

# Environmental Planning and Assessment Act 1979 No 203

[1979-203]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**

[Local Government and Environmental Planning and Assessment Amendment \(Transfer of Functions\) Act 2001 No 93](#) (amended by [Environmental Planning Legislation Amendment Act 2006 No 123](#)), Sch 2 [2] [3] [5] and [10B] (not commenced)

[Environmental Planning and Assessment Amendment Act 2008 No 36](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2008 No 114](#) and [State Revenue and Other Legislation Amendment \(Budget Measures\) Act 2008 No 122](#) and [Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) and [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2009 No 106](#) and [Planning Appeals Legislation Amendment Act 2010 No 120](#) and [Environmental Planning and Assessment Amendment Act 2012 No 93](#)), Schs 2.1 [14] [17]-[19] [26] [30] [31] [36] [37] (except to the extent that it inserts sec 97B) [37A]-[37C] and [38], 2.2 [17] [18] [26] [28]-[30] [40]-[45] and [75] (to the extent that it inserts cl 126 (except cl 126 (2)) of Div 3 of Part 21 of Sch 6), 3.1 (except Sch 3.1 [5]), 4.1 [2] (except to the extent that it inserts the definition of **accredited certifier**) [3]-[5] [10] [11] [16]-[19] and [32] (to the extent that it inserts cl 132 of Div 5 of Part 21 of Sch 6) and 5.1 [7] and [9] (not commenced)

[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2008 No 114](#), Sch 1.8 [1]-[6] and [8] (not commenced — Sch 1.8 [1]-[4] and [6] to commence on the commencement of Sch 3.1 [6] to the [Environmental Planning and Assessment Amendment Act 2008](#); Sch 1.8 [5] to commence on the commencement of Sch 4.1 [17] to the [Environmental Planning and Assessment Amendment Act 2008](#); Sch 1.8 [8] to commence immediately after the commencement of Sch 3.1 [8] to the [Environmental Planning and Assessment Amendment Act 2008](#))

[Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#), Sch 1.13 [7] (not commenced — to commence on the commencement of Sch 3.1 [6] to the [Environmental Planning and Assessment Amendment Act 2008](#))

[Environmental Planning and Assessment Amendment \(Part 3A Repeal\) Act 2011 No 22](#), Sch 1.2 [28] (not commenced)

[Environmental Planning and Assessment Amendment Act 2012 No 93](#) (not commenced)

[Forestry Act 2012 No 96](#) (not commenced — to commence on 1.1.2013)

- **See also**

[Environmental Planning and Assessment Amendment \(Demolition Orders\) Bill 2012](#) [Non-government Bill: Ms S K Hornery, MP]

## **Authorisation**

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File last modified 21 December 2012

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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:

**accredited certifier**, in relation to matters of a particular kind, means the holder of a certificate of accreditation as an accredited certifier under the *Building Professionals Act 2005* in relation to those matters.

**advertised development** means development, other than State significant development or 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 State significant development or 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](#).

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

**building** includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure or part of a manufactured home, moveable dwelling or associated structure.

**Building Code of Australia** means the document, published by or on behalf of the Australian Building Codes Board, that is prescribed for purposes of this definition by the regulations, 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 Professionals Board** means the Building Professionals Board constituted under the [Building Professionals Act 2005](#).

**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.

**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, the Planning Assessment Commission, a joint regional planning panel or public authority (other than a council) as having the function to determine the application—that Minister, Commission, panel or 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](#).



**critical stage inspections** means the inspections prescribed by the regulations for the purposes of section 109E (3) (d).

**Crown land** has the same meaning as in the [Crown Lands Act 1989](#).

**Department** means the Department of 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 control plan** (or **DCP**) means a development control plan made, or taken to have been made, under Division 6 of Part 3 and in force.

**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.

**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](#).

**ecologically sustainable development** has the same meaning it has in section 6 (2) of the [Protection of the Environment Administration Act 1991](#).

**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 an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 and in force.

**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](#).

**independent hearing and assessment panel** means a panel constituted under section 23I.

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

**joint regional planning panel** (or **regional panel**) means a joint regional planning panel constituted under section 23G.

**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 environmental plan** (or **LEP**)—see section 24 (2).

**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.

**owner-builder** has the same meaning as in the [Home Building Act 1989](#).

**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.

**Planning Assessment Commission** means the Planning Assessment Commission constituted under section 23B.

**planning assessment panel** means a panel listed in Schedule 5B.

**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.

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

**Note—**

If any residential building work is involved, the principal contractor must be the holder of a contractor

licence under the [Home Building Act 1989](#).

**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 Employment and Management Act 2002](#) (including the Director-General), or
- (e) a statutory State owned corporation (and its subsidiaries) within the meaning of the [State Owned Corporations Act 1989](#), or
- (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).

**regulation** means a regulation made under this Act.

**relevant planning authority:**

(a) in relation to environmental planning instruments—see section 54, or

(b) in relation to development control plans—see section 74B.

**residential building work** has the same meaning as in the [Home Building Act 1989](#).

**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** (or **SEPP**)—see section 24 (2).

**State significant development** has the meaning given by Division 4.1 of Part 4.

**State significant infrastructure** has the meaning given by Part 5.1.

**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).

**temporary structure** includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure.

**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** 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](#), except as provided by section 5D.

**Note—**

Section 5D excludes vulnerable ecological communities from this expression.

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

**vulnerable species** has the same meaning as in the *Threatened Species Conservation Act 1995* 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 an authority or person preparing a document includes a reference to the authority or person causing the document to be prepared on the authority's or person'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 under 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**

- (1) For the purposes of this Act and, in particular, in the administration of sections 78A, 79B, 79C, 111 and 112, the following 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) each of the factors listed in subsection (2),
  - (b) any assessment guidelines.
- (2) The following factors must be taken into account in making a determination under this section:
  - (a) in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
  - (b) in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,
  - (c) in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:
    - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
    - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
  - (d) in relation to the habitat of a threatened species, population or ecological community:
    - (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
    - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
    - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality,

- (e) whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly),
- (f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,
- (g) whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.

(3) In this section:

**assessment guidelines** means assessment guidelines issued and in force under section 94A of the *Threatened Species Conservation Act 1995* or, subject to section 5C, section 220ZZA of the *Fisheries Management Act 1994*.

**key 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*.

#### **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 the Department of Environment, Climate Change and Water 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 the Department of Environment, Climate Change and Water is taken to be a reference to the Director-General of the Department of Industry and Investment.

(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*.

#### **5D Application of Act to vulnerable ecological communities**

(1) In this Act, a reference to **threatened species, populations and ecological communities** or **threatened species, population or ecological community** (however expressed) does not include a reference to any vulnerable ecological community.

(2) However, this section does not affect the application of this Act to any threatened species or endangered population that forms part of a vulnerable ecological community.

#### **Note—**

Vulnerable ecological communities are generally excluded from the provisions of this Act relating to threatened species, populations and ecological communities, including provisions that require the concurrence of the Director-General of the Department of Environment, Climate Change and Water or the Minister administering the *Threatened Species Conservation Act 1995*, or the preparation of a species impact statement, in respect of development or an activity that is likely to have a significant effect on threatened species, populations or ecological communities (subject to subsection (2) above). However, vulnerable ecological communities are relevant to the preparation of environmental planning instruments under section 26.

#### **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 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 environmental planning instruments,
- (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 Roads and Maritime Services, 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 Infrastructure, Planning and Natural Resources**

- (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 or to the Director-General of the Department of Urban Affairs and 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**

#### **18 (Repealed)**

### **Division 5 Committees**

#### **19-21 (Repealed)**

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

- (1) The Minister or 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 person who establishes a committee under this section may appoint one of the members as Chairperson of the committee.
- (4) The regulations may make provision for or with respect to the following matters:
  - (a) the procedures of committees in exercising their functions,

- (b) the remuneration payable to committee members and alternate members,
  - (c) the appointment of alternate members for committee members and the functions of alternate members,
  - (d) the appointment and procedures of subcommittees in exercising their functions.
- (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) (Repealed)
  - (c1) a development corporation under the *Growth Centres (Development Corporations) Act 1974* or an officer or employee of any such corporation for the purposes of that Act,
  - (c2) any other public authority or an officer or employee of any other public authority,
  - (d) a council,
  - (e) an officer or employee of a council,
  - (f) the Planning Assessment Commission, or
  - (g) a joint regional planning panel,
- and may, by such an instrument, revoke wholly or in part any such delegation.
- (1A) The Planning Assessment Commission may, by instrument in writing and with the approval of the Minister, delegate any of the Commission's functions conferred or imposed by or under this or any other Act.
- (1B) A joint regional planning panel may, by instrument in writing and with the approval of the Minister, delegate any of the panel's functions conferred or imposed by or under this or any other Act to a council for an area situated wholly or partly in a part

of the State for which the panel is appointed.

- (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, Director-General, Commission or panel, 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, Director-General, Commission or panel, as the case may be, and shall be deemed to have been done or suffered by the Minister, corporation, Director-General, Commission or panel, as the case may be.
- (6) An instrument purporting to be signed by a delegate of the Minister, corporation, Director-General, Commission or panel, in the 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, Director-General, Commission or panel, 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, Director-General, Commission or panel, 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
    - (a1) (Repealed)
    - (a2) the functions of the Minister under Part 5.1 of determining an application for approval to carry out critical State significant infrastructure, or
  - (b) any function of the Minister conferred by section 80 (7), 117 or 118 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 2A Other planning bodies**

### **Division 1 Preliminary**

#### **23A Definitions**

In this Part:

**Commission** means the Planning Assessment Commission.

### **Division 2 Planning Assessment Commission**

#### **23B Planning Assessment Commission**

- (1) There is constituted by this Act a body corporate with the corporate name of the Planning Assessment Commission of New South Wales.
- (2) The Commission has such functions as are conferred or imposed on it by or under this or any other Act.
- (3) The Commission is not subject to the direction or control of the Minister, except in relation to the procedures of the Commission and to the extent specifically provided for in this Act.
- (4) The Commission is a statutory body representing the Crown.

**Note—**

By virtue of section 13A of the [Interpretation Act 1987](#), a statutory body representing the Crown has the status, privileges and immunities of the Crown.

- (5) Schedule 3 has effect with respect to the Commission.

#### **23C Chairperson of Commission**

The work of the Commission is, subject to this Act and the regulations, to be allocated by the chairperson of the Commission.

**Note—**

The chairperson is appointed under Schedule 3.

#### **23D Functions of Commission**

- (1) The Commission has the following functions:
  - (a) any function delegated to the Commission under this Act,
  - (b) if requested to do so by the Minister or the Director-General:

- (i) to advise the Minister or the Director-General as to planning or development matters, environmental planning instruments or the administration or implementation of the provisions of this Act, or any related matter, and
  - (ii) to review any (or any aspect or part of any) development, activity, infrastructure or project to which this Act applies, and
  - (iii) to hold a public hearing into any matter the subject of any such advice or review, and
  - (iv) (Repealed)
  - (v) to review a proposal to constitute, alter or abolish a development area under section 132 or 133,
- (c) any function of a regional panel, an independent hearing and assessment panel or a planning assessment panel conferred on it by order in writing by the Minister,
- (d) if a regional panel has not been appointed for any part of the State, any function that is conferred on a regional panel under an environmental planning instrument applicable to that part or that is otherwise conferred on a regional panel under this Act.
- (2) For the purposes of subsection (1) (c) and (d), the Commission has all the functions of the panel concerned.
- (3) The Commission cannot employ any staff.

**Note—**

Staff to enable the Commission to exercise its functions may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service.

- (4) However, the Commission may:
- (a) arrange, with the approval of the Director-General, for the use of the services of any staff (by secondment or otherwise) or facilities of a Division of the Government Service or a public authority, and
  - (b) with the approval of the Director-General, engage such consultants as it requires to exercise its functions.

**23E Reviews by, and procedures of, Commission**

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

- (a) the procedures of the Commission, including the procedures for reviews relating to any or all, or a class, of its functions,
- (b) (Repealed)

- (c) without limiting paragraph (a), providing that parties are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,
- (d) the conferral on the Commission of power to require a person to give evidence or produce documents for the purposes of a review or the exercise of any of its other functions,
- (e) additional procedural requirements relating to hearings involving a proposed development or activity that may involve the need for an approval under the *Water Management Act 2000* or a licence under the *Water Act 1912*,
- (f) reports of the Commission's findings and recommendations,
- (g) the making of findings and recommendations of the Commission public,
- (h) the provision of information by the Commission.

**23F No appeals against decisions by Commission after public hearings**

- (1) This section has effect despite any other provision of this Act or the regulations.
- (2) An appeal under this Act may not be made in respect of a decision of the Commission in exercising a function conferred on the Commission by or under this Act (including a function delegated to it under this Act) if the decision was made by the Commission after a public hearing.

**Division 3 Joint regional planning panels**

**23G Joint regional planning panels**

- (1) The Minister may, by order published on the NSW legislation website, constitute a joint regional planning panel for a particular part of the State specified in the order.
- (2) A regional panel has the following functions:
  - (a) any of a council's functions as a consent authority that are conferred on it under an environmental planning instrument,
  - (b) any functions that are conferred on it under Division 1AA (Planning administrators and panels) of Part 6,
  - (c) to advise the Minister or the Director-General as to planning or development matters or environmental planning instruments relating to the part of the State for which it is appointed, or any related matters, if requested to do so by the Minister or the Director-General (as the case may be).
- (2A) An environmental planning instrument may only confer a council's functions as consent authority on a regional panel if the development is of a class or description



set out in Schedule 4A. The functions of a consent authority may only be conferred on a regional panel in accordance with subsection (2) (a) and this subsection.

- (2B) Any environmental planning instrument that is in force on the commencement of subsection (2A) ceases to have effect to the extent that it is inconsistent with that subsection.
- (3) A regional panel has the functions conferred or imposed on it by or under this or any other Act.
- (4) A regional panel is not subject to the direction or control of the Minister, except in relation to the procedures of the regional panel and to the extent specifically provided for in this Act.
- (4A) Legal proceedings by or against a regional panel are to be taken in the name of the regional panel and not by or against the members of the regional panel.
- (5) A regional panel is a statutory body representing the Crown.

**Note—**

By virtue of section 13A of the [Interpretation Act 1987](#), a statutory body representing the Crown has the status, privileges and immunities of the Crown.

- (5A) Subject to the regulations, a regional panel is, in the exercise of functions conferred under subsection (2) (a), taken to be the council whose functions are conferred on a regional panel as referred to in subsection (2) (a).
- (5B) A regional panel is to exercise functions conferred as referred to in subsection (2) (a) to the exclusion of the applicable council (subject to any delegation under this Act).
- (5C) Subsections (5A) and (5B) apply to the Commission in its exercise of the functions of a regional panel under an environmental planning instrument that are conferred on the Commission under section 23D (1) (d) in the same way as they apply to a regional panel in the exercise of functions conferred as referred to in subsection (2) (a).
- (6) Schedule 4 has effect with respect to regional panels.

### **23H Regulations**

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

- (a) the functions conferred by this Act on a regional panel including its procedures in exercising its functions, and procedures in relation to its determination of development applications and applications to modify development consents,
- (b) the provision of information and reports by regional panels,
- (c) without limiting paragraph (a), providing that parties to matters being determined by a regional panel are not to be represented (whether by an Australian legal practitioner

or any other person) or are only to be represented in specified circumstances.

## **Division 4 Independent hearing and assessment panels**

### **23I Independent hearing and assessment panels**

- (1) A council may constitute a panel of experts to assess any aspect of a development application or any planning matter referred to the panel by the council (other than a matter subject to a determination or review by a regional panel).
- (2) A council must constitute a panel of experts to assess any aspect of a development application or any planning matter if an assessment by a panel is required by an environmental planning instrument.
- (3) The members of a panel of experts are to consist of persons having expertise in at least 1 of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.
- (4) For the purposes of an assessment, a panel may receive or hear submissions from interested persons and must submit a report to the council within the time required by the council.
- (5) A panel is to exercise its functions in accordance with the regulations and any arrangements approved by the Minister. However, a panel is not subject to the direction of the Minister on the findings or recommendations in its report.
- (6) The council is to provide staff and facilities for the purpose of enabling a panel to exercise its functions.
- (7) A member of a panel is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **23J Regulations**

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

- (a) the procedures of independent hearing and assessment panels in exercising functions,
- (b) without limiting paragraph (a), providing that parties are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,
- (c) the provision of information or reports by councils with respect to the exercise of functions by independent hearing and assessment panels and any actions taken or not taken by councils in response to panel assessments.

## **Division 6 Matters relating to councils and council functions**

### **23M Obligation to consult with council about certain decisions**

The Commission or a regional panel must not exercise a function that will result in the making of a decision that will have, or that might reasonably be expected to have, a significantly adverse financial impact on a council until after it has consulted with the council.

### **23N Obligations of councils to assist Commission and regional panels**

- (1) The Commission or a regional panel is entitled:
  - (a) to have access to, and to make copies of and take extracts from, records of a council relevant to the exercise of the Commission's or panel's functions, and
  - (b) to the use of the staff and facilities of a relevant council in order to exercise the Commission's or panel's functions.
- (2) The general manager of a council must carry out any reasonable direction of the Commission or a regional panel relating to functions of the council being exercised by the Commission or panel.

Maximum penalty: 10 penalty units.

- (3) A member of a council, or the general manager or other member of staff of a council, must not obstruct the Commission, a regional panel or a member of the Commission or a panel in the exercise of the Commission's or panel's functions under this Act.

Maximum penalty: 10 penalty units.

### **23O Recovery of certain costs**

- (1) A council is to pay to the Director-General out of the council's consolidated fund:
  - (a) the remuneration, costs and expenses of the Commission in respect of the exercise of any functions of a consent authority involving development on land within the area of the council, and
  - (b) any other costs relating to the provision of services to the Commission by the Department in respect of the exercise of any such functions.
- (2) The councils for an area or part of an area situated in a part of the State for which a regional panel has been appointed are to pay to the Director-General, out of the councils' consolidated funds, the remuneration, costs and expenses of the panel and of the Department relating to the costs of administration of the panel.
- (3) A council is to pay, out of the council's consolidated fund, the remuneration, costs and expenses of any independent hearing and assessment panel established by the

council.

- (5) The Minister may do either or both of the following:
- (a) exempt a council from payment of any or all of any such remuneration, costs or expenses,
  - (b) resolve any dispute as to the amount of any such remuneration, costs or expenses.

## **Part 3 Environmental planning instruments**

### **Division 1 General**

#### **24 Making of environmental planning instruments**

- (1) 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.
- (2) Environmental planning instruments may be made:
- (a) by the Governor under Division 2 (called a State environmental planning policy or SEPP), or
  - (b) by the Minister (or delegate) under Division 4 (called a local environmental plan or LEP).

**Note—**

Under transitional arrangements made by Schedule 6, some former instruments (such as regional environmental plans, planning scheme ordinances and interim development orders) continue in force.

#### **25 (Repealed)**

#### **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.
- (1A) An environmental planning instrument may also make provision for or with respect to protecting and conserving vulnerable ecological communities.
- (1B) Despite subsection (1A), an environmental planning instrument must not contain any provision that requires a consent authority, before determining a development application relating to development that may affect a vulnerable ecological community:
- (a) to consult with the Director-General of the Department of Environment, Climate Change and Water or the Minister administering the *Threatened Species Conservation Act 1995* about the effect of the development on the vulnerable ecological community, or
  - (b) to obtain the concurrence of the Director-General of the Department of Environment, Climate Change and Water or the Minister administering the *Threatened Species Conservation Act 1995* in respect of the development because of its possible effect on the vulnerable ecological community.
- (2), (3) (Repealed)
- (3A) An environmental planning instrument may make provision for any zoning of land or other provision to have effect only for a specified period or only in specified circumstances.
- (4) An environmental planning instrument that makes provision for or with respect to protecting or preserving trees or other vegetation may make provision:
- (a) for development control plans to specify the species or kinds of trees or other vegetation included in or excluded from the relevant provisions, and

- (b) for the grant of permission to remove or otherwise affect trees or other vegetation, and for a refusal to grant permission to be treated as a refusal or failure to grant development consent under and for the purposes of Part 4.

**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 Owner-initiated acquisition of land reserved for public purposes**

- (1) An environmental planning instrument that reserves land for use exclusively for a purpose referred to in section 26 (1) (c) must specify an authority of the State that will be the relevant authority to acquire the land if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) Section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991* applies for the purposes of determining whether an environmental planning instrument reserves land for use exclusively for a purpose referred to in section 26 (1) (c).
- (3) An environmental planning instrument (whenever made) is not to be construed as requiring an authority of the State to acquire land, except as required by Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (4) Subsection (3) applies despite:
  - (a) any provision of an environmental planning instrument (whenever made) to the contrary, or
  - (b) the service of a notice to acquire the land on an authority of the State on or after the day on which notice was given in Parliament for leave to introduce the Bill for the *Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Act 2006*.

## **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.
- (6) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

## **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 State significant development or 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, 33 (Repealed)**

### **33A Standardisation of environmental planning instruments**

- (1) The Governor may, by order published on the NSW legislation website, prescribe the standard form and content of local environmental plans or other environmental planning instruments (a ***standard instrument***).
- (2) An environmental planning instrument may be made in the form of:
  - (a) a declaration that the applicable mandatory provisions of a standard instrument are adopted, and
  - (b) the prescription of the matters required to be prescribed for the purposes of the application of the mandatory provisions of the standard instrument (such as the adoption of land zoning or other maps), and
  - (c) the prescription of any other matters permitted to be prescribed by an environmental planning instrument, including non-mandatory provisions of the standard instrument (with or without modification) or additional provisions.
- (3) When an environmental planning instrument is made with such a declaration, the instrument has the form and content of the applicable mandatory provisions of the standard instrument and the matters so prescribed.
- (4) If the mandatory provisions of a standard instrument so adopted are amended by a further order under subsection (1) or by an Act after they are adopted, the environmental planning instrument is taken (without further amendment) to adopt the amended provisions of the standard instrument on and from the date the amendment to the standard instrument takes effect.
- (5) The order that amends a standard instrument may make provision of a savings or transitional nature consequent on the amendment of the standard instrument.
- (6) Where a standard instrument has been adopted, the provisions of the environmental planning instrument (other than the mandatory provisions of the adopted standard instrument) may be amended from time to time by another environmental planning instrument or in accordance with any Act.



- (7) A standard instrument may:
- (a) provide that a provision is a mandatory provision only in the circumstances specified in the instrument, and
  - (b) contain requirements or guidance as to the form or content of a non-mandatory provision.
- (8) The adoption of the provisions of a standard instrument in an environmental planning instrument is taken to be a matter of State environmental planning significance for the purposes of this Act.
- (8A) An environmental planning instrument may be made under this Part without compliance with the provisions of this Part relating to the conditions precedent to the making of the instrument if:
- (a) the instrument adopts the provisions of a standard instrument for the purposes of replacing instruments that apply to the land concerned (being existing instruments that do not adopt the provisions of a standard instrument), and
  - (b) the Minister is of the opinion that the replacement instrument does not make any substantial changes to the general effect of the existing instrument or instruments.
- (9) Subject to this Act and the regulations, the form and subject-matter of an environmental planning instrument is (if there is no applicable standard instrument) to be as determined by the Minister.
- (10) In this section:
- amend** includes alter or vary.
  - form** includes structure.

### **33B Staged repeal and review of environmental planning instruments**

- (1) In order to facilitate the staged implementation of standard instruments and the periodic review of existing instruments, the Minister may, by order published on the NSW legislation website, establish a staged repeal program for existing environmental planning instruments.
- (2) The staged repeal program may include provision for or with respect to the following:
- (a) the repeal of designated environmental planning instruments at specified times during the period of the program,
  - (b) requirements for the preparation and making of replacement instruments (including the times by which proposals for replacement instruments are to be submitted to the Director-General or the Minister),

- (c) the postponement of the repeal of particular instruments when the making of a replacement instrument is delayed,
  - (d) the periodic review by a council of environmental planning instruments (other than State environmental planning policies) applying in its area and the submission of reports of each review to the Director-General.
- (3) At the time specified by the staged repeal program for the repeal of a designated environmental planning instrument, the instrument is repealed by the operation of this section.
- (4) The Minister may, under Division 4, make a local environmental plan to take effect on the repeal of an instrument under this section pending the making of a replacement instrument in accordance with this Act. Any such plan made by the Minister is to adopt the mandatory provisions of a standard instrument (with the prescriptions the Minister considers necessary in the particular circumstances).
- (5) For the purposes of subsection (4):
- (a) a local environmental plan made pursuant to that subsection is not required to comply with the conditions precedent in Division 4 for the making of an environmental planning instrument, and
  - (b) (Repealed)
  - (c) the council is to provide the Minister, when requested, with copies of any maps or other relevant documents prepared or held by the council.

The Minister may direct the council to pay to the Director-General such amount as the Director-General determines will meet the reasonable costs incurred on behalf of the Minister by the Department for the purposes of making the plan under subsection (4).

**Note—**

See section 118 (1A) in relation to the power to appoint an administrator to exercise plan-making functions when a council fails to comply with the requirements of the staged repeal program for the preparation or making of a replacement instrument.

**33C Public access to environmental planning instruments and related documents**

For the purpose of facilitating electronic or other public access to environmental planning instruments and any development control plans, contributions plans or other documents under this Act:

- (a) the Minister may determine standard technical requirements with respect to the preparation of those instruments, plans or other documents and of the maps or other documents that are referred to in (or adopted under) them, and
- (b) a council is to provide the Director-General, when requested, with copies and

electronic files (in a specified format) of any such instruments, plans, maps or other documents prepared or held by the council.

### **34 Environmental planning instruments—making, operation and inspection**

(1)-(4) (Repealed)

(5) An environmental planning instrument shall:

(a) be published on the NSW legislation website, and

(b) commence on and from the date of publication or a later date specified in the instrument.

(5A) Subsection (5) does not prevent an environmental planning instrument from specifying different days for the commencement of different provisions of the instrument.

(5B) Neither the whole nor any part of an environmental planning instrument is invalid merely because the instrument is published on the NSW legislation website after the day on which one or more of its provisions is expressed to commence. In that case, the provisions concerned commence on and from the day the instrument is published on the NSW legislation website, instead of on and from the earlier day.

(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 on the NSW legislation website 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.

**Note—**

An environmental planning instrument is an instrument for the purposes of the *Interpretation Act 1987*, and accordingly standard provisions under that Act applying to statutory instruments apply to environmental planning instruments.

**34A Special consultation procedures concerning threatened species**

- (1) In this section, the **relevant authority** means:
  - (a) in the case of a proposed SEPP—the Director-General, or
  - (b) in the case of a proposed LEP—the relevant planning authority.
- (2) Before an environmental planning instrument is made, the relevant authority must consult with the Director-General of the Department of Environment, Climate Change and Water if, in the opinion of the relevant authority, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be adversely affected by the proposed instrument.
- (3) For the purposes of the consultation, the relevant authority is to provide such information about the proposed instrument as would assist in understanding its effect (including information of the kind prescribed by the regulations).
- (4) The consultation in relation to a proposed local environmental plan is to commence after a decision under section 56 (Gateway determination) that the matter should proceed, unless the regulations otherwise provide.
- (5) The Director-General of the Department of Environment, Climate Change and Water may comment to the relevant authority on the proposed instrument within the following period after the consultation commences:
  - (a) the period agreed between that Director-General and the relevant authority,
  - (b) in the absence of any such agreement, the period of 21 days or such other period as is prescribed by the regulations.
- (6) The consultation required by this section is completed when the relevant authority has considered any comments so made.
- (7) In this section, a reference to the Director-General of the Department of Environment, Climate Change and Water includes, in the application of this section to fish and marine vegetation, a reference to the Director-General of the Department of Industry and Investment.

**34B Special provision for development in Sydney water catchment relating to water quality**

- (1) In this section, **Sydney drinking water catchment** means a catchment area of the

State to which the *Sydney Water Catchment Management Act 1998* applies that is declared by a State Environmental Planning Policy to be the Sydney drinking water catchment.

- (2) Provision is to be made in a State Environmental Planning Policy requiring a consent authority to refuse to grant consent to a development application relating to any part of the Sydney drinking water catchment unless the consent authority is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on the quality of water.
- (3) Pending a declaration under subsection (1), the hydrological catchment (within the meaning of the *Drinking Water Catchments Regional Environmental Plan No 1*, as in force on that commencement) is taken to be the Sydney drinking water catchment.

**Note—**

Schedule 6 provides that regional environmental plans are taken to be SEPPs as a consequence of the repeal of provisions of this Act relating to the making of regional environmental plans.

- (4) The Minister is not to recommend the making of a State Environmental Planning Policy that relates to the declaration of the Sydney drinking water catchment unless:
  - (a) the Minister administering the *Sydney Water Catchment Management Act 1998* approves of the declaration, and
  - (b) the Minister administering the *Protection of the Environment Operations Act 1997* has been consulted about the declaration.

### **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 on the NSW legislation website.

### **36 Inconsistency between instruments**

- (1) In the event of an inconsistency between environmental planning instruments and unless otherwise provided:
  - (a) there is a general presumption that a State environmental planning policy prevails over a local environmental plan or other instrument made before or after that State environmental planning policy, and
  - (b) (Repealed)
  - (c) the general presumptions of the law as to when an Act prevails over another Act apply to when one kind of environmental planning instrument prevails over another environmental planning instrument of the same kind.
- (2), (3) (Repealed)

- (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 SEPPs**

### **37 Governor may make environmental planning instruments (SEPPs)**

- (1) The Governor may make environmental planning instruments for the purpose of environmental planning by the State. Any such instrument may be called a State environmental planning policy (or SEPP).
- (2) Without limiting subsection (1), an environmental planning instrument may be made by the Governor to make provision with respect to any matter that, in the opinion of the Minister, is of State or regional environmental planning significance.

### **38 Consultation requirements**

Before recommending the making of an environmental planning instrument by the Governor, the Minister is to take such steps, if any, as the Minister considers appropriate or necessary:

- (a) to publicise an explanation of the intended effect of the proposed instrument, and
- (b) to seek and consider submissions from the public on the matter.

