

City of Sydney Act 1988 No 48

[1988-48]



New South Wales

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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**
Environmental Planning and Assessment Amendment (Development Contributions) Act 2005 No 19 (not commenced)

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New South Wales

Contents

Long title	5
Part 1 Preliminary	5
1 Name of Act	5
2 Commencement	5
3 Principal Act	5
4 Definitions	5
Part 2 (Repealed)	6
Part 3 Elections	6
Division 1 Enrolment for elections for the City Council	6
14 Definitions	6
15 Right to be enrolled as an elector	8
16 Provisions relating to right to be enrolled as an elector	8
16A Partnerships	9
17 Roll of electors	9
17A, 18 (Repealed)	9
18A Electoral Commissioner to prepare roll of non-resident owners and roll of occupiers and ratepaying lessees	9
18B Enrolment letter	10
18C Costs in relation to electoral rolls	11
19, 19A (Repealed)	11

Division 2 Voting at elections for the City Council	11
20, 21 (Repealed)	11
22 Compulsory voting	11
Division 3 Election of Lord Mayor	11
23 Election by electors	12
23A Lord Mayor must also be candidate for election as councillor	12
Division 4 Council poll or constitutional referendum	12
24 Applicable provisions of Principal Act and this Part	12
25-30 (Repealed)	12
Part 4 Planning in the City of Sydney	12
Division 1 Preliminary	12
31 Definition	12
32 Relationship of this Part to the Planning Act etc	12
Division 2 Constitution of the Central Sydney Planning Committee	13
33 The Planning Committee	13
34 Members of the Planning Committee	13
35 Provisions relating to members, procedure etc of the Planning Committee	14
36 Access to records etc of City Council	14
37 Subcommittees.....	14
38 Delegation	14
Division 3 Environmental planning functions of the Planning Committee	14
39 Planning Committee’s role in planning controls	14
40 Determination of major development applications.....	15
41 Consultation with Minister or public authority	15
42 Minister or public authority may make representations	16
43 Representations to be taken into consideration	16
44 Validity of consents	16
45 Certain provisions of the Planning Act not to apply	16

Division 4 Other functions	17
46 Definition	17
47 Nomination of authorisations by applicant	17
48 Decision by the Planning Committee as to nomination	17
49 Decision by the Planning Committee to deal with an authorisation under this Division	17
50 Determination of matter by the Planning Committee	17
51 Directions by the Minister	18
52 (Repealed)	18
Part 5 Miscellaneous	18
52A Amount of ordinary rate for year commencing 1 July 1995 and later years	18
53–56 (Repealed)	18
57 Savings, transitional and other provisions	19
58 Regulations	19
Part 6 Special environmental planning powers	19
59 Rectification of landscape—uncompleted development	19
60 Rectification of landscape—agreements with owners	20
61 Development contributions	21
62 Waiver of tendering requirements—conditional donations to public space improvement projects	22
63 Donations to public space improvement projects	22
Schedule 1 The Planning Committee	23
Schedule 2 (Repealed)	27
Schedule 3 Savings, transitional and other provisions	27

City of Sydney Act 1988 No 48



New South Wales

An Act relating to the constitution of the City of Sydney and the City of South Sydney; to make provisions for planning and major development within the City of Sydney; to repeal and amend certain enactments; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *City of Sydney Act 1988*.

2 Commencement

- (1) Subject to this section, this Act commences on a day or days to be appointed by proclamation.
- (2) Sections 1 and 2 commence on the date of assent.
- (3) (Repealed)

3 Principal Act

- (1) The *Local Government Act 1993* is referred to in this Act as the Principal Act.
- (2) This Act (Part 4 and Schedule 1 excepted) shall be construed with, and as if it formed part of, the Principal Act.
- (3) In the event of an inconsistency between this Act and the Principal Act, this Act shall prevail to the extent of the inconsistency.

4 Definitions

- (1) In this Act:

City Council means the Council of the City of Sydney.

Planning Act means the *Environmental Planning and Assessment Act 1979*.

Planning Committee means the Central Sydney Planning Committee constituted by this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Part 2

5-13 (Repealed)

Part 3 Elections

Division 1 Enrolment for elections for the City Council

14 Definitions

(1) For the purposes of this Division:

(a) **owner** means:

- (i) a joint or several owner of rateable land, and
- (ii) the holder or resident manager of a lease, promise or contract of lease from the Crown of rateable Crown land,

but does not include:

- (iii) a lessee of rateable land (not being Crown land) or a person who merely occupies any such rateable land under a licence or other agreement, or
 - (iv) where rateable land is held on trust, a beneficiary under the trust,
- (b) **ratepaying lessee** means, subject to subsections (1A), (3) and (4), a person who has been continuously, during the period of 3 months preceding the relevant date, the lessee (whether jointly or severally) of rateable land and who is liable, under a lease in writing or other document of title relating to the land, to pay to any person the whole or any part of any local government rates which may be made or levied in respect of the land and where the annual amount payable by the lessee (or by the lessee together with another person or other persons) for the lease and local government rates is at least \$5,000 (or, if the regulations prescribe a greater amount, the greater amount so prescribed),
- (c) **occupier** means, subject to subsections (2), (3) and (4), a person who has been continuously, during the period of 3 months preceding the relevant date, in actual occupation of rateable land (jointly or severally, but not as owner or ratepaying lessee) where the annual amount payable by the person (or by the person together with another person or other persons) for the right to that occupation is at least \$5,000 (or, if the regulations prescribe a greater amount, the greater

amount so prescribed),

- (d) **resident** means a person who is, on the relevant date, enrolled, within the meaning of the *Parliamentary Electorates and Elections Act 1912*, on the roll for any electoral district and whose place of living as described on that roll is within the City of Sydney,
- (e) **rateable land** includes all land in the City of Sydney on which any rate is leviable or levied under the Principal Act, but does not include land comprised solely of a lot in a strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, being a lot designed, constructed or used solely or principally for the parking of a motor vehicle,
- (f) **relevant date** means, for the purposes of determining:
 - (i) whether a person is entitled to have the person's name included in a roll of electors—the date on which the claim for enrolment is made, or
 - (ii) whether a person is entitled to vote at an election—the date prescribed under the Principal Act for the closing of the residential roll for the election, and
- (g) **joint** and **jointly**, in relation to owning, holding or occupying land, includes owning, holding or occupying in common.

