77A, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement that accompanied the development application,
- (b) any assessment report prepared by the consent authority,
- (c) any submissions or objections received concerning the development application,
- (d) any relevant recovery plan or threat abatement plan,
- (e) whether the development proposed is likely to reduce the long-term viability of the species, population or ecological community in the region,
- (f) whether the development is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,
- (g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (h) the likely social and economic consequences of granting or of not granting concurrence.

78 Seeking concurrence of Minister or public authority

- (1) Where an environmental planning instrument or section 77A provides that a development application shall not be determined by the granting of consent under this Act without the concurrence of a Minister or public authority to development specified in the instrument or section 77A, the consent authority shall, unless the concurrence of that Minister or public authority may be assumed under section 81 or consent to the application is refused:
 - (a) forward forthwith a copy of the application to that Minister or public authority, and
 - (b) notify by post the applicant of the action taken by it under paragraph (a).
- (2) Where development referred to in subsection (1) is designated development, the consent authority shall comply with the provisions of sections 84 and 86 and with the provisions of subsection (1) concurrently.

79 Granting or refusal of concurrence by Minister or public authority

- (1) A Minister or public authority referred to in section 78 may, with respect to development the subject of a development application, a copy of which has been forwarded to him or it under section 78 (1) (a):
 - (a) grant concurrence to that development either unconditionally or subject to conditions, or
 - (b) refuse concurrence to that development.
- (2) In deciding whether concurrence should be granted under subsection (1), a Minister or public authority referred to in section 78 (other than the Minister and the public authority referred to in section 77A) shall take into consideration the matters stated pursuant to section 30 (3) and applicable in relation to the development application (and those matters only).
- (3) Where a Minister or public authority grants concurrence subject to conditions or refuses concurrence, he or it shall notify the consent authority of the reasons for the imposition of the conditions or the refusal.
- (4) Subsection (2) does not apply in the case of a deemed environmental planning instrument.

80 Notification of Minister's or public authority's decision

- (1) A Minister or public authority referred to in section 78 shall notify the consent authority of his or its decision with respect to development the subject of a development application a copy of which has been forwarded to him or it under section 78 (1) (a):
 - (a) except as provided by paragraph (b)—within a period of 40 days after receipt of

the copy of that development application, or

- (b) where, within the period referred to in paragraph (a), that Minister or public authority sends by post to the consent authority and the applicant a notice informing it and him that that Minister or public authority is unable to deal with that development application within that period and specifies in that notice a longer period within which that Minister or public authority will notify his or its decision—within the longer period,

but nothing in this subsection affects the operation of section 96.

- (2) Where a Minister or public authority referred to in section 78 does not inform the consent authority of his or its decision within the period referred to in subsection (1) (a), or the longer period referred to in subsection (1) (b), as the case may be, the consent authority may determine the development application by granting consent thereto without the concurrence of that Minister or public authority.
- (3) Where a Minister or public authority issues a notice under subsection (1) (b), he or it shall forward a copy of that notice to the Secretary.

81 Circumstances in which concurrence may be assumed

- (1) Where under an environmental planning instrument or section 77A a development application may not be determined by the granting of consent under this Act without the concurrence of a Minister or public authority to development specified in the instrument or section 77A, that Minister or public authority may inform the consent authority, by notification in writing, that the concurrence may be assumed with such qualifications or conditions as are specified in the notification.
- (2) A Minister or public authority referred to in subsection (1) may, by notification in writing given to the consent authority, amend or revoke a notification given by him or it under subsection (1).
- (3) A consent granted by a consent authority which has assumed the concurrence of a Minister or public authority in accordance with a notification in force under this section is as valid and effective as if the consent authority had obtained the concurrence of that Minister or public authority pursuant to sections 78 and 79.

82 Giving effect to concurrence

- (1) Where the concurrence of a Minister or public authority is given pursuant to section 79 or may be assumed pursuant to section 81, the consent authority shall, in granting consent to the carrying out of the development to which the concurrence relates, notwithstanding section 81, grant the consent subject to any conditions specified in the notification referred to in section 80 or 81, as the case may be.
- (2) Nothing in subsection (1) affects the right of the consent authority to impose

conditions under section 91 not inconsistent with the conditions referred to in subsection (1) or to refuse consent to the development application.

83 Avoidance of consents

Where under an environmental planning instrument or section 77A a development application may not be determined by the granting of consent under this Act without the concurrence of a Minister or public authority to that development, a consent (other than a consent granted as referred to in section 80 (2) or 81 (3)) granted:

- (a) without the concurrence of that Minister or public authority, or
- (b) not subject to such conditions, if any, as are referred to in a notification under section 80 or 81,

shall be void, but nothing in this section affects any liability of a consent authority in respect of a consent granted as referred to in paragraph (a) or (b).

84 Notice of applications respecting designated development

(1) Where a development application is made for consent to carry out designated development, the consent authority shall forthwith:

- (a) give written notice of that development application:
 - (i) to such persons as appear to it to own or occupy the land adjoining the land to which the development application relates,
 - (ii) where practicable, to such other persons as appear to it to own or occupy land the use and enjoyment of which, in the opinion of the consent authority, may be detrimentally affected if that designated development is carried out, and
 - (iii) to such public authorities as, in the opinion of the consent authority, may have an interest in the determination of that development application,

(b) cause notice to be exhibited in the prescribed manner on the land to which that development application relates, and

(c) cause notice of that development application to be published in a newspaper circulating in the locality.

(2) Where land is a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973*, a written notice to the body corporate shall be deemed to be a written notice under subsection (1) (a) to the owner or occupier of each lot within the strata scheme.

(2A) Where land is a lot within the meaning of the *Strata Schemes (Leasehold Development) Act 1986*, a written notice to the lessor under the leasehold strata scheme concerned and to the body corporate shall be deemed to be a written notice

under subsection (1) (a) to the owner or occupier of each lot within the scheme.

- (3) Where land is owned or occupied by more than one person, a written notice to one owner or one occupier shall be deemed to satisfy the requirements of subsection (1) (a).
- (4) Each notice referred to in subsection (1) shall be in or to the effect of such form, if any, as may be prescribed or, where no such form is prescribed, shall contain such matters as may be prescribed.
- (5) Where a notice given under subsection (1) refers to a period exceeding 30 days, the consent authority shall notify the applicant of the period specified in the notice and the effect of that period on the operation of section 96.

85 Circumstances in which compliance with section 84 may be dispensed with

(1) Notwithstanding section 84, where:

(a) a development application referred to in section 84 which has not been determined by the consent authority is amended, or substituted by a subsequent development application, or the development application so referred to is withdrawn and a subsequent development application is made with respect to substantially the same development, and

(b) the consent authority has with respect to that development application referred to in section 84 complied in all respects with that section,

the consent authority may, if it is of the opinion that there is no necessity, by reason that the amended or subsequent development application differs only in minor respects from the former development application, to comply with section 84 with respect to the amended or subsequent development application, decide to dispense with further compliance with that section in relation to that application, and compliance with that section in relation to the former development application shall be deemed to be compliance in relation to the amended or subsequent development application.

(2) The consent authority shall notify the applicant of its decision under subsection (1) at or before the time notice of the determination of the development application is given under section 92.

86 Inspection of development applications etc

At the places and during the period specified in a notice under section 84 (1), any person may inspect the development application referred to in the notice and documents accompanying that application and may make extracts from or copies thereof.

86A Effect of inquiry by Commission of Inquiry on determination of development

application

- (1) This section applies after a consent authority receives notice from the Secretary that the Minister has directed that an inquiry be held, in accordance with section 119, with respect to proposed development, or part of any such proposed development, the subject of a development application.
- (2) The consent authority must not determine the development application in so far as it relates to proposed designated development.
- (3) The consent authority must not determine the development application in so far as it relates to proposed development that is not designated development until:
 - (a) the inquiry has been held, and
 - (b) the consent authority has considered the findings and recommendations of the Commission of Inquiry and any comments made by the Minister that accompanied those findings and recommendations when they were forwarded to the consent authority.

87 Submissions in respect of development applications for designated development

- (1) Any person may, during the period specified in a notice under section 84 (1), make a submission in writing to the consent authority, and, where a submission by way of objection is made, the grounds of objection to the development application referred to in the notice shall be specified in that submission.
- (2) Where the application referred to in subsection (1) is an application to which section 78 applies, the consent authority shall, immediately after the expiration of the period specified in a notice under section 84 (1), forward copies of any submissions to a Minister or public authority, as the case may be, referred to in section 78, if:
 - (a) that Minister or public authority, as the case may be, so requires, or
 - (b) the consent authority considers that that Minister or public authority, as the case may be, would be assisted in his or its consideration of the application by having regard to the submissions.
- (3) A consent authority shall, as soon as practicable after the expiration of the period specified in a notice under section 84 (1), forward to the Secretary copies of submissions made under subsection (1).

88 Restrictions on determination of development application for designated development

- (1) A consent authority shall not determine a development application to carry out designated development otherwise than in accordance with this section.
- (2) Subject to section 86A, a consent authority may determine the application:

- (a) where no objection has been made under section 87 (1)—at any time after the expiration of the period specified in a notice under section 84 (1), or
- (b) where objection has been made under section 87 (1)—at any time after the expiration of the period of 21 days following the date upon which a copy of that objection is forwarded to the Secretary in accordance with section 87 (3).

(3) (Repealed)

89 Determination of development application for designated development after inquiry by Commission of Inquiry

- (1) Where the Minister has directed that an inquiry be held by a Commission of Inquiry in relation to any designated development the subject of a development application, he shall determine the application, after:
 - (a) the inquiry has been held, and
 - (b) he has considered the findings and recommendations of the Commission of Inquiry.
- (2) The provisions of section 101 (8), (9) and (10) apply to a determination of the Minister under this section as if it were a determination under section 101 (8).

90 Matters for consideration

- (1) In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
 - (a) the provisions of:
 - (i) any environmental planning instrument,
 - (ii) any draft environmental planning instrument that is or has been placed on exhibition pursuant to section 47 (b) or 66 (1) (b),
 - (iii) any draft State environmental planning policy which has been submitted to the Minister in accordance with section 37 and details of which have been notified to the consent authority, and
 - (iv) any development control plan in force under section 51A or 72, that applies to the land to which the development application relates,
 - (a1) the provisions of:
 - (i) any conservation agreement entered into under the *National Parks and Wildlife Act 1974* and applying to the whole or part of the land to which the development application relates, and

- (ii) any plan of management adopted under that Act for the conservation area to which the agreement relates,
- (b) the impact of that development on the environment (whether or not the subject of an environmental impact statement) and, where harm to the environment is likely to be caused, any means that may be employed to protect the environment or to mitigate that harm,
- (c) the effect of that development on the landscape or scenic quality of the locality,
- (c1) the effect of that development on any wilderness area (within the meaning of the [Wilderness Act 1987](#)) in the locality,
- (c2) the effect of that development on critical habitat,
- (c3) whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats,
- (c4) any relevant recovery plan or threat abatement plan,
- (c5) the effect of that development on any other protected fauna or protected native plants within the meaning of the [National Parks and Wildlife Act 1974](#),
- (d) the social effect and the economic effect of that development in the locality,
- (e) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of that development,
- (f) the size and shape of the land to which that development application relates, the siting of any building or works thereon and the area to be occupied by that development,
- (g) whether the land to which that development application relates is unsuitable for that development by reason of its being, or being likely to be, subject to flooding, tidal inundation, subsidence, slip or bush fire or to any other risk,
- (h) the relationship of that development to development on adjoining land or on other land in the locality,
- (i) whether the proposed means of entrance to and exit from that development and the land to which that development application relates are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles within that development or on that land,
- (j) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system,

- (k) whether public transport services are necessary and, if so, whether they are available and adequate for that development,
 - (l) whether utility services are available and adequate for that development,
 - (m) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved,
 - (m1) whether that development is likely to cause soil erosion,
 - (n) any representations made by a public authority in relation to that development application, or to the development of the area, and the rights and powers of that public authority,
 - (o) the existing and likely future amenity of the neighbourhood,
 - (p) any submission made under section 87,
 - (p1) without limiting the generality of paragraph (a), any matter specified in an environmental planning instrument as a matter to be taken into consideration or to which the consent authority shall otherwise have regard in determining the development application,
 - (q) the circumstances of the case,
 - (r) the public interest, and
 - (s) any other prescribed matter.
- (2) A reference in this section to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application.

90A Compliance with non-discretionary development standards

- (1) In this section, ***non-discretionary development standards*** means development standards that are identified in an environmental planning instrument as non-discretionary development standards.
- (2) If an environmental planning instrument contains non-discretionary development standards and development the subject of a development application complies with those standards, the consent authority:
- (a) is not entitled to take those standards into further consideration in determining the development application, and
 - (b) must not refuse the application on the ground that the development does not

comply with those standards, and

(c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under sections 90 and 91 is limited accordingly.

(3) If an environmental planning instrument contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

(a) subsection (2) does not apply and the discretion of the consent authority under sections 90 and 91 is not limited as referred to in that subsection, and

(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

91 Determination of development application

(1) A development application shall be determined by:

(a) the granting of consent to that application, either unconditionally or subject to conditions, or

(b) the refusing of consent to that application.

(2) Notwithstanding subsection (1), the consent authority shall refuse an application where the development referred to therein, being the subdivision of land, would if carried out result in a contravention of an environmental planning instrument or of this Act, whether arising in relation to that or any other development.

(3) A condition may be imposed for the purposes of subsection (1) if it:

(a) relates to any matter referred to in section 90 (1) of relevance to the development the subject of the consent,

(b) requires the modification or surrender of a consent granted under this Act or a right conferred by Division 2 in relation to the land to which the development application relates,

(c) requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out on land (whether or not being land to which the development application relates),

(d) limits the period during which development may be carried out in accordance with the consent so granted,

- (e) requires the removal of buildings and works (or any part thereof) at the expiration of the period referred to in paragraph (d),
- (f) requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 90 (1) applicable to the development the subject of the consent,
- (g) modifies details of the development the subject of the development application, or
- (h) is authorised to be imposed under section 91AA, 91AB or 94.

(3A) A consent may be granted subject to a condition that a specified aspect of the development that is ancillary to the core purpose of the development is to be carried out to the satisfaction of the consent authority or a person specified by the consent authority.

