

# Environmental Planning and Assessment Act 1979 No 203

[1979-203]



New South Wales

## Status Information

### Currency of version

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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**

[Albury-Wodonga Development Repeal Act 2000 No 18](#) (not commenced)

[Water Management Act 2000 No 92](#) (not commenced)

[Local Government and Environmental Planning and Assessment Amendment \(Transfer of Functions\) Act 2001 No 93](#) (amended by [Building Legislation Amendment \(Quality of Construction\) Act 2002 No 134](#)), Sch 2 [1]–[10] [14] and [15] (not commenced)

[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)

[Land and Environment Court Amendment Act 2002 No 76](#) (not commenced)

[Threatened Species Conservation Amendment Act 2002 No 78](#), Sch 2.1 [1]–[4] [6] and [7] (not commenced)

[Civil Liability Amendment \(Personal Responsibility\) Act 2002 No 92](#) (not commenced)

[Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)

[Building Legislation Amendment \(Quality of Construction\) Act 2002 No 134](#), Sch 1.1 [6]–[30] [32] [33] [36] and [41] (not commenced — Sch 1.1 [14] to commence on the commencement of Sch 2 [6] to the [Land and Environment Court Amendment Act 2002 No 76](#))

### Authorisation

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File last modified 1 February 2003

# 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### 3 (Repealed)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:

**accreditation body**, in relation to matters of a particular kind, means a professional association that is authorised under section 109S to accredit persons as accredited certifiers in relation to those matters.

**accredited certifier**, in relation to matters of a particular kind, means a person who is accredited by an accreditation body under section 109T in relation to those matters.

**advertised development** means development, other than designated development, that is identified as advertised development by the regulations, an environmental planning instrument or a development control plan.

Advertised development includes any development for the purposes of a scheduled activity at any premises under the *Protection of the Environment Operations Act 1997*

that is not designated development.

**advertisement** means a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.

**advertising structure** means a structure used or to be used principally for the display of an advertisement.

**affordable housing** means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

**alignment** means the boundary line between any public place and any land abutting that place.

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

**associated structure** has the same meaning as in the [Local Government Act 1993](#).

**building** includes part of a building and any structure or part of a structure, but does not include:

- (a) a manufactured home, a moveable dwelling or associated structure or part of a manufactured home, a moveable dwelling or associated structure, or
- (b) a temporary structure within the meaning of the [Local Government Act 1993](#).

**Building Code of Australia** means the document of that name published on behalf of the Australian Building Codes Board in October 1996, together with:

- (a) such amendments made by the Board, and
- (b) such variations approved by the Board in relation to New South Wales,

as are prescribed by the regulations.

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

**bush fire prone land**, in relation to an area, means land recorded for the time being as bush fire prone land on a bush fire prone land map for the area.

**bush fire prone land map** for an area means a map for the area certified as referred to in section 146 (2).

**certifying authority** means a person who:

- (a) is authorised by or under section 85A to issue complying development certificates,
- or

(b) is authorised by or under section 109D to issue Part 4A certificates.

**change of building use** means a change of use of a building from a use that the *Building Code of Australia* recognises as appropriate to one class of building to a use that the *Building Code of Australia* recognises as appropriate to a different class of building.

**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.

**compliance certificate** means a certificate referred to in section 109C (1) (a).

**complying development** is development for which provision is made as referred to in section 76A (5).

**complying development certificate** means a complying development certificate referred to in section 85.

**consent authority**, in relation to a development application or an application for a complying development certificate, means:

- (a) the council having the function to determine the application, or
- (b) if a provision of this Act, the regulations or 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.

**construction certificate** means a certificate referred to in section 109C (1) (b).

**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* or (subject to section 5C) Part 7A of the *Fisheries Management Act 1994*.

**Crown land** has the same meaning as in the *Crown Lands Act 1989*.

**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 Department of Urban Affairs and Planning.

**designated development** has the meaning given by section 77A.

**development** means:

- (a) the use of land, and
- (b) the subdivision of land, and
- (c) the erection of a building, and
- (d) the carrying out of a work, and
- (e) the demolition of a building or work, and
- (f) any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument,

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 Part 4 to carry out development but does not include an application for a complying development certificate.

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

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

**development standards** means provisions of an environmental planning instrument or the regulations 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-General** means the Director-General of the Department of Urban Affairs and Planning.

**ecological community** has the same meaning as in the [Threatened Species Conservation Act 1995](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

**endangered ecological community** means an endangered ecological community within the meaning of the [Threatened Species Conservation Act 1995](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

**endangered population** means an endangered population within the meaning of the [Threatened Species Conservation Act 1995](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

**endangered species** means an endangered species within the meaning of the [Threatened Species Conservation Act 1995](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

**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.

**exempt development** is development for which provision is made as referred to in section 76 (2).

**functions** includes powers, authorities and duties.

**habitat** has the same meaning as in the [Threatened Species Conservation Act 1995](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

**integrated development** has the meaning given by section 91.

**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, and
- (d) a building erected on the land.

**local development** has the meaning given by section 76A (4).

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

**manufactured home** has the same meaning as in the [Local Government Act 1993](#).

**moveable dwelling** has the same meaning as in the [Local Government Act 1993](#).

**objector** means a person who has made a submission under section 79 (5) by way of objection to a development application for consent to carry out designated development.

**occupation certificate** means a certificate referred to in section 109C (1) (c).

**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-General.

**owner** has the same meaning as in the [Local Government Act 1993](#) and includes, in Division 2A of Part 6, in relation to a building, the owner of the building or the owner of the land on which the building is erected.

**Part 4A certificate** means a certificate referred to in section 109C (1) (a), (b), (c) or (d).

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

**place of shared accommodation** includes a boarding house, a common lodging house, a house let in lodgings and a backpackers hostel.

**population** has the same meaning as in the [Threatened Species Conservation Act 1995](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

**premises** means any of the following:

- (a) a building of any description or any part of it and the appurtenances to it,
- (b) a manufactured home, moveable dwelling and associated structure,
- (c) land, whether built on or not,
- (d) a tent,
- (e) a swimming pool,
- (f) a ship or vessel of any description (including a houseboat).

**principal certifying authority** means a principal certifying authority appointed under section 109E.

**prohibited development** means:

- (a) development the carrying out of which is prohibited on land by the provisions of an environmental planning instrument that apply to the land, or
- (b) development that cannot be carried out on land with or without development consent.

**provision for fire safety** means provision for any or all of the following:

- (a) the safety of persons in the event of fire,
- (b) the prevention of fire,



- (c) the detection of fire,
- (d) the suppression of fire,
- (e) the prevention of the spread of fire.

**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-General), 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.

**public place** has the same meaning as in the *Local Government Act 1993*.

**public reserve** has the same meaning as in the *Local Government Act 1993*.

**public road** has the same meaning as in the *Roads Act 1993*.

**recovery plan** has the same meaning as in the *Threatened Species Conservation Act 1995* or (subject to section 5C) Part 7A of the *Fisheries Management Act 1994*.

**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.

**relevant accreditation body**, in relation to an accredited certifier, means the accreditation body by which he or she is accredited.

**species** has the same meaning as in the *Threatened Species Conservation Act 1995* or (subject to section 5C) Part 7A of the *Fisheries Management Act 1994*.

**species impact statement** has the same meaning as in the *Threatened Species Conservation Act 1995* or (subject to section 5C) Part 7A of the *Fisheries Management*

[Act 1994](#).

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

**State significant development** has the meaning given by section 76A (7).

**subdivision certificate** means a certificate referred to in section 109C (1) (d).

**subdivision of land** has the meaning given by section 4B.

**subdivision work** means any physical activity authorised to be carried out under the conditions of a development consent for the subdivision of land, as referred to in section 81A (3).

**threat abatement plan** has the same meaning as in the [Threatened Species Conservation Act 1995](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

**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](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

**threatening process** has the same meaning as in the [Threatened Species Conservation Act 1995](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

**vulnerable species** has the same meaning as in the [Threatened Species Conservation Act 1995](#) or (subject to section 5C) Part 7A of the [Fisheries Management Act 1994](#).

(2) A reference in this Act to:

- (a) the use of land includes a reference to a change of building use, and
- (b) the erection of a building includes a reference to:
  - (i) the rebuilding of, the making of alterations to, or the enlargement or extension of, a building, or
  - (ii) the placing or relocating of a building on land, or
  - (iii) enclosing a public place in connection with the construction of a building, or
  - (iv) erecting an advertising structure over a public road, or
  - (v) extending a balcony, awning, sunshade or similar structure or an essential service pipe beyond the alignment of a public road, and

- (c) the carrying out of a work includes a reference to:
    - (i) the rebuilding of, the making of alterations to, or the enlargement or extension of, a work, or
    - (ii) enclosing a public place in connection with the carrying out of a work, and
  - (d) 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 a work for the purposes of this Act, and
  - (e) the demolition of a building or work includes a reference to enclosing a public place in connection with the demolition of a building or work, and
  - (f) the carrying out of development includes a reference to the use of land or a building, the subdivision of land, the erection of a building, the carrying out of a work, the demolition of a building or work or the doing of any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument.
- (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-General or a council preparing an environmental planning instrument or an environmental study includes a reference to the Director-General or a council, as the case may be, causing that environmental planning instrument or environmental study to be prepared on the Director-General'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, 79B (5) and 112D, a region has the same meaning as in the *Threatened Species Conservation Act 1995* or (subject to section 5C) Part 7A of the *Fisheries Management Act 1994*.
- (7) A reference in this Act to a direction is a reference to a direction in writing.
- (7A) A power, express or implied, of the Minister to make a declaration under this Act includes a power to revoke or amend the declaration.
- (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.
- (13) Notes in this Act are explanatory notes and do not form part of this Act.
- (14) A reference in this Act to an original document, map or plan includes a reference to a document, map or plan created, or a copy of which is kept, in electronic form.

#### **4A (Repealed)**

#### **4B Subdivision of land**

- (1) For the purposes of this Act, **subdivision of land** means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:
- (a) by conveyance, transfer or partition, or
  - (b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.
- (2) Without limiting subsection (1), **subdivision of land** includes the procuring of the

registration in the office of the Registrar-General of:

- (a) a plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919*, or
- (b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

**Note—**

The definition of **plan of subdivision** in section 195 of the *Conveyancing Act 1919* extends to plans of subdivision for lease purposes (within the meaning of section 23H of that Act) and to various kinds of plan under the *Community Land Development Act 1989*.

(3) However, **subdivision of land** does not include:

- (a) a lease (of any duration) of a building or part of a building, or
- (b) the opening of a public road, or the dedication of land as a public road, by the Crown, a statutory body representing the Crown or a council, or
- (c) the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or
- (d) a division of land effected by means of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or
- (e) the procuring of the registration in the office of the Registrar-General of:
  - (i) a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of section 195 of the *Conveyancing Act 1919*, or
  - (ii) a strata plan of consolidation or a building alteration plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

## 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, and

(vii) ecologically sustainable development, and

(viii) the provision and maintenance of affordable housing, and

(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 78A, 79C (1) 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.

**5B Planning authorities to have regard to register of critical habitat**

- (1) Each planning 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.
- (2) In this section, **planning authority** in relation to a function under this Act 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.

**5C Application of Act with respect to threatened species conservation—fish and marine vegetation**

- (1) A reference in this Act to the *Threatened Species Conservation Act 1995*, in connection with critical habitat, or threatened species, populations or ecological communities, or their habitats, is to be construed in accordance with this section.
- (2) To the extent that the matter concerns critical habitat of fish or marine vegetation, or threatened species, populations or ecological communities of fish or marine vegetation, or their habitats:
  - (a) a reference to the *Threatened Species Conservation Act 1995* is taken to be a reference to Part 7A of the *Fisheries Management Act 1994*, and
  - (b) a reference to the Minister administering the *Threatened Species Conservation Act 1995* is taken to be a reference to the Minister administering the *Fisheries Management Act 1994*, and
  - (c) a reference to the Director-General of National Parks and Wildlife is taken to be a reference to the Director of NSW Fisheries.
- (3) In this section:

**fish** has the same meaning as in Part 7A of the *Fisheries Management Act 1994*.

**marine vegetation** has the same meaning as in Part 7A of the *Fisheries*

*Management Act 1994.*

**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-General 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) (Repealed)
- (6) In the exercise of any function under subsection (4) (g), consultations are to be held with the Roads and Traffic Authority, the relevant council and such other persons as the Minister determines.
- (7) In relation to any land (whether vested in the corporation or not), the corporation may

exercise any function that is necessary or convenient to be exercised in, or for any purpose of, the application of any part of a Development Fund referred to in Division 1 of Part 7.

## **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 Director-General shall notify the council in whose area the land is situated of the recording.

## **Division 2 The Director-General**

### **13 Director-General of Department of Urban Affairs and Planning**

- (1) (Repealed)
- (2) The Director-General shall, in the exercise of any function conferred upon the Director-General by or under this Act (except in relation to the contents of a recommendation or report made by the Director-General 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-General.
- (5) A reference in any environmental planning instrument, or any regulation or other instrument made under this Act, to the Director is taken to be a reference to the Director-General.

**14 (Repealed)**

**15 Functions of the Director-General**

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

- (a) submit to the Minister such proposals with respect to environmental planning and assessment as the Director-General 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-General 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-General under this or any other Act, the Director-General 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) (Repealed)
- (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) (Repealed)
- (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-General.
- (3) Schedules 3 and 5 apply in relation to the Committee.
- (4) The Committee is, for the purpose of any Act, a statutory body representing the Crown.

### **21 (Repealed)**

### **22 Establishment of other committees**

- (1) The Director-General may establish committees, in addition to those established by this Act.

- (2) The functions of a committee established under subsection (1) are to be as specified in the instrument by which the committee is established, and (without limitation) may include:
  - (a) the investigation of any matter relevant to the administration or execution of this Act, and
  - (b) the preparation of advice, opinions or recommendations with respect to any such matter for the Minister, the Director-General, a consent authority or any other person or body engaged in the administration of this Act.
- (3) The Director-General 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).
- (5) A committee established under subsection (1) is, for the purpose of any Act, a statutory body representing the Crown.

## **Division 6 Delegation**

### **23 Delegation**

- (1) The Minister, corporation or Director-General 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-General'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-General 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.
- (1A) A function with respect to an accreditation body that is delegated to the Director-General under subsection (1) by the Minister may be subdelegated by the Director-General to any person referred to in subsection (1) (a)-(f), except to the extent to which the terms of the delegation prohibit subdelegation.
- (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-General, 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-General, as the case may be, and shall be deemed to have been done or suffered by the Minister, corporation or Director-General, as the case may be.
- (6) An instrument purporting to be signed by a delegate of the Minister, corporation or Director-General, 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-General, 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-General, as the case may be, under this section.
- (7) The Director-General 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 80 (7), 88A, 89, 117 or 118, by Division 4 of Part 5 or by section 130 (4).
- (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) providing, maintaining and retaining, and regulating any matter relating to,

- affordable housing,
- (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*.

**Note—**

Section 5C provides that a reference to the *Threatened Species Conservation Act 1995*, in relation to the critical habitat of fish or marine vegetation, is taken to be a reference to Part 7A of the *Fisheries Management Act 1994*.

## **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 (1) (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.

### **29A Advertised development**

- (1) Without limiting the generality of section 26 (1) (b), an environmental planning instrument may identify development, other than designated development, as advertised development.
- (2) Any such provisions may add to or extend, but not replace or reduce, the provisions of the regulations concerning the notification and advertising of development and the making of submissions relating to advertised development.

## **30 Consents and concurrences**

- (1) Without limiting the generality of section 26 (1) (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), (5) (Repealed)

### **31 Prohibitions**

Without limiting the generality of section 26 (1) (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 Director-General 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 Director-General 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-General of the Department of Urban Affairs and Planning 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-General of the Department of Urban Affairs and Planning, 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-General of the Department of Urban Affairs and Planning or the 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-General of the Department of Urban Affairs and Planning or the council may provide any other information that, in the Director-General'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-General of the Department of Urban Affairs and Planning or the 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-General of the Department of Urban Affairs and Planning or the council has considered any comments so made.

**Note—**

Section 5C provides that a reference to the Director-General of National Parks and Wildlife, in connection with the *Threatened Species Conservation Act 1995*, is taken, in the case of threatened species, populations or ecological communities of fish or marine vegetation, to be a reference to the Director of NSW Fisheries.

### **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-General may, after consultation with such public authorities as the Director-General determines, prepare a draft State environmental planning policy with respect to such matters as are, in the opinion of the Director-General, 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-General 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-General 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-General 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-General, 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-General 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-General 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-General determines.

#### **42, 43 (Repealed)**

#### **44 Preparation of draft regional environmental plan**

In the preparation of a draft regional environmental plan, the Director-General 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-General under section 41.
- (c)-(e) (Repealed)

#### **45 Notification**

- (1) In the preparation of an environmental study or a draft regional environmental plan, the Director-General, 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-General 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-General 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-General on the preparation of the environmental study or draft regional environmental plan within 28 days after the Director-General 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-General, furnish such information and provide such assistance as may reasonably be required by the Director-General in the preparation of the study or plan, and
- (b) shall notify the Director-General 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-General shall:

- (a) give public notice, in a form and manner determined by the Director-General, of the places at which, the dates on which, and the times during which, the environmental study prepared by the Director-General 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-General 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 Director-General 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 Director-General 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-General shall cause any submissions made under section 48 to be considered and:
  - (a) may, if the Director-General 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-General 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-General, specifying the period during which

submissions may be made to the Director-General in accordance with section 48 as applied by subsection (2).

- (2) Where the Director-General 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-General 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-General may exclude certain provisions of the draft plan or exclude part of the region from the draft plan, or both (in this section referred to as ***the deferred matter***) which, in the Director-General'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-General 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-General 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-General 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-General 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-General 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-General 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 Director-General 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-General 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 Director-General, 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-General**

- (1) Where the Director-General receives a copy of a draft local environmental plan from a council under section 64, the Director-General 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-General 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 Director-General:
  - (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 of the draft plan or exclude part of the land from the draft plan, or both (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-General 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-General**

The Director-General 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-General thinks appropriate.

### **70 Making of local environmental plan**

- (1) After considering the Director-General'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 of the draft plan or exclude part of the land from the draft plan, or both (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) If a council considers it necessary or desirable:

- (a) 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 applies, or
- (b) to identify development as advertised development, or
- (c) to provide for the notification or advertising to the public, a section of the public or specified persons of any of the following:
  - (i) a development application for specified development (other than designated development or advertised development),
  - (ii) an application for the modification of a development consent for specified development (including advertised development but not including designated development),
  - (iii) an application for a complying development certificate,or to provide that the relevant application does not need to be notified or advertised, or
- (d) to specify criteria, in addition to any criteria that may be specified in the regulations, that it is to take into consideration in determining whether or not to give an order under Division 2A of Part 6,

it may prepare or cause to be prepared a development control plan.

- (1A) A provision of a kind to which subsection (1) (b) applies may add to or extend, but not replace or reduce, the provisions of the regulations concerning the notification and advertising of development applications and the making of submissions relating to advertised development.
- (1B) If a council makes a development control plan that specifies criteria that it is to take into consideration in determining whether or not to give an order under Division 2A of Part 6, the criteria may add to, but must not be inconsistent with, any criteria that may be specified in the regulations.
- (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 88A and 89, cannot be carried out either with or without development consent, or
  - (b) development the carrying out of which, but for this Division or sections 88A and 89, 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 78A 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, unless the development is designated development, for the development to be advertised 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 79A, 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 79.

(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 the regulations or section 79 (5), 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-General:

- (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-General shall arrange for the draft plan to be published in the Gazette, with such alterations as the Director-General 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 79C (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 82 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-General accordingly.
- (2) If the Director-General has not already done so, the Director-General 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-General 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 Part 4, and
- (b) to become effective in accordance with section 83 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-General 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-General directs to the contrary.

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

## Part 4 Development assessment

### Note—

The environmental planning legislation comprises 3 elements, namely, this Act, the environmental planning instruments and the regulations made under this Act. The legislative scheme for environmental planning control is, broadly speaking, distributed between the 3 elements as follows:

- (a) This Part of the Act, Part 4, lays the foundation for the legislative scheme. It contains the major concepts and addresses the major matters of principle.
- (b) The environmental planning instruments identify particular forms of development according to the threefold classification that is established by Division 1 of this Part. They also determine whether development is exempt development as referred to in section 76 (2) or complying development as referred to in section 76A (5).
- (c) The regulations contain much of the detail of the various processes that, having regard to the nature of the proposed development, lead to the granting of development consent. They also largely determine whether development is designated development.

## Division 1 Carrying out of development—the threefold classification

### 76 Development that does not need consent

- (1) **General** If an environmental planning instrument provides that specified development may be carried out without the need for development consent, a person may carry the development out, in accordance with the instrument, on land to which the provision applies.

### Note—

Environmental assessment of the development may nevertheless be required under Part 5.

- (2) **Exempt development** An environmental planning instrument may provide that development of a specified class or description that is of minimal environmental impact is exempt development.
- (3) If development is exempt development:
  - (a) the development may be carried out, in accordance with the instrument, on land to which the provision applies without the need for development consent, unless that land:
    - (i) is critical habitat, or
    - (ii) is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*), and

(b) Part 5 does not apply to the development.

A provision made under subsection (2) has no effect at any time during which the land is land to which paragraph (a) (i) or (ii) applies.

#### **76A Development that needs consent**

- (1) **General** If an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies unless:
  - (a) such a consent has been obtained and is in force, and
  - (b) the development is carried out in accordance with the consent and the instrument.
- (2) For the purposes of subsection (1), development consent may be obtained:
  - (a) by the making of a determination by a consent authority to grant development consent, or
  - (b) in the case of complying development, by the issue of a complying development certificate.
- (3) **Two types of development that need consent** Development that may not be carried out except with development consent comprises 2 types, namely:
  - (a) local development (which includes complying development), and
  - (b) State significant development.
- (4) **Local development** Local development is development that is described in subsection (1) and that is not State significant development.
- (5) **Complying development** An environmental planning instrument may provide that local development that can be addressed by specified predetermined development standards is complying development.
- (6) A provision under subsection (5) cannot be made:
  - (a) if the development is State significant development, or
  - (b) if the development is designated development, or
  - (c) if the development is development for which development consent cannot be granted except with the concurrence of a person other than:
    - (i) the consent authority, or
    - (ii) the Director-General of National Parks and Wildlife as referred to in section 79B

(3), or

- (d) so as to apply to land that is critical habitat, or
- (e) so as to apply to land that is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*), or
- (f) so as to apply to land that comprises, or on which there is, an item of the environmental heritage:
  - (i) that is subject to an interim heritage order under the *Heritage Act 1977*, or that is listed on the State Heritage Register under that Act, or
  - (ii) that is identified as such an item in an environmental planning instrument, or
- (g) so as to apply to land that is identified as an environmentally sensitive area in the environmental planning instrument that makes provision for the complying development.

A provision made under subsection (5) has no effect in relation to development or land at any time during which the development or land is development or land to which paragraph (a)–(g) applies.

**Note—**

Further provisions concerning complying development are found in Division 3 of this Part.

(7) **State significant development** State significant development is:

- (a) development:
  - (i) that is declared by a State environmental planning policy or a regional environmental plan to be State significant development, and
  - (ii) that may be carried out with development consent, or
- (b) particular development, or a particular class of development:
  - (i) that, under an environmental planning instrument, may be carried out with development consent, and
  - (ii) that, in the opinion of the Minister, is of State or regional environmental planning significance, and
  - (iii) that is declared by the Minister, by notice in the Gazette, to be State significant development, or
- (c) development that is proposed to be carried out in accordance with a development application that the Minister has directed, under section 88A, to be referred to the Minister for determination, or

(d) prohibited development in respect of which a direction by the Minister under section 89 is in force.

(8) If:

(a) a project comprises development part of which is State significant development, all other development comprised in the project is taken to be State significant development, and

(b) but for this provision, part of State significant development would be subject to Part 5, this Part applies to the exclusion of Part 5 and the development may be carried out with development consent, and

(c) but for this provision, part of State significant development would be prohibited, the development may be carried out with development consent.

(9) The Minister is the consent authority for State significant development.

#### **76B Development that is prohibited**

If an environmental planning instrument provides that:

(a) specified development is prohibited on land to which the provision applies, or

(b) development cannot be carried out on land with or without development consent,

a person must not carry out the development on the land.

#### **76C Relationship of this Division to this Act**

This Division is subject to the other provisions of this Act, unless express provision is made to the contrary.

## **Division 2 The procedures for development that needs consent**

### **77 Application of Division**

This Division:

(a) applies to development that may not be carried out except with development consent, but

(b) does not apply to complying development.

#### **Note—**

Under this Part, the procedures by which development consent is obtained differ according to whether the development:

(a) is local development (including complying development) or State significant development, and

(b) is or is not designated development (which it may be declared to be by an environmental planning

instrument or the regulations), and

(c) is or is not integrated development (see Division 5).

### **77A Designated development**

Designated development is development that is declared to be designated development by an environmental planning instrument or the regulations.

### **78 The development consent process—the main steps**

The main steps in the development consent process are set out in sections 78A–81 and in the regulations made for the purposes of this Part.