(1A) If the annual amount payable for the lease and local government rates under a lease in writing or other document of title relating to rateable land exceeds \$5,000 (or the greater amount prescribed for the purposes of subsection (1) (b)), the maximum number of ratepaying lessees of that rateable land for the purposes of subsection (1) (b) is the number obtained by dividing the annual amount so payable by \$5,000 (or an amount equivalent to the greater amount prescribed) ignoring any remainder.

(2) If the annual amount payable for the joint occupation of any rateable land exceeds \$5,000 (or the greater amount prescribed for the purposes of subsection (1) (c)), the maximum number of occupiers of that rateable land for the purposes of subsection (1) (c) is the number obtained by dividing the annual amount so payable by \$5,000 (or an amount equivalent to the greater amount prescribed) ignoring any remainder.

(3) If, because of the operation of subsection (1A) or (2), it is necessary to choose the persons with the requisite qualifications as electors from among a number of joint ratepaying lessees or joint occupiers, the choice shall be made:

- (a) in accordance with a written nomination signed by the majority of those lessees or those occupiers, or
- (b) if no such nomination is made, by the Electoral Commissioner having regard to the alphabetical order of the surnames of the lessees or occupiers or on such

other basis as the Electoral Commissioner considers appropriate in the circumstances of the case.

- (4) A person is not a ratepaying lessee or an occupier if his or her primary place of residence is not within New South Wales.
- (5) If the City of Sydney is divided into wards, this Division applies to each ward in the same way as it applies to the area of the City of Sydney.

15 Right to be enrolled as an elector

- (1) A person is entitled to be enrolled as an elector for the City of Sydney if the person is:
 - (a) an owner of rateable land in the City of Sydney, or
 - (b) a ratepaying lessee or occupier of rateable land in the City of Sydney, or
 - (c) a resident of the City of Sydney.
- (2) A person is not entitled to be enrolled as an elector under subsection (1) unless the person (or, in the case of a corporation, the person nominated as the elector by the corporation) is entitled to vote at an election of members of the Legislative Assembly or an election of members of the Commonwealth House of Representatives.
- (3) Sections 266 and 269–272 of the Principal Act do not apply to the City of Sydney.

16 Provisions relating to right to be enrolled as an elector

- (1) If a corporation is the owner, ratepaying lessee or occupier of rateable land, one natural person nominated in writing by the corporation as elector shall be taken to be entitled to be enrolled as an elector instead of the corporation.
- (2) (Repealed)
- (3) If the same person or group of persons is the owner, ratepaying lessee or occupier of 2 or more parcels of rateable land (whether in one or more of those capacities), all those parcels shall be taken to be a single parcel of land for the purposes of this section and (if applicable) to be held by the person or group in only one of those capacities.
- (4) If a person is entitled to be enrolled as an elector because the person is a resident of the City of Sydney, the person is taken not to be entitled to be enrolled as an elector in any other capacity.
- (5) In this section, a reference to a person does not exclude a reference to a corporation merely because elsewhere in this section there is particular reference to a corporation.

16A Partnerships

- (1) This section applies for the purposes of this Division and sections 267 and 268 of the Principal Act.
- (2) If a person is an owner, ratepaying lessee or occupier of rateable land in the person's capacity as a partner of a firm:
 - (a) the person is taken not to be an owner, ratepaying lessee or occupier of that rateable land, and
 - (b) the firm is taken to be a corporation that is the owner, ratepaying lessee or occupier of that rateable land.

17 Roll of electors

In the application of Division 2 of Part 6 of Chapter 10 of the Principal Act to an election for the City of Sydney:

- (a) a reference in that Division to persons entitled to be enrolled as electors because they are non-resident owners of land within an area is to be read as a reference to persons entitled under section 15 (1) (a) to be enrolled as electors, and
- (b) a reference in that Division to persons entitled to be enrolled as electors because they are ratepaying lessees or occupiers of land within an area is to be read as a reference to persons entitled under section 15 (1) (b) to be enrolled as electors, and
- (c) a reference in that Division to persons entitled to be enrolled as electors because they are residents of an area is to be read as a reference to persons entitled under section 15 (1) (c) to be enrolled as electors.

17A, 18 (Repealed)

18A Electoral Commissioner to prepare roll of non-resident owners and roll of occupiers and ratepaying lessees

- (1) Not later than the closing date for an election, the Electoral Commissioner is to prepare and confirm the following rolls for the election:
 - (a) **the roll of non-resident owners of rateable land**, being a roll of persons who are entitled to be enrolled as electors as owners of rateable land in the City of Sydney and have applied for the inclusion of their names on the roll for the election,
 - (b) **the roll of occupiers and ratepaying lessees**, being a roll of persons who are entitled to be enrolled as electors as ratepaying lessees or occupiers of rateable land in the City of Sydney and have applied for the inclusion of their names on the roll for the election.

- (2) A roll prepared under this section lapses after the election for which it is prepared.
- (3) Sections 299 and 300 of the Principal Act do not apply to any election for the City of Sydney.
- (4) References in section 301 of the Principal Act to the non-residential roll prepared and confirmed under section 299 for the area and the roll of occupiers and ratepaying lessees prepared and confirmed under section 300 for the area are in the operation of that section in respect of the City of Sydney to be read as references to, respectively, the roll of non-resident owners of rateable land prepared and confirmed under this section and the roll of occupiers and ratepaying lessees prepared and confirmed under this section.
- (5) References in Division 2 of Part 6 of Chapter 10 of the Principal Act to the general manager are in the operation of that Division in respect of the City of Sydney to be read as references to the Electoral Commissioner.

