

# Environmental Planning and Assessment Amendment Act 2008 No 36

[2008-36]



New South Wales

## Status Information

### Currency of version

Historical version for 1 March 2013 to 7 January 2015 (accessed 17 February 2025 at 1:42)

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

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2014 No 88](#) (not commenced — to commence on 8.1.2015)
- **See also**  
[Planning Bill 2013](#)
- **Proposed repeal**  
The Act is to be repealed by sec 5 (1) of this Act on the day following the day on which all of the provisions of this Act have commenced.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 28 November 2014

# Environmental Planning and Assessment Amendment Act 2008 No 36



New South Wales

## Contents

<b>Long title</b> .....	3
1 Name of Act .....	3
2 Commencement .....	3
3 Amendment of Environmental Planning and Assessment Act 1979 No 203 and other Acts and instruments .....	3
4 Repeal of Miscellaneous Acts (Planning) Repeal and Amendment Act 1979 No 205 .....	3
5 Repeal of Act .....	3
<b>Schedule 1 (Repealed)</b> .....	3
<b>Schedule 2 Amendments relating to development assessment</b> .....	3
<b>Schedule 3 Amendments relating to development contributions</b> .....	10
<b>Schedule 4 Amendments relating to certification of development</b> .....	46
<b>Schedule 5 Miscellaneous amendments</b> .....	51

# Environmental Planning and Assessment Amendment Act 2008 No 36



New South Wales

An Act to amend the *Environmental Planning and Assessment Act 1979* and other Acts and instruments to improve the NSW planning system.

## 1 Name of Act

This Act is the *Environmental Planning and Assessment Amendment Act 2008*.

## 2 Commencement

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

## 3 Amendment of *Environmental Planning and Assessment Act 1979 No 203* and other Acts and instruments

The *Environmental Planning and Assessment Act 1979* and other Acts and instruments specified in Schedules 1–5 are amended as set out in those Schedules.

## 4 Repeal of *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979 No 205*

The *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979* is repealed.

## 5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

## Schedule 1 (Repealed)

## Schedule 2 Amendments relating to development assessment

(Section 3)

### 2.1 Principal amendments to *Environmental Planning and Assessment*

## Act 1979

### [1]-[13] (Repealed)

### [14] Section 75F Environmental assessment requirements for approval

Omit “relevant public authorities” from section 75F (4).

Insert instead “such public authorities as relevant guidelines in respect of the project require to be consulted”.

### [15], [16] (Repealed)

### [17] Section 78A Application

Insert at the end of section 78A (8) (b), before the note:

, or

- (c) if the application is in respect of development not referred to in paragraph (a), a statement of environmental effects prepared by or on behalf of an applicant in accordance with the regulations.

### [18] Section 79AA

Insert after section 79A:

#### **79AA Public participation—other development subject to objector reviews**

- (1) This section applies to development applications of a class in respect of which a review application may be made under section 82BA.
- (2) Regulations may be made for or with respect to the following:
  - (a) notice of development applications to which this section applies,
  - (b) submissions to the consent authority about development applications to which this section applies.

### [19] Section 79C Evaluation

Insert after section 79C (1):

- (1A) **Rejection of submissions—development (other than designated development) subject to objector review** A consent authority determining a development application of a class in respect of which a review application may be made under section 82BA may reject a submission that it considers has been made primarily to secure or

maintain a direct or indirect commercial advantage for the objector. If an objection is rejected under this subsection, this Act applies as if the objection had not been made.

**[20]-[25] (Repealed)**

**[26] Section 86A Duration of complying development certificate**

Insert after section 86A (4):

- (5) The regulations may set out circumstances in which work is or is not taken to be physically commenced for the purposes of this section.

**[27]-[29] (Repealed)**

**[30] Section 95A Extension of lapsing period for 1 year**

Insert after section 95A (1):

- (1A) If, in granting a development consent that is subject to a deferred commencement condition under section 80 (3), the consent authority specifies a shorter period than 5 years within which the consent will lapse if it is not satisfied as to the matter specified in the condition, 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.

**[31] Section 95A (3)**

Omit “subsection (1)”. Insert instead “this section”.