**Note—**

See also section 34A.

### **39 (Repealed)**

## **Division 3**

### **40-52 (Repealed)**

## **Division 4 LEPs**

### **53 Minister may make environmental planning instruments for local areas (LEPs)**

- (1) The Minister may make environmental planning instruments for the purpose of environmental planning:
  - (a) in each local government area, and
  - (b) in such other areas of the State (including the coastal waters of the State) as the Minister determines.
- (2) Any such instrument may be called a local environmental plan (or LEP).

#### 54 Relevant planning authority

- (1) For the purposes of this Part, the **relevant planning authority** in respect of a proposed instrument is as follows:
  - (a) the council for the local government area to which the proposed instrument is to apply, subject to paragraph (b),
  - (b) the Director-General or any other person or body prescribed by the regulations if the Minister so directs under subsection (2).
- (2) The Minister may direct that the Director-General (or any other person or body prescribed by the regulations) is the relevant planning authority for a proposed instrument in the following cases:
  - (a) the proposed instrument relates to a matter that, in the opinion of the Minister, is of State or regional environmental planning significance,
  - (b) the proposed instrument makes provision that, in the opinion of the Minister, is consequential on the approval of the concept plan for a project under Part 3A, is consequential on the making of another environmental planning or other instrument or is consequential on changes made to a standard instrument under section 33A,
  - (c) the Planning Assessment Commission or a joint regional planning panel has recommended to the Minister that the proposed instrument should be submitted for a determination under section 56 (Gateway determination) or that the proposed instrument should be made,
  - (d) the council for the local government area concerned has, in the opinion of the Minister, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner,
  - (e) the proposed instrument is to apply to an area that is not within a local government area (subject to subsection (6)).
- (3) A relevant planning authority that is requested by the owner of any land to exercise its functions under this Division in relation to the land may, as a condition of doing so, require the owner to carry out studies or provide other information concerning the proposal or to pay the costs of the authority in accordance with the regulations.
- (4) The Minister may, in a direction under this section, require a council to provide studies or other information in its possession relating to the proposed instrument to be provided to the person or body specified in the direction as the relevant planning authority for the proposed instrument.
- (5) Two or more relevant local authorities may together exercise the functions under this

Division of a relevant planning authority in connection with the making of a single principal or amending instrument in relation to the whole of their combined areas.

- (6) A reference in this section to a local government area includes a reference to an adjoining area that is not within a local government area and that is designated as part of that local government area for the purposes of this Division by the Minister by order published in the Gazette.

**Note—**

Section 117 enables directions to be given to councils or other relevant planning authorities on the exercise of functions under this Division in relation to the making of an instrument.

**55 Relevant planning authority to prepare explanation of and justification for proposed instrument—the planning proposal**

- (1) Before an environmental planning instrument is made under this Division, the relevant planning authority is required to prepare a document that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument (the *planning proposal*).
- (2) The planning proposal is to include the following:
- (a) a statement of the objectives or intended outcomes of the proposed instrument,
  - (b) an explanation of the provisions that are to be included in the proposed instrument,
  - (c) the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117),
  - (d) if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument,
  - (e) details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.
- (3) The Director-General may issue requirements with respect to the preparation of a planning proposal.

**56 Gateway determination**

- (1) After preparing a planning proposal, the relevant planning authority may forward it to the Minister.
- (2) After a review of the planning proposal, the Minister is to determine the following:
- (a) whether the matter should proceed (with or without variation),



- (b) whether the matter should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal),
  - (c) community consultation required before consideration is given to the making of the proposed instrument (***the community consultation requirements***),
  - (d) any consultation required with State or Commonwealth public authorities that will or may be adversely affected by the proposed instrument,
  - (e) whether a public hearing is to be held into the matter by the Planning Assessment Commission or other specified person or body,
  - (f) the times within which the various stages of the procedure for the making of the proposed instrument are to be completed.
- (3) A determination of the community consultation requirements includes a determination under section 73A (or other provision of this Act) that the matter does not require community consultation.
- (4) The regulations may provide for the categorisation of planning proposals for the purposes of this section, and may prescribe standard community consultation requirements for each such category.
- (5) The Minister may arrange for the review of a planning proposal (or part of a planning proposal) under this section to be conducted by, or with the assistance of, the Planning Assessment Commission or a joint regional planning panel:
- (a) if there has been any delay in the matter being finalised, or
  - (b) if for any other reason the Minister considers it appropriate to do so.
- (6) The relevant planning authority may, at any time, forward a revised planning proposal to the Minister.
- (7) The Minister may, at any time, alter a determination made under this section.
- (8) A failure to comply with a requirement of a determination under this section in relation to a proposed instrument does not prevent the instrument from being made or invalidate the instrument once it is made. However, if community consultation is required under section 57, the instrument is not to be made unless the community has been given an opportunity to make submissions and the submissions have been considered under that section.

## **57 Community consultation**

- (1) Before consideration is given to the making of a local environmental plan, the relevant planning authority must consult the community in accordance with the community consultation requirements for the proposed instrument.

- (2) The planning proposal (as revised to comply with the determination under section 56 and in a form approved by the Director-General) is to be made publicly available during the period of community consultation. Detailed provisions may be summarised instead of being set out in full if the Director-General is satisfied that the summary provides sufficient details for community consultation.
- (3) During the period of community consultation, any person may make a written submission to the relevant planning authority concerning the matter (other than any matter that is mandatory under an applicable standard instrument under section 33A).
- (4) The relevant planning authority may (but need not) make publicly available, in accordance with the community consultation requirements, the submissions made concerning a matter (or a summary of or report on any such submissions).
- (5) If:
  - (a) a person making a submission so requests, and
  - (b) the relevant planning authority considers that the issues raised in a submission are of such significance that they should be the subject of a hearing,the relevant planning authority is to arrange a public hearing on the issues raised in the submission.
- (6) The relevant planning authority may arrange a public hearing on any issue whether or not a person has made a submission concerning the matter.
- (7) A report of any public hearing is to be furnished to the relevant planning authority and may be made publicly available by that authority.
- (8) The consultation required by this section is completed when the relevant planning authority has considered any submissions made concerning the proposed instrument and the report of any public hearing.

**58 Relevant planning authority may vary proposals or not proceed**

- (1) The relevant planning authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason.
- (2) If it does so, the relevant planning authority is to forward a revised planning proposal to the Minister.
- (3) Further community consultation under section 57 is not required unless the Minister so directs in a revised determination under section 56.
- (4) The relevant planning authority may also, at any time, request the Minister to determine that the matter not proceed.

## **59 Making of local environmental plan by Minister**

- (1) The Director-General is to make arrangements for the drafting of any required local environmental plan to give effect to the final proposals of the relevant planning authority. The Director-General is to consult the relevant planning authority, in accordance with the regulations, on the terms of any such draft instrument.
- (2) The Minister may, following completion of community consultation:
  - (a) make a local environmental plan (with or without variation of the proposals submitted by the relevant planning authority) in the terms the Minister considers appropriate, or
  - (b) decide not to make the proposed local environmental plan.
- (3) The Minister may defer the inclusion of a matter in a proposed local environmental plan.
- (4) If the Minister does not make the proposed local environmental plan or defers the inclusion of a matter in a proposed local environmental plan, the Minister may specify which procedures under this Division the relevant planning authority must comply with before the matter is reconsidered by the Minister.

## **60 Regulations**

The regulations may make further provision with respect to the making of environmental planning instruments under this Division, including:

- (a) requirements with respect to consultation about proposed instruments by a relevant planning authority with particular persons or bodies, and
- (b) requirements with respect to planning proposals and the submission of other related reports and documents, and
- (c) requirements with respect to advertising in connection with community consultation on proposed instruments, and
- (d) provisions relating to consultation by the Director-General with relevant planning authorities and others on the drafting of proposed instruments, and
- (e) requirements for concurrence of public authorities in relation to the reservation of land for a purpose referred to in section 26 (1) (c).

### **Note—**

The [Interpretation Act 1987](#) applies to environmental planning instruments.

## **61-72 (Repealed)**

## **Division 4A**

### **72A-72H (Repealed)**

## **Division 4B Instrument amendments and development applications**

### **72I Application of Division**

- (1) 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.
- (2) This Division also applies in respect of applications and approvals under Part 3A, and references to a development application, a consent authority or a consent are to be construed accordingly.
- (3) A reference in this Division to the appropriate amendment of an environmental planning instrument includes a reference to the making of an appropriate principal environmental planning instrument.

### **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 making of a proposed 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 if that is practicable or, if that is not practicable, as closely together as is practicable.
- (2) The period during which the public may inspect the documents relating to the proposed environmental planning instrument and the development application the subject of the same notice, if those periods are different, is to be the longer of them.
- (3) If the proposed environmental planning instrument makes the development the subject of the development application State significant development or 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 State significant development or designated development.

**72L (Repealed)**

**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 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.

**73A Expedited amendments of environmental planning instruments**

- (1) An amending environmental planning instrument may be made under this Part without compliance with the provisions of this Part relating to the conditions precedent to the making of the instrument if the instrument, if made, would amend or repeal a provision of a principal instrument in order to do any one or more of the following:
  - (a) correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,
  - (b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature,
  - (c) deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.
- (2) A reference in this section to an amendment of an instrument includes a reference to the amendment or replacement of a map adopted by an instrument.

**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) (Repealed)

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

#### **74A Application of Division**

This Division is subject to sections 33A and 33B.

### **Division 6 Development control plans**

#### **74B Definition (DCPs)**

(1) In this Division:

**relevant planning authority**, in relation to any matter, means the council of the area to which the matter relates or the Director-General. However, the council is not the relevant planning authority in relation to a SEPP and the Director-General is not the relevant planning authority in relation to a LEP for which a council is the relevant planning authority under Division 4.

(2) A reference in this Division to an environmental planning instrument includes a reference to any such proposed instrument.

#### **74C Preparation of development control plans**

(1) The relevant planning authority may prepare a development control plan (or cause such a plan to be prepared) if it considers it necessary or desirable:

- (a) to make more detailed provision with respect to development to achieve the purpose of an environmental planning instrument applying to the land concerned, or
- (b) to identify development as advertised development (so as to make additional but not inconsistent requirements to those imposed by the regulations in relation to development applications), or
- (c) to provide for (or exclude) public or particular advertising or notification of any of the following:
  - (i) a development application for specified development (other than State significant development or designated development or advertised development),
  - (ii) a request for the review of a determination of a development application where the applicant for review makes amendments to the development described in the original development application,
  - (iii) an application for the modification of a development consent for specified development (including advertised development but not State significant development or designated development), or

(iv) (Repealed)

- (d) in the case of a council—to specify criteria (in addition to but not inconsistent with any criteria prescribed by the regulations) that the council is to take into consideration in determining whether or not to give an order under Division 2A of Part 6, or
- (e) to make provision for anything permitted by this Act to be prescribed by a development control plan.

**Note—**

See for example section 26 (4) (a).

- (2) Only one development control plan made by the same relevant planning authority may apply in respect of the same land. This subsection does not apply to:
  - (a) a plan prepared for the purposes of subsection (1) (d) or for any other purpose prescribed by the regulations, or
  - (b) a plan prepared for the purpose of amending an existing plan.

If this subsection is not complied with, all the development control plans concerned have no effect.

**Note—**

A planning authority may prepare one development control plan for the whole of its area or one plan for each precinct or locality in its area, or prepare one plan for a site (and exclude that site from the area to which other plans apply).

- (3) A development control plan may adopt by reference the provisions of another development control plan.
- (4) A development control plan may amend, substitute or revoke another development control plan.
- (5) A provision of a development control plan (whenever made) has no effect to the extent that:
  - (a) it is the same or substantially the same as the provision of an environmental planning instrument applying to the same land, or
  - (b) it is inconsistent with a provision of any such instrument or its application prevents compliance with a provision of any such instrument.

**74D Development control plans required or authorised by environmental planning instruments**

- (1) An environmental planning instrument may require or permit a development control

plan to be prepared before any particular development or kind of development may be carried out (and make provision with respect to the preparation and content of any such plan).

- (2) Any such development control plan may outline the development of all the land to which it applies.
- (3) Any such development control plan may be prepared (and submitted to the relevant planning authority) by the owners of the land to which it applies or by such percentage of those owners as the environmental planning instrument concerned allows. A person authorised by those owners may act on their behalf for the purposes of this subsection.
- (4) The relevant planning authority may make a development control plan submitted to it under this section, including with such changes as it thinks fit.
- (5) If the relevant planning authority refuses to make a development control plan submitted to it under this section (or delays by more than 60 days to make a decision on whether to make the plan):
  - (a) the owners may make a development application despite the requirement of the environmental planning instrument concerned for the preparation of a development control plan, or
  - (b) the Minister may act in the place of the relevant planning authority to make the plan (with or without modification), but only if the environmental planning instrument concerned authorises the Minister to do so.
- (6) The regulations may extend the period of 60 days referred to in subsection (5) in connection with any failure by the owners to provide further information required by the relevant planning authority for the purposes of making the plan.

**Note—**

Section 83C provides that a staged development application may be made for development requiring consent under Part 4 as an alternative to a development control plan required by an environmental planning instrument.

**74E Miscellaneous provisions relating to development control plans**

- (1) The regulations may make provision for or with respect to development control plans, including:
  - (a) the form, structure and subject-matter of development control plans, and
  - (b) the procedures for the preparation, public exhibition, making, amendment and repeal of development control plans, and
  - (c) the fees payable to the relevant planning authority by owners submitting draft development control plans under section 74D.



- (2) The staged repeal program under section 33B may be extended to development control plans, and for that purpose a reference in that section to an environmental planning instrument is taken to include a reference to a development control plan.
- (3) An environmental planning instrument may exclude or modify the application of development control plans in respect of land to which the instrument applies (whether the plan was prepared before or after the making of the instrument).
- (4) A development control plan must be available for public inspection (without charge):
  - (a) at the principal office of the relevant planning authority that prepared the plan, and
  - (b) in such other manner as is prescribed by the regulations.

#### **74F Minister may direct councils with respect to development control plans**

- (1) The Minister may, subject to the regulations (if any), direct a council to make, amend or revoke a development control plan in the time and manner specified in the direction.
- (2) A council to which a direction is given under this section must comply with the direction in accordance with its terms.
- (3) If a council fails to comply with a direction of the Minister under this section, the Minister may make, amend or revoke the development control plan as if the Minister were the council.
- (4) A development control plan made, amended or revoked by the Minister under this section has effect, or ceases to have effect as the case may be, as if it were made, amended or revoked by the council.
- (5) The Minister in making, amending or revoking a development control plan under this section is not subject to the regulations.
- (6) Section 74C (2) does not apply to development control plan made by or at the direction of the Minister under this section.

### **Part 3A**

#### **75A-75ZA (Repealed)**

### **Part 4 Development assessment**

#### **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), (4) (Repealed)

(5) **Complying development** An environmental planning instrument may provide that development, or a class of development, that can be addressed by specified

predetermined development standards is complying development.

(6)–(9) (Repealed)

**Note—**

Division 4.1 makes provision with respect to 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 or is not 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**

- (1) Designated development is development that is declared to be designated development by an environmental planning instrument or the regulations.
- (2) Designated development does not include State significant development despite any such declaration.

## 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 of Part A
  - paragraph 1–6 of Part B
  - paragraph 1–5 of Part C
  - paragraph 1 of Part E
  - paragraph 1–5 or 10 of Part F.
- (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 (other than an application in respect of State significant development) 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*.

**Note—**

Part 7A of the *Threatened Species Conservation Act 1995* provides for certain circumstances in which development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats.

- (8A) A development application for State significant development is to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations.
- (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.

**Note—**

Section 89F deals with public participation for State significant development.

- (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.
- (3) This section does not apply to State significant development.

#### **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.
- (2A) **State significant development—exclusion** This section does not apply to State significant development unless the requirement of an environmental planning instrument for consultation or concurrence specifies that it applies to State significant development.
- (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 the Department of Environment, Climate Change and Water or, if a Minister is the consent authority, unless the Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*.

**Note—**

The development is taken not to significantly affect threatened species, populations or ecological communities, or their habitats if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the *Threatened Species Conservation Act 1995*), or
  - (b) a biobanking statement has been issued in respect of the development under Part 7A of 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 the Department of Environment, Climate Change and Water 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 the Department of Environment, Climate Change and Water 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,
  - (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 the Department of Environment, Climate Change and Water 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 instrument referred to in Division 2 of Part 21 of Schedule 6).

(8A) **Threatened species requirements** The Director-General of the Department of Environment, Climate Change and Water may grant concurrence under this section conditional on the taking of specified action (**voluntary action**, as provided by subsection (8B)) that the Director-General considers will significantly benefit threatened species conservation, but only if the Director-General is satisfied that the person who proposes to carry out the development to which the concurrence relates has agreed to take the voluntary action and agrees to the imposition of the condition.

(8B) The voluntary action that can be required by a condition imposed under this section is any one or more of the following:

(a) the reservation of land under Part 4 of the [National Parks and Wildlife Act 1974](#) or the entering into of a conservation agreement relating to the land under that Act,

(b) action to secure the protection of land for conservation purposes by a method that the Director-General considers satisfactory,

(c) action to restore threatened species habitat on land referred to in paragraph (a) or (b),

(d) the contribution of money for a purpose referred to in paragraphs (a)-(c).

(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 the document entitled *Planning for Bush Fire Protection*, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (**the relevant specifications and requirements**), or
  - (b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.
- (1A) If the consent authority is satisfied that the development does not conform to the relevant specifications and requirements, the consent authority may, despite subsection (1), grant consent to the carrying out of the development but only if it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the

environment from danger that may arise from a bush fire.

(1B) This section does not apply to State significant development.

(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 proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
- (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),

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.

#### **Note—**

See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

**Note—**

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the *Threatened Species Conservation Act 1995*), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the *Threatened Species Conservation Act 1995*.

(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 building product or system relating to the development does not comply with a requirement of the *Building Code of Australia*

if the building product or system is accredited in respect of that requirement 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) **Total or partial consent** 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) The consent authority is not required to refuse consent to any specified part or aspect of development for which development consent is not initially granted under subsection (4), but development consent may subsequently be granted for that part or aspect of the development.

**Note—**

See also Division 2A for special procedures concerning staged development applications.

- (6) **Restrictions on determination of development applications involving PAC** If a consent authority (other than the Minister) has received notice that the Minister has requested that a review (with or without a public hearing) be conducted by the Planning Assessment Commission in relation to all or any part of the development the subject of a development application, the consent authority must not determine the development application until:
- (a) the review has been conducted, and
  - (b) the consent authority has considered the findings and recommendations of the Planning Assessment Commission 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 requested that a review (with or without a public hearing) be conducted by the Planning Assessment Commission in relation to all or any part of the development the subject of a development application for which the Minister is the consent authority, the Minister must not determine the development application until:
- (a) the review has been conducted, and
  - (b) the Minister has considered the findings and recommendations of the Planning Assessment Commission.
- (8) (Repealed)
- (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, together with any variations to the construction certificate or plans and specifications that are effected in accordance with this Act or the regulations, are taken to form part of the relevant development consent (other than for the purposes of section 96).
- (13), (14) (Repealed)

### **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, 94A, 94EF 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.
- (10A) A condition of a consent has no effect to the extent that it requires a compliance certificate to be obtained in respect of any development.
- (10B) **Review of extended hours of operation and number of persons permitted** A development consent that is granted subject to a reviewable condition may be granted subject to a further condition that the consent authority may review that condition at any time or at intervals specified by the consent and that the reviewable condition may be changed on any such review.
- (10C) The regulations may make provision for or with respect to the kinds of development that may be subject to a further condition referred to in subsection (10B), the matters that must be included in such a condition and the procedures for a review under such a condition.
- (10D) A decision by a consent authority to change a reviewable condition on a review is taken to be a determination of a development consent for the purposes of this Act.

**Note—**

A review application or an appeal against a determination of a development consent may be made under this Division or Division 8.

- (10E) For the purposes of subsections (10B)–(10D), a **reviewable condition** means any of the following:
- (a) a condition that permits extended hours of operation (in addition to other specified hours of operation),
  - (b) a condition that increases the maximum number of persons permitted in a building (in addition to the maximum number otherwise permitted).
- (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.

(4) For the purposes of this section, **designated development** includes State significant development that would be designated development but for section 77A (2), and accordingly a reference in this section to section 79 (5) includes a reference to section 89F (3).

#### **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 the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and

(b) the person having the benefit of the development consent has:

(i) appointed a principal certifying authority for the building work, and

(ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and

(b1) the principal certifying authority has, no later than 2 days before the building work commences:

(i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and

- (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
  - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - (ii) notified the principal certifying authority of any such appointment, and
  - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council, and the principal certifying authority if that is not 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 the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
  - (b) the person having the benefit of the development consent has appointed a principal certifying authority for the subdivision work, and
- (b1) the principal certifying authority has, no later than 2 days before the subdivision work commences:
- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
  - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the subdivision work, and

(c) the person having the benefit of the development consent has given at least 2 days' notice to the council, and the principal certifying authority if that is not 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.

(6) **Crown building work** Subsections (2) and (4) do not apply in relation to Crown building work that is certified, in accordance with section 109R, to comply with the technical provisions of the State's building laws.

(7) **Penalty for contravention of subsection (2) or (4)** The maximum penalty that may be imposed for a contravention of subsection (2) or (4) is 1,000 penalty units.

## **82 Circumstances in which consent 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.

(5) This section does not apply in respect of a development application if section 97 does not apply to the application.

### **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 Division 4 in respect of an application by the Crown.
- (2) A council must, on a request made in accordance with this section, conduct a review.
- (2A) A determination cannot be reviewed:
- (a) after the time limited for the making of an appeal under section 97 expires, if no such appeal is made against the determination, or
  - (b) after an appeal under section 97 against the determination is disposed of by the Court, if such an appeal is made against the determination.
- (3) (Repealed)
- (3A) In requesting a review, the applicant may make amendments to the development described in the original application, subject to subsection (4) (c).
- (4) The council may review the determination if:
- (a) it has notified the request for review in accordance with:
    - (i) the regulations, if the regulations so require, or
    - (ii) a development control plan, if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations, and
  - (b) it has considered any submissions made concerning the request for review within any period prescribed by the regulations or provided by the development control plan, as the case may be, and
  - (c) in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same development as the development described in the original application.
- (4A) As a consequence of its review, the council may confirm or change the determination.
- (5) (Repealed)
- (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)–(9) (Repealed)

(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) (Repealed)

(12) This section does not apply where a regional panel exercises a council's functions as the consent authority.

### **82B Review where development application not accepted**

- (1) **Application of section** This section applies if a council as consent authority determines that a development application is to be rejected and not determined.
- (2) **Applications for council review** The applicant may request a council to review the decision to reject and not determine the application.
- (3) **Council must review decision** A council must, on a request made in accordance with this section, conduct a review.
- (4) **Persons who may conduct review** The review must be conducted:
  - (a) if the decision was made by the council—by the council, or
  - (b) if the decision was made by a delegate of the council—by the council or another delegate of the council who is not subordinate to the delegate who made the determination.
- (5) **Determination of council review** As a consequence of the review, the council may confirm its decision or proceed to consider the development application.

### **82C Review procedures generally**

- (1) This section and section 82D apply to a review held under section 82A, 82B or 96AB by a reviewing body.
- (2) An application for a review must be made, the review must be held and the review must be determined, within the relevant periods (if any) prescribed by the regulations.
- (3) The regulations may provide that a failure to determine an application within a period prescribed by the regulations is taken to be a decision refusing the application.
- (4) The prescribed fee must be paid in connection with an application for a review.
- (5) Before determining an application for a review (other than a review under section

82A), the reviewing body must notify the request for review (if required to do so by the regulations) and must consider any submissions made concerning the application for review within any period prescribed by the regulations.

- (6) The reviewing body must, in accordance with the regulations, give notice of the result of its determination of an application for a review to the person who applied for the review.
- (7) A decision on an application for a review may not be further reviewed under the same section by the same reviewing body.
- (8) The regulations may make further provision with respect to review applications, the conduct of a review and the notification of review decisions.
- (9) In this Division:

**reviewing body** means the council or the delegate of the council who conducts the review.

#### **82D Effect of review decisions**

- (1) For the purposes of determining an application for a review, a reviewing body has the same functions as the consent authority had, in relation to the original application or determination.
- (2) If the reviewing body determines under section 82B that a council should proceed to consider a development application, the development application that is the subject of the review is taken to have been lodged on the day on which that determination is made.
- (3) If the reviewing body changes a determination (other than a determination under section 82B), the changed determination replaces the earlier determination as from the date of review and the date of determination of the application is taken to be the date of the decision on the review.
- (4) If the reviewing body grants development consent, or varies the conditions of a development consent or otherwise modifies a development consent, the reviewing body must endorse on the notice issued under section 82C (6) the date from which the consent, or the consent as varied, operates.
- (5) A decision by a reviewing body in determining an application for a review is taken for all purposes to be the decision of the consent authority.
- (6) This section has effect even if the appointment of a reviewing body or a member of a reviewing body is subsequently found not to have been validly made.

### **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 82D (4), 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 (6) or (7) following the holding of a review that includes a public hearing by the Planning Assessment Commission—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 (1) 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) development consent is refused on a review under section 82A or an appeal under section 97, or
  - (b) the effect of a decision on an appeal under section 98 is 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.
- (4A) Subsections (2) and (3) do not apply to State significant development. If development consent for any such development is refused by the Court on an appeal,



any development consent that was granted ceases to have effect on the determination of the appeal.

- (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) (Repealed)

## **Division 2A Special procedures concerning staged development applications**

### **83A Application of this Division**

This Division applies to staged development applications and to consents granted on the determination of those applications.

### **83B Staged development applications**

- (1) For the purposes of this Act, a ***staged development application*** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may set out detailed proposals for the first stage of development.
- (2) A development application is not to be treated as a staged development application unless the applicant requests it to be treated as a staged development application.
- (3) If consent is granted on the determination of a staged development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:
- (a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or
  - (b) the staged development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.
- (4) The terms of a consent granted on the determination of a staged development application are to reflect the operation of subsection (3).

### **83C Staged development applications as alternative to dcp required by environmental planning instruments**

- (1) An environmental planning instrument cannot require the making of a staged development application before development is carried out.
- (2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a staged development application in respect of that land.

**Note—**

Section 74D (5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.

- (3) Any such staged development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.

### **83D Status of staged development applications and consents**

- (1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a staged development application and a development consent granted on the determination of any such application.

**Note—**

Applicable provisions in respect of staged development applications include provisions relating to designated development, integrated development and regulations made under section 105.

- (2) While any consent granted on the determination of a staged development application for a site remains in force, the determination of any further development application in respect of that site cannot be inconsistent with that consent.
- (3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a staged development application.

**Note—**

See section 95 (2) which prevents a reduction in the 5 year period of a development consent.

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

### **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.

- (5A) A complying development certificate has no effect to the extent that it requires a compliance certificate to be obtained in respect of any development.

- (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) (Repealed)

- (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 accredited certifier must not refuse to issue a complying development certificate on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement 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 the period prescribed by the regulations (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 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, and
  - (c) if the determination is to issue a complying development certificate, the council or accredited certifier must notify any other person, if required to do so by the regulations, in accordance with the regulations.
- (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 has:
    - (i) appointed a principal certifying authority for the building work, and
    - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
  - (a1) the principal certifying authority has, no later than 2 days before the building work commences:
    - (i) notified the council of his or her appointment, and
    - (ii) notified the person having the benefit of the complying development certificate of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - (a2) the person having the benefit of the complying development certificate, if not carrying out the work as an owner-builder, has:
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
    - (ii) notified the principal certifying authority of any such appointment, and
    - (iii) unless that person is the principal contractor, notified the principal contractor

of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

(b) the person having the benefit of the complying development certificate has given at least 2 days' notice to the council, and the principal certifying authority if that is not 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 has appointed a principal certifying authority for the subdivision work, and

(a1) the principal certifying authority has, no later than 2 days before the subdivision work commences, notified the council of his or her appointment, and

(b) the person having the benefit of the complying development certificate has given at least 2 days' notice to the council, and the principal certifying authority if that is not the council, of the person's intention to commence the subdivision work.

(3) **Crown development** Subsections (1) and (2) do not apply in relation to development carried out by the Crown.

(4) **Penalty for contravention of subsection (1) or (2)** The maximum penalty that may be imposed for a contravention of subsection (1) or (2) is 300 penalty units.

#### **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 Crown developments

### 88 Definitions

(1) In this Division:

***applicable regional panel*** for development means the regional panel for the part of the State in which the development is to be carried out.

***Crown development application*** means a development application made by or on behalf of the Crown.

(2) A reference in this Division to the Crown:

(a) includes a reference to a person who is prescribed by the regulations to be the Crown for the purposes of this Division, 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 this Division, or

(ii) a person who is prescribed by the regulations not to be the Crown for the purposes of this Division.

### 89 Determination of Crown development applications

(1) A consent authority (other than the Minister) must not:

(a) refuse its consent to a Crown development application, except with the approval of the Minister, or

(b) impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.

(2) If the consent authority fails to determine a Crown development application within the period prescribed by the regulations, the applicant or the consent authority may refer the application:

(a) to the Minister, if the consent authority is not a council, or

(b) to the applicable regional panel, if the consent authority is a council.

(2A) A Crown development application for which the consent authority is a council must not be referred to the Minister unless it is first referred to the applicable regional panel.

(3) An applicable regional panel to which a Crown development application is referred may exercise the functions of the council as a consent authority (subject to subsection (1)) with respect to the application.



- (4) A decision by a regional panel in determining a Crown development application is taken for all purposes to be the decision of the council.
- (5) If an applicable regional panel fails to determine a Crown development application within the period prescribed by the regulations, the applicant or the panel may refer the application to the Minister.
- (6) The party that refers an application under this section must notify the other party in writing that the application has been referred.
- (7) When an application is referred under this section to an applicable regional panel or the Minister, the consent authority must, as soon as practicable, submit to the panel or 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.
- (8) An application may be referred by a consent authority or applicable regional panel before the end of a relevant period referred to in subsection (2) or (5).