#### **78A Application**

- (1) A person may, subject to the regulations, apply to a consent authority for consent to carry out development.
- (2) A single application may be made in respect of one or more of the types of development referred to in paragraphs (a)–(f) of the definition of **development** in section 4 (1).
- (3) If the consent authority is a council, a person (other than the Crown or a person acting on behalf of the Crown) may, in the same development application, apply for development consent and approval for anything that requires approval under the following provisions of the Table to section 68 of the *Local Government Act 1993*, namely:

paragraph 1, 2 or 3 of Part A

paragraph 1–6 of Part B

paragraph 1–5 of Part C

paragraph 1 of Part E

paragraph 1–6, 8, 9 or 10 of Part F.

#### **Note—**

The relevant approvals under the *Local Government Act 1993* are:

##### **Structures or places of public entertainment**

Installing a manufactured home, moveable dwelling or associated structure on land

Installing a temporary structure on land

Using a building or temporary structure as a place of public entertainment or permitting its use as a place of public entertainment

##### **Water supply, sewerage and stormwater drainage work**

Carrying out water supply work

Drawing water from a council water supply or a standpipe or selling water so drawn

Installing, altering, disconnecting or removing a meter connected to a service pipe  
Carrying out sewerage work  
Carrying out stormwater drainage work  
Connecting a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer

**Management of waste**

For fee or reward, transporting waste over or under a public place  
Placing waste in a public place  
Placing a waste storage container in a public place  
Disposing of waste into a sewer of the council  
Installing, constructing or altering a waste treatment device or a human waste storage facility or a drain connected to any such device or facility

**Public roads**

Swinging or hoisting goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway

**Other activities**

Operating a public car park  
Operating a caravan park or camping ground  
Operating a manufactured home estate  
Installing a domestic oil or solid fuel heating appliance, other than a portable appliance  
Installing or operating amusement devices (within the meaning of the [Construction Safety Act 1912](#))  
Installing or operating amusement devices prescribed by the regulations under the [Local Government Act 1993](#) in premises  
Operating an undertaker's business  
Operating a mortuary  
Carrying out an activity prescribed by the regulations under the [Local Government Act 1993](#) or an activity of a class or description so prescribed

- (4) In determining a development application to which subsection (3) applies, the council may apply any of the provisions of or under the [Local Government Act 1993](#) that it could apply if the development application were an application under that Act for the relevant approval. In particular, if development consent is granted, the council may impose a condition that is authorised under that Act to be imposed as a condition of an approval.
- (5) If development consent is granted to a development application to which subsection (3) applies, the council is taken to have granted the relevant approval under the [Local Government Act 1993](#) that authorises the activity, but that Act has no application to the approval so taken to have been granted.
- (6) In granting development consent to a development application to which subsection (3) applies, the council may, without limiting any other condition it may impose, impose, in relation to the approval taken to have been granted under the [Local Government Act 1993](#), either or both of the following conditions:
  - (a) a condition that the approval is granted only to the applicant and does not attach to or run with the land to which it applies,



- (b) a condition that the approval is granted for a specified time.
- (7) A development application cannot 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.
- (8) A development application must be accompanied by:
  - (a) if the application is in respect of designated development—an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations, or
  - (b) 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—a species impact statement prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*.
- (9) The regulations may specify other things that are required to be submitted with a development application.

## **79 Public participation—designated development**

- (1) **Public exhibition and notification** As soon as practicable after a development application is made for consent to carry out designated development, the consent authority must:
  - (a) place the application and any accompanying information on public exhibition for a period of not less than 30 days (the **submission period**) commencing on the day after which notice of the application is first published as referred to in paragraph (d), and
  - (b) give written notice of the application in accordance with the regulations:
    - (i) to such persons as appear to it to own or occupy the land adjoining the land to which the development application relates, and
    - (ii) if practicable, to such other persons as appear to it to own or occupy land the use or enjoyment of which, in its opinion, may be detrimentally affected if the designated development is carried out, and
    - (iii) to such other persons as are required to be notified by the regulations, and
  - (c) cause notice of the application to be exhibited in accordance with the regulations on the land to which the application relates, and
  - (d) cause notice of the application to be published in accordance with the regulations in a newspaper circulating in the locality.
- (2) If land is:

- (a) a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973*, a written notice to the owners corporation is taken to be a written notice under subsection (1) (b) to the owner or occupier of each lot within the strata scheme, or
  - (b) 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 owners corporation is taken to be a written notice under subsection (1) (b) to the owner or occupier of each lot within the scheme.
- (3) If land is owned or occupied by more than one person, a written notice to one owner or one occupier is taken to satisfy the requirements of subsection (1) (b).
- (4) **Inspection of application and accompanying information** During the submission period, any person may inspect the development application and any accompanying information and make extracts from or copies of them.
- (5) **Making of submissions** During the submission period, any person may make written submissions to the consent authority with respect to the development application. A submission by way of objection must set out the grounds of the objection.
- (6) **Circumstances in which public exhibition may be dispensed with** If:
- (a) a development application for designated development is amended, or substituted, or withdrawn and later replaced before it has been determined by the consent authority, and
  - (b) the consent authority has complied with subsections (1), (2) and (3) in relation to the original application, and
  - (c) the consent authority is of the opinion that the amended, substituted or later application differs only in minor respects from the original application,
- the consent authority may decide to dispense with further compliance with subsection (1) in relation to the amended, substituted or later application. In that event, compliance with subsection (1) in relation to the original application is taken to be compliance in relation to the amended, substituted or later application.
- (7) The consent authority must give written notice to the applicant of its decision under subsection (6) at or before the time notice of the determination of the development application is given under section 81.

#### **79A Public participation—advertised development and other notifiable development**

- (1) Notice of a development application for consent to carry out advertised development is to be given in accordance with this Act, the regulations, the relevant environmental planning instrument and any relevant development control plan.
- (2) A development application for specified development (other than designated

development or advertised development) must be notified or advertised in accordance with the provisions of a development control plan if the development control plan provides for the notification or advertising of the application.

### **79B Consultation and concurrence**

- (1) **General** If, by an environmental planning instrument, the consent authority, before determining the development application, is required to consult with or to obtain the concurrence of a person, the consent authority must, in accordance with the environmental planning instrument and the regulations, consult with or obtain the concurrence of the person, unless the consent authority determines to refuse to grant development consent.
- (2) However, if, by an environmental planning instrument, the Minister, before determining a development application, is required to obtain the concurrence of a person, the Minister is required only to consult with the person.
- (3) **Consultation and concurrence—threatened species** Development consent cannot be granted for:
  - (a) development on land that is, or is a part of, critical habitat, or
  - (b) development 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 or, if a Minister is the consent authority, unless the Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*.
- (4) Despite subsection (3), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may:
  - (a) elect to act in place of the Director-General of National Parks and Wildlife for the purposes of that subsection, or
  - (b) review and amend any recommendations that that Director-General proposes to make, or any advice that that Director-General proposes to offer, for the purposes of that subsection.
- (5) In deciding whether or not concurrence should be granted under subsection (3), the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995* 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 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.
- (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 a development application relating to development referred to in subsection (3) 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 copy of the reasons referred to in subsection (6) must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.
- (8) **Granting or refusal of concurrence** A person whose concurrence to development is required may:
- (a) grant concurrence to the development, either unconditionally or subject to conditions, or
  - (b) refuse concurrence to the development.

In deciding whether to grant concurrence, the person must take into consideration only the matters stated pursuant to section 30 (3) and applicable to the development (unless the relevant environmental planning instrument is a deemed environmental planning instrument).

- (9) **Giving effect to concurrence** A consent authority that grants consent to the carrying out of development for which a concurrence has been granted must grant the consent subject to any conditions of the concurrence. This does not affect the right of the consent authority to impose conditions under section 80A not inconsistent with the conditions of the concurrence or to refuse consent.
- (10) **Avoidance of consents subject to concurrence** If, by an environmental planning

instrument or by subsection (3), a development application may not be determined by the granting of consent without the concurrence of a specified person, a consent granted:

- (a) without that concurrence, or
  - (b) not subject to any conditions of the concurrence,
- is, subject to sections 102–104, voidable.

- (11) However, if the specified person fails to inform the consent authority of the decision concerning concurrence within the time allowed for doing so, the consent authority may determine the development application without the concurrence of the specified person and a development consent so granted is not voidable on that ground.
- (12) Nothing in this section affects any liability of a consent authority in respect of a consent granted as referred to in subsection (10) (a) or (b).

#### **79BA Consultation and development consent—certain bush fire prone land**

- (1) Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land unless the consent authority:
  - (a) is satisfied that the development conforms to the specifications and requirements of *Planning for Bushfire Protection 2001* produced by the NSW Rural Fire Service (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document), that are relevant to the development, or
  - (b) the consent authority has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.
- (2) In this section:

***special fire protection purpose*** has the same meaning as it has in section 100B of the [Rural Fires Act 1997](#).

#### **79C Evaluation**

- (1) **Matters for consideration—general** In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:
  - (a) the provisions of:
    - (i) any environmental planning instrument, and

- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and
- (iii) any development control plan, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

(2) **Compliance with non-discretionary development standards—development other than complying development** If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying 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 this section and section 80 is limited accordingly.

(3) If an environmental planning instrument or a regulation 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 this section and section 80 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.

**Note—**

The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

- (4) **Consent where an accreditation is in force** A consent authority must not refuse to grant consent to development on the ground that any component, process or design relating to the development is unsatisfactory if the component, process or design is accredited in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) **Definitions** In this section:
  - (a) reference 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, and
  - (b) **non-discretionary development standards** means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

## **80 Determination**

- (1) **General** A consent authority is to determine a development application by:
  - (a) granting consent to the application, either unconditionally or subject to conditions, or
  - (b) refusing consent to the application.
- (2) Despite subsection (1), the consent authority must refuse an application for development, being the subdivision of land, that would, if carried out, result in a contravention of this Act, an environmental planning instrument or the regulations, whether arising in relation to that or any other development.
- (3) **“Deferred commencement” consent** A development consent may be granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority, in accordance with the regulations, as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.
- (4) **Staged development** 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.
- (5) A development consent referred to in subsection (4) 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.
- (6) **Restrictions on determination of development applications where Commission of Inquiry is held concerning environmental aspects of proposed development** A consent authority that has received notice that the Minister has directed that an inquiry be held, in accordance with section 119, with respect to the environmental aspects of proposed development or part of any such proposed development the subject of a development application:
  - (a) must not determine the development application in so far as it relates to proposed designated development, and
  - (b) must not determine the development application in so far as it relates to development that is not designated development until:
    - (i) the inquiry has been held, and
    - (ii) 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.
- (7) If the Minister has directed that an inquiry be held by a Commission of Inquiry in relation to any proposed designated development the subject of a development application, the Minister is to determine the application after the inquiry has been held and the Minister has considered the findings and recommendations of the Commission of Inquiry.
- (8) Sections 82, 97 and 98 do not apply to or in respect of the development application determined by the Minister under subsection (7) or its determination.
- (9) **Restrictions on determination of development applications for designated development A** consent authority must not determine a development application for designated development:
  - (a) until after the submission period (within the meaning of section 79 (1) (a)) has expired, or
  - (b) if a submission is made with respect to the application within the submission period, until after 21 days following the date on which a copy of the submission is forwarded to the Director-General have expired.
- (10) Subsection (9) (b) does not apply:



- (a) to a consent authority being the Minister or the Director-General, or
  - (b) if the Director-General has waived the requirement that submissions be forwarded to the Director-General for a specified development application or for a specified class of development applications.
- (10A) (Repealed)
- (11) **Other restrictions on determination of development applications** The regulations may specify other matters of a procedural nature that are to be complied with before a development application may be determined.
- (12) **Effect of issuing construction certificate** If a consent authority or an accredited certifier issues a construction certificate, the construction certificate and any approved plans and specifications issued with respect to that construction certificate are taken to form part of the relevant development consent (other than for the purposes of section 96).
- (13) **Classification of buildings** A development consent for the erection of a building must identify the classification of the building in accordance with the *Building Code of Australia*.
- (14) A development consent may indicate different classifications for different parts of the same building.

**Note—**

To the extent to which it deals with the classification of a proposed building, a development consent under this Division replaces the statement of classification formerly issued under the regulations under the [Local Government Act 1993](#).

**80A Imposition of conditions**

- (1) **Conditions—generally** A condition of development consent may be imposed if:
- (a) it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or
  - (b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 10 in relation to the land to which the development application relates, or
  - (c) it 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), or
  - (d) it limits the period during which development may be carried out in accordance with the consent so granted, or
  - (e) it requires the removal of buildings and works (or any part of them) at the

expiration of the period referred to in paragraph (d), or

- (f) it 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 79C (1) applicable to the development the subject of the consent, or
- (g) it modifies details of the development the subject of the development application, or
- (h) it is authorised to be imposed under section 80 (3) or (5), subsections (5)–(9) of this section or section 94 or 94F.

- (2) **Ancillary aspects of development** 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, determined in accordance with the regulations, of the consent authority or a person specified by the consent authority.
- (3) A consent authority that has not determined a request to indicate whether a specified aspect of development has been carried out to the satisfaction of the consent authority, or a person specified by the consent authority, within the relevant period, prescribed by the regulations, applicable to the aspect or the development is, for the purpose only of section 97, taken to have determined the request by indicating that it, or the person, is not satisfied as to the specified aspect.
- (4) **Conditions expressed in terms of outcomes or objectives** 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.
- (5) **Modification or surrender of consents or existing use rights** If a consent authority imposes (as referred to in subsection (1) (b)) a condition requiring the modification or surrender of a consent granted under this Act or a right conferred by Division 10, the consent or right may be modified or surrendered subject to and in accordance with the regulations.
- (6) **Conditions and other arrangements concerning security** A development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of any one or more of the following:
  - (a) making good any damage caused to any property of the consent authority (or any property of the corporation) as a consequence of the doing of anything to which

the consent relates,

- (b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,
  - (c) remedying any defects in any such public work that arise within 6 months after the work is completed.
- (7) The security is to be for such reasonable amount as is determined by the consent authority.
- (8) The security may be provided, at the applicant's choice, by way of:
- (a) deposit with the consent authority, or
  - (b) a guarantee satisfactory to the consent authority.
- (9) The security is to be provided before carrying out any work in accordance with the development consent or at such other time as may be agreed to by the consent authority.
- (10) The funds realised from a security may be paid out to meet any cost referred to in subsection (6). Any balance remaining is to be refunded to, or at the direction of, the persons who provided the security.
- (11) **Prescribed conditions** A development consent is subject to such conditions as may be prescribed by the regulations.

## **81 Post-determination notification**

- (1) The consent authority must, in accordance with the regulations, notify its determination of a development application to:
- (a) the applicant, and
  - (b) in the case of a development application for consent to carry out designated development, each person who made a submission under section 79 (5), and
  - (c) such other persons as are required by the regulations to be notified of the determination of the development application.
- (2) If the consent authority is not the council, the consent authority must notify the council of its determination.
- (3) In the case of a development application for consent to carry out designated development, the consent authority must also notify each person who made a submission under section 79 (5) by way of objection of the person's rights to appeal against the determination and of the applicant's rights to appeal against the

determination.

### **81A Effects of development consents and commencement of development**

- (1) **Erection of buildings** A development consent that enables the erection of a building is sufficient to authorise the use of the building when erected for the purpose for which it was erected if that purpose is specified in the development application, subject to section 109M.

**Note—**

Section 109M prohibits the occupation or use of a new building unless an occupation certificate has been issued for the building.

- (2) The erection of a building in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the building work has been issued by:
    - (i) the consent authority, or
    - (ii) an accredited certifier, and
  - (b) the person having the benefit of the development consent:
    - (i) has appointed a principal certifying authority, and
    - (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
  - (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the erection of the building.
- (3) **Subdivision of land** A development consent that enables the subdivision of land may authorise the carrying out of any physical activity in, on, under or over land in connection with the subdivision, including the construction of roads and stormwater drainage systems.

**Note—**

A plan of subdivision cannot be registered under the [Conveyancing Act 1919](#) unless a subdivision certificate has been issued for the subdivision.

- (4) Subdivision work in accordance with a development consent must not be commenced until:
- (a) a construction certificate for the subdivision work has been issued by:
    - (i) the consent authority, or
    - (ii) an accredited certifier, and

- (b) the person having the benefit of the development consent:
  - (i) has appointed a principal certifying authority, and
  - (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

(5) **Regulations may provide for the issue of certificates** The regulations may make provision concerning the issue of certificates for the erection of buildings and the subdivision of land.

## **82 Circumstances in which consent is taken to have been refused**

- (1) A consent authority that has not determined a development application within the relevant period, prescribed by the regulations, applicable to the development the subject of the development application is, for the purpose only of section 97, taken to have determined the application by refusing consent on the date on which the period expires.
- (2) Nothing in subsection (1) prevents a consent authority from determining a development application after the expiration of the relevant period referred to in that subsection, whether on a review under section 82A or otherwise.
- (3) A determination pursuant to subsection (2) does not, subject to subsection (4), prejudice or affect the continuance or determination of an appeal made under section 97 in respect of a determination that is taken by subsection (1) to have been made.
- (4) If a determination pursuant to subsection (2) is made by granting consent, the consent authority is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal (being an appeal made under section 97 in respect of a determination that is taken by subsection (1) to have been made) withdrawn at any time prior to the determination of that appeal.

### **82A Review of determination**

- (1) If the consent authority is a council, an applicant may request the council to review a determination of the applicant's application, other than:
  - (a) a determination to issue or refuse to issue a complying development certificate, or
  - (b) a determination in respect of designated development, or
  - (c) a determination in respect of integrated development, or
  - (d) a determination made by the council under section 116E in respect of an

application by the Crown.

**Note—**

This section does not apply to State significant development because it only applies if the consent authority is a council.

- (2) The request for a review must be made within 28 days after the date on which the applicant received notice, given in accordance with the regulations, of the determination of the application.
- (3) The prescribed fee must be paid in connection with a request for a review.
- (4) The council may review the determination and, as a consequence of its review, may confirm or change the determination.
- (5) The decision whether or not to review the determination must not be made by the person who made the determination unless that person was the council, but is to be made by a person who is qualified under subsection (6) to make the review.
- (6) If the council reviews the determination, the review must be made by:
  - (a) if the determination was made by a delegate of the council—the council or another delegate of the council who is not subordinate to the delegate who made the determination, or
  - (b) if the determination was made by the council—the council.
- (7) The council must give notice of the result of the review to the applicant as soon as practicable after the review.
- (8) If on the review the council grants development consent, or varies the conditions of a development consent, the council must endorse on the notice the date from which the consent, or the consent as varied, operates.
- (9) If on a review the council changes a determination, the changed determination replaces the earlier determination as from the date of the review.
- (10) If on a review the council grants development consent, or varies the conditions of a development consent, the council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 97 in respect of its determination withdrawn at any time prior to the determination of that appeal.
- (11) A decision on a review may not be further reviewed under this section.

**83 Date from which consent operates**

- (1) Subject to subsections (2) and (3), if a determination is made by the granting of consent, the consent becomes effective and operates from:

- (a) except as provided in paragraph (b)—the date that is endorsed on the notice given to the applicant in accordance with section 81 (1) of the determination of the development application or under section 82A (7), or
  - (b) in the case of designated development to which an objection has been made in accordance with section 79 (5):
    - (i) if consent was granted under section 80 (7) following the holding of an inquiry by a Commission of Inquiry—the date that is endorsed on the notice of the determination of the development application given to the applicant in accordance with section 81 (1), or
    - (ii) in any other case—the expiration of 28 days from the date that is endorsed on the notice of the determination of the development application given to the applicant in accordance with section 81 (1).
- (2) Subject to subsection (3), if 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) ceases to be, or does not become, effective pursuant to subsection (1), and
  - (b) becomes effective and operates from the date of the determination of that appeal, except where that decision is to refuse development consent.
- (3) A consent referred to in subsection (1) or (2) is void and, except for the purposes of section 97 or 98, is taken never to have been granted if:
- (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) If a determination is made by refusing consent or if an application is taken by section 82 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 is taken to be a consent granted under this Division and that consent is effective and operates 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 Part 5A operates from the date on which it is taken to have been determined.

## **Division 3 Special procedure for complying development**

### **Note—**

This Division applies to development that is declared by an environmental planning instrument to be complying development which means that the **whole** of the development is subject to specified development standards.

### **84 Application of this Division**

This Division applies to complying development.

#### **84A Carrying out of complying development**

- (1) A person may carry out complying development on land if:
- (a) the person has been issued with a complying development certificate for the development, and
  - (b) the development is carried out in accordance with:
    - (i) the complying development certificate, and
    - (ii) any provisions of an environmental planning instrument, development control plan or the regulations that applied to the carrying out of the complying development on that land at the time the complying development certificate was issued.
- (2) An application for a complying development certificate may be made:
- (a) by the owner of the land on which the development is proposed to be carried out, or
  - (b) by any other person, with the consent of the owner of that land.
- (3) The regulations may provide for the procedures for making an application, the fees payable in connection with an application and the procedures for dealing with an application.
- (4) (Repealed)
- (5) Nothing in this Division prevents a consent authority from considering and determining a development application for the carrying out of complying development.

#### **84B (Repealed)**



## 85 What is a “complying development certificate”?

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

**Note—**

To the extent to which it deals with the classification of a proposed building, a complying development certificate under this Division replaces the statement of classification formerly issued under the regulations under the [Local Government Act 1993](#).

- (3) **Erection of buildings** A complying development certificate that enables the erection of a building is sufficient to authorise the use of the building when erected for the purpose for which it was erected if that purpose is specified in the application for the complying development certificate, subject to section 109M.

**Note—**

Section 109M prohibits the occupation or use of a new building unless an occupation certificate has been issued for the building.

- (4) **Subdivision of land** A complying development certificate that enables the subdivision of land may authorise the carrying out of any physical activity in, on, under or over land in connection with the subdivision, including the construction of roads and stormwater drainage systems.

**Note—**

A plan of subdivision cannot be registered under the [Conveyancing Act 1919](#) unless a subdivision certificate has been issued for the subdivision.

- (5) **Other requirements for complying development certificates** The regulations:
- (a) may impose other requirements concerning the issue of complying development certificates, and
  - (b) may provide for the form in which a complying development certificate is to be issued.
- (6) For the purposes of this section, **development standard** includes a provision of a development control plan that would be a development standard, within the meaning

of section 4, if the provision were in an environmental planning instrument.

### **85A Process for obtaining complying development certificates**

- (1) **Application** An applicant may, in accordance with the regulations, apply to:
  - (a) the council, or
  - (b) an accredited certifier,for a complying development certificate.
- (2) **Public notification** An application for a complying development certificate is to be publicly notified in accordance with a development control plan if the development control plan requires the public notification of the complying development.
- (3) **Evaluation** The council or accredited certifier must consider the application and determine:
  - (a) whether or not the proposed development is complying development, and
  - (b) whether or not the proposed development complies with the relevant development standards, and
  - (c) if the proposed development is complying development because of the provisions of a local environmental plan, or a local environmental plan in relation to which the council has made a development control plan, that specifies standards and conditions for the complying development, whether or not the proposed development complies with those standards and conditions.
- (4) A council or an accredited certifier must not refuse to issue a complying development certificate on the ground that any component, process or design relating to the development is unsatisfactory if the component, process or design is accredited in accordance with the regulations.
- (5) A council, an employee of a council and an accredited certifier do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) **Determination** The council or an accredited certifier may determine an application:
  - (a) by issuing a complying development certificate, unconditionally or (to the extent required by the regulations, an environmental planning instrument or a development control plan) subject to conditions, or
  - (b) by refusing to issue a complying development certificate.
- (7) The council or an accredited certifier must not refuse to issue a complying development certificate if the proposed development complies with the development standards applicable to it and complies with other requirements prescribed by the

regulations relating to the issue of a complying development certificate.

- (8) The determination of an application by the council or accredited certifier must be completed within 7 days (or such longer period as may be agreed to by the applicant) after lodgment of the application.
- (9) In determining the application, the council or the accredited certifier must impose a condition that is required to be imposed under Division 6 in relation to the complying development.
- (10) There is no right of appeal against the determination of, or a failure or refusal to determine, an application for a complying development certificate by a council or an accredited certifier.
- (10A) **Payment of long service levy** Where a council or accredited certifier completes a complying development certificate, that certificate is not to be forwarded or delivered to the applicant, unless the council or accredited certifier is satisfied that any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.
- (11) **Post-determination notification** On the determination of an application for the issue of a complying development certificate:
  - (a) the council or accredited certifier must notify the applicant of the determination, and
  - (b) the accredited certifier must notify the council of the determination.
- (12) For the purposes of subsection (7), **development standard** includes a provision of a development control plan that would be a development standard, within the meaning of section 4, if the provision were in an environmental planning instrument.

## **86 Commencement of complying development**

- (1) **Erection of buildings** The erection of a building in accordance with a complying development certificate must not be commenced until:
  - (a) the person having the benefit of the complying development certificate:
    - (i) has appointed a principal certifying authority, and
    - (ii) has notified the council of the appointment, and
  - (b) the person having the benefit of the complying development certificate has given at least 2 days' notice to the council of the person's intention to commence the erection of the building.
- (2) **Subdivision of land** Subdivision work in accordance with a complying development

certificate must not be commenced until:

- (a) the person having the benefit of the complying development certificate:
  - (i) has appointed a principal certifying authority, and
  - (ii) has notified the council of the appointment, and
- (b) the person having the benefit of the complying development certificate has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

#### **86A Duration of complying development certificate**

- (1) A complying development certificate becomes effective and operates from the date endorsed on the certificate.
- (2) A complying development certificate lapses 5 years after the date endorsed on the certificate.
- (3) However, a complying development certificate does not lapse if the development to which it relates is physically commenced on the land to which the certificate applies within the period of 5 years after the date endorsed on the certificate.
- (4) No proceedings may be taken before a court or tribunal to extend the 5-year period.