**[32]-[35] (Repealed)**

**[36] Section 82BA:**

Insert after section 82B:

**82BA Applications for review—objectors**

- (1) This section applies to development applications of a class prescribed by the regulations for the purposes of this section.
- (2) Without limiting subsection (1), a class of development application may be described by reference to whether, or to what extent, the relevant development fails to meet any applicable development standards.
- (3) A person (***an objector***) may make an application under this section if:

- (a) the person is not an applicant and has made a submission objecting to the development in accordance with regulations made under section 79AA, and
  - (b) the person owns land within 1 kilometre of any point on the boundary of the land the subject of the development application or is currently occupying any such land and has been an occupant for at least 6 months.
- (4) An objector who is dissatisfied with a determination of a council to grant consent to a development application either unconditionally or subject to conditions may apply to the applicable regional panel for a review of the determination.
- (5) An objector who is dissatisfied with a determination of a regional panel to grant consent to a development application either unconditionally or subject to conditions may apply to the Commission for a review of the determination.
- (6) An application for a review of a determination under this section must be made within 28 days after the date on which notice of the determination was given in accordance with the regulations.
- (7) An applicant may amend the development the subject of the original application.
- (8) The prescribed fee must be paid in connection with a review application.
- (9) The regulations may limit the persons who are qualified to apply for reviews under this section.
- (10) This section does not apply to the following development applications:
  - (a) a development application in relation to which an appeal may be made by an objector under section 98,
  - (b) a development application relating to integrated development,
  - (c) a Crown development application (within the meaning of Division 4).
- (11) As a consequence of a review, the reviewing body may confirm or change the determination.
- (12) If an application for a review is made under section 82A and this section, the applications are to be dealt with together and determined by the reviewing body. A council may not determine an application for a review if an application concerning the same matter is made under this section.
- (13) The regulations may make provision with respect to the notification of applications made under this section.
- (14) In this section:

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

**[37] Section 82C Review procedures generally**

Omit “or 96AB” from section 82C (1).

Insert instead “, 82BA or 96AB”.

**[37A] Section 82C (6)**

Omit the subsection. Insert instead:

- (6) The reviewing body must, in accordance with the regulations, give notice of the result of its determination of an application for a review:
  - (a) to the person who applied for the review, and
  - (b) if that person was not the applicant for the determination reviewed, to the applicant and the council.

**[37B] Section 82C (9)**

Omit the definition of ***reviewing body***. Insert instead:

***reviewing body*** means:

- (a) the council or a delegate of the council who conducts the review, or
- (b) in the case of an application to a regional panel under section 82BA, the regional panel, or
- (c) in the case of an application to the Planning Assessment Commission under section 82BA, the Commission.

**[37C] Section 97A Notice of appeals to be given and right to be heard**

Insert “or make an application for a review under section 82BA” after “section 98” in section 97A (1) (a).

**[38] Section 99 Joint hearing of certain appeals**

Insert after section 99 (3):

- (4) If an appeal is made under section 97 with respect to a development application and a review application is made under section 82BA with respect to the same application, the review application is to be dealt with by the Court as if it were an appeal under section 98 and is, as far as practicable, to be heard together with the

appeal under section 97.

**[39]-[56] (Repealed)**

## **2.2 Consequential amendments to Environmental Planning and Assessment Act 1979**

**[1]-[16] (Repealed)**

**[17] Section 81 Post-determination notification**

Omit section 81 (1) (b). Insert instead:

- (b) in the case of a development application for consent to carry out designated development or development in respect of which a review application may be made under section 82BA, each objector, and

**[18] Section 81 (3) and (4)**

Omit section 81 (3). Insert instead:

- (3) In the case of a development application for consent to carry out designated development or development in respect of which a review application may be made under section 82BA, the consent authority must also notify each objector of the objector's rights to appeal against the determination and of the applicant's rights to appeal against the determination.

- (4) In this section:

***appeal*** includes make a review application under section 82BA.

***objector*** means a person who has made a submission by way of objection under section 79 (5) or under regulations made under section 79AA.

**[19]-[25] (Repealed)**

**[26] Section 83 (1) (b)**

Insert "or development to which an objection has been made in accordance with regulations under section 79AA" after "section 79 (5)".

**[27] (Repealed)**

**[28] Section 83 (2)**

Insert "a review application has been made under section 82BA or" before "an appeal".



**[29] Section 83 (2) (b)**

Insert “review application or” before “appeal”.

**[30] Section 83 (3) (b)**

Insert “a review application under section 82BA or” after “a decision on”.

**[31]-[39] (Repealed)**

**[40] Section 109J Restriction on issue of subdivision certificates**

Insert “or person who has made a submission in accordance with the regulations under section 79AA” after “objector” in section 109J (1) (g) where firstly occurring.