(3B) A consent may be granted subject to a condition expressed in a manner that identifies both of the following:

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

The condition may specify the means by which the outcome or objective may be achieved.

(4) A consent to a development application for the carrying out of development, being the erection of a building, shall be sufficient to authorise the use of the building when erected for the purpose for which it was erected where that purpose is specified in the development application.

(5) (Repealed)

(6) Where in respect of a development application referred to in subsection (1), the consent authority is not the council, the consent authority shall inform the council of its determination under this section.

(7) Where a consent authority imposes under this section a condition requiring the modification or surrender of a consent granted under this Act or a right conferred by Division 2, the consent or right may be modified or surrendered subject to and in accordance with the regulations.

91AA “Deferred commencement” consent

(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. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.

- (2) Such a consent must be clearly identified as a “deferred commencement” consent (whether by the use of that expression or by reference to this section or otherwise).
- (3) A “deferred commencement” consent must clearly distinguish conditions concerning matters as to which the consent authority must be satisfied before the consent can operate from any other conditions.
- (4) A consent authority may specify the period in which the applicant must produce evidence to the consent authority sufficient to enable it to be satisfied as to those matters.
- (5) The applicant may produce evidence to the consent authority sufficient to enable it to be satisfied as to those matters and, if the consent authority has specified a period for the purpose, the evidence must be produced within that period.
- (6) If the applicant produces evidence in accordance with this section, the consent authority must notify the applicant whether or not it is satisfied as to the relevant matters. If the consent authority has not notified the applicant within the period of 28 days after the applicant’s evidence is produced to it, the consent authority is, for the purposes only of section 97, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.

91AB Staged development

- (1) 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 part or aspect of that development, or
 - (c) for a specified part or aspect of that development.
- (2) Such a development consent may be granted subject to a condition that the development or the specified part or aspect of the development, or any thing associated with the development or the carrying out of the development, must be the subject of another development consent.

91A Determination of Crown development applications

- (1) A consent authority, in respect of a development application made by or on behalf of the Crown or a prescribed person, must not:
 - (a) refuse its consent to the application, except with the written approval of the Minister, or
 - (b) impose a condition of its consent, except with the written approval of the Minister

or the applicant.

- (2) The applicant or the consent authority may refer the development application to the Minister if it has not been determined by the consent authority within 60 days after being lodged with the consent authority.
- (3) The party who refers the application to the Minister must notify the other party in writing that the application has been referred.
- (4) When an application is referred to the Minister by either party, the consent authority must, as soon as practicable after the application is referred, submit to the Minister:
 - (a) a copy of the development application, and
 - (b) details of its proposed determination of the development application, and
 - (c) the reasons for the proposed determination, and
 - (d) any relevant reports of another public authority.
- (5) The Minister is required to notify the Director in writing that the application has been referred.
- (6) On being so notified, the Director must convene a meeting between the consent authority and the applicant for the purpose of negotiating, as far as possible, a determination of the development application that is acceptable to them and that is in accordance with this Act.
- (7) If agreement is reached between the applicant and the consent authority that development consent be granted, unconditionally or subject to conditions, the Director must prepare a report of the agreement. The report:
 - (a) may include any recommendations that may be necessary or desirable to ensure the implementation of the agreement, and
 - (b) must specify the date by which consent is to be granted.

The Director must give a copy of the report to the consent authority and the applicant.

- (8) After receiving the Director's report, the consent authority must determine the application by granting consent in accordance with the report and recommendations and on or before the date specified for the purpose in the report. Such a consent is taken to have been granted in accordance with the written approval of the Minister.
- (9) If agreement is not reached between the applicant and the consent authority that development consent be granted, unconditionally or subject to conditions, the Minister must notify the consent authority and the applicant in writing of:
 - (a) the Minister's approval to the refusal of consent, or

- (b) the Minister's approval to the imposition of the consent authority's proposed conditions and the date on or before which the development application must be determined, or
 - (c) the Minister's intention not to agree with the consent authority's proposed refusal and that the consent authority may submit any conditions it wishes to impose as conditions of consent to the Minister within 40 days after the date of the Minister's notification, or
 - (d) the Minister's refusal to agree with the consent authority's proposed conditions, any conditions that may be imposed with the Minister's approval and the date on or before which the development application must be determined.
- (10) At the end of the 40-day period specified in subsection (9) (c), the Minister must notify the consent authority and the applicant in writing:
- (a) whether the Minister approves of the imposition of any of the conditions submitted by the consent authority during that period and, if so, which conditions, or
 - (b) of the conditions that may be imposed with the Minister's approval,
- or both, and that the consent authority must determine the application in accordance with the Minister's notification on or before the date notified by the Minister for the purpose.
- (11) The Minister must notify the consent authority and the applicant in writing of the reasons for a decision under subsection (9) or (10).
- (12) If the consent authority does not determine the application on or before the date specified in the Director's report under subsection (7), or on or before the date notified for the purpose by the Minister under subsection (9) (b) or (d) or subsection (10), the consent authority is taken, on the date so specified or notified, to have determined the application:
- (a) in the case of a report under subsection (7)—by granting consent in accordance with the report and recommendations, or
 - (b) in the case of a notification under subsection (9) (b) or (d)—by granting consent subject to the conditions that may be imposed with the Minister's approval, or
 - (c) in the case of a notification under subsection (10)—in accordance with the Minister's approval as notified to it.
- (13) This section applies to an application by or on behalf of the Crown or a prescribed person under section 102 (modification of consents) in the same way as it applies to an application for development consent.
- (14) This section does not affect the right of an applicant to appeal under section 97 or

102 (5).

92 Notice to applicant of determination of development application

- (1) The consent authority (or the Minister in the case of a determination by the Minister under section 91A) must give notice of the determination of the development application in the prescribed form and manner.
- (2) The date on which the application was determined and the date from which the development consent operates (if development consent is granted) must be endorsed, as prescribed, on the notice.
- (3) In the case of a development consent 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:
 - (a) the date from which the consent operates must not be endorsed on the notice, and
 - (b) if the applicant satisfies the consent authority as to the matter, the consent authority must give notice to the applicant, in the prescribed form and manner, of the date from which the consent operates.
- (4) If the determination is made by the granting of consent subject to conditions or by the refusing of consent, the notice of the determination must:
 - (a) indicate the reasons for the imposition of the conditions or the refusal, and
 - (b) notify the applicant of the provisions of this Act conferring a right of appeal against the determination.

93 Date from which consent operates

- (1) Subject to subsections (2) and (3), where a determination is made by the granting of consent, the consent shall become effective and operate from:
 - (a) except as provided in paragraph (b)—the date from which the consent operates that is endorsed upon the notice referred to in section 92, or
 - (b) in the case of designated development to which any objection has been made under section 87—the expiration of 28 days from the date from which the consent operates that is endorsed upon the notice referred to in section 92.
- (2) Subject to subsection (3), where a determination is made by the granting of consent or the granting of consent subject to conditions, and an appeal has been made under section 97 or 98, the consent:
 - (a) shall cease to be, or shall not become, effective pursuant to subsection (1), and

- (b) shall become effective and operate from the date of the decision on that appeal, except where that decision is to refuse development consent.
- (3) A consent referred to in subsection (1) or (2) is void and shall, except for the purposes of section 97 or 98, be deemed never to have been granted where:
 - (a) an appeal under section 97 is dismissed and development consent is refused, or
 - (b) an appeal under section 98 is upheld, with the effect that development consent is refused.
- (4) Where a determination is made by refusing consent or where an application is deemed by section 96 to have been so determined, and the decision on the appeal made pursuant to section 97 in respect of that determination has the effect of granting consent, the decision shall be deemed to be a consent granted under this Division and that consent shall be effective and operate from the date of that decision.
- (5) Despite any other provision of this section, a development consent is taken to become effective and operate from such date as may be 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 consent, or
 - (b) the Land and Environment Court, if the validity of a consent granted by that Court is confirmed by, or the consent is granted by that Court as a result of, such a final determination made by another court that has not fixed that date.
- (6) A development consent in respect of a development application that is taken to have been determined under section 91A operates from the date on which it is taken to have been determined.

94 Payment towards provision or improvement of amenities or services

- (1) Subject to subsection (2), where a consent authority is satisfied that a development, the subject of a development application, will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant consent to that application subject to a condition requiring:
 - (a) the dedication of land free of cost, or
 - (b) the payment of a monetary contribution,or both.
- (2) A condition referred to in subsection (1) shall be imposed only:
 - (a) (Repealed)

- (b) to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services mentioned in that subsection.

(2A) Subject to subsection (2B), where:

- (a) a consent authority has, at any time, whether before or after the date of commencement of this subsection, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area, and
- (b) development, the subject of a development application, will, if carried out, benefit from the provision of those public amenities or public services,

the consent authority may grant consent to the application subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services.

(2B) A condition referred to in subsection (2A) shall, subject to any direction of the Minister under section 94A (1), be imposed only to require a reasonable contribution towards recoupment of the cost referred to in subsection (2A).

(2C) The consent authority may accept:

- (a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (2A), or
- (b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (2A).

(3) The consent authority shall hold any monetary contribution paid in accordance with a condition referred to in subsection (1) (and any additional amount earned from its investment) for the purpose for which the payment was required and apply the money towards providing public amenities or public services or both within a reasonable time and in such a manner as will meet the increased demand for those amenities or services or both.

(3A) The consent authority shall apply any monetary contribution paid in accordance with a condition referred to in subsection (2A), where the whole or any part of the cost incurred in providing the public amenities or public services with respect to which the contribution is paid remains unpaid, towards repayment of that cost.

(4) Land dedicated in accordance with a condition imposed under subsection (1) or in part or full satisfaction of a condition imposed under subsection (2A) shall be made available by the consent authority for the purpose of providing public amenities or public services or both within a reasonable time.

(5) Where a consent authority proposes to impose a condition in accordance with subsection (1) or (2A) in respect of development, the consent authority shall take into consideration any land or other sum of money that the applicant has elsewhere dedicated free of cost within the area or previously paid to the consent authority other than as a condition of the grant of consent under this Act or approval, consent or permission under Part 12 or 12A of the *Local Government Act 1919* as in force at any time.

(6) Where:

- (a) a condition imposed under subsection (1) or (2A) in relation to development the subject of a development application has been complied with, and
- (b) a public authority would, but for this subsection, be entitled under any other Act to require, in relation to or in connection with that development, a dedication of land or payment of money in respect of the provision of public amenities or public services or both,

then, notwithstanding that other Act, compliance with the condition referred to in paragraph (a) shall be deemed to have satisfied the requirement referred to in paragraph (b) to the extent of the value (determined, if the regulations so provide, in accordance with the regulations) of the land dedicated or the amount of money paid in compliance with the condition.

(7) When granting consent to a development application made on or after 1 July 1993, a council may impose a condition referred to in this section only if it is of a kind allowed by, and is determined in accordance with, a contributions plan approved under section 94AB.

(8) A condition of a kind allowed by a contributions plan may be disallowed or amended by the Court on appeal because it is unreasonable, even if it was determined in accordance with the plan.

(9) This section does not apply to public amenities or public services comprising water supply or sewerage works.

94AA Section 94 conditions imposed by the Minister or Director

(1) The Minister or the Director, as the consent authority determining a development application, may impose conditions referred to in section 94 if the application relates:

- (a) to land within a growth centre, or
- (b) to other land within a single area.

(2) Section 94, as modified by this section, applies to the Minister or the Director determining such a development application as consent authority.

- (3) When the development application relates to land within a growth centre, section 94 applies as if references in that section to the area were references to the growth centre.
- (4) Before imposing any condition referred to in section 94, the Minister or the Director must have regard to any contributions plan approved under section 94AB that applies to the whole or any part of the growth centre or area in which the relevant land is situated.
- (5) The Minister or the Director may impose a condition referred to in section 94 even though it is not of a kind allowed by, or not in accordance with, a contributions plan.
- (6) Any monetary contribution paid in accordance with a condition referred to in section 94 imposed by the Minister or the Director:
 - (a) must be paid by the Minister or Director to the corporation for the growth centre or the council of the area concerned, and
 - (b) must (together with any additional amount earned from its investment) be applied within a reasonable time for the purpose for which it was levied.
- (7) This section applies to the Minister as consent authority whether or not the Minister is consent authority pursuant to section 101.
- (8) In this section, **growth centre** means:
 - (a) a growth centre, within the meaning of the *Growth Centres (Development Corporations) Act 1974*, or
 - (b) a designated area, within the meaning of the *Albury-Wodonga Development Act 1974*.

94AB Contributions plans—making

- (1) A council may prepare and approve a contributions plan for the purpose of imposing conditions referred to in section 94.
- (2) One or more contributions plans may be made for all or any part of the council's area and in relation to one or more public amenities or public services.
- (3) The council must not approve a contributions plan that is inconsistent with any direction given to it under section 94A.
- (4) A draft contributions plan must be publicly exhibited for a period of not less than 28 days.
- (5) Except as provided by this section, the format, structure, subject-matter and procedures for the preparation, public exhibition, approval, amendment and repeal of a contributions plan are to be as prescribed.

- (6) It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a contributions plan have been complied with and performed.

94AC Contributions plans—judicial notice, validity etc

- (1) Judicial notice is to be taken of a contributions plan and of the date on which the plan came into effect.
- (2) The validity of any procedure required to be followed in making or approving a contributions plan is not to be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date on which the plan came into effect.
- (3) The amendment or repeal, whether in whole or in part, of a contributions plan does not affect the previous operation of the plan or anything duly done under the plan.

94A Directions by the Minister

- (1) The Minister may, generally or in any particular case or class of cases, direct a consent authority as to:
 - (a) the public amenities and public services in relation to which a condition referred to in section 94 may or may not be imposed,
 - (b) in the case of a condition referred to in that section requiring the payment of a monetary contribution:
 - (i) the means by which or the factors in relation to which the amount of the contribution may or may not be calculated or determined, and
 - (ii) the maximum amount of any such contribution, and
 - (c) the things which may or may not be accepted as a material public benefit pursuant to section 94 (2C).
- (2) A consent authority to which a direction is given under subsection (1) shall comply, and is hereby empowered to comply, with the direction in accordance with the terms of the direction.
- (3) Notwithstanding section 94, a consent authority shall not, in granting consent to a development application in relation to which a direction under subsection (1) applies, impose a condition which is not in accordance with the terms of the direction.