#### **87 Modification of complying development**

- (1) A person who has made an application to carry out complying development and a person having the benefit of a complying development certificate may apply to modify the development the subject of the application or certificate.
- (2) This Division applies to an application to modify development in the same way as it applies to the original application.

### **Division 4 Additional procedures concerning State significant development**

#### **88 Application of this Division**

- (1) This Division applies to State significant development.
- (2) Division 2 applies to the determination of a development application under this Division, but in the event of any inconsistency between this Division and Division 2, this Division prevails to the extent of the inconsistency.

#### **88A Development applications directed to be referred to the Minister for determination**

- (1) The Minister may direct a council to refer a particular development application made

to it for determination by the Minister if, having regard to matters that in the Minister's opinion are of significance for State or regional environmental planning, the Minister considers it is expedient in the public interest to do so.

- (2) On giving the direction:
  - (a) the Minister becomes the consent authority for the development application to the exclusion of the council, except for such functions as the Minister's direction specifies the council is to perform in relation to the development application, and
  - (b) the council must deliver the development application to the Minister within 7 days after receiving the Minister's direction, and
  - (c) if the development application is being advertised, the advertising is to be completed as if the direction had not been given.
- (3) The council must perform the functions specified in the Minister's direction as referred to in subsection (2) (a) in accordance with the appropriate requirements.
- (4) If the Minister's direction is given during or after any period for which the development application is or was being advertised, the council must, at the end of that period, give written notice to each person who made a submission concerning the development application of their rights in the event that the Minister directs, under subsection (5), that a Commission of Inquiry be held.
- (5) If the Minister directs that a Commission of Inquiry be held in accordance with section 119:
  - (a) the council, the applicant, an approval body (within the meaning of Division 5) and any person who made a submission concerning the development application are entitled to appear and be heard at the Commission of Inquiry, and
  - (b) the Minister must consider the findings and recommendations of the Commission of Inquiry before determining the application.

## **89 Carrying out of prohibited development**

- (1) The Minister may direct in writing, that specified prohibited development on specified land may be the subject of a development application for determination by the Minister if, having regard to matters that in the Minister's opinion are of significance for State or regional environmental planning, the Minister considers it is expedient in the public interest to do so.
- (2) On giving the direction:
  - (a) a person may make a development application to the Minister as consent authority for consent to carry out the prohibited development, and

(b) the Minister may determine the development application, and

(c) if the development application is determined by granting consent, a person may carry out the development,

despite any other provision of this Act or an environmental planning instrument.

(3) The council may request that a Commission of Inquiry be held into the development application before it is determined by the Minister. If the council makes the request, the Minister must direct that such an inquiry be held in accordance with section 119.

(4) If a Commission of Inquiry is held:

(a) the council, the applicant, an approval body and any person who made a submission concerning the development application are entitled to appear and be heard at the Commission of Inquiry, and

(b) the Minister must consider the findings and recommendations of the Commission of Inquiry before determining the application.

#### **89A Application of sections 82, 97 and 98 to State significant development**

(1) Section 82 does not apply to or in respect of a development application for State significant development for which a Commission of Inquiry has been held.

(2) Sections 97 and 98 do not apply to the determination of a development application for State significant development that has been the subject of a Commission of Inquiry.

### **Division 5 Special procedure for integrated development**

#### **90 Application of this Division**

(1) This Division applies to integrated development.

(2) However, this Division does not apply to development the subject of a development application to which Part 5A applies.

#### **90A Definitions**

In this Division:

**approval** means a consent, licence, permit, permission or any form of authorisation.

**approval body** means a person who may grant an approval.

**first renewal** of an approval means, in the case of an environment protection licence under the [Protection of the Environment Operations Act 1997](#), the first review of the licence under section 78.

**grant** an approval includes give or issue an approval.

**91 What is “integrated development”?**

(1) Integrated development is development (not being complying development) that, in order for it to be carried out, requires development consent and one or more of the following approvals:

<b>Act</b>	<b>Provision</b>	<b>Approval</b>
<i>Fisheries Management Act 1994</i>	s 144	aquaculture permit
	s 201	permit to carry out dredging or reclamation work
	s 205	permit to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease
	s 219	permit to: <ul style="list-style-type: none"> <li>(a) set a net, netting or other material, or</li> <li>(b) construct or alter a dam, floodgate, causeway or weir, or</li> <li>(c) otherwise create an obstruction,                             <ul style="list-style-type: none"> <li>across or within a bay, inlet, river or creek, or across or around a flat</li> </ul> </li> </ul>
<i>Heritage Act 1977</i>	s 58	approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57 (1)
<i>Mine Subsidence Compensation Act 1961</i>	s 15	approval to alter or erect improvements within a mine subsidence district or to subdivide land therein
<i>National Parks and Wildlife Act 1974</i>	s 90	consent to knowingly destroy, deface or damage or knowingly cause or permit the destruction or defacement of or damage to, a relic or Aboriginal place
<i>Protection of the Environment Operations Act 1997</i>	ss 43 (a), 47 and 55	Environment protection licence to authorise carrying out of scheduled development work at any premises.

	ss 43 (b), 48 and 55	Environment protection licence to authorise carrying out of scheduled activities at any premises (excluding any activity described as a “waste activity” but including any activity described as a “waste facility”).
	ss 43 (d), 55 and 122	Environment protection licences to control carrying out of non-scheduled activities for the purposes of regulating water pollution resulting from the activity.
<i>Rivers and Foreshores Improvement Act 1948</i>	Part 3A	permit under Part 3A
		consent to:
		(a) erect a structure or carry out a work in, on or over a public road, or
		(b) dig up or disturb the surface of a public road, or
<i>Roads Act 1993</i>	s 138	(c) remove or interfere with a structure, work or tree on a public road, or
		(d) pump water into a public road from any land adjoining the road, or
		(e) connect a road (whether public or private) to a classified road
<i>Rural Fires Act 1997</i>	s 100B	authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes
<i>Water Act 1912</i>	s 10	licence to construct and use a work, and to take and use water, if any, conserved or obtained by the work, and to dispose of the water for the use of occupiers of land



s 13A	licence to construct a supply work and to take and use water obtained thereby
s 18F	permit to construct and use a work, and to take and use water, if any, conserved or obtained by the work, and to dispose of the water for the use of occupiers of land for any purpose other than irrigation
s 20B	authority to take water from a river or lake for the purposes of a joint water supply scheme
s 20CA	authority to construct a supply work and to take and use water conserved or obtained thereby
s 20L	group licence
s 116	licence to commence sinking a bore or to enlarge, deepen or alter a bore
Part 8	approval to construct a controlled work

- (1A) Development is integrated development in respect of a licence that may be granted under the *Protection of the Environment Operations Act 1997* to control the carrying out of non-scheduled activities for the purpose of regulating water pollution only if:
- (a) the development application stipulates that an application for such a licence has been or will be made in respect of the development, or
  - (b) the Environment Protection Authority notifies the consent authority in writing before the development application is granted or refused that an application for such a licence has been or may be made in respect of the development.
- (2) Development is not integrated development in respect of the consent required under section 90 of the *National Parks and Wildlife Act 1974* unless:
- (a) a relic referred to in that section is known, immediately before the development application is made, to exist on the land to which the development application applies, or
  - (b) the land to which the development application applies is an Aboriginal place within the meaning of that Act immediately before the development application is made.
- (3) Development is not integrated development in respect of the consent required under

section 138 of the *Roads Act 1993* if, in order for the development to be carried out, it requires the development consent of a council and the approval of the same council.

- (4) Development is not integrated development in respect of the approval required under section 57 of the *Heritage Act 1977* if the approval that is required is the approval of a council.

### **91A Local development that is integrated development**

- (1) This section applies to the determination of a development application for local development that is integrated development.
- (2) Before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.
- (3) A consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed. For the purposes of this Part, the consent authority is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.
- (4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.
- (5) If the approval body fails to inform the consent authority, in accordance with the regulations, whether or not it will grant the approval, or of the general terms of its approval:
- (a) the consent authority may determine the development application, and
  - (b) if the consent authority determines the development application by granting consent:
    - (i) the approval body cannot refuse to grant approval to an application for approval in respect of the development, and
    - (ii) an approval granted by the approval body must not be inconsistent with the development consent, and
    - (iii) section 93 applies to an approval so granted as if it were an approval the general terms of which had been provided to the consent authority,
- despite any other Act or law.

- (6) If a development application is determined, whether or not by the granting of development consent, the consent authority must notify all relevant approval bodies of the determination.

**Note—**

If a dispute arises under this section between a consent authority and an approval body, the dispute may be dealt with under section 121.

**92 State significant development that is integrated development**

- (1) This section applies to the determination of a development application for State significant development that is integrated development.
- (2) Before granting development consent to an application for consent to carry out the development, the Minister must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. Nothing in this section requires the Minister to obtain the general terms of any such approval if the Minister determines to refuse to grant development consent.
- (3) For the purposes of this Part, the Minister is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.
- (4) If the approval body informs the Minister that:
  - (a) it will not grant an approval that is required in order for the development to be lawfully carried out, or
  - (b) it will grant the approval but subject to general terms that, in the Minister's opinion, are inappropriate,and a resolution of the matter cannot be agreed between the approval body and the Minister, the Minister must submit the dispute to the Premier for settlement under section 121.
- (5) For the purpose of the application of section 121 to any such dispute, the Minister and the approval body are taken to be public authorities.
- (6) If the approval body fails to inform the Minister, in accordance with the regulations, whether or not it will grant the approval, or of the general terms of any approval proposed to be granted by it:
  - (a) the Minister may determine the development application, and
  - (b) if the Minister determines the development application by granting consent:
    - (i) the approval body cannot refuse to grant approval to an application for

approval in respect of the development, and

(ii) an approval granted by the approval body must not be inconsistent with the development consent, and

(iii) section 93 applies to an approval so granted as if it were an approval the general terms of which had been provided to the consent authority,

despite any other Act or law.

(7) If a development application is determined, whether or not by the granting of development consent, the Minister must notify all relevant approval bodies of the determination.

### **92A Effect of giving notice**

If, in relation to integrated development:

- (a) notice of a development application is given under section 79 or 79A, and
- (b) the consent authority obtains from an approval body the general terms of any approval proposed to be granted by the approval body in relation to the development or the approval body fails to inform the consent authority, in accordance with the regulations, whether or not it will grant the approval or of the general terms of its approval, and
- (c) the consent authority determines the application by granting consent,

the notice is taken to be notice duly given for the purpose of any law that requires the giving of public notice in relation to an application for the approval of the approval body to that development.

### **93 Granting and modification of approval by approval body**

- (1) Despite any other Act or law, an approval body must, in respect of integrated development for which development consent has been granted following the provision by the approval body of the general terms of the approval proposed to be granted by the approval body in relation to the development, grant approval to any application for approval that is made within 3 years after the date on which the development consent is granted if, within that 3-year period, the development consent has not lapsed or been revoked.
- (2) The approval may be granted subject to conditions that are not inconsistent with the development consent. Neither the provisions of section 80A (6)–(10) nor the imposition of conditions as to security by the consent authority prevent an approval body from imposing conditions, or additional conditions, as to security.
- (3) Subsection (1) does not apply to or limit the granting of approval to an application for

renewal of an approval.

- (4) An approval body cannot vary the terms of an approval granted for integrated development for which development consent has been granted before the expiration, lapsing or first renewal of the approval, whichever first occurs, other than to make variations that are not inconsistent with the development consent.
- (5) Subsection (4) does not prevent:
  - (a) the modification, in accordance with section 96 or 96A, of the development consent at any time, or
  - (b) if a development consent is modified as referred to in paragraph (a) before the expiration, lapsing or first renewal, whichever first occurs, of the approval, the modification in accordance with law of the approval to any necessary consequential extent, or
  - (c) the exercise by the approval body of any of its other functions, such as the issuing of orders, the suspension or cancellation of an approval or the prosecution of offences.

### **93A Effect of approval if the approval body is also a concurrence authority**

If the concurrence of a person who is also an approval body is required before a consent authority may grant a development consent, the granting of the general terms of its approval is taken to also grant the concurrence provided that the matters to be considered in granting the general terms of its approval are the same as those required to be considered in deciding whether or not to grant the concurrence.

### **93B Rights of appeal**

- (1) **Applicant's appeal rights** This Division does not affect any right of objection, appeal or review conferred on an applicant for an approval under the Act that provides for the granting of the approval, except as provided by subsection (2).
- (2) **Restriction on appellate body** Despite any other Act or law, section 93 applies to a person, court or tribunal that deals with an objection, appeal or review referred to in this section in the same way as it applies to an approval body.

## **Division 6 Conditions requiring contributions towards public amenities and services**

### **94 Payment towards provision or improvement of amenities or services**

- (1) Subject to subsection (2), if a consent authority is satisfied that a development, the subject of a development application or of an application for a complying development certificate, 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) is to be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services mentioned in that subsection.

(3) Subject to subsection (4), if:

- (a) a consent authority has, at any time, whether before or after the date of commencement of this Part, 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 or of an application for a complying development certificate, 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.

(4) A condition referred to in subsection (3) is, subject to any direction of the Minister under section 94E (1), to be imposed only to require a reasonable contribution towards recoupment of the cost referred to in subsection (3).

(5) The consent authority may accept:

- (a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (3), 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 (3).

(6) The consent authority is to 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.

(7) The consent authority is to apply any monetary contribution paid in accordance with a

condition referred to in subsection (3), if 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.

- (8) Land dedicated in accordance with a condition imposed under subsection (1) or in part or full satisfaction of a condition imposed under subsection (3) is to be made available by the consent authority for the purpose of providing public amenities or public services or both within a reasonable time.
- (9) If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, the consent authority must 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.
- (10) If:
- (a) a condition imposed under subsection (1) or (3) 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) is taken 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.

- (11) 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 94B.
- (12) 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.
- (13) This section does not apply to public amenities or public services comprising water supply or sewerage works.

#### **94A Section 94 conditions imposed by the Minister or Director-General**

- (1) The Minister or the Director-General, as the consent authority determining a development application, may impose conditions under this Division if the application relates to:

- (a) land within a growth centre, or
  - (b) other land within a single area.
- (2) This Division, as modified by this section, applies to the Minister or the Director-General determining such a development application as consent authority.
- (3) This Division applies to a development application relating to land within a growth centre as if references in this Division to the area were references to the growth centre.
- (4) Before imposing any condition under this Division, the Minister or the Director-General must have regard to any contributions plan approved under section 94B 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-General may impose a condition under this Division even though it is not of a kind allowed by, or is not in accordance with, a contributions plan.
- (6) Any monetary contribution paid in accordance with a condition under this Division imposed by the Minister or the Director-General:
- (a) must be paid by the Minister or Director-General 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 88A.
- (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](#).

#### **94B Contributions plans—making**

- (1) A council may, subject to and in accordance with the regulations, prepare and approve a contributions plan for the purpose of imposing conditions referred to in this Division.
- (2) It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a contributions plan have been complied with and performed.



**94C 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.

**94D Contributions plans—complying development**

- (1) In relation to an application made to an accredited certifier for a complying development certificate, a contributions plan:
  - (a) is to specify whether or not the accredited certifier must, if a complying development certificate is issued, impose a condition of the kind referred to in this Division, and
  - (b) can only authorise the imposition of a condition by an accredited certifier that requires the payment of a monetary contribution, and
  - (c) if the contributions plan authorises the imposition of a condition by an accredited certifier that requires the payment of a monetary contribution, must specify the amount of the monetary contribution or the precise method by which the amount of the contribution is to be determined.
- (2) This section does not limit anything for which a contributions plan may make provision in relation to a consent authority.

**94E 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 under this Division may or may not be imposed, and
  - (b) in the case of a condition 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.

- (2) A consent authority to which a direction is given under this section must comply with the direction in accordance with its terms.
- (3) A consent authority must not, in granting consent to a development application in relation to which a direction under this section applies, impose a condition that is not in accordance with the terms of the direction, despite the other provisions of this Division.

## **Division 6A Conditions requiring land or contributions for affordable housing**

### **94F Conditions requiring land or contributions for affordable housing**

- (1) This section applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and:
  - (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
  - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
  - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or
  - (d) the regulations provide for this section to apply to the application.
- (2) Subject to subsection (3), the consent authority may grant consent to a development application to which this section applies subject to a condition requiring:
  - (a) the dedication of part of the land, or other land of the applicant, free of cost to be used for the purpose of providing affordable housing, or
  - (b) the payment of a monetary contribution to be used for the purpose of providing affordable housing,or both.
- (3) A condition may be imposed under this section only if:
  - (a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and
  - (b) the condition is authorised to be imposed by a regional environmental plan or local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and

- (c) the condition requires a reasonable dedication or contribution, having regard to the following:
  - (i) the extent of the need in the area for affordable housing,
  - (ii) the scale of the proposed development,
  - (iii) any other dedication or contribution required to be made by the applicant under this section or section 94.
- (4) A consent authority that proposes to impose a condition in accordance with this section must take into consideration any land or other sum of money that the applicant has previously dedicated free of cost, or previously paid, for the purpose of affordable housing within the area otherwise than as a condition of a consent.
- (5) Nothing in this section prevents the imposition on a development consent of other conditions relating to the provision, maintenance or retention of affordable housing. Such conditions may require, but are not restricted to, the imposition of covenants (including positive covenants) or the entering into of contractual or other arrangements.

#### **94G Provision of affordable housing**

- (1) Land dedicated in accordance with a condition imposed under this Division must:
  - (a) be made available by the consent authority for the purposes of affordable housing within a reasonable time, or
  - (b) be transferred by the consent authority in accordance with any applicable direction under subsection (3).
- (2) A consent authority must:
  - (a) hold any monetary contribution paid in accordance with a condition imposed under this Division (and any additional amount earned from its investment) for the purpose for which the payment was required and apply the money for the purposes of affordable housing in the area or an adjoining area within a reasonable time, or
  - (b) pay the monetary contribution in accordance with any applicable direction under subsection (3).
- (3) The Minister may give a direction, that applies generally or in any particular case or class of cases, to a consent authority:
  - (a) requiring it to transfer land to a person nominated by the Minister, if it imposes a condition under this Division requiring dedication of the land, or
  - (b) requiring it to pay a monetary contribution to a person nominated by the Minister,

if it imposes a condition under this Division requiring the payment of the monetary contribution.

- (4) A person nominated under this section by the Minister must:
- (a) make available any land transferred to the person under this Division for the purposes of affordable housing within a reasonable time, and
  - (b) apply any monetary contribution paid to the person under this Division (and any additional amount earned from its investment) for the purposes of affordable housing in the area concerned or in an adjoining area within a reasonable time.

## **Division 7 Post-consent provisions**

### **95 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 80 (5), 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 the regulations to lapse within the period prescribed by the regulations 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.
- (5) 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.

#### **95A Extension of lapsing period for 1 year**

- (1) If, in granting a development consent, the consent authority reduces the period after which the consent lapses to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.
- (2) The consent authority may grant the extension if satisfied that the applicant has shown good cause.
- (3) A person making an application under subsection (1) 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 88A or 89, appeal to the Court, and the Court may determine the appeal.
- (4) 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) This section does not apply to complying development.

#### **96 Modification of consents**

- (1) **Modifications involving minor error, misdescription or miscalculation** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5), (6), (6A) and (7) do not apply to such a modification.
- (1A) **Modifications involving minimal environmental impact** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:
  - (a) it is satisfied that the proposed modification is of minimal environmental impact, and
  - (b) it is satisfied that the development to which the consent as modified relates is

substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and

- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

(2) **Other modifications** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (3) 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 79C (1) as are of relevance to the development the subject of the application.
- (4) Modification of a development consent in accordance with this section is not to be construed as the granting of development consent under this Part but a reference in this or any other Act to a development consent is a reference to the development consent so modified.
- (5) **Threatened species** Development consent of the kind referred to in section 79B (3) is not to be modified unless the requirements of section 79B (3)-(7) have been complied with in relation to the proposed modification as if the proposed modification were an application for development consent.
- (6) **Appeals** Except in the case of State significant development, an applicant who is dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days after the application is made may appeal to the Court and the Court may determine the appeal.
- (6A) In the case of State significant development, an applicant who is dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days after the application is made may appeal to the Court unless the consent for the State significant development that was originally granted was granted following the holding of an inquiry by a Commission of Inquiry. The Court may determine any such appeal.
- (7) Subsection (6) or (6A) does not enable 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.

#### **96A Revocation or modification of development consent**

- (1) If at any time it appears to:
  - (a) the Director-General, 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, the Director-General or council may, by instrument in writing, revoke or modify that consent.
- (2) This section applies to complying development for which a complying development

certificate has been issued in the same way as it applies to development for which development consent has been granted and so applies to enable a council to revoke or modify a complying development certificate whether the certificate was issued by the council or by an accredited certifier.

- (3) Before revoking or modifying the consent, the Director-General or council must:
  - (a) by notice in writing inform, in accordance with the regulations:
    - (i) each person who in the Director-General's or council's opinion will be adversely affected by the revocation or modification of the consent, and
    - (ii) such persons as may be prescribed by the regulations,of the intention to revoke or modify the consent, and
  - (b) afford each such person the opportunity of appearing before the Director-General or council, or a person appointed by the Director-General or council, to show cause why the revocation or modification should not be effected.
- (4) The revocation or modification of a development consent takes effect, subject to this section, from the date on which the instrument referred to in subsection (1) is served on the owner of the land to which the consent applies.
- (5) Within 3 months after the date on which the revocation or modification of the consent takes effect, the applicant for the consent, or any other person entitled to rely on the consent, who is aggrieved by the revocation or modification may appeal to the Court, and the Court may determine the appeal.
- (6) The Court may determine the appeal by affirming, varying or cancelling the instrument of revocation or modification.
- (7) If a development consent is revoked or modified under this section, a person aggrieved by the revocation or modification is entitled to recover from:
  - (a) the Government of New South Wales—if the Director-General is responsible for the issue of the instrument of revocation or modification, or
  - (b) the council—if the council is responsible for the issue of that instrument,compensation for expenditure incurred pursuant to the consent during the period between the date on which the consent becomes effective and the date of service of the notice under subsection (3) which expenditure is rendered abortive by the revocation or modification of that consent.
- (8) The Director-General or council must, on or as soon as practicable after the date on which the instrument referred to in subsection (1) is served on the owner of the land referred to in subsection (4), cause a copy of the instrument to be sent to each person



who is, in the Director-General's or council's opinion, likely to be disadvantaged by the revocation or modification of the consent.

- (9) This section does not apply to or in respect of a consent granted by the Court or by the Minister.

## **Division 8 Appeals and related matters**

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

- (1) An applicant who is dissatisfied with the determination of a consent authority with respect to the applicant's development application (including a determination on a review under section 82A) may appeal to the Court within 12 months after:
- (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application, or
  - (b) the date on which that application is taken to have been determined under section 82 (1).
- (2) An applicant who is dissatisfied with a decision that a consent authority, or a person specified by the consent authority, is not satisfied as to a matter, being a specified aspect of the development that is to be carried out to the satisfaction of the consent authority, or person, pursuant to a condition imposed under section 80A (2), may appeal to the Court within 12 months after:
- (a) the consent authority or person notifies the applicant of its decision, or
  - (b) the date on which the applicant's request is taken to have been determined under section 80A (3).
- (3) 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 80 (3) can operate, may appeal to the Court within 12 months after the consent authority notifies the applicant of its decision.
- (4) If 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 is to be given notice by the consent authority of that appeal and is, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, entitled to be heard at the hearing of the appeal as if he, she or it were a party to the appeal.
- (5) If:
- (a) an appeal has been made under this section relating to a development application, and

(b) the application is one:

- (i) in relation to which the concurrence of a Minister or public authority is required under this Act, or
- (ii) for consent to carry out integrated development that involves an approval body (within the meaning of Division 5),

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

- (6) An appeal under this section relating to a development application for consent to carry out designated development in respect of which an objection has been made in accordance with the regulations must not be heard by the Court until after the expiration of the time within which an objector may appeal to the Court under 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 for designated development (including designated development that is integrated development) either unconditionally or subject to conditions may, within 28 days after the date on which notice of the determination was given in accordance with the regulations, and in accordance with rules of court, appeal to the Court.
- (2) If an appeal has been made under subsection (1), the person who made the development application and the consent authority referred to in that subsection are to be given notice of that appeal, in accordance with rules of court, and are entitled to be heard at the hearing of the appeal as parties to the appeal.
- (3) If:
  - (a) an appeal has been made under subsection (1) relating to a development application, and
  - (b) the consent authority referred to in subsection (1) is given notice of an appeal under that subsection, and
  - (c) the application is one:
    - (i) in relation to which the concurrence of a Minister or public authority is required under this Act, or
    - (ii) for consent to carry out integrated development that involves an approval body (within the meaning of Division 5),

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

### **98A Appeal concerning security**

- (1) An applicant who is dissatisfied with:
  - (a) a decision of a consent authority with respect to the provision (otherwise than by the imposition of a condition of development consent) of security of a kind referred to in section 80A (6), or
  - (b) the failure or refusal of the consent authority to release a security held by it,may appeal to the Court.

#### **Note—**

The right to appeal against the imposition of a condition of development consent is excluded from subsection (1) (a) so as not to duplicate the right of appeal conferred by section 97.