**[41] Section 109J (1) (g) (i)**

Insert “or person” after “objector”.

**[42] Section 109J (1) (g) (ii)**

Omit the subparagraph. Insert instead:

- (ii) if a review application under section 82BA, or an appeal, has been made by the objector or person within that time, the application or appeal has been finally determined.

**[43] Section 109K Appeals against failure or refusal to issue Part 4A certificates**

Insert “or other development in respect of which a review application may be made under section 82BA” after “designated development” wherever occurring in section 109K (3) (c) and (d).

**[44] Section 109K (3) (d) (ii)**

Insert “a review application may be made under section 82BA or” before “an appeal”.

**[45] Section 109K (3) (d) (iii)**

Omit the subparagraph. Insert instead:

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

**[46]-[74] (Repealed)**

**[75] Schedule 6 Savings, transitional and other provisions**

Insert in appropriate order in Part 21 (as inserted by Schedule 5.1 [12]):

## **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.

### **126 Application to existing development applications and consents**

- (1) The amendment made to section 86A by the amending Act does not apply to or in respect of a complying development certificate issued before the commencement of the amendment.
- (2) (Repealed)
- (3) The amendments made to section 95A by the amending Act apply to or in respect of a development consent granted before the commencement of those amendments.

### **2.3-2.10**

(Repealed)

## **Schedule 3 Amendments relating to development contributions**

(Section 3)

### **3.1 Amendment of [Environmental Planning and Assessment Act 1979](#)**

#### **[1] Section 750 Giving of approval for concept plan**

Omit “planning agreement referred to in section 93F” from section 750 (5).

Insert instead “planning agreement under Division 4 of Part 5B”.

**[2] Section 75R Application of other provisions of Act**

Omit section 75R (4).

**[3] Section 75R**

Insert at the end of the section:

**Note—**

Section 116B provides for the application of Part 5B (Provision of public infrastructure) to projects and the giving of approval for the carrying out of projects under this Part.

**[4] Part 4, Divisions 6 and 6A**

Omit the Divisions.

**[5] (Repealed)**

**[6] Part 5B**

Insert after Part 5A:

## **Part 5B Provision of public infrastructure**

### **Division 1 Preliminary**

#### **116A Definitions**

(1) In this Part:

**community infrastructure**—see section 116C.

**community infrastructure contribution** means a development contribution required by a consent authority under Division 2.

**contributions plan** means a contributions plan approved under this Part.

**development contribution** means:

- (a) the dedication of land free of cost, or
- (b) the payment of a monetary contribution.

**Note—**

Development contributions for community infrastructure are provided for in Division 2 and development contributions for public infrastructure are provided for in Division 3.

**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 planning agreement provided for in Division 4.

**planning authority** means:

- (a) a council, or
- (b) the Minister, or
- (c) the corporation, or
- (d) a development corporation, or
- (e) a public authority declared by the regulations to be a planning authority for the purposes of this Part.

**public infrastructure**—see section 116C.

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

**State infrastructure contribution** means a State infrastructure contribution determined by the Minister under Division 3.

- (2) Words and expressions used in Schedule 1 have the same meanings as they have in this Part.

### **116B Application of Part**

- (1) This Part applies to development that requires development consent.
- (2) This Part applies to projects under Part 3A (and the giving of approval for the carrying out of projects under that Part) in the same way as it applies 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. However, a condition cannot be imposed under a provision of Division 2, 3 or 5 of this Part unless the provision would have applied if Part 3A did not apply to the project and a development consent were granted.

### **116C Community and public infrastructure**

- (1) In this Part:

**community infrastructure** means public amenities and public services, but does not include water supply or sewerage services.

**public infrastructure** includes:

- (a) public amenities and public services, and
- (b) affordable housing, and
- (c) transport infrastructure,

but does not include water supply or sewerage services.

(2) In this Part, **provision of public infrastructure** includes:

- (a) the provision, extension and augmentation of (or the recoupment of the cost of providing, extending or augmenting) public infrastructure, and
- (b) the funding of recurrent expenditure relating to the provision, extension and augmentation of public infrastructure, and
- (c) the conservation or enhancement of the natural environment, and
- (d) any action of a planning authority in connection with the exercise of any statutory function under this Act, including the carrying out of any research or investigation and the preparation of any report, study or instrument.