#### **89A Directions by Minister**

- (1) On a referral being made by a consent authority or an applicable regional panel, or an applicant, to the Minister under this Division, the Minister may direct the relevant consent authority, within the time specified in the direction:
  - (a) to approve the Crown development application, with or without specified conditions, or
  - (b) to refuse the Crown development application.
- (2) A consent authority must comply with a direction by the Minister.
- (3) If the consent authority fails to comply, the consent authority is taken, on the last date for compliance specified in the direction, to have determined the Crown development application in accordance with the Minister's direction.
- (4) Despite subsection (2), a consent authority may vary a condition specified by the Minister with the approval of the applicant.

#### **89B Modification of Crown development consents**

This Division applies to an application made by or on behalf of the Crown under section 96 in the same way as it applies to an application for development consent.

## **Division 4.1 State significant development**

### **89C Development that is State significant development**

- (1) For the purposes of this Act, **State significant development** is development that is declared under this section to be State significant development.
- (2) A State environmental planning policy may declare any development, or any class or description of development, to be State significant development.
- (3) The Minister may, by order published in the Gazette, declare specified development on specified land to be State significant development, but only if the Minister has obtained and made publicly available advice from the Planning Assessment Commission about the State or regional planning significance of the development.

#### **Editorial Note—**

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

- (4) A State environmental planning policy that declares State significant development may extend the provisions of the policy relating to that development to State significant development declared under subsection (3).

#### **Note—**

See section 115U (6) and (7) in relation to development that is, but for those provisions, both State significant development and State significant infrastructure.

### **89D Minister consent authority for State significant development**

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

#### **Note—**

Section 23 enables the Minister to delegate the consent authority function to the Planning Assessment Commission, the Director-General or to any other public authority.

- (2) If a staged development application is made under Division 2A in respect of State significant development:
  - (a) the Minister may determine that a subsequent stage of the development is to be determined by the relevant council, and
  - (b) that stage of the development ceases to be State significant development and that council becomes the consent authority for that stage of the development instead of the Minister.

### **89E Consent for State significant development**

- (1) The Minister is to determine a development application in respect of State significant development by:
  - (a) granting consent to the application with such modifications of the proposed

development or on such conditions as the Minister may determine, or

- (b) refusing consent to the application.
- (2) Development consent may not be granted if the development is wholly prohibited by an environmental planning instrument.
- (3) Development consent may be granted despite the development being partly prohibited by an environmental planning instrument.
- (4) If part of a single proposed development that is State significant development requires development consent to be carried out and the other part may be carried out without development consent:
  - (a) Part 5 does not apply to that other part of the proposed development, and
  - (b) that other part of the proposed development is taken to be development that may not be carried out except with development consent.
- (5) A development application in respect of State significant development that is wholly or partly prohibited may be considered in accordance with Division 4B of Part 3 in conjunction with a proposed environmental planning instrument to permit the carrying out of the development. The Director-General may (despite anything to the contrary in section 54) undertake the functions of the relevant planning authority under Part 3 for a proposed instrument if it is initiated for the purpose of permitting the carrying out of the development (whether or not it contains other provisions).
- (6) If the determination under section 56 (Gateway determination) for a planning proposal declares that the proposed instrument is principally concerned with permitting the carrying out of State significant development that would otherwise be wholly prohibited:
  - (a) the proposed instrument may be made only by the Planning Assessment Commission under a delegation from the Minister, and
  - (b) the development application for the carrying out of that development may be determined only by the Planning Assessment Commission under a delegation from the Minister.

### **89F Public participation**

- (1) As soon as practicable after a development application is made for consent to carry out State significant development, the Director-General must:
  - (a) place the application and any accompanying information on public exhibition for a period (of not less than 30 days) prescribed by the regulations (the **submission period**) commencing on the day after which notice of the application is first published as referred to in paragraph (b), and

(b) cause notice of the application to be given and published in accordance with the regulations.

(2) During the submission period, any person may inspect the development application and any accompanying information and make extracts from or copies of them.

(3) During the submission period, any person may make written submissions to the Minister with respect to the development application. A submission by way of objection must set out the grounds of the objection.

(4) If:

(a) a development application for State significant development is amended, or substituted, or withdrawn and later replaced before it has been determined by the Minister, and

(b) the Director-General has complied with subsection (1) in relation to the original application,

compliance with subsection (1) in relation to the amended, substituted or later application is not required, unless the Director-General determines that the amended, substituted or later application substantially differs from the original application and the environmental impact of the development concerned has not been reduced by the changes proposed in the amended, substituted or later application.

### **89G Regulations—State significant development**

In addition to any other matters for or with respect to which regulations may be made under this Part, the regulations may make provision for or with respect to the procedures and other matters concerning State significant development, including the following:

(a) the environmental impact statements to accompany development applications in respect of State significant development,

(b) the requirements for the preparation of those environmental impact statements, including consultation requirements with respect to government agencies and other affected persons,

(c) the making of orders under section 89C (3) declaring specified development to be State significant development,

(d) the making of information publicly available relating to development applications in respect of State significant development and the determination of those applications,

(e) requiring applicants to provide responses to submissions made on development applications in respect of State significant development.

## 89H Evaluation of development application (s 79C)

Section 79C applies, subject to this Division, to the determination of the development application.

### Note—

Section 80 (7) provides that if a review is to be conducted by the Planning Assessment Commission into proposed State significant development the Minister is not to determine the development application until after the review has been conducted and consideration given to the findings and recommendations of the Commission.

## 89I Biobanking—special provisions

- (1) The Minister may grant consent to State significant development subject to a condition that requires the applicant to acquire and retire (in accordance with Part 7A of the *Threatened Species Conservation Act 1995*) biodiversity credits of a number and class (if any) specified by the Minister in the consent. This subsection applies whether or not a biobanking statement under Part 7A of that Act was obtained in respect of the development.
- (2) The Minister may approve an arrangement under which:
  - (a) the retirement of some or all of the biodiversity credits is deferred pending the completion of any rehabilitation or restoration action proposed to be taken on the site of the State significant development, after the development has been substantially completed, that will restore or improve the biodiversity values affected by the development, and
  - (b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister administering the *Threatened Species Conservation Act 1995*.
- (3) Division 7 of Part 7A of the *Threatened Species Conservation Act 1995* applies in respect of any such arrangement as if it were a deferred retirement arrangement approved under that Division.
- (4) If a biobanking statement was obtained in respect of State significant development, the Minister may grant consent to the development subject to a condition that requires the applicant to comply with any conditions of the biobanking statement.

### Note—

The conditions of a biobanking statement may require the applicant to retire biodiversity credits in respect of the development in order to ensure that it maintains or improves biodiversity values, or to carry out other onsite measures to minimise any negative impact of the development on biodiversity values.

- (5) A person cannot appeal to the Court in respect of a condition imposed by the Minister under subsection (4).

**89J Approvals etc legislation that does not apply**

- (1) The following authorisations are not required for State significant development that is authorised by a development consent granted after the commencement of this Division (and accordingly the provisions of any Act that prohibit an activity without such an authority do not apply):
  - (a) the concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of that Act,
  - (b) a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*,
  - (c) an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*,
  - (d) an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*,
  - (e) an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act repealed by that Act) to clear native vegetation or State protected land,
  - (f) a bush fire safety authority under section 100B of the *Rural Fires Act 1997*,
  - (g) a water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *Water Management Act 2000*.
- (2) Division 8 of Part 6 of the *Heritage Act 1977* does not apply to prevent or interfere with the carrying out of State significant development that is authorised by a development consent granted after the commencement of this Division.
- (3) A reference in this section to State significant development that is authorised by a development consent granted after the commencement of this Division includes a reference to any investigative or other activities that are required to be carried out for the purpose of complying with any environmental assessment requirements under this Part in connection with a development application for any such development.

**89K Approvals etc legislation that must be applied consistently**

- (1) An authorisation of the following kind cannot be refused if it is necessary for carrying out State significant development that is authorised by a development consent under this Division and is to be substantially consistent with the consent:
  - (a) an aquaculture permit under section 144 of the *Fisheries Management Act 1994*,
  - (b) an approval under section 15 of the *Mine Subsidence Compensation Act 1961*,
  - (c) a mining lease under the *Mining Act 1992*,

- (d) a production lease under the *Petroleum (Onshore) Act 1991*,
  - (e) an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act),
  - (f) a consent under section 138 of the *Roads Act 1993*,
  - (g) a licence under the *Pipelines Act 1967*.
- (2) This section does not apply to or in respect of:
- (a) an application for the renewal of an authorisation or a renewed authorisation, or
  - (b) an application for a further authorisation or a further authorisation following the expiry or lapsing of an authorisation, or
  - (c) in the case of an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—any period after the first review of the licence under section 78 of that Act.
- (3) A reference in this section to an authorisation or development consent includes a reference to any conditions of the authorisation or consent.
- (4) This section applies to a person, court or tribunal that deals with an objection, appeal or review conferred on a person in relation to an authorisation in the same way as it applies to the person giving the authorisation.

### **89L This Division prevails**

The provisions of this Division, the regulations under this Division and any other provisions of or made under this Act with respect to State significant development prevail to the extent of any inconsistency with any other provisions of or made under this Act relating to development to which this Part applies.

## **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 made by or on behalf of the Crown (within the meaning of Division 4), other than development that requires a heritage approval.

### **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.

**heritage approval** means an approval in respect of the doing or carrying out of an act, matter or thing referred to in section 57 (1) of the *Heritage Act 1977*.

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

(1) Integrated development is development (not being State significant development or 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>Mining Act 1992</i>	ss 63, 64	grant of mining lease



<i>National Parks and Wildlife Act 1974</i>	s 90	grant of Aboriginal heritage impact permit
<i>Petroleum (Onshore) Act 1991</i>	s 9	grant of production lease
<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>Roads Act 1993</i>	s 138	<p>consent to:</p> <p>(a) erect a structure or carry out a work in, on or over a public road, or</p> <p>(b) dig up or disturb the surface of a public road, or</p> <p>(c) remove or interfere with a structure, work or tree on a public road, or</p> <p>(d) pump water into a public road from any land adjoining the road, or</p> <p>(e) connect a road (whether public or private) to a classified road</p>
<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

*Water Management Act 2000* ss 89, 90, 91

water use approval, water management work approval or activity approval under Part 3 of Chapter 3

- (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 an Aboriginal heritage impact permit required under Part 6 of the *National Parks and Wildlife Act 1974* unless:
- (a) an Aboriginal object referred to in that Part 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 Development that is integrated development**

- (1) This section applies to the determination of a development application for 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 Consent authority may not refuse certain development applications**

- (1) This section applies to the determination by a consent authority of a development application for development that is integrated development for which a heritage approval is required.
- (2) A consent authority must not refuse development consent on heritage grounds if the same development is the subject of a heritage approval.

### **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 Development contributions**

### **Subdivision 1 Preliminary**

#### **93C Definitions**

In this Division:

**contributions plan** means a contributions plan approved under section 94EA.

**development corporation** means a development corporation constituted under Part 2 of the [Growth Centres \(Development Corporations\) Act 1974](#).

**growth centre** has the same meaning as it has in the [Growth Centres \(Development Corporations\) Act 1974](#).

**planning agreement** means a voluntary agreement referred to in section 93F.

**planning authority** means:

- (a) a council, or
- (b) the Minister, or

- (c) the corporation, or
- (d) a development corporation (within the meaning of the *Growth Centres (Development Corporations) Act 1974*), or
- (e) a public authority declared by the regulations to be a planning authority for the purposes of this Division.

**public amenities** or **public services** do not include water supply or sewerage services.

**special contributions area** means land for the time being described in Schedule 5A.

### **93D Relationship to planning instruments**

This Division does not derogate from or otherwise affect any provision of an environmental planning instrument, whether made before or after the commencement of this section, that requires satisfactory arrangements to be made for the provision of particular kinds of public infrastructure, facilities or services before development is carried out.

### **93E Provisions relating to money etc contributed under this Division (other than Subdivision 4)**

- (1) A consent authority or planning authority is to hold any monetary contribution or levy that is paid under this Division (other than Subdivision 4) in accordance with the conditions of a development consent or with a planning agreement for the purpose for which the payment was required, and apply the money towards that purpose within a reasonable time.
- (2) However, money paid under this Division (other than Subdivision 4) for different purposes in accordance with the conditions of development consents may be pooled and applied progressively for those purposes, subject to the requirements of any relevant contributions plan or ministerial direction under this Division (other than Subdivision 4).
- (3) Land dedicated in accordance with this Division (other than Subdivision 4) is to be made available by the consent authority or planning authority for the purpose for which the dedication was required and within a reasonable time.
- (4) A reference in this section to a monetary contribution or levy includes a reference to any additional amount earned from its investment.

## **Subdivision 2 Planning agreements**

### **93F Planning agreements**

- (1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person

(the **developer**):

- (a) who has sought a change to an environmental planning instrument, or
- (b) who has made, or proposes to make, a development application, or
- (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,

under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

(2) A public purpose includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.

(3) A planning agreement must provide for the following:

- (a) a description of the land to which the agreement applies,
- (b) a description of:
  - (i) the change to the environmental planning instrument to which the agreement applies, or
  - (ii) the development to which the agreement applies,
- (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
- (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development,
- (e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken

into consideration in determining a development contribution under section 94,

(f) a mechanism for the resolution of disputes under the agreement,

(g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

(3A) A planning agreement cannot exclude the application of section 94 or 94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement.

(4) A provision of a planning agreement in respect of development is not invalid by reason only that there is no connection between the development and the object of expenditure of any money required to be paid by the provision.

**Note—**

See section 93E (1), which requires money paid under a planning agreement to be applied for the purpose for which it was paid within a reasonable time.

(5) If a planning agreement excludes the application of section 94 or 94A to particular development, a consent authority cannot impose a condition of development consent in respect of that development under either of those sections (except in respect of the application of any part of those sections that is not excluded by the agreement).

(5A) A planning authority, other than the Minister, is not to enter into a planning agreement excluding the application of section 94EF without the approval of:

(a) the Minister, or

(b) a development corporation designated by the Minister to give approvals under this subsection.

(6) If a planning agreement excludes benefits under a planning agreement from being taken into consideration under section 94 in its application to development, section 94 (6) does not apply to any such benefit.

(7) Any Minister, public authority or other person approved by the Minister is entitled to be an additional party to a planning agreement and to receive a benefit under the agreement on behalf of the State.

(8) A council is not precluded from entering into a joint planning agreement with another council or other planning authority merely because it applies to any land not within, or any purposes not related to, the area of the council.

(9) A planning agreement cannot impose an obligation on a planning authority:

(a) to grant development consent, or

(b) to exercise any function under this Act in relation to a change to an environmental



planning instrument.

- (10) A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach this section or any other provision of this Act, or would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.
- (11) A reference in this section to a change to an environmental planning instrument includes a reference to the making or revocation of an environmental planning instrument.

### **93G Information about planning agreements**

- (1) A planning agreement cannot be entered into, and a planning agreement cannot be amended or revoked, unless public notice has been given of the proposed agreement, amendment or revocation, and a copy of the proposed agreement, amendment or revocation has been available for inspection by the public for a period of not less than 28 days.
- (2) The regulations may provide for the public notice to be given under subsection (1) and may provide that it may be given contemporaneously with, in association with, or as part of, any other public notice or public notification that is required to be given of any matter relevant to the planning agreement.
- (3) If the Minister is not a party to a planning agreement, the relevant planning authority that is a party to the agreement must provide to the Minister:
  - (a) a copy of the agreement within 14 days after the agreement is entered into, and
  - (b) if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and
  - (c) if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs.
- (4) If a council is not a party to a planning agreement that applies to the area of the council, the relevant planning authority that is a party to the agreement must provide to the council:
  - (a) a copy of the agreement within 14 days after the agreement is entered into, and
  - (b) if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and
  - (c) if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs.
- (5) A planning authority that has entered into one or more planning agreements must,

while any such planning agreements remain in force, include in its annual report particulars of compliance with and the effect of the planning agreements during the year to which the report relates.

### **93H Registered planning agreements to run with land**

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

### **93I Circumstances in which planning agreements can or cannot be required to be made**

- (1) A provision of an environmental planning instrument (being a provision made after the commencement of this section):
  - (a) that expressly requires a planning agreement to be entered into before a development application can be made, considered or determined, or
  - (b) that expressly prevents a development consent from being granted or having effect unless or until a planning agreement is entered into,has no effect.
- (2) A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.

- (3) However, a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with:
- (a) the development application, or
  - (b) a change to an environmental planning instrument sought by the developer for the purposes of making the development application,
- or that is in the terms of a commitment made by the proponent in a statement of commitments made under Part 3A.
- (4) In this section, **planning agreement** includes any agreement (however described) containing provisions similar to those that are contained in an agreement referred to in section 93F.

### **93J Jurisdiction of Court with respect to planning agreements**

- (1) A person cannot appeal to the Court under this Act against the failure of a planning authority to enter into a planning agreement or against the terms of a planning agreement.
- (2) This section does not affect the jurisdiction of the Court under section 123.

### **93K Determinations or directions by Minister**

The Minister may, generally or in any particular case or class of cases, determine or direct any other planning authority as to:

- (a) the procedures to be followed in negotiating a planning agreement, or
- (b) the publication of those procedures, or
- (c) other standard requirements with respect to planning agreements.

### **93L Regulations—planning agreements**

The regulations may make provision for or with respect to planning agreements, including the following:

- (a) the form of planning agreements,
- (b) the subject-matter of planning agreements,
- (c) the making, amendment and revocation of planning agreements, including the giving of public notice and inspection by the public,
- (d) the public inspection of planning agreements after they have been made.

## **Subdivision 3 Local infrastructure contributions**

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

- (1) If a consent authority is satisfied that development for which development consent is sought 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 the development consent 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) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.
- (3) 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 for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services,the consent authority may grant the development consent subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations).
- (4) A condition referred to in subsection (3) may be imposed only to require a reasonable contribution towards recoupment of the cost concerned.
- (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) 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, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or

previously paid to the consent authority, other than:

- (a) a benefit provided as a condition of the grant of development consent under this Act, or
- (b) a benefit excluded from consideration under section 93F (6).

(7) If:

- (a) a condition imposed under subsection (1) or (3) in relation to development 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, despite 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.

#### **94A Fixed development consent levies**

- (1) A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development.
- (2) A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under section 94.
- (2A) A consent authority cannot impose a condition under this section in relation to development on land within a special contributions area without the approval of:
  - (a) the Minister, or
  - (b) a development corporation designated by the Minister to give approvals under this subsection.
- (3) Money required to be paid by a condition imposed under this section is to be applied towards the provision, extension or augmentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation). The application of the money is subject to any relevant provisions of the contributions plan.
- (4) A condition imposed under this section is not invalid by reason only that there is no connection between the development the subject of the development consent and the

object of expenditure of any money required to be paid by the condition.

- (5) The regulations may make provision for or with respect to levies under this section, including:
  - (a) the means by which the proposed cost of carrying out development is to be estimated or determined, and
  - (b) the maximum percentage of a levy.

#### **94B Section 94 or 94A conditions subject to contributions plan**

- (1) A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).
- (2) However, in the case of a consent authority other than a council:
  - (a) the consent authority may impose a condition under section 94 or 94A even though it is not authorised (or of a kind allowed) by, or is not determined in accordance with, a contributions plan, but
  - (b) the consent authority must, before imposing the condition, have regard to any contributions plan that applies to the whole or any part of the area in which development is to be carried out.
- (3) A condition under section 94 that is of a kind allowed by a contributions plan (or a direction of the Minister under this Division) may be disallowed or amended by the Court on appeal because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with the relevant contributions plan (or direction). This subsection does not authorise the Court to disallow or amend the contributions plan or direction.
- (4) A condition under section 94A that is of a kind allowed by, and determined in accordance with, a contributions plan (or a direction of the Minister under this Division) may not be disallowed or amended by the Court on appeal.

#### **94C Cross-boundary issues**

- (1) A condition may be imposed under section 94 or 94A for the benefit (or partly for the benefit) of an area that adjoins the local government area in which the development is to be carried out.
- (2) Any monetary contribution that is required to be paid under any such condition is to be apportioned among the relevant councils:
  - (a) in accordance with any joint or other contributions plan approved by those councils, or

(b) if provision is not made for the apportionment in any such plan—in accordance with the terms of the development consent for the development.

(3) Any dispute between the councils concerned is to be referred to the Director-General and resolved in accordance with any direction given by the Director-General.

**94CA Public service or public amenity may be provided outside NSW**

A condition may, with the written approval of the Minister, be imposed under section 94 or 94A for the provision of a public amenity or public service on land in another State or Territory if the area in which the development the subject of the condition is to be carried out adjoins the other State or Territory.

**94D Section 94 or 94A conditions imposed by Minister or Director-General in growth centres, council areas etc**

(1) This section applies where the Minister or the Director-General, as the consent authority, imposes conditions under section 94 or 94A in relation to:

- (a) land within a growth centre, or
- (b) other land within one or more council areas.

(2) This Division applies to land within a growth centre as if references in this Division to the area were references to the growth centre.

(3) Any monetary contribution paid in accordance with a condition under section 94 or 94A:

- (a) must be paid by the Minister or Director-General to the corporation for the growth centre or to the councils of the areas 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.

(4) This section applies to the Minister as consent authority whether or not the Minister is the consent authority because it is State significant development.

(5) (Repealed)

**94E Directions by 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 section 94 may or may not be imposed, and
- (b) in the case of a condition under section 94 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 that may or may not be accepted as a material public benefit for the purposes of a condition under section 94, and
  - (d) the type or area of development in respect of which a condition under section 94A may be imposed and the maximum percentage of the levy, and
  - (e) the use of monetary contributions or levies for purposes other than those for which they were paid, and
  - (f) the preparation of joint contributions plans by two or more councils.
- (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 development consent 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 and despite the provisions of any contributions plan.

**94EA Contributions plans—making**

- (1) A council, or two or more councils, may, subject to and in accordance with the regulations, prepare and approve a contributions plan for the purpose of imposing conditions under this Division (other than Subdivision 4).
- (2) If a contributions plan authorises the imposition of conditions under section 94A, the plan is to specify the type or area of development in respect of which a condition under section 94A may be imposed and is to preclude the imposition of a condition under section 94 in respect of that type or area of development.
- (2A) A contributions plan does not authorise the imposition of a condition under section 94 on a grant of development consent if the public amenities or public services to which that condition relates are, in whole or in part, infrastructure provided, or to be provided, in relation to the development out of contributions collected under Subdivision 4.
- (3) The regulations may make provision for or with respect to the preparation and approval of contributions plans, including the format, structure and subject-matter of plans.
- (4) A council is, as soon as practicable after approving a contributions plan, to provide the Minister with a copy of the plan.



**94EAA Contributions plans—making, amendment or repeal by Minister**

- (1) The Minister may direct a council, in writing, to approve, amend or repeal a contributions plan in the time and manner specified in the direction.
- (2) The Minister may make, amend or repeal a contributions plan if:
  - (a) a council fails to approve, amend or repeal the plan in accordance with a direction of the Minister under this section, or
  - (b) a council consents in writing to the Minister making, amending or repealing the plan.

The plan, the amended plan or the repeal of the plan has effect as if it had been approved, amended or repealed by the council.

- (3) The Minister in making, amending or repealing a contributions plan under this section is not subject to the regulations.
- (4) A person cannot appeal to the Court under this Act in respect of:
  - (a) the making, amending or repealing of a contributions plan by or at the direction of the Minister under this section, or
  - (b) the reasonableness in the particular circumstances of a condition under section 94 that is determined in accordance with any such contributions plan,despite section 94B (3) or any other provision of this Act.

**94EB 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) 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.
- (3) 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 after the date on which the plan came into effect.
- (4) 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.

**94EC 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 under section 94 or 94A, and
- (b) can only authorise the imposition by an accredited certifier of a condition under section 94 that requires the payment of a monetary contribution, and
- (c) must specify the amount of the monetary contribution or levy that an accredited certifier must so impose or the precise method by which the amount is to be determined.

- (1A) The imposition of a condition by an accredited certifier as authorised by a contributions plan is subject to compliance with any directions given under section 94E (1) (a), (b) or (d) with which a council would be required to comply if issuing the complying development certificate concerned.
- (2) This section does not limit anything for which a contributions plan may make provision in relation to a consent authority.

## **Subdivision 4 Special infrastructure contributions**

### **94ED Provision of infrastructure**

- (1) In this Subdivision, a reference to the ***provision of infrastructure*** includes a reference to:
    - (a) the provision, extension and augmentation of (or the recoupment of the cost of providing, extending or augmenting) public amenities or public services, affordable housing and transport or other infrastructure relating to land, and
    - (b) the funding of recurrent expenditure relating to the provision, extension and augmentation of public amenities or public services, affordable housing and transport or other infrastructure, and
    - (c) the conservation or enhancement of the natural environment, and
    - (d) the Minister, corporation, Department or Director-General doing any one or more of the following:
      - (i) carrying out of any research or investigation,
      - (ii) preparing any report, study or instrument,
      - (iii) doing any other matter or thing in connection with the exercise of any statutory function under this Act,
- but does not include a reference to water supply or sewerage services.

- (2) Subject to section 94EE (2) (c), infrastructure may be regarded as being provided in relation to development whether or not the infrastructure is provided on land within a special contributions area or within New South Wales.

**94EE Minister to determine development contributions**

- (1) The Minister is, subject to the regulations (if any), to determine the level and nature of development contributions to be imposed as conditions under this Subdivision for the provision of infrastructure in relation to a development or a class of development.
- (2) In determining the level and nature of development contributions:
- (a) the Minister is, as far as reasonably practicable, to make the contribution reasonable having regard to the cost of the provision of infrastructure in relation to the development or class of development, and
  - (b) if the cost of that infrastructure exceeds \$30 million—the Minister is to consult the Treasurer, and
  - (c) the Minister is not to take into account infrastructure provided on land other than that within the relevant special contributions area, unless, in the opinion of the Minister, the provision of the infrastructure on such land arises as a result of the development or as a result of a class of development of which the development forms a part.
- (3) Despite subsection (2), the Minister may, if he or she sees fit, determine the level and nature of development contributions in the form of a levy of a percentage of the proposed cost of carrying out development or any class of development.
- (3A) The determination of the Minister is to identify what part (if any) of a development contribution, that is to be imposed as a condition under this Subdivision, is for the provision of infrastructure by a council or for any one or more of the matters set out in section 94ED (1) (d).
- (3B) Any part of a development contribution identified in accordance with subsection (3A):
- (a) is, for the purposes of Subdivision 5, taken not to be received by the consent authority under this Subdivision, and
  - (b) is not to be taken into account in calculating the cost of infrastructure for the purposes of subsection (2) (b), and
  - (c) is, if the part is identified as being for the provision of infrastructure by a council, to be provided to the council and is to be held and applied by the council in accordance with section 93E, and
  - (d) is, if the part is identified as being for any one or more of the matters set out in

section 94ED (1) (d), to be provided to the Department and is to be held and applied by the Department in accordance with section 93E.

- (4) In determining the level and nature of development contributions to be imposed as conditions under this Subdivision for development within a particular special contributions area (other than a growth centre), the Minister is to do one or more of the following:
  - (a) consult with owners of land in the special contributions area and other relevant stakeholders,
  - (b) publicly exhibit a proposal in relation to the level of development contributions and seek submissions within a reasonable time in relation to that proposal,
  - (c) establish a panel that, in the Minister's opinion, represents the interests of the various relevant stakeholders and consult with that panel.
- (5) The determination of the Minister:
  - (a) is to contain reasons for the level and nature of the development contributions, and
  - (b) is to be made publicly available by the Minister.
- (6) A person cannot appeal to the Court under this Act in respect of a determination of the Minister under this section.
- (7) Subsection (3A) does not limit any payments being made out of the Fund to a council or the Department under section 94EL (1) (a).

**94EF Special infrastructure contributions**

- (1) The Minister may direct a consent authority, in relation to development or class of development on land within a special contributions area, to impose a condition (determined in accordance with section 94EE) on a grant of development consent in relation to that land.
- (2) If the Minister is the consent authority, the Minister may impose a condition referred to in subsection (1) without giving a direction under that subsection.
- (3) A consent authority to which a direction is given under this section must comply with the direction in accordance with its terms. If the consent authority fails to do so, the Minister may impose the condition, and it has effect as if it had been imposed by the consent authority.
- (4) A condition imposed under this section is in addition to any condition that the consent authority may impose under section 94 or 94A in relation to the development.
- (5) The consent authority may, subject to the consent of the Minister, accept:

- (a) the dedication of land in part or full satisfaction of a condition imposed in accordance with this section, 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 this section.
- (6) A person cannot appeal to the Court under this Act in respect of a direction of the Minister, or a condition imposed by a consent authority or the Minister, under this section.
- (7) A condition imposed by a consent authority or the Minister under this section cannot be modified without the approval of the Minister.

**94EG Minister may make, amend or repeal special contributions areas**

- (1) The Minister may, by order published on the NSW legislation website, amend Schedule 5A for the purpose of:
- (a) creating a special contributions area, or
  - (b) repealing a special contributions area, or
  - (c) changing a special contributions area.
- (2) Any such order may contain savings and transitional provisions.
- (3) Any such order takes effect on the day that it is published on the NSW legislation website or such later date as may be specified in the order.
- (4) Before creating a special contributions area (other than a growth centre), the Minister is to consult with the peak industry organisations that the Minister considers to be relevant.

**94EH Land contributed under this Subdivision**

The Minister may direct a consent authority to sell all or part of any land it receives under this Subdivision or to transfer any such land to a public authority that is to provide, or has provided, infrastructure in relation to:

- (a) the development to which the land relates, or
- (b) the class of development to which that development belongs.