18B Enrolment letter

- (1) The Electoral Commissioner must, at least 90 days before the closing date for an election (the **proposed election**) for the City of Sydney, send an enrolment letter addressed:
 - (a) to each person whose name appeared on a non-residential roll prepared and confirmed for the previous election, at the address of the person appearing on the roll, and
 - (b) to each corporation or firm that nominated a person as an elector for the previous election, at the address of the corporation or firm appearing on the form of nomination.
- (2) **An enrolment letter** is a letter stating the following:
 - (a) that an election for the City of Sydney is to be held,
 - (b) the date the election is to be held,
 - (c) that the person the enrolment letter is addressed to may be entitled to be enrolled as an elector on the roll of non-resident owners of rateable land or the roll of occupiers and ratepaying lessees, or to nominate a person to be so enrolled, for the election,
 - (d) that a person will not be enrolled on such a roll unless inclusion on the roll is applied for before the date prescribed for the closing of the roll of electors for the election,
 - (e) the date prescribed for the closing of the roll of electors for the election.

(3) The lapsing of a non-residential roll after the election for which it was prepared does not prevent or otherwise affect use of the roll for the purposes of this section.

(4) In this section and clause 31 of Schedule 3:

closing date for an election has the same meaning as it has in the Principal Act.

non-residential roll means the roll of non-resident owners of rateable land or the roll of occupiers and ratepaying lessees.

previous election in relation to a proposed election means the last election for the City of Sydney held before the proposed election, whether the last election was an ordinary election, a by-election or other kind of election.

18C Costs in relation to electoral rolls

The costs of the Electoral Commissioner with respect to the preparation of rolls under section 18A, including the costs with respect to the sending of enrolment letters under section 18B, are to be met by the City Council and are recoverable from the Council as a debt. Any dispute as to the amount of those costs is to be determined by the Director-General of the Department of Local Government.

19, 19A (Repealed)

Division 2 Voting at elections for the City Council

20, 21 (Repealed)

22 Compulsory voting

- (1) Electors whose names are on the residential roll, the non-residential roll or the roll of occupiers and ratepaying lessees must vote at a contested election for the City of Sydney, unless exempt from voting under the Principal Act or this Act. Section 286 of the Principal Act does not apply to a contested election for the City of Sydney.
- (2) In the application of Division 4 of Part 6 of Chapter 10 of the Principal Act to any such election:
 - (a) a reference in those provisions to a resident is to be read as including a reference to a person included on the non-residential roll or the roll of occupiers and ratepaying lessees for the election, and
 - (b) a reference in those provisions to a residential roll is to be read as including a reference to the non-residential roll or the roll of occupiers and ratepaying lessees for the election.

Division 3 Election of Lord Mayor

23 Election by electors

The Lord Mayor of Sydney is to be elected by the electors in accordance with section 282 (1) of the Principal Act.

23A Lord Mayor must also be candidate for election as councillor

A person who is a candidate for election as the Lord Mayor of Sydney must also be a candidate for election as a councillor of the City of Sydney at the same time. Section 283 of the Principal Act applies accordingly.

Division 4 Council poll or constitutional referendum

24 Applicable provisions of Principal Act and this Part

- (1) The provisions of this Part apply (and the provisions of sections 266 and 269-272 of the Principal Act do not apply) to a council poll or constitutional referendum in the City of Sydney.
- (2) However, section 22 (1) applies to a constitutional referendum but not a council poll in the City of Sydney.

25-30 (Repealed)

Part 4 Planning in the City of Sydney

Division 1 Preliminary

31 Definition

In this Part:

major development means development carried out or proposed to be carried out on land within or partly within the City of Sydney, being:

- (a) development the estimated cost of which exceeds 50 million dollars, or
- (b) development the subject of a development application which, if unconditional consent were to be granted to the application, would not comply with an environmental planning instrument that applies to the land concerned, or
- (c) development the subject of a development application, or development of a specified class, that the Minister administering Part 4 of the Planning Act has requested the Planning Committee to deal with.

32 Relationship of this Part to the Planning Act etc

- (1) This Part and Schedule 1 shall be construed with, and as if they formed part of, the Planning Act.

(2) This Act does not affect the application of any provision of the Planning Act except to such extent (if any) as is necessary to give effect to the provisions of this Act.

(3), (4) (Repealed)

Division 2 Constitution of the Central Sydney Planning Committee

33 The Planning Committee

- (1) There is constituted by this Act a committee of the City Council to be known as the Central Sydney Planning Committee.
- (2) The Planning Committee has the functions conferred or imposed on it by or under this or any other Act.
- (3) A function exercised by the Planning Committee shall be taken to have been exercised by the City Council.
- (4) The Planning Committee is not subject to the control or direction of the City Council and the City Council has no power to affect (by amendment or revocation or otherwise) a decision of the Planning Committee.
- (5) Any difference arising between the City Council and the Planning Committee may be dealt with under section 742 of the Principal Act as if it were a difference between councils.
- (6) The Planning Committee is, by virtue of this subsection, a corporation.