#### **116D Key considerations for development contributions**

The following are the key considerations for development contributions for the purposes of this Part:

- (a) Can the public infrastructure that is proposed to be funded by a development contribution be provided within a reasonable time?
- (b) What will be the impact of the proposed development contribution on the affordability of the proposed development?
- (c) Is the proposed development contribution based on a reasonable apportionment between existing demand and new demand for public infrastructure to be created by the proposed development to which the contribution relates?
- (d) Is the proposed development contribution based on a reasonable estimate of the cost of proposed public infrastructure?
- (e) Are the estimates of demand for each item of public infrastructure to which the proposed development contribution relates reasonable?

### **116E Accountability**

- (1) The regulations may make provision for or with respect to requiring the collection and publication by planning authorities of information concerning the provision of public infrastructure and the determination, collection, application and use of development contributions under this Part.
- (2) The information required to be collected and published can include (but is not limited to):
  - (a) details of the amounts of monetary contributions paid and the purposes for which they were paid, and
  - (b) details of the purposes for which monetary contributions have been applied by a planning authority, and
  - (c) details of the time frame for the provision of public infrastructure to which any contributions plan approved by the planning authority relates, and
  - (d) details of any borrowings or other arrangements made by a planning authority for the provision of public infrastructure, and
  - (e) the amount and other details of any monetary contributions that have not been applied for the purpose for which they were paid and that continue to be held by a planning authority.
- (3) The regulations can, for example, require the publication of information by a planning authority by requiring inclusion of the information in any annual or other report of the planning authority.

### **116F Use of development contributions**

- (1) A consent authority or planning authority is to hold any monetary contribution paid under this Part (including under a planning agreement) for the purpose for which the payment was required, and apply the money towards that purpose within a reasonable time.
- (2) Money paid under this Part for different purposes may be pooled and applied progressively for those purposes, subject to the requirements of any relevant contributions plan.
- (3) Money paid as an indirect contribution under Division 2 is to be applied (subject to any relevant provisions of a contributions plan) towards the provision, extension or augmentation of community infrastructure or towards recouping the cost of the provision, extension or augmentation of community infrastructure.
- (4) Land dedicated under this Part 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.

- (5) A reference in this section to a monetary contribution includes a reference to any additional amount earned from its investment.
- (6) This section is subject to any direction of the Minister under this Part.
- (7) This section does not apply in respect of any of the following:
  - (a) monetary contributions paid, and the proceeds of the sale of land dedicated, under Division 2 (Community infrastructure contributions) in respect of development within a growth centre (or other area of land) that is specified in Schedule 3 (Community Infrastructure Trust Fund areas) to the *Growth Centres (Development Corporations) Act 1974*,

**Note—**

Section 25 of the *Growth Centres (Development Corporations) Act 1974* requires these contributions to be paid into a Community Infrastructure Trust Fund. The other areas of land referred to in this paragraph are former growth centres.

- (b) a State infrastructure contribution under Division 3,
- (c) a development contribution under Division 5 (Development contributions for affordable housing).

## **Division 2 Community infrastructure contributions**

### **116G Direct and indirect contributions for community infrastructure**

- (1) A consent authority can require the following development contributions in respect of development:

***direct contributions***, being either or both of the following:

- (a) a reasonable development contribution for the provision, extension or augmentation of community infrastructure within the area,
- (b) a reasonable monetary contribution towards recoupment of the cost of providing existing community infrastructure within the area.

***indirect contributions***, being the payment of a monetary contribution that is a percentage of the proposed cost of carrying out the development.

- (2) An indirect contribution cannot be required in relation to development if a direct contribution is required in relation to that development.
- (3) Once a direct contribution has been required in respect of development comprising the subdivision of land (the ***initial development***), no direct or

indirect contribution can be required in respect of other development on that land except to the extent (if any) that the other development will or is likely to increase the demand for community infrastructure beyond the increase in demand attributable to the initial development.

#### **116H Councils require contributions plan**

- (1) A council cannot require a community infrastructure contribution unless it is of a kind allowed by, and is determined in accordance with, a contributions plan approved by the council.
- (2) The Minister may, by direction in writing given in a particular case, authorise a council to require a community infrastructure contribution even though it is not of a kind allowed by, or is not determined in accordance with, a contributions plan approved by the council.
- (3) A council and the Minister must have regard to the key considerations for development contributions established by section 116D when approving a contributions plan or giving a direction under this section.