**Subdivision 5 Establishment of Special Contributions Areas  
Infrastructure Fund**

**94EI Definition**

In this Subdivision:

**the Fund** means the Special Contributions Areas Infrastructure Fund established under section 94EJ.

**94EJ Establishment of Fund**

- (1) There is to be established in the Special Deposits Account a fund called the Special Contributions Areas Infrastructure Fund.
- (2) The Fund is to be administered by the Director-General. The Director-General is to consult the Secretary of the Treasury in relation to the administration of the Fund.

**94EK Payments into Fund**

The following is to be paid into the Fund:

- (a) monetary contributions received by a consent authority under Subdivision 4,
- (b) the proceeds of the sale of any land received by a consent authority under Subdivision 4,
- (c) any money appropriated by Parliament for the purposes of the Fund,
- (d) the proceeds of the investment of money in the Fund,
- (e) any other money required to be paid into the Fund by or under this or any other Act or the regulations under this Act.

**94EL Payments out of Fund**

- (1) The following is to be paid from the Fund:
  - (a) payments to public authorities for the provision of infrastructure in relation to development,
  - (b) any money required to meet administrative expenses in relation to the Fund,
  - (c) all other money directed or authorised to be paid from the Fund by this Act or by the regulations under this Act.
- (2) The assets of the Fund can only be applied for the purposes referred to in subsection (1).

**94EM Investment of money in Fund**

The money in the Fund may be invested:

- (a) in such manner as may be authorised by the *Public Authorities (Financial*

*Arrangements) Act 1987*, or

- (b) if that Act does not confer power on the Department to invest the money, in any other manner approved by the Treasurer.

## **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 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.
- (6) A condition is not to be imposed under this section in relation to development that is within a special contributions area (within the meaning of Division 6).

#### **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 5 years after the date from which it operates.
- (2) However, a consent authority may reduce that period of 5 years in granting development consent. This subsection does not apply to development consent granted to a staged development application under Division 2A for development that requires a subsequent development application and consent.
- (3) Such a reduction may not be made so as to cause:
- (a) a development consent to erect or demolish a building or to subdivide land to lapse within 2 years after the date from which the consent operates, or
  - (b) a development consent of a kind prescribed by the regulations to lapse within the period prescribed by the regulations in relation to the consent.
- (3A) A reduction that has been made under subsection (2) is to be disregarded if:
- (a) the development consent operated before, and lapses after, the commencement of this subsection (or the development consent lapsed during the period commencing on 22 April 2010 and ending on the commencement of this subsection), or
  - (b) the development consent operated before, and lapses after, a date after 1 July 2011 prescribed by the regulations.

A reduction may not be made under subsection (2) during the period commencing on the commencement of this subsection and ending on 1 July 2011 or during any subsequent period prescribed by the regulations.

- (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.
- (6) Despite any other provision of this section, a development consent that is subject to a deferred commencement condition under section 80 (3) lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within 5 years from the grant of the consent or, if a shorter period is specified by the consent authority, within the period so specified.
- (7) The regulations may set out circumstances in which work is or is not taken to be physically commenced for the purposes of this section.

#### **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 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.

#### **95B (Repealed)**

## 96 Modification of consents—generally

(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) and (6), section 96AB and Division 8 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), 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 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), 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 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) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.
- (5) **Threatened species** Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the *Threatened Species Conservation Act 1995*, is not to be modified unless:
  - (a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or
  - (b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the *Threatened Species Conservation Act 1995*—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

This subsection does not apply to State significant development.

- (6) **Deemed refusals** The regulations may make provision for or with respect to the following:

- (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,
- (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,
- (c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.

(6A), (7) (Repealed)

(8) **Modifications by the Court** The provisions of this section extend, subject to the regulations, to enable the Court to modify a consent granted by it but, in the extension of those provisions, the functions imposed on a consent authority under subsection (1A) (c) or subsection (2) (b) and (c) are to be exercised by the relevant consent authority and not the Court.

**96AA Modification by consent authorities of consents granted by the Court**

- (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development 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 the consent was originally granted and before that consent as originally granted was modified (if at all), and
  - (b) it has notified the application in accordance with:
    - (i) the regulations, if the regulations so require, and
    - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
  - (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, 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.
- (1A) 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.

- (1B) Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the *Threatened Species Conservation Act 1995*, is not to be modified unless:
- (a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or
  - (b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the *Threatened Species Conservation Act 1995*—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

This subsection does not apply to State significant development.

- (1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.
- (2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.
- (3) The regulations may make provision for or with respect to the following:
- (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,
  - (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,
  - (c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.
- (4) (Repealed)

#### **96AB Review where modification application refused or conditions imposed**

- (1) **Applications for review of modification decisions** An applicant for the modification of a development consent for which a council is the consent authority may request the council to review a determination by the council under section 96 or 96AA of the

application.

- (2) **Council must review determination** A council must, on a request made in accordance with this section, conduct a review.
- (3) **Persons who may conduct council review** The review must be carried out by:
  - (a) if the determination was made by the council—the council, or
  - (b) if the determination was made by a delegate of the council—by the council or another delegate of the council who is not subordinate to the delegate who made the determination.
- (4) **Determination of review** As a consequence of the review, the council may confirm or change the determination.
- (5) **No review if appeal period expired or appeal made** A determination cannot be reviewed:
  - (a) after the time limited for the making of an appeal under section 97AA expires, if no such appeal is made against the determination, or
  - (b) after an appeal under section 97AA against the determination is disposed of by the Court, if such an appeal is made against the determination.
- (6) **Withdrawal of appeals** If on a review the council modifies 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 97AA in respect of its determination withdrawn at any time prior to the determination of that appeal.
- (7) **Determinations not subject to review** This section does not apply to the following determinations:
  - (a) a determination of an application to modify a complying development certificate,
  - (b) a determination in respect of designated development,
  - (c) a determination in respect of integrated development,
  - (d) a determination made by the council under section 89A in respect of an application by the Crown,
  - (e) a determination that is taken to have been made because the council has failed to determine an application.

**Note—**

Sections 82C and 82D apply to a review under this section.

## **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 proposed State environmental planning policy, 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 proposed 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 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 6 months after:
- (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application or review, 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 6 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 6 months after the consent authority notifies the applicant of its decision.

- (4), (5) (Repealed)
- (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.
- (7) This section does not apply to a development application for designated development determined by the consent authority after a public hearing held by the Planning Assessment Commission, or to the determination of the application.

**97AA Appeal by applicant—modifications**

An applicant who is dissatisfied with the determination of a consent authority with respect to the applicant’s application under section 96 or 96AA (including a determination on a review under section 96AB) may appeal to the Court within 6 months after:

- (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application or, if an application for review under section 96AB has been decided, the date on which the applicant received notice, in accordance with the regulations, of the decision, or
- (b) the date on which the applicant’s application is taken to have been determined in accordance with regulations made under section 82C (3), 96 (6) or 96AA (3).

**97A Notice of appeals to be given and right to be heard**

- (1) The consent authority must give notice of an appeal under section 97, 97AA or 98:
  - (a) to an objector, in the case of an appeal concerning a development application in respect of which the objector may appeal under section 98, or
  - (b) to the relevant Minister or public authority, in the case of an appeal concerning a development application in relation to which the concurrence of a Minister or public authority is required under this Act, or
  - (c) to the relevant approval body (within the meaning of Division 5), in the case of a development application to carry out integrated development that involves the approval body.
- (2) A council must give notice to a regional panel of any appeal under section 97, 97AA or 98 in respect of a determination made by the panel or that may be reviewed by the

panel under this Act.

- (3) A council must give notice to the Planning Assessment Commission of any appeal under section 97, 97AA or 98 in respect of a determination made by the Commission or that may be reviewed by the Commission under this Act.
- (4) A person or body who is given notice of an appeal under this section 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 the person or body were a party to the appeal.

#### **97B Costs payable if amended development application filed**

- (1) This section applies to proceedings if the Court, on an appeal by an applicant under section 97 allows the applicant to file an amended development application (other than to make a minor amendment).
- (2) In any proceedings to which this section applies, the Court must make an order for the payment by the applicant of those costs of the consent authority that are thrown away as a result of amending the development application.
- (3) The regulations may provide for circumstances in which subsection (2) does not apply.
- (4) This section has effect despite the provisions of any other Act or law.

#### **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) (Repealed)
- (4) This section extends to a development application for State significant development that would be designated development but for section 77A (2), and to the determination of the application and, for that purpose, a reference in this Act to **objector** includes a person who has made a submission under section 89F (3) by way of objection to a development application for consent to carry out such State significant development.

- (5) This section does not apply to a development application determined by the consent authority after a public hearing held by the Planning Assessment Commission, or to the determination of the application.

### **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, or
  - (c) the failure or refusal of a council to release a security held by it that has been provided in accordance with a condition of a complying development certificate,
- 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) or (c) may be made:
- (a) except as provided by paragraph (b), within 6 months after the work to which the security relates has been completed, or
  - (b) if the security is provided in respect of contingencies that may arise on or after completion of the work to which the security relates, not earlier than 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 State significant development or 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 State significant development or 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.

### **104A Voluntary surrender of development consent**

- (1) A development consent may be surrendered, subject to and in accordance with the

regulations, by any person entitled to act on the consent.

- (2) A development consent may be surrendered under this section even if, on the making of an appeal under section 97 or 98, the consent has ceased to be, or does not become, effective as referred to in section 83 (2).

#### **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,
  - (c1) requiring the New South Wales Aboriginal Land Council to consent to applications for the modification of development consents relating to land owned by Local Aboriginal Land Councils,
  - (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 preparation, contents, form and submission of environmental impact statements and statements of environmental effects,
  - (k) the documents and information required to accompany statements of environmental effects and environmental impact statements,

- (l) 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,
  - (n1) authorising a consent authority or council to impose a fee with respect to the lodging of any complying development certificate with it, whether pursuant to a requirement made by or under this Act or otherwise,
  - (o) procedures concerning integrated development,
  - (p) notifications and notices for the purposes of sections 81A and 86,
  - (p1) procedural matters in relation to the review, under section 82A, of determinations,
  - (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 building products and systems, 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 adoption, application or incorporation (whether with or without modification)



of a scheme of accreditation (however described) of building products and systems,

(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*.

(5) The regulations may make provision for or with respect to the remission of part of the fees for development applications to the Director-General for payment, in accordance with subsection (6), into the Building Professionals Board Fund established under the *Building Professionals Act 2005*.

(6) The Director-General is to pay into the Building Professionals Board Fund established under the *Building Professionals Act 2005* such part of the fees for development applications remitted to the Director-General:

(a) as may be provided for in the regulations, or

(b) subject to the regulations (if any), as the Minister directs to be paid into the Fund.

#### **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 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.
  - (d) (Repealed)

- (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.
- (4) (Repealed)

### **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 instrument referred to in Division 2 of Part 21 of Schedule 6 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**

### **Division 1 Certification of work and other matters**

#### **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*.

(1A) A single compliance certificate may deal with any number of matters, whether of the same or of a different kind.

(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, the council or an accredited certifier,
  - (b) a construction certificate may be issued by a consent authority, the council or an accredited certifier,
  - (c) an occupation certificate may be issued by a consent authority, the council or an accredited certifier,
  - (d) a subdivision certificate may be issued:
    - (i) in the case of subdivision the subject of development consent, by the consent authority or the council,
    - (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.
- (1A) For the purposes of subsection (1) (d) (iv), an environmental planning instrument that identifies subdivision in respect of which a subdivision certificate may be issued by an accredited certifier may place restrictions on the issue of such certificates by accredited certifiers.
- (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 work.
- (4) In this section:

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

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

- (1) The person having the benefit of a development consent or complying development certificate for development:
  - (a) is to appoint a principal certifying authority in respect of building work involved in the development and a principal certifying authority in respect of subdivision work involved in the development, and
  - (b) may appoint only the consent authority, the council or an accredited certifier as the principal certifying authority for the building work or subdivision work, and
  - (c) may appoint the same principal certifying authority for both types of work or different certifying authorities.
- (1AA) The council must, if appointed under subsection (1), accept that appointment.
- (1A) Despite subsection (1), such an appointment may not be made by any contractor or other person who will carry out the building work or subdivision work unless the contractor or other person is the owner of the land on which the work is to be carried out.
- (2) Despite subsection (1), an accredited certifier must not be appointed as the principal certifying authority for 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) A principal certifying authority for building work or subdivision work to be carried out on a site is required to be satisfied:
  - (a) that a construction certificate or complying development certificate has been issued for such of the building work or subdivision work as requires development consent and over which the principal certifying authority has control, before the work commences on the site, and
  - (b) that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the [Home Building Act 1989](#), before any residential building work over which the principal certifying authority has control commences on the site, unless the work is to be carried out by an owner-builder, and
  - (c) that the owner-builder is the holder of any owner-builder permit required under the [Home Building Act 1989](#), before an owner-builder commences on the site any residential building work over which the principal certifying authority has control, and
  - (d) that building work or subdivision work on the site has been inspected by the principal certifying authority or another certifying authority on such occasions (if

any) as are prescribed by the regulations and on such other occasions as may be required by the principal certifying authority, before the principal certifying authority issues an occupation certificate or subdivision certificate for the building or work, and

(e) that any preconditions required by a development consent or complying development certificate to be met for the work before the issue of an occupation certificate or subdivision certificate have been met, before the principal certifying authority issues the occupation certificate or subdivision certificate.

(4) A principal certifying authority must also comply with such other requirements of a like or different nature as may be imposed on principal certifying authorities by the regulations.

**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.

**109EA Replacement of principal certifying authorities**

- (1) A person may not be appointed to replace another person as the principal certifying authority for development unless:
  - (a) the Building Professionals Board so approves in writing and the relevant council and consent authority are notified before the replacement occurs, or
  - (b) the current principal certifying authority, the proposed principal certifying authority and a person who is eligible to appoint a principal certifying authority for the development agree.
- (2) An application to the Building Professionals Board for approval or a notification under subsection (1) is to be accompanied by the fee (if any) prescribed by the regulations under the *Building Professionals Act 2005* and is to be in a form approved by the Board.
- (3) If the Building Professionals Board approves the appointment of the relevant council to replace another person as the principal certifying authority under subsection (1) (a), the council must accept that appointment.

**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:



- (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.
- (1A) A construction certificate has no effect if it is issued after the building work or subdivision work to which it relates is physically commenced on the land to which the relevant development consent applies.
- (2) A certifying authority must not refuse to issue a construction certificate on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations made for the purposes of Part 4.
- (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 a development consent or complying development certificate is in force with respect to the building or subdivision to which the work relates.

#### **109H Restrictions on issue of occupation certificates**

- (1) There are two kinds of occupation certificates, as follows:
- (a) an ***interim occupation certificate*** that authorises a person to commence occupation or use of a partially completed new building, or to commence a new use of part of a building resulting from a change of building use for an existing building,
  - (b) a ***final occupation certificate*** that authorises a person to commence occupation or use of a new building, or to commence a new use of a building resulting from a change of building use for an existing building.

It is not necessary for an interim occupation certificate to be issued before a final occupation certificate is issued with respect to the same building.

- (2) An occupation certificate must not be issued unless any preconditions to the issue of the certificate that are specified in a development consent or complying development certificate, or any requirements of a planning agreement referred to in section 93F that, by its terms, are required to be complied with before such a certificate is issued,

have been met.

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

unless:

- (a) a development consent or complying development certificate is in force with respect to the change of building use, and
- (b) the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
- (c) such other matters as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

(7) 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:
  - (a) the subdivision is not prohibited by or under this Act, and
  - (b) in the case of subdivision that may not be carried out except with development consent, a development consent (or, in the case of complying development, a complying development certificate) is in force with respect to the subdivision, and
  - (c) in the case of subdivision for which a development consent has been granted, 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, and
  - (c1) in the case of subdivision of land to which a planning agreement referred to in section 93F applies, all the requirements of the agreement that, by its terms, are required to be complied with before a subdivision certificate is issued in relation to the plan of subdivision have been complied with, and

- (d) in the case of subdivision for which a “deferred commencement” consent under section 80 (3) has been granted, the applicant has satisfied the consent authority concerning all matters as to which the consent authority must be satisfied before the consent can operate, and
  - (e) in the case of subdivision that relates to land within a water supply authority’s area of operations, the applicant has obtained a certificate of compliance from the water supply authority with respect to the subdivision of the land, and
  - (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, all such drainage easements have been acquired by the council as referred to in that section, and
  - (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) at least 28 days have elapsed since the objector was notified, or
    - (ii) if an appeal has been made by the objector within that time, the appeal has been finally determined.
- (2) Without limiting subsection (1), a subdivision certificate must not be issued for a subdivision that involves subdivision work unless:
- (a) the work has been completed, or
  - (b) agreement has been reached between the applicant for the certificate and the consent authority:
    - (i) as to the payment by the applicant to the consent authority of the cost of carrying out the work, and
    - (ii) as to when the work will be completed by the consent authority, or
  - (c) agreement has been reached between the applicant for the certificate and the consent authority:
    - (i) as to the security to be given by the applicant to the consent authority with respect to the work to be completed, and
    - (ii) as to when the work will be completed by the applicant.
- (3) Subsection (2) does not 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 within the meaning of the *Water Management Act 2000*, or
- (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

### **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 State significant development or 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 State significant development or 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) unless an occupation certificate has been issued in relation to the building or part.

Maximum penalty:

- (a) in the case of a class 1a or class 10 building, as referred to in the *Building Code of Australia*—5 penalty units, or
  - (b) in the case of any other building—1,000 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 effect 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**

- (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) the documents to be provided to, and the matters to be notified to, a consent authority, council or certifying authority for the purposes of this Part,
  - (b) the records to be kept by certifying authorities under this Part,
  - (c) applications for Part 4A certificates,
  - (d) the form and content of Part 4A certificates,
  - (e) the manner in which complaints in respect of development are to be dealt with by certifying authorities.
  - (f) exempting classes of temporary structures from requirements relating to construction certificates or occupation certificates.
- (2) In particular, the regulations may authorise a consent authority or council to impose a fee with respect to any Part 4A certificate that is lodged with it, whether pursuant to a requirement of this Act or the regulations or otherwise.

## **Division 2 Crown building work and other Crown development**

### **109R Building, demolition and incidental work**

- (1) In this section:

**Crown** has the same meaning as it has in Division 4 of Part 4 except that a reference in section 88 (2) to a thing prescribed by the regulations for the purposes of that Division is to be read as a thing prescribed by the regulations for the purposes of 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 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 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) (Repealed)

**109S (Repealed)**

## **Part 4B**

**109T-109ZH (Repealed)**

## **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 (Repealed)

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

- (1) Despite any Act or law to the contrary, a building action may not be brought in relation to any building work:
  - (a) more than 10 years after the date on which the relevant final occupation certificate is issued, or
  - (b) in a case where no final occupation certificate is issued, more than 10 years after:
    - (i) the last date on which the building work was inspected by a certifying authority, or
    - (ii) if no such inspection has been conducted, the date on which that part of the building in relation to which the building work was carried out is first occupied or used.
- (1A) Despite any Act or law to the contrary, a subdivision action may not be brought in relation to any subdivision work more than 10 years after:
  - (a) in the case of work completed before the relevant subdivision certificate is issued, the date on which the relevant subdivision certificate is issued, or
  - (b) 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**

### **109ZM-109ZP (Repealed)**

## **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 Part 3A or Part 5.1.

#### **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,
- 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.
- (3) A determining authority (other than the nominated determining authority) is required to forward to the nominated determining authority a copy of any submissions made to it under section 113 (2) and to provide other information to the nominated

determining authority, as required by the regulations, to enable the nominated determining authority to co-ordinate the preparation and furnishing of reports in relation to the activity or activity of the specified class or description.

**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 the Department of Environment, Climate Change and Water under the *Threatened Species Conservation Act 1995*.

**110D Transitional—amendment of 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), (4) (Repealed)
- (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*.

#### **110E Exemptions for certain activities**

Sections 111 and 112 do not apply to or in respect of the following (despite the terms of those sections):

- (a) a modification of an activity, whose environmental impact has already been considered, that will reduce its overall environmental impact,
- (b) a routine activity (such as the maintenance of infrastructure) that the Minister determines has a low environmental impact and that is carried out in accordance with a code approved by the Minister,
- (c) an activity (or part of an activity) that has been approved, or is to be carried out, by another determining authority after environmental assessment in accordance with this Part.

### **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*, and
  - (d) any biobanking agreement entered into under Part 7A of the *Threatened Species Conservation Act 1995* that applies to the whole or part of the land to which the activity relates.

- (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](#).

**Note—**

The determining authority is not required to consider the effect of an activity on biodiversity values if:

- (a) the activity is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the [Threatened Species Conservation Act 1995](#)), or
- (b) a biobanking statement has been issued in respect of the activity under Part 7A of the [Threatened Species Conservation Act 1995](#).

**111A (Repealed)**

**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) (Repealed)

(d) where it receives notice from the Director-General that the Minister has requested that a review be held by the Planning Assessment Commission with respect to the activity, the review has been held and the determining authority has considered the findings and recommendations of the Planning Assessment Commission 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.

**Note—**

An activity is taken not to significantly affect threatened species, populations or ecological communities, or their habitats if:

- (a) the activity is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the *Threatened Species Conservation Act 1995*), or
- (b) a biobanking statement has been issued in respect of the activity under Part 7A of the *Threatened Species Conservation Act 1995*.

(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 (other than Part 3A or Part 5.1) or the provisions of any other Act or of any instrument made under this or any other Act.

(6A) (Repealed)

(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 the Department of Environment, Climate Change and Water 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 the Department of Environment, Climate Change and Water 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 the Department of Environment, Climate Change and Water.

- (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 the Department of Environment, Climate Change and Water for the purpose of that subsection. However, if the Minister so elects, the Minister must:
- (a) consult the Director-General of the Department of Environment, Climate Change and Water 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), (8A), (8B), (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 the Department of Environment, Climate Change and Water 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 the Department of Environment, Climate Change and Water as concurrence authority**

- (1) In deciding whether or not concurrence should be granted under section 112C, the Director-General of the Department of Environment, Climate Change and Water (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,
  - (h) the likely social and economic consequences of granting or of not granting concurrence.
- (2) Before the Director-General of the Department of Environment, Climate Change and Water 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 the Department of Environment, Climate Change and Water when consulted**

The Minister administering the *Threatened Species Conservation Act 1995* (for the purposes of consultation under section 112B) or the Director-General of the Department of Environment, Climate Change and Water (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,
- (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 submissions 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 submissions made to it under subsection (2) with respect to the activity.
- (3A) The determining authority must, at that time, also forward copies of those submissions to the Environment Protection Authority if the activity is a scheduled activity under the *Protection of the Environment Operations Act 1997*.
- (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 requested that a review be held by the Planning Assessment Commission, 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 submissions 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 Planning Assessment Commission**

Where the Minister has requested that a review be held by the Planning Assessment Commission, with respect to any activity referred to in section 112 (1):

- (a) the Minister shall consider the findings and recommendations of the Planning Assessment Commission 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 Planning Assessment Commission 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 submissions made with respect to activities to which any such statements relate.

## **Division 4**

### **115A-115F (Repealed)**

## **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.

**shark meshing** means the placing of nets around beaches or other waters to protect the public from sharks.

#### **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,
- (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) shark meshing,
  - (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 115O with respect to the designated fishing activity until the report of the Director-General has been forwarded to the Fisheries Minister.

#### **115M Reviews about designated fishing activity**

- (1) The Minister administering this Act may request that a review be held by the Planning Assessment Commission 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 Planning Assessment Commission 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 a review is to be conducted, the Fisheries Minister must not make a determination under section 115O 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 the Department of Environment, Climate Change and Water 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 the Planning Assessment Commission 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) The regulations may make provisions for or with respect to approvals under this section of the Minister administering this Act.

**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 115O—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.
- (3A) A designated fishing activity cannot be declared to be a project to which Part 3A applies or declared to be State significant infrastructure.

- (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.

#### **115RA Shark meshing**

- (1) Despite section 115I, this section applies to shark meshing that:
  - (a) is the subject of both a joint management agreement under Division 8 of Part 7A of the *Fisheries Management Act 1994* and a joint management agreement within the meaning of the *Threatened Species Conservation Act 1995*, and
  - (b) is not a designated fishing activity.
- (2) The provisions of this Part (other than this section) do not apply to or in respect of shark meshing to which this section applies.
- (3) Shark meshing to which this section applies cannot be declared to be a project to which Part 3A applies or declared to be State significant infrastructure.
- (4) Shark meshing to which this section applies cannot be made subject to a requirement for development consent under Part 4.
- (5) An environmental planning instrument cannot prohibit or otherwise regulate shark meshing to which this section applies.

#### **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 5.1 State significant infrastructure**

### **Division 1 Preliminary**

#### **115T Definitions**

In this Part:

**approved State significant infrastructure** means infrastructure to the extent that it is approved by the Minister under this Part (but does not include any stage of the infrastructure that has not yet been authorised to be carried out by an approval under a staged infrastructure application).

**critical State significant infrastructure** means State significant infrastructure that is critical State significant infrastructure, as referred to in section 115V.

**development** includes an activity within the meaning of Part 5.

**infrastructure** means development for the purposes of infrastructure, including (without limitation) development for the purposes of railways, roads, electricity transmission or distribution networks, pipelines, ports, wharf or boating facilities, telecommunications, sewerage systems, stormwater management systems, water supply systems, waterway or foreshore management activities, flood mitigation works, public parks or reserves management, soil conservation works or other purposes prescribed by the regulations.

**proponent** of infrastructure means the person proposing to carry out development comprising all or any part of the infrastructure, and includes any person certified by the Director-General to be the proponent.

**State significant infrastructure**—see section 115U.

#### **115U Development that is State significant infrastructure**

- (1) For the purposes of this Act, **State significant infrastructure** is development that is declared under this section to be State significant infrastructure.
- (2) A State environmental planning policy may declare any development, or any class or description of development, to be State significant infrastructure.
- (3) Development that may be so declared to be State significant infrastructure is development of the following kind that a State environmental planning policy permits to be carried out without development consent under Part 4:
  - (a) infrastructure,
  - (b) other development that (but for this Part and within the meaning of Part 5) would be an activity for which the proponent is also the determining authority and would,

in the opinion of the proponent, require an environmental impact statement to be obtained under Part 5.

Paragraph (b) does not apply where the proponent is a council or county council.

- (4) Specified development on specified land is State significant infrastructure despite anything to the contrary in this section if it is specifically declared to be State significant infrastructure. Any such declaration may be made by a State environmental planning policy or by an order of the Minister (published on the NSW legislation website) that amends a State environmental planning policy for that purpose.
- (5) The Planning Assessment Commission or Infrastructure NSW may recommend to the Minister that a declaration be made under subsection (4) in respect of particular development.
- (6) If, but for this subsection, development is both State significant infrastructure because of a declaration under subsection (2) and State significant development, it is not State significant infrastructure despite any such declaration.
- (7) If, but for this subsection, development is both State significant infrastructure because of a declaration under subsection (4) and State significant development, it is not State significant development despite any declaration under Division 4.1 of Part 4.

### **115V Critical State significant infrastructure**

Any State significant infrastructure may also be declared to be critical State significant infrastructure if it is of a category that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons. Any such declaration may be made by the instrument that declared the development to be State significant infrastructure or by a subsequent such instrument.

#### **Note—**

In the case of critical State significant infrastructure, this Part contains the following additional provisions:

- (a) section 115ZF (4),
- (b) section 115ZG (3),
- (c) section 115ZK.

Section 23 (8) also prevents the Minister delegating his or her function under this Part of determining an application for approval to carry out critical State significant infrastructure.

## **Division 2 Environmental assessment and approval of infrastructure**

### **115W Minister's approval required for State significant infrastructure**

- (1) A person is not to carry out development that is State significant infrastructure unless the Minister has approved of the carrying out of the State significant infrastructure

under this Part.

- (2) The person is to comply with any conditions to which such an approval is subject.

**115X Application for approval of State significant infrastructure**

- (1) The proponent may apply for the approval of the Minister under this Part to carry out State significant infrastructure.
- (2) The application is to:
  - (a) describe the infrastructure, and
  - (b) contain any other matter required by the Director-General.
- (3) The application is to be lodged with the Director-General.

**115Y Environmental assessment requirements for approval**

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

**115Z Environmental assessment and public consultation**

- (1) The proponent is to submit to the Director-General the environmental impact statement required under this Division for approval to carry out the State significant infrastructure.
- (2) The Director-General may require the proponent to submit a revised environmental impact statement to address the matters notified to the proponent.
- (3) The Director-General must make the environmental impact statement publicly available for at least the minimum exhibition period prescribed by the regulations. The minimum exhibition period prescribed by the regulations must not be less than 30 days.

- (4) During that period, any person (including a public authority) may make a written submission to the Director-General concerning the matter.
- (5) The Director-General is to provide copies of submissions received by the Director-General or a report of the issues raised in those submissions to:
  - (a) the proponent, and
  - (b) if the State significant infrastructure will require an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—the Department responsible to the Minister for the Environment, and
  - (c) any other public authority the Director-General considers appropriate.
- (6) The Director-General may require the proponent to submit to the Director-General:
  - (a) a response to the issues raised in those submissions, and
  - (b) a preferred infrastructure report that outlines any proposed changes to the State significant infrastructure to minimise its environmental impact or to deal with any other issue raised during the assessment of the application concerned.
- (7) If the Director-General considers that significant changes are proposed to the nature of the State significant infrastructure, the Director-General may make the preferred infrastructure report available to the public.

**115ZA Director-General's environmental assessment report**

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

**115ZB Giving of approval by Minister to carry out project**

- (1) If:

(a) the proponent makes an application for the approval of the Minister under this Part to carry out State significant infrastructure, and

(b) the Director-General has given his or her report on the State significant infrastructure to the Minister,

the Minister may approve or disapprove of the carrying out of the State significant infrastructure.

(2) The Minister, when deciding whether or not to approve the carrying out of State significant infrastructure, is to consider:

(a) the Director-General's report on the infrastructure and the reports, advice and recommendations contained in the report, and

(b) any advice provided by the Minister having portfolio responsibility for the proponent, and

(c) any findings or recommendations of the Planning Assessment Commission following a review in respect of the State significant infrastructure.