- (2) An appeal with respect to a decision referred to in subsection (1) (a) may be made within 12 months after the applicant received notice of the decision.
- (3) An appeal with respect to a failure or refusal referred to in subsection (1) (b) may be made:
  - (a) except as provided by paragraph (b), within 6 months after the work to which the security relates has been completed, or
  - (b) if the security is provided in respect of contingencies that may arise on or after completion of the work to which the security relates, not earlier than 6 months and not later than 12 months after the completion of the work.

### **99 Joint hearing of certain appeals**

- (1) If an appeal is made under section 97 with respect to a development application, the appeal is, as far as practicable, to 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 are, as far as practicable, to be heard together.
- (3) If 2 or more appeals are made under section 96A (5) with respect to the same notice referred to in section 96A, the appeals are, as far as practicable, to be heard together.

## **Division 9 Miscellaneous**

### **100 Register of consents and certificates**

- (1) A council must, in the prescribed form and manner (if any), keep a register of:
  - (a) applications for development consent, and
  - (b) the determination of applications for development consent (including the terms of development consents granted under this Part), and
  - (c) the determination of applications for complying development certificates (including the terms of complying development certificates issued under this Part), and
  - (d) decisions on appeal from any determination made under this Part.
- (2) The register is to be available for public inspection, without charge, at the office of the council during ordinary office hours.

### **101 Validity of development consents and complying development certificates**

If public notice of the granting of a consent or a complying development certificate is given in accordance with the regulations by a consent authority or an accredited certifier, the validity of the consent or certificate cannot 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.

### **102 Non-compliance with certain provisions regarding State significant development**

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, 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 subsection (1) applies are as follows:
  - (a) A requirement that a development application to carry out designated development and its accompanying information be publicly exhibited for the minimum period of time.
  - (b) A requirement that a development application to carry out development, being development, other than designated development, to which some or all of the provisions of sections 84, 85, 86, 87 (1) and 90, as in force immediately before the commencement of this section, applied by virtue of an environmental planning instrument, as referred to in section 30 (4), as then in force, be publicly exhibited for the minimum period of time.
  - (c) A requirement that a development application to carry out advertised development and its accompanying information be publicly exhibited for the minimum period of time prescribed by the regulations.

### **103 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 a consent authority, to which an order of suspension applies under section 25B of the *Land and Environment Court Act 1979*.
- (2) The consent authority 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 consent authority 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 consent authority 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 81 and such other provisions of this Act as may be prescribed by the regulations apply to development consents regranted under this section.

### **104 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—Part 4**

- (1) In addition to any other matters for or with respect to which regulations may be made for the purposes of this Part, the regulations may make provision for or with respect to

the following:

- (a) any matter that is necessary or convenient to be done before making a development application,
- (b) the persons who may make development applications,
- (c) the making, consideration and determination of development applications that are made by or on behalf of the Crown, public authorities and persons prescribed by the regulations,
- (d) the form of development applications,
- (e) the documents and information required to accompany development applications, including documents that will assist the consent authority in assessing the environmental effects of development,
- (f) the fees for development applications,
- (g) the notification and advertising of development applications (and proposed development),
- (h) the form and contents of notices of development applications, the manner of giving notices and the persons to whom notices are to be given,
- (i) the requirement for consultation with, or obtaining the concurrence of, the Director-General, public authorities and other persons concerning proposed development,
- (j) the form of statements of environmental effects and environmental impact statements,
- (k) the documents and information required to accompany statements of environmental effects and environmental impact statements,
- (l) the making of submissions, by way of objection or otherwise, with respect to proposed development and the consideration of submissions,
- (m) the holding of inquiries into proposed development,
- (n) procedures concerning complying development, advertised development and designated development,
- (o) procedures concerning integrated development,
- (p) notifications and notices for the purposes of sections 81A and 86,
- (q) the modification of development consents, including the fees for applications for modification,

- (r) the periods within which specified aspects of the environmental planning control process must be completed and the variation of those periods,
  - (s) the effect of a failure to comply with any requirement of the regulations,
  - (t) the notification of applicants and persons making submissions (including by way of objection) of the determination of development applications, reasons for the determinations and any rights of appeal.
- (2) The regulations may provide that an applicant who is not entitled to copyright in a document forming part of or accompanying the development application or the application for a complying development certificate is taken to have indemnified all persons using the application and document in accordance with this Act against any claim or action in respect of breach of copyright.
- (3) The regulations may provide for the accreditation of components, processes and designs, including the following:
- (a) applications for accreditation,
  - (b) the determination of applications for accreditation,
  - (c) revocation of accreditation,
  - (d) extension or renewal of accreditation,
  - (e) the acceptance, status and effect of accreditation granted under schemes other than that provided for in the regulations,
  - (f) the notification of consent authorities of information concerning accreditation (including accreditation referred to in paragraph (e)).
- (4) The regulations may provide for the adoption and application of the *Building Code of Australia*.

**105A Transitional—amendment to list of vulnerable species**

- (1) An amendment to the list of vulnerable species does not apply in respect of any development application made under section 78A before the amendment was made.
- (2) This section ceases to apply in respect of a development application if the application has not been determined by the consent authority at the end of the period of 12 months after the date the application was made under section 78A.
- (3) In this section:

***list of vulnerable species*** means Part 1 of Schedule 2 to the *Threatened Species Conservation Act 1995* or, subject to section 5C, Schedule 5 to the *Fisheries Management Act 1994*.

## **Division 10 Existing uses**

### **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 Division 4 of this Part, 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, or
  - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
  - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or
  - (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 80A (1) (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 is to 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, and
  - (b) the change of an existing use to another use, and
  - (c) the enlargement or expansion or intensification of an existing use.
- (2) The provisions (in this section referred to as ***the incorporated provisions***) of any regulations in force for the purposes of subsection (1) are taken 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 do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 89 to a development application for consent to carry out prohibited development.

### **109 Continuance of and limitations on other lawful uses**

- (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, or
  - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
  - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of the use therein mentioned, or
  - (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 80A (1) (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 is 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 is not 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, work or land that was unlawfully commenced is, and is taken 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 4A Certification of development**

#### **109C Part 4A certificates**

(1) The following certificates (known collectively as **Part 4A certificates**) may be issued for the purposes of this Part:

(a) a **compliance certificate**, being a certificate to the effect that:

- (i) specified building work or subdivision work has been completed as specified in the certificate and complies with specified plans and specifications, or
  - (ii) a condition with respect to specified building work or subdivision work (being a condition attached to a development consent or complying development certificate) has been duly complied with, or
  - (iii) a specified building or proposed building has a specified classification identified in accordance with the *Building Code of Australia*, or
  - (iv) any specified aspect of development complies with the requirements of any other provisions prescribed by the regulations, or
  - (v) any specified aspect of development (including design of development) complies with standards or requirements specified in the certificate with respect to the development,
- (b) a **construction certificate**, being a certificate to the effect that work completed in accordance with specified plans and specifications will comply with the requirements of the regulations referred to in section 81A (5),
- (c) an **occupation certificate**, being a certificate that authorises:
- (i) the occupation and use of a new building, or
  - (ii) a change of building use for an existing building,
- (d) a **subdivision certificate**, being a certificate that authorises the registration of a plan of subdivision under Division 3 of Part 23 of the [Conveyancing Act 1919](#).
- (2) An occupation certificate:
- (a) may be an interim certificate or a final certificate, and
  - (b) may be issued for the whole or any part of a building.
- (3) If the regulations so provide, a construction certificate may be issued subject to conditions.
- (4) In this section:
- new building** includes an altered portion of, or an extension to, an existing building.

**Notes—**

- (1) Sections 109M and 109N prohibit the occupation or use of a new building, and the change of building use for an existing building, unless an occupation certificate has been issued for the building.
- (2) A plan of subdivision (whether or not the subdivision requires development consent) is not in registrable form for the purposes of the [Conveyancing Act 1919](#) unless it is endorsed with a subdivision certificate issued under this Division. Plans prepared for the purposes of the [Strata Schemes \(Freehold Development\) Act 1973](#) or the [Strata Schemes \(Leasehold Development\) Act 1986](#) are not plans of subdivision within the meaning of

section 195 of the *Conveyancing Act 1919* and are therefore not subject to this Division. The regulations under the *Conveyancing Act 1919* provide for the manner and form in which a plan of subdivision is to be endorsed for the purpose of enabling the plan to be registered under that Act.

#### **109D Certifying authorities**

- (1) Subject to subsections (2) and (3), the following kinds of Part 4A certificate may be issued by the following kinds of persons:
  - (a) a compliance certificate may be issued by a consent authority or accredited certifier,
  - (b) a construction certificate may be issued by a consent authority or accredited certifier,
  - (c) an occupation certificate may be issued by a consent authority or accredited certifier,
  - (d) a subdivision certificate may be issued:
    - (i) in the case of subdivision the subject of development consent, by the consent authority,
    - (ii) in the case of subdivision that is not the subject of development consent, by the council,
    - (iii) in the case of subdivision carried out by or on behalf of the Crown or a prescribed person, by the Crown or prescribed person or by any person acting on behalf of the Crown or prescribed person,
    - (iv) in the case of subdivision of a kind identified by an environmental planning instrument as one in respect of which an accredited certifier may be a certifying authority, by an accredited certifier.
- (2) An occupation certificate must not be issued to authorise a person to commence occupation or use of a new building except by the principal certifying authority appointed for the erection of the building.
- (3) A subdivision certificate must not be issued for a subdivision involving subdivision work except by the principal certifying authority appointed for the carrying out of the subdivision.
- (4) In this section:

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

#### **109E Principal certifying authorities**

- (1) A person who proposes to carry out development involving building work or subdivision work pursuant to a development consent or complying development

certificate may appoint the consent authority or an accredited certifier as the principal certifying authority for the development.

- (2) Despite subsection (1), an accredited certifier must not be appointed as the principal certifying authority for development involving subdivision work unless the subdivision to which the work relates is of a kind identified by an environmental planning instrument as one in respect of which an accredited certifier may be a certifying authority.
- (3) An accredited certifier who has been appointed as a principal certifying authority must not be replaced by another accredited certifier except with the approval of the relevant accreditation body.
- (4) Such an approval may be given only if the relevant accreditation body is satisfied that replacement of the accredited certifier is appropriate in the circumstances of the particular case.

**Note—**

Section 81A prohibits the commencement of building work or subdivision work unless the consent authority has been notified of the appointment of a principal certifying authority for the work. Section 109D (2) prohibits the issue of an occupation certificate authorising the occupation and use of a new building except by the principal certifying authority appointed for the erection of the building. Section 109D (3) prohibits the issue of a subdivision certificate for a subdivision involving subdivision work except by the principal certifying authority appointed for the carrying out of the subdivision.

**109F Restriction on issue of construction certificates**

- (1) A construction certificate must not be issued with respect to the plans and specifications for any building work or subdivision work unless the certifying authority is satisfied that:
  - (a) the requirements of the regulations referred to in section 81A (5) have been complied with, and
  - (b) any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.
- (2) A certifying authority must not refuse to issue a construction certificate on the ground that any component, process or design relating to the development is unsatisfactory if the component, process or design is accredited in accordance with the regulations.
- (3) A certifying authority and (but only in the case of a certifying authority that is a consent authority) an employee of a certifying authority do not incur any liability as a consequence of acting in accordance with subsection (2).

**109G Restriction on issue of compliance certificates**

A compliance certificate of the kind referred to in section 109C (1) (a) (i) or (ii) must not be issued for any building work or subdivision work unless the certifying authority is satisfied that a development consent or complying development certificate is in force with respect to the building or subdivision to which the work relates.

**109H Restriction on issue of occupation certificates**

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

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

**109I Effect of occupation certificate on earlier occupation certificates**

- (1) A final occupation certificate for the whole of a building revokes any earlier occupation certificate for that building.
- (2) An interim occupation certificate for a part of a building additional to the part or parts in respect of which an earlier interim occupation certificate is in force:
  - (a) revokes the earlier interim occupation certificate, and
  - (b) applies to the part in respect of which it is issued and to the part or parts in respect of which the earlier interim occupation certificate was in force.
- (3) An occupation certificate (whether interim or final) for a part of a building revokes any earlier occupation certificate to the extent to which it applies to that part.

**109J Restriction on issue of subdivision certificates**

- (1) A subdivision certificate must not be issued for a subdivision unless the certifying authority is satisfied of each of the following:
  - (a) that the subdivision is not prohibited by or under this Act,
  - (b) in the case of subdivision that may not be carried out except with development consent, that a development consent (or, in the case of complying development, a complying development certificate) is in force with respect to the subdivision,
  - (c) in the case of subdivision for which a development consent has been granted, that the applicant has complied with all conditions of the consent that, by its terms, are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision,
  - (d) in the case of subdivision for which a “deferred commencement” consent under section 80 (3) has been granted, that the applicant has satisfied the consent authority concerning all matters as to which the consent authority must be satisfied before the consent can operate,
  - (e) in the case of subdivision that relates to land within a water supply authority’s area of operations, that the applicant has obtained a certificate of compliance from the water supply authority with respect to the division of the land,
  - (f) in the case of subdivision the subject of an order made by the Court under section 40 of the [Land and Environment Court Act 1979](#) concerning the provision of drainage easements, that all such drainage easements have been acquired by the council referred to in that section,
  - (g) in the case of subdivision the subject of a development consent for which the

consent authority is required by the regulations to notify any objector:

- (i) that at least 28 days have elapsed since the objector was notified, or
- (ii) if an appeal has been made by the objector within that time, that the appeal has been finally determined.

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

- (4) In this section:

**certificate of compliance**, in relation to a water supply authority, means a certificate of compliance issued by the water supply authority under the Act under which the water supply authority is constituted.

**water supply authority** means:

- (a) the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority constituted under the [Water Supply Authorities Act 1987](#), or
- (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the [Local Government Act 1993](#).

### **109K Appeals against failure or refusal to issue Part 4A certificates**

- (1) An applicant for:



- (a) a construction certificate, or
- (b) a final occupation certificate, or
- (c) a subdivision certificate,

may appeal to the Court against a consent authority's (or, in the case of a subdivision certificate for subdivision that is not the subject of development consent, a council's) decision to refuse to issue such a certificate or to issue a construction certificate subject to conditions.

- (2) An appeal under this section is to be made within 12 months after the date on which the decision was made.
- (3) For the purposes only of an appeal under this section, a consent authority or council is taken to have made a decision to refuse to issue a certificate if, following an application for the certificate, it has failed to issue the certificate:
  - (a) in the case of an application for a construction certificate:
    - (i) if the application is made on or before the date on which its associated development application is determined, within the relevant period referred to in section 82 (1) in relation to the development the subject of the development application, or
    - (ii) if the application is made after the date on which its associated development application is determined, within 28 days after the application for the construction certificate was made, or
  - (b) in the case of an application for a final occupation certificate, within 14 days after the application was made, or
  - (c) in the case of an application for a subdivision certificate for subdivision that does not constitute designated development:
    - (i) within 14 days after the application was made, where development consent to the subdivision is required, or
    - (ii) within 7 days after the application was made, where development consent to the subdivision is not required, or
  - (d) in the case of an application for a subdivision certificate for subdivision that constitutes designated development:
    - (i) within 14 days after the application was made, or
    - (ii) within 14 days after the period in which an appeal may be made under section 98 against the granting of development consent to that development, or

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

whichever is the longer.

- (4) Nothing in subsection (3) prevents a consent authority or council from determining an application for a construction certificate, occupation certificate or subdivision certificate after the expiration of the relevant period prescribed by that subsection.
- (5) A determination pursuant to subsection (4) does not, subject to subsection (6), prejudice or affect the continuance or determination of an appeal made under this section in respect of a determination that is taken by subsection (3) to have been made.
- (6) If a determination pursuant to subsection (4) is made by granting the certificate concerned, the consent authority or council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal (being an appeal made under this section in respect of a determination that is taken by subsection (3) to have been made) withdrawn at any time prior to the determination of that appeal.

**109L Accredited certifiers may issue notices requiring work to be carried out**

- (1) An accredited certifier who is the principal certifying authority for any development may, by notice served on a person on whom an order under section 121B may be served, direct that person to do anything that the consent authority could require that person to do by means of such an order.
- (2) A notice under this section has the same effect as a notice referred to in section 121H (1), and the provisions of Division 2A of Part 6 have effect accordingly:
  - (a) subject to the accredited certifier being:
    - (i) present when representations are made under section 121I, and
    - (ii) entitled to make representations to the consent authority or nominated person to whom the representations under section 121I are made, and
    - (iii) entitled to have the representations made by the accredited certifier heard and considered under section 121J in the same way as the representations under section 121I are heard and considered, and
  - (b) subject to such other modifications as the regulations may prescribe.
- (3) Within 2 working days after the date on which an accredited certifier serves a notice under this section, the accredited certifier must send copies of the notice:
  - (a) to the council, and
  - (b) if the development is the subject of development consent given by a consent

authority other than the council, to the consent authority, and

- (c) if the person on whom the notice is served is not the owner of the land on which the development is being carried out, to the owner of the land.

**109M Occupation and use of new building requires occupation certificate**

- (1) A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4)) unless an occupation certificate has been issued in relation to the building or part.

Maximum penalty: 25 penalty units.

- (2) This section does not apply to:

- (a) the occupation or use of a new building for any purpose if the erection of the building is or forms part of exempt development or development that does not otherwise require development consent, or
- (b) the occupation or use of a new building at any time after the expiration of 12 months after the date on which the building was first occupied or used, or
- (c) the occupation or use of a new building by such persons or in such circumstances as may be prescribed by the regulations, or
- (d) the occupation or use of a new building that has been erected by or on behalf of the Crown or by or on behalf of a prescribed person.

**109N Change of building use of existing building requires occupation certificate**

- (1) A person must not commence a change of building use for the whole or any part of an existing building unless an occupation certificate has been issued in relation to the building or part.

Maximum penalty: 25 penalty units.

- (2) This section does not apply to:

- (a) a change of building use of an existing building if the change of building use is or forms part of exempt development or development that does not otherwise require development consent, or
- (b) the continued occupation or use of a building at any time after the expiration of 12 months after the date on which the building was first occupied or used, or
- (c) a change of building use of an existing building by such persons or in such circumstances as may be prescribed by the regulations, or
- (d) a change of building use of an existing building that has been erected by or on behalf of the Crown or by or on behalf of a prescribed person.

**109O Certifying authorities may be satisfied as to certain matters**

- (1) For the purpose of enabling a Part 4A certificate or a complying development certificate to be issued by a certifying authority, the regulations may provide that any requirement for a consent authority or council to be satisfied as to any specified matter (or any matter of a specified class of matters) is taken to have been complied with if the certifying authority is satisfied as to that matter.
- (2) This section applies whether the requirement is imposed by or under:
  - (a) this Act, the regulations or an environmental planning instrument, or
  - (b) the terms of a development consent or complying development certificate.

**109P Satisfaction as to compliance with conditions precedent to the issue of certificates**

- (1) A person who exercises functions under this Act in reliance on a Part 4A certificate or a complying development certificate is entitled to assume:
  - (a) that the certificate has been duly issued, and
  - (b) that all conditions precedent to the issuing of the certificate have been duly complied with, and
  - (c) that all things that are stated in the certificate as existing or having been done do exist or have been done,and is not liable for any loss or damage arising from any matter in respect of which the certificate has been issued.
- (2) This section does not apply to an accredited certifier in relation to any Part 4A certificate or complying development certificate that he or she has issued.

**109Q Regulations under Part 4A**

In addition to any other matters for or with respect to which regulations may be made for the purposes of this Part, the regulations may make provision for or with respect to the following:

- (a) the matters to be notified to a consent authority under this Part,
- (b) the records to be kept by certifying authorities under this Part.

**Part 4B Accreditation of certifiers**

**Division 1 Preliminary**

**109R Definitions**

In this Part:

**complaint** means a complaint about an accredited certifier made under section 109V.

**disciplinary finding** means a finding of unsatisfactory professional conduct or professional misconduct.

**professional misconduct**, in relation to an accredited certifier, means conduct that is unsatisfactory professional conduct of a sufficiently serious nature to justify suspension of the accredited certifier's accreditation as an accredited certifier or the withdrawal of the accredited certifier's accreditation.

**Tribunal** means the Administrative Decisions Tribunal.

**unsatisfactory professional conduct** includes conduct (whether consisting of an act or omission):

- (a) occurring in connection with the exercise of an accredited certifier's functions as a certifying authority that falls short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent accredited certifier, or
- (b) by which an accredited certifier exercises his or her functions as a certifying authority in a partial manner, or
- (c) by which an accredited certifier wilfully disregards matters to which he or she is required to have regard in exercising his or her functions as a certifying authority, or
- (d) by which an accredited certifier fails to comply with:
  - (i) any relevant code of conduct established by the accreditation body by which he or she is accredited, or
  - (ii) any other Act or law prescribed by the regulations, or
- (e) by which an accredited certifier contravenes this Act, whether or not he or she is prosecuted or convicted for the contravention.

## **Division 2 Accreditation of certifiers**

### **109S Authorisation of accreditation bodies**

- (1) The Minister may, in accordance with the regulations:
  - (a) authorise any professional association as an accreditation body with respect to any specified class of matters, and
  - (b) withdraw any authorisation so granted.
- (2) More than one professional association may be authorised as an accreditation body with respect to the same class of matters.

### **109T Accreditation of accredited certifiers**

- (1) An accreditation body may accredit persons (other than bodies corporate) as accredited certifiers in accordance with its authorisation as an accreditation body.
- (2) An accreditation body may refuse to accredit a person as an accredited certifier or suspend or withdraw a person's accreditation as an accredited certifier:
  - (a) if it is satisfied that the person does not have the qualifications or expertise to exercise the functions of an accredited certifier, or
  - (b) if it is satisfied that the person is not covered by the required insurance (within the meaning of section 109ZN), or
  - (c) for such other reasons as may be prescribed by the regulations.
- (3) An accreditation body must refuse to accredit a person as an accredited certifier or suspend or withdraw a person's accreditation as an accredited certifier if directed to do so by an order made by the Tribunal under this Part.
- (4) Neither an accreditation body, nor any member or member of staff of an accreditation body, is liable for any act or omission done or omitted to be done in good faith in the exercise of any function under this section.
- (5) The regulations may make provision for or with respect to any or all of the following:
  - (a) the keeping by the Director-General of a register of accredited certifiers,
  - (b) the issue of certificates by the Director-General containing details of the accreditation of a person and the evidentiary value of such certificates.

### **109U Auditing of accredited certifiers**

- (1) The Director-General may authorise any person (referred to in this section as a **Departmental inspector**) to carry out an investigation into the work and activities of an accredited certifier.
- (2) For the purpose of carrying out the investigation, the Departmental inspector may exercise the same functions under sections 431 and 432 of the [Local Government Act 1993](#) as may be exercised by a Departmental representative referred to in those sections.
- (3) The Departmental inspector must report to the Director-General on the results of the investigation.
- (4) If satisfied that the report indicates that the accredited certifier is or may be guilty of unsatisfactory professional conduct or professional misconduct, the Director-General:
  - (a) must furnish a copy of the report to the accredited certifier, and

- (b) may furnish a copy of the report to the relevant accreditation body and any person prescribed by the regulations, and
- (c) may apply to the Tribunal for a disciplinary finding against an accredited certifier with respect to any matter arising from the report.

### **Division 3 Disciplinary proceedings**

#### **109V Persons who may make complaints**

- (1) A person may make a complaint to the relevant accreditation body against an accredited certifier that the accredited certifier has been guilty of unsatisfactory professional conduct or professional misconduct.
- (2) A complaint is:
  - (a) to be in writing, and
  - (b) to contain particulars of the allegations on which it is founded, and
  - (c) to be verified by statutory declaration.
- (3) The accreditation body may require the complainant to provide further particulars of the complaint.
- (4) The accreditation body must, after receiving a complaint against an accredited certifier:
  - (a) inform the accredited certifier of the nature of the complaint, and
  - (b) by notice, invite the accredited certifier to make, within such time (being at least 7 days) as the accreditation body specifies in the notice, such representations to the accreditation body with respect to the complaint as he or she thinks fit.

#### **109W Investigation by accreditation body of complaints**

- (1) The relevant accreditation body must, subject to this Division, conduct an investigation into each complaint made to it under this Division.
- (2) An accreditation body may deal with one or more complaints about an accredited certifier in an investigation.
- (3) If during an investigation of any one or more complaints it appears to an accreditation body that there is matter in respect of which another complaint could have been made against the accredited certifier concerned, the accreditation body may deal with the matter in its investigation as if a complaint had been made about it under section 109V.
- (4) For the purposes of subsection (3), the accreditation body may deal with a matter that

could have been the subject of another complaint:

- (a) whether that complaint could have been made instead of or in addition to any complaint that was in fact made, and
  - (b) whether or not that complaint could have been made by the same complainant.
- (5) The accreditation body may dismiss any complaint without investigation if further particulars of the complaint are not given, or the complaint or the further particulars are not verified, as required by the accreditation body.

**109X Powers of accreditation body in investigation of complaint**

- (1) For the purpose of investigating any complaint, the relevant accreditation body may, by notice served on any person accredited by it as an accredited certifier, require the person to do any one or more of the following:
- (a) to provide written information, by a date specified in the notice, and to verify the information by statutory declaration,
  - (b) to produce, at a time and place specified in the notice, any document (or a copy of any document) specified in the notice,
  - (c) to otherwise assist in, or co-operate with, the investigation of the complaint in a specified manner.
- (2) The accreditation body may inspect any document produced before the accreditation body under this section and may retain it for such period as the accreditation body thinks necessary for the purposes of an investigation in relation to which it was produced. The accreditation body may make copies of the document or any part of the document.
- (3) If the accredited certifier against whom any complaint is made (or taken to be made) claims a lien over documents relating to the matter the subject of the complaint, the accreditation body may require the accredited certifier to waive the lien if satisfied it is necessary for the orderly transaction of the complainant's business.
- (4) A requirement under this section is to be notified in writing to the accredited certifier and is to specify a reasonable time for compliance.
- (5) An accredited certifier who, without reasonable excuse, fails to comply with such a requirement is guilty of professional misconduct.
- (6) An accredited certifier must not mislead or obstruct an accreditation body in the exercise of any function under this Division. The wilful contravention of this subsection is capable of being professional misconduct.