#### **116I Councils limited to contributions for key community infrastructure**

- (1) A council's contributions plan cannot allow the council to require a community infrastructure contribution unless the community infrastructure is:
  - (a) **key community infrastructure** (being community infrastructure prescribed by the regulations as key community infrastructure), or
  - (b) **additional community infrastructure** (being community infrastructure other than key community infrastructure) that the Minister has approved for the council under this section.
- (2) The Minister may on application by a council approve particular community infrastructure or a kind of community infrastructure as additional community infrastructure for the council.
- (3) The Minister may by direction in writing to one or more councils direct that (despite any other provision of this section or the regulations) a contributions plan of the council may permit the council to require a community infrastructure contribution for specified additional community infrastructure.
- (4) In determining whether to grant approval or give a direction under this section, the Minister must have regard to the key considerations for development contributions established by section 116D.
- (5) The regulations may:
  - (a) limit the kinds of infrastructure that may be the subject of an approval or



direction of the Minister of additional community infrastructure for the purposes of this section, and

- (b) require a council that applies for the approval of the Minister under this section to provide specified information and documents (such as a business plan and independent assessment of the business plan) in support of or otherwise in connection with the application.

### **116J Nexus for direct contributions**

- (1) A direct contribution for the provision, extension or augmentation of community infrastructure within an area can only be required if the consent authority is satisfied that the development concerned will or is likely to require the provision of or increase the demand for that community infrastructure.
- (2) A direct contribution towards recoument of the cost of providing existing community infrastructure within the area can only be required if:
  - (a) the consent authority is satisfied that the development concerned will, if carried out, benefit from the provision of the existing public infrastructure, and
  - (b) the existing public infrastructure was (at any time, whether before or after the date of commencement of this Part) provided within the area by a consent authority in preparation for or to facilitate the carrying out of development in the area.
- (3) For the purposes of a direct contribution, the cost of providing existing community infrastructure is that cost as indexed in accordance with the regulations.
- (4) A direct contribution cannot be required if the community infrastructure concerned is, in whole or in part, infrastructure provided, or to be provided, in relation to the development out of State infrastructure contributions.

### **116K Nexus for indirect contributions**

- (1) The validity of an indirect contribution is not affected by there being no connection between the development the subject of the indirect contribution and the object of expenditure of any money required to be paid.
- (2) A consent authority cannot require payment of an indirect contribution in relation to development on land in a State contributions area except with the approval of the Minister or a development corporation designated by the Minister to give approvals under this subsection.
- (3) The regulations may make provision for or with respect to indirect contributions,

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 an indirect contribution.
- (4) The Minister may by direction to a consent authority in the case of a particular development application permit the consent authority to require payment of an indirect contribution of a percentage in excess of any maximum percentage fixed by the regulations. The Minister's direction may also include requirements for the public notification of any such permission, including notification in any contributions plan of the consent authority.

#### **116L Minister's directions about community infrastructure contributions**

- (1) The Minister may, generally or in any particular case or class of cases, direct a consent authority as to any one or more of the following:
- (a) the community infrastructure in relation to which a requirement for a community infrastructure contribution may or may not be imposed,
  - (b) in the case of a requirement for a direct contribution requiring the payment of a monetary contribution—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 the maximum amount of any such contribution,
  - (c) in the case of a requirement for an indirect contribution—the maximum percentage or maximum amount of the indirect contribution,
  - (d) the things that may or may not be accepted as a material public benefit for the purposes of a requirement for a direct contribution,
  - (e) the type or area of development in respect of which a community infrastructure contribution may or may not be imposed,
  - (f) the time within which community infrastructure contributions in the form of monetary contributions under this Division are to be applied (including a direction as to what constitutes a reasonable time for the provision of community infrastructure funded by community infrastructure contributions under this Division),
  - (g) the use of community infrastructure contributions in the form of monetary contributions for purposes other than those for which they were paid,
  - (h) the preparation of joint contributions plans by 2 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 Part and despite the provisions of any contributions plan.
- (4) A direction under this section as to the maximum amount or maximum percentage of a community infrastructure contribution may provide for the Minister to approve of an increase in that maximum amount or percentage in a particular case on the application of a council.
- (5) The regulations may require a council that applies for the approval of the Minister as referred to in subsection (4) to provide specified information and documents (such as a business plan and independent assessment of the business plan) in support of or otherwise in connection with the application
- (6) Directions in force under this section are to be made publicly available on the website of the Department.