34 Members of the Planning Committee

- (1) The Planning Committee shall consist of 7 members, being:
 - (a) the Lord Mayor of Sydney,
 - (b) a senior government employee with architectural experience nominated by the Minister administering the *Public Works Act 1912*,
 - (c) 2 councillors of the City of Sydney elected by the City Council,
 - (d) the Director of Planning under the Planning Act, and
 - (e) 2 persons appointed, subject to subsection (2), by the Minister administering Part 4 of the Planning Act.
- (2) Of the persons appointed under subsection (1) (e):
 - (a) one person must have special knowledge of and experience in architecture, building construction, civic design, engineering, transport planning, tourism or the arts and the other person must have special knowledge of and experience in

heritage conservation or environmental planning, and

- (b) neither person may be a government employee or a local government employee, and
- (c) neither person may have an actual or potential conflict of interest arising from development carried out or proposed to be carried out in the area to which this Act applies.

(3) The City Council may appoint an alternate for each of the members of the Planning Committee referred to in subsection (1) (c).

35 Provisions relating to members, procedure etc of the Planning Committee

Schedule 1 has effect.

36 Access to records etc of City Council

The Planning Committee is entitled:

- (a) to have access to, and to make copies of and take extracts from, records of the City Council relevant to the exercise of its functions, and
- (b) to the use of the staff and facilities of the City Council in order to exercise its functions.

37 Subcommittees

- (1) The Planning Committee may establish subcommittees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a subcommittee are not members of the Planning Committee.
- (3) The procedure for the calling of meetings of a subcommittee and for the conduct of business at those meetings shall be as determined by the Planning Committee or (subject to any determination of the Planning Committee) by the subcommittee.

38 Delegation

The Planning Committee may, with the approval of the Minister, delegate to a person any of its functions, other than this power of delegation.

Division 3 Environmental planning functions of the Planning Committee

39 Planning Committee's role in planning controls

- (1) The City Council must not prepare a draft environmental planning instrument or

submit a draft environmental planning instrument to be made unless the Planning Committee has approved of the draft environmental planning instrument.

(2) The Planning Committee may require the City Council to prepare a draft environmental planning instrument, or to submit a draft environmental planning instrument to be made, to enable the carrying out of non-complying major development the subject of the requirement. The City Council must exercise such of the Council's functions (including functions under the Planning Act) as may be necessary to cause the required draft environmental planning instrument to be made or approved.

(3) In this section:

non-complying major development means major development the subject of a development application which, if unconditional consent were to be granted to the application, would not comply with an environmental planning instrument that applies to land to which the application applies.

40 Determination of major development applications

(1) The Planning Committee has and may exercise the functions of the City Council under Parts 4, 5, 6 and 8 of the Planning Act in relation to the carrying out of major development, to the exclusion of the City Council (subject to any delegation under this section).

(2) The Planning Committee may delegate to an authorised person or body the exercise of any of the Committee's functions under subsection (1) with respect to a particular application for development consent or with respect to any class of applications for development consent. A delegation can be given subject to conditions. A delegation does not (despite section 38) require the approval of the Minister.

(3) The Planning Committee, or a delegate, must not exercise a function under this section that will result in the making of a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on the City Council until after it has consulted with the City Council.

(4) In this section:

authorised person or body means the City Council, the general manager of the City Council, the Chairperson of the Planning Committee, or any subcommittee of the Planning Committee.

41 Consultation with Minister or public authority

(1) Where an environmental planning instrument which applies to land within the City of Sydney provides that a development application shall not be determined by the granting of consent without the consent, permission, approval or concurrence of a

Minister or public authority (other than the City Council) to development specified in the instrument, the Planning Committee shall, in relation to an application to carry out major development, forward forthwith a copy of the application to that Minister or public authority (unless consent to the application is refused).

- (2) Where development referred to in subsection (1) is designated development, the Planning Committee shall comply with the provisions of section 84 of the Planning Act and with the provisions of subsection (1) concurrently.

42 Minister or public authority may make representations

- (1) A Minister or public authority referred to in section 41 shall not grant or purport to grant a consent, permission, approval or concurrence so referred to but may, with respect to development the subject of a development application so referred to, make representations to the Planning Committee in relation to:
 - (a) any matter which would, but for section 41, have been relevant to the granting of the Minister's or authority's consent, permission, approval or concurrence, and
 - (b) the matters stated pursuant to section 30 (3) of the Planning Act and applicable in relation to the development application.
- (2) The exercise or purported exercise of a function by a Minister or public authority in contravention of this section is of no effect.

43 Representations to be taken into consideration

- (1) Without limiting the generality of section 90 (1) of the Planning Act, in determining a development application relating to the carrying out of major development, the Planning Committee shall take into consideration any representations made in relation to the development to which the development application relates in accordance with section 42 by a Minister or public authority within 40 days after a copy of the application was forwarded to that Minister or public authority.
- (2) Subsection (1) does not prevent the Planning Committee from taking into consideration any such representation made after the expiry of the 40-day period but before the development application is determined.

44 Validity of consents

The failure of the Planning Committee to comply with sections 41–43 in relation to a development application does not invalidate or otherwise affect a development consent given by the Planning Committee with respect to the development to which the application relates.

45 Certain provisions of the Planning Act not to apply

Sections 78–83 of the Planning Act do not apply to or in respect of major development.

Division 4 Other functions

46 Definition

In this Division:

authorisation means:

- (a) a consent, permission, approval, concurrence, licence, permit or other authority of, or
- (b) the exercise of a function by,

a Minister or public authority (not being a court) other than under Division 3 or as prescribed by the regulations.

47 Nomination of authorisations by applicant

An applicant for consent to carry out major development may nominate, in the development application, any authorisations the applicant requires in order to carry out the development in the manner proposed by the applicant.

48 Decision by the Planning Committee as to nomination

- (1) On receipt of the application, the Planning Committee shall decide which (if any) of the authorisations the Planning Committee proposes to deal with under this Division.
- (2) The Planning Committee shall notify the applicant as soon as practicable of its decision.