95 Notification of consent authority's determination to objectors etc

A consent authority shall notify, in the prescribed form, time and manner:

- (a) each person who made a submission under section 87 in respect of a development

application, of its determination of that application, and

- (b) each objector in respect of the application, of the rights under this Act of the applicant and each objector to appeal in respect of that determination.

96 Circumstances in which consent is taken to have been refused

(1) Where a consent authority has not determined a development application:

- (a) in respect of development other than development referred to in paragraph (b), (c) or (d)—within a period of 40 days after lodgment of that development application with the consent authority,
- (b) in respect of development referred to in section 78 other than development referred to in paragraph (c) or (d)—within a period of 60 days after lodgment of that development application with the consent authority, or
- (c) in respect of designated development (whether or not being development referred to in section 78):
- (i) except as provided in subparagraph (ii)—within 60 days after lodgment of that development application with the consent authority, or
- (ii) where that development application is available for inspection in accordance with section 86 for a period exceeding 30 days—within such period exceeding 60 days from the date of lodgment of that development application with the consent authority as the firstmentioned period exceeds 30 days, or
- (d) in respect of development (not being designated development), or part of development, about which the Minister has directed an inquiry under section 119—within a period of 40 days or, in the case of development referred to in section 78, within a period of 60 days after the Minister has complied with section 119 (8),

that consent authority shall, for the purpose only of section 97, be deemed to have determined that application by refusing consent on the date upon which that period expires.

- (2) Nothing in subsection (1) prevents a consent authority from determining a development application after the expiration of the period referred to in that subsection in relation to that development application.
- (3) A determination pursuant to subsection (2) shall not, subject to subsection (4), prejudice or affect the continuance or determination of an appeal made under section 97 in respect of a determination that is deemed by subsection (1) to have been made.
- (4) Where a determination pursuant to subsection (2) is made by granting consent, the consent authority shall be entitled, with the consent of the applicant and without

prejudice to costs, to have an appeal made under section 97 in respect of a determination that is deemed by subsection (1) to have been made, withdrawn at any time prior to the determination of that appeal.

97 Appeal by an applicant

- (1) An applicant who is dissatisfied with the determination of a consent authority with respect to his development application may appeal to the Court within 12 months after the date on which he received notice under section 92 in respect of that application or the date upon which that application is deemed to have been determined under section 96 (1).
- (1A) An applicant who is dissatisfied with a decision that a consent authority is not satisfied as to a matter, being a matter as to which it must be satisfied before a “deferred commencement” consent under section 91AA can operate, may appeal to the Court within 12 months after the consent authority notifies the applicant of its decision.
- (2) Where an appeal has been made under this section relating to a development application for consent to carry out designated development, each objector to that application shall be given notice by the consent authority of that appeal and shall, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, be entitled to be heard at the hearing of the appeal as if he were a party to the appeal.
- (3) Where:
 - (a) an appeal has been made under this section relating to a development application, and
 - (b) the concurrence of a Minister or public authority is required, as referred to in section 78, in relation to the application,that Minister or public authority shall be given notice by the consent authority of that appeal and shall, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, be entitled to be heard at the hearing of the appeal as if he or it were a party to the appeal.
- (4) An appeal under this section relating to a development application for consent to carry out designated development in respect of which an objection has been made under section 87 shall not be heard by the Court until after the expiration of the time within which an objector may appeal to the Court under section 98.

98 Appeal by an objector

- (1) An objector who is dissatisfied with the determination of a consent authority to grant consent to a development application either unconditionally or subject to conditions

may, within 28 days after the date on which notice of the determination was given under section 95, and in accordance with rules of court, appeal to the Court.

(2) Where an appeal has been made under subsection (1), the person who made the development application and the consent authority referred to in that subsection shall be given notice of that appeal, in accordance with rules of court, and shall be entitled to be heard at the hearing of the appeal as parties thereto.

(3) Where:

(a) an appeal has been made under subsection (1) relating to a development application,

(b) the consent authority referred to in subsection (1) is given notice of an appeal under that subsection, and

(c) the concurrence of a Minister or public authority is required, as referred to in section 78, in relation to the application,

that Minister or public authority shall be given notice of that appeal by the consent authority and shall, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, be entitled to be heard at the hearing of the appeal as if he or it were a party thereto.

99 Lapsing of consent

(1) A development consent lapses:

(a) 5 years after the date from which it operates, except as provided by paragraph (b), or

(b) in the case of a development consent that is subject to a condition under section 91AB (2), 5 years after the date from which the initial development consent operates, or 2 years after the date from which a later or the latest development consent granted in accordance with the condition operates, whichever is the longer.

(2) A consent authority, in granting development consent, may vary either or both of the periods referred to in subsection (1), despite that subsection.

(3) Such a variation 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 regulation to lapse within the period prescribed by regulation in relation to the consent.

(4) 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, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.

- (4A) Development consent for development other than that referred to in subsection (4) 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 under this section.
- (4B) If, in granting a development consent, the consent authority reduces the period referred to in subsection (1) (a) to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.
- (4C) The consent authority may grant the extension if satisfied that the applicant has shown good cause.
- (4D) A person making an application under subsection (4B) who is dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days after it is made, may, except where the application is made in respect of a consent granted by the Minister under section 101, appeal to the Court, and the Court may determine the appeal.
- (4E) An extension of 1 year granted under this section commences to run from the later of the following:
 - (a) the date on which the consent would have lapsed but for the extension,
 - (b) the date on which the consent authority granted the extension or, if the Court has allowed the extension in determining an appeal, the date on which the Court determined the appeal.
- (5) Where development is commenced within the period specified in subsection (1) but is not completed within that period, the consent authority, at any time after the expiration of that period, may, subject to this section, issue a notice requiring completion of the development within such time (not being less than 12 months from the date of service of the notice) as the consent authority considers reasonable, having regard to all relevant circumstances including the nature of the development.
- (5A) If a development is the subject of:
 - (a) a proposed strata development contract referred to in the *Strata Schemes*

(Freehold Development) Act 1973 or the *Strata Schemes (Leasehold Development) Act 1986*, or

(b) a development contract registered with a community plan or precinct plan under the *Community Land Development Act 1989*,

the relevant circumstances referred to in subsection (5) include the proposals relating to the stages in which the development is to be effected.

(6) Subject to subsections (8) and (9), a notice issued under subsection (5) shall:

(a) be in the prescribed form,

(b) take effect from the date when the notice is sent by post addressed to the owner of the land to which the consent applies, and

(c) operate according to its tenor.

(7) The consent authority shall, on or as soon as practicable after the day on which the notice is sent to the owner referred to in subsection (6), send a copy of the notice to:

(a) such persons (if any) as are, in the opinion of the consent authority, likely to be disadvantaged by the issue of the notice, and

(b) such persons (if any) as are referred to in the regulations for the purposes of this paragraph.

(8) Within 3 months of the date upon which the notice takes effect, any person aggrieved by the notice may, except where the notice is given in relation to a consent granted by the Minister under section 101, appeal to the Court, and the Court may determine the appeal.

(9) The Court shall determine the appeal under subsection (8) by:

(a) affirming the notice,

(b) varying the notice by substituting a different time stipulation, or

(c) cancelling the notice.

(10) The consent authority may extend the time stipulated in a notice issued under subsection (5):

(a) upon application being made in the prescribed form by the applicant or any other person entitled to act upon the consent, being an application made within the time so stipulated, and

(b) if the consent authority is satisfied that the applicant has shown good cause for the extension of the time.

- (11) A person making an application under subsection (10) and dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days of its being made, may appeal to the Court, and the Court may determine the appeal.

100 Joint hearing of certain appeals

- (1) If an appeal is made under section 97 with respect to a development application, the appeal shall, as far as practicable, be heard together with any appeals under section 98 made with respect to the application.
- (2) Without affecting subsection (1), if 2 or more appeals are made under section 98 with respect to the same development application, the appeals shall, as far as practicable, be heard together.
- (3) If 2 or more appeals are made under section 99 (8) with respect to the same notice referred to in that section, the appeals shall, as far as practicable, be heard together.

100A Carrying out of prohibited development

- (1) In this section and section 101:

prohibited development means:

- (a) development which cannot be carried out either with or without development consent, or
- (b) development the carrying out of which is prohibited under this Act.
- (2) Notwithstanding section 76 (3) or section 91 (2) or any other provision of this Act or the provisions of an environmental planning instrument:
- (a) the Minister may, subject to and in accordance with section 101, grant consent to the carrying out by a person of prohibited development, and
- (b) a person may, subject to and in accordance with a consent referred to in paragraph (a), carry out prohibited development.

101 Determination of development applications by the Minister

- (1) Where the Minister is of the opinion that it is expedient in the public interest to do so, having regard to matters which in the opinion of the Minister are of significance for State or regional environmental planning, the Minister may give a direction in writing to a consent authority to refer to the Secretary for determination by the Minister in accordance with this section a particular development application or a development application of a class or description of development applications.
- (2) Without limiting the generality of subsection (1), a direction may be given under that subsection in respect of a development application notwithstanding that the

development application is an application for consent to carry out prohibited development.

- (3) Where a direction is given under subsection (1), a consent authority (other than the Minister):
- (a) shall not determine in accordance with this Division any development application to which that direction applies, and
 - (b) shall forthwith after dealing, except as provided by paragraph (a), with the application:
 - (i) in accordance with this Division, or
 - (ii) in the case of a development application for consent to carry out prohibited development which is not designated development—in accordance with this Division and in accordance with the provisions of sections 84, 85, 86, 87 (1) and 90 as if the prohibited development were designated development, refer the application to the Secretary,
- and the provisions of section 96 shall not apply to or in respect of the development application.
- (4) The consent authority shall, by notice in writing, inform:
- (a) in the case of a development application, other than a development application for consent to carry out prohibited development—the applicant and any objector to that application, or
 - (b) in the case of a development application for consent to carry out prohibited development—the applicant and any person who made a submission under section 87 (1) in relation to that application,
- that the application has been referred to the Secretary for determination by the Minister and of the rights, under subsection (5), of the applicant and any such person.
- (5) The consent authority, the applicant and any person who made a submission under section 87 (1) in relation to the development application shall be afforded the opportunity of a hearing if so required by any of them before the Minister determines the application.
- (6) Where, pursuant to subsection (5), a hearing is required to be held, the Minister shall direct that an inquiry be held, in accordance with section 119, by a Commission of Inquiry appointed under section 119 (2), with respect to the application, and the consent authority, the applicant and any person who made a submission under section 87 (1) in relation to the development application shall be entitled to appear and be heard.

- (7) The Minister shall consider the findings and recommendations of the Commission of Inquiry (if any) appointed as referred to in subsection (6) before determining the development application in respect of which the inquiry was held.
- (8) The Minister may determine the development application:
- (a) by granting consent to that application either unconditionally or subject to such conditions as the Minister thinks fit, or
 - (b) by refusing consent to that application,
- and the provisions of sections 90 and (subject to section 100A) 91 and sections 91AA and 91AB apply to and in respect of the determination by the Minister under this section of a development application in the same way as they apply to and in respect of the determination by a consent authority under those sections of such an application.
- (9) The Minister's determination under subsection (8):
- (a) shall be final and the provisions of sections 97 and 98 shall not apply to or in respect of the determination, and
 - (b) where the determination has the effect of granting consent to the development application, shall be deemed to be a consent granted under this Division and take effect from the date of notification under subsection (10) to the applicant.
- (10) The Secretary shall notify the consent authority, the applicant and any person who made a submission under section 87 (1) in relation to the development application of the Minister's determination under subsection (8), and, where the determination is made by the granting of consent subject to conditions or by the refusing of consent, the notification shall indicate the reasons for the imposition of the conditions or the refusal.
- (11) Where the Minister, under subsection (8), determines a development application by the granting of consent, the Minister shall, for the purposes of this Act or any instrument in force under this Act, be deemed to be the consent authority, to the exclusion of any other consent authority, in relation to that application and that consent and any decision made by the Minister as the consent authority in relation to that application or that consent shall be final.
- (12) Where the Minister has given a direction under subsection (1), the Secretary may require the consent authority to furnish such information concerning development applications as the Secretary considers expedient for the purpose of enabling the Minister to exercise the Minister's functions under this section.

102 Modification of consents

- (1) Upon application being made in the prescribed form by the applicant or any other

person entitled to act upon the consent, a consent authority which has granted development consent under this Division may modify the consent where:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development,
- (b) it is satisfied that no prejudice will be caused to any person who objected to the development application the subject of that consent, and
- (c) it has consulted with the relevant Minister or public authority in respect of a condition referred to in section 82 (1) and that Minister or authority has not, within 21 days after being consulted, objected to the modification of that consent.

- (1A) In the case of a development consent referred to in section 93 (4) that is the result of an appeal, a copy of such an application is to be lodged by the applicant with the council of the relevant area or with such other person as may be prescribed by the regulations.
- (1B) An application under this section must be accompanied by the fee as prescribed by the regulations.
- (2) A development consent shall not be modified under this section where it relates to designated development or development which is required to be notified as if it were designated development, unless notice has been given, in accordance with the regulations, to the persons (if any) who made submissions under section 87 in relation to the application for the consent, and the consent authority shall consider any further submissions made by any of those persons within the prescribed period.
- (3) Where the development consent referred to in subsection (1) is a consent referred to in section 93 (4) or 101 (9) (b), the Court or the Minister, as the case may be, shall be deemed for the purposes of this section to be the consent authority.
- (3A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 90 as are of relevance to the development the subject of the application.
- (4) Modification of a development consent in accordance with this section shall not be construed as the granting of development consent under this Division but a reference in this or any other Act to a development consent shall be a reference to the development consent so modified.
- (5) A person making an application under subsection (1), and dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days of the application being made, may, except where the application is made in relation to a consent granted by the Minister under section 101, or except as may otherwise be provided by this section, appeal to the Court, and the Court may determine the appeal.

- (5A) Nothing in subsection (5) enables an appeal to be made against the determination of, or the failure to determine, an application to modify a development consent, being a development consent granted by the Court.
- (6) Nothing in this Act prevents the making and determination of a development application where the development to which the application relates is the subject of a development consent, and the foregoing provisions of this subsection apply whether or not that consent could be modified under this section.