(3) State significant infrastructure may be approved under this Part with such modifications of the infrastructure or on such conditions as the Minister may determine.

### **115ZC Biobanking—special provisions**

(1) The Minister may approve State significant infrastructure subject to a condition that requires the proponent to acquire and retire (in accordance with Part 7A of the *Threatened Species Conservation Act 1995*) biodiversity credits of a number and class (if any) specified by the Minister in the approval. This subsection applies whether or not a biobanking statement under Part 7A of that Act was obtained in respect of the infrastructure.

(2) The Minister may approve an arrangement under which:

(a) the retirement of some or all of the biodiversity credits is deferred pending the completion of any rehabilitation or restoration action proposed to be taken on the site of the State significant infrastructure, after the infrastructure has been substantially completed, that will restore or improve the biodiversity values affected by the infrastructure, and

(b) the biodiversity credits the retirement of which is deferred pending the completion of those actions are required to be transferred to the Minister administering the *Threatened Species Conservation Act 1995*.

(3) Division 7 of Part 7A of the *Threatened Species Conservation Act 1995* applies in respect of any such arrangement as if it were a deferred retirement arrangement

approved under that Division.

- (4) If a biobanking statement was obtained in respect of State significant infrastructure, the Minister may approve the infrastructure subject to a condition that requires the proponent to comply with any conditions of the biobanking statement.

**Note—**

The conditions of a biobanking statement may require the proponent to retire biodiversity credits in respect of the infrastructure in order to ensure that it maintains or improves biodiversity values, or to carry out other onsite measures to minimise any negative impact of the infrastructure on biodiversity values.

- (5) A person cannot appeal to the Court in respect of a condition imposed by the Minister under subsection (4).

## **Division 3 Staged infrastructure applications**

### **115ZD Staged infrastructure applications**

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

### **115ZE Status of staged infrastructure applications and approvals**

- (1) The provisions of or made under this or any other Act relating to applications for approval and approvals under this Part apply, except as otherwise provided by or under this or any other Act, to a staged infrastructure application and an approval granted on the determination of any such application.
- (2) An approval granted on the determination of a staged infrastructure application for infrastructure does not have any effect to the extent that it is inconsistent with the

determination of any further application for approval in respect of that infrastructure.

## **Division 4 Application of other provisions of this and other Acts**

### **115ZF Application of other provisions of Act**

- (1) Part 4 and Part 5 do not, except as provided by this Part, apply to or in respect of State significant infrastructure (including the declaration of the infrastructure as State significant infrastructure and any approval or other requirement under this Part for the infrastructure).
- (2) Part 3 and environmental planning instruments do not apply to or in respect of State significant infrastructure, except that:
  - (a) they apply to the declaration of infrastructure as State significant infrastructure or as critical State significant infrastructure (and to the declaration of development that does not require consent), and
  - (b) they apply in so far as they relate to section 28, and for that purpose a reference in that section to enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent granted under this Act is to be construed as a reference to enabling State significant infrastructure to be carried out in accordance with an approval granted under this Part.
- (3) Divisions 6 and 6A of Part 4 apply to State significant infrastructure that is not carried out by or on behalf of a public authority (and to the giving of approval for the carrying out of any such infrastructure under this Part) in the same way as they apply to development and the granting of consent to the carrying out of development under Part 4, subject to any necessary modifications and any modifications prescribed by the regulations.
- (4) Division 2A of Part 6 does not apply to critical State significant infrastructure.
- (5) The regulations may make provision for or with respect to the application to State significant infrastructure of the provisions (with or without modification) of section 81A, section 109M or any other provision of this Act relating to the issue of subdivision certificates.
- (6) Section 109R applies to approved State significant infrastructure.

### **115ZG Approvals etc legislation that does not apply**

- (1) The following authorisations are not required for approved State significant infrastructure (and accordingly the provisions of any Act that prohibit an activity without such an authority do not apply):
  - (a) the concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister

- administering that Part of that Act,
- (b) a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*,
  - (c) an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*,
  - (d) an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*,
  - (e) an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act repealed by that Act) to clear native vegetation or State protected land,
  - (f) a bush fire safety authority under section 100B of the *Rural Fires Act 1997*,
  - (g) a water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *Water Management Act 2000*.
- (2) Division 8 of Part 6 of the *Heritage Act 1977* does not apply to prevent or interfere with the carrying out of approved State significant infrastructure.
- (3) The following directions, orders or notices cannot be made or given so as to prevent or interfere with the carrying out of approved critical State significant infrastructure:
- (a) an interim protection order (within the meaning of the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995*),
  - (b) an order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995* or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*,
  - (c) a remediation direction under Division 3 (Remediation directions) of Part 6A of the *National Parks and Wildlife Act 1974*,
  - (d) an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*,
  - (e) an order under section 124 of the *Local Government Act 1993*.
- (4) A reference in this section to approved State significant infrastructure includes a reference to any investigative or other activities that are required to be carried out for the purpose of complying with any environmental assessment requirements under this Part in connection with an application for approval to carry out the State significant infrastructure.



### **115ZH Approvals etc legislation that must be applied consistently**

- (1) An authorisation of the following kind cannot be refused if it is necessary for carrying out approved State significant infrastructure and is to be substantially consistent with the approval under this Part:
  - (a) an aquaculture permit under section 144 of the *Fisheries Management Act 1994*,
  - (b) an approval under section 15 of the *Mine Subsidence Compensation Act 1961*,
  - (c) a mining lease under the *Mining Act 1992*,
  - (d) a production lease under the *Petroleum (Onshore) Act 1991*,
  - (e) an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act),
  - (f) a consent under section 138 of the *Roads Act 1993*,
  - (g) a licence under the *Pipelines Act 1967*.
- (2) This section does not apply to or in respect of:
  - (a) an application for the renewal of an authorisation or a renewed authorisation, or
  - (b) an application for a further authorisation or a further authorisation following the expiry or lapsing of an authorisation, or
  - (c) in the case of an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—any period after the first review of the licence under section 78 of that Act.
- (3) A reference in this section to an authorisation or approval includes a reference to any conditions of the authorisation or approval.
- (4) This section applies to a person, court or tribunal that deals with an objection, appeal or review conferred on a person in relation to an authorisation in the same way as it applies to the person giving the authorisation.

## **Division 5 Miscellaneous**

### **115ZI Modification of Minister's approval**

- (1) In this section:

**Minister's approval** means an approval to carry out State significant infrastructure under this Part, and includes an approval granted on the determination of a staged infrastructure application.

**modification** of an approval means changing the terms of the approval, including revoking or varying a condition of the approval or imposing an additional condition on the approval.

- (2) The proponent may request the Minister to modify the Minister's approval for State significant infrastructure. The Minister's approval for a modification is not required if the infrastructure as modified will be consistent with the existing approval under this Part.
- (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.

**115ZJ Validity of action under this Part**

- (1) The validity of an approval or other decision under this Part cannot be questioned in any legal proceedings in which the decision may be challenged except those commenced in the Court within 3 months after public notice of the decision was given.
- (2) The only requirement of this Part that is mandatory in connection with the validity of an approval of State significant infrastructure is a requirement that an environmental impact statement with respect to the infrastructure is made publicly available under this Part.
- (3) Any infrastructure that has been approved (or purports to be approved) by the Minister under this Part is taken to be State significant infrastructure to which this Part applies, and to have been such infrastructure for the purposes of any application or other matter under this Part in relation to the infrastructure.

**115ZK Third-party appeals and judicial review—critical State significant infrastructure**

- (1) In this section:

**breach** has the meaning given by Division 3 of Part 6.

**the judicial review jurisdiction** of the Court means the jurisdiction conferred on the Court under section 20 (2) of the [Land and Environment Court Act 1979](#).

**the third-party appeal provisions** means Division 3 of Part 6 of this Act and sections 252 and 253 of the [Protection of the Environment Operations Act 1997](#).

- (2) The third-party appeal provisions do not apply in relation to the following (except in relation to an application to the Court made or approved by the Minister):

- (a) a breach of this Act arising under this Part in respect of critical State significant infrastructure, including the declaration of the development as State significant infrastructure (and as critical State significant infrastructure) and any approval or other requirement under this Part for the infrastructure,
  - (b) a breach of any conditions of an approval under this Part for critical State significant infrastructure,
  - (c) a breach of this or any other Act arising in respect of the giving of an authorisation of a kind referred to in section 115ZH (1) for critical State significant infrastructure (or in respect of the conditions of such an authorisation).
- (3) The conditions of approval under this Part for critical State significant infrastructure are conditions that may only be enforced by or with the approval of the Minister (whether under the third-party appeal provisions, the judicial review jurisdiction of the Court or in any other proceedings).
- (4) The third-party appeal provisions and the judicial review jurisdiction of the Court are subject to the provisions of section 115ZJ.

**115ZL Miscellaneous provisions relating to approvals under this Part**

- (1) The following documents under this Part in relation to State significant infrastructure are to be made publicly available by the Director-General in accordance with the regulations:
- (a) applications to carry out State significant infrastructure,
  - (b) environmental assessment requirements for State significant infrastructure,
  - (c) environmental impact statements placed on public exhibition and responses provided to the Director-General by the proponent after the end of the public exhibition period,
  - (d) environmental assessment reports of the Director-General to the Minister,
  - (e) any advice, recommendations or reports received from the Planning Assessment Commission,
  - (f) approvals to carry out State significant infrastructure given by the Minister,
  - (g) requests for modifications of approvals given by the Minister and any modifications made by the Minister,
  - (h) any reasons given to the proponent by the Minister as referred to in subsection (2),
  - (i) any other matter prescribed by the regulations.

- (2) The Minister is to give reasons to the proponent for a decision:
  - (a) not to approve State significant infrastructure under this Part, or
  - (b) to modify the State significant infrastructure for which the proponent has sought approval under this Part.
- (3) An approval under this Part may be subject to a condition that it lapses on a specified date unless specified action with respect to the approval has been taken (such as the commencement of work on the infrastructure). Any such condition may be modified to extend the lapsing period.
- (4) An approval under this Part may be surrendered, subject to and in accordance with the regulations, by any person entitled to act on the approval.
- (5) A condition of the approval of State significant infrastructure under this Part may require any one or more of the following:
  - (a) the surrender under this section of any other approval under this Part (or under Part 3A) relating to the infrastructure or the land concerned,
  - (b) the surrender under section 104A of any development consent relating to the infrastructure or the land concerned,
  - (c) the surrender, subject to and in accordance with the regulations, of a right conferred by Division 10 of Part 4 relating to the infrastructure or the land concerned.

#### **115ZM Regulations for purposes of Part**

The regulations may make provision for or with respect to the approval of State significant infrastructure under this Part and to approved State significant infrastructure, including:

- (a) the requirements and procedures for making applications for approvals under this Part, and
- (b) requiring owners of land on which State significant infrastructure is proposed to be carried out to consent to applications for approvals under this Part, and
- (c) the amendment of applications for approvals under this Part, and
- (d) the preparation, notification and modification of requirements for environmental assessment of State significant infrastructure, and
- (e) the requirements for environmental impact statements under this Part, and
- (f) the fees for applications and the exercise of functions under this Part, and
- (g) requiring the New South Wales Aboriginal Land Council to consent to applications for

approvals under this Part on land owned by Local Aboriginal Land Councils, if the consent of the Local Aboriginal Land Council concerned is required as owner of the land, and

- (h) providing for public exhibition, notification and public registers of applications for approvals under this Part (or for the modification of approvals) and of the determination of those applications, and
- (i) the effect of the revocation of the declaration of development as State significant infrastructure.

## **Part 5A**

### **116A-116F (Repealed)**

**116G, 116GA** (Renumbered as secs 109R, 109S)

### **116H (Repealed)**

## **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 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 planning proposal 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, and
  - (c) to provide the Minister, in the manner and at the times specified in the direction, with reports, containing such information as the Minister may direct, on the council's performance in relation to planning and development matters.

(2A) A direction under subsection (2):

- (a) may be given to a particular council or to councils generally, and
- (b) may require the inclusion in planning proposals of provisions to achieve or give effect to particular principles, aims, objectives or policies, and
- (c) may require planning proposals to be strictly consistent or substantially consistent with the terms of the direction (or provide for the circumstances in which an inconsistency can be justified).

Any such direction may be given to councils generally by its publication in the Gazette or on a website maintained by the Department (or both).

- (2B) A reference to a council in subsections (2) and (2A) includes a reference to a relevant planning authority under Division 4 of Part 3 that is not a council.
- (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.
- (4A) Before giving a direction under subsection (2) (c), the Minister is to consult with the Local Government and Shires Associations of New South Wales and any other industry organisation the Minister considers to be relevant, in relation to the information that the Minister is proposing to seek. This requirement is in addition to the requirement under subsection (4).
- (5) A local environmental plan (or any planning proposal or purported plan) cannot in any court proceedings be challenged, reviewed, called into question, prevented from being made or otherwise affected on the basis of anything in a direction under subsection (1) or (2).

**117A Inquiry into councils by Director-General of Department of Premier and Cabinet**

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

**117B Action that may be taken against council following investigation**

- (1) If the Building Professionals Board has made its final report of the results of an investigation under section 45 of the *Building Professionals Act 2005* in relation to a

council publicly available and is of the opinion that the council has not taken appropriate action about a matter investigated, the Board may:

- (a) make recommendations to the Director-General of the Department of Local Government as to the measures that it considers appropriate to be taken in relation to the matter, or
- (b) recommend to the Minister that the Minister take action against the council under this section.

**Note—**

Section 45 of the *Building Professionals Act 2005* enables the Building Professionals Board to investigate the work and activities of a council in its capacity as a certifying authority.

- (2) The Minister may, on the recommendation of the Board under this section and following consultation with the Minister administering the *Local Government Act 1993*, make an order suspending a council's authority to exercise all or specified functions of a certifying authority.
- (3) A council must comply with an order under this section that relates to the council.
- (4) Despite any other provision of this Act, a council that is the subject of an order must not exercise any function of a certifying authority while the council's authority to exercise that function is suspended by operation of the order.
- (5) An order does not operate to suspend a council's authority to exercise the functions of a certifying authority in relation to any matter being dealt with by the council as a certifying authority before the commencement of the order, unless the order provides otherwise.
- (6) An order may contain provisions of a savings or transitional nature consequent on the suspension contained in the order.
- (7) Without limiting subsection (6), an order may contain provisions for or with respect to the following:
  - (a) the way in which any pending matter being dealt with by the relevant council as a certifying authority is to be completed, including, for example, enabling the council to complete any such matter or providing for the matter to be completed by an accredited certifier,
  - (b) directing any fee paid to the council to act as a certifying authority in relation to any pending matter to be refunded,
  - (c) directing the council to pay any fees required to be paid to an accredited certifier to complete any pending matter being dealt with by the council as a certifying authority.

- (8) The Minister must revoke an order if satisfied that the relevant council has implemented measures to address the matters that led to the making of the order.
- (9) Nothing prevents the Minister from amending an order made under this section by another order, including amending the first order to change the functions of a certifying authority to which the first order relates.
- (10) An order under this section must be in writing and published in the Gazette and takes effect on the day on which it is published in the Gazette or on a later day specified in the order.
- (11) Section 109E (1AA) does not require a council to accept an appointment as principal certifying authority if the council would contravene subsection (4) by accepting the appointment.
- (12) An order under this section may be made whether or not any action has been taken by the Minister under section 118 in relation to the exercise of all or any of the functions of the council concerned.

## **Division 1AA Planning administrators and panels**

### **117C Definitions**

In this Division:

***planning administrator*** means a person appointed as a planning administrator under section 118.

### **118 Appointment of planning administrator, planning assessment panel or regional panel**

- (1) The Minister may appoint a planning administrator, a planning assessment panel or a regional panel (or all of them) to exercise functions of a council if:
  - (a) the Minister is of the opinion that the council has failed to comply with its obligations under the planning legislation, or
  - (b) the Minister is of the opinion that the performance of a council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters, the time taken or in any other respect, or
  - (c) the council agrees to the appointment, or
  - (d) a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988* recommends that consideration be given to the appointment because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of functions conferred or imposed on the council by or under this Act.



- (2) A planning administrator may be appointed to exercise all or any particular function or class of functions of the council under this Act.
- (3) A planning assessment panel or regional panel may be appointed to exercise only all or any particular function or class of functions of the council:
  - (a) as a consent authority, or
  - (b) in relation to making of environmental planning instruments under Part 3, or under Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993*, or
  - (c) in relation to the preparation, making and approval of development control plans, or
  - (d) in relation to the preparation and approval of contributions plans.
- (4) A planning assessment panel or regional panel may not exercise the functions of a council for a continuous period of more than 5 years.
- (5) If a planning assessment panel exercises the functions of a council for a continuous period of more than 2 years, the Minister is, as soon as practicable after 2 years after the date on which the planning assessment panel was appointed, to conduct a review of the appointment and functions of the planning assessment panel.
- (6) A review under subsection (5) is to be conducted by the Minister in consultation with the Minister for Local Government, the Local Government and Shires Associations of New South Wales and any other industry organisation that the Minister considers to be relevant.
- (7) A planning administrator or planning assessment panel is to be appointed by order of the Minister published in the Gazette or on the NSW legislation website.
- (7A) Functions are to be conferred on a regional panel under this section by order of the Minister published in the Gazette or on the NSW legislation website.
- (7B) Before appointing a planning administrator or planning assessment panel, or conferring functions under this section on a regional panel, the Minister must notify the council concerned in writing of the proposed action (including the reasons for the proposed action) and request the council to show cause why the action should not be taken.
- (7C) The Minister must consider any written submissions made by the council within 21 days of notice being given under subsection (7B) and must not take action under this section earlier than 21 days after the notice is given.
- (8) Before appointing a planning administrator or a planning assessment panel, or conferring functions on a regional panel under this section, the Minister is to obtain the concurrence of the Minister for Local Government.

- (9) The Minister may appoint a planning administrator or a planning assessment panel, or confer functions on a regional panel under this section, for a reason set out in subsection (1) (b) only if the Minister has, by order published in the Gazette or on the NSW legislation website, provided heads of consideration for the exercise of power under subsection (1) (b), and has taken any of those heads of consideration that are relevant into account.

**Editorial note—**

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

- (10) The Minister may take action under this section in the circumstances specified in subsection (1) (d) 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.
- (11) The Minister must, as soon as reasonably practicable after appointing a planning administrator or a planning assessment panel, or conferring functions on a regional panel under this section, make the reasons for that appointment publicly available.

- (12) In this section:

**failure to comply with obligations under the planning legislation** includes:

- (a) a failure to carry into effect or enforce the provisions of this Act, an environmental planning instrument or a direction under section 55, 94E or 117, or
- (b) a failure to comply with the requirements of the staged repeal program under section 33B with respect to the preparation or making of a replacement local environmental plan, or
- (c) without limiting paragraph (a), a failure to comply with a determination under section 56, or
- (d) without limiting paragraph (a), a failure to provide access to and the use of staff and facilities to the Planning Assessment Commission or a regional panel as referred to in section 23N (1).

**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.

### **118AA Planning assessment panels**

- (1) The bodies listed in Part 1 of Schedule 5B from time to time are established by this Act as planning assessment panels.
- (2) A planning assessment panel is a body corporate with the corporate name specified in

Part 1 of Schedule 5B.

- (3) A planning assessment panel is a statutory body representing the Crown and has the status, privileges and immunities of the Crown.
- (4) A planning assessment panel is to consist of such members (being not less than 3 and not more than 5) as are appointed by the Minister.
- (5) The members of the planning assessment panel are to be persons who together have, in the opinion of the Minister, relevant skills and knowledge in planning and development matters.
- (6) The Minister is to appoint a member of the planning assessment panel as the chairperson of the planning assessment panel.
- (7) Part 2 of Schedule 5B has effect with respect to the members of planning assessment panels.
- (7A) The regulations may make provision for or with respect to the procedures of planning assessment panels.
- (8) A planning assessment panel is, in the exercise of its functions, subject to the control and direction of the Minister.
- (9) A planning assessment panel is to provide the Minister with such information and material as the Minister may require in relation to its policies, programs and procedures.
- (10) Despite subsection (8), a planning assessment panel is not subject to the control of the Minister in determining a development application.
- (11) The Minister may, by order published on the NSW legislation website, amend Part 1 of Schedule 5B for the purpose of:
  - (a) establishing a planning assessment panel, or
  - (b) abolishing a planning assessment panel, or
  - (c) changing the name of a planning assessment panel.
- (12) Any such order may contain savings and transitional provisions.

**118AB Functions of planning administrators or panels**

- (1) During the period of appointment, the planning administrator, planning assessment panel or regional panel:
  - (a) is to exercise the functions of the council under this Act that are specified in the order of appointment, and

- (b) is, in the exercise of those functions, taken to be the council, and
  - (c) is to exercise those functions to the exclusion of the council except to the extent that the order of appointment provides otherwise, and
  - (d) is, in the exercise of those functions, to give priority to particular functions to the extent that the order of appointment so provides.
- (2) Despite subsection (1), a planning administrator or planning assessment panel is not to enter into contracts in the exercise of the planning administrator's or panel's functions except:
- (a) with the consent of the Minister and the concurrence of the Minister for Local Government, or
  - (b) in the case of contracts for the appointment of staff—with the authority conferred by a regulation made under section 118AF.
- (3) Subsection (1) has effect even if the appointment of the planning administrator or panel is subsequently found not to have been validly made.

**118AC Costs of planning administrator or planning assessment panel**

- (1) A council, the functions of which are exercised by a planning administrator or planning assessment panel, is to pay to the Director-General out of the council's consolidated fund, the remuneration and costs and expenses of the planning administrator or planning assessment panel.
- (2) The Minister may do either or both of the following:
- (a) exempt a council from payment of all or part of the remuneration and costs and expenses of the planning administrator or planning assessment panel,
  - (b) resolve any dispute as to the amount of any such remuneration, costs or expenses.

**118AD Council to assist planning administrator or panel**

- (1) A council must, if directed to do so by the Minister, provide any of the following with such staff, facilities and documents as are specified in the direction:
- (a) a planning administrator, planning assessment panel or regional panel appointed to exercise functions of the council,
  - (b) a staff member of any such planning administrator, planning assessment panel or regional panel,
  - (c) a member of any such panel.

- (2) A member of a council, or a member of staff of a council, must not obstruct any of the persons in subsection (1) (a)-(c) in the exercise of his or her functions under this Division.

Maximum penalty: 10 penalty units.

- (2A) The general manager of a council must carry out any reasonable direction of the planning administrator or planning assessment panel relating to functions of the council being exercised by the planning administrator or panel.

Maximum penalty: 10 penalty units.

- (3) Before giving a direction under subsection (1), the Minister is to consult with the Minister for Local Government.

#### **118AE Annual report on activities of planning administrators and planning assessment panels**

The Director-General is, in the annual report of the Department, to report on the activities of planning administrators and planning assessment panels during the period covered by the annual report, including:

- (a) the financial activities of planning administrators and planning assessment panels, and
- (b) the exercise of council functions by planning administrators and planning assessment panels.

#### **118AF Regulations**

The regulations may make provision for or with respect to the appointment and functions of a planning administrator, planning assessment panel or regional panel and, in particular, for or with respect to:

- (a) the accommodation, if any, to be provided at the offices of the council for the planning administrator, planning assessment panel or regional panel and any other persons assisting the planning administrator, planning assessment panel or regional panel in the exercise of the planning administrator's, planning assessment panel's or regional panel's functions, and
- (b) the appointment of staff by the planning administrator, planning assessment panel or regional panel to assist in the exercise of the planning administrator's, planning assessment panel's or regional panel's functions.

#### **118AG Protection for exercise of certain functions by Minister**

- (1) This section applies to any function (a ***protected function***) conferred or imposed on the Minister (including a delegate of the Minister) relating to the appointment of a planning administrator or planning assessment panel, or the conferral of functions on

a regional panel, under this Division.

- (2) The exercise by the Minister of any protected function may not be:
- (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
  - (b) restrained, removed or otherwise affected by any proceedings.
- (3) Without limiting subsection (2), that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by the Minister (including a delegate of the Minister), with the provisions of this Division or the rules of natural justice (procedural fairness).
- (4) Accordingly, no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by the Minister (including a delegate of the Minister), with those provisions or with those rules so far as they apply to the exercise of any protected function.
- (5) This section has effect despite any provision of this Act or other legislation or any other law (whether written or unwritten).

- (6) In this section:

**exercise** of functions includes:

- (a) the purported exercise of functions, and
- (b) the non-exercise or improper exercise of functions, and
- (c) the proposed, apprehended or threatened exercise of functions.

**proceedings** includes:

- (a) proceedings for an order under section 124, and
- (b) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (c) without limiting paragraph (b), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the [Supreme Court Act 1970](#).

## **Division 1A Local enforcement 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), (2A) (Repealed)

(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 under this Act and the regulations as the principal certifying authority with respect to the development.

(2C) Subject to the regulations, this Division (other than section 118BA) 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 to exercise the council'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.

### **118BA Power of authorised persons to require answers and record evidence**

(1) A person authorised to enter premises under this Division (***an authorised person***) may require an accredited certifier, a person carrying out building work or subdivision work or any other person whom the authorised person suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably

required to enable the council concerned to exercise its functions under this Act to answer questions in relation to those matters.

- (2) An authorised person may require a corporation to nominate a director or officer of the corporation who is authorised to represent the corporation for the purposes of answering questions under this section.
- (3) An authorised person may, by notice in writing, require a person referred to in subsection (1) to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (4) The place and time at which a person may be required to attend under subsection (3) is to be:
  - (a) a place and time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the authorised person that is reasonable in the circumstances.
- (5) An authorised person may cause any questions and answers to questions given under this section to be recorded if the authorised person has informed the person who is to be questioned that the record is to be made.
- (6) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised person.
- (7) A copy of any such record must be provided by the authorised person to the person who is questioned as soon as practicable after it is made.
- (8) A record may be made under this section despite the provisions of any other law.

#### **118C Notice of entry**

- (1) Before a person authorised to enter premises under this Division does so, the council 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 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 in accordance with this section.
- (2) The authority of the council:
  - (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.
- (2) The council must give notice of the entry to such persons or authorities as appear to the council 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 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 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 council requires any work to be carried out on or in the premises, the council may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.

### **118H Compensation**

A council must pay compensation for any damage caused by any person authorised by the council 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 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 for the purposes of this section may apply to an authorised officer 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 officer 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) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, 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 officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **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 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**

- (1) A person must not:
- (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an authorised person under this Division, or
  - (b) wilfully delay, hinder or obstruct an authorised person in the exercise of the authorised person's functions under this Division, or
  - (c) furnish an authorised person with information that the person knows (or ought reasonably to know) is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

- (2) Section 122U applies to and in respect of:

- (a) an offence under subsection (1) of failing or refusing to comply with a requirement to furnish information or answer a question under this Division in the same way as it applies to an offence of failing or refusing to comply with a requirement to furnish information or answer a question under Division 2C, and
- (b) a requirement to furnish information or answer a question under this Division in the same way as it applies to a requirement to furnish information or answer a question under Division 2C.

## **Division 1B**

### **1180-118R (Repealed)**

## **Division 2 Settlement of disputes**

### **119-120A (Repealed)**

### **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 member of the Planning Assessment Commission to hold an inquiry and make a report to the Premier or the Minister with respect to that dispute or may himself or herself 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 Definitions

In this Division:

**consent authority** includes, in the case of a project to which Part 3A applies or in the case of State significant infrastructure, the Minister.

**development consent** includes, in the case of a project to which Part 3A applies, an approval under that Part to carry out the project and also includes, in the case of State significant infrastructure, an approval under Part 5.1 to carry out the infrastructure.

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

### 121B Orders that may be given by consent authority or by Minister etc

- (1) An order may be given to a person by:

- (aa) the Minister or the Director-General (but only in connection with a project to which Part 3A applies, in connection with State significant infrastructure or in connection with development for which the Minister or Director-General is or has been the consent authority), or
- (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? To whom?</b>	
1 To cease using premises for a purpose specified in the order	<ul style="list-style-type: none"> <li>(a) Premises are being used for a purpose that is prohibited</li> <li>(b) Premises are being used for a purpose for which development consent is required but has not been obtained</li> <li>(c) Premises are being used in contravention of the conditions of a development consent</li> </ul>	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	<p>(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</p> <p>(b) The advertisement is displayed contrary to a provision made by or under this Act</p> <p>(c) The advertising structure is erected contrary to a provision made by or under this Act</p>	<p>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</p>
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	<p>(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</p> <p>(b) Maintenance or use of the premises constitutes a significant fire hazard</p>	<p>Owner of premises or, in the case of a place of shared accommodation, the owner or manager</p>

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
13A	(Repealed)		
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>

18	To do or refrain from doing any act to remedy or restrain a breach of Part 3A or Part 5.1 or of an approval under that Part	The breach has occurred, is occurring or is likely to occur	The person who caused, is causing or is likely to cause the breach, or the person entitled to act on the approval
19	To cease carrying out specified building work or subdivision work	<p>(a) Building work or subdivision work is being carried out in contravention of this Act</p> <p>(b) Building work or subdivision work is being carried out that affects the support of adjoining premises</p>	Owner of land or any person apparently engaged in carrying out the building work or subdivision work

(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).

(3) An order under item 18 of the Table to subsection (1) may only be given by the Minister or the Director-General.

### 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*.

### 121CA Compliance cost notices

(1) A person (***the relevant authority***) who gives an order under this Division to another person may, by notice in writing served on the other person, require the other person to pay all or any reasonable costs and expenses incurred by the relevant authority in connection with:

- (a) monitoring action under the order, and

- (b) ensuring that the order is complied with, and
  - (c) any other associated matters.
- (2) A notice under subsection (1) (**a compliance cost notice**) is to specify the amount required to be paid and a reasonable period within which the amount is to be paid or, if the regulations prescribe the period to be allowed for payment, that period.
- (3) The relevant authority may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (4) If the person given a compliance cost notice complies with the notice but was not the person who was responsible for the situation giving rise to the issue of the notice, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who was responsible.
- (5) The regulations may make provision for or with respect to the following:
- (a) the issue of compliance cost notices,
  - (b) the form of compliance cost notices,
  - (c) limiting the amounts that may be required to be paid under compliance cost notices or the matters in respect of which costs and expenses may be required to be paid under those notices.