**109Y Investigation into complaint to be conducted expeditiously**

An investigation by an accreditation body is to be conducted as expeditiously as possible.

**109Z Decision after investigation of complaint**

- (1) After an accreditation body has completed an investigation into a complaint against an accredited certifier, the complaint is to be dealt with in accordance with this section.
- (2) The accreditation body may apply to the Tribunal for a disciplinary finding against an accredited certifier with respect to any complaint against the accredited certifier.
- (3) Subject to subsection (4), the accreditation body must institute proceedings in the Tribunal with respect to the complaint against the accredited certifier if satisfied that there is a reasonable likelihood that the accredited certifier will be found guilty by the Tribunal of unsatisfactory professional conduct or professional misconduct.
- (4) If the accreditation body is satisfied that there is a reasonable likelihood that the accredited certifier will be found guilty by the Tribunal of unsatisfactory professional conduct (but not professional misconduct), the accreditation body may instead:
  - (a) with the consent of the accredited certifier do any one or more of the following:
    - (i) caution or reprimand the accredited certifier,
    - (ii) direct that such conditions as it considers appropriate be imposed on the accredited certifier's accreditation to practise as an accredited certifier,
    - (iii) order that the accredited certifier complete such educational courses as are specified by the accreditation body,
    - (iv) order that the accredited certifier report on his or her practice as an accredited certifier at the times, in the manner and to the persons specified by the accreditation body, or
  - (b) dismiss the complaint if satisfied that the accredited certifier is generally competent and diligent and that no other material complaints have been made against the accredited certifier.
- (5) The accreditation body is to dismiss the complaint against the accredited certifier if satisfied that there is no reasonable likelihood that the accredited certifier will be found guilty by the Tribunal of either unsatisfactory professional conduct or professional misconduct.

**109ZA Tribunal may make certain disciplinary findings on application of accreditation body**

- (1) If an application is made to the Tribunal under section 109U or 109Z for a disciplinary

finding in relation to an accredited certifier, the Tribunal is to determine whether or not the accredited certifier is guilty of unsatisfactory professional conduct or professional misconduct.

- (2) If the Tribunal finds that the accredited certifier is guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal may make any one or more of the following decisions:
  - (a) caution or reprimand the accredited certifier,
  - (b) direct that such conditions as it considers appropriate be imposed on the accredited certifier's accreditation to practise as an accredited certifier,
  - (c) order that the accredited certifier complete such educational courses as are specified by the Tribunal,
  - (d) order that the accredited certifier report on his or her practice as an accredited certifier at the times, in the manner and to the persons specified by the Tribunal,
  - (e) order the accredited certifier to pay a fine of an amount, not exceeding 300 penalty units, specified in the order,
  - (f) order the accredited certifier to pay to the complainant such amount (not exceeding \$20,000) as the Tribunal considers appropriate by way of compensation for any damage suffered by the complainant as a result of the unsatisfactory professional conduct or professional misconduct,
  - (g) suspend the accredited certifier's accreditation for such period as the Tribunal thinks fit,
  - (h) withdraw the accredited certifier's accreditation.
- (3) If the Tribunal finds that the accredited certifier is not guilty of unsatisfactory professional conduct or professional misconduct, it is to dismiss the application.
- (4) If the Tribunal orders that an accredited certifier's accreditation be withdrawn, it may also order that he or she cannot re-apply for accreditation (whether by his or her relevant accreditation body or by any other accreditation body) within such period (including the period of his or her lifetime) as may be specified by the Tribunal.

#### **109ZB Tribunal may award costs**

The Tribunal may award costs under section 88 of the [Administrative Decisions Tribunal Act 1997](#) in respect of proceedings commenced by an application made under this Division.

#### **109ZC Appeals to Appeal Panel against decisions and orders of the Tribunal**

An order or other decision made by the Tribunal under this Division may be appealed to an

Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* by a party to the proceedings in which the order or decision is made.

**109ZD Duty of confidentiality of client communications**

- (1) An accredited certifier must comply with a requirement under this Division to answer a question or to produce information or a document despite any duty of confidentiality in respect of a communication between the accredited certifier and a client (but only if the client is the complainant or consents to its disclosure).
- (2) An accredited certifier may disclose a matter to the relevant accreditation body or the Tribunal in breach of any such duty of confidentiality if the accreditation body or Tribunal is satisfied that it is necessary for the accredited certifier to do so in order to rebut an allegation in the complaint.

**109ZE Confidential information in statement of reasons**

- (1) The Tribunal is not required to include confidential information in the statement of reasons given under section 89 or 117 of the *Administrative Decisions Tribunal Act 1997*. If a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (1), the Tribunal must give a confidential information notice to the person.
- (3) A **confidential information notice** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (4) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

**109ZF General provisions concerning disciplinary proceedings**

- (1) If an accredited certifier has died:
  - (a) a person cannot make a complaint against the accredited certifier, and
  - (b) the accreditation body is not to investigate (or continue to investigate) a complaint made against the accredited certifier or to make an application to the Tribunal for a disciplinary finding against the accredited certifier, and
  - (c) the Tribunal is not to determine an application for a disciplinary finding against the accredited certifier.

- (2) A complaint against an accredited certifier may be made and dealt with even though the accredited certifier's accreditation has been withdrawn. For that purpose, a reference to an accredited certifier in this Division includes a reference to a person whose right to practise as an accredited certifier has been suspended or whose accreditation has been withdrawn.
- (3) Despite subsection (2), the accreditation body or the Tribunal may decide not to investigate or determine an application (or may decide to terminate an investigation or dismiss proceedings for an application) if the person to whom the investigation or application relates is no longer an accredited certifier.

## **Division 4 Offences**

### **109ZG Conflicts of interest**

- (1) An accredited certifier must not issue a Part 4A certificate or complying development certificate in relation to any aspect of development:
  - (a) if he or she has been involved in the preparation of the plans or specifications for that aspect of the development, or
  - (b) if he or she has been involved in the carrying out of work on that aspect of the development, or
  - (c) if he or she is the applicant for the certificate or is related to the applicant for the certificate, or
  - (d) if he or she is associated with the council of the area in which the development is to be carried out, or
  - (e) if he or she has a pecuniary interest in that or any other aspect of the development.

Maximum penalty: 200 penalty units.

- (1A) Despite subsection (1), an accredited certifier who is an employee of a council may issue a Part 4A certificate in relation to development that is to be carried out in the area of the council if:
  - (a) the certificate relates to development for which the council is not the consent authority, and
  - (b) the accredited certifier issues the certificate in the course of his or her employment with the council.
- (2) An accredited certifier is related to another person for the purposes of this section if the accredited certifier:
  - (a) is an employer, partner or employee of the other person, or

- (b) is a spouse, de facto partner (whether of the same or the opposite sex), sibling, parent or child of the other person, or
  - (c) has a contractual arrangement with the other person that might reasonably be seen to give rise to a conflict between the accredited certifier's duties as an accredited certifier and the accredited certifier's interests under the arrangement.
- (3) An accredited certifier is associated with a council if he or she:
- (a) is a councillor or employee of the council, or
  - (b) is related to a councillor or employee of the council, or
  - (c) has a contractual arrangement with the council that might reasonably be seen to give rise to a conflict between the accredited certifier's duties as an accredited certifier and the accredited certifier's interests under the arrangement.
- (4) An accredited certifier has a pecuniary interest in an aspect of development if there is a reasonable likelihood or expectation of appreciable financial gain or loss to the person, or to a person to whom he or she is related, but does not have such an interest if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to that aspect of the development.

#### **109ZH False representations**

- (1) A person who:
- (a) issues a Part 4A certificate or complying development certificate that he or she is not authorised by or under this Act to issue, or
  - (b) makes any statement that is false or misleading in a material particular in, or in connection with, a Part 4A certificate or complying development certificate,
- is guilty of an offence against this Act.
- Maximum penalty: 300 penalty units.
- (2) An accredited certifier who falsely represents that he or she is a certifying authority or principal certifying authority in relation to any development is guilty of an offence against this Act.
- Maximum penalty: 300 penalty units.

### **Part 4C Liability and insurance**

#### **Division 1 Preliminary**

## 109ZI Definitions

In this Part:

**building action** means an action (including a counter-claim) for loss or damage arising out of or concerning defective building work.

**building work** includes the design, inspection and issuing of a Part 4A certificate or complying development certificate in respect of building work.

**subdivision action** means an action (including a counter-claim) for loss or damage arising out of or concerning defective subdivision work.

**subdivision work** includes the design, inspection and issuing of a Part 4A certificate or complying development certificate in respect of subdivision work.

## Division 2 Liability

### 109ZJ Apportionment of liability

- (1) After determining an award of damages in a building action or subdivision action, a court must give judgment against each contributing party for such proportion of the total amount of damages as the court considers to be just and equitable, having regard to the extent of that party's responsibility for the loss or damage in respect of which the award is made.
- (2) Despite any Act or law to the contrary, the liability for damages of a contributing party is limited to the amount for which judgment is given against that party by the court.
- (3) A contributing party cannot be required:
  - (a) to contribute to the damages apportioned to any other person in the same building action or subdivision action, or
  - (b) to indemnify any such other person in respect of those damages.
- (4) In this section **contributing party**, in relation to a building action or subdivision action, means a defendant or other party to the action found by the court to be jointly or severally liable for the damages awarded, or to be awarded, in the action.

### 109ZK Limitation on time when building action or subdivision action may be brought

- (1) Despite any Act or law to the contrary:
  - (a) a building action may not be brought in relation to any building work more than 10 years after the date on which the relevant final occupation certificate is issued, and
  - (b) a subdivision action may not be brought in relation to any subdivision work more

than 10 years after:

- (i) in the case of work completed before the relevant subdivision certificate is issued, the date on which the relevant subdivision certificate is issued, or
- (ii) in the case of work completed after the relevant subdivision certificate is issued, the date on which the compliance certificate that certifies that the work has been completed is issued.

(2) This section does not operate to extend any period of limitation under the *Limitation Act 1969*.

### **109ZL Division not to affect rights to recover damages for death or personal injury**

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

## **Division 3 Insurance**

### **109ZM Application of Division**

This Division applies to:

- (a) accredited certifiers, and
- (b) such other persons as are prescribed by the regulations for the purposes of this section (referred to in this Division as ***building practitioners***).

### **109ZN Accredited certifiers**

(1) An accredited certifier must not:

- (a) exercise the functions of a certifying authority in relation to any building work or subdivision work, or
- (b) hold himself or herself out as being covered by the required insurance, unless he or she is covered by the required insurance.

Maximum penalty: 100 penalty units.

(2) For the purposes of this section, an accredited certifier is covered by the required insurance if he or she is indemnified by an insurance policy that complies with the regulations against any liability to which he or she may become subject as a result of exercising the functions of a certifying authority.

### **109ZO Building practitioners**

(1) A building practitioner must not:

- (a) carry out any building work or subdivision work, or

(b) hold himself or herself out as being covered by the required insurance, unless he or she is covered by the required insurance.

Maximum penalty: 500 penalty units (in the case of a corporation) or 100 penalty units (in any other case).

(2) For the purposes of this section, a building practitioner is covered by the required insurance if he or she is indemnified by an insurance policy that complies with the regulations against any liability to which he or she may become subject as a result of carrying out building work or subdivision work.

### **109ZP Regulations under this Division**

Without limiting the matters for which the regulations may provide in relation to an insurance policy, the regulations may prescribe:

- (a) the persons or bodies who may be the insurers under such a policy, and
- (b) the period for which the insured is to be indemnified under such a policy, and
- (c) the amount in respect of which the insured is to be indemnified under such a policy, and
- (d) the risks in respect of which the insured is to be indemnified under such a policy, and
- (e) the form in which such a policy must be expressed, and
- (f) the obligations on a person who is the insurer under such a policy, and
- (g) the issue of such a policy in respect of liability incurred by a person who was formerly an accredited certifier.

## **Part 5 Environmental assessment**

### **Division 1 Preliminary**

#### **110 Definitions**

(1) In this Part:

**activity** means:

- (a) the use of land, and
- (b) the subdivision of land, and
- (c) the erection of a building, and
- (d) the carrying out of a work, and



- (e) the demolition of a building or work, and
- (f) any other act, matter or thing referred to in section 26 that is prescribed by the regulations for the purposes of this definition,

but does not include:

- (g) any act, matter or thing for which development consent under Part 4 is required or has been obtained, or
- (h) any act matter or thing that is prohibited under an environmental planning instrument, or
- (i) exempt development, or
- (j) development carried out in compliance with an order under Division 2A of Part 6, or
- (k) any development of a class or description that is prescribed by the regulations for the purposes of this definition.

**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](#).

#### **110D Transitional—amendment to list of vulnerable species**

- (1) For the purposes of Divisions 2 and 3 of this Part, an amendment to the list of vulnerable species does not apply in respect of an activity if:
- (a) an environmental impact statement was obtained in relation to that activity in

accordance with this Part before the amendment was made, and

- (b) notice of the environmental impact statement has been given as provided for by section 113 (1).
- (2) Subsection (1) ceases to apply in respect of an activity if the activity has not commenced to be carried out, or an approval in relation to the activity has not been granted, by a determining authority at the end of the period of 12 months after the date the notice of the environmental impact statement was given under section 113 (1).
- (3) For the purposes of Division 4 of this Part, an amendment to the list of vulnerable species does not apply in respect of an activity to which that Division applies if the proponent sought the Minister's approval under that Division in respect of the activity before the amendment was made.
- (4) Subsection (3) ceases to apply in respect of an activity if the Minister has not approved the activity being carried out by the end of the period of 12 months after the date the proponent sought the Minister's approval under that Division.
- (5) In this section:

***list of vulnerable species*** means Part 1 of Schedule 2 to the [Threatened Species Conservation Act 1995](#) or, subject to section 5C, Schedule 5 to the [Fisheries Management Act 1994](#).

## **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 Director-General 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 Director-General that the Director-General 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) An environmental impact statement is not required (despite subsection (1) (a)) in respect of an activity that:

(a) is on land that is, or is part of, critical habitat, or is likely to significantly affect threatened species, populations or ecological communities, or their habitats, and

(b) is not likely to significantly affect the environment except as described in paragraph (a),

if the determining authority has obtained or been furnished with a species impact statement in respect of the activity, prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*. However, the provisions of this Part relating to environmental impact statements (other than subsection (1) (a) (i)) apply to the species impact statement as if references to an environmental impact statement included a reference to the species impact statement.

(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 Director-General 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 Director-General as the Director-General 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 that 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) Section 79B (8), (9) and (11) and the prescribed provisions of the regulations 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.
- (4) The Director-General of National Parks and Wildlife or, in a case where the Minister administering the *Threatened Species Conservation Act 1995* has elected to act in the place of the Director-General, the Minister may, on the request of a determining authority that proposes to carry out or grant an approval to carry out an activity referred to in subsection (1), modify a concurrence granted under this section by:
  - (a) revoking or varying a condition of the concurrence, or
  - (b) imposing an additional condition on the concurrence.

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

- (1) 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.
- (2) Before the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995* decides to modify a concurrence in respect of an activity under section 112C he or she must:
  - (a) give notice of the proposed decision to any person who made representations



under section 113 concerning the species impact statement in respect of the activity, and

- (b) provide the person with an opportunity to make submissions with respect to the proposed decision within a period specified in the notice (being a period of not less than 28 days after the date of the notice), and
- (c) have regard to any submissions made to him or her in accordance with the notice within the period so specified.

**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 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 Director-General a copy of any representations made to it under subsection (2) with respect to the activity.
- (3A) The determining authority must, at that time, also forward copies of those representations to the Environment Protection Authority if the activity is a scheduled activity under the *Protection of the Environment Operations Act 1997*.
- (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-General 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-General 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) and (1B). 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-General'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) and (1B) 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-General'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.

#### **115BAA Minor modification of Minister's approval**

- (1) The Minister may, on application by a proponent, modify an approval for the proponent to carry out an activity to correct a minor error, misdescription or miscalculation in the approval.
- (2) If a proponent requests modification of an approval under this section, the Minister is required to modify the approval (without conditions) or disapprove of the modification. The Minister is to notify the proponent of the decision.
- (3) The Minister's decision on a modification of an approval is to be made within 21 days after the Minister receives the Director-General's report under section 115C (1B). The proponent may agree to an extension of the period.
- (4) Section 115BB (2) and (3), and section 115C (1), (1A), (2), (2A), (5) and (6) do not apply to such a modification.

#### **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-General 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-General 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-General's report**

- (1) The Director-General 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-General 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.
- (1B) The Director-General is also to report to the Minister on the assessment of a proposed modification of an approval requested by a proponent under section 115BAA.
- (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-General 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-General 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-General 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-General 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-General 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-General 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-General 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-General 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-General 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.



## Division 5 Environmental assessment of fishing activities

### 115G Definitions

In this Division:

**designated fishing activity** means a fishing activity to which this Division applies as provided by section 115I.

**fish, fishery, fishing activity** and **share management fishery** have the respective meanings given in the *Fisheries Management Act 1994*.

**fisheries approval** means a licence, endorsement or permit, of any kind, issued or renewed under the *Fisheries Management Act 1994* or the regulations under that Act.

**Fisheries Minister** means the Minister administering the *Fisheries Management Act 1994*.

**fishery management strategy** means a fishery management strategy for a designated fishing activity under Part 1A of the *Fisheries Management Act 1994*.

**fishing regulatory controls** means the provisions of the following instruments that regulate, prohibit or authorise fishing activities:

- (a) the *Fisheries Management Act 1994* and the regulations under that Act,
- (b) management plans under the *Fisheries Management Act 1994*,
- (c) fishing closures under section 8 of the *Fisheries Management Act 1994*,
- (d) fisheries approvals,
- (e) determinations of the TAC Committee under Division 4 of Part 2 of the *Fisheries Management Act 1994*,
- (f) policies approved by the Fisheries Minister with respect to the administration of the *Fisheries Management Act 1994* and the regulations under that Act,
- (g) any relevant environmental planning instrument referred to in section 115R (5),
- (h) Ministerial orders and interim orders made under Subdivision 1A of Division 6 of Part 7A of the *Fisheries Management Act 1994*.

**proponent** of a fishing activity means:

- (a) in the case of a share management fishery—the holders of shares in the fishery or, if shares have not yet been issued on a provisional or permanent basis, the persons who are entitled to be allocated shares in the fishery, or
- (b) in the case of any other fishery—the fishers or other persons who carry out, or

propose to carry out, the fishing activity.

#### **115H Principles guiding administration of Division**

The administration of this Division is to be guided by the following principles:

- (a) the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (b) public participation in accordance with this Division,
- (c) environmental impact assessment in accordance with this Division.

#### **115I Application of Division to designated fishing activities**

- (1) This Division applies to designated fishing activities described in Schedule 1A to the *Fisheries Management Act 1994*.
- (2) This Division extends to the following activities (but only if the activity is such a designated fishing activity):
  - (a) the stocking of waters with fish,
  - (b) the placing of nets around beaches or other waters to protect the public from sharks,
  - (c) the harvesting of marine vegetation.

For that purpose, a reference in this Division to a fishing activity or fishery includes a reference to any such activity.

- (3) This Division does not apply to aquaculture within the meaning of the *Fisheries Management Act 1994*.

#### **115J Designated fishing activities to be assessed under this Division**

- (1) Environmental assessments of designated fishing activities are to be undertaken in accordance with this Division.
- (2) A draft fishery management strategy is required for a designated fishing activity that is the subject of such an environmental assessment.

**Note—**

Section 7E of the *Fisheries Management Act 1994* deals with the contents of such a strategy (including the incorporation of the relevant management plan).

- (3) The environmental assessment is to be undertaken on the basis of the activity described in the draft strategy.
- (4) The environmental assessment is to assess the likely cumulative environmental impact of the designated fishing activity carried out by all the proponents as

authorised by the applicable fishing regulatory controls described in the draft strategy.

**115K Environmental impact statements to be prepared**

- (1) An environmental impact statement in respect of a designated fishing activity must be prepared for the purposes of an environmental assessment under this Division.
- (2) An environmental impact statement is required even if it would not be required under Division 3 if that Division applied to the carrying out of the designated fishing activity.
- (3) An environmental impact statement is to be prepared in accordance with the requirements of Division 3, and the regulations under that Division, relating to the preparation of such statements.
- (4) The Fisheries Minister is to make arrangements for the preparation of an environmental impact statement, including engaging a person to be responsible for the preparation of the statement.
- (5) The Fisheries Minister may, under those arrangements, require the proponents of the designated fishing activity to provide information or carry out investigations for the statement and to contribute to the cost of the preparation of the statement.
- (6) As soon as practicable after an environmental impact statement has been prepared and before public notice is given under section 115L, the Fisheries Minister is to give a copy of the statement to the Director-General.

**115L Publicity and examination of environmental impact statements**

- (1) The Fisheries Minister must give public notice of the preparation of an environmental impact statement under this Division and make a copy of the statement available for public inspection in accordance with the requirements for environmental impact statements made by section 113.
- (2) A copy of the relevant draft fishery management strategy is to accompany any copy of the environmental impact statement that is made available for public inspection in accordance with this section.
- (3) Any person may, during the period specified in the public notice under subsection (1), inspect the environmental impact statement and may, within that period, make representations in writing to the Fisheries Minister with respect to the designated fishing activity to which the statement relates.
- (4) Copies of all such representations received by the Fisheries Minister are to be provided, as soon as practicable, to the Director-General.
- (5) The Director-General may, unless an inquiry has been directed under section 115M:
  - (a) examine or cause to be examined in the Department the environmental impact

statement and any relevant representations, and

- (b) forward to the Fisheries Minister, as soon as practicable, a report containing the findings of that examination together with any recommendations arising from that examination.

The Director-General must make that report public.

- (6) If the Director-General notifies the Fisheries Minister that the environmental impact statement and representations are to be examined in the Department, the Fisheries Minister must not make a determination under section 1150 with respect to the designated fishing activity until the report of the Director-General has been forwarded to the Fisheries Minister.

#### **115M Public inquiry into designated fishing activity**

- (1) The Minister administering this Act may direct an inquiry under section 119 with respect to all or any of the environmental aspects of a designated fishing activity the subject of an environmental impact statement prepared under this Division.
- (2) The Minister administering this Act is to consider the findings and recommendations of the Commission of Inquiry that has conducted the inquiry and forward to the Fisheries Minister a copy of the findings and recommendations (together with any advice on whether there are environmental grounds on which the activity should be permitted, modified or prevented).
- (3) If the Minister administering this Act notifies the Fisheries Minister that an inquiry is to be conducted, the Fisheries Minister must not make a determination under section 1150 with respect to the designated fishing activity until the findings and recommendations (and any advice) have been forwarded to the Fisheries Minister.

#### **115N Special provisions relating to threatened species conservation**

- (1) An environmental assessment under this Division of a designated fishing activity is to include an assessment of the effect or likely effect on the following:
  - (a) critical habitat,
  - (b) threatened species, populations and ecological communities and their habitats.
- (2) An environmental impact statement under this Division must include a species impact statement if the designated fishing activity is to be carried out in critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats.
- (2A) However, despite subsection (2), a species impact statement is not required in relation to threatened species, populations or ecological communities or their habitats, if:

- (a) the designated fishing activity subject to the environmental assessment is an activity authorised by a Ministerial order made under Subdivision 1A of Division 6 of Part 7A of the *Fisheries Management Act 1994*, and
  - (b) the species impact statement prepared under section 221IC of the *Fisheries Management Act 1994* in relation to that order includes an assessment of the likely effect of the activity on those threatened species, populations or ecological communities or their habitats.
- (3) The Fisheries Minister, in considering a species impact statement under this Division, must have regard to the terms of any recovery plans or threat abatement plans relating to the area to which the statement applies for the purpose of assessing any effect on a threatened species, population or ecological community, or its habitat.
- (4) The Fisheries Minister must not make a determination under section 1150 with respect to a designated fishing activity that is to be carried out in critical habitat or is likely to significantly affect threatened species, populations or ecological communities or their habitats unless the Minister has consulted the Minister administering the *Threatened Species Conservation Act 1995*. This subsection does not apply if the critical habitat or the threatened species, population or ecological community relate to fish or marine vegetation.
- (5) In consulting under subsection (4), the Minister administering the *Threatened Species Conservation Act 1995* must provide the Fisheries Minister with any recommendations made by the Director-General of National Parks and Wildlife concerning the determination with respect to the designated fishing activity. The Fisheries Minister must include any recommendations not accepted by the Fisheries Minister (and the reasons for not accepting them) in the public report of the Fisheries Minister's determination.
- (6) The Minister administering the *Threatened Species Conservation Act 1995* (for the purposes of consultation under subsection (4)) must take into consideration the matters referred to in section 112E of this Act.

**Note—**

This section incorporates the relevant obligations under Division 3 with respect to threatened species conservation.