49 Decision by the Planning Committee to deal with an authorisation under this Division

- (1) If the Planning Committee decides to deal with an authorisation under this Division, the Planning Committee shall:
 - (a) notify the Minister or public authority concerned of its decision,
 - (b) forward a copy of the development application to that Minister or public authority, and
 - (c) require that Minister or public authority to finally determine the matter requiring the authorisation within such time as the Planning Committee may specify having regard to any law (other than this Act) governing the granting of the authorisation or the exercise of the function comprising the authorisation.
- (2) The Planning Committee may, before or after the expiration of the time specified under this section, extend that time from time to time.

50 Determination of matter by the Planning Committee

- (1) If the Minister or public authority concerned has not finally determined the matter

requiring the authorisation within the time (or the extended time) specified by the Planning Committee, the Planning Committee may give notice to that Minister or public authority of the manner in which and the conditions (if any) subject to which the Planning Committee proposes to determine that matter in accordance with this Division.

- (2) If, within 14 days after receipt of a notice under this section, the Minister or public authority concerned has not finally determined the matter, the Planning Committee may determine the matter.
- (3) The Planning Committee shall determine any matter under this section as if it were the Minister or public authority concerned and its determination shall have effect in all respects as if it were a determination of that Minister or public authority.
- (4) The Planning Committee may exercise any function of the Minister or public authority concerned in order to give effect to its determination and the exercise of the function shall have effect in all respects as if it were exercised by that Minister or public authority.

51 Directions by the Minister

The Minister may at any time direct the Planning Committee not to exercise a function under this Division in relation to such matters (if any) as the Minister may specify.

52 (Repealed)

Part 5 Miscellaneous

52A Amount of ordinary rate for year commencing 1 July 1995 and later years

- (1) The City Council may resolve that the amount of the ordinary rate that is to be levied on a parcel of rateable land for the year commencing on 1 July 1995 or for any subsequent year is to be not more than a specified percentage higher than the amount of the ordinary rate levied on the same parcel of rateable land for the previous year.
- (2) The specified percentage is to be stated in the City Council's resolution and must be the percentage approved by the Minister for the relevant year. The Minister may approve a nil percentage.
- (3) The City Council must levy the ordinary rate in accordance with its resolution.
- (4) The City Council's resolution does not apply to a parcel of rateable land that did not exist as that parcel of rateable land for the whole of the previous year (because, for example, it was exempt from rating for the whole or a part of that year or it is a lot in a subdivision created during that year).

53-56 (Repealed)

57 Savings, transitional and other provisions

Schedule 3 has effect.

58 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.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) the form in which applications under Division 4 of Part 4 may be made,
 - (b) the fees to be lodged with applications,
 - (c) the determination of applications,
 - (d) the recording of determinations,
 - (e) the notification of the making of determinations,
 - (f) the giving of effect to determinations,
 - (g) the public availability of determinations.

Part 6 Special environmental planning powers

59 Rectification of landscape—uncompleted development

- (1) This section applies if the City Council has adopted a local orders policy under Part 3 of Chapter 7 of the Principal Act that specifies the criteria that the City Council must take into consideration in determining whether or not to give an order in accordance with this section.
- (2) Section 164 of the Principal Act does not apply to such a local orders policy.
- (3) The City Council may order the owner or occupier of land to which the *Central Sydney Local Environmental Plan 1996* applies:
 - (a) on which uncompleted development exists, and
 - (b) on which no substantial work to complete the development has been carried out during the period of 18 months (determined consecutively or cumulatively) before the order is given,

to do such things as are specified in the order to rectify the landscape of the land if the development, because of its uncompleted state, adversely affects the visual amenity of the City of Sydney (or a part of the City of Sydney).

- (4) An order may specify only one or more of the following:
- (a) that the demolition of buildings be completed,
 - (b) that builder's debris and rubble be removed,
 - (c) that a hoarding or other secure fencing be erected,
 - (d) that decorative panels be attached to hoardings and fences,
 - (e) that the land be landscaped,
 - (f) that landscaping items be maintained or, in the case of plants that are dead or damaged, be replaced,
 - (g) that lighting be installed,
 - (h) that such other things of an incidental nature as may be specified in the order be done,
 - (i) that such things as may have been agreed to by the person to whom the order is given be done.
- (5) This section does not authorise the City Council to order the filling-in of an excavation or the installation of drainage works.
- (6) An order under this section is taken to be an order under section 124 of the Principal Act.

60 Rectification of landscape—agreements with owners

- (1) The City Council or the Planning Committee may refuse to consider a development application for the development of land to which the *Central Sydney Local Environmental Plan 1996* applies and that is made by or with the consent of the owner of the land unless the owner enters into an agreement with the City Council under which the owner agrees to do such things as may be reasonably required in the agreement in order to rectify the landscape of the land if the development, because of its uncompleted state, adversely affects the visual amenity of the City of Sydney (or a part of the City of Sydney).
- (2) The City Council or the Planning Committee may, in the case of a development application for the development of land to which the *Central Sydney Local Environmental Plan 1996* applies that is made by the owner of the land, impose as a condition of development consent a requirement that the owner enter into an agreement with the City Council under which the owner agrees to do such things as may be reasonably required in the agreement in order to rectify the landscape of the land if the development, because of its uncompleted state, adversely affects the visual amenity of the City of Sydney (or a part of the City of Sydney).

- (3) An agreement must comply with a policy approved by the Minister for the time being administering the Planning Act and adopted by the City Council.
- (4) An agreement may make provision only for one or more of the following:
 - (a) that the demolition of buildings be completed,
 - (b) that builder's debris and rubble be removed,
 - (c) that a hoarding or other secure fencing be erected,
 - (d) that decorative panels be attached to hoardings and fences,
 - (e) that the land be landscaped,
 - (f) that landscaping items be maintained or, in the case of plants that are dead or damaged, be replaced,
 - (g) that lighting be installed,
 - (h) that such other things of an incidental nature as may be specified in the agreement be done,
 - (i) that such things as may have been agreed to by the owner of the land be done.
- (5) An agreement cannot require an owner to fill in an excavation or to install drainage works.
- (6) An agreement binds a successor in title to the land.
- (7) This section does not affect the power of the City Council or the Planning Committee to enter into any other agreement concerning the land or its development or to impose any other conditions of development consent.