#### **116M Development contribution provisions in planning instruments**

- (1) An environmental planning instrument (**EPI**) must not include provision that requires as a condition of development consent or as a precondition to the grant of development consent:
  - (a) the making of a development contribution for the provision of public infrastructure of any kind in connection with the carrying out of the development concerned, or
  - (b) the making of satisfactory arrangements for the making of such a development contribution.
- (2) This section does not apply to any provision of an EPI authorised by Division 3.
- (3) This section does not prevent an EPI from including a provision to the effect that development consent must not be granted for development unless the consent authority is satisfied that specified public infrastructure is available or that adequate arrangements have been made to make that public infrastructure available.
- (4) This section does not apply to any provision that is in force immediately before the commencement of this section.

#### **116N Procedural matters**

Part 1 of Schedule 1 has effect in relation to community infrastructure contributions.

## **Division 3 State infrastructure contributions**

### **116O State infrastructure contributions in State contributions areas**

- (1) For any land in a State contributions area, the Minister may determine that development contributions (***State infrastructure contributions***) are to be made for the provision of public infrastructure in relation to development or a class of development on the land.
- (2) The Minister is to determine the level and nature of State infrastructure contributions. A State infrastructure contribution may be determined as a contribution of a specified amount or of a percentage of the proposed cost of carrying out development or any class of development.
- (3) In determining the level and nature of a State infrastructure contribution, the Minister must have regard to the key considerations for development contributions established by section 116D.
- (4) A State infrastructure contribution can extend to the provision of public infrastructure outside a State contributions area or outside New South Wales.

### **116P Restrictions on State infrastructure determinations**

- (1) The determination by the Minister of a state infrastructure contribution is subject to the concurrence of:
  - (a) the Treasurer, or
  - (b) the Secretary of the Treasury (if the cost of the infrastructure is less than \$30 million).
- (2) The determination by the Minister of a State infrastructure contribution as a specified amount (but not as a percentage of the proposed cost of carrying out development) is subject to the following requirements:
  - (a) the contribution must as far as reasonably practicable be reasonable having regard to the cost of the provision of public infrastructure in relation to the development or class of development concerned,
  - (b) a State infrastructure contribution for the provision of public infrastructure outside the State contributions area concerned is not to be determined unless the Minister is of the opinion that the need for that public infrastructure arises as a result of the development concerned.

### **116Q State infrastructure contributions in addition to community infrastructure contributions**

A requirement for a State infrastructure contribution is in addition to any

requirement for a community infrastructure contribution under Division 2.

### **116R Provision in EPIs for satisfactory arrangements for State infrastructure**

- (1) An environmental planning instrument can include provision to the effect that development consent is not to be granted for specified development or development of a specified class unless arrangements satisfactory to the Director-General have been made for the making of a development contribution for the provision of public infrastructure by the State in relation to the development.
- (2) In deciding for the purposes of any such provision whether satisfactory arrangements have been made for the making of a development contribution for the provision of public infrastructure by the State in relation to development, the Director-General must have regard to the key considerations for development contributions established by section 116D.
- (3) If a State infrastructure contribution is required in respect of development, a development contribution for the provision of public infrastructure in respect of the development cannot be required under a provision of an environmental planning instrument.

### **116S Procedural matters**

Part 2 of Schedule 1 has effect in relation to State infrastructure contributions.

## **Division 4 Voluntary planning agreements**

### **116T Developers can enter into planning agreements**

- (1) A **planning agreement** is a voluntary agreement between one or more planning authorities and a person (the **developer**) 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 the provision of public infrastructure or another public purpose.
- (2) The developer must be:
  - (a) a person who has sought a change to or the making or revocation of an environmental planning instrument, or
  - (b) a person who has made, or proposes to make, a development application, or
  - (c) a person who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.

### **116U Planning authority must have regard to key considerations for**

### **development contributions**

When entering into a planning agreement a planning authority must have regard to the key considerations for development contributions established by section 116D.

#### **116V Council planning agreements limited to key community infrastructure**

- (1) A planning agreement entered into by a council cannot apply in respect of the provision of public infrastructure unless:
  - (a) the infrastructure is **key community infrastructure** (being community infrastructure prescribed by the regulations as key community infrastructure), or
  - (b) the provision of the public infrastructure concerned has been approved for the council by the Minister under this section.
- (2) The Minister may on application by a council approve the provision of public infrastructure specified by the Minister or of a kind specified by the Minister for the purposes of a planning agreement.
- (3) The Minister may by direction in writing to a council direct that (despite any other provision of this section or the regulations) a planning agreement entered into by the council can apply in respect of the provision of public infrastructure specified by the Minister.
- (4) In determining whether to grant approval or give a direction under this section, the Minister must have regard to the key considerations for development contributions established by section 116D.
- (5) The regulations may:
  - (a) limit the kinds of infrastructure that may be the subject of an approval or direction of the Minister or the purposes of this section, or
  - (b) require a council that applies for the approval of the Minister under this section to provide specified information and documents (such as a business plan and independent assessment of the business plan) in support of or otherwise in connection with such an application.