103 Revocation or modification of development consent

(1) If at any time it appears to:

- (a) the Director, having regard to the provisions of any draft State environmental planning policy or draft regional environmental plan, or
- (b) a council (being the consent authority in relation to the development application referred to in this subsection), having regard to the provisions of any draft local environmental plan,

that any development for which consent under this Division is in force in relation to a development application should not be carried out or completed, or should not be carried out or completed except with modifications, he or it may, by instrument in writing, revoke or modify that consent.

- (2) Before revoking or modifying a consent as provided by subsection (1), the Director or council shall by notice in writing inform each person who in his or its opinion will be adversely affected by the revocation or modification of the consent of his or its intention to revoke or modify that consent and afford that person the opportunity of appearing before the Director or council or a person appointed by him or it to show cause why the revocation or modification should not be effected.
- (3) The revocation or modification of a development consent shall, subject to this section, take effect from the date upon which the instrument referred to in subsection (1) is served upon the owner of the land to which that consent applies.
- (4) Within 3 months of the date upon which the revocation or modification of a consent referred to in subsection (1) takes effect, the applicant for the consent, or any other person entitled to rely upon the consent, who is aggrieved by the revocation or modification may appeal to the Court, and the Court may determine the appeal.
- (5) The Court shall determine the appeal under subsection (4) by affirming, varying or cancelling the instrument of revocation or modification.
- (6) Where a development consent is revoked or modified under this section, any person aggrieved by the revocation or modification shall be entitled to recover from:
 - (a) where the Director is responsible for the issue of the instrument of revocation or

modification—the Government of New South Wales, or

(b) where a council is responsible for the issue of that instrument—that council,

compensation for expenditure incurred pursuant to that consent during the period between the date on which that consent becomes effective and the date of service of the notice under subsection (2) which expenditure is rendered abortive by the revocation or modification of that consent.

- (7) The Director or council shall, on or as soon as practicable after the date upon which the instrument referred to in subsection (1) is served upon the owner of the land referred to in subsection (3), cause a copy of the instrument to be sent to each person who is, in his or its opinion, likely to be disadvantaged by the revocation or modification of the consent.
- (8) This section does not apply to or in respect of a consent granted by the Court or by the Minister.

104 Register of consents

- (1) A council shall, in the prescribed form and manner (if any), keep a register of consents granted under this Division and of decisions on appeal from any determination made under this Division.
- (2) The register referred to in subsection (1) shall be available for public inspection, without charge, at the office of the council during ordinary office hours.

104A Validity of development consents

In the event that public notice of the granting of a consent is given in accordance with the regulations by a consent authority, the validity of the consent shall not be questioned in any legal proceedings except those commenced in the Court by any person at any time before the expiration of 3 months from the date on which public notice was so given.

104B Non-compliance with certain provisions regarding certain development consents

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, whether before or after the commencement of this section.
- (2) The only requirements of this Act that are mandatory in connection with the validity of a development consent to which this section applies are as follows:
- (a) A requirement that a development application to carry out designated development and its accompanying documents be publicly exhibited for the minimum period of time.
- (b) A requirement that a development application to carry out advertised development and its accompanying documents be publicly exhibited for the

minimum period of time.

104C Revocation or regrant of development consents after order of Court

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, whether before or after the commencement of this section, being a development consent to which an order of suspension under section 25B of the *Land and Environment Court Act 1979* applies.
- (2) The Minister may revoke a development consent to which this section applies, whether or not the terms imposed by the Court under section 25B of the *Land and Environment Court Act 1979* have been complied with.
- (3) However, if the terms imposed by the Court have been substantially complied with, the Minister may revoke the development consent to which this section applies and grant a new development consent with such alterations to the revoked consent as the Minister thinks appropriate having regard to the terms themselves and to any matters arising in the course of complying with the terms. Such a grant of a development consent is referred to as a **regrant** of the consent.
- (4) No preliminary steps need be taken with regard to the regrant of a development consent under this section, other than those that are required to secure compliance with those terms.
- (5) Section 92 and such other provisions of this Act as may be prescribed by the regulations apply to development consents regranted under this section.

104D Appeals and other provisions relating to development consents after order of Court

- (1) A development consent declared to be valid under section 25C of the *Land and Environment Court Act 1979*:
 - (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and
 - (b) is operative as from the date the development consent originally took effect or purported to take effect, unless the Court otherwise orders.
- (2) A development consent declared under section 25C of the *Land and Environment Court Act 1979* to be validly regranted:
 - (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and
 - (b) takes effect from the date of the declaration or another date specified by the Court.

105 Regulations respecting environmental impact statements under this Part

The regulations may make provision for or with respect to:

- (a) the furnishing of environmental impact statements for the purposes of this Part, and
- (b) any matters relating to environmental impact statements under this Part, being matters for or with respect to which regulations relating to environmental impact statements referred to in Part 5 may be made.

Division 2 Existing use

106 Definition of “existing use”

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 an environmental planning instrument which would, but for Division 4A of Part 3 or sections 100A and 101, 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 an environmental planning instrument having the effect of prohibiting the use, and
 - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

107 Continuance of and limitations on existing use

- (1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.
- (2) Nothing in subsection (1) authorises:
 - (a) any alteration or extension to or rebuilding of a building or work,
 - (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 instrument therein mentioned,
 - (b1) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use,
 - (c) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that

consent or in breach of any condition referred to in section 91 (3) (b), or

(d) the continuance of the use therein mentioned where that use is abandoned.

(3) Without limiting the generality of subsection (2) (d), a use shall be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

108 Regulations respecting existing use

(1) The regulations may make provision for or with respect to existing use 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,

(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 (in this section referred to as ***the incorporated provisions***) of any regulations in force for the purposes of subsection (1) shall be deemed to be incorporated in every environmental planning instrument.

(3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating 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 an environmental planning instrument extending, expanding or supplementing the incorporated provisions shall not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 101 to a development application for consent to carry out prohibited development within the meaning of section 100A.

109 Existing consent

(1) Nothing in an environmental planning instrument operates so as to require 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 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,

- (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 instrument therein mentioned,
 - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of the use therein mentioned,
 - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 91 (3) (b), or
 - (e) the continuance of the use therein mentioned where that use is abandoned.
- (3) Without limiting the generality of subsection (2) (e), a use shall be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

109A Uses unlawfully commenced

- (1) The use of a building, work or land which was unlawfully commenced shall not be rendered lawful by the occurrence of any subsequent event except:
- (a) the commencement of an environmental planning instrument which permits the use without the necessity for consent under this Act being obtained therefor, or
 - (b) the granting of development consent to that use.
- (2) The continuation of a use of a building or work or of land that was unlawfully commenced is, and shall be deemed always to have been, development of the land within the meaning of and for the purposes of any deemed environmental planning instrument applying, or which at any time applied, to or in respect of the building, work or land.

109B Saving of effect of existing consents

- (1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.
- (2) This section:
- (a) applies to consents lawfully granted before or after the commencement of this Act, and
 - (b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and
 - (c) has effect despite anything to the contrary in section 107 or 109.

(3) This section is taken to have commenced on the commencement of this Act.

Part 5 Environmental assessment

Division 1 Preliminary

110 Definitions

(1) In this Part:

activity means:

- (a) the erection of a building,
- (b) the carrying out of a work in, on, over or under land,
- (c) the use of land or of a building or work, and
- (d) the subdivision of land,

and includes any act, matter or thing for which provision may be made under section 26 and which is prescribed for the purposes of this definition, but does not include:

- (e) any act, matter or thing for which development consent under Part 4 is required or has been obtained, or
- (f) any act, matter or thing which is prohibited under an environmental planning instrument.

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 such financial accommodation, or financial accommodation of such class or description, as may be prescribed for the purposes of this definition by a determining authority so prescribed.

determining authority means a Minister or public authority and, in relation to any activity, means the Minister or public authority by or on whose behalf the activity is or is to be carried out or any Minister or public authority whose approval is required in order to enable the activity to be carried out.

nominated determining authority, in relation to an activity, means the determining authority nominated by the Minister in accordance with section 110A in relation to the activity.

proponent, in relation to an activity, means the person proposing to carry out the activity, and includes any person taken to be the proponent of the activity by virtue of

section 110B.

- (2) The Minister is not a determining authority in relation to an activity for the purposes of this Part merely because the Minister's approval is required under Division 4.

110A Nomination of nominated determining authority

- (1) Where the approval of more than one determining authority is required in relation to an activity or an activity of a specified class or description (either in respect of the carrying out of the activity or the granting of an approval in respect of the activity), the Minister may, by order published in the Gazette and in a newspaper circulating throughout the State, nominate a determining authority to be the nominated determining authority in relation to the activity or an activity of that class or description for the purposes of this Part.
- (2) Where, under subsection (1), the Minister has nominated a determining authority to be the nominated determining authority in relation to an activity or an activity of a specified class or description, any other determining authority which would otherwise be required to comply with the provisions of this Part in relation to the activity or an activity of that class or description is not required:
 - (a) to comply with section 112 (2) or (3), or
 - (b) to comply with section 113 (subsection (3) excepted),in relation to the activity or any activity which comes within that class or description but shall, in all other respects, comply with the relevant provisions of this Part.

110B Determining authorities taken to be proponents of activities

- (1) A proponent of an activity for the purposes of this Part is taken to include the following:
 - (a) the Forestry Commission in respect of forestry activities authorised by that Commission on land under the management of that Commission,
 - (b) any determining authority which the Minister certifies in writing to be the proponent of a particular activity specified in the certificate or which the regulations declare to be the proponent of activities of the kind specified in the regulations.
- (2) In any such case, a reference in this Part to a determining authority carrying out an activity includes a reference to the Forestry Commission or such a determining authority granting an approval in relation to the activity.

110C Determining authorities to have regard to register of critical habitat

Each determining authority must, for the purpose of exercising functions under this Part,

have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995*.

Division 2 Duty of determining authorities to consider environmental impact of activities

111 Duty to consider environmental impact

- (1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.
- (2) Without limiting subsection (1), a determining authority shall consider the effect of an activity on:
 - (a) any conservation agreement entered into under the *National Parks and Wildlife Act 1974* and applying to the whole or part of the land to which the activity relates, and
 - (b) any plan of management adopted under that Act for the conservation area to which the agreement relates, and
 - (c) any joint management agreement entered into under the *Threatened Species Conservation Act 1995*.
- (3) Without limiting subsection (1), a determining authority shall consider the effect of an activity on any wilderness area (within the meaning of the *Wilderness Act 1987*) in the locality in which the activity is intended to be carried on.
- (4) Without limiting subsection (1), a determining authority must consider the effect of an activity on:
 - (a) critical habitat, and
 - (b) in the case of threatened species, populations and ecological communities, and their habitats, whether there is likely to be a significant effect on those species, populations or ecological communities, or those habitats, and
 - (c) any other protected fauna or protected native plants within the meaning of the *National Parks and Wildlife Act 1974*.

Division 3 Activities for which EIS required

112 Decision of determining authority in relation to certain activities

- (1) A determining authority shall not carry out an activity, or grant an approval in relation to an activity, being an activity that is a prescribed activity, an activity of a prescribed kind or an activity that is likely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats, unless:
- (a) the determining authority has obtained or been furnished with and has examined and considered an environmental impact statement in respect of the activity:
 - (i) prepared in the prescribed form and manner by or on behalf of the proponent, and
 - (ii) except where the proponent is the determining authority, submitted to the determining authority in the prescribed manner,
 - (b) notice referred to in section 113 (1) has been duly given by the determining authority (or, where a nominated determining authority has been nominated in relation to the activity, by the nominated determining authority), the period specified in the notice has expired and the determining authority has examined and considered any representations made to it or any other determining authority in accordance with section 113 (2),
 - (c) the determining authority has complied with section 113 (3),
 - (c1) if Division 4 applies—any requisite approval of the Minister has been obtained and the activity is carried out in accordance with that approval,
 - (d) where it receives notice from the Secretary that the Minister has directed that an inquiry be held in accordance with section 119 with respect to the activity, the inquiry has been held and the determining authority has considered the findings and recommendations of the Commission of Inquiry and any advice given to it by the Minister in accordance with section 114, and
 - (e) where it receives notice from the Secretary that the Director has decided that an examination be undertaken in accordance with section 113 (5), that examination has been carried out and the determining authority has considered the report furnished to it in accordance with that subsection.
- (1A) A determining authority shall not grant an approval in relation to an activity referred to in subsection (1) that is to be carried out in respect of land that is, or is part of, a wilderness area (within the meaning of the [Wilderness Act 1987](#)) unless any consent to the activity required under that Act has been obtained.
- (1B) Without limiting subsection (1), a determining authority must not carry out an activity, or grant an approval in relation to an activity, being an activity that is in

respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless a species impact statement, or an environmental impact statement that includes a species impact statement, has been prepared (in each case) in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*.

(1C), (1D) (Repealed)

- (2) The determining authority or nominated determining authority, as the case requires, shall, as soon as practicable after an environmental impact statement is obtained by or furnished to it, as referred to in subsection (1), but before giving notice under section 113 (1), furnish to the Secretary a copy of the statement.
- (3) A determining authority or nominated determining authority, as the case requires, shall furnish such number of additional copies of an environmental impact statement to the Secretary as the Secretary may request.
- (4) Before carrying out an activity referred to in subsection (1) or in determining whether to grant an approval in relation to such an activity, a determining authority which is satisfied that the activity will detrimentally affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats:
 - (a) may, except where it is the proponent of the activity:
 - (i) impose such conditions or require such modifications as will in its opinion eliminate or reduce the detrimental effect of the activity on the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats, or
 - (ii) disapprove of the activity, or
 - (b) may, where it is the proponent of the activity:
 - (i) modify the proposed activity so as to eliminate or reduce the detrimental effect of the activity on the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats, or
 - (ii) refrain from undertaking the activity.
- (5) Where a determining authority, not being the proponent of an activity, imposes conditions as referred to in subsection (4) (a) (i) or disapproves of an activity as referred to in subsection (4) (a) (ii), the determining authority shall, by notice in writing to the proponent, indicate the reasons for the imposition of the conditions or for disapproving of the activity.
- (6) The provisions of subsection (4) have effect notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any

other Act.