61 Development contributions

- (1) Despite Part 4 of the Planning Act, a contributions plan prepared and approved under section 94AB of that Act in respect of the whole or any part of the land to which the [Central Sydney Local Environmental Plan 1996](#) applies may authorise the imposition of a condition that the applicant for development consent pay a levy to the City Council of 1% of the cost, as estimated by the consent authority, of the proposed development.
- (2) Such a contributions plan cannot authorise the imposition of such a levy on so much of a proposed development as comprises residential accommodation (within the meaning of the [Accommodation Levy Act 1997](#)) within a place of accommodation to which the [Accommodation Levy Act 1997](#) applies.
- (3) Such a contributions plan must specify the purposes for which any such levy is to be

used. Any such levy must be used for the purposes so specified.

- (4) A contributions plan prepared and approved as referred to in this section:
 - (a) is not subject to section 94AB (3) or 94A of the Planning Act, and
 - (b) does not have to comply with clause 26 of the *Environmental Planning and Assessment Regulation 1994* (or any clause made in substitution for or by way of replacement of that clause).
- (5) The City Council must not approve a contributions plan that contains a provision authorised by this section unless it has first obtained the concurrence of the Minister administering Part 4 of the Planning Act.

62 Waiver of tendering requirements—conditional donations to public space improvement projects

If:

- (a) a person makes a donation, subject to conditions, to carry out a public space improvement project of the City Council, and
 - (b) in order to give effect to such a condition, the City Council enters into a contract with the person or another person to carry out the project, or a part of the project,
- section 55 of the Principal Act does not apply to the contract.

63 Donations to public space improvement projects

- (1) The City Council must include in any publication that advertises, promotes or disseminates information concerning a public space improvement project a statement to the effect that the acceptance of a donation will not limit or affect the exercise by the City Council of any of its functions, except as provided by section 62.
- (2) The City Council must table a statement at the meeting of the City Council that next follows the making of a donation to a public space improvement project, being a statement that includes the following:
 - (a) the name of the person making the donation,
 - (b) the nature of the donation,
 - (c) any conditions to which the donation was subject.
- (3) The City Council must include in its annual report under section 428 of the Principal Act:
 - (a) a summary of donations made during the year to which the report relates to public space improvement projects, and

- (b) a list of the public space improvement projects undertaken during that year.

Schedule 1 The Planning Committee

(Section 35)

Part 1 Members

1 Definitions

In this Schedule:

appointed member means a person referred to in section 34 (1) (e).

elected member means a person referred to in section 34 (1) (c).

2 Elected members

- (1) An ordinary election of elected members is to be held:
 - (a) at the same time as the election of the Lord Mayor by the councillors under section 290 (1) (a) of the Principal Act, or
 - (b) at a meeting of the City Council held within 3 weeks of the election of the Lord Mayor by electors of the City of Sydney under section 289 of the Principal Act.
- (2) The office of an elected member commences on the day of the member's election and becomes vacant on the day of the election of the member's successor or on the occurrence of an extraordinary vacancy.
- (3) An extraordinary election of an elected member shall be held as soon as practicable after the extraordinary vacancy occurs.
- (4) An elected member is eligible (if otherwise qualified) for re-election.
- (5) The City Council may remove an elected member (other than a person who has been appointed under subclause (6) and who is not a councillor of the City of Sydney) at any time.
- (6) If a person is not elected in accordance with this clause, the Minister may appoint any person to be an elected member and the person so appointed shall be taken to have been duly elected.
- (7) If a person appointed by the Minister to be an elected member is not a councillor of the City of Sydney, the Minister may remove the person from office at any time.

3 Chairperson

The Lord Mayor of Sydney shall be the Chairperson of the Planning Committee.

3A Deputy Chairperson

- (1) The members of the Planning Committee are to elect a person from among their number to be the Deputy Chairperson of the Planning Committee.
- (2) The person may be elected for the duration of the person's term of office as a member or for a shorter term.

4 Alternate members

- (1) The Lord Mayor of Sydney may appoint a councillor of the City of Sydney who is not an elected member, or the general manager of the City Council, to be the alternate member for the Lord Mayor.
- (2) The Minister administering the *Public Works Act 1912* may appoint an officer of the Department of Public Works and Services to be the alternate member for the senior government employee with architectural experience.
- (3) The Director of Planning may appoint an officer of the Department of Planning to be an alternate member for the Director.
- (4) The Minister administering Part 4 of the Planning Act may appoint a person to be an alternate member for an appointed member.
- (5) A person may not be an alternate member for more than one member of the Planning Committee at the same time.
- (6) An alternate member may only act in the office of the member for whom that alternate member is the alternate member during the illness or absence of the member and while so acting, the alternate member has, subject to clause 14, all the functions of the member and shall be taken to be the member.

5 Term of office of appointed member

Subject to this Schedule, an appointed member shall hold office for such period (not exceeding 5 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

6 Remuneration of appointed member

An appointed member is entitled to be paid from the consolidated fund of the City Council such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the appointed member.

7 Extraordinary vacancy in office of elected member

An extraordinary vacancy occurs in the office of an elected member if:

- (a) a casual vacancy occurs under the Principal Act in the civic office of the member, or

(b) the member resigns the office by instrument in writing addressed to the City Council.