#### **116W Planning agreements can limit other development contribution requirements**

- (1) A planning agreement can exclude the application in respect of development of any provision of Division 2 (Community infrastructure contributions) or of Division 3 (State infrastructure contributions), subject to the following restrictions:

- (a) a planning agreement cannot exclude the application of a provision of Division 2 in respect of development unless the consent authority for the development or the Minister is a party to the agreement,
  - (b) a planning authority is not to enter into a planning agreement excluding the application of Division 3 unless the planning authority is the Minister or does so with the approval of the Minister or a development corporation designated by the Minister to give such approvals.
- (2) If a planning agreement excludes the application of any provision of Division 2 or 3 to particular development, a consent authority cannot require a development contribution in respect of that development under the excluded provisions (except in respect of the application of any part of those provisions that is not excluded by the agreement).
- (3) A planning agreement can exclude benefits under a planning agreement from being taken into consideration in connection with requiring a direct contribution under Division 2, and such an exclusion has effect accordingly.

#### **116X Procedural matters**

Part 3 of Schedule 1 has effect in relation to planning agreements.

### **Division 5 Development contributions for affordable housing**

#### **116Y Conditions requiring land or contributions for affordable housing**

- (1) A State environmental planning policy may identify that there is a need for affordable housing within an area.
- (2) A consent authority may grant development consent for development within such an area subject to a condition requiring a reasonable development contribution to be used for the purpose of providing affordable housing, but only if:
  - (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 for development consent.

- (3) The reasonableness of a development contribution is to be determined having regard to the following:
  - (a) the extent of the need in the area for affordable housing,
  - (b) the scale of the proposed development,
  - (c) any other dedication or contribution required to be made by the applicant under this Division, or under Division 2 as a direct contribution.
- (4) 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 or State environmental planning policy, and is in accordance with a scheme for dedications or contributions set out in or adopted by the plan or policy.
- (5) A condition is not to be imposed under this section in relation to development that is within a State contributions area.

### **116Z Other contributions to be taken into account**

A consent authority that proposes to impose a condition in accordance with this Division 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.

### **116ZA Other conditions concerning affordable housing**

This Division does not prevent 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.

### **116ZB Use of affordable housing contributions**

- (1) A development contribution made in accordance with a condition imposed under this Division must:
  - (a) in the case of land, be made available by the consent authority for the purposes of affordable housing within a reasonable time, or
  - (b) in the case of a monetary contribution, be held by the consent authority (together with any additional amount earned from its investment) for the purpose for which the payment was required and applied by the consent



authority for the purposes of affordable housing in the area or an adjoining area within a reasonable time, or

- (c) in either case, transfer the land or pay the monetary contribution in accordance with any applicable direction of the Minister under this section.
- (2) 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 to a person nominated by the Minister land contributed under this Division, or
  - (b) requiring it to pay to a person nominated by the Minister a monetary contribution contributed under this Division.
- (3) 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 or (if the Minister so directs) within a time directed by the Minister, 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 any other area directed by the Minister, within a time directed by the Minister.

## **Division 6 State Infrastructure Fund**

### **116ZC Definition**

In this Part:

***the Fund*** means the State Infrastructure Fund established under this Division.

### **116ZD Establishment of Fund**

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

### **116ZE Payments into Fund**

The following is to be paid into the Fund:

- (a) monetary contributions, and the proceeds of sale of any land, received by a consent authority as a State infrastructure contribution under Division 3,

- (b) any money appropriated by Parliament for the purposes of the Fund,
- (c) the proceeds of the investment of money in the Fund,
- (d) any other money required to be paid into the Fund by or under this or any other Act or the regulations under this Act.

#### **116ZF Payments out of Fund**

- (1) The following is to be paid from the Fund:
  - (a) payments to public authorities for the provision of public 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).

#### **116ZG 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 Secretary of the Treasury to invest the money, in any other manner approved by the Treasurer.