- (6A) However, the provisions of subsection (4) do not authorise a determining authority which is the proponent of an activity to do anything contrary to an approval under Division 4.
- (7) Where a nominated determining authority has been nominated in relation to an activity, no other determining authority which may grant an approval in relation to the activity shall be concerned to inquire whether or not the nominated determining authority has complied with this section or section 113.

112A Determining authorities to have regard to recovery plans and threat abatement plans

A determining authority, in considering a species impact statement, must have regard to the terms of any recovery plan or threat abatement plan relating to the land referred to in the species impact statement for the purposes of assessing any effect on a threatened species, population or ecological community, or its habitat.

112B Consultation with Minister for the Environment if Minister is determining authority

- (1) A Minister who is a determining authority must not carry out, or grant an approval to carry out, an activity in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless that Minister has consulted with the Minister administering the [Threatened Species Conservation Act 1995](#).
- (2) In so consulting, the Minister administering the [Threatened Species Conservation Act 1995](#) must provide the Minister who is the determining authority with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination of the activity. If that Minister does not accept any one or more of the recommendations, that Minister must include the recommendations not accepted and the Minister's reasons for not accepting them in the determination.

112C Concurrence of or consultation with Director-General of National Parks and Wildlife if Minister is not determining authority

- (1) A determining authority (not being a Minister) must not carry out, or grant an approval to carry out, an activity:
- (a) that is to be carried out in respect of land that is, or is part of, critical habitat, or
 - (b) that is likely to significantly affect a threatened species, population or ecological community or its habitat,
- without the concurrence of the Director-General of National Parks and Wildlife.
- (2) Despite subsection (1), if the Minister administering the [Threatened Species](#)

Conservation Act 1995 considers that it is appropriate, that Minister may elect to act in the place of the Director-General of National Parks and Wildlife for the purpose of that subsection. However, if the Minister so elects, the Minister must:

- (a) consult the Director-General of National Parks and Wildlife and seek the Director-General's recommendations in respect of the proposed activity, and
- (b) if the Minister does not accept any one or more of those recommendations—specify, in the determination as to the grant or refusal to grant concurrence under this section, the recommendations that were not accepted and the Minister's reasons for not accepting them.

- (3) Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82 apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under this section in the same way as they apply to and in respect of the granting of concurrence required by an environmental planning instrument.

112D Matters to be considered by Director-General of National Parks and Wildlife as concurrence authority

In deciding whether or not concurrence should be granted under section 112C, the Director-General of National Parks and Wildlife (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement prepared in relation to the activity,
- (b) any assessment report prepared by or on behalf of the proponent,
- (c) any representations made under section 113 concerning the species impact statement,
- (d) any relevant recovery plan or threat abatement plan,
- (e) whether the activity is likely to reduce the long-term viability of the species, population or ecological community in the region,
- (f) whether the activity is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,
- (g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (h) the likely social and economic consequences of granting or of not granting concurrence.

112E Matters to be considered by Minister or Director-General of National Parks and

Wildlife when consulted

The Minister administering the *Threatened Species Conservation Act 1995* (for the purposes of consultation under section 112B) or the Director-General of National Parks and Wildlife (for the purposes of consultation under section 112C) (or the Minister administering the *Threatened Species Conservation Act 1995*, if that Minister acts under that section) must take the following matters into consideration:

- (a) any species impact statement prepared in relation to the activity,
- (b) any assessment report prepared by or on behalf of the proponent,
- (c) any representations made under section 113 concerning the species impact statement,
- (d) whether the activity is likely to reduce the long-term viability of the species in the region,
- (e) whether the activity is likely to place the species at risk of becoming endangered as described in section 10 of the *Threatened Species Conservation Act 1995*,
- (f) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (g) the likely social and economic consequences if the activity is not carried out.

113 Publicity and examination of environmental, fauna and species impact statements

- (1) A determining authority shall give notice in the prescribed form and manner that a copy of an environmental impact statement prepared by or submitted to it, as referred to in section 112 (1), may be inspected at:
 - (a) the office of the determining authority and the Department at any time during ordinary office hours, and
 - (b) such other premises operated or controlled by them respectively and at such times as may be prescribed,within such period, being not less than 30 days after the day on which the notice is given, as may be specified in the notice.
- (2) Any person may, during the period specified in the notice, inspect the environmental impact statement (except any part thereof the publication of which would, in the opinion of the determining authority, be contrary to the public interest by reason of its confidential nature or for any other reason) and may within that period make representations in writing to the determining authority with respect to the activity to which the environmental impact statement relates.
- (3) A determining authority shall, as soon as practicable and not less than 21 days before

carrying out an activity or granting an approval in relation to an activity, being an activity referred to in section 112 (1), furnish to the Secretary a copy of any representations made to it under subsection (2) with respect to the activity.

- (4) A proponent not entitled to copyright in an environmental impact statement referred to in section 112 (1) shall be deemed to have indemnified all persons using the environmental impact statement for the purposes of this Part against any claim or action in respect of a breach of copyright in the statement.
- (5) Except where the Minister has directed that an inquiry be held in accordance with section 119 or Division 4 applies, the Director may examine or cause to be examined in the Department an environmental impact statement furnished in accordance with section 112 (2) and any representations made with respect to the activity to which the statement relates under subsection (2) and shall forward, as soon as practicable to the relevant determining authority, a report containing the findings of that examination together with any recommendations arising therefrom.
- (6) After the report referred to in subsection (5) has been forwarded to the determining authority, the Director shall make public that report.
- (7) Any public authority or body to which an appeal may be made by or under any Act in relation to the activity the subject of an examination carried out under subsection (5) shall, in deciding the appeal, consider and take into account the report forwarded to the determining authority under that subsection.
- (8) In this section, **environmental impact statement** includes a fauna impact statement and a species impact statement.

114 Consideration of findings and recommendations of Commission of Inquiry

Where the Minister has directed that an inquiry be held, in accordance with section 119, with respect to any activity referred to in section 112 (1):

- (a) the Minister shall consider the findings and recommendations of the Commission of Inquiry and forward to the relevant determining authority (whether or not that determining authority is the nominated determining authority) a copy of the findings and recommendations and may give advice to the authority as to whether, in the Minister's opinion:
 - (i) there are no environmental grounds which would preclude the carrying out of the activity to which the findings and recommendations relate in accordance with the proponent's proposal,
 - (ii) there are no environmental grounds which would preclude the carrying out of the activity subject to its being modified in the manner specified in the advice,
 - (iii) there are no environmental grounds which would preclude the carrying out of the

activity subject to the observance of conditions specified in the advice, or

(iv) there are environmental grounds which would preclude the carrying out of the activity, and

(b) any public authority or body to which an appeal may be made by or under any Act in relation to the activity shall, in deciding the appeal, consider and take into account the findings and recommendations of the Commission of Inquiry and any such advice given by the Minister.

115 Regulations

The regulations may make provision for or with respect to:

- (a) the factors to be taken into account when consideration is being given to the likely impact of an activity on the environment,
- (b) the preparation, contents, form and submission of environmental impact statements,
- (c) the making of environmental impact statements available for public comment, or
- (d) the methods of examination of environmental impact statements and representations made with respect to activities to which any such statements relate.

Division 4 Minister administering this Act to be approving authority instead of proponent where EIS prepared

115A Requirement for Minister's approval

- (1) A determining authority is not to carry out an activity to which this Division applies if it is the proponent of the activity unless the Minister has approved of the activity being carried out. The determining authority is to comply with any conditions to which such an approval is subject.
- (2) This Division applies to an activity only if:
 - (a) the proponent has obtained an environmental impact statement in respect of the activity, and
 - (b) the proponent of the activity is not an authority excluded from this Division by section 115D.
- (3) When considering whether to approve of an activity, the Minister is to review the decision of the proponent to carry out the activity having regard to the assessment of the activity under this Part and the rights and obligations of the proponent.
- (4) When considering whether to modify an approval granted under this Division, the Minister is required to review the decision of the proponent to modify the activity having regard to the assessment of the modification under this Part and the rights and

obligations of the proponent.

115B Minister's approval

- (1) A proponent may seek the Minister's approval under this Division after it has complied with section 112 (1) (a)–(c). The proponent must also have complied with section 112B or 112C, or both, as the case requires.
- (2) If a proponent seeks the Minister's approval under this Division, the Minister is required to approve of the activity (with or without conditions or modifications) or disapprove of the activity. The Minister is to notify the proponent of the decision and indicate the reasons for any conditions or modifications or any disapproval of the activity.
- (3) The Minister, when approving of an activity, must consider the environmental impact of the activity in accordance with section 111.
- (4)–(6) (Repealed)
- (7) If the Minister has directed that an inquiry be held in accordance with section 119 with respect to an activity to which this Division applies, the Minister is to defer a decision on the activity until the proponent advises the Minister whether it proposes to proceed with or modify the activity following its consideration of the findings and recommendations of the Commission of Inquiry and any advice of the Minister.
- (8) The Minister's decision on an activity is to be made within 21 days after the Minister receives the Director's report under section 115C or (if subsection (7) applies) within 21 days after the proponent advises the Minister that it proposes to proceed with or modify the activity. The proponent may agree to an extension of any such period.
- (9) If the Minister's decision is not made within the period required by subsection (8), the approval of the Minister under this Division is no longer required in respect of the activity. This subsection does not affect any obligation of the proponent under the other Divisions of this Part.

115BA Modification of Minister's approval

- (1) A reference in this section to a ***modification of an approval*** is a reference to revoking or varying a condition of the approval or imposing an additional condition on the approval.
- (2) A proponent may request the Minister to modify an approval granted under this Division if the proponent intends to modify the approved activity so that it will be inconsistent with the approval.
- (3) A proponent does not need to obtain the Minister's modification of an approval if the activity as modified will be consistent with the approval.

- (4) The proponent must consider in accordance with section 111 the environmental impact of the modification of the activity. For that purpose, a reference in that section to an activity is taken to be a reference to the activity only to the extent that it is proposed to be modified.
- (5) A modification of an approval may be sought:
 - (a) if a further environmental impact statement is required under this Part because of the proposed modification of the activity, only after the proponent has complied with section 112 (1) (a)–(c) in respect of the proposed modified activity, or
 - (b) if a further environmental impact statement is not so required, only after particulars of the proposed modification of the activity have been publicly exhibited in accordance with the regulations.
- (6) If a proponent requests modification of an approval under this Division, the Minister is required to modify the approval (with or without conditions or revising the requested modification) or disapprove of the modification. The Minister is to notify the proponent of the decision and indicate the reasons for any conditions or revision of the requested modification or any disapproval of the modification of the approval.
- (7) The Minister, when modifying an approval, must consider in accordance with section 111 the environmental impact of the modification of the activity. For that purpose, a reference in that section to an activity is taken to be a reference to the activity only to the extent that it is proposed to be modified.
- (8) If the Minister has directed that an inquiry be held in accordance with section 119 with respect to the proposed modification of the approval, the Minister is to defer a decision on the modification until the proponent advises the Minister whether it proposes to proceed with or revise the requested modification following its consideration of the findings and recommendations of the Commission of Inquiry and any advice of the Minister.
- (9) The Minister's decision on a modification of an approval is to be made within 21 days after:
 - (a) the Minister receives the Director's report under section 115C, or
 - (b) the proponent advises the Minister that it proposes to proceed with or revise the requested modification, if subsection (8) applies.

The proponent may agree to an extension of the period.

- (10) If the Minister's decision is not made within the period required by subsection (9), the Minister is taken to have modified the approval as requested by the proponent. This subsection does not affect any obligation of the proponent under the other Divisions of this Part.

115BB Reports and consultation

- (1) Before deciding whether to grant or modify an approval under this Division, the Minister is to obtain a report from the Director under section 115C. A report is not required if the Minister has directed that an inquiry be held in accordance with section 119.
- (2) If the proponent is not a Minister, the Minister is to consult the Minister responsible for the proponent before making a decision under this Division.
- (3) When making a decision under this Division, the Minister is to take into account any report of the Director under section 115C, any findings or recommendations of a Commission of Inquiry and (if the proponent is not a Minister) any submission from the Minister responsible for the proponent.

115C Director's report

- (1) The Director is to report to the Minister on the assessment of a proposed activity under this Part and the decision of the proponent to carry out the activity.
- (1A) The Director is also to report to the Minister on the assessment of a proposed modification of an activity for which the Minister's approval is required under this Division, whether or not a further environmental impact statement is required under this Part.
- (2) When preparing a report relating to the granting of an approval under this Division or the modification of such an approval (if an environmental impact statement is required), the Director is to examine the environmental impact statement, the representations made in response to the public exhibition of the statement, any submissions from the proponent and any other thing the Director considers relevant.
- (2A) When preparing a report relating to the modification of an approval granted under this Division (if an environmental impact statement is not required), the Director is to examine the representations made in response to the public exhibition of the proposal, any submissions from the proponent and any other thing the Director considers relevant.
- (3) A copy of the report is to be given to the proponent immediately after it is given to the Minister.
- (4) The report is to be made within 3 months after the proponent seeks the Minister's approval under this Division to carry out the activity or within 30 days after the proponent seeks the Minister's modification of such an approval. The proponent may agree to an extension of any such period.
- (5) If the report is not made within the period required by subsection (4), the approval of the Minister under this Division, or the Minister's modification of such an approval, is

no longer required in respect of the activity. This subsection does not affect any obligation of the proponent under the other Divisions of this Part.

- (6) The Director may make a report under this section even though an inquiry is held in accordance with section 119. However, subsections (4) and (5) do not apply to the report.

115D Excluded determining authorities

The following determining authorities are excluded from this Division:

- (a) the Minister or the corporation constituted by section 8 (1),
- (b) a council or county council,
- (c) any person or body excluded from this Division by an Act or by the regulations.