**1150 Determination with respect to environmental assessment**

- (1) The Fisheries Minister is to make a determination with respect to the designated fishing activity the subject of an environmental impact statement for the purpose of attaining the objects of this Act relating to the protection and the enhancement of the environment and the objects of the *Fisheries Management Act 1994*.
- (2) When making the determination, the Fisheries Minister is to examine and take into

account to the fullest extent possible all matters affecting or likely to affect the environment by reason of the designated fishing activity (including the effect of the activity on the matters referred to in section 111 (2)-(4)).

**Note—**

The duty of the Fisheries Minister under this section is in similar terms to the duty imposed on determining authorities by section 111 to consider the environmental impact of activities.

(3) The Fisheries Minister is to consider:

- (a) the environmental impact statement and the representations duly received by the Fisheries Minister with respect to the designated fishing activity to which the statement relates, and
- (b) any report on the statement and recommendations of the Director-General that are forwarded to the Fisheries Minister under section 115L, and
- (c) any findings and recommendations of a Commission of Inquiry and advice of the Minister administering this Act that are forwarded to the Fisheries Minister under section 115M, and
- (d) the matters required to be considered under section 115N relating to threatened species conservation.

(4) The Fisheries Minister may make any of the following determinations:

- (a) a determination to permit the designated fishing activity to be carried out,
- (b) a determination to permit the designated fishing activity to be carried out subject to such modifications as will in the Fisheries Minister's opinion eliminate or reduce the detrimental effect of the activity on the environment,
- (c) a determination to prevent the carrying out of the designated fishing activity or any part of the activity.

The Fisheries Minister must make the determination public as soon as practicable after it is made.

**Note—**

This subsection is in similar terms to section 112 (4) with respect to the actions of a determining authority once it has obtained and considered an environmental impact statement on an activity that is likely to significantly affect the environment. Section 7F of the *Fisheries Management Act 1994* requires the Fisheries Minister to revise the relevant draft fishery management strategy (and publish the approved strategy) so as to reflect the result of the determination.

(5) If the approval of the Minister administering this Act is required under section 115P for a determination under this section, the Fisheries Minister is to make a preliminary determination before seeking approval under that section. A determination is not made under this section until a final determination is made in accordance with section

115P.

- (6) When giving effect to a determination, the Fisheries Minister is to comply with the applicable provisions of the *Fisheries Management Act 1994* and the regulations under that Act.
- (7) A determination under this section does not prevent the imposition from time to time of new fishing regulatory controls applicable to a designated fishing activity, or changes from time to time to those controls.

**Note—**

See also section 115R (3) which only excludes a fishing approval from the requirement for individual environmental assessment under this Part if it is issued or renewed in accordance with the determination of the environmental assessment under this section.

**115P Approval of Minister administering this Act required for designated fishing activity where Fisheries Minister is or is declared to be proponent**

- (1) This section applies to:
  - (a) any designated fishing activity of which the Fisheries Minister is the proponent, and
  - (b) any other designated fishing activity in respect of which the Fisheries Minister is declared to be the proponent by the Minister administering this Act by order published in the Gazette:
    - (i) with the approval of the Fisheries Minister, or
    - (ii) if there is a dispute between the Minister administering this Act and the Fisheries Minister, with the approval of the Premier.
- (2) The Fisheries Minister is not to make a final determination under section 115O with respect to a designated fishing activity to which this section applies without the approval of the Minister administering this Act. If the approval is subject to conditions, the final determination must accord with those conditions.
- (3) Division 4 applies (with any necessary modifications) to an approval of the Minister administering this Act required under this section in the same way as it applies to an approval of that Minister required under that Division.

**115Q Re-assessment of designated fishing activity**

- (1) A further environmental assessment of a designated fishing activity is to be undertaken under this Division if:
  - (a) a review of the relevant fishery management strategy is indicated by the strategy because the specified performance indicators are not being met, and

- (b) the review results in proposed changes to the strategy, and
  - (c) the proposed changes to fishing regulatory controls are likely, in the opinion of the Fisheries Minister, to significantly affect the environment (including threatened species, populations or ecological communities or their habitats).
- (2) A further environmental assessment may be limited to an assessment that relates to the proposed changes to fishing regulatory controls.

**115R Application of other provisions of this Act**

- (1) The provisions of this Part (other than this Division) do not apply to or in respect of a designated fishing activity.
- (2) Despite subsection (1), those provisions apply to a designated fishing activity if the Fisheries Minister has not made a determination with respect to the activity under this Division before:
- (a) 1 July 2003, except as provided by paragraph (b), or
  - (b) a later date prescribed by the regulations for the purposes of that fishing activity.

In that case, those provisions cease to apply if the determination is made after that date.

- (3) Despite subsection (1), those provisions apply to a fisheries approval that relates to a designated fishing activity if:
- (a) until a determination is made by the Fisheries Minister with respect to the activity under section 1150—the fisheries approval does not authorise commercial fishing activities and is granted or renewed for a period exceeding 12 months, or
  - (b) after such a determination is made—the fisheries approval is not granted or renewed in accordance with the determination.
- (4) A designated fishing activity cannot be made subject to a requirement for development consent under Part 4.
- (5) An environmental planning instrument cannot prohibit or otherwise regulate a designated fishing activity (or any part of such an activity) unless the Fisheries Minister has approved those provisions before the instrument is made.

**115S Transitional—amendment to list of vulnerable species**

- (1) An amendment to the list of vulnerable species does not apply in respect of a designated fishing activity if:
- (a) an environmental impact statement was prepared in relation to that activity in accordance with this Part before the amendment was made, and



(b) notice of the environmental impact statement has been given as provided for by section 115L.

(2) Subsection (1) ceases to apply in respect of a designated fishing activity if a determination under section 115O has not been made in respect of the activity at the end of the period of 12 months after the date the notice of the environmental impact statement was given under section 115L.

(3) In this section:

***list of vulnerable species*** means Part 1 of Schedule 2 to the *Threatened Species Conservation Act 1995* or, subject to section 5C, Schedule 5 to the *Fisheries Management Act 1994*.

## **Part 5A Development by the Crown**

### **116A Relationship between Parts 4 and 5A**

Part 4 applies to development to which this Part applies but this Part prevails over Part 4 to the extent of any inconsistency between this Part and Part 4.

### **116B References to the Crown**

A reference in a provision of this Part to the Crown:

- (a) includes a reference to a person who is prescribed by the regulations to be the Crown for the purposes of the provision, and
- (b) does not include a reference to:
  - (i) a capacity of the Crown that is prescribed by the regulations not to be the Crown for the purposes of the provision, or
  - (ii) a person who is prescribed by the regulations not to be the Crown for the purposes of the provision.

### **116C Determination of Crown development applications**

A consent authority, in respect of a development application made by or on behalf of the Crown, 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.

### **116D Reference of undetermined applications to the Minister**

(1) 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.

- (2) The party who refers the application to the Minister must notify the other party in writing that the application has been referred.
- (3) 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.
- (4) The Minister is required to notify the Director-General in writing that the application has been referred.

#### **116E Negotiating determination of development application**

- (1) On being notified of the reference of a development application, the Director-General 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.
- (2) If agreement is reached between the consent authority and the applicant that development consent be granted, unconditionally or subject to conditions, the Director-General 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-General must give a copy of the report to the consent authority and the applicant.

- (3) After receiving the Director-General's report, the consent authority must determine the application by granting consent in accordance with the report and recommendations and must do so 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.
- (4) If agreement is not reached between the consent authority and the applicant 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.
- (5) At the end of the 40-day period specified in subsection (4) (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.
- (6) The Minister must notify the consent authority and the applicant in writing of the reasons for a decision under subsection (4) or (5).
- (7) If the consent authority does not determine the application on or before the date specified in the Director-General's report under subsection (2), or on or before the date notified for the purpose by the Minister under subsection (4) (b) or (d) or subsection (5), 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 (2)—by granting consent in accordance with the report and recommendations, or
  - (b) in the case of a notification under subsection (4) (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 (5)—in accordance with the Minister's approval as notified to it.

### **116F Modification of Crown development consents**

This Part applies to an application by or on behalf of the Crown under section 96 in the

same way as it applies to an application for development consent.

**116G Building, demolition and incidental work**

(1) In this section:

**Crown building work** means development (other than exempt development), or an activity within the meaning of Part 5, by the Crown that comprises:

- (a) the erection of a building, or
- (b) the demolition of a building or work, or
- (c) the doing of anything that is incidental to the erection of a building or the demolition of a building or work.

**technical provisions of the State's building laws** means those provisions of:

- (a) the regulations, or
- (b) a publication, the provisions of which have been applied, adopted or incorporated by the regulations,

that are prescribed by the regulations to be technical provisions of the State's building laws for the purposes of this section.

(2) Crown building work cannot be commenced to be carried out unless the Crown building work is certified by or on behalf of the Crown to comply with the technical provisions of the State's building laws in force as at:

- (a) the date of the invitation for tenders to carry out the Crown building work, or
- (b) in the absence of tenders, the date on which the carrying out of the Crown building work commences, except as provided by this section.

(3) A Minister, by order in writing, may at any time determine in relation to buildings generally or a specified building or buildings of a specified class that a specified technical provision of the State's building laws:

- (a) does not apply, or
- (b) does apply, but with such exceptions and modifications as may be specified.

(4) A determination of a Minister applies only to:

- (a) a building erected on behalf of the Minister, or
- (b) a building erected by or on behalf of a person appointed, constituted or regulated by or under an Act administered by the Minister.

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

- (6) Section 81A (2) does not apply to Crown building work that is certified in accordance with this section.

#### **116H Applicant's rights of appeal**

This Part does not affect the right of an applicant to appeal under section 96 (6) or 97.

## **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 Inquiry into councils by Director-General of Department of Local Government**

- (1) The Director-General of the Department of Planning may request the Director-General of the Department of Local Government to authorise an investigation under section 430 of the [Local Government Act 1993](#) into any aspect of a council's performance of its environmental planning functions under this Act that requires investigation.
- (2) The Director-General of the Department of Local Government is to provide the Director-General of the Department of Planning with advice on the outcome of any such request or investigation.

**117B (Repealed)**

**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 94E 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) In addition to the circumstances in which an appointment may be made under subsection (1), the Minister may appoint a person under that subsection if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the appointment because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of functions conferred or imposed on the council by or under this Act. The Minister may make the appointment without conducting an inquiry but, in that case, the Minister is to inquire into the matter as soon as practicable with a view to confirming or revoking the appointment.
- (3) In subsection (2):  
**serious corrupt conduct** means corrupt conduct (within the meaning of the *Independent Commission Against Corruption Act 1988*) that may constitute a serious indictable offence, being conduct in connection with the exercise or purported exercise of the functions of a councillor.
- (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. This subsection has effect even if the appointment is subsequently found not to have been validly made.
- (7) In respect of the period of a person's appointment under subsection (1), there is payable to the Director-General, 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 1A Entry on to land and other powers**

### **118A Power of entry**

- (1) For the purpose of enabling a council to exercise the council's functions, the council may authorise a person, in writing, to enter any premises.
- (2) For the purpose of enabling the Minister to exercise the Minister's functions, the Minister may authorise a person, in writing, to enter any premises.
- (2A) For the purpose of enabling the Director-General to exercise the Director-General's functions, the Director-General may authorise a person, in writing, to enter any premises.
- (2B) The principal certifying authority for any development may enter the land on which the development is carried out, including any building or work being erected on the land, for the purpose of exercising his or her functions as the principal certifying authority with respect to the development.
- (2C) Subject to the regulations, this Division applies to a principal certifying authority referred to in subsection (2B) as if his or her functions as a principal certifying authority were the functions of a council and as if he or she had been authorised by a council to enter premises for the purpose of exercising those functions.
- (3) Entry may only be made at any reasonable hour in the daytime or at any hour during which business is in progress or is usually carried on at the premises.

### **118B Inspections and investigations**

For the purpose of enabling a council, the Minister or the Director-General to exercise the council's, the Minister's or the Director-General's functions, a person authorised to enter premises under this Division may:

- (a) inspect the premises and any article, matter or thing on the premises, and
- (b) for the purpose of an inspection:

- (i) open any ground and remove any flooring and take such measures as may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting, and
- (ii) require the opening, cutting into or pulling down of any work if the person authorised has reason to believe or suspect that anything on the premises has been done in contravention of this Act, the regulations or an environmental planning instrument, and
- (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks, and
- (d) require any person at those premises to answer questions or otherwise furnish information in relation to the matter the subject of the inspection or investigation, and
- (e) take samples or photographs in connection with any inspection.

**118C Notice of entry**

- (1) Before a person authorised to enter premises under this Division does so, the council, the Minister, the Director-General or the person must give the owner or occupier of the premises written notice of the intention to enter the premises.
- (2) The notice must specify the day on which the person intends to enter the premises and must be given before that day.
- (3) This section does not require notice to be given:
  - (a) if entry to the premises is made with the consent of the owner or occupier of the premises, or
  - (b) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or
  - (c) if entry is required urgently and the case is one in which the general manager of the council, the Minister or the Director-General has authorised in writing (either generally or in the particular case) entry without notice.

**118D Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to any premises (other than residential premises) under a power conferred by this Division, but only if authorised by the council, the Minister or the Director-General in accordance with this section.
- (2) The authority of the council, the Minister or the Director-General:
  - (a) must be in writing, and



(b) must be given in respect of the particular entry concerned, and

(c) must specify the circumstances which are required to exist before force may be used.

**118E Notification of use of force or urgent entry**

(1) A person authorised to enter premises under this Division who:

(a) uses force for the purpose of gaining entry to the premises, or

(b) enters the premises in an emergency without giving written notice to the owner or occupier,

must promptly advise the council, Minister or Director-General (whichever authorised the person to enter the premises under section 118C (3) or 118D (1)).

(2) The council, the Minister or the Director-General must give notice of the entry to such persons or authorities as appear to the council, the Minister or the Director-General to be appropriate in the circumstances.

**118F Care to be taken**

(1) In the exercise of a function under this Division, a person authorised to enter premises must do as little damage as possible. The council, the Minister or the Director-General must provide, if necessary, other means of access in place of any taken away or interrupted by a person authorised by it.

(2) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence. If entry by that means is not practicable, a new opening may be made in the enclosing fence, but the fence is to be fully restored when the need for entry ceases.

**118G Recovery of cost of entry and inspection**

If a person authorised by a council, the Minister or the Director-General enters any premises under this Division for the purpose of making an inspection and as a result of that inspection, under a power conferred on the council, the Minister or the Director-General, the council, the Minister or the Director-General requires any work to be carried out on or in the premises, the council, the Minister or the Director-General may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.

**118H Compensation**

A council, the Minister or the Director-General must pay compensation for any damage caused by any person authorised by the council, the Minister or the Director-General under this Division to enter premises, other than damage arising from work done for the

purpose of an inspection which reveals that there has been a contravention of this Act, the regulations or an environmental planning instrument.

**118I Authority to enter premises**

- (1) A power conferred by this Division to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.
- (2) The authority must be a written authority which is issued by the council, the Minister or the Director-General and which:
  - (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the powers conferred and the source of the powers, and
  - (d) states the date (if any) on which it expires, and
  - (e) describes the kind of premises to which the power extends, and
  - (f) in the case of a council, bears the signature of the general manager.
- (3) This section does not apply to a power conferred by a search warrant.

**118J In what circumstances can entry be made to a residence?**

The powers of entry and inspection conferred by this Division are not exercisable in relation to that part of any premises being used for residential purposes except:

- (a) with the permission of the occupier of that part of the premises, or
- (b) if entry is necessary for the purpose of inspecting work being carried out under a development consent (including a complying development certificate), or
- (c) under the authority conferred by a search warrant, or
- (d) if an application for a building certificate has been made under section 149B in respect of premises used for residential purposes and entry is necessary for the purpose of inspecting the premises in order to issue a building certificate in accordance with sections 149A-149E.

**118K Search warrants**

- (1) A person generally or specially authorised by a council, the Minister or the Director-General for the purposes of this section may apply to an authorised justice if the authorised person has reasonable grounds for believing that the provisions of this Act, the regulations, an environmental planning instrument or the terms of a development

consent, complying development certificate or order under this Act have been or are being contravened in or on any premises.

- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant:
  - (a) to enter the premises, and
  - (b) to search the premises for evidence of a contravention of this Act, the regulations, an environmental planning instrument or the terms of a development consent, complying development certificate or order under this Act.
- (3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 18 of the [Search Warrants Act 1985](#), a police officer:
  - (a) may accompany an authorised person executing a search warrant issued under this section, and
  - (b) may take all reasonable steps to assist the authorised person in the exercise of the person's functions under this section.
- (5) In this section, **authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).

#### **118L Special provision with respect to fire brigades**

- (1) An authorised fire officer within the meaning of section 121ZC may exercise the functions conferred on a person authorised by a council, the Minister or the Director-General under this Division for the purpose of inspecting a building to determine:
  - (a) whether or not adequate provision for fire safety has been made in or in connection with the building, or
  - (b) whether or not such of the provisions of this or any other Act or law as may be prescribed for the purposes of this paragraph have been complied with.
- (2) An inspection for the purposes of subsection (1) (a) is not, however, authorised for premises other than places of shared accommodation except:
  - (a) when requested by the council of the area in which the building is located, or
  - (b) when requested by a person who holds himself or herself out as the owner, lessee or occupier of the building, or
  - (c) when the Commissioner of New South Wales Fire Brigades has received a

complaint in writing that adequate provision for fire safety has not been made concerning the building.

- (3) A council must, at the request of the Commissioner of New South Wales Fire Brigades, make available a person authorised by the council for the purposes of the inspection, and the person concerned is to be present during the inspection.
- (4) The Commissioner of New South Wales Fire Brigades must send a report of any inspection carried out under this section to the council concerned.
- (5) This Division applies to an authorised fire officer within the meaning of section 121ZC in the same way as it applies to a council and a council employee (or other person) authorised by the council.

**118M Councils to carry out fire-safety inspections on request of Commissioner of NSW Fire Brigades**

- (1) A council must, at the written request of the Commissioner of New South Wales Fire Brigades, cause any building specified in the request to be inspected for the purpose of determining whether or not adequate provision for fire safety has been made in or in connection with the building.
- (2) As soon as practicable after such an inspection has been carried out, the council must send a report of the inspection to the Commissioner of New South Wales Fire Brigades.

**118N Obstruction of authorised persons**

A person must not obstruct, hinder or interfere with an authorised person in the exercise of the person's functions under this Division.

Maximum penalty: 20 penalty units.

**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 89 (3), 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-General, as referred to in subsection (1) or (2), shall report its findings and recommendations to the Minister or Director-General, 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.

**119A Certain inquiries taken to be public inquiries for purposes of [Local Government Act 1993](#)**

An inquiry that is directed to be held under section 119 that relates to the exercise, or the failure or refusal to exercise, by a council of any of the functions conferred or imposed on it by or under this Act may be relied on as a public inquiry for the purposes of section 255 of the [Local Government Act 1993](#).

**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-General, 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-General 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.

(1A) Where a dispute arises between a public authority, other than a council, and another 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 any such 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-General) 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), (1A) 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-General, 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), (1A) or (2).

## **Division 2A Orders**

### **121A Definition**

In this Division:

**order** means an order under this Division.

### **121B What orders may be given by a consent authority?**

- (1) An order may be given to a person by:
  - (a) a council, or
  - (b) any other person who exercises functions as a consent authority, except in relation to complying development for which a complying development certificate

has been issued,

to do or to refrain from doing a thing specified in the following Table if the circumstances specified opposite it in Column 2 of the Table exist and the person comes within the description opposite it in Column 3 of the Table.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
1 To cease using premises for a purpose specified in the order	(a) Premises are being used for a purpose that is prohibited  (b) Premises are being used for a purpose for which development consent is required but has not been obtained  (c) Premises are being used in contravention of the conditions of a development consent	Owner of premises, or person by whom premises are being used for the purpose specified in the order

- |   |                                  |   |                   |
|---|----------------------------------|---|-------------------|
| 2 | To demolish or remove a building | <p>(a) Building is erected without prior development consent of consent authority in a case where prior development consent is required or is erected without prior development consent of a consent authority and a prior construction certificate in a case where both prior development consent and a prior construction certificate are required</p> <p>(b) Building is or is likely to become a danger to the public</p> <p>(c) Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood</p> <p>(d) Building is erected without prior approval of council, in a case where prior approval was required under the <i>Local Government Act 1919</i> or the <i>Local Government Act 1993</i> when the erection of the building commenced</p> | Owner of building |
|---|----------------------------------|---|-------------------|

		(a) Building is likely to be demolished without prior development consent of consent authority in a case where prior development consent is required	
3	Not to demolish, or to cease demolishing a building	(b) Building is being demolished without prior development consent of consent authority or otherwise than in accordance with prior development consent of consent authority in a case where prior development consent is required	Owner of building, person likely to demolish or person engaged in demolition
		(a) Building is or is likely to become a danger to the public	
4	To repair or make structural alterations to a building	(b) Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood	Owner of building

5	To alter, obliterate, demolish or remove an advertisement and any associated advertising structure	(a) The advertisement is unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed  (b) The advertisement is displayed contrary to a provision made by or under this Act  (c) The advertising structure is erected contrary to a provision made by or under this Act	The person who caused the advertisement to be displayed or advertising structure to be erected or the owner or occupier of the premises on which the advertisement is displayed or the advertising structure is erected
6	To do or refrain from doing such things as are specified in the order so as to ensure or promote adequate fire safety or fire safety awareness	(a) Provisions for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire  (b) Maintenance or use of the premises constitutes a significant fire hazard	Owner of premises or, in the case of a place of shared accommodation, the owner or manager

7	To erect or install on or around a building such structures or appliances as are necessary to protect persons or property on or in a public place	<p>(a) Building is about to be erected</p> <p>(b) Building is situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place</p> <p>(c) Building is about to be demolished</p> <p>(d) Work is about to be carried out</p> <p>(e) Work is about to be demolished</p>	Owner or occupier of land
8	Not to conduct, or to cease conducting, an activity on premises (being an activity that is, or is capable of being, the subject of a development consent, whether or not the activity is the subject of a development consent)	<p>The activity constitutes or is likely to constitute:</p> <p>(a) a life threatening hazard, or</p> <p>(b) a threat to public health or public safety,</p> <p>and is not regulated or controlled under any other Act by a public authority</p>	Any person apparently engaged in promoting, conducting or carrying out the activity
9	To cease the use of a building	<p>The use of the building:</p> <p>(a) is not consistent with its classification under this Act or the <i>Local Government Act 1993</i>, and</p> <p>(b) constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and</p> <p>(c) is not regulated or controlled under any other Act by a public authority</p>	The owner or occupier of the building

10	To cease the use of premises or to evacuate premises	A person to whom order No 6 or 8 is given has failed to comply with the order	The person to whom order No 6 or 8 is given
11	To leave premises or not to enter premises	A person to whom order No 6 or 8 is given has failed to comply with the order	Any person
12	To do such things as are specified in the order to restore premises to the condition in which they were before building was unlawfully erected or before work was unlawfully carried out	(a) Building has been unlawfully erected, and an order No 2 has been given requiring the building to be demolished or removed (b) Work has been unlawfully carried out	The owner of the premises, any person entitled to act on a development consent or complying development certificate or any person acting otherwise than in compliance with a development consent or complying development certificate
13	To do such things as are necessary to bring into compliance with relevant development standards any building or part of a building that has been unlawfully erected	Building has been unlawfully erected and does not comply with relevant development standards	The owner of the premises
14	To repair or remove a building	The building is situated wholly or partly in a public place	Owner or occupier of building
15	To comply with a development consent	The development consent is not being complied with	Person entitled to act on the development consent or person acting otherwise than in compliance with the development consent



	<p>To complete development that is subject to a development consent within such time (not being less than 12 months from the date of service of the order) as the consent authority considers reasonable, having regard to all relevant circumstances, including the nature of the development, and including, if the development is the subject of:</p>		
16	<p>(a) a proposed strata development contract referred to in the <i>Strata Schemes (Freehold Development) Act 1973</i> or the <i>Strata Schemes (Leasehold Development) Act 1986</i>, or</p> <p>(b) a development contract registered with a community plan or precinct plan under the <i>Community Land Development Act 1989</i>,</p> <p>the proposals relating to the stages in which the development is to be effected</p>	<p>The development has been commenced within the period specified in section 95 (1) but has not been completed within that period</p>	<p>The owner of the land to which the development consent applies</p>
17	<p>To carry out works associated with a subdivision</p>	<p>There has been a failure to carry out the works in accordance with a development consent or an agreement made with the applicant for development consent</p>	<p>The person required to carry out the works</p>

- (2) The regulations may prescribe acts and circumstances that are taken to be included in or excluded from any of the acts or circumstances specified in Column 1 or 2 of the Table to subsection (1).

**121C Giving orders to public authorities**

- (1) An order under this Division may not be given in respect of the following land without the prior written consent of the Minister:
  - (a) vacant Crown land,
  - (b) a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*,
  - (c) a common within the meaning of the *Commons Management Act 1989*.
- (2) The Minister must not give consent in respect of vacant Crown land or a reserve within the meaning of Part 5 of the *Crown Lands Act 1989* until after the Minister has consulted the Minister administering the *Crown Lands Act 1989*.

**121D Circumstances in which compliance with secs 121F-121K is required**

Before giving an order, the person who gives the order must comply with sections 121F-121K, except for:

- (a) order No 8 in the Table to section 121B, or
- (b) an order given, and expressed to be given, in an emergency.