8 Vacancy in office of appointed member

(1) The office of an appointed member becomes vacant if the member:

- (a) dies,
- (b) completes a term of office and is not re-appointed,
- (c) resigns the office by instrument in writing addressed to the Minister,
- (d) is removed from office by the Minister under this clause,
- (e) is absent from 4 consecutive meetings of the Planning Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings,
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

9 Filling of vacancy in office of appointed member

If the office of an appointed member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

10 Disclosure of pecuniary interests

(1) Chapter 14 (Part 1 excepted) of the Principal Act applies to and in respect of:

- (a) a member of the Planning Committee in the same way as it applies to and in respect of a councillor, and
- (b) a member of a subcommittee of the Planning Committee in the same way as it applies to and in respect of a member of a council committee, and
- (c) a meeting of the Planning Committee in the same way as it applies to and in respect of a meeting of a council, and

(d) a meeting of a subcommittee of the Planning Committee in the same way as it applies to and in respect of a meeting of a council committee.

(2) The Planning Committee shall cause particulars of any disclosure made pursuant to this clause to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to inspection by any person on payment of such fee as may be determined by the Planning Committee from time to time.

11 Liability of members etc

No matter or thing done by the Planning Committee, any member or any person acting under the direction of the Planning Committee shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the member or person so acting personally to any action, liability, claim or demand.

Part 2 Procedure

12 General procedure

The procedure for the calling of meetings of the Planning Committee and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Planning Committee.

13 Quorum

The quorum for a meeting of the Planning Committee is 4 members.

14 Presiding member

- (1) The Chairperson of the Planning Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting by the members present shall preside at a meeting of the Planning Committee.
- (2) The person presiding at any meeting of the Planning Committee has a deliberative vote and, in the event of an equality of votes, a casting vote.
- (3) An alternate member for the Chairperson or Deputy Chairperson shall not preside at a meeting of the Planning Committee unless elected in accordance with this clause.

15 Voting

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

16 Application of [Local Government \(Meetings\) Regulation 1993](#)

Part 1 of Chapter 4 and Division 2 of Part 2 of Chapter 12 of the Principal Act and the [Local Government \(Meetings\) Regulation 1993](#) apply to and in respect of the members of the

Planning Committee in the same way as they apply to and in respect of councillors of a council, except in so far as provision is otherwise made by or under this Act.

Part 3 General

17 Proof of certain matters not required

In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Planning Committee, or
- (b) any resolution of the Planning Committee, or
- (c) the appointment of, or the holding of office by, any member of the Planning Committee, or
- (d) the presence of a quorum at any meeting of the Planning Committee.

18 Authentication of documents

A document requiring authentication by the Planning Committee may be sufficiently authenticated if signed by the Chairperson of the Planning Committee or the general manager of the City of Sydney.

Schedule 2 (Repealed)

Schedule 3 Savings, transitional and other provisions

(Section 57)

Part 1 Preliminary

1 Definitions

In this Schedule:

Commissioners means the Commissioners appointed under the [City of Sydney Act 1987](#).

existing employee means a person who, immediately before the commencement of Part 2 of this Act, was an employee of the City Council.

transferred employee means an existing employee who, in accordance with this Act, is transferred to the service of the South Sydney Council.

Part 2 Staff arrangements

2, 3 (Repealed)

4 Arrangements for the transfer of existing employees

- (1) The Commissioners shall determine, in accordance with any directions of and subject

to the approval of the Minister, the arrangements to be made for the transfer of existing employees to the service of the South Sydney Council and for such alterations (if any) to staffing arrangements within the City Council as may, in the opinion of the Commissioners, having regard to those transfers, be necessary or desirable.

- (2) The arrangements (despite any other law, but subject to clauses 5 and 6) may:
- (a) in relation to existing employees generally:
 - (i) determine amounts of remuneration for specified classes of existing employees, and
 - (ii) authorise the establishment of a voluntary retirement scheme and require the making of payments in accordance with that scheme, and
 - (iii) authorise the making of industrial agreements, and
 - (b) in relation to transferred employees:
 - (i) authorise and require the payment of money by the City Council to the South Sydney Council towards the remuneration and overheads of those employees for such period and in such circumstances as may be determined by the Commissioners or any other specified person, and
 - (ii) authorise and require the payment of money by the City Council to the South Sydney Council towards the leave and retirement benefits of those employees and provide for the administration of that money pending its payment.
- (3) If the Commissioners do not determine those arrangements to the satisfaction of the Minister by such day as may be specified by the Minister, they may be determined by the Minister.
- (4) The Governor may make a proclamation to take effect on or after the commencement of Part 2 of this Act embodying the arrangements.
- (5) More than one such proclamation may be made.
- (6) Any such proclamation has the force of law.

5 Employment, remuneration etc of transferred employees

- (1) On the commencement of Part 2 of this Act, in accordance with the arrangements determined under clause 4, an existing employee may be transferred to the service of the South Sydney Council and, if so transferred:
- (a) shall become an employee of that council, and
 - (b) shall be taken to have been appointed and employed by that council under the Principal Act in such office (if any) of that council as may be specified in the

arrangements.

- (2) An existing employee so transferred who is not taken, under subclause (1) (b), to have been appointed and employed in a specified office shall, on that commencement and until otherwise directed by the South Sydney Council, continue to perform the duties which attached to the existing employee's employment before that commencement.
- (3) The provisions of section 20C (2)-(4) and (6)-(8) of the Principal Act apply to and in respect of an existing employee transferred under this clause in the same way as those provisions apply to a person transferred under section 20C of the Principal Act.

6 Continuation of remuneration and employment

Each existing employee who is affected by an arrangement under this Act:

- (a) shall, subject to Part 5 of the *Industrial Arbitration Act 1940*, be remunerated by the council in whose service the existing employee is appointed and employed after the commencement of the arrangement on terms not less advantageous than those on which the existing employee was remunerated by the City Council immediately before that commencement, and
- (b) shall not have his or her employment as an employee of that council terminated on the ground of redundancy arising from the operation of this Act.