115E Miscellaneous provisions

- (1) Any public authority or body to which an appeal may be made by or under any Act in relation to an activity to which this Division applies is, in deciding the appeal, to consider and take into account a report of the Director to the Minister under section 115C and the decision of the Minister.
- (2) The following are to be made public:
 - (a) a decision of the Minister to approve (with or without conditions or modification) or to disapprove of an activity under this Division (together with any report of the Director under section 115C),
 - (b) a decision of the Minister to modify (with or without conditions) an approval of an activity under this Division or to refuse to modify such an approval (together with any report of the Director under section 115C).
- (3) (Repealed)
- (4) A proponent obtains an environmental impact statement for the purposes of this Division if it obtains an environmental impact statement itself or if it is furnished, at its request, with such a statement.

115F Transitional arrangements

- (1) This Division does not apply to an activity if:
 - (a) the proponent obtained the environmental impact statement before the commencement of this Division, or
 - (b) the proponent obtained the environmental impact statement after that commencement, but the Director had duly notified the person preparing the statement before that commencement of requirements with respect to the form

and contents of the statement.

- (2) However, if the activity to which an environmental impact statement relates has not been carried out, this Division applies to the activity if the Minister (by notice in writing to the proponent) so directs.

Part 6 Implementation and enforcement

Division 1 General

116 (Repealed)

117 Directions by the Minister

- (1) The Minister may direct a public authority or person having functions under this Act or an environmental planning instrument to exercise those functions at or within such times as are specified in the direction.
- (2) In addition to any direction which may be given under subsection (1), the Minister may direct a council:
 - (a) to exercise its functions under Division 4 or 5 of Part 3 in relation to the preparation of a draft local environmental plan in accordance with such principles, not inconsistent with this Act, as are specified in the direction, and
 - (b) without limiting paragraph (a), to include in a draft local environmental plan prepared by the council provisions which will achieve or give effect to such principles or such aims, objectives or policies, not inconsistent with this Act, as are specified in the direction.
- (3) A public authority or person to whom a direction is given under subsection (1) or (2) shall comply, and is hereby empowered to comply, with the direction in accordance with the terms of the direction.
- (4) Before giving a direction under subsection (1) or (2), the Minister shall consult with the responsible Minister concerned.

117A Power of entry

- (1) The Director or a council may authorise a person, in writing, to carry out inspections for the purposes of this Act, the regulations and any environmental planning instrument.
- (2) A person authorised under subsection (1) may enter any land or any place on any land and may thereon or therein carry out such inspections and surveys and take such measurements and such photographs as the person considers necessary in connection with the administration of this Act, the regulations and any environmental planning instrument.

- (3) Subsection (2) does not authorise a person to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises.
- (4) A person authorised under subsection (1), in exercising a function conferred by subsection (2) in relation to any land or any place on any land, shall, if so required by a person apparently in charge of that land or place, produce the instrument of his or her authority to that person.

117B Obstruction of authorised person

A person shall not obstruct, hinder or interfere with a person authorised under section 117A (1) in the exercise of the person's functions under section 117A.

118 Appointment of environmental planning administrator

- (1) Where, as a consequence of a failure, in the opinion of the Minister, of a council to comply with, carry into effect or enforce the provisions of this Act, an environmental planning instrument, a direction under section 55, a direction under section 94A or a direction under section 117, the Minister considers it proper to do so, the Minister may, with the concurrence of the Minister for Local Government, by order published in the Gazette, appoint a person to administer all, or such part as is specified in the order, of the functions conferred or imposed on the council by or under this Act.
- (2)-(4) (Repealed)
- (5) Notwithstanding subsection (1), the person shall not enter into contracts in the exercise of the person's functions except with the consent of the Minister and the concurrence of the Minister for Local Government.
- (6) The person shall, during the period of the person's appointment under subsection (1), be deemed to be and have the functions of the council specified in the order of the person's appointment.
- (7) In respect of the period of a person's appointment under subsection (1), there is payable to the Director, for transmission to the Consolidated Revenue Fund, out of the consolidated fund of the council such remuneration and such costs and expenses as the Minister determines with the concurrence of the Minister for Local Government.
- (8) The regulations may make provision for or with respect to the functions of the person in connection with the person's appointment and, in particular, for or with respect to:
 - (a) the accommodation, if any, to be provided at the offices of the council for the person and any other persons assisting the person in the exercise of those functions, and
 - (b) requiring officers and employees of the council to render all necessary assistance to the person in the exercise of the person's functions in accordance with the

person's appointment and any such officers and employees not to obstruct the person in the exercise of the person's functions.

Division 2 Public inquiries and settlement of disputes

119 Public inquiry

- (1) The Minister may at any time direct that an inquiry be held, in accordance with this section, by a Commission of Inquiry appointed under subsection (2) with respect to:
 - (a) any matter relating to the administration and implementation of the provisions of this Act or any environmental planning instrument or relating to the administration and implementation of the provisions of any other Act administered by the Minister,
 - (b) all or any of the environmental aspects of proposed development the subject of a development application (whether or not it is designated development), or of a part of any such proposed development, or
 - (c) all or any of the environmental aspects of an activity referred to in section 112 (1), or of a part of any such activity, or
 - (d) a proposal to constitute, alter or abolish a development area under section 132 or 133.
- (2) Where, pursuant to subsection (1) or section 49 (1) or 101 (6), an inquiry is directed to be held, the Minister may appoint one or more Commissioners of Inquiry to constitute a Commission of Inquiry to hold the inquiry and may appoint one or more persons to assist such a Commission.
- (3) Any person appointed under subsection (2) to assist a Commission of Inquiry shall be paid such remuneration and allowances as may be determined in respect of the person by the Minister.
- (3A) Where the Chairperson of Commissioners of Inquiry is appointed with one or more Commissioners of Inquiry to constitute a Commission of Inquiry, the Chairperson shall preside at the proceedings of the Commission.
- (3B) Except as provided by subsection (3A), where the Deputy Chairperson of Commissioners of Inquiry is appointed with one or more Commissioners of Inquiry to constitute a Commission of Inquiry, the Deputy Chairperson shall preside at the proceedings of the Commission.
- (4) Where there is more than one Commissioner of Inquiry constituting a Commission of Inquiry, neither or none of whom is the Chairperson of Commissioners of Inquiry or the Deputy Chairperson of Commissioners of Inquiry, the Minister shall appoint one of the Commissioners to preside at the proceedings of the Commission.

- (5) Except as provided in subsection (1), a Commission of Inquiry is not subject to directions by the Minister or any other person in relation to the contents of its report, findings or recommendations.
- (6) A Commission of Inquiry constituted under this section shall hold an inquiry in accordance with the direction of the Minister or Director, as referred to in subsection (1) or (2), shall report its findings and recommendations to the Minister or Director, as the case may be, and shall, after so reporting, but subject to subsection (7), make public those findings and recommendations.
- (7) A Commission of Inquiry shall not make public any evidence or matters in respect of which directions have been given under section 120 (5) (b) or matters the publication of which is excepted from section 120 (8).
- (8) If the inquiry was held with respect to proposed development (other than designated development), or part of any such proposed development, the subject of a development application, a copy of the findings and recommendations, and of any comment that the Minister may consider appropriate to make on them, must be forwarded by the Minister:
 - (a) to the consent authority having the function of determining the application, and
 - (b) to any public authority whose concurrence to the granting of consent to the application is required.

120 Procedure at inquiries

- (1) Subject to this section, an inquiry by a Commission of Inquiry constituted under section 119 shall be held in public and evidence in the inquiry shall be taken in public and may be required to be taken on oath or affirmation.
- (2) Before a Commission of Inquiry commences to hold an inquiry, it shall give reasonable notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold the inquiry, of the subject of the inquiry and of the time and place at which the inquiry is to be commenced.
- (3) A Commissioner of Inquiry may, by writing signed by the Commissioner summon a person to appear before the Commission of Inquiry at a time and place specified in the summons to give evidence and to produce such books and documents (if any) as are referred to in the summons.
- (4) A person served with a summons to appear as a witness at an inquiry by a Commission of Inquiry shall not, without reasonable excuse:
 - (a) fail to attend as required by the summons, or
 - (b) fail to appear and report himself or herself from day to day unless excused or released from further attendance by or on behalf of the Commission.

Maximum penalty: 10 penalty units.

- (5) Where a Commission of Inquiry is satisfied that it is desirable to do so in the public interest by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may:
- (a) direct that an inquiry or a part of an inquiry shall take place in private and give directions as to the persons who may be present, or
 - (b) give directions prohibiting or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission,
- or do both of those things.
- (6) A Commission of Inquiry may, if it thinks fit, permit a person appearing as a witness before the Commission to give evidence by tendering, and verifying by oath or affirmation, a written statement.
- (7) Where a Commission of Inquiry considers that the attendance of a person as a witness before the Commission would cause serious hardship to the person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the Commission allows.
- (8) Where evidence is given to a Commission of Inquiry by a written statement in accordance with subsection (6) or (7), the Commission shall make available to the public in such manner as the Commission thinks fit the contents of the statement other than any matter the publication of which, in the opinion of the Commissioner, would be contrary to the public interest by reason of its confidential nature or for any other reason.
- (9) Subject to this section and the regulations:
- (a) the procedure to be followed at an inquiry by a Commission of Inquiry shall be determined by the Commission, and
 - (b) a Commission of Inquiry is not bound by the rules of evidence.
- (10) An oath or an affirmation may be administered for the purposes of this section by a Commissioner of Inquiry or by any person authorised by the [Oaths Act 1900](#) to administer a judicial oath.
- (11) Nothing in this section derogates from any law relating to Crown privilege.
- (12) This section is subject to section 120A.

120A Additional procedural requirements where water licence or water approval is

involved

- (1) A Commission of Inquiry must cause notice to be given to the Water Administration Ministerial Corporation if, before or at any time up to the conclusion of an inquiry held by it into:
 - (a) the environmental aspects of any proposed development the subject of a development application, whether or not it is designated development, or
 - (b) the environmental aspects of any activity referred to in section 112 (1),it is of the opinion that the development or activity involves a work that may require a water licence or a work that may require a water approval.
- (2) For the purposes of subsection (1), an inquiry concludes when the Commission of Inquiry provides its report on the inquiry to the Minister under section 119 (6), regardless of when any public hearings conducted in connection with the inquiry are concluded.
- (3) The Commission of Inquiry must also cause notice to be given to the applicant for the development, or the proponent of the activity, advising that an application for a water licence or for a water approval should be made promptly if it has not already been made.
- (4) The Commission of Inquiry must defer concluding its inquiry for sufficient time to enable the applicant or proponent:
 - (a) to make an application for a water licence under section 10, and for objectors to lodge objections in accordance with section 11, of the [Water Act 1912](#), or
 - (b) to make an application for a water approval under section 167, and for objectors to make objections in accordance with section 170, of that Act.
- (5) As soon as practicable after the applicant's or proponent's:
 - (a) application for a water licence is referred to it under section 11A of the [Water Act 1912](#), or
 - (b) application for a water approval is referred to it under section 171A of that Act,the Commission of Inquiry must give at least 28 days notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold a public hearing in connection with the application concerned and of the time and place at which that hearing is to be held.
- (6) The advertisement under subsection (5) may, but need not, form part of the advertisement referred to in section 120 (2).
- (7) In addition to considering any submissions that are made to it in the course of its

inquiry, the Commission of Inquiry must consider:

- (a) the application for a water licence or for a water approval, and
 - (b) any objection to the granting of a water licence, or a water approval, that has been referred to it under section 11A, or under section 171A, of the [Water Act 1912](#).
- (8) In any report prepared by it under section 119 (6), the Commission of Inquiry must include findings and recommendations with respect to:
- (a) the question of whether or not a water licence or a water approval should be granted, and
 - (b) the period, term, limitations and conditions of any such licence or approval.
- (9) The Commission of Inquiry must cause a copy of any such report to be given to the Water Administration Ministerial Corporation.
- (10) This section extends to any inquiry that had been begun by a Commission of Inquiry, but in respect of which a report had yet to be made under section 119 (6), as at the commencement of this section.
- (11) The regulations may make further provision for or with respect to the procedure of a Commission of Inquiry in relation to those aspects of its inquiry that relate to the granting of a water licence or a water approval.
- (12) In this section:

water approval means an approval under Part 8 of the [Water Act 1912](#).

water licence means a licence under Division 3 of Part 2 of the [Water Act 1912](#).

121 Settlement of disputes

- (1) Where a dispute arises between the Department or the Director, and a public authority, other than a council, with respect to:
- (a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument, or
 - (b) the exercise of any function conferred or imposed upon the Department or the Director or upon the public authority by or under this Act, the regulations or an environmental planning instrument,
- a party to the dispute may submit that dispute to the Premier for settlement in accordance with this section.
- (2) Where a dispute arises between a public authority (including the Department and the

Director) and a council with respect to:

- (a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument, or
- (b) the exercise of any function conferred or imposed upon the public authority or council by or under this Act, the regulations or an environmental planning instrument,

a party to the dispute may submit that dispute to the Minister for settlement in accordance with this section.

- (3) On the submission of a dispute to the Premier or the Minister under subsection (1) or (2), the Premier or Minister may appoint a Commissioner of Inquiry to hold an inquiry and make a report to the Premier or the Minister with respect to that dispute or may himself or herself hold an inquiry with respect to that dispute.
- (4) After the completion of an inquiry held under subsection (3) and, where a report is made to the Premier or the Minister under that subsection, after consideration by the Premier or the Minister of that report, the Premier or the Minister, as the case may be, may make such order with respect to the dispute, having regard to the public interest and to the circumstances of the case, as the Premier or the Minister thinks fit.
- (5) An order made by the Premier or the Minister under subsection (4) may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.
- (6) The Department, the Director, a council or other public authority, as the case may be, shall comply with an order given under subsection (4), and shall, notwithstanding the provisions of any Act, be empowered to comply with any such order.
- (7) The provisions of any other Act relating to the settlement of disputes do not apply to the settlement of a dispute referred to in subsection (1) or (2).

Division 3 Orders of the Court

122 Definitions

In this Division:

- (a) a reference to a breach of this Act is a reference to:
 - (i) a contravention of or failure to comply with this Act, and
 - (ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act, and
- (b) a reference to this Act includes a reference to:
 - (i) an environmental planning instrument,

- (ii) a consent granted under this Act, and
- (iii) a condition subject to which a consent referred to in subparagraph (ii) was granted.