**121E Effect of compliance with secs 121F-121K**

A person who complies with sections 121F-121K is taken to have observed the rules of natural justice (the rules of procedural fairness).

**121F Criteria to be considered before order is given**

If a council has adopted criteria in a development control plan under section 72 on which it is to give an order, the council is required to take the criteria into consideration before giving the order.

**121G Orders that make or are likely to make residents homeless**

- (1) If an order will or is likely to have the effect of making a resident homeless, the person who gives the order must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality.
- (2) If the resident is not able to arrange satisfactory alternative accommodation in the locality, the person who gives the order must provide the resident with:
  - (a) information as to the availability of satisfactory alternative accommodation in the locality, and

(b) any other assistance that the person considers appropriate.

#### **121H Notice to be given of proposed order**

- (1) **Notice to whom the order is to be given** Before giving an order, the person who gives the order must give notice to the person to whom the order is proposed to be given of the intention to give the order, the terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with.
- (2) The notice must also indicate that the person to whom the order is proposed to be given may make representations to the person who gives the order as to why the order should not be given or as to the terms of or period for compliance with the order.
- (3) The notice may provide that the representations are to be made to the person who gives the order or a nominated person on a nominated date, being a date that is reasonable in the circumstances of the case. In the case of a council this may be a specified committee of the council on a specified meeting date or to a specified employee of the council on or before a specified date.
- (4) **Notice to the other consent authorities** If a council proposes to give an order in relation to development for which another person is the consent authority, the council must give the other person notice of its intention to give the order.

#### **121I Making of representations**

- (1) A person may, in accordance with a notice under section 121H, make representations concerning the proposed order.
- (2) For the purpose of making the representations, the person may be represented by a barrister, solicitor or agent.

#### **121J Hearing and consideration of representations**

The person who gives the order or the nominated person is required to hear and to consider any representations made under section 121I.

#### **121K Procedure after hearing and consideration of representations**

- (1) After hearing and considering any representations made concerning the proposed order, the person who gives the order or the nominated person may determine:
  - (a) to give an order in accordance with the proposed order, or
  - (b) to give an order in accordance with modifications made to the proposed order, or
  - (c) not to give an order.
- (2) If the determination is to give an order in accordance with modifications made to the proposed order, the person who gives the order is not required to give notice under

this Division of the proposed order as so modified.

**121L Reasons for orders to be given**

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

**121M Period for compliance with order**

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

**121N Notice of right to appeal against order**

A person who gives an order must, in giving a person notice of the order:

- (a) state that the person may appeal to the Court against the order or a specified part of the order, and
- (b) specify the period within which an appeal may be made.

**121O Development consent not required to comply with order**

A person who carries out work in compliance with a requirement of an order does not have to make an application under Part 4 for consent to carry out the work.

**121P Order may specify standards and work that will satisfy those standards**

- (1) Instead of specifying the things the person to whom the order is given must do or refrain from doing, an order:
  - (a) may specify the standard that the premises are required to meet, and
  - (b) may indicate the nature of the work that, if carried out, would satisfy that standard.
- (2) Such an order may require the owner or occupier to prepare and submit to the person who gives the order, within the period (not exceeding 3 months) specified in the order, particulars of the work the owner or occupier considers necessary to make provision for such matters as may be so specified.

**121Q Compliance with order under sec 121P**

- (1) A person complies with a requirement of an order under section 121P (2) by submitting to the person who gives the order such matters as the person would be required to submit if applying to a consent authority for development consent to carry out the work.
- (2) (Repealed)

**121R Consent authority's response to submission of particulars of work by owner**

- (1) A person who gives an order must, within 28 days after particulars of work are submitted to the person in accordance with section 121P (2):
  - (a) accept the particulars without modification or with such modifications as the person thinks fit, or
  - (b) reject the particulars.
- (2) If a person accepts the particulars of work without modification, the person must forthwith order the owner to carry out that work.
- (3) If a person accepts the particulars of work with modifications or rejects the particulars, or if an owner fails to submit particulars of work in accordance with section 121P (2), the person must:
  - (a) prepare, within 3 months after the acceptance, rejection or failure, particulars of the work that the person considers necessary to make provision for the matters specified in the order given to the owner under section 121P, and
  - (b) order the owner to carry out that work.
- (4) An order under this section is not invalid merely because of the failure of the person to accept or reject any particulars of work or prepare particulars of any work, as the case may be, within the period it is required to do so by this section.
- (5) A person may recover from an owner as a debt the person's expenses of preparing particulars of work under this section.
- (6) Except for the purposes of section 121ZK (3), an order under this section forms part of the order under section 121B to which it relates.

**121S Orders affecting heritage items**

- (1) This section applies to an item of the environmental heritage:
  - (a) to which an interim heritage order or listing on the State Heritage Register under the [Heritage Act 1977](#) applies or to which an order under section 136 of that Act applies, or

- (b) that is identified as such an item in an environmental planning instrument.
- (2) A person must not give an order under this Division in respect of an item of the environmental heritage to which this section applies until after the person has considered the impact of the order on the heritage significance of the item.
- (3) A person must not give an order under this Division in respect of an item of the environmental heritage to which subsection (1) (a) applies until after the person has given notice of the order to the Heritage Council and has considered any submissions duly made to the person by the Heritage Council.
- (4) The Heritage Council may, by instrument in writing served on a person, exempt the person from the requirements of subsection (3).
- (5) An exemption under subsection (4) may be given unconditionally or subject to such conditions as the Heritage Council determines, and may be varied or revoked by a subsequent instrument in writing made by the Heritage Council and served on the person.
- (6) The Heritage Council may make a submission:
  - (a) within 28 days after it is given notice by the person, or
  - (b) if, within 28 days after it is given notice by the person, the Heritage Council requests that a joint inspection of the item be made, within 28 days after the joint inspection is made.
- (7) If the Heritage Council notifies a person that it wishes to be consulted in connection with an order under section 121R, the person must include a statement to that effect in any order under section 121P.
- (8) This section does not apply to:
  - (a) order No 3 in the Table to section 121B if given by a person in an emergency, or
  - (b) order No 8, 10 or 11.

#### **121T Combined orders**

A person who gives an order may include two or more orders in the same instrument.

#### **121U Giving and taking effect of orders**

An order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service or a later time specified in the order.

#### **121V Orders may be given to two or more persons jointly**

If appropriate in the circumstances of the case, an order may direct two or more people to

do the thing specified in the order jointly.

**121W Notice in respect of land or building owned or occupied by more than one person**

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

**121X Notice of giving of order No 16**

A person who gives an order must, on or as soon as practicable after the day on which the person gives an order in the terms of order No 16 in the Table to section 121B, send a copy of the order to:

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

**121Y Effect of order on successors in title**

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

**121Z Compliance with orders by occupiers or managers**

If an occupier or manager complies with an order, the occupier or manager may (unless the occupier or manager has otherwise agreed) deduct the cost of so complying (together with interest at the rate currently prescribed by the Supreme Court rules in respect of unpaid judgment debts) from any rent payable to the owner or may recover the cost (and that interest) from the owner as a debt in any court of competent jurisdiction.

**121ZA Occupier of land may be required to permit owner to carry out work**

- (1) The person who gives an order may order the occupier of any land to permit the owner of the land to carry out such work on the land as is specified in the order (being work that is, in the person's opinion, necessary to enable the requirements of this Act

or the regulations, or of any order under section 121B, to be complied with).

- (2) An occupier of land on whom such an order is served must, within 2 days after the order is served, permit the owner to carry out the work specified in the order.
- (3) The owner of the land is not guilty of an offence arising from his or her failure to comply with the requirements of this Act or the regulations, or of any order under section 121B, if, while an order under this section is in force, the occupier of the land refuses to permit the owner to carry out the work specified in the order.
- (4) Subsection (3) applies only if the owner of the land satisfies the Court that the owner has, in good faith, tried to comply with the requirements concerned.

#### **121ZB Notice of fire safety orders to be given to Commissioner of NSW Fire Brigades**

A person who gives an order must immediately give notice to the Commissioner of New South Wales Fire Brigades of an order given by the person in terms of order No 6 in the Table to section 121B.

#### **121ZC Powers of fire brigades**

- (1) An authorised fire officer who inspects a building in accordance with section 118L may give:
  - (a) order No 6 in the Table to section 121B if the order does not require the carrying out of any structural work to the premises concerned, or
  - (b) order No 8 in the Table to section 121B if the premises concerned are a place of shared accommodation, or
  - (c) order No 10 or 11 in the Table to section 121B if a person to whom an order under paragraph (a) or (b) is given has failed to comply with the order.
- (2) The provisions of:
  - (a) sections 121D-121K, and
  - (b) section 121Q,do not apply to an order given in accordance with this section in circumstances which the authorised fire officer believes constitute an emergency or a serious risk to safety.
- (3) For the purpose of giving such an order, an authorised fire officer may exercise such of the powers of a person who gives an order under this Division as are specified in the fire officer's authorisation under this section.
- (4) In exercising a power under this Division, an authorised fire officer may be accompanied and assisted by a police officer.



- (5) An authorised fire officer must forward a copy of an order given under this section to the relevant council.
- (6) In this section, a reference to an **authorised fire officer**, in relation to the exercise of a power under this Division, is a reference to:
  - (a) the Commissioner of New South Wales Fire Brigades, or
  - (b) a member of staff of New South Wales Fire Brigades who is for the time being authorised by the Minister administering the *Fire Brigades Act 1989* to exercise that power, or
  - (c) an officer or member of a fire brigade who is for the time being authorised by the Minister administering the *Fire Brigades Act 1989* to exercise that power.

#### **121ZD Inspection reports by fire brigades**

- (1) If the Commissioner of New South Wales Fire Brigades carries out an inspection of a building under section 118L, the Commissioner must furnish to the council of the area in which the building is located:
  - (a) a report of the inspection, and
  - (b) if of the opinion that adequate provision for fire safety has not been made concerning the building, such recommendations as to the carrying out of work or the provision of fire safety and fire-fighting equipment as the Commissioner considers appropriate.
- (2) A council must:
  - (a) table any report and recommendations it receives under this section at the next meeting of the council, and
  - (b) at any meeting of the council held within 28 days after receiving the report and recommendations or at the next meeting of the council held after the tabling of the report and recommendations, whichever is the later, determine whether it will exercise its powers to give order No 6 or 8 in the Table to section 121B.
- (3) A reference in subsection (2) to a meeting of a council does not include a reference to a special meeting of the council unless the special meeting is called for the purpose of tabling any report and recommendations or making any determination referred to in that subsection.
- (4) A council must give notice of a determination under this section to the Commissioner of New South Wales Fire Brigades.

#### **121ZE Details of orders and notices to be given to councils**

- (1) A person, other than a council, who gives a notice or an order under this Division must

immediately give a copy of the notice or order to the council.

- (2) The person, if requested by the council, must immediately inform the council whether or not the notice is outstanding or the order is in force and of any action proposed to be taken by the person in relation to the notice or order.

#### **121ZF Modification of orders**

A person who gives an order may, at any time, modify an order it has given to a person (including a modification of the period specified for compliance with the order) if the person to whom the order is given agrees to that modification.

#### **121ZG Revocation of orders**

- (1) An order given by a consent authority may be revoked by the consent authority at any time.
- (2) An order given by a council may be revoked by the council at any time.
- (3) An order given by an authorised fire officer (as referred to in section 121ZC (6)) may be revoked by an authorised fire officer at any time.

#### **121ZH Minister may revoke or modify a council's order**

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

#### **121ZI Limitation on Minister's orders**

The Minister must not take any action under section 121ZH that is inconsistent with, or has the effect of revoking or modifying, an order given by the council unless the Minister is of the opinion that:

- (a) it is necessary because of an emergency, or
- (b) it is necessary because of the existence or reasonable likelihood of a serious risk to

health or safety, or

- (c) the order relates to a matter of State or regional significance, or
- (d) the order relates to a matter in which the intervention of the Minister is necessary in the public interest.

**121ZJ Failure to comply with order—carrying out of work by consent authority**

- (1) If a person fails to comply with the terms of an order given to the person under this Division, the person who gave the order may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.
- (2) If the person who gave the order gives effect to it by demolishing a building, the person:
  - (a) may remove any materials concerned, and
  - (b) may sell the materials, unless the person's expenses in giving effect to the terms of the order are paid to the person within 14 days after removal of the materials.
- (3) If the proceeds of such a sale exceed the expenses incurred by the person who gave the order in relation to the demolition and the sale, the person:
  - (a) may deduct out of the proceeds of the sale an amount equal to those expenses, and
  - (b) must pay the surplus to the owner on demand.
- (4) If the proceeds of sale do not exceed those expenses, the person who gave the order:
  - (a) may retain the proceeds, and
  - (b) may recover the deficiency (if any) together with the person's costs of recovery from the owner as a debt.
- (5) Materials removed that are not saleable may be destroyed or otherwise disposed of.
- (6) If work required by the order is carried out by the person who gave the order in relation to development for which an amount of security was provided and the amount of the security is more than the costs of carrying out the work, the person, after being recompensed from the security, must pay the surplus to the person entitled to it on demand.
- (7) Any expenses incurred under this section by a person who gave an order (less the proceeds, if any, of any sale under this section or the amount of any security provided in respect of development to which the order relates) together with all associated costs may be recovered by the person in any court of competent jurisdiction as a debt

due to the person by the person required to comply with the order.

- (8) Nothing in subsection (3), (4), (6) or (7) affects the owner's right to recover any amount from any lessee or other person liable for the expenses of repairs.
- (9) A reference in subsection (4), (6) or (7) to costs is a reference to costs incurred by the person who gave the order in seeking to recover the deficiency or expenses otherwise than by proceedings in a court, but nothing in this section prevents the person from receiving costs as between party and party in respect of those proceedings.
- (10) The person who gave the order may exercise the person's functions under this section irrespective of whether the person required to comply with the order has been prosecuted for an offence against this Act.
- (11) In any proceedings before the Land and Environment Court that are brought by a person who gave an order against another person as a result of the other person's failure to comply with the order, the Court may, at any stage of the proceedings, order the person who gave the order to exercise the person's functions under this section. Having made such an order, the Court may continue to hear and determine the proceedings or may dismiss the proceedings.
- (12) If the Minister or the Director-General gave the order, the Minister's or Director-General's functions under this section may be exercised by the corporation.

#### **121ZK Appeals concerning orders**

- (1) A person on whom an order is served may appeal against the order to the Court.
- (2) However, a person may not appeal against order No 6 in the Table to section 121B if the order is given by an authorised fire officer (as referred to in section 121ZC (6)).
- (3) The appeal must be made within 28 days after the service of the order on the person or, if an order is given under section 121R, within 28 days after the service of the order given under section 121R on the person. The person may make an appeal within the later period whether or not the person has made an appeal within the earlier period.
- (4) On hearing an appeal, the Court may:
  - (a) revoke the order, or
  - (b) modify the order, or
  - (c) substitute for the order any other order that the person who gave the order could have made, or
  - (d) find that the order is sufficiently complied with, or

(e) make such order with respect to compliance with the order as the Court thinks fit,  
or

(f) make any other order with respect to the order as the Court thinks fit.

**121ZL Awarding of compensation concerning orders**

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

**121ZM Appeals concerning particulars of work submitted to person who gave order**

- (1) A person may appeal to the Court against the failure of a person who gave an order:
  - (a) to accept or reject, under section 121R (1), particulars of work submitted to the person in accordance with section 121P (2), or
  - (b) to prepare, under section 121R (3) (a), particulars of the work that the person considers necessary to make provision for the matters specified in an order given to an owner under section 121P.
- (2) The appeal must be made within 28 days after the period limited under section 121R (1) or (3) (a) for compliance by the person who gave the order.
- (3) On hearing an appeal, the Court may:
  - (a) make any order that the person who gave the order could have made, or
  - (b) order the person to perform the person's functions under section 121R (1) or (3) (a) within such time as is specified in the order.

**121ZN Effect of appeal on order**

If an appeal is duly made to the Land and Environment Court against an order, the appeal does not effect a stay of the order.

### **121ZO Court's powers not limited by this Division**

This Division does not limit a power of the Land and Environment Court under the [Land and Environment Court Act 1979](#).

### **121ZP Certificate as to orders**

- (1) A person may apply to a council for a certificate as to whether there are:
  - (a) any outstanding notices issued under section 121H,
  - (b) any orders under this Division in force,in respect of any land within the council's area.
- (2) The application must be in the form determined by the council and must be accompanied by the fee determined by the council under the [Local Government Act 1993](#).
- (3) The council is to issue a certificate to the applicant stating:
  - (a) whether or not a notice is outstanding or an order is in force in respect of the land as at the date of the certificate and, if so, the terms of any such notice or order, and
  - (b) any action proposed to be taken or that may be taken by the council or any other person in relation to any such notice or order.
- (4) The production of the certificate is taken for all purposes to be conclusive proof of the existence or otherwise of any outstanding notices and any orders in force.

## **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 the following:
  - (i) the regulations,
  - (ii) an environmental planning instrument,
  - (iii) a consent granted under this Act, including a condition subject to which a consent

is granted,

- (iv) a complying development certificate, including a condition subject to which a complying development certificate is granted,
- (v) an order under Division 2A.

### **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) (Repealed)

### **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*.

#### **124A Evidence of use of premises as backpackers' hostel**

- (1) This section applies to proceedings before the Court under this Act to remedy or restrain a breach of this Act in relation to the use of premises as a backpackers' hostel.
- (2) In any proceedings to which this section applies, the Court may rely on circumstantial evidence to find that particular premises are used as a backpackers' hostel.

##### **Note—**

Examples of circumstantial evidence include (but are not limited to) the following:

- (a) evidence relating to persons entering and leaving the premises (including the depositing of luggage) that is consistent with the use of the premises for a backpackers' hostel,
- (b) evidence of the premises being advertised expressly or implicitly for the purposes of a backpackers' hostel (including advertisements on or in the premises, newspapers, directories or the Internet),
- (c) evidence relating to internal and external signs and notices at the premises (including price lists, notices to occupants and offers of services) that is consistent with the use of the premises for a backpackers' hostel,
- (d) evidence of the layout of rooms, and the number and arrangement of beds, at the premises that is consistent with the use of the premises for a backpackers' hostel.

#### **124A Special provision where development consent tainted by corruption**

- (1) For the purposes of this section, a decision of a consent authority to grant or modify a development consent is tainted by corrupt conduct:
- (a) if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the suspension of the development consent or modification with a view to its revocation because of serious corrupt conduct by the consent authority or by a councillor or other officer or member of staff of the consent authority in connection with the grant of the consent or modification, or
- (b) if criminal proceedings are instituted against the consent authority or against a councillor or other officer or member of staff of the consent authority for serious



corrupt conduct in connection with the grant of the consent or modification, or

(c) if the consent authority, councillor or other officer or member of staff makes an admission of such serious corrupt conduct.

- (2) A breach of this Act that may be remedied or restrained in proceedings instituted under this Division includes a decision of a consent authority to grant or modify a development consent that is tainted by corrupt conduct.
- (3) If a decision of a consent authority to grant or modify a development consent is tainted by corrupt conduct, the Minister may, without prior notice or inquiry, suspend the decision pending the institution and determination of proceedings under this Division in respect of the decision. The Minister is to give the consent authority and the applicant for the grant or modification of the development consent written notice of the suspension as soon as practicable after it is imposed.
- (4) A suspension imposed by the Minister may be lifted by the Minister at any time and is taken to be lifted if the proceedings concerned are not instituted within 6 months after the suspension is imposed.
- (5) The Court may, in proceedings to which this section applies, suspend the decision of a consent authority to grant or modify a development consent pending the determination of the proceedings. The Court may lift a suspension imposed by the Minister under this section.
- (6) The Court may, in proceedings to which this section applies, revoke the decision of a consent authority to grant or modify a development consent if:
  - (a) the decision is tainted by corrupt conduct, and
  - (b) the Court is satisfied that the revocation of the decision will not significantly disadvantage any person affected by the decision who was not a party to the corrupt conduct.

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

- (7) A development consent for the erection of a building, the carrying out of a work or the demolition of a building or work (or a modification of any such consent) is not to be suspended or revoked under this section if the building, work or demolition authorised by the consent (or by the modification) has been substantially commenced.
- (8) Section 101 does not apply to proceedings to which this section applies.
- (9) Compensation is not payable by the Minister or the State for any loss suffered by a person because:
  - (a) a decision is suspended under this section (whether or not the Court decides to

revoke the decision), or

(b) a decision is revoked under this section.

(10) This section applies:

(a) to decisions made by a consent authority before or after the commencement of this section, and

(b) to serious corrupt conduct, and to criminal proceedings instituted or admissions made in respect of serious corrupt conduct, before or after that commencement.

(11) In this section:

**serious corrupt conduct** means corrupt conduct (within the meaning of the *Independent Commission Against Corruption Act 1988*) that may constitute a serious indictable offence.

## 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-General, 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-General, 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.
- (4) It is a sufficient defence to a prosecution for an offence that arises from the failure to comply with an order under Division 2A if the defendant satisfies the court that the defendant was unaware of the fact that the matter in respect of which the offence arose was the subject of an order.
- (5) Unless the context otherwise requires, a requirement under this Act or the regulations that must be complied with by a particular time, or within a particular period, continues after the time has expired or the period ended, and so must still be

complied with.

## **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 10,000 penalty units and to a further daily penalty not exceeding 1,000 penalty units.
- (2) A person guilty of an offence against the regulations is, for every such offence, liable to:
  - (a) the penalty (not exceeding 1,000 penalty units) expressly imposed by the regulations, or
  - (b) if no such penalty is imposed, to a penalty not exceeding 1,000 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 monetary penalty that the court may impose in respect of the offence is, notwithstanding any other provisions of this Act, 1,000 penalty units or the maximum monetary 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, except as provided by subsection (6).

- (6) Proceedings for the following offences may be instituted at any time within the period specified in relation to the offence:
  - (a) carrying out development, other than complying development, for which development consent is required without obtaining development consent—12 months after the offence is alleged to have been committed,
  - (b) carrying out complying development without obtaining a complying development certificate—12 months after the offence is alleged to have been committed.
- (7) A person shall not be convicted of an offence against this Act or the regulations 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.

#### **127A Penalty notices for certain offences**

- (1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice:
  - (a) may be served personally or by post, or
  - (b) if it relates to an offence involving the use of a vehicle, may be addressed to the owner (without naming the owner or stating the owner's address) and may be served by leaving it on or attaching it to the vehicle.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding

arising out of the same occurrence.

- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences, and
  - (d) prescribe different amounts of penalties for the same offence, including, in the case of a continuing offence, different amounts of penalties for different periods during which the offence continues.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section, **authorised person** means a person who is declared by the regulations to be an authorised person for the purposes of this section or who belongs to a class of persons so declared.

## 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.
- (4) The Development Fund may also be applied, with the approval of the Minister, to the development of land (whether vested in the corporation or not) within the development area for the purpose of an improvement program, if:
- (a) the Minister has considered likely future applications of the Development Fund for all the purposes in subsection (3), and
  - (b) in the opinion of the Minister, implementation of the improvement program will improve public amenity by:
    - (i) enhancing open space or the public domain, or
    - (ii) providing suitable infrastructure or facilities at a regional or local level.
- (5) The Development Fund in respect of each development area may be applied to purposes that are necessary, incidental, subordinate or supplementary to any of the purposes specified in subsection (3) or (4).

### **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-General 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-General shall have regard to any environmental planning instruments relating to those areas or parts, environmental planning principles and such other matters as the Director-General thinks fit.
- (4) Within 14 days after the publication in the Gazette of the notice referred to in subsection (2), the Director-General 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-General, 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-General 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-General 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-General 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-General:
  - (a) supplies any service, product, commodity or publication, or
  - (b) makes any registration, or
  - (c) gives any permission, or
  - (d) furnishes any information, or

- (e) receives any application for its approval, or
- (f) issues any certificate, requirement or direction, or
- (g) allows admission to any building,

the charge or fee shall be as prescribed by the regulations or as determined in accordance with the regulations, including as determined by a person specified in 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-General 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-General 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 the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

**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

(a1) in the case of a function relating to an application for a complying development certificate—the council or accredited certifier to whom the application is made, 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,
  - (d1) the processing and determination of an application for a complying development certificate,
  - (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 Bush fire prone land

- (1) If a bush fire risk management plan applies to land within the area of a council, the council must, within 12 months after the commencement of this section (and before the end of the period of every 5 years after the commencement):
- (a) request the Commissioner of the NSW Rural Fire Service to designate land (if any) within the area that the Commissioner considers, having regard to the bush fire risk management plan, to be bush fire prone land, and
  - (b) must record any land so designated on a map.
- (2) The Commissioner of the NSW Rural Fire Service must, if satisfied that the land designated by the Commissioner has been recorded by the council on a map, certify the map as a bush fire prone land map for the area of the council.
- (3) Land recorded for the time being as bush fire prone land on a bush fire prone land map for an area is bush fire prone land for the area for the purposes of this or any other Act.
- (4) The bush fire prone land map for an area is to be available for public inspection during normal office hours for the council.
- (5) In this section:

***bush fire risk management plan*** has the same meaning as it has in the [Rural Fires Act 1997](#).

**Note—**

Division 8 of Part 4 of the *Rural Fires Act 1997* contains provisions relating to the carrying out of development and bush fire hazard reduction work on bush fire prone land.

**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 the person 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 or herself, or a person with whom he or she is associated.
- (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 or herself, or a person with whom he or she is associated, 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, or
  - (c) a decision concerning a complying development certificate, or
  - (d) the giving of an order under Division 2A of Part 6.
- (4) In this section, a person is associated with another person if the person is the spouse, de facto partner (whether of the same or the opposite sex), sibling, parent or child of the other person.