Part 3 Division of assets etc

7 Arrangements for the division of assets etc

- (1) The Commissioners shall determine, in accordance with any directions of and subject to the approval of the Minister, the arrangements to be made for:
 - (a) the apportionment of assets (including land and interests in land), rights, debts and liabilities of the City Council between it and the South Sydney Council, and
 - (b) the handing over of books, documents, records and papers of the City Council to the South Sydney Council.
- (2) The arrangements shall embody such measures as will facilitate the financial stability of the City of Sydney and the City of South Sydney and for that purpose, in addition to the matters referred to in subclause (1), may (despite any other law):
 - (a) authorise and require the payment of money by the City Council to or on behalf of the South Sydney Council for such purposes, for such periods and in such circumstances as the Commissioners or any other specified person may decide,
 - (b) authorise and require the City Council to provide (or to assist in the provision of) services within the City of South Sydney either jointly with the South Sydney Council or otherwise for such periods and in such circumstances as the

Commissioners or any other specified person may decide,

(c) authorise the conduct or provision by the South Sydney Council (under a lease or otherwise and whether in accordance with section 519 of the Principal Act or otherwise) of facilities, undertakings and services of the City Council or within the City of Sydney for such periods and in such circumstances as the Commissioners or any other specified person may decide, and

(d) make provision with respect to insurances, including workers' compensation insurance.

(3) If the Commissioners do not determine those arrangements to the satisfaction of the Minister by such day as may be specified by the Minister, they may be determined by the Minister.

(4) The Governor may make a proclamation to take effect on or after the commencement of Part 2 of this Act embodying the arrangements.

(5) More than one such proclamation may be made.

(6) Any such proclamation has the force of law.

(7) Nothing in this clause limits or affects section 21 of the Principal Act.

8 Vesting of assets etc

Subject to the terms of a proclamation made under clause 7, the following provisions apply on the day on which the proclamation takes effect in respect of any asset, right, debt or liability to the extent to which it is vested in the South Sydney Council by the proclamation:

(a) all real and personal property (including any estate or interest in, or right to control or manage, real or personal property) that, immediately before that day, was vested in the City Council vests in the South Sydney Council,

(b) any money that, immediately before that day, was payable to the City Council becomes payable to the South Sydney Council,

(c) any liquidated or unliquidated claim that, immediately before that day, was enforceable by the City Council becomes enforceable by the South Sydney Council,

(d) any liquidated or unliquidated claim that, immediately before that day, was enforceable against the City Council becomes enforceable against the South Sydney Council,

(e) any proceeding pending immediately before that day at the suit of the City Council becomes a proceeding pending at the suit of the South Sydney Council,

- (f) any proceeding pending immediately before that day against the City Council becomes a proceeding pending against the South Sydney Council,
- (g) any contract, agreement or undertaking entered into with the City Council and in force immediately before that day becomes a contract, agreement or undertaking entered into with the South Sydney Council,
- (h) any security or charge given to or by the City Council and in force immediately before that day becomes a security or charge given to or by the South Sydney Council.

Part 4 Making of rates etc

9 (Repealed)

Parts 5, 6

10-21 (Repealed)

Part 7 Miscellaneous

22 Application of statutory instruments

A statutory instrument that applied to the City of Sydney, as constituted immediately before the commencement of Part 2 of this Act, shall (subject to this Act) continue, on and after that commencement, to apply to the City of Sydney and the City of South Sydney, as constituted by this Act, until varied, amended or repealed.

23, 24 (Repealed)

25 Effect of proclamations under sec 21 (1) of the Principal Act

- (1) Without limiting section 21 (1) of the Principal Act, a proclamation under that subsection may provide:
 - (a) that specified provisions of the Principal Act or the ordinances made under that Act apply or do not apply to or in relation to any matter or thing authorised or required to be done under this Act, and
 - (b) where specified provisions of that Act or those ordinances are applied under paragraph (a), that they so apply with specified modifications by way of omission from, addition to or partial substitution for those provisions, and
 - (c) whether or not specified provisions of that Act or those ordinances are applied under paragraph (a), that specified provisions additional to those of the Principal Act and the ordinances made under that Act apply to or in relation to any matter or thing authorised or required to be done under this Act.
- (2) A provision of a proclamation referred to in this section may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (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.

26 Draft local environmental plans

Section 39 applies to a draft local environmental plan in course of preparation by the City Council immediately before the commencement of that section.

27 Development applications

Section 40 applies to a development application for consent to carry out major development which has not been finally determined by the City Council immediately before the commencement of that section.

28 Validation

Anything done or omitted (including anything done or omitted under the Principal Act) before the commencement of a provision of this Act which would have been valid if that provision of this Act had been in force when the thing was done or omitted is validated.

29 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or the [City of Sydney Amendment Act 1997](#) or the [Local Government Legislation Amendment \(Elections\) Act 1998](#).
- (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 8 Provisions consequent on enactment of [City of Sydney](#)

Amendment Act 1997

30 Review of amendments

- (1) The Minister is to review the amendments made to this Act by the *City of Sydney Amendment Act 1997* to determine whether the policy objectives of the *City of Sydney Amendment Act 1997* remain valid and whether the terms of the amendments made by that Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *City of Sydney Amendment Act 1997*.
- (3) A report on the outcome of the review is to be tabled in each House Of Parliament within 12 months after the end of the period of 5 years.

Part 9 Provision consequent on enactment of *City of Sydney Amendment (Electoral Rolls) Act 2003*

31 Electoral rolls prepared before commencement of *City of Sydney Amendment (Electoral Rolls) Act 2003*

A reference in section 18B to a non-residential roll prepared and confirmed for a previous election extends to a roll prepared and confirmed for an election for the City of Sydney under section 299 or 300 of the Principal Act before the commencement of section 18B.