123 Restraint etc of breaches of this Act

- (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) 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.
- (4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

124 Orders of the Court

- (1) Where the Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (2) Without limiting the powers of the Court under subsection (1), an order made under that subsection may:
 - (a) where the breach of this Act comprises a use of any building, work or land—restrain that use,
 - (b) where the breach of this Act 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) where the breach of this Act 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 was committed.
- (3) Where a breach of this Act would not have been committed but for the failure to obtain a consent under Part 4, the Court, upon application being made by the defendant, may:

- (a) adjourn the proceedings to enable a development application to be made under Part 4 to obtain that consent, and
 - (b) in its discretion, by interlocutory order, restrain the continuance of the commission of the breach while the proceedings are adjourned.
- (4) The functions of the Court under this Division are in addition to and not in derogation from any other functions of the Court.
- (5) Nothing in this section affects the provisions of Division 3 of Part 3 of the *Land and Environment Court Act 1979*.

Division 4 Offences

125 Offences against this Act and the regulations

- (1) Where any matter or thing is by or under this Act, other than by or under the regulations, directed or forbidden to be done, or where the Minister, the Director, a council or any other person is authorised by or under this Act, other than by or under the regulations, to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against this Act.
- (2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where the Minister, the Director, a council or any other person is authorised by the regulations to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against the regulations.
- (3) Nothing in subsection (1) or (2) applies in respect of a direction given under this Act by the Minister to a public authority.

126 Penalties

- (1) A person guilty of an offence against this Act shall, for every such offence, be liable to the penalty expressly imposed and if no penalty is so imposed to a penalty not exceeding 1,000 penalty units and to a further daily penalty not exceeding 100 penalty units.
- (2) A person guilty of an offence against the regulations is liable to a penalty not exceeding 100 penalty units.
- (3) Where a person is guilty of an offence involving the destruction of or damage to a tree or vegetation, 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 vegetation and maintain those trees and vegetation to a mature growth, and
- (b) to provide security for the performance of any obligation imposed under paragraph (a).

127 Proceedings for offences

- (1) Proceedings for an offence against this Act may be taken before a Local Court constituted by a Magistrate sitting alone or before the Court in its summary jurisdiction.
- (2) Proceedings for an offence against the regulations may be taken before a Local Court constituted by a Magistrate sitting alone.
- (3) If proceedings in respect of an offence against this Act are brought in a Local Court constituted by a Magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provisions of this Act, 100 penalty units or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.
- (4) If proceedings in respect of an offence against this Act are brought in the Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.
- (5) Proceedings in the Court in its summary jurisdiction in respect of an offence against this Act may be commenced not later than 6 months after the offence was alleged to be committed.
- (6) (Repealed)
- (7) A person shall not be convicted of an offence against this Act where the matter constituting the offence is, at the date upon which the conviction would, but for this subsection, be made:
 - (a) the subject of proceedings under section 123, which proceedings have not been concluded, or
 - (b) the subject of an order made under section 124.
- (8) Nothing in subsection (7) precludes a conviction being made where the proceedings referred to in paragraph (a) of that subsection are concluded otherwise than by the making of an order under section 124.

Part 7 Finance

Division 1 Funds

128 Department of Environment and Planning Account

The Account which has been established in the Special Deposits Account in the Treasury pursuant to section 30 (1) of the *State Planning Authority Act 1963* shall be continued under a name determined by the Treasurer.

129 Funds generally

- (1) In connection with the Account referred to in section 128, there shall be created in the books of the Department the following funds:
 - (a) a Development Fund in respect of each development area (each of which funds is referred to in this Part as a **Development Fund**), and
 - (b) the Trust Fund (which is referred to in this Part as **the Trust Fund**).
- (2) The funds shall be separate and distinct.

130 Development Funds

- (1) The Development Fund in respect of each development area shall consist of:
 - (a) all money borrowed for the purpose of the acquisition or development of land within the development area and for the purpose of repaying or renewing a loan obtained for that purpose and the proceeds of any levy or assessment made by the corporation for the purpose of repaying money so borrowed or renewing such a loan,
 - (b) the proceeds of the sale or lease by the corporation of any land situated within the development area,
 - (c) all money and land directed by or under this Act to be allocated to the Development Fund,
 - (d) all money received as a result of the investment of the Development Fund as authorised by this Act, and
 - (e) such other money as the Treasurer authorises to be paid into the Development Fund.
- (2) All land vested in the corporation and situated within a development area shall form part of the assets of the Development Fund in respect of that development area.
- (3) The Development Fund in respect of each development area may be applied to any of the following purposes:

- (a) the acquisition or development of any land within the development area,
- (b) the payment of rates and charges due and payable by the corporation in respect of land within the development area,
- (c) transfers to any reserve for loan repayment in respect of money borrowed in respect of the development area or in respect of any loan transferred to the corporation in pursuance of Schedule 3 to the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979*,
- (d) payment of principal, interest and expenses in respect of money borrowed in respect of the development area or in respect of any loan transferred to the corporation in pursuance of that Schedule,
- (e) any purpose authorised by or under this Act for the application of the Development Fund,
- (f) the creation of assets and incurring and discharging liabilities not inconsistent with the purposes of the Development Fund,
- (g) payment of principal, interest and expenses in respect of money borrowed which is not chargeable to any fund other than the Development Fund, or in respect of a loan or asset transferred from another fund,
- (h) the investment of money for the creation of reserves for any purposes not inconsistent with the purposes of the Development Fund,
- (i) any costs incurred in the administration of the Development Fund.

131 Trust Fund

- (1) The Trust Fund shall consist of the following assets:
 - (a) all money and land held by the corporation by way of deposit or in trust for any person,
 - (b) all money and land assigned, conveyed, bequeathed or devised to the corporation in trust for the purpose of any function which the corporation is by or under this Act empowered to exercise,
 - (c) all money received as a result of the investment of the Trust Fund as authorised by this Act.
- (2) The Trust Fund shall be applied as follows:
 - (a) where the money or land is held by way of a deposit or in trust for any person, the money may be paid or the land may be assured to or on behalf of the person entitled thereto, but if the money has remained in the Trust Fund for 10 years, the corporation may transfer it to such Development Fund as it may deem proper,

subject to repaying it from that fund to any person entitled thereto,

- (b) except as otherwise provided in this section, for the purposes and according to the trusts upon which the money or land is held by the corporation,
- (c) by investment in securities authorised under the *Trustee Act 1925* or for the purposes of and according to the trusts referred to in paragraph (b).

132 Constitution of development areas

- (1) Development areas may be constituted in accordance with this section.
- (2) The Director may, by notice published in the Gazette, notify a proposal to constitute as a development area any area or areas or parts of areas specified in the notice.
- (3) In determining which areas or parts of areas should be included in the development area, the Director shall have regard to any environmental planning instruments relating to those areas or parts, environmental planning principles and such other matters as the Director thinks fit.
- (4) Within 14 days after the publication in the Gazette of the notice referred to in subsection (2), the Director shall, in the prescribed manner, notify the councils of the areas or parts of areas proposed to be included in the development area of the proposal and the reasons therefor and otherwise publicise the proposal.
- (5) Any person may, by notice in writing, lodge with the Director, within 3 months after the publication in the Gazette of the notice referred to in subsection (2), representations in relation to the proposal.
- (6) Where representations have been lodged under subsection (5), the Director shall refer the matter to the Minister who shall either:
 - (a) confirm the proposal, or
 - (b) alter the proposal by excluding, from the proposed development area, any area or part of an area other than an area or part in which the corporation has acquired land pursuant to section 9.
- (7) Where the Minister has directed that an inquiry be held, in accordance with section 119, with respect to the proposal, the Minister shall not determine the application until after:
 - (a) the inquiry has been held, and
 - (b) the Minister has considered the findings and recommendations of the Commission of Inquiry appointed in respect of the inquiry.
- (8) If no representations are lodged under subsection (5), the proposal shall be deemed to be confirmed immediately on the expiry of the period allowed for the lodgment of

representations.

- (9) The areas or parts of areas specified in the proposal as confirmed or altered shall, upon publication in the Gazette of a notice constituting them as a development area, be constituted as a development area under the name specified in the notice.

133 Alteration or abolition of development area

The Director may, by notice published in the Gazette, notify a proposal to alter a development area constituted under this Division by including therein any land or by excluding therefrom any land or to abolish such a development area, and the provisions of this Division shall apply to the notice as they apply to a notice referred to in section 132 (2).

134 Land to be in one development area only

Land shall not at the one time be within more than one development area.

135 Disallowance of constitution of development area

- (1) A copy of the notice constituting, altering or abolishing a development area published in the Gazette in accordance with this Division shall be laid before each House of Parliament within 14 sitting days of that House after the date of publication.
- (2) If either House of Parliament passes a resolution, of which notice has been given within 15 sitting days of that House after a copy of a notice referred to in subsection (1) has been laid before it, disallowing the constitution, alteration or abolition of the development area, the constitution, alteration or abolition is thereupon revoked.
- (3) For the purposes of subsections (1) and (2), sitting days shall be counted, whether or not they occur during the same session.

Division 2 Charges and fees

136 Right to charges and fees

For the purpose of this Act, the Director may demand, levy and recover the prescribed charges and fees in accordance with this Division.

137 Charges and fees fixed by regulation

- (1) Where under the provisions of any Act, regulation or environmental planning instrument the Minister, corporation, Department or Director:
 - (a) supplies any service,
 - (b) makes any registration,
 - (c) gives any permission,

(d) furnishes any information, or

(e) receives any application for its approval,

the charge or fee shall be as prescribed by the regulations.

(2) In any such regulation, provision may be made requiring a deposit or prepayment in respect of any such charge or fee.

(3) Nothing in this section authorises any charge or fee contrary to the provisions of any Act, regulation or environmental planning instrument.

138 Liability for charge or fee

The charge or fee shall be paid to the Minister, corporation, Department or Director by the person to whom or at whose request the service, permission or information is supplied, given or furnished, or at whose request the registration is made or from whom the application is received, as the case may be.

139 Recovery of charges etc

Any charge, fee or money due to the Minister, corporation, Department or Director under the provisions of this Act may be recovered as a debt or liquidated demand in a court of competent jurisdiction.

Division 3 Loans

140-142 (Repealed)

143 Assessment of loan commitments

(1) The corporation may, in respect of each year ending on 31 December, subject to and in accordance with the regulations, assess the amount required in any such year for the payment of interest on, or repayment of principal of, any loan raised by the corporation upon the councils whose areas or parts of areas are included in the development area to which the purpose for which the loan was raised relates.

(2) The regulations may make provision for or with respect to:

(a) the notification of a council referred to in subsection (1) by the corporation of a decision to make an assessment under that subsection,

(b) the provision by such a council of information necessary to determine the amount to be paid by the council in relation to the assessment, and

(c) the payment by such a council of the whole or any part of an amount assessed under subsection (1).

(3) A council required to pay the whole or any part of an amount assessed under

subsection (1) shall make the payment from its consolidated fund.

(4) The corporation may recover as a debt or liquidated demand in any court of competent jurisdiction any amount assessed upon a council and not paid on or before such day as may be prescribed in relation to the assessment.

(5)–(8) (Repealed)

Division 4 General

144 Financial year

(1)–(7) (Repealed)

(8) The financial year of the corporation shall be the year ending on 30 June.

145 (Repealed)

Part 7A Liability in respect of contaminated land

145A Definitions

In this Part:

contaminated land means land in, on or under which any substance is present at a concentration above that naturally present in, on or under the land and that poses, or is likely to pose, an immediate or long term risk to human health or the environment.

contaminated land planning guidelines means guidelines notified in accordance with section 145C.

planning authority, in relation to a function specified in section 145B, means:

- (a) in the case of a function relating to a development application—the consent authority (or a person or body taken to be a consent authority), and
- (b) in the case of any other function—the public authority or other person responsible for exercising the function.

145B Exemption from liability—contaminated land

- (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 to which this section applies in so far as it relates to contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land.
- (2) This section applies to the following planning functions:
 - (a) the preparation or making of an environmental planning instrument,

- (b) the preparation or making of a development control plan,
 - (c) the processing and determination of a development application,
 - (d) the modification of a development consent,
 - (e) the furnishing of advice in a certificate under section 149,
 - (f) anything incidental or ancillary to the carrying out of any function listed in paragraphs (a)–(e).
- (3) 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 at the time the thing was done or omitted to be done.
- (4) This section applies to and in respect of:
- (a) a councillor, and
 - (b) an employee of a planning authority, and
 - (c) a public servant, and
 - (d) a person acting under the direction of a planning authority,
- in the same way as it applies to a planning authority.

145C Contaminated land planning guidelines

- (1) For the purposes of section 145B, the Minister may, from time to time, give notice in the Gazette of the publication of planning guidelines relating to contaminated land and that a copy of the guidelines may be inspected, free of charge, at the principal office of each council during ordinary office hours.
- (2) However, the Minister cannot give notice under subsection (1) of the publication of contaminated land planning guidelines unless:
- (a) those guidelines are based (either wholly or partly) on draft contaminated land planning guidelines that have been publicly exhibited, for a period of at least 28 days, in such manner as may be directed by the Minister, and
 - (b) the Minister has considered any written submissions made within the specified public exhibition period in relation to those draft guidelines.
- (3) A copy of the guidelines must be made available for public inspection, free of charge, at the principal office of each council during ordinary office hours.
- (4) For the purposes of this Part, contaminated land planning guidelines:

- (a) enter into force on the day on which their publication is notified in the Gazette, and
- (b) cease to be in force on the day on which the publication of new contaminated land planning guidelines is notified in the Gazette in accordance with this section.

Part 8 Miscellaneous

146, 147 (Repealed)

148 Disclosure and misuse of information

- (1) A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:
 - (a) with the consent of the person from whom the information was obtained,
 - (b) in connection with the administration or execution of this Act,
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings,
 - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
 - (e) with other lawful excuse.
- (2) A person acting in the administration or execution of this Act shall not use, either directly or indirectly, information acquired by him in that capacity, being information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land, for the purpose of gaining either directly or indirectly an advantage for himself.
- (3) A person acting in the administration or execution of this Act, and being in a position to do so, shall not, for the purpose of gaining either directly or indirectly an advantage for himself, influence:
 - (a) the making of any provision of an environmental planning instrument or draft environmental planning instrument, or
 - (b) the determination of a development application.

Maximum penalty: 20 penalty units or imprisonment for a term not exceeding 6 months.