**121D Circumstances in which compliance with sections 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 or No 19 in the Table to section 121B (1), or
- (b) an order given, and expressed to be given, in an emergency, or
- (c) an order given by the Minister or the Director-General in connection with a project to which Part 3A applies, or
- (d) an order given by the Minister or the Director-General in connection with State significant development or State significant infrastructure.

**121E Effect of compliance with sections 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 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.
- (5) **Notice to principal certifying authority** If a council proposes to give an order in relation to building work or subdivision work for which the council is not the principal certifying authority, the council must give the principal certifying authority 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 an



Australian legal practitioner 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 or approval 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 3A or Part 5.1 for approval or 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) but, except in the case of an order given by the Minister or the Director-General, only if the person to whom the order is given agrees to that modification.

**121ZG Revocation of orders**

- (1A) An order given by the Minister may be revoked by the Minister at any time, and an order given by the Director-General may be revoked by the Minister or the Director-General at any time.
- (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.

**121ZKA Appeals concerning compliance cost notices**

- (1) A person on whom a notice under section 121CA (**a compliance cost notice**) is served may appeal against the notice to the Local Court within 28 days after the service of the notice on the person.
- (2) If an appeal is lodged under section 121ZK against an order in relation to which a compliance cost notice has been issued:
- (a) an appeal may be lodged against the compliance cost notice in the same way as, and at the same time as, the appeal against the order, and
  - (b) the Court may deal with the appeal against the compliance cost notice at the same time as it deals with the appeal against the order.
- (3) On hearing an appeal against a compliance cost notice, the Local Court or the Court may:

- (a) revoke the notice, or
- (b) modify the notice, or
- (c) make any other order with respect to the notice as the Court thinks fit.

**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.

### **121ZQ Continuing effect of orders**

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

### **121ZR Special provisions relating to brothel closure orders**

- (1) **Definitions** In this section and section 121ZS:

**brothel closure order** means an order No 1 or No 15 under the Table to section 121B (1) to cease using premises as a brothel or in respect of the use of premises as a brothel, whether or not the order also prohibits the premises from being used for, or relates to the use of the premises for, any related sex uses.

**related sex uses** means the following:

- (a) the use of premises for the provision of sexual acts or sexual services in exchange for payment,
- (b) the use of premises for the provision of massage services (other than genuine remedial or therapeutic massage services) in exchange for payment,
- (c) the use of premises for the provision of adult entertainment involving nudity, indecent acts or sexual activity if the entertainment is provided in exchange for payment or if the entertainment is ancillary to the provision of other goods or services.

(2) **Natural justice requirements not applicable** A person who gives a brothel closure order is not required to comply with sections 121G-121K.

**Note—**

Sections 121G-121K provide, among other things, for notice of proposed orders. Sections 121L and 121N apply to brothel closure orders and provide for reasons for an order to be given to the person to whom an order is given as well as information about appeal rights.

(3) **Additional prohibitions may be included** A brothel closure order may also prohibit the use of the premises for specified related sex uses, if the use of the premises for the specified uses is a prohibited development or a development for which development consent is required but has not been obtained.

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

(5) **Period for compliance** A brothel closure order must specify a period of not less than 5 working days within which the order must be complied with.

**Note—**

An appeal against a brothel closure order may be made under section 121ZK.

(6) **Additional persons or bodies that may make brothel closure orders** In addition to the persons specified by section 121B, a brothel closure order may be made by a person or body exercising planning or regulatory functions in respect of the area in which the premises are situated and authorised by the Minister to make brothel closure orders.

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

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

premises as a brothel or for the specified related sex uses.

(8) **Appeals** Regulations may be made for or with respect to the following matters:

- (a) the conferral of jurisdiction on the Local Court with respect to appeals against brothel closure orders,
- (b) removing the right to appeal under section 121ZK if an appeal is made to the Local Court against a brothel closure order under the regulations,
- (c) the conferral of jurisdiction on the Land and Environment Court with respect to appeals from decisions of the Local Court on appeals against brothel closure orders,
- (d) the modification of provisions of the *Crimes (Appeal and Review) Act 2001* for the purposes of appeals referred to in paragraph (c).

(9) **Section prevails over Division** This section has effect despite any other provision of this Division.

**Note—**

Failure to comply with a brothel closure order is an offence (see section 125).

**121ZS Enforcement of brothel closure orders by cessation of utilities**

- (1) If a person fails to comply with a brothel closure order, the Local Court or the Land and Environment Court may, on the application of the person who gave the order, make an order (a **utilities order**) directing that a provider of water, electricity or gas to the premises concerned cease to provide those services.
- (2) An order may apply to the whole or part of premises.
- (3) A utilities order ceases to have effect on the date specified in the order, or 3 months after the order is made, whichever occurs first.
- (4) An application for a utilities order must not be made unless not less than 7 days notice of the proposed application is given to the following persons:
  - (a) any person to whom the brothel closure order was given,
  - (b) any provider of water, electricity or gas to the premises who is affected by the application,
  - (c) any owner or occupier of the premises.
- (5) An owner or occupier of premises, or a provider of water, electricity or gas to premises, who is affected by an application for a utilities order is entitled to be heard and represented in proceedings for the order.
- (6) In determining whether to make a utilities order, the court is to take into consideration

the following matters:

- (a) the effects of the failure to comply with the brothel closure order,
  - (b) the uses of the premises,
  - (c) the impact of the order on the owner, occupier or other users of the premises,
  - (d) whether the health or safety of any person, or of the public, will be detrimentally affected by the order,
  - (e) any other matter the court thinks appropriate.
- (7) A utilities order must not be made for premises, or any part of premises, used for residential purposes.
- (8) A provider of water, electricity or gas must comply with a utilities order, despite any other law or agreement or arrangement applying to the provision of water, electricity or gas to the premises, or part of premises, concerned.
- (9) No compensation is payable to any person for any damage or other loss suffered by that person because of the making or operation of a utilities order or this section.
- (10) A provider of water, electricity or gas must not, during a period that a utilities order is in force in relation to premises, or part of premises, require payment for the provision of water, electricity or gas services to the premises or part of premises (other than services related to the implementation of the order).
- (11) The Land and Environment Court or the Local Court may make a utilities order when it determines an appeal against a brothel closure order, if subsections (4) and (5) have been complied with.

## **Division 2B Monitoring and environmental audits—approved projects**

### **122A Application of Division**

- (1) This Division applies to the carrying out of a project approved under Part 3A.
- (1A) This Division also applies to the carrying out of State significant development that has development consent under Part 4 and to the carrying out of State significant infrastructure approved under Part 5.1. In this Division, any such development or infrastructure is referred to as a project.
- (2) This Division does not affect the other provisions of this Act.

### **122B Nature of monitoring and environmental audits**

- (1) For the purposes of this Division, **monitoring** of a project is the monitoring of the carrying out of the project to provide data on compliance with the approval of the

project or on the project's environmental impact.

- (2) For the purposes of this Division, an **environmental audit** of a project is a periodic or particular documented evaluation of an approved project to provide information to the proponent of the project and to the persons administering this Act on compliance with the approval of the project or on the project's environmental management or impact.
- (3) A reference in this section to compliance with the approval of a project includes a reference to compliance with:
  - (a) the conditions to which the approval of the project is subject, and
  - (b) the requirements of this Act and of relevant provisions of any other Act referred to in Division 4 of Part 3A.

**122C Minister may require monitoring or environmental audits by imposition of conditions on approved project**

- (1) The Minister may, by the imposition of conditions on the approval for a project, require monitoring or an environmental audit or audits to be undertaken to the satisfaction of the Minister by the proponent of the project.
- (2) A condition requiring monitoring or an environmental audit may be imposed at the time the approval for the project is given or at any other time by notice in writing to the proponent of the project.
- (3) Any such condition imposed by notice may be varied or revoked by a similar notice.

**122D Provisions relating to conditions for monitoring and environmental audits**

- (1) A condition requiring monitoring may require:
  - (a) the provision and maintenance of appropriate measuring and recording devices for the purposes of the monitoring, and
  - (b) the analysis, reporting and retention of monitoring data, and
  - (c) certification of the monitoring data (including the extent to which the terms and conditions of any approval have or have not been complied with).
- (2) A condition requiring an environmental audit must specify the purpose of the audit. Such a condition may require:
  - (a) the conduct of the audit by the proponent or by an independent person or body approved by the Minister or the Director-General (either periodically or on particular occasions), and
  - (b) preparation of written documentation during the course of the audit, and
  - (c) preparation of an audit report, and



- (d) certification of the accuracy and completeness of the audit report, and
- (e) production to the Minister of the audit report.

## **122E Offences**

- (1) **False or misleading information in monitoring or audit report** A person must not include information in (or provide information for inclusion in):
  - (a) a report of monitoring data, or
  - (b) an audit report produced to the Minister in connection with an environmental audit,if the person knows that the information is false or misleading in a material respect.
- (2) **Information not included in monitoring or audit report** The proponent of an approved project must not fail to include information in (or provide information for inclusion in):
  - (a) a report of monitoring data, or
  - (b) an audit report produced to the Minister in connection with an environmental audit,if the proponent knows that the information is materially relevant to the monitoring or audit.
- (3) **Retention of monitoring data or audit documentation** The proponent of an approved project must:
  - (a) retain any monitoring data in accordance with the relevant condition of the approval for at least 5 years after it was collected, and
  - (b) retain any documentation required to be prepared by the proponent in connection with an environmental audit for a period of at least 5 years after the audit report concerned was produced to the Minister, and
  - (c) produce during that period any such documentation on request to an authorised officer under Division 2C.
- (4) **Penalty** Despite section 126, the maximum penalty for an offence under section 125 arising under this Division is:
  - (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
  - (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

### **122F Self-incriminatory information and use of information**

- (1) Information must be supplied by a person in connection with a report of monitoring or an environmental audit, and this Division applies to any such information that is supplied, whether or not the information might incriminate the person.
- (2) Any information in monitoring data or in an audit report or other documentation supplied to the Minister in connection with an environmental audit may be taken into consideration by the Minister and used for the purposes of this Act.
- (3) Without limiting the above, any such information:
  - (a) is admissible in evidence in any prosecution of the proponent of an approved project for any offence (whether under this Act or otherwise), and
  - (b) may be disclosed by the Minister by publishing it in such manner as the Minister considers appropriate.

## **Division 2C Departmental enforcement powers**

### **Subdivision 1 Preliminary**

#### **122G Purposes for which powers under Division may be exercised**

- (1) Powers may be exercised under this Division for the following purposes:
  - (a) for enabling the Minister or Director-General to exercise their functions under this Act,
  - (b) for determining whether there has been compliance with or a contravention of this Act, the regulations, any environmental planning instrument, any approval under Part 3A or Part 5.1 or any development consent under Part 4 or any document or requirement issued or made under this Act,
  - (c) for obtaining information or records for purposes connected with the administration of this Act,
  - (d) generally for administering this Act and securing the objects of this Act.
- (2) Powers are not to be exercised under this Division for the purpose only of investigating the exercise of the statutory functions of a council under this Act.
- (3) Nothing in this Division affects any function under any other part of this Act or under any other Act.

#### **122H Definitions: Division 2C**

In this Division:

***authorised officer*** means a person appointed under section 122I.

**occupier** of premises means the person who has the management or control of the premises.

**records** includes plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise).

#### **122I Appointment of authorised officers**

- (1) The Director-General may appoint any person (including a class of persons) as an authorised officer for the purposes of this Division.
- (2) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.
- (3) Every authorised officer is to be provided with an identification card as an authorised officer by the Director-General.
- (4) In the course of exercising the functions of an authorised officer under this Division, the officer must, if requested to do so by any person affected by the exercise of any such function, produce the officer's identification card to the person.

### **Subdivision 2 Powers of entry and search of premises**

#### **122J Powers of authorised officers to enter premises**

- (1) An authorised officer may enter:
  - (a) any premises at which the authorised officer reasonably suspects that any industrial, agricultural or commercial activities are being carried out—at any time during which those activities are being carried out there, and
  - (b) any other premises—at any reasonable time.
- (2) A power to enter premises conferred by this Subdivision authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.
- (3) Entry may be effected under this Subdivision by an authorised officer with the aid of such authorised officers, police officers or other persons as the authorised officer considers necessary and with the use of reasonable force.
- (4) Entry may be effected to any premises with the authority of a search warrant under section 122M.

#### **122K Entry into residential premises only with permission or warrant**

This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 122M.

### **122L Powers of authorised officers to do things at premises**

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Division, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any of the following:
  - (a) examine and inspect any works, plant or other article,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the authorised officer considers necessary,
  - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine and inspect any records,
  - (g) copy any records,
  - (h) seize anything that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
  - (i) do any thing that a person authorised by a council is empowered to do under Division 1A,
  - (j) do any other thing the authorised officer is empowered to do under this Division.
- (3) The power to seize anything connected with an offence includes a power to seize:
  - (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.

A reference to any such offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

### **122M Search warrants**

- (1) **Application for search warrant** An authorised officer may apply to an issuing officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that a provision of or made under this Act is being or has been contravened at any premises.

- (2) **Issue of search warrant** An issuing officer 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 officer named in the warrant:
- (a) to enter the premises, and
  - (b) to exercise any function of an authorised officer under this Division.
- (3) **Application of [Law Enforcement \(Powers and Responsibilities\) Act 2002](#)** Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) applies to a search warrant issued under this section.
- (4) **Definition** In this section:
- issuing officer** means an authorised officer within the meaning of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

#### **122N Assistance to be given to authorised officers**

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Division in connection with any premises.
- (2) The Director-General may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

#### **122O Care to be taken and compensation**

- (1) In the exercise of a power of entering or searching premises under this Subdivision, the authorised officer must do as little damage as possible.
- (2) The State must compensate all interested parties for any damage caused by an authorised officer in exercising a power of entering premises (but not any damage caused by the exercise of any other power), unless the occupier obstructed or hindered the authorised officer in the exercise of the power of entry.

### **Subdivision 3 Power to obtain information or records**

#### **122P Application of Subdivision**

This Subdivision applies whether or not a power of entry under this Division is being or has been exercised.

**122Q Requirement to provide information and records**

- (1) An authorised officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter within the responsibilities and functions of the Minister or Director-General under this Act.
- (2) A notice under this Subdivision must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

**122R Provisions relating to records**

- (1) A notice under this Subdivision may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The body or person to whom any record is furnished under this Subdivision may take copies of it.
- (3) If any record required to be furnished under this Subdivision is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

**122S Power of authorised officers to require answers and record evidence**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required in connection with any matter within the responsibilities and functions of the Minister or Director-General under this Act to answer questions in relation to those matters.
- (2) The Minister or Director-General may require a corporation to nominate a director or officer of the corporation who is authorised to represent the corporation for the purposes of answering questions under this section.
- (3) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (4) The place and time at which a person may be required to attend under subsection (3) is to be:
  - (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the

authorised officer that is reasonable in the circumstances.

- (5) An authorised officer may cause any questions and answers to questions given under this section to be recorded if the officer has informed the person who is to be questioned that the record is to be made.
- (6) A record may be made using sound recording apparatus or audio visual apparatus, or any other method determined by the authorised officer.
- (7) A copy of any such record must be provided by the authorised officer to the person who is questioned as soon as practicable after it is made.
- (8) A record may be made under this section despite the provisions of any other law.

## **Subdivision 4 General**

### **122T Criminal proceedings relating to compliance with requirements under this Division**

- (1) A person is not guilty of an offence under section 125 in respect of a neglect or failure to comply with a requirement made of the person under this Division if the person satisfies the court that the person had a lawful excuse for doing so.
- (2) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Division that the person knows is false or misleading in a material respect.
- (3) A person must not wilfully delay or obstruct an authorised officer in the exercise of the authorised officer's powers under this Division.
- (4) Despite section 126, the maximum penalty for an offence under section 125 arising under this Division is:
  - (a) in the case of a corporation—\$250,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
  - (b) in the case of an individual—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

### **122U Provisions relating to requirements to furnish records, information or answer questions**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Division to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A person is not excused from a requirement under this Division to furnish records or information or to answer a question on the ground that

the record, information or answer might incriminate the person or make the person liable to a penalty.

- (3) **Information or answer not admissible if objection made** However, any information furnished or answer given by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Division) if:
- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Records admissible** Any record furnished by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) **Further information** Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Division is not inadmissible on the ground:
- (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.

#### **122V Miscellaneous provisions relating to notices**

- (1) More than one notice under a provision of this Division may be given to the same person.
- (2) A notice given under this Division may be revoked or varied by a subsequent notice or notices (including by extending the time for compliance with the notice).
- (3) A notice may be given under this Division to a person in respect of a matter or thing even though the person is outside the State or the matter or thing occurs or is located outside the State, so long the matter or thing affects the environment of this State.

### **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,
  - (vi) a planning agreement referred to in section 93F.

### **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*.

#### **124AA 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.

### **124AB Proceedings relating to use of premises as brothel**

- (1) **Application** This section applies to proceedings before the Court to remedy or restrain a breach of this Act in relation to the use of premises as a brothel. Subsections (5) and (6) extend to any such proceedings in relation to all brothels within the meaning of the *Restricted Premises Act 1943*.
- (2) **Adjournments to obtain consent only in exceptional circumstances** The Court may not adjourn the proceedings under section 124 (3) unless it is of the opinion that the adjournment is justified because of the exceptional circumstances of the case. The fact that it is intended to lodge a development application, or that a development application has been made, is not by itself an exceptional circumstance.
- (3) **Time for making development application limited to 10 days** If the Court adjourns the proceedings under section 124 (3), the proceedings must be brought back before the Court if a development application is not made within 10 working days of the adjournment.
- (4) **Only one adjournment** The Court may make only one adjournment under section 124 (3) of particular proceedings.
- (5) **Finding may be made on circumstantial evidence** In any proceedings:
  - (a) the Court may rely on circumstantial evidence to find that particular premises are used as a brothel, and
  - (b) the Court may make such a finding without any direct evidence that the particular premises are used as a brothel.
- (6) However, the presence in any premises of articles or equipment that facilitate or encourage safe sex practices does not of itself constitute evidence of any kind that the premises are used as a brothel.

**Note—**

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

- (a) evidence relating to persons entering and leaving the premises (including number, gender and frequency) that is consistent with the use of the premises for prostitution,
- (b) evidence of appointments with persons at the premises for the purposes of prostitution that are made through the use of telephone numbers or other contact details that are publicly advertised,
- (c) evidence of information in books and accounts that is consistent with the use of the premises for prostitution,
- (d) evidence of the arrangement of, or other matters relating to, the premises, or the furniture, equipment or articles in the premises, that is consistent with the use of the premises for prostitution.

### **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).
- (4) In determining the sentence for a person who has previously been found guilty of an offence that arises from a failure to comply with a brothel closure order within the meaning of section 121ZR or the unlawful use of premises for the purposes of a brothel, a court must take into account the fact of the previous offence as an aggravating factor and is, accordingly, to impose a higher sentence than it would otherwise impose.

## 127 Proceedings for offences

- (1) Proceedings for an offence against this Act may be taken before the Local Court or before the Court in its summary jurisdiction.
- (2) Proceedings for an offence against the regulations may be taken before the Local Court.
- (3) If proceedings in respect of an offence against this Act are brought in the Local Court, 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 for an offence against this Act or the regulations may be commenced not later than 2 years after the offence was alleged to be committed.
- (5A) However, proceedings for any such offence may also be commenced within, but not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer within the meaning of Division 2C of Part 6.
- (5B) If subsection (5A) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an authorised officer is the date specified in the information or application, unless the contrary is established.
- (5C) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (6) (Repealed)
- (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) If the Minister has requested that a review be held by the Planning Assessment Commission with respect to the proposal, the Minister must not determine the application until after:
  - (a) the review has been held, and
  - (b) the Minister has considered the findings and recommendations of the Commission following the review.
- (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.

- (1A) The regulations may prescribe charges or fees, and prescribe the circumstances in which a person or body becomes liable for any such charge or fee, if the Minister, corporation, Department or Director-General carries out any research or investigation, prepares any report, study or instrument or does any other matter or thing in connection with the exercise of any statutory function under this Act, either at the request of the person or body or for the benefit of the person or body.

**Note—**

Such functions may include making an environmental planning instrument.

- (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, including a planning proposal for the proposed environmental planning instrument,
  - (b) the preparation or making of a development control plan,

- (c) the processing and determination of a development application and any application under Part 3A or Part 5.1,
  - (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.

### 146A Smoke alarms in buildings providing sleeping accommodation

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

and

- (b) the maintenance of smoke alarms installed in such buildings, and
- (c) prohibiting persons from removing or interfering with the operation of smoke alarms installed in such buildings.

- (2) Regulations made under this section may (without limitation) do any one or more of the following:
- (a) specify the types of buildings in which smoke alarms are to be installed,
  - (b) specify the types of smoke alarms to be installed,
  - (c) specify where a smoke alarm is to be located,
  - (d) specify the maintenance that may be required in relation to a smoke alarm that has been installed,
  - (e) specify circumstances in which development consent under Part 4 is not required in relation to the installation of a smoke alarm,
  - (f) specify circumstances in which the consent of an owners corporation (within the meaning of the *Strata Schemes Management Act 1996*) is not required in relation to the installation of a smoke alarm.

- (3) A person must not contravene a provision of a regulation made under this section.

Maximum penalty: 5 penalty units.

- (4) In this section:

**building** includes a manufactured home, a moveable dwelling or associated structure and includes a building erected before the commencement of this section.

#### **147 Disclosure of political donations and gifts**

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

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

**Note—**

This Act makes provision for planning applications to be referred to various bodies for advice or determination. Section 124A makes special provision where development consent is tainted by corruption. The *Local Government Act 1993* makes provision with respect to voting by local councillors with a conflict of interest in any matter before the council.

(2) In this section:

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

**Note—**

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

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

**relevant planning application** means:

- (a) a formal request to the Minister, a council or the Director-General to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site, or
- (b) a formal request to the Minister or the Director-General for development on a particular site to be made State significant development or State significant infrastructure or declared a project to which Part 3A applies, or
- (b1) an application for approval of State significant infrastructure (or for the modification of the approval for any such infrastructure), or
- (c) an application for approval of a concept plan or project under Part 3A (or for the modification of a concept plan or of the approval for a project), or
- (d) an application for development consent under Part 4 (or for the modification of a development consent), or
- (e) any other application or request under or for the purposes of this Act that is prescribed by the regulations as a relevant planning application,

but does not include:

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

regulations.

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

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

**Note—**

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

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

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

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

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

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

(b) all gifts made to any local councillor or employee of that council.

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

- (6) The disclosure of a reportable political donation or gift under this section is to be made:
- (a) in, or in a statement accompanying, the relevant planning application or submission if the donation or gift is made before the application or submission is made, or
  - (b) if the donation or gift is made afterwards, in a statement to the person to whom the relevant planning application or submission was made within 7 days after the donation or gift is made.
- (7) For the purposes of this section, a person has a financial interest in a relevant planning application if:
- (a) the person is the applicant or the person on whose behalf the application is made, or
  - (b) the person is an owner of the site to which the application relates or has entered into an agreement to acquire the site or any part of it, or
  - (c) the person is associated with a person referred to in paragraph (a) or (b) and is likely to obtain a financial gain if development that would be authorised by the application is authorised or carried out (other than a gain merely as a shareholder in a company listed on a stock exchange), or
  - (d) the person has any other interest relating to the application, the site or the owner of the site that is prescribed by the regulations.
- (8) For the purposes of this section, persons are associated with each other if:
- (a) they carry on a business together in connection with the relevant planning application (in the case of the making of any such application) or they carry on a business together that may be affected by the granting of the application (in the case of a relevant planning submission), or
  - (b) they are related bodies corporate under the [Corporations Act 2001](#) of the Commonwealth, or
  - (c) one is a director of a corporation and the other is any such related corporation or a director of any such related corporation, or
  - (d) they have any other relationship prescribed by the regulations.

- (9) The disclosure of reportable political donations under this section is to include disclosure of the following details of each such donation made during the relevant disclosure period:
- (a) the name of the party or person for whose benefit the donation was made,
  - (b) the date on which the donation was made,
  - (c) the name of the donor,
  - (d) the residential address of the donor (in the case of an individual) or the address of the registered or other official office of the donor (in the case of an entity),
  - (e) the amount (or value) of the donation,
  - (f) in the case of a donor that is an entity and not an individual—the Australian Business Number of the entity.

**Note—**

The above details are the details required to be disclosed of political donations under Part 6 of the [Election Funding and Disclosures Act 1981](#).

- (10) The disclosure of gifts under this section is to include disclosure of the following details of each such gift made during the relevant disclosure period:
- (a) the name of the person to whom the gift was made,
  - (b) the date on which the gift was made,
  - (c) the name of the person who made the gift,
  - (d) the residential address of the person who made the gift (in the case of an individual) or the address of the registered or other official office of the person who made the gift (in the case of an entity),
  - (e) the amount (or value) of the gift.
- (11) A person is guilty of an offence under section 125 in connection with the obligations under this section only if the person fails to make a disclosure of a political donation or gift in accordance with this section that the person knows, or ought reasonably to know, was made and is required to be disclosed under this section. The maximum penalty for any such offence is the maximum penalty under Part 6 of the [Election Funding and Disclosures Act 1981](#) for making a false statement in a declaration of disclosures lodged under that Part.
- (12) Disclosures of reportable political donations and gifts under this section are to be made available to the public on, or in accordance with arrangements notified on:
- (a) a website maintained by the Department (in the case of planning applications or

submissions made to the Minister or the Director-General), or

- (b) a website maintained by the council (in the case of planning applications or submissions made to that council).

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

- (13) This section applies to relevant planning applications or submissions made after the commencement of this section and, in relation to any such application or submission, extends to political donations or gifts made before that commencement.

#### **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 proposed 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, sibling, parent or child of the other person.

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

**Note—**

“De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

**148A (Repealed)**

**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 Australian legal practitioner 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**

Except as provided by this Act or the regulations, if this Act confers a right on a person to be heard, that person shall be entitled to be heard personally or by an Australian legal practitioner 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, or
- (c) by sending it by facsimile or electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person.
- (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 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 planning proposal that has been placed on public exhibition in accordance with Division 4 of Part 3 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 on the NSW legislation website, 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, 156 (Repealed)**

**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
  - (c1) the content, form, erection, maintenance and removal of signs relating to the carrying out of development or persons involved with the carrying out of development, or
  - (d) obligations on persons regarding fire safety, or
  - (d1) temporary structures, or
  - (d2) entertainment venues (including in connection with the existing use of premises), 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)), or
- (f) procedural matters in relation to the making of local environmental plans, or
- (g) the documents to be provided to, and the matters to be notified to, a consent authority, council or certifying authority under this Act.

(2) A provision of a regulation may:

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

or may do any combination of those things.

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

### **158 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 member of the Planning Assessment Commission, a joint regional planning panel or an independent hearing and assessment panel, or
- (d1) any committee referred to in section 22, or any member of such a committee, or
- (e) (Repealed)
- (f) any person acting under the direction of a person or body referred to in paragraph (a)-(d1),
- (g) (Repealed)

does not subject the Minister, the Director-General, a member of staff, a member, a panel member, 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 Planning Assessment Commission**

(Section 23B (5))

### **Part 1 General**

#### **1 Definitions**

In this Part:

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

**Commission** means the Planning Assessment Commission.

**member** means the chairperson or other member of the Commission.

### **Part 2 Members**

#### **2 Members**

- (1) The Commission is to consist of not less than 4 and not more than 9 members appointed by the Minister.
- (2) One member of the Commission is, in the instrument of appointment, to be appointed as chairperson of the Commission.
- (3) Each member is to have expertise in at least 1 of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.
- (4) In appointing a member of the Commission, the Minister is to have regard to the need to have a range of expertise represented among the Commission's members.

#### **3 Additional casual members**

The Minister may appoint additional members of the Commission for the purposes of exercising specific functions of the Commission. A casual member is not required to have expertise in an area referred to in clause 2 but is required to have expertise in an area relevant to the functions the member is to exercise.

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

- (1) For the purpose of carrying out any of its functions, the Commission is to be

constituted by 3 members. The regulations may prescribe circumstances in which the Commission may be constituted by more than 3 members or less than 3 members.

- (2) The members for the purpose of exercising a function of the Commission are, subject to any directions of the Minister, to be determined by the chairperson.
- (3) The Commission may, at any time, exercise by the same members or different members, one or more of its functions.
- (4) For the purpose of exercising any of its functions, the Commission is to be constituted by specified members, or members with specified qualifications or expertise, if a direction to that effect is given by the Minister.

## **5 Terms of office of members**

- (1) Subject to this Part and the regulations, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment.
- (2) The period under subclause (1) may be determined by reference to the occurrence of a specified event or the completion of the exercise of particular functions of the Commission.
- (3) A member is eligible to be re-appointed, but may not hold office as a member for more than 6 years in total.

## **6 Members may be full-time or part-time**

The Minister may appoint a member on either a full-time or part-time basis. The Minister may change the basis of the appointment during the member's term of office.

## **7 Remuneration**

- (1) A full-time member is entitled to be paid:
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.
- (2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **8 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or

- (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
  - (e) is absent from 3 consecutive meetings of the Commission of which reasonable notice has been given to the member personally or by post, except on leave granted by the Commission or unless the member is excused by the Commission for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.

## **9 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

## **10 Chairperson**

The chairperson vacates office as chairperson if he or she:

- (a) is removed from that office by the Minister, or
- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be a member of the Commission.

## **11 Disclosure of pecuniary interests**

- (1) If:
- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the Commission, and
  - (b) the interest appears to raise a conflict with the proper performance of the

member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.

- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:
  - (a) the member, or
  - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
  - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):
  - (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
  - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
  - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
- (4) A disclosure by a member at a meeting of the Commission that the member, or a spouse, de facto partner, relative, partner or employer of the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Commission.

- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Commission otherwise determines:
- (a) be present during any deliberation of the Commission with respect to the matter, or
  - (b) take part in any decision of the Commission with respect to the matter.
- (7) For the purposes of the making of a determination by the Commission under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Commission for the purpose of making the determination, or
  - (b) take part in the making by the Commission of the determination.
- (8) A contravention of this clause does not invalidate any decision of the Commission.

## 12 Effect of certain other Acts

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## Schedule 4 Joint Regional Planning Panels

(Section 23G (6))

### Part 1 General

#### 1 Definitions

In this Part:

***applicable council*** means the council of an area that is situated (wholly or partly) in a part of the State for which a regional panel is appointed.

***chairperson*** means the person appointed by the Minister as the chairperson of a joint

regional planning panel.

**council nominee** means a person nominated as a member of a regional panel by an applicable council.

**member** means the chairperson or other member of a regional panel.

**State member** means a member appointed by the Minister.

## Part 2 Members

### 2 Members

- (1) A regional panel is to consist of the following 5 members:
  - (a) 3 persons appointed by the Minister, each having expertise in at least 1 of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration,
  - (b) 2 council nominees of an applicable council, at least one of whom has expertise in planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.
- (2) One of the State members is to be appointed by the Minister as chairperson of the regional panel. The Minister is required to obtain the concurrence of the Local Government and Shires Associations of New South Wales to the appointment unless:
  - (a) the Associations fail to notify their concurrence or refusal to concur within 21 days of being requested to do so by the Minister, or
  - (b) the Associations have refused to concur in 2 different persons proposed by the Minister for appointment.
- (3) In appointing a State member, the Minister is to have regard to the need to have a range of expertise represented among the panel's members.
- (4) Each applicable council is to nominate 2 persons as council nominees for the purposes of the regional panel, at least one of whom has expertise in planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.
- (5) If an applicable council fails to nominate 1 or more council nominees, a regional panel is not required to include 2 council nominees for the purposes of exercising its functions in relation to the area of the council concerned.

### 3 Rotation of council nominees

- (1) For the purposes of exercising the functions of a regional panel in relation to a matter,

the council nominees appointed to the regional panel are to be those nominated by the applicable council for the land to which the matter relates.

- (2) Subject to this Part, a council nominee remains eligible to participate as a member of the regional panel for such period (not exceeding 3 years) as is specified in the nominee's instrument of nomination, but is eligible (if otherwise qualified) for re-nomination.

#### **4 Terms of office of State members**

- (1) Subject to this Part, a State member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) The period under subclause (1) may be determined by reference to the occurrence of a specified event.

#### **5 Basis of office**

The office of a member is a part-time office.

#### **6 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **7 Deputy chairperson**

- (1) The members of a regional panel may elect a State member to be the deputy chairperson of the regional panel.
- (2) The person may be elected for the duration of the person's term of office as a member or for a shorter term.

#### **8 Alternates**

- (1) The Minister may, from time to time, appoint a person to be the alternate of a State member, and may revoke any such appointment.
- (2) An applicable council may, from time to time, appoint a person to be the alternate of a member nominated by the council, and may revoke any such appointment.
- (3) In the absence of a member, the member's alternate may, if available, act in the place of the member.
- (4) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (5) A person while acting in the place of a member is entitled to be paid such



remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

- (6) A person may be appointed as the alternate of 2 or more members, but has only one vote at any meeting of the regional panel.

## **9 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister or applicable council, as the case requires, or
  - (d) in the case of a council nominee, is removed from office by an applicable council under this clause or by the Minister under subclause (2), or
  - (e) in the case of a State member, is removed from office by the Minister or by the Governor under Chapter 5 of the *Public Sector Employment and Management Act 2002*, or
  - (f) is absent from 3 consecutive meetings of the regional panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the panel or unless the member is excused by the panel for having been absent from those meetings, or
  - (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (h) becomes a mentally incapacitated person, or
  - (i) 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 a member from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.
- (3) The Minister may remove a State member from office for any or no reason and without notice.
- (4) An applicable council may remove any of its council nominees from office for any or

no reason and without notice.

#### **10 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

#### **11 Chairperson**

(1) The chairperson vacates office as chairperson if he or she:

- (a) is removed from that office by the Minister, or
- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be a member of the regional panel.

(2) The Minister may at any time remove the chairperson from office as chairperson for any or no reason and without notice.

#### **12 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the regional panel, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the regional panel.

(2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the member, or
- (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
- (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.

(3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):

- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or

- (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
  - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
- (4) A disclosure by a member at a meeting of the regional panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the regional panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the regional panel.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the regional panel otherwise determines:
- (a) be present during any deliberation of the panel with respect to the matter, or
  - (b) take part in any decision of the panel with respect to the matter.
- (7) For the purposes of the making of a determination by the regional panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the panel for the purpose of making the determination, or
  - (b) take part in the making by the panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the regional panel.

### **13 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

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

### **1 Definitions**

(1) In this Schedule:

**capital investment value** has the same meaning as in the regulations under this Act.

**coastal zone** has the same meaning as in the [Coastal Protection Act 1979](#).

**Crown development** means development carried out by or on behalf of the Crown (within the meaning of Division 4 of Part 4 of this Act).

**eco-tourist facility** means a building or place used for tourist and visitor accommodation, function centres or environmental facilities, that is located in a natural environment and is primarily used for activities involving education about, or the interpretation, cultural understanding or appreciation of, the natural environment.

**metropolitan coastal zone** means that part of the coastal zone between the northern boundary of the local government area of Newcastle City and the southern boundary of the local government area of Shellharbour City.

**rail infrastructure facilities** has the same meaning as it has in Division 15 of Part 3 of [State Environmental Planning Policy \(Infrastructure\) 2007](#).

**road infrastructure facilities** has the same meaning as it has in Division 17 of Part 3 of [State Environmental Planning Policy \(Infrastructure\) 2007](#).

**sensitive coastal location** means any of the following which occur within the coastal zone:

- (a) land within 100m above mean high water mark of the sea, a bay or an estuary,
- (b) a coastal lake,

- (c) a declared Ramsar wetland within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
- (d) a declared World Heritage property within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
- (e) land declared as an aquatic reserve under the *Fisheries Management Act 1994*,
- (f) land declared as a marine park under the *Marine Parks Act 1997*,
- (g) land within 100m of any of the following:
  - (i) the water's edge of a coastal lake,
  - (ii) land to which paragraph (c), (d), (e) or (f) applies,
  - (iii) land reserved under the *National Parks and Wildlife Act 1974*,
  - (iv) land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies,
- (h) residential land (within the meaning of *State Environmental Planning Policy No 26—Littoral Rainforests*) that is within a distance of 100m from the outer edge of the heavy black line on the series of maps held in the Department and marked "*State Environmental Planning Policy No 26—Littoral Rainforests (Amendment No 2)*".

**subdivision of land** does not include a boundary adjustment, a strata subdivision, or a community title subdivision associated with another development that has been approved.

- (2) Words and expressions in this Schedule have (subject to subclause (1)) the same meaning as they have in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

## 2 Excluded development

Development of a class or description otherwise set out in this Schedule is excluded from this Schedule if it is:

- (a) complying development, or
- (b) development for which development consent is not required, or
- (c) development that is State significant development, or
- (d) development for which a person or body other than a council is the consent authority,  
or
- (e) development within the area of the City of Sydney.

**3 General development over \$20 million**

Development that has a capital investment value of more than \$20 million.

**4 Council related development over \$5 million**

Development that has a capital investment value of more than \$5 million if:

- (a) a council for the area in which the development is to be carried out is the applicant for development consent, or
- (b) the council is the owner of any land on which the development is to be carried out, or
- (c) the development is to be carried out by the council, or
- (d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).

**5 Crown development over \$5 million**

Crown development that has a capital investment value of more than \$5 million.

**6 Private infrastructure and community facilities over \$5 million**

Development that has a capital investment value of more than \$5 million for any of the following purposes:

- (a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,
- (b) affordable housing, child care centres, community facilities, correctional centres, educational establishments, group homes, health services facilities or places of public worship.

**7 Eco-tourist facilities over \$5 million**

Development for the purpose of eco-tourist facilities that has a capital investment value of more than \$5 million.

**8 Particular designated development**

Development for the purposes of:

- (a) extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*, or

- (b) marinas or other related land and water shoreline facilities, which meet the requirements for designated development under clause 23 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*, or
- (c) waste management facilities or works, which meet the requirements for designated development under clause 32 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*.

## **9 Coastal subdivision**

Development within the coastal zone for the purposes of subdivision of the following kind:

- (a) subdivision of land for any purpose into more than 100 lots, if more than 100 of the lots will not be connected to an approved sewage treatment work or system,
- (b) subdivision of land for residential purposes into more than 100 lots, if the land:
  - (i) is not in the metropolitan coastal zone, or
  - (ii) is wholly or partly in a sensitive coastal location,
- (c) subdivision of land for rural-residential purposes into more than 25 lots, if the land:
  - (i) is not in the metropolitan coastal zone, or
  - (ii) is wholly or partly in a sensitive coastal location.

## **10 Development subject to delays in determination**

Development that has a capital investment value of more than \$10 million but less than \$20 million:

- (a) for which a development application to the relevant council has been lodged but not determined within 120 days after the application was lodged, and
- (b) that is the subject of a written request to that council by the applicant for the application to be dealt with by a regional panel,

unless the chairperson of the regional panel concerned determines that the delay in determining the development application was caused by the applicant.

## **11 Development in council areas where development assessment unsatisfactory**

- (1) Development within the area of a particular council for particular purposes designated by the Minister by order published on the NSW legislation website.
- (2) Such an order cannot be made unless the Minister is satisfied that the performance of the council concerned in dealing with development matters has not met applicable performance criteria.

## Schedule 5 (Repealed)

### Schedule 5A Special contributions areas

(Sections 93C and 94EG (1))

- 1 land shown edged heavy black on the map marked “[Western Sydney Growth Areas—Special Contributions Area](#)” deposited in the head office of the Department
- 2 **(Repealed)**
- 3 land within the local government area of Wyong shown edged heavy black on the map marked “*Wyong Employment Zone—Special Contributions Area*” deposited in the head office of the Department
- 4 land shown edged heavy black on the map marked “*Warnervale Town Centre—Special Contributions Area*” deposited in the head office of the Department, as in force at the date of commencement of [State Environmental Planning Policy \(Major Projects\) 2005 \(Amendment No 24\)](#)

### Schedule 5B Planning assessment panels

(Section 118AA)

#### Part 1 Panels

#### Part 2 Provisions relating to panels

#### Division 1 General

##### 1 Definitions

In this Part:

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

**deputy chairperson** means the deputy chairperson of the panel.

**member** means a member of the panel.

**panel** means a planning assessment panel listed in Part 1.

#### Division 2 Members

##### 2 Terms of office of members

- (1) Subject to this Part and the regulations, a member holds office for such period (not exceeding 3 years) as is specified in the member’s instrument of appointment.
- (2) The period under subclause (1) may be determined by reference to the occurrence of a specified event.



### **3 Basis of office**

The office of a member is a part-time office.

### **4 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **5 Deputies**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) A person may be appointed as the deputy of 2 or more members, but has only one vote at any meeting of the panel.
- (5) This clause does not operate to confer on the deputy of a member who is the chairperson or deputy chairperson the member's functions as chairperson or deputy chairperson.

### **6 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the panel or unless the member is excused by the panel for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office for any or no reason and without notice.

## **7 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **8 Chairperson and deputy chairperson**

(1) A panel may elect a deputy chairperson from among its members.

(2) The chairperson or deputy chairperson vacates office as chairperson or deputy chairperson if he or she:

- (a) is removed from that office by the Minister or the panel under this clause, or
- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be a member of the relevant panel.

(3) The Minister may at any time remove the chairperson or deputy chairperson from office as chairperson or deputy chairperson.

(4) A panel may at any time remove the deputy chairperson of the panel from office as deputy chairperson.

## **9 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the panel, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the panel.

(2) A disclosure by a member at a meeting of a panel that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or

to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the panel.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the relevant panel otherwise determines:
  - (a) be present during any deliberation of the panel with respect to the matter, or
  - (b) take part in any decision of the panel with respect to the matter.
- (5) For the purposes of the making of a determination by a panel under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the panel for the purpose of making the determination, or
  - (b) take part in the making by the panel of the determination.
- (6) A contravention of this clause does not invalidate any decision of a panel.

## **10 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **11 Personal liability**

A matter or thing done or omitted to be done by a panel, a member of a panel or a person acting under the direction of a panel does not, if the matter or thing was done or omitted

to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

## **Division 3**

### **12-18 (Repealed)**

## **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*

*Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*

*Environmental Planning and Assessment Amendment (Anti-Corruption) Act 2002*

*Rural Fires and Environmental Assessment Legislation Amendment Act 2002*

*Land and Environment Court Amendment Act 2002*

*Threatened Species Conservation Amendment Act 2002*

*Building Legislation Amendment (Quality of Construction) Act 2002*

*Environmental Planning and Assessment Amendment (Development Consents) Act 2003*

*Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*

*Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*

*Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*

*Building Professionals Act 2005*

*Environmental Planning and Assessment Amendment Act 2006*

*Environmental Planning Legislation Amendment Act 2006*

*Brothels Legislation Amendment Act 2007*

*Environmental Planning and Assessment Amendment Act 2008*

*Fisheries Management and Planning Legislation Amendment (Shark Meshing) Act 2008*

*Aboriginal Land Rights Amendment Act 2009*

*Planning Appeals Legislation Amendment Act 2010*

*Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **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 2A Environmental Planning Legislation Amendment Act 1995**

### **3A Application of amendment**

- (1) The amendment made by the amending Act extends to the consents granted by Port Stephens Shire Council on 7 June 1978 and 28 March 1979 to RZM (Newcastle) Limited in respect of mineral sandmining on land comprised in Mining Leases 594, 1226 and 744 despite the decision of the Land and Environment Court in *Paul Winn v Director-General of National Parks and Wildlife and RZM Pty Limited*(No 40209 of 1995).
- (2) Subclause (1) re-enacts (with minor modifications) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.
- (3) In this clause:

**amending Act** means the *Environmental Planning Legislation Amendment Act 1995*.

## **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 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 or regional environmental plan 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 9A Environmental Planning and Assessment Amendment (Affordable Housing) Act 2000**

### **37A Compensation**

- (1) To remove any doubt, the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply to anything done or required to be done pursuant to a consent granted before or after 5 June 2000 (the commencement of the amending Act) in accordance with a provision referred to in section 7 (1) (a), (b) or (c) of the amending Act.
- (2) Subclause (1) re-enacts (with minor modifications) section 9 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.
- (3) In this clause:



**amending Act** means the *Environmental Planning and Assessment Amendment (Affordable Housing) Act 2000*.

## **Part 10 Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001**

### **38 Definition**

In this Part:

**amending Act** means the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*.

### **39 Pending applications for approvals for places of public entertainment**

Any application for an approval under the *Local Government Act 1993*, as in force immediately before the commencement of this clause:

- (a) for use of a building or temporary structure as a place of public entertainment, or
- (b) for the installation of a temporary structure on land,

being an application that had been made, but not determined, before the commencement of this clause is to be determined under that Act as if the amending Act had not been enacted.

### **40 Conditions applying to places of public entertainment**

(1) Subject to the regulations under this Act, the conditions applying to the use of a building as a place of public entertainment:

- (a) pursuant to any regulation in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
- (b) pursuant to any approval in force under Part 1 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, including an approval granted as referred to in clause 39, or
- (c) pursuant to any local policy in force under Part 3 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
- (d) pursuant to any exemption in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause,

continue to apply to the use of a building as a place of public entertainment as if those conditions were contained in regulations under this Act.

(2) (Repealed)

- (3) This clause does not authorise the use of a building as a place of public entertainment if, apart from this clause, the building may not lawfully be used for that purpose under this Act.
- (4) This clause ceases to have effect 2 years after the date on which it commences.

#### **41 Conditions applying to installation of temporary structures**

- (1) Subject to the regulations under this Act, the conditions applying to the installation of a temporary structure on land:
  - (a) pursuant to any regulation in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
  - (b) pursuant to any approval in force under Part 1 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, including an approval granted as referred to in clause 39, or
  - (c) pursuant to any local policy in force under Part 3 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
  - (d) pursuant to any exemption in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause,continue to apply to the installation of a temporary structure on land as if those conditions were contained in regulations under this Act.
- (2) This clause does not authorise the installation of a temporary structure on land if, apart from this clause, such a structure may not lawfully be installed on the land under this Act.
- (3) This clause ceases to have effect 2 years after the date on which it commences.

## **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.

### **46-56 (Repealed)**

### **57 Exclusion of personal liability**

Section 158, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that section.

### **58-60 (Repealed)**

## **Part 13 Statute Law (Miscellaneous Provisions) Act 2003**

### **61 Definition**

In this Part, ***the 2003 amending Act*** means the *Statute Law (Miscellaneous Provisions) Act 2003*.

### **62 Modification of development consents—generally**

Section 96 (8), as in force before the amendment made to that subsection by the 2003 amending Act, applies in respect of an application for a modification of a development consent made before the commencement of that amendment.

### **63 Modification by consent authorities of development consents granted by the Court**

- (1) Section 96AA (1A) and (1B), as inserted by the 2003 amending Act, apply only in respect of an application for a modification of a development consent made on or after the commencement of those subsections.
- (2) Section 96AA (1C), as inserted by the 2003 amending Act, extends to a modification (of a development consent) granted before the commencement of that subsection.

## **Part 14 Environmental Planning and Assessment Amendment (Development Consents) Act 2003**

### **64 Lapsing of development consents for State significant development**

Section 95B, as inserted by the *Environmental Planning and Assessment Amendment (Development Consents) Act 2003*, extends to the following:

- (a) any development consent granted pursuant to *State Environmental Planning Policy No 34—Major Employment-Generating Industrial Development*, or *State Environmental Planning Policy No 48—Major Putrescible Landfill Sites*, that was determined after 1 July 1998 by the operation of clause 18 or 19 of this Schedule,
- (b) any consent granted in response to an application for consent to State significant development made before, but not finally determined on, the commencement of this clause.

### **65 Voluntary surrender of development consents**

Section 104A, as inserted by the *Environmental Planning and Assessment Amendment (Development Consents) Act 2003*, extends to a development consent granted before the commencement of the section.

## **Part 15 Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003**

### **66 Definition**

In this Part, **the 2003 amending Act** means the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*.

### **67 Saving of appointment of Chairperson by Director-General**

The substitution of section 22 (3) by the 2003 amending Act does not affect any appointment of a Chairperson under that provision as in force before the substitution.

### **68 Nature of construction certificate**

Section 80 (12), as amended by the 2003 amending Act, extends to any variation to a

construction certificate, plan or specification that lawfully occurred before the commencement of that amendment.

#### **69 Commencement of development under development consents**

Section 81A, as amended by the 2003 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.

#### **70 Commencement of development under complying development certificates**

Section 86, as amended by the 2003 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.

#### **71 Part 4A certificates**

Section 109C (1A), as inserted by the 2003 amending Act, extends to matters arising before the commencement of that subsection.

#### **72 Appointment of principal certifying authorities**

Section 109E, as amended by the 2003 amending Act, extends to any development consent or complying development certificate issued before the commencement of those amendments for which a principal certifying authority needs to be appointed after that commencement.

#### **73 Replacement of principal certifying authorities**

Section 109EA, as inserted by the 2003 amending Act, extends to the replacement of a principal certifying authority who had been appointed before the commencement of that section.

#### **74 Restriction on issue of occupation certificates**

Section 109H (1B), as inserted by the 2003 amending Act, does not apply to any building work that commenced before that amendment.

#### **75 Saving of occupation certificates**

An occupation certificate issued in accordance with section 109H, as in force before it was amended by the 2003 amending Act, is taken to have been issued in accordance with that section, as so amended.

#### **76 Previously suspended, withdrawn or lapsed accreditation**

Section 109ZF (2), as inserted by the 2003 amending Act, extends to complaints that

were made but not finally dealt with before the date of assent to that Act and to a person whose right to practise as an accredited certifier was suspended, or whose accreditation was withdrawn or lapsed, before that date.

#### **77 Conflicts of interest**

Section 109ZG (1AA), as inserted by the 2003 amending Act, extends to matters arising before the commencement of that subsection.

#### **78 Investigation of certifying authorities**

- (1) Subject to subclause (2), Division 1B of Part 6, as inserted by the 2003 amending Act, extends to matters arising before the commencement of that Division.
- (2) Section 109U, as in force immediately before its repeal by the 2003 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.

#### **79 Proceedings for offences**

Section 127 (5), as substituted by the 2003 amending Act, does not apply to offences arising before the commencement of that amendment.

#### **80 Improper influence with respect to conduct of accredited certifier**

Section 148A, as inserted by the 2003 amending Act, does not apply to conduct occurring before the commencement of that section.

#### **81 Conditions of development consent**

Clauses 98A and 98B of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2003 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

#### **82 Conditions of complying development certificate**

Clauses 136B and 136C of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2003 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

#### **83 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 2003 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.

## **Part 16 Environmental Planning and Assessment Amendment**

## **(Development Contributions) Act 2005**

### **84 Definition**

In this Part, **2005 amending Act** means the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*.

### **85 Application of amendments**

The substitution of Division 6 of Part 4 of this Act by the 2005 amending Act does not affect anything done under that Division before its substitution, and anything so done is taken to have been done under the corresponding provision of that Division as so substituted.

## **Part 17 Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005**

### **Division 1 Preliminary**

#### **86 Definition**

In this Part:

**2005 Amending Act** means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

#### **87 Savings and transitional regulations**

Regulations made under Part 1 of this Schedule have effect despite anything to the contrary in this Part.

### **Division 2 Major infrastructure and other projects amendments**

#### **88 Pending or previous matters under Division 4 of Part 5**

- (1) Despite its repeal by Schedule 1 to the 2005 Amending Act, Division 4 of Part 5 of this Act continues to apply to and in respect of the carrying out of any activity for which the Minister's approval under that Division was sought before its repeal.
- (2) If the activity is a project to which Part 3A of this Act applies:
  - (a) subclause (1) applies to the activity (unless the instrument that declares it a project otherwise provides), and
  - (b) Part 3A of this Act does not apply to the activity while Division 4 of Part 5 of this Act continues to apply to the activity (subject to subclause (3)).
- (3) The approval of the Minister for an activity that was given under Division 4 of Part 5 of this Act before its repeal (or under that Division as continued by subclause (1)) is

taken to be an approval under Part 3A of this Act, and that Part (sections 75U and 75V excepted) applies accordingly.

- (4) Until regulations are made under section 115P (3) (as substituted by the 2005 Amending Act), the provisions of Division 4 of Part 5 of this Act continue to apply (with necessary modifications) to approvals under that section of the Minister administering this Act.

### **89 State significant development matters**

- (1) If a development application for State significant development is pending on the commencement of Part 3A of this Act, the application is to be determined (unless withdrawn by the applicant) as if the amendments made to this Act by Schedule 1 to the 2005 Amending Act had not been made.
- (2) A reference in any Act or instrument to State significant development within the meaning of this Act is taken to be a reference to a project to which Part 3A of this Act applies.

This subclause ceases to have effect on the repeal of Part 3A of the Act.

### **90 Special heritage provision with respect to Opera House**

- (1) Section 75U (as inserted by the 2005 Amending Act), in so far as it excludes the requirement for an approval under Part 4 of the *Heritage Act 1977*, does not apply to the carrying out of any development in connection with the Opera House that is a project to which Part 3A applies.
- (2) In that case, section 75V applies instead as if an approval under Part 4 of the *Heritage Act 1977* were included in section 75V (1).

## **Division 3 Planning instruments amendments**

### **91 Review of SEPPs and REPs**

- (1) The Minister may, by order published on the NSW legislation website, transfer any provisions of State environmental planning policies or regional environmental plans (with or without modification) to the principal local environmental plans for the local government areas to which the existing provisions apply.
- (2) Subclause (1) does not prevent an environmental planning instrument being made to transfer any of those existing provisions in respect of a particular local area.
- (3) The transfer of any of those existing provisions is taken to be a matter of State environmental planning significance for the purposes of this Act.

### **92 Standard instruments**

The Director-General may issue a certificate under section 65 or furnish a report under



section 69 (despite sections 65 (1A) and 69 (2), as inserted by the 2005 Amending Act) if the Director-General is satisfied that:

- (a) significant council resources have been expended in the preparation of the draft instrument before the prescription of the relevant standard instrument, or
- (b) the draft instrument makes a necessary amendment of a principal environmental planning instrument made before the prescription of the relevant standard instrument, or a necessary amendment of an instrument referred to in paragraph (a),

and the Director-General is satisfied that satisfactory arrangements have been made for the making of a replacement instrument in accordance with the relevant standard instrument.

### **93 Model provisions**

- (1) Model provisions made under section 33 (as in force immediately before its repeal by the 2005 Amending Act) continue in force for the purposes of any existing environmental planning instruments that adopt those model provisions.
- (2) The Minister may, by order published in the Gazette, amend or revoke any of those model provisions, and section 33 (2) (as so in force) applies accordingly.

### **94 Development control plans**

- (1) A development control plan made under section 51A or 72 and in force immediately before the repeal of that section by the 2005 Amending Act is taken to be a development control plan made under Division 6 of Part 3 (as inserted by that Act).
- (2) Section 74C (as inserted by the 2005 Amending Act) does not render invalid any provision of a development control plan that is continued in force by subclause (1) during the period until a development control plan is made under section 74C in respect of the land concerned.
- (3) Anything done under section 51A or 72 immediately before its repeal by the 2005 Amending Act in connection with a proposed development control plan is taken to have been done under Division 6 of Part 3 (as inserted by that Act).
- (4) Regulations made for the purposes of section 51A or 72 and in force immediately before the repeal of that section by the 2005 Amending Act are taken to have been made for the purposes of Division 6 of Part 3 (as inserted by that Act).

### **95 Master plans under existing instruments**

- (1) This clause applies to any provision of an environmental planning instrument that is in force on the commencement of this clause and that requires, before the grant of development consent, a master plan (within the meaning of clause 92A of the [Environmental Planning and Assessment Regulation 2000](#) as in force before its

amendment by the 2005 Amending Act) for the land concerned.

- (2) While that provision continues in force, it is to be construed as requiring a development control plan under section 74D (as inserted by the 2005 Amending Act) with respect to the matters required to be included in the master plan, and in accordance with the procedures provided for making the master plan, by the environmental planning instrument.
- (3) Any master plan made under that provision before the commencement of this clause is taken to be a development control plan under section 74D (as inserted by the 2005 Amending Act).

#### **96 Section 117 (2) directions**

- (1) Directions given under section 117 (2) before the commencement of section 117 (2A) by the 2005 Amending Act cease to have effect on that commencement.
- (2) However, those directions continue in force for the purposes of any draft local environmental plan that is the subject of a certificate under section 65 issued before that commencement.

### **Division 4 Development consent amendments**

#### **97 Section 80 (5)—staged development conditional consents**

- (1) The substitution of section 80 (5) by the 2005 Amending Act does not affect a condition of a development consent that requires another development consent before development may be carried out.
- (2) Section 95 (as in force immediately before the amendment of that section by the 2005 Amending Act) continues to apply to a development consent that is subject to such a condition.

#### **98 Staged development applications as alternative to master plans**

Section 83C (as inserted by the 2005 Amending Act) applies as if a reference in that section to a provision of an environmental planning instrument that requires a development control plan included a reference to any such provision made before the commencement of this clause that requires a master plan.

### **Division 5 Environmental assessment amendments**

#### **99 Application of section 111A (Exemptions)**

Section 111A (as inserted by the 2005 Amending Act) extends to an activity that was carried out or began to be carried out before the commencement of that section.

## **Part 18 Building Professionals Act 2005**

### **100 Compliance certificates**

- (1) Section 80A (10A) does not apply to a consent issued before the commencement of the subsection.
- (2) Section 85 (5A) does not apply to a complying development certificate issued before the commencement of the subsection.

### **101 Construction certificates**

Section 109F (1A) does not apply to a construction certificate issued before the commencement of that subsection or in relation to building work or subdivision work that was physically commenced on the land to which the relevant development consent applies before the commencement of that subsection.

## **Part 19 Provisions consequent on enactment of [Environmental Planning and Assessment Amendment Act 2006](#)**

### **102 Definition**

In this Part:

**amending Act** means the [Environmental Planning and Assessment Amendment Act 2006](#).

### **103 Contributions plans**

Section 94EA (2A), as inserted by the amending Act, does not affect a condition imposed under section 94 before the commencement of section 94EA (2A) and any such condition continues to have effect as if that subsection had not commenced.

### **104 Contributions for affordable housing**

Section 94F (6), as inserted by the amending Act, does not affect a condition imposed under section 94F before the commencement of section 94F (6) and any such condition continues to have effect as if that subsection had not commenced.

### **105 Review**

- (1) The Minister is to review Subdivision 4 of Division 6 of Part 4 of this Act to determine whether the policy objectives of that Subdivision remain valid and whether the terms of this Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the amending Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament

within 12 months after the end of the period of 3 years.

## **Part 20 Environmental Planning Legislation Amendment Act 2006**

### **106 Definition**

In this Part:

**amending Act** means the *Environmental Planning Legislation Amendment Act 2006*.

### **107 Savings and transitional regulations**

Regulations made under Part 1 of this Schedule have effect despite anything to the contrary in this Part.

### **108 Part 3A matters**

- (1) The amendments made by Schedule 1 [3], [4] and [5] to the amending Act apply to declarations made (or purporting to be made) before the commencement of those amendments.
- (2) The amendment made by Schedule 1 [12] to the amending Act applies only to applications lodged after the commencement of the amendment.
- (3) The other amendments to Part 3A of this Act made by Schedule 1 to the amending Act extend to matters pending under Part 3A on the commencement of those amendments.
- (4) A concept plan that was submitted before the commencement of the amendments made by Schedule 1 [11], [21] and [29] to the amending Act may continue to be dealt with after that commencement as if it were an application for approval of a concept plan.