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

**149 Planning certificates**

- (1) A person may, on payment of the prescribed fee, apply to a council for a certificate

under this section (a **planning certificate**) 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 planning 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 planning certificate shall be set out in the prescribed form and manner.
- (5) A council may, in a planning certificate, 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 planning certificate 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.

#### **149A Building certificates**

- (1) A council may issue a building certificate in accordance with this section and sections 149B-149E.
- (2) A building certificate may apply to the whole or to part only of a building.
- (3) The regulations may provide for the form in which a building certificate is to be issued.
- (4) (Repealed)

**Note—**

A building certificate under this Part replaces the building certificate formerly issued under the [Local Government Act 1993](#).

#### **149B Applications for building certificates**

- (1) An application for a building certificate may be made:
  - (a) by the owner of the land on which the building is erected, or

- (b) by any other person, with the consent of the owner of that land, or
  - (c) by the purchaser under a contract for the sale of property that comprises or includes the building or part, or by the purchaser's solicitor or agent, or
  - (d) by a public authority that has notified the owner of its intention to apply for the certificate.
- (2) The regulations may provide for the procedures for making an application, the fees payable in connection with an application and the procedures for dealing with an application.

**149C Supply of information in connection with applications for building certificates**

- (1) On receipt of an application, the council may, by notice in writing served on the applicant, require the applicant to supply it with such information (including building plans, specifications, survey reports and certificates) as may reasonably be necessary to enable the proper determination of the application.
- (2) If the applicant is able to provide evidence that no material change has occurred in relation to the building since the date of a survey certificate which, or a copy of which, is supplied to the council by the applicant, the council is not entitled to require the applicant to supply a more recent survey certificate.

**149D Obligations of council to issue building certificate**

- (1) The council must issue a building certificate if it appears that:
- (a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the [Local Government Act 1993](#):
    - (i) to order the building to be demolished, altered, added to or rebuilt, or
    - (ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or
    - (iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or
  - (b) there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.
- (2) If the council refuses to issue a building certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.
- (3) The reasons must be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building certificate.
- (4) The council must not refuse to issue or delay the issue of a building certificate by



virtue of the existence of a matter that would not entitle the council to make any order or take any proceedings of the kind referred to in subsection (1) (a).

- (5) Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work.

**149E Effect of building certificate**

- (1) A building certificate operates to prevent the council:

- (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
- (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,

in relation to matters existing or occurring before the date of issue of the certificate.

- (2) A building certificate operates to prevent the council, for a period of 7 years from the date of issue of the certificate:

- (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
- (b) from taking proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,

in relation to matters arising only from the deterioration of the building as a result solely of fair wear and tear.

- (3) However, a building certificate does not operate to prevent a council:

- (a) from making order No 6 in the Table to section 121B, or
- (b) from taking proceedings against any person under section 125 with respect to that person's failure:
  - (i) to obtain a development consent with respect to the erection or use of the building, or
  - (ii) to comply with the conditions of a development consent.

- (4) An order or proceeding that is made or taken in contravention of this section is of no effect.

### **149F Appeals with respect to building certificates**

- (1) An applicant:
  - (a) who is aggrieved by a council's refusal to issue a building certificate, or
  - (b) who is aggrieved by a council's refusal to issue a building certificate within 40 days after:
    - (i) the date of application for the certificate, or
    - (ii) if the applicant receives a notice under section 149C to supply information, the date on which the information is supplied,whichever is the later, or
  - (c) who receives a notice under section 149C to supply information, may appeal to the Court.
- (2) The appeal must be made within 12 months after the date on which the refusal is communicated to the person, the date on which the 40-day period expires or the date of the notice under section 149C, as the case requires.
- (3) On hearing the appeal, the Court may do any one or more of the following:
  - (a) it may direct the council to issue a building certificate in such terms and on such conditions as the Court thinks fit,
  - (b) it may revoke, alter or confirm a notice under section 149C,
  - (c) it may make any other order that it considers appropriate.

### **149G Record of building certificates**

- (1) The council must keep a record of building certificates issued by it in such form as it thinks fit.
- (2) A person may inspect the record at any time during the ordinary office hours of the council.
- (3) A person may obtain a copy of a building certificate from the record with the consent of the owner of the building and on payment of the fee prescribed by the regulations.

### **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 Director-General 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 Proof of ownership of land**

(1) In any legal proceedings under this Act, in addition to any other method of proof available:

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

(b) a certificate furnished by the Registrar-General under subsection (2) with respect to any land is, until the contrary is proved, evidence that the person described in the certificate as the proprietor or owner of the land was the owner of that land at the time or during the period specified in the certificate pursuant to subsection (3) (b) (i) or (ii).

(2) If:

(a) written application with respect to any land is made to the Registrar-General under this subsection by a consent authority, and

(b) the Registrar-General has been paid the prescribed fee,

the Registrar-General is to furnish to the consent authority a certificate setting out such of the particulars specified in subsection (3) as are recorded in the Register kept under the *Real Property Act 1900* or in the General Register of Deeds maintained under Division 1 of Part 23 of the *Conveyancing Act 1919* and as the Registrar-General is able to ascertain from the information about the land furnished in the application.

(3) The particulars are:

(a) the situation and a description of the land, and

(b) in the case of:

- (i) land subject to the provisions of the *Real Property Act 1900*—the names and addresses of the person registered under that Act as the proprietor of the land at the time or during the period in respect of which the application is made and the date of registration of the instruments under which they became so registered, or
- (ii) land not subject to those provisions—the names and addresses of the owner of the land at the time or during the period in respect of which the application is made and the dates, and dates of registration under Division 1 of Part 23 of the *Conveyancing Act 1919*, of the instruments kept in the General Register of Deeds maintained under that Division under which the owner became the owner of the land.

(4) Judicial notice is to be taken for the purposes of this Act of the signature of the Registrar-General and of a Deputy Registrar-General.

(5) In subsection (2) (b), the reference to the prescribed fee is, in relation to an application made under that paragraph:

- (a) in the case of land subject to the provisions of the *Real Property Act 1900*—a reference to the fee prescribed under that Act for the purposes of that paragraph, or
- (b) in the case of land not subject to those provisions—a reference to the fee prescribed under the *Conveyancing Act 1919* for the purposes of that paragraph.

## **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, or
  - (b) requiring information, particulars, returns and statistics to be furnished to the Director-General by councils and the time and mode of furnishing and the manner of verifying them, or
  - (c) the form, time, manner and mode of giving notices under this Act, or
  - (d) obligations on persons regarding fire safety, or
  - (e) the purposes, objectives, provision and maintenance of affordable housing, including:
    - (i) means for determining whether a household is a very low income, low income or moderate income household (for example, by reference to income statistics produced by the Australian Bureau of Statistics), and
    - (ii) means for determining affordable housing costs payable in respect of affordable housing (for example, by reference to percentages of household income), and
    - (iii) enabling the Minister by order to determine matters relating to affordable housing (including the matters referred to in subparagraphs (i) and (ii)).
- (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 Exclusion of personal liability**

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

- (a) the Minister, or
- (b) the Director-General, or
- (c) any member of staff of the Department, or
- (d) a Commissioner of Inquiry, or
- (e) the Local Government Liaison Committee, or any member of that Committee, or
- (f) any committee referred to in section 22, or any member of such a committee, or
- (g) any person acting under the direction of a person or body referred to in paragraph (a)-(f),

does not subject the Minister, the Director-General, a member of staff, the Commissioner of Inquiry, a committee member or a person so acting personally to any action, liability, claim or demand if the matter or thing was done, or omitted to be done, in good faith for the purpose of executing 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-General 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-General, having such knowledge of local government and planning matters as the Director-General 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-General 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*

*Environmental Planning and Assessment Amendment Act 1997*

*Fisheries Management Amendment Act 1997*

*Darling Harbour Authority Amendment and Repeal Act 1998*

*Sydney Cove Redevelopment Authority Amendment Act 1998*

*Protection of the Environment Operations Act 1997*

*Environmental Planning and Assessment Amendment Act 1999*

*Environmental Planning and Assessment Amendment (Anti-Corruption) Act 2002*

*Rural Fires and Environmental Assessment Legislation Amendment Act 2002*

*Threatened Species Conservation Amendment Act 2002*

*Building Legislation Amendment (Quality of Construction) Act 2002*

- (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.

## Part 6 Environmental Planning and Assessment Amendment Act 1997

### 18 General saving

- (1) If anything done or commenced under a provision of this or any other Act that is amended or repealed by the *Environmental Planning and Assessment Amendment Act 1997* has effect or is not completed immediately before the amendment or repeal of the provision and could have been done or commenced under a provision of such an Act if the provision had been in force when the thing was done or commenced:
  - (a) the thing continues to have effect, or
  - (b) the thing commenced may be completed.
- (2) This clause is subject to any express provision of this Act or the regulations on the matter.

### 18A Saving of assumed concurrences

- (1) A notification given under section 81 before 1 July 1998 and in force immediately before that date is taken (until revoked) to be:
  - (a) until 1 January 2001—a notice given under clause 51B of the *Environmental Planning and Assessment Regulation 1994*, and
  - (b) on and from 1 January 2001—a notice given under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.
- (2) This clause is taken to have commenced on 1 July 1998.

### 19 Effect of other savings and transitional provisions

Regulations made as referred to in clause 1 as a consequence of the enactment of the *Environmental Planning and Assessment Amendment Act 1997* may have effect despite the terms of any savings or transitional provisions contained in this or any other Act, if the regulations so provide.

## 20 (Repealed)

# Part 7 Darling Harbour Authority Amendment and Repeal Act 1998

## 21 Definitions

In this Part:

**amending Act** means the *Darling Harbour Authority Amendment and Repeal Act 1998*.

**appointed day** means the day appointed for the commencement of Schedule 1 to the amending Act by proclamation under section 2 of that Act.

**Darling Harbour Development Area** has the same meaning as **Development Area** in the 1984 Act.

**the 1984 Act** means the *Darling Harbour Authority Act 1984*.

## 22 Consent authority

- (1) The consent authority with respect to land in the Darling Harbour Development Area is the Minister.
- (2) Subclause (1) does not apply with respect to land in the Darling Harbour Development Area if a State environmental planning policy referred to in clause 26 (1) or a regional environmental plan or local environmental plan referred to in clause 26 (3) specifies a consent authority with respect to that land.

## 23 Development plans

- (1) The *Darling Harbour Development Plan No 1* is taken to be a regional environmental plan, and may be amended and repealed accordingly.
- (2) A draft development plan for which an approval was in force under section 25 of the 1984 Act immediately before the appointed day is taken to be a draft regional environmental plan prepared under Division 3 of Part 3 of this Act.
- (3) Without limiting clause 1, a regulation referred to in that clause may make such amendments to the *Darling Harbour Development Plan No 1* as are necessary to enable that plan to have effect as a regional environmental plan.

## 24 Permits

- (1) An application for a permit under the 1984 Act that had not been finally determined before the appointed day is to be dealt with under Part 5 of that Act as if the amending Act had not been enacted.
- (2) For the purposes of this clause, an application is not finally determined unless:
  - (a) a permit is granted or refused and no appeal against the decision to grant or

refuse the permit is made within 12 months after the date on which the permit is granted or refused, or

(b) if such an appeal is made, the appeal is withdrawn or finally disposed of.

(3) A permit under the 1984 Act, including a permit granted in accordance with this clause, is taken to be a development consent granted under this Act.

(4) This Act applies to a development consent arising under this clause as if it had been granted when the permit referred to in subclause (3) was granted.

## **25 (Repealed)**

## **26 Application of environmental planning instruments within Darling Harbour Development Area**

(1) Any State environmental planning policy that is expressed to apply:

(a) to the whole of the State, or

(b) to land within the Darling Harbour Development Area, or

(c) to land of which the Darling Harbour Development Area forms part,

applies, in accordance with its provisions, to land within the Darling Harbour Development Area.

(2) Any regional environmental plan, local environmental plan or deemed environmental planning instrument that was in force before the commencement of this clause does not apply to land within the Darling Harbour Development Area.

(3) Subclause (2) does not prevent:

(a) a regional environmental plan or local environmental plan made after the commencement of this clause from applying to land within the Darling Harbour Development Area, or

(b) a regional environmental plan or local environmental plan made before the commencement of this clause from applying to land within the Darling Harbour Development Area as a consequence of an amendment to the plan made after that commencement.

## **Part 8 Sydney Cove Redevelopment Authority Amendment Act 1998**

### **27 Definitions**

In this Part:

**amending Act** means the *Sydney Cove Redevelopment Authority Amendment Act 1998*.



**appointed day** means the day appointed for the commencement of Schedule 1 to the amending Act by proclamation under section 2 of that Act.

**approved scheme** means the approved scheme for the purposes of the 1968 Act, as that scheme was in force immediately before the appointed day, and as amended from time to time in accordance with the regulations.

**Sydney Cove Development Area** has the same meaning as **development area** in the 1968 Act.

**the 1968 Act** means the [Sydney Cove Redevelopment Authority Act 1968](#).

## 28 Consent authority

- (1) The consent authority with respect to land in the Sydney Cove Development Area is the Minister.
- (2) Subclause (1) does not apply to land in the Sydney Cove Development Area if a State environmental planning policy referred to in clause 32 (1) or a regional environmental plan or local environmental plan referred to in clause 32 (3) specifies a consent authority with respect to that land.

## 29 Carrying out of development

- (1) This clause applies to such land within the Sydney Cove Development Area as is not the subject of a regional environmental plan or local environmental plan.
- (2) Development of any kind may not be carried out on land to which this clause applies without development consent, subject to the provisions of any State environmental planning policy that allows development to be carried out on that land without development consent.
- (3) For the purposes of section 76A:
  - (a) the approved scheme has effect as if it were an environmental planning instrument, and
  - (b) subclause (2) has effect as if it were a provision of an environmental planning instrument.

Consequently, all development on land to which this clause applies must have development consent and must comply with the requirements of the approved scheme.

- (4) For the purposes of section 79C, the approved scheme has effect as if it were an environmental planning instrument.
- (5) The regulations may make provision for the amendment of the approved scheme.

### **30 Consents**

- (1) An application for the consent of the Sydney Cove Redevelopment Authority under section 23 or 25 of the 1968 Act that had not been finally determined before the appointed day is to be dealt with under Part 4 of that Act as if the amending Act had not been enacted.
- (2) However, the application is to be dealt with by the Minister and not (subject to any delegation by the Minister under section 23) by the Sydney Cove Redevelopment Authority.
- (3) A consent under the 1968 Act, including a consent granted in accordance with this clause, is taken to be development consent granted under this Act.
- (4) This Act applies to development consent arising under this clause as if it had been granted when the consent referred to in subclause (3) was granted.

### **31 Power of Minister, corporation and Director-General to delegate functions**

For the purposes of section 23, the Sydney Harbour Foreshore Authority is taken to be a council.

### **32 Application of environmental planning instruments within Sydney Cove Development Area**

- (1) Any State environmental planning policy that is expressed to apply:
  - (a) to the whole of the State, or
  - (b) to land within the Sydney Cove Development Area, or
  - (c) to land of which the Sydney Cove Development Area forms part,applies, in accordance with its provisions, to land within the Sydney Cove Development Area.
- (2) Any regional environmental plan, local environmental plan or deemed environmental planning instrument that was in force before the commencement of this clause does not apply to land within the Sydney Cove Development Area.
- (3) Subclause (2) does not prevent:
  - (a) a regional environmental plan or local environmental plan made after the commencement of this clause from applying to land within the Sydney Cove Development Area, or
  - (b) a regional environmental plan or local environmental plan made before the commencement of this clause from applying to land within the Sydney Cove Development Area as a consequence of an amendment to the plan made after

that commencement.

## **Part 8A Environmental Planning and Assessment Amendment (Ski Resort Areas) Act 2001**

### **32A Definitions**

(1) In this Part:

**existing Part 5 approval** means a Part 5 approval granted before the commencement of this clause and in force immediately before that commencement.

**Part 5 approval** means an approval (however described or arrived at) within the meaning of Part 5 relating to a ski resort area.

**ski resort area** means an area of land within the national park reserved for the time being under the *National Parks and Wildlife Act 1974*, and known as Kosciuszko National Park, that is identified for the purposes of this clause by the Minister by order published in the Gazette.

(2) An order may be made for the purposes of the definition of **ski resort area** only with the concurrence of the Minister for the Environment.

### **32B Transitional regulations relating to ski resort areas in Kosciuszko National Park**

The regulations may make provision, in relation to a ski resort area, for or with respect to the following:

- (a) savings and transitional matters arising from development consent being required by an environmental planning instrument for any activity within a ski resort area that did not previously require development consent,
- (b) converting any existing Part 5 approval into a current development consent,
- (c) converting any certificate, permission or other authority given for the purposes of an existing Part 5 approval (or any requirement for such a certificate, permission or other authority) into a Part 4A certificate (or into a requirement for a Part 4A certificate),
- (d) authorising the Director-General to issue a certificate certifying that any existing Part 5 approval, certificate, permission or other authority is to be treated as a current development consent or a Part 4A certificate,
- (e) providing that any activity carried out in a ski resort area in accordance with any specified instrument, or any instrument of a specified class, in existence immediately before the commencement of this clause, is taken to be carried out in accordance with a development consent,
- (f) enabling anything lodged in connection with an application for a Part 5 approval that

has been lodged before the commencement of this clause, but not determined before that commencement, to be accepted as lodged in connection with an application for a development consent,

- (g) any matter that is ancillary or incidental to, or otherwise related to, a matter referred to in any of the preceding paragraphs, but only to the extent to which the matter relates to an activity or development in a ski resort area.

### **32C Modification of Act with respect to ski resort areas**

- (1) The regulations may modify the application of any provision of this Act to or in respect of a ski resort area, but only in relation to:
  - (a) the person or authority to be responsible for exercising any function, or complying with any requirement, under this Act, under any existing Part 5 approval converted by regulations under this Part or under any certificate, permission or other authority given for the purposes of any such approval, and
  - (b) the way in which such functions are to be exercised or such requirements are to be complied with.
- (2) Despite any other provision of this Act:
  - (a) the Minister is the consent authority for all development applications relating to land within a ski resort area and a regulation made pursuant to this Part can not make a council responsible for exercising any other function referred to in subclause (1), and
  - (b) a regulation may be made pursuant to this Part for or with respect to a ski resort area only on the recommendation of the Minister made after consultation with the Minister for the Environment, and
  - (c) a State environmental planning policy may be made for or with respect to a ski resort area only on the recommendation of the Minister made after consultation with the Minister for the Environment, and
  - (d) any other environmental planning instrument for or with respect to a ski resort area may be made by the Minister only after consultation with the Minister for the Environment.

If the Minister recommends that any such regulation or State environmental planning policy be made, or makes any such other environmental planning instrument, against the advice of the Minister for the Environment, the Minister is to publish the reasons for making the recommendation or instrument in the same Gazette as that in which the regulation, policy or instrument is published.

- (3) When consulting with the Minister about whether a recommendation should be made for the making of a regulation or State environmental planning policy, and about

whether any other environmental planning instrument should be made, for or with respect to a ski resort area, the Minister for the Environment must take into account whether the proposed regulation, policy or instrument:

- (a) promotes the objects of the *National Parks and Wildlife Act 1974*, and
- (b) is consistent with the plan of management under that Act for the land concerned.

### **32D Application of Chapter 7 of Local Government Act 1993 to ski resort areas**

- (1) Except as may otherwise be provided by the regulations, Chapter 7 of the *Local Government Act 1993* does not apply to or in respect of a ski resort area.
- (2) A regulation made for the purposes of this clause may modify the application of any provision of Chapter 7 of the *Local Government Act 1993* to or in respect of a ski resort area.

### **32E Effect of certain regulations**

To remove any doubt, a regulation made pursuant to this Schedule can not have the effect of making any provision prevail over the *National Parks and Wildlife Act 1974*.

### **32F State of the environment report**

- (1) The Director-General is to present to the Minister a report as to the state of the environment in each ski resort area on each second anniversary of the day on which this clause commenced.
- (2) Section 428 (2) (c) of the *Local Government Act 1993* applies to the content of a state of the environment report under this clause, except that references in that paragraph to a council are to be read as references to the Department and the National Parks and Wildlife Service.
- (3) Copies of each report must be furnished to such persons and bodies as are prescribed under section 428 (3) of the *Local Government Act 1993*.

## **Part 9 Environmental Planning and Assessment Amendment Act 1999**

### **33 Modification of development consents**

An amendment made by Schedule 3 to the *Environmental Planning and Assessment Amendment Act 1999* extends to a development consent granted before the commencement of the amendment.

### **34 Date from which consent operates**

Section 83 (1) (b), as substituted by the *Environmental Planning and Assessment Amendment Act 1999*, extends to a development application made before the commencement of the substitution.

### 35 Building and construction industry long service levy

If a long service levy, or the first instalment of such a levy, has been paid under section 80 (10A) before its repeal, section 109F as amended by the *Environmental Planning and Assessment Amendment Act 1999* does not apply in respect of the levy, or the first instalment of the levy.

### 36 Apportionment of liability

Section 109ZJ, as amended by the *Environmental Planning and Assessment Amendment Act 1999*, does not apply to or in respect of any development referred to in clause 34 of the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998*.

### 37 Entry to residences for building certificate inspections

Section 118J, as amended by the *Environmental Planning and Assessment Amendment Act 1999*, extends to an application for a building certificate that was made before the commencement of the amendment.

## Part 11 Rural Fires and Environmental Assessment Legislation Amendment Act 2002

### 42 Bush fire prone land

- (1) The following land within the area of a council is taken to be bush fire prone land for the area of the council until a bush fire prone land map for the area has been certified by the Commissioner of the NSW Rural Fire Service under section 146:
  - (a) land that is within, or within 100 metres of, a high or medium bush fire hazard that is identified on a hazard map prepared for the purposes of a bush fire risk management plan applying to the land, and
  - (b) land within, or within 30 metres of, a low bush fire hazard that is identified on a hazard map prepared for the purposes of a bush fire risk management plan applying to the land.

- (2) In this clause:

***bush fire risk management plan*** has the same meaning as it has in the *Rural Fires Act 1997*.

## Part 12 Building Legislation Amendment (Quality of Construction) Act 2002

### 43 Definition

In this Part, ***the 2002 amending Act*** means the *Building Legislation Amendment (Quality of Construction) Act 2002*.

#### **44 Status of certain committees**

A committee referred to in section 20 or 22 is taken from the time of its constitution to have been a statutory body representing the Crown.

#### **45 Delegations**

Any authorisation granted to the Director-General under clause 199 of the *Environmental Planning and Assessment Regulation 2000* that was in force immediately before the commencement of section 23 (1A), as inserted by the 2002 amending Act, is taken to be a delegation under section 23 (1), and may be subdelegated accordingly.

#### **46 Nature of construction certificate**

Section 80 (12), as amended by the 2002 amending Act, extends to any variation to a construction certificate, plan or specification that lawfully occurred before the commencement of that amendment.

#### **47 Commencement of development under development consents**

Section 81A, as amended by the 2002 amending Act, extends to building work or subdivision work the subject of a development consent granted before the commencement of those amendments unless the work had begun before that commencement.

#### **48 Commencement of development under complying development certificates**

Section 86, as amended by the 2002 amending Act, extends to building work or subdivision work the subject of a complying development certificate issued before the commencement of those amendments unless the work had begun before that commencement.

#### **49 Part 4A certificates**

Section 109C (1A), as inserted by the 2002 amending Act, extends to matters arising before the commencement of that subsection.

#### **50 Appointment of principal certifying authorities**

Section 109E, as amended by the 2002 amending Act, extends to any development consent or complying development certificate issued before the commencement of those amendments for which a principal certifying authority has yet to be appointed.

#### **51 Replacement of certifying authorities**

Section 109EA, as inserted by the 2002 amending Act, extends to the replacement of a certifying authority or principal certifying authority who had been appointed before the commencement of that section.

## **52 Restriction on issue of occupation certificates**

Section 109H (1) (b1), as inserted by the 2002 amending Act, does not apply to any building work that commenced before that amendment.

## **53 Conflicts of interest**

Section 109ZG (1AA), as inserted by the 2002 amending Act, extends to matters arising before the commencement of that subsection.

## **54 Investigation of certifying authorities**

- (1) Subject to subclause (2), Division 1B of Part 6, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that Division.
- (2) Section 109U, as in force immediately before its repeal by the 2002 amending Act, continues to apply to any investigation that had commenced before the repeal of that section as if that Act had not been enacted.

## **55 Proceedings for offences**

Section 127 (5), as substituted by the 2002 amending Act, does not apply to offences arising before the commencement of that amendment.

## **56 Improper influence with respect to conduct of accredited certifier acting as certifying authority**

Section 148A, as inserted by the 2002 amending Act, does not apply to conduct occurring before the commencement of that section.

## **57 Exclusion of personal liability**

Section 158, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that section.

## **58 Conditions of development consent**

Clauses 98A and 98B of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2002 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

## **59 Conditions of complying development certificate**

Clauses 136B and 136C of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2002 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

## **60 Time limits for accredited certifiers**

The amendments to clauses 130, 138, 142, 151 and 160 of the *Environmental Planning*



*and Assessment Regulation 2000* made by the 2002 amending Act do not apply to any determination made under any of those clauses, or any certificate issued under any of those clauses, before the commencement of those amendments.

## **Schedule 7 (Repealed)**