149 Certificates

- (1) A person may, on payment of the prescribed fee, apply to a council for a certificate under this section with respect to any land within the area of the council.
- (2) On application made to it under subsection (1), the council shall, as soon as practicable, issue a certificate specifying such matters relating to the land to which

the certificate relates as may be prescribed (whether arising under or connected with this or any other Act or otherwise).

- (3) (Repealed)
- (4) The regulations may provide that information to be furnished in a certificate under subsection (2) shall be set out in the prescribed form and manner.
- (5) A council may, in a certificate under subsection (2), include advice on such other relevant matters affecting the land of which it may be aware.
- (6) A council shall not incur any liability in respect of any advice provided in good faith pursuant to subsection (5). 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 Part 7A.
- (7) For the purpose of any proceedings for an offence against this Act or the regulations which may be taken against a person who has obtained a certificate under this section or who might reasonably be expected to rely on that certificate, that certificate shall, in favour of that person, be conclusively presumed to be true and correct.

150 Evidence

- (1) A document that purports to be a copy or extract of any document, map or plan embodied, incorporated or referred to in an environmental planning instrument is admissible in evidence if:
 - (a) it purports to be printed by the Government Printer or by the authority of the Government, or
 - (b) it purports to be certified:
 - (i) where the original documents, maps or plans are held in the office of the Department—under the hand of such officer of the Department as is prescribed, or
 - (ii) where the original documents, maps or plans are held in the offices of a council—under the hand of the mayor, general manager or public officer of the council.
- (2) Where the original documents, maps or plans are held in the office of:
 - (a) the Department—the Secretary shall furnish a certified copy or extract to the person applying for it on payment of the prescribed fee, or
 - (b) a council—that council shall furnish a certified copy or extract to the person applying for it on payment of the prescribed fee.

(3) For the purposes of this section, a copy or extract of a map or plan:

- (a) may be to the same scale as the original document, map or plan or may be an enlarged or reduced copy, and
- (b) where the original document, map or plan is coloured, may be a coloured copy or may be a black and white copy.

151 (Repealed)

152 Right to be heard

Where this Act confers a right on a person to be heard, that person shall be entitled to be heard personally or by counsel, solicitor or agent.

153 Notices

(1) Where under this Act any notice or other document is required to be given to or served upon any person, the notice or other document may be given or served:

(a) in the case of an individual:

- (i) by delivering it to him or her, or
- (ii) by sending it by prepaid post addressed to him or her at the address, if any, specified by him or her for the giving of notices or service of documents under this Act, or, where no such address is specified, at his or her usual or last known place of abode or his or her last known place of business, or

(b) in the case of a person not being an individual:

- (i) by leaving it at that person's place of business, or, if that person is a corporation, at the registered office of that corporation, with a person apparently not less than 16 years of age and apparently in the service of the person to whom the notice or other document is required to be given or on whom the notice or other document is required to be served, or
- (ii) by sending it by prepaid post addressed to that person at the address, if any, specified by that person for the giving of notices or service of documents under this Act, or, where no such address is specified, at that person's last known place of business.

(2) A notice or other document shall, in respect of a notice or other document sent by prepaid post in accordance with subsection (1) (a) (ii) or (b) (ii), be deemed to have been given or served at the time at which the notice or other document would be delivered in the ordinary course of post.

153A Delegation by public authorities

- (1) A public authority (other than a council) may delegate any function conferred or imposed on the public authority by or under this Act (other than this power of delegation) to:
 - (a) in the case of a public authority other than a chief executive officer—any officer or employee of the public authority, or
 - (b) in the case of a chief executive officer—any officer or employee of the public authority of which the chief executive officer is the chief executive officer.
- (2) An officer or employee of a public authority (other than a council) may delegate any function conferred or imposed on the officer or employee by or under this Act (other than this power of delegation) to any other officer or employee of the public authority. However, a function conferred or imposed on the firstmentioned officer or employee by delegation may not be subdelegated unless the subdelegation is authorised by the terms of the delegation.
- (3) A power conferred by this section is in addition to any other power of delegation of the public authority, officer or employee or any power of a person to exercise functions on behalf of a public authority.

154 Transfer or amalgamation of land to which an environmental planning instrument applies

- (1) Where land is transferred from one area to another area or is amalgamated with land of another area:
 - (a) subject to paragraph (b), an environmental planning instrument shall continue to apply to the land to which it applied immediately before the date of the transfer or amalgamation, and so applies as in force at that date, and
 - (b) the council of that other area has the functions conferred or imposed on a council by or under this Act by virtue of any environmental planning instrument applying to the land so transferred or amalgamated immediately before the date of the transfer or amalgamation.
- (2) Where land is transferred from one area to another area:
 - (a) a draft local environmental plan that has been placed on public exhibition in accordance with section 66 and that applies to land including that land may, with the written consent of the council of that other area given within 2 months after the date of the transfer, be proceeded with as if the transfer had not taken effect,
 - (b) subject to paragraph (c), the plan, when it takes effect as an environmental planning instrument, shall apply to that land, and so applies as in force at the date of publication of the plan in the Gazette, and

- (c) the council of that other area has the functions conferred or imposed on a council by or under this Act by virtue of the plan, when it takes effect as an environmental planning instrument, so far as it applies to that land.
- (3) An environmental planning instrument referred to in subsection (1) or (2), to the extent that it applies to land so referred to, so applies subject to any subsequent environmental planning instrument applying to that land.
- (4) This section applies to and in respect of a transfer or amalgamation of land, whether or not it is effected pursuant to the *Local Government Act 1993*.

155 Application of section 26 of the *Interpretation Act 1987*

Without limiting the generality of section 26 of the *Interpretation Act 1987*, a reference in that section to an instrument includes a reference to an environmental planning instrument.

156 Statute law revision (sec 16)

- (1) On a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette, section 16 is repealed.

Editorial note—

Day appointed for the purposes of this Act, 25.3.1988. See Gazette No 65 of 25.3.1988, p 2044.

- (2) A day shall not be appointed for the purposes of subsection (1) that is earlier than a day on which the Department established by section 16 is abolished, or its name changed, under section 49 of the *Constitution Act 1902*.
- (3) The repeal of section 16 by subsection (1) does not itself affect the existence of the Department established by section 16, but nothing in this subsection affects the powers conferred by section 49 of the *Constitution Act 1902*.

157 Regulations

- (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 and, in particular, for or with respect to:
 - (a) any function conferred by this Act on any person,
 - (b) requiring information, particulars, returns and statistics to be furnished to the Secretary by councils and the time and mode of furnishing and the manner of verifying them, and
 - (c) the form, time, manner and mode of giving notices under this Act.
- (2) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.

(3) A regulation may apply, adopt or incorporate any publication as in force from time to time.

158 Designated development: declaration by regulation

The regulations may contain provisions declaring any class or description of development (whether by reference to the type, purpose or location of development or otherwise) to be designated development for the purposes of this Act.

159 Savings, transitional and other provisions

Schedule 6 has effect.

Schedules 1, 2 (Repealed)

Schedule 3 Local Government Liaison Committee

(Section 20)

1 The Committee shall consist of:

- (a) the Director as Chairperson, and
- (b) the following persons appointed by the Minister:
 - (i) a person nominated by the Roads and Traffic Authority,
 - (ii) a person nominated by the Under Secretary of the Department of Local Government,
 - (iii) a person nominated by the State Pollution Control Commission,
 - (iv) 2 persons included in a panel of 6 persons nominated by the Local Government Association of New South Wales,
 - (v) 2 persons included in a panel of 6 persons nominated by the Shires Association of New South Wales,
 - (vi) a person nominated by the Local Government Planners' Association,
 - (vii) a person nominated by the Town Clerks' Society,
 - (viii) a person nominated by the Local Government Engineers' Association,

- (ix) a person nominated jointly by the Australian Institute of Health Surveyors and the Building Surveyors Institute,
 - (x) a person nominated by the Federated Municipal and Shire Council Employees' Union, and
 - (xi) a person, nominated by the Director, having such knowledge of local government and planning matters as the Director considers appropriate.
- 2** Where, for the purposes of clause 1, a nomination of a person for appointment as a member or a panel of persons is not made within the time or in the manner specified by the Minister in a notice in writing given to the body or person entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination or from that panel, as the case may be.
- 3** A person referred to in clause 1 (b) shall, subject to the regulations, hold office for a term specified in the instrument of his or her appointment, and is, if otherwise qualified, eligible for re-appointment.
- 4** The Governor may, by regulation, amend clause 1 (b):
- (a) by omitting therefrom a subparagraph, or
 - (b) by inserting therein a subparagraph containing a reference to one or more persons to be persons, or to be included in a panel of persons, nominated by a specified person or body.

Schedule 4 (Repealed)

Schedule 5 Committee procedures

(Sections 19-22)

- 1** Questions arising at a meeting of the committee shall be determined by a majority of votes of the members present and voting.
- 2** In the absence of the Chairperson at any meeting of the committee, the members present shall appoint one of their number to preside at that meeting.
- 3** The Chairperson or member presiding at a meeting of a committee shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.
- 4** A majority of members of a committee shall form a quorum and any duly convened meeting at which a quorum is present shall be competent to transact any business of the committee and shall have and may exercise all the functions of that committee.
- 5** The frequency of meetings of a committee and the procedures for the conduct of business at those meetings shall, subject to any directions by the Minister, be as determined by the committee.
- 6** The chairperson of a committee shall cause minutes of the proceedings and decisions at each meeting of the committee to be kept and shall furnish the Minister and the Director with a copy of those minutes as soon as practicable after each meeting.
- 7** Each member of a committee is entitled to receive such remuneration (including travelling and

subsistence allowances) for attending meetings and transacting business of that committee as the Minister may from time to time determine in respect of the member.

- 8**
- (1) The regulations may make provision for or with respect to the appointment of alternate members for members of the committee and the exercise by them of the functions of those members.
 - (2) In this Schedule, a reference to a member of the committee includes, subject to the regulations, a reference to the member's alternate appointed and acting in accordance with the regulations.
- 9** The committee or the Minister may establish subcommittees (whether or not consisting of members of the committee) for the purposes of advising the committee upon such matters within the scope of the committee's functions as may be referred to the subcommittees by the committee or the Minister.
- 10** The provisions of this Schedule apply to a subcommittee as if it were a committee.

Schedule 6 Savings, transitional and other provisions

(Section 159)

Part 1 Preliminary

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Environmental Planning and Assessment (Part 5) Amendment Act 1993

Environmental Planning and Assessment (Amendment) Act 1994

Threatened Species Conservation Act 1995

Environmental Planning and Assessment Amendment (Contaminated Land) Act 1996

Environmental Planning and Assessment Amendment (Public Authorities) Act 1996

Environmental Planning and Assessment Amendment Act 1996

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, 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.

Part 2 Environmental Planning and Assessment (Amendment) Act 1994

2 Performance-based conditions of consent

Section 91 (3B) extends to a condition imposed in the determination of a development application before the commencement of that subsection.

3 Determination of Crown development applications

Section 91A, as substituted by the *Environmental Planning and Assessment (Amendment) Act 1994*, applies to a development application made but not determined as at the date of commencement of Schedule 1 (3) to that Act.

Part 3 Environmental Planning and Assessment Amendment Act 1996

4 References to joint and multiple owners and lessees of land

Section 4 (12), as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, is taken to have commenced on 1 September 1980.

5 Instruments controlling advertising

Section 26 (1) (g), as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, extends to environmental planning instruments made, or in the course of preparation, before it was so inserted.

6 Relationship between instruments

Section 36, as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, extends to environmental planning instruments that took effect before that section was so inserted.

7 Amendment of draft instruments

Part 3, as amended by an item of Schedule 1 to the *Environmental Planning and Assessment Amendment Act 1996*, extends to environmental planning instruments in the course of preparation before that item commenced.

8 Preparation of draft regional environmental plans

Sections 41 and 45, as amended by an item of Schedule 2 to the *Environmental Planning*

and Assessment Amendment Act 1996, apply only to environmental studies and draft regional environmental plans if their preparation commences after that item commences.

9 Joint exhibition of development application and draft environmental planning instrument

Division 4B of Part 3 extends to a development application made to a consent authority but not finally determined before the commencement of that Division.

10 Compliance with non-discretionary development standards

Section 90A extends to a development application made to a consent authority but not finally determined before the commencement of that section.

11 Date from which development consent operates

A date endorsed pursuant to section 92 on a notice and described on the notice as the “date of consent” is taken to be the date from which the consent becomes effective and operates, if the date was so endorsed before sections 92 (2) and 93 (1) were amended by the *Environmental Planning and Assessment Amendment Act 1996*.

12 Existing uses

Section 106 (b), as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, is taken to have commenced on 1 September 1980.

13 Modification of approvals under Division 4 of Part 5

Division 4 of Part 5, as amended by an item of Schedule 4 to the *Environmental Planning and Assessment Amendment Act 1996*, extends to approvals granted by the Minister under that Division before the commencement of that item.

14 Minister’s consent for certain proceedings

Section 127, as amended by the *Environmental Planning and Assessment Amendment Act 1996*, extends to proceedings for offences alleged to have been committed before the commencement of Schedule 5 to that Act.

Part 4 Environmental Planning and Assessment Amendment (Contaminated Land) Act 1996

16 Application of section 145B to acts or omissions before commencement

Section 145B extends to anything done or omitted to be done before the commencement of Schedule 1 [1] to the *Environmental Planning and Assessment Amendment (Contaminated Land) Act 1996* if:

- (a) the thing was done or omitted to be done substantially in accordance with planning guidelines relating to contaminated land published before that commencement, and

- (b) those guidelines were notified in a manner that, had section 145C been in force, would have complied with subsection (1) of that section (whether or not the notification complied with subsection (2) of that section).

Part 5 Environmental Planning and Assessment Amendment (Public Authorities) Act 1996

17 Validation of role of certain concurrence authorities

Anything done or omitted to be done before the commencement of the *Environmental Planning and Assessment Amendment (Public Authorities) Act 1996* that would have been valid if this Act, as amended by the *Environmental Planning and Assessment Amendment (Public Authorities) Act 1996*, had been in force when the thing was done or omitted to be done is validated.

Schedule 7 (Repealed)