### **109 Planning agreements—exclusion of section 94 or 94A**

Section 93F (3A), as inserted by the amending Act, applies only to a planning agreement that is entered into after the commencement of that subsection and that was the subject of public notice under section 93G after that commencement.

### **110 Contributions for public service or amenity outside NSW**

Section 94CA, as inserted by the amending Act, extends to permit contributions provided for a public amenity or service, as a result of a condition allowed under a contributions plan that is in force before the commencement of that section, to be applied, with the written approval of the Minister, to an equivalent, similar or related public amenity or service.

### **111 Lapsing of consent**

A development consent granted before the commencement of section 95 (6), as inserted by the amending Act, that is subject to a deferred commencement condition under section 80 (3), lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within:

- (a) 5 years after the date consent was granted, or
- (b) 2 years after the date of the commencement of section 95 (6),

whichever is the later.

### **112 Occupation certificates**

Section 109H, as substituted by the amending Act, does not apply to or in respect of an application for an occupation certificate made, but not determined, before that substitution and that section, as in force immediately before that substitution, continues to apply to and in respect of any such application.

### **113 Subdivision certificates**

Section 109J, as substituted by the amending Act, does not apply to or in respect of an application for a subdivision certificate made, but not determined, before that substitution and that section, as in force immediately before that substitution, continues to apply to and in respect of any such application.

### **114 Reference of undetermined applications to the Minister**

Section 116D, as amended by the amending Act, does not apply to an application made, but not determined, before that amendment and that section, as in force immediately before that amendment, continues to apply to any such application.

### **115 Negotiating determination of development application**

Section 116E, as amended by the amending Act, does not apply to an application made, but not determined, before that amendment and that section, as in force immediately before that amendment, continues to apply to any such application.

### **116 Time limit for bringing proceedings**

Section 127 (5A)-(5C), as inserted by the amending Act, apply only in respect of offences alleged to have been committed after the commencement of those subsections.

## **Part 21 Environmental Planning and Assessment Amendment Act**

## 2008

### Division 1 Preliminary

#### 117 Interpretation

In this Part:

**amending Act** means the *Environmental Planning and Assessment Amendment Act 2008*.

#### 118 Savings and transitional regulations

Regulations made under Part 1 of this Schedule have effect despite anything to the contrary in this Part.

### Division 2 Provisions consequent on Schedule 1 to amending Act

#### 119 Definitions

In this Division:

**deemed environmental planning instrument** means a former environmental 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.

**existing local environmental plan** means a local environmental plan made under Part 3 of this Act (as in force immediately before the relevant commencement day).

**existing regional environmental plan** means a regional environmental plan made under Part 3 of this Act (as in force immediately before the relevant commencement day).

**existing State environmental planning policy** means a State environmental planning policy made under Part 3 of this Act (as in force immediately before the relevant commencement day).

**the relevant commencement day** means the day on which Schedule 1.1 [4] to the amending Act commences.

#### 120 Continuation in force of existing SEPPs and REPs

All existing State environmental planning policies and existing regional environmental plans are, on the relevant commencement day, taken to be environmental planning instruments made by the Governor under Division 2 of Part 3 of this Act, as amended by the amending Act.

### **121 Review of existing REPs**

- (1) As soon as practicable after the relevant commencement day, the Minister is to review the provisions of all existing regional environmental plans.
- (2) An environmental planning instrument (whether a principal or amending instrument) may be made by the Governor under Division 2 of Part 3 of this Act, or by the Minister under Division 4 of that Part, to transfer those existing environmental planning provisions (with or without modification) to appropriate new or existing principal instruments that apply to the land concerned.
- (3) Any such instrument may be made without compliance with the provisions of Part 3 of this Act relating to the conditions precedent to the making of the instrument.

### **122 Continuation in force of existing LEPs**

- (1) All existing local environmental plans are, on the relevant commencement day, taken to be environmental planning instruments made by the Minister under Division 4 of Part 3 of this Act, as amended by the amending Act.
- (2) The Minister may dispense with any conditions precedent to the making of an environmental planning instrument under that Division if satisfied that the instrument was in the course of preparation before the commencement of this clause.

### **123 Continuation in force of deemed environmental planning instruments**

- (1) All deemed environmental planning instruments that are in force immediately before the relevant commencement day continue in force and have effect according to their tenor.
- (2) Any such instrument may be amended or repealed by an environmental planning instrument made under Part 3 of this Act.

## **Division 3 Provisions relating to development assessment**

### **124 Commissioners of Inquiry**

- (1) A person who held office as a Commissioner of Inquiry immediately before the repeal of Division 4 of Part 2 by the amending Act ceases to hold office on that repeal.
- (2) A Commissioner of Inquiry is not entitled to any remuneration or compensation because of the loss of that office as a consequence of the amendments made by the amending Act.

### **125 Committees**

- (1) A person who held office as a member of the Local Government Liaison Committee immediately before the repeal of Division 5 of Part 2 by the amending Act ceases to

hold office on that repeal.

- (2) Any such member is not entitled to any remuneration or compensation because of the loss of that office as a consequence of the amendments made by the amending Act.

## **Division 5 Provisions relating to certification**

### **133 Section 109ZK**

The amendment made to section 109ZK by the amending Act does not apply to any building work or subdivision work commenced before the commencement of the amendment.

## **Part 22 Bennelong Point (Parking Station) Act 1985**

### **134 Repeal of Act**

The repeal of the *Bennelong Point (Parking Station) Act 1985* does not affect the carrying out of development authorised by that Act.

## **Part 23 Statute Law (Miscellaneous Provisions) Act 2009**

### **135 Restrictions on the issue of occupation or subdivision certificate**

The amendments made by Schedule 1.13 [6] and [8] to the *Statute Law (Miscellaneous Provisions) Act 2009* apply only in relation to an application for an occupation certificate or a subdivision certificate made on or after the commencement of those amendments.

## **Part 24 Planning Appeals Legislation Amendment Act 2010**

### **136 Review and appeal changes**

The amendments made to Part 4 of the Act by the *Planning Appeals Legislation Amendment Act 2010* do not apply to or in respect of a development application lodged with a consent authority before the commencement of section 82B (as inserted by that amending Act).

## **Part 25 Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009**

### **137 Definitions**

In this Part:

**authorisation** means an authorisation under section 24 of the Nation Building Act to carry out an infrastructure project.

**Co-ordinator General** means the NSW Infrastructure Co-ordinator General.



**infrastructure project** has the same meaning as in the Nation Building Act.

**nation building consent** means an authorisation declared to be a development consent under this Part.

**the Nation Building Act** means the [Nation Building and Jobs Plan \(State Infrastructure Delivery\) Act 2009](#).

### **138 Authorisations declared to be development consents**

- (1) An authorisation is declared to be a development consent under this Act for the development comprising the infrastructure project if the Co-ordinator General has certified in writing that this Part applies to the project.
- (2) This Act, as modified by this Part and with any other necessary modifications, applies to a nation building consent as if it were a development consent granted under this Act and to any conditions of that consent as if they were conditions of a development consent.
- (3) A nation building consent is, for the purposes of this Act, taken to have been effective and to operate from the date the relevant authorisation was granted under the Nation Building Act.
- (4) For the purposes of this Act and any instrument made under this Act, the consent authority for a nation building consent is the council for the area in which the infrastructure project is situated or, if the project is situated in the Western Division, the Western Lands Commissioner.
- (5) In any instrument, a reference:
  - (a) to an authorisation that has been declared by this Part to be a development consent under this Act is taken to be a reference to a development consent, and
  - (b) to a condition of any such authorisation is taken to be a reference to a condition of the development consent, and
  - (c) to the NSW Infrastructure Co-ordinator General in respect of any such development consent is taken to be a reference to the consent authority referred to in subclause (4).

### **139 Infrastructure projects taken to be exempt development**

Development for the purposes of an infrastructure project is taken to be exempt development for the purposes of this Act if:

- (a) it is the subject of an order under section 23 (1) (a) of the Nation Building Act, and
- (b) an authorisation under section 24 of that Act was not required for the carrying out of the project, and

- (c) the Co-ordinator General has certified in writing that this Part applies to the project or a class of projects of which the project is a member.

#### **140 Certification of infrastructure projects**

- (1) The Co-ordinator General must notify the council of the area in which an infrastructure project is situated in writing if the Co-ordinator General certifies that this Part applies to the project, or a class of projects of which the project is a member.
- (2) The Co-ordinator General must keep a register of certificates given under this Part. The register is to be kept in the form and manner determined by the Co-ordinator General.
- (3) A council must keep a register of notices given under this clause for infrastructure projects situated in the area of the council.
- (4) A register kept by a council under this clause may form part of the register kept by the council under section 100.
- (5) Section 100 (2) applies to a register kept by a council under this clause.
- (6) If a council is given notice under this clause that this Part applies to an infrastructure project, or a class of projects of which an infrastructure project is a member, the council is not required to include advice about previous exemptions or authorisations under the Nation Building Act in any planning certificate issued for the land concerned under section 149 of this Act.

#### **141 Application of EPA Act to nation building consents generally**

- (1) Divisions 1–6A (other than section 81A), 8 and 10 of Part 4 of this Act, and sections 95, 95A, 96AA, 96A, 100 and 101, do not apply to a nation building consent except to the extent that any of those provisions are applicable because of the operation of section 96 in respect of a modification to the nation building consent.
- (2) Section 96 applies to a nation building consent with the following modifications:
  - (a) the consent authority must not consider any provisions of an environmental planning instrument, proposed environmental planning instrument or development control plan insofar as they prohibit the proposed modification,
  - (b) the consent authority must not refuse to consent to the application for modification on the ground that the application does not comply with non-discretionary development standards in a regulation or an environmental planning instrument, if the non-compliance is of a kind already permitted under the nation building consent,
  - (c) section 96 (5) does not apply.

- (3) If a nation building consent relates to particular development for the purposes of an educational establishment, any other development for the purposes of an educational establishment is taken to be substantially the same development for the purposes of section 96.
- (4) If a nation building consent relates to particular development for the purposes of affordable housing or seniors housing, any other development for the purposes of residential accommodation (other than affordable housing or seniors housing) is taken not to be substantially the same development for the purposes of section 96.

## **Schedule 6A Transitional arrangements—repeal of Part 3A**

### **1 Definitions and application**

- (1) In this Schedule:

***environmental assessment requirements*** means:

- (a) environmental assessment requirements for approval to carry out a project, or for approval of a concept plan for a project, notified to the proponent of the project under Part 3A (as modified from time to time under that Part), or
- (b) environmental assessment requirements adopted by the Director-General as environmental assessment requirements for approval to carry out a project, or for approval of a concept plan for a project, under clause 8J of the *Environmental Planning and Assessment Regulation 2000*,

but does not include draft environmental assessment requirements.

***Part 3A project or concept plan application*** means an application under Part 3A for approval to carry out a project (or part of a project) or for approval of a concept plan for a project.

***relevant Part 3A repeal date*** means:

- (a) the date on which Part 3A was repealed, except as provided by paragraph (b), or
- (b) in the case of a project to which clause 17 (1) of *State Environmental Planning Policy (Major Development) 2005* applies—8 April 2011.

***transitional Part 3A project***—see clause 2.

- (2) Words and expressions used in this Schedule have the same meaning as they had in Part 3A immediately before its repeal.
- (3) This Schedule applies, on and from the commencement of this Schedule, with the amendments made by the *Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011*.

## 2 Transitional Part 3A projects

- (1) The following are, subject to this Schedule, **transitional Part 3A projects**:
  - (a) an approved project (whether approved before or after the repeal of Part 3A),
  - (b) a project that is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A),
  - (c) a project for which environmental assessment requirements for approval to carry out the project, or for approval of a concept plan for the project, were last notified or adopted within 2 years before the relevant Part 3A repeal date (unless the environmental assessment is not duly submitted on or before 30 November 2012 or on or before such later day as the Director-General may allow by notice in writing to the proponent),
  - (d) a project for which an environmental assessment (whether for approval to carry out the project or for approval of a concept plan for the project) was duly submitted before the relevant Part 3A repeal date.
- (2) Environmental assessment requirements referred to in subclause (1) (c) do not include environmental assessment requirements determined under section 75P (1) (a).
- (3) If the environmental assessment requirements referred to in subclause (1) (c) are expressed to expire at a particular time, those requirements continue and do not expire at that time.
- (4) A part of a project is a transitional Part 3A project if that part of the project meets the criteria under this clause for a transitional Part 3A project even though the whole project does not meet those criteria.
- (5) A transitional Part 3A project extends to the project as varied by changes to the Part 3A project or concept plan application, to the concept plan approval or to the project approval, whether made before or after the repeal of Part 3A.
- (6) Development is not a transitional Part 3A project if it ceased to be a project to which Part 3A applies before the repeal of Part 3A or if it ceases to be such a project after that repeal in accordance with the provisions of or continued by this Schedule.
- (7) The repeal, on the commencement of this Schedule, of provisions of the [State Environmental Planning Policy \(Major Development\) 2005](#) that declared development as projects to which Part 3A applied (or as critical infrastructure projects) does not affect the operation of this Schedule.
- (8) A transitional Part 3A project is not State significant development or State significant infrastructure, unless it becomes State significant development or infrastructure and

ceases to be a transitional Part 3A project as referred to in clauses 5 and 6.

### **3 Continuation of Part 3A—transitional Part 3A projects**

- (1) Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project.
- (2) For that purpose:
  - (a) any State environmental planning policy or other instrument made under or for the purposes of Part 3A, as in force on the repeal of that Part and as amended after that repeal, continues to apply to and in respect of a transitional Part 3A project, and
  - (b) declarations, orders, directions, determinations or other decisions with respect to a transitional Part 3A project continue to have effect and may continue to be made under Part 3A (including for the purpose of the application or continued application of Part 4 or 5 or other provisions of this Act in relation to the project).

#### **Editorial note—**

For orders under former sec 75B, declarations under former sec 75C, or orders or declarations in relation to those sections under this paragraph, see the Historical notes at the end of this Act.

- (3) This clause is subject to the other provisions of this Schedule.

### **3A Projects that cease to be dealt with under Part 3A**

- (1) Approval cannot be granted for the carrying out of a transitional Part 3A project if the development concerned is a transitional Part 3A project only because it is the subject of:
  - (a) an approved concept plan, or
  - (b) environmental assessment requirements for approval of a concept plan, or
  - (c) an environmental assessment for approval of a concept plan.

However, approval may be granted to such a project if it is to be granted under section 75P (1) (c) when the concept plan is approved (but not if it is to be granted when the concept plan is modified).

- (2) An application under Part 3A for approval to carry out such a project cannot be lodged or dealt with.
- (3) This clause does not prevent the determination of an application for approval of a concept plan.

### **3B Provisions applying with respect to approval of concept plans**

- (1) This clause applies to development (other than an approved project) for which a concept plan has been approved under Part 3A, before or after the repeal of Part 3A, and so applies whether or not the project or any stage of the project is or was a transitional Part 3A project.
- (2) After the repeal of Part 3A, the following provisions apply (despite anything to the contrary in section 75P (2)) if approval to carry out any development to which this clause applies is subject to Part 4 or 5 of the Act:
  - (a) if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),
  - (b) if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),
  - (c) any development standard that is within the terms of the approval of the concept plan has effect,
  - (d) a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan,
  - (e) a consent authority may grant consent under Part 4 for the development without complying with any requirement under any environmental planning instrument relating to a master plan,
  - (f) the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan,
  - (g) any order or direction made under section 75P (2) when the concept plan was approved continues to have effect.

### **3C Modification of concept plans**

- (1) Section 75W continues to apply for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A, whether or not the project or any stage of the project is or was a transitional Part 3A project.
- (2) This clause applies despite anything to the contrary in this Schedule (other than provisions relating to approval for the carrying out of a project or stage of a project that is given in connection with an approval to modify a concept plan).

### **3D Modification of environmental assessment provisions—sections 75H and 75I**

For the purposes of the application of Part 3A to a transitional Part 3A project:

- (a) section 75H (3) is taken not to require the Director-General to accept an environmental assessment before making an environmental assessment publicly available in accordance with that subsection, and
- (b) section 75I (2) (g) does not apply to or in respect of a transitional Part 3A project, and
- (c) the Minister is not required to consider a statement relating to compliance with environmental assessment requirements for the purposes of section 75J (2) (a) or 75O (2) (a).

#### **Note—**

Section 75N applies sections 75H and 75I to approval for a concept plan for a project in the same way as they apply with respect to an approval to carry out a project.

### **3E Time limits for proponents to comply with environmental assessment requirements**

- (1) If the Director-General requires a proponent to make a submission under section 75H (6), the proponent must comply with that requirement:
  - (a) in relation to a response under section 75H (6) (a)—within 30 days, or
  - (b) in relation to a preferred project report referred to in section 75H (6) (b)—within 60 days, or
  - (c) in relation to a revised statement of commitments referred to in section 75H (6) (c)—within 60 days,after being notified of that requirement, or within such other period as the Director-General notifies in writing from time to time to the proponent.
- (2) If the proponent fails to make a submission within a period specified in this clause, to avoid doubt, the Minister may approve or disapprove the carrying out of a project (under section 75J) or may give or refuse to give approval for a concept plan (under section 75O).
- (3) If the Director-General has notified a proponent of a requirement under section 75H (6) before the commencement of this clause, this clause applies to that requirement as if the period specified in relation to the requirement commences on the date of the commencement of this clause.
- (4) This clause does not affect the operation of clause 8D of the *Environmental Planning and Assessment Regulation 2000*.

#### **4 Construing references to Part 3A**

A reference in this Act (other than this Schedule) or in any other Act or in any instrument made under an Act to Part 3A or to a provision of that Part is to be construed as a reference to that Part or that provision as continued by this Schedule.

#### **5 Part 3A projects that become State significant infrastructure**

- (1) Specified development on specified land that was a project to which Part 3A applied immediately before its repeal may be declared to be State significant infrastructure by an order of the Minister (published in the Gazette).
- (2) Any such development may be declared to be State significant infrastructure whether or not the development is a transitional Part 3A project. On the making of the declaration it ceases to be a transitional Part 3A project.
- (3) Despite anything to the contrary in any environmental planning instrument, any such development that is declared to be State significant infrastructure is taken to be development that may be carried out without development consent under Part 4.
- (4) For the purposes of Part 5.1 of the Act in its application to any such development:
  - (a) a concept plan approved under Part 3A in relation to the development (whether before or after the repeal of Part 3A) is taken to be an approval (and the concept proposals) for a staged infrastructure application under Division 3 of Part 5.1, and
  - (b) (Repealed)
  - (c) any environmental assessment requirements, any statement of environmental assessment, any public exhibition, any response to submissions, any preferred project report by a proponent or any other action under Part 3A in relation to the development is taken to be environmental assessment requirements, an environmental impact statement, public exhibition, a response to submissions, a preferred infrastructure report by a proponent or other action taken under the corresponding provisions of Part 5.1, unless the Director-General directs that any such action be taken again under Part 5.1.
- (5) If a single proposed development comprises development that is only partly State significant infrastructure declared under this clause, the remainder of the development (except so much of the remainder of the development as is State significant development or as the Director-General determines is not sufficiently related to the State significant infrastructure):
  - (a) may be carried out without development consent under Part 4 of the Act, and
  - (b) is also declared to be State significant infrastructure for the purposes of the Act.
- (6) State significant infrastructure declared under this clause is taken to be State



significant infrastructure declared under section 115U (4).

**5A Additional provision relating to modification of approvals for North West Rail Link development**

- (1) This clause applies to modification request no MP06\_0157 MOD 1 to modify the staged infrastructure approval (dated 6 May 2008) relating to the North West Rail Link development and to any subsequent modification requests to modify that approval.

**Note—**

The North West Rail Link development is declared to be State significant infrastructure by the operation of clause 5 of this Schedule and Schedule 4 to the *State Environmental Planning Policy (State and Regional Development) 2011*. The concept plan approved under Part 3A in relation to the development is taken to be an approval for a staged infrastructure application (see clause 5 (4) (a) of this Schedule).

- (2) Section 115ZI applies to a modification request to which this clause applies as if that request were a request to modify a Minister's approval within the meaning of that section.
- (3) Any actions taken before the commencement of this clause with respect to any modification request to which this clause applies have effect for the purposes of the application of section 115ZI to the request.
- (4) This clause is in addition to clause 5.

**6 Part 3A projects that become State significant development**

- (1) Specified development on specified land that was a project to which Part 3A applied immediately before its repeal may be declared to be State significant development by an order of the Minister (published in the Gazette).
- (2) Any such development may be declared to be State significant development whether or not the development is a transitional Part 3A project. On the making of the declaration it ceases to be a transitional Part 3A project.
- (3) For the purposes of Part 4 in its application to any such development:
  - (a) any approval under Part 3A to carry out part of the development is taken to be a development consent under Part 4 for the carrying out of that part of the development, and
  - (b) any environmental assessment requirements, any statement of environmental assessment, any public exhibition, any response to submissions by a proponent or any other action under Part 3A in relation to the development are taken to be environmental assessment requirements, an environmental impact statement, public exhibition, a response to submissions by an applicant or other action taken under the corresponding provisions of Part 4, unless the Director-General directs that any such action be taken again under Part 4.

- (4) If a single proposed development comprises development that is only partly State significant development declared under this clause, the remainder of the development is also declared to be State significant development (except so much of the remainder of the development as the Director-General determines is not sufficiently related to the State significant development).
- (5) State significant development declared under this clause is taken to be State significant development declared under section 89C (3).

#### **7 Regulations relating to projects ceasing to be Part 3A**

- (1) The regulations may make provision for or with respect to the effect of the revocation (whether or not under this Schedule) of a declaration of development as a project under Part 3A or as a critical infrastructure project.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the revival of consents or approvals under other Parts of this Act, and
  - (b) the recognition of any environmental assessment or any other action for the purposes of other Parts of this Act, and
  - (c) the continuing effect of provisions of Part 3A for the purposes of other Parts of this Act.

#### **8 (Repealed)**

#### **9 Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State:
  - (a) because of the enactment, making or operation of any of the following:
    - (i) the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*,
    - (ii) *State Environmental Planning Policy (Major Development) Amendment 2011* or any other environmental planning instrument, regulation or decision relating to the removal of any project from the operation of Part 3A (whether made before or after the commencement of this clause), or
  - (b) because of any consequence of any such enactment, making or operation, or
  - (c) because of any statement or conduct relating to any such enactment, making or operation, or
  - (d) because of any other statement or conduct relating to the repeal or proposed repeal of Part 3A (including the termination of consideration of any application or proposal under that Part in anticipation of its repeal).

(2) This clause extends to statements, conduct and any other matter occurring before the commencement of this clause.

(3) In this clause:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**statement** includes a representation of any kind:

(a) whether made verbally or in writing, and

(b) whether negligent, false, misleading or otherwise.

**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

## 10 Savings and transitional regulations

(1) This clause applies to regulations made under Part 1 of Schedule 6 that contain provisions of a savings or transitional nature consequent on the enactment of the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*.

(2) The provisions of those regulations have effect despite anything to the contrary in this Schedule.

(3) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## 11 Lapsing of Part 3A approvals

(1) An approval for carrying out a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A unless:

(a) the project is physically commenced (within the meaning of section 95) on or before that day on the land to which the approval relates, or

(b) the approval of the project is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.

(2) Despite subclause (1), an approval for carrying out a transitional Part 3A project that authorises the use of any land, building or work does not lapse if that use is actually commenced before the date on which the approval would otherwise lapse.

(3) The approval of a concept plan for a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A unless:

(a) any part of the project is physically commenced (within the meaning of section

95) on or before that day, in accordance with an approval or development consent, on the land to which the approval or consent relates, or

(b) the approval of the concept plan is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.

## **12 Continuing application of Part 3A to modifications of certain development consents**

Section 75W of Part 3A continues to apply to modifications of the development consents referred to in clause 8J (8) of the *Environmental Planning and Assessment Regulation 2000*, and so applies whether an application for modification is made before or after the commencement of this clause.

## **13 Application of amendments to existing development applications**

The amendments made to this Act by Schedule 1.2 [16], [18], [19], [25] and [26] to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* do not apply to or in respect of a development application lodged on or before the commencement of the amendment concerned.

## **14 Joint regional planning panels and matters previously determined by such panels**

Section 23G (4A), as inserted by Schedule 1.5 [2] to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*, does not apply to proceedings commenced by or against a joint regional planning panel before the commencement of that amendment.

## **15 Matters determined by joint regional planning panels**

(1) If:

(a) a development application was made but not determined before the commencement of Schedule 4A and a regional panel was exercising the consent authority functions of the council when the application was made, and

(b) the regional panel ceased to exercise those functions on the commencement of that Schedule,

the council may exercise those functions.

(2) An application (whether made before or after the commencement of Schedule 4A) for modification of a development application for development for which a regional panel ceased to exercise the consent authority functions of a council on that commencement is to be determined by that council.

(3) Despite subclause (1), the applicable regional panel continues to exercise the consent authority functions of a council for the following development applications (but not for the modification of those development applications):

- (a) a development application for development that has a capital investment value of more than \$10 million if the development application was made, but not determined by the panel, before the commencement of Schedule 4A,
- (b) a development application for development referred to in clause 13B (1) (f) of the *State Environmental Planning Policy (Major Development) 2005*, if the development application was made, but not determined by the panel, before the commencement of Schedule 4A,
- (c) the first stage of a staged development application for development referred to in clause 13G of the *State Environmental Planning Policy (Major Development) 2005*, if the development application was made, but not determined by the panel, before the commencement of Schedule 4A.

## **16 Sydney Opera House—continuation of heritage provisions**

If development in connection with the Opera House is declared to be State significant development or State significant infrastructure, clause 90 of Schedule 6 continues to apply as if references in that clause to provisions of Part 3A were references to the corresponding provisions relating to State significant development or State significant infrastructure.

## **17 Planning Assessment Commission**

- (1) The amendments made to section 23D of this Act by Schedule 1.4 to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* do not affect any review under that section that was requested by the Minister before the commencement of those amendments.
- (2) The amendment made to clause 5 (3) of Schedule 3 to this Act by Schedule 1.4 [7] to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* extends to persons who were appointed as members before the commencement of that amendment.

## **18 Joint Regional Planning Panels**

The amendment made to clause 2 of Schedule 4 to the Act by Schedule 1.5 [4] to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* does not apply to or in respect of the appointment or reappointment of a person who was the chairperson of a regional panel immediately before the commencement of that amendment.

## **19 Existing development applications not to be determined by regional panels**

- (1) This clause applies to a development application for development if:
  - (a) the development application was made before 1 July 2009 and not finally determined before the commencement of Schedule 4A, and

- (b) the development is development specified in Schedule 4A.
- (2) A development application to which this clause applies is to be dealt with as if it were for development not specified in Schedule 4A.
- (3) This clause applies to the determination of a development application before the commencement of this clause.

## **Schedule 7 Transferred provisions**

### **Part 1 Botany and Randwick Sites Development Act 1982**

#### **1 Bus depot**

- (1) The Minister may, by order published in the Gazette, declare that such land within the Municipality of Botany or the Municipality of Randwick or both as is specified or described in the order may be developed by the Urban Transit Authority, or by any other persons nominated in the order, for the purpose of a bus depot.
- (2) Notwithstanding anything in any planning instrument or in any other environmental planning instrument, the Urban Transit Authority, and any other persons nominated pursuant to subclause (1), or any of them, may carry out development for the purpose of a bus depot, without the necessity for consent under this Act being obtained therefor, on the land for the time being specified or described pursuant to subclause (1).
- (3) Subclauses (1) and (2) re-enact (with minor modifications) section 7 (1) and (2) of the *Botany and Randwick Sites Development Act 1982* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

### **Part 2 Walsh Bay Development (Special Provisions) Act 1999**

#### **2 Meaning of “Walsh Bay”**

In this Part, **Walsh Bay** means the land to which *Sydney Regional Environmental Plan No 16—Walsh Bay* applied immediately before 31 May 1999, or any part of the land, and includes any thing in, on, under or over that land or any part of that land.

#### **3 Applicants appeals**

The provisions of section 97 and, to the extent applicable, section 97AA do not apply to an applicant who is dissatisfied with a determination or decision, or a failure to make a determination, of a kind referred to in those provisions in relation to a development application to carry out development on land at Walsh Bay.

#### **4 Objectors appeals**

Section 98 does not apply to an objector who is dissatisfied with a determination of the

consent authority to grant consent to a development application of a kind referred to in that section in relation to a development application to carry out development on land at Walsh Bay.

## 5 Restraint of breaches

Proceedings under section 123 may not be brought in connection with:

- (a) a determination or decision in relation to a development application, or the modification of a development consent, to carry out development on land at Walsh Bay, or
- (b) any thing done or omitted to be done in compliance, or purported compliance, with a determination or decision referred to in paragraph (a),

except by the Minister or a person with the consent of the Minister.

## 6 Transferred provisions to which [Interpretation Act 1987](#) applies

Clauses 2-5 re-enact (with minor modifications) the definition of **Walsh Bay** in section 3, and sections 11, 12 and 14, of the [Walsh Bay Development \(Special Provisions\) Act 1999](#) and are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.

## Part 3 Western Sydney Regional Park (Revocation for Western Sydney Orbital) Act 2001

### 7 Dealings with certain land at Fairfield

- (1) This clause applies to all those pieces or parcels of land situated in the County of Cumberland, Parish of Melville, local government area of Fairfield and being so much of the following land as is, at the commencement of this clause, vested in the corporation:
  - (a) lots 12, 13 and 15-20, DP 1021938,
  - (b) lots 33-37 and 40-42, DP 1021940,
  - (c) lots 22-29 and 31, DP 1022008.
- (2) The corporation may sell, grant leases of, dispose of or otherwise deal with the land to which this clause applies.
- (3) Proceeds of any dealing by the corporation with that land are to be paid into the Development Fund created under section 129 for the Sydney Region.
- (4) Subclauses (1)-(3) re-enact (with minor modifications) sections 4 and 6 (2) and (3) of the [Western Sydney Regional Park \(Revocation for Western Sydney Orbital\) Act 2001](#) and are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.