### **[7] Schedule 1**

Insert as Schedule 1:

## **Schedule 1 Provisions relating to development contributions**

(Sections 116N, 116S and 116X)

### **Part 1 Community infrastructure contributions**

#### **1 Development contributions to be imposed by condition of consent**

A requirement for a community infrastructure contribution is to be imposed by means of a condition on development consent for the development concerned.

## **2 Appeals**

- (1) A condition of development consent that imposes a direct contribution may be disallowed or amended by the Court on appeal, or by a reviewing body on a review under section 82BA, because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with a contributions plan or direction of the Minister. The Court is not authorised to disallow or amend the contributions plan or direction.
- (2) A condition of development consent that imposes an indirect contribution that is of a kind allowed by, and determined in accordance with, a contributions plan (or a direction of the Minister under this Part) may not be disallowed or amended by the Court on appeal, or by a reviewing body on a review under section 82BA.
- (3) A person cannot appeal to the Court under this Act (despite section 123 or any other provision of this Act) in respect of:
  - (a) the approving, amending or repealing of a contributions plan by the Minister under clause 7 (Minister's directions about contributions plans), or
  - (b) the reasonableness in the particular circumstances of a requirement for a community infrastructure contribution that is determined in accordance with any such contributions plan.

## **3 Dedication of land or provision of material public benefit in satisfaction of development contribution requirement**

A consent authority may accept the dedication of land or the provision of a material public benefit in part or full satisfaction of a requirement for a community infrastructure contribution other than an indirect contribution.

## **4 Other contributions to be taken into account**

A consent authority that proposes to require a community infrastructure contribution in respect of development 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 by a planning agreement.

## **5 Contribution requirements under other Acts**

- (1) Compliance with a requirement for a community infrastructure contribution in relation to development operates to satisfy a requirement imposed by a public

authority under any other Act (in relation to or in connection with that development) for the dedication of land or payment of money in respect of the provision of public infrastructure, to the extent of the value of the land dedicated or the amount of money paid in compliance with the requirement.

- (2) The regulations may make provision for the determination in accordance with the regulations of the value for the purposes of this clause of the land dedicated in compliance with the requirement.

## **6 Making of contributions plans**

- (1) A council, or 2 or more councils, may, subject to and in accordance with the regulations, prepare and approve a contributions plan for the purpose of imposing requirements for community infrastructure contributions.
- (2) If a contributions plan authorises the imposition of a requirement for an indirect contribution, the plan is to specify the type or area of development in respect of which an indirect contribution may be imposed and is to preclude the imposition of a requirement for a direct contribution in respect of that type or area of development.
- (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 must, within 14 days after approving a contributions plan, provide the Minister with a copy of the plan.

## **7 Minister's directions about contributions plans**

- (1) The Minister may direct a council to provide the Minister with a draft of a contributions plan for review by the Minister before the council approves the plan. The council is not to approve the contributions plan until the Minister has notified the council that the Minister's review of the plan has been completed.
- (2) The Minister may, by direction in writing to a council, approve, amend or repeal a contributions plan on behalf of the council.
- (3) Alternatively, 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. The Minister may then, by direction in writing to the council, approve, amend or repeal the contributions plan on behalf of the council if the council fails to do so in accordance with the direction.
- (4) The approval, amendment or repeal of a contributions plan by the Minister has effect as if done by the council.

- (5) In approving, amending or repealing a contributions plan under this clause the Minister is not subject to the regulations.

## **8 Operation of contributions plan if consent authority not a council**

- (1) A consent authority that is not a council can require a development contribution even if it is not of a kind allowed by, or is not determined in accordance with, a contributions plan.
- (2) If there is a contributions plan that applies to the whole or any part of the area in which development is to be carried out, a consent authority that is not a council must however have regard to the contributions plan before imposing the requirement.

## **9 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.

## **10 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 requiring a community infrastructure contribution, and
- (b) can only authorise the imposition by an accredited certifier of a condition requiring the payment of a monetary contribution, and
- (c) must specify the amount of the monetary contribution 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 116L (1) (a), (b), (c) or (e) with which a council would be required to comply if issuing the complying development certificate concerned.
- (2) If an accredited certifier fails to comply with such a requirement of a contributions plan, the consent authority may impose the necessary condition on the complying development certificate and it has effect as if it had been imposed by the accredited certifier.
- (3) This clause does not limit anything for which a contributions plan may make provision in relation to a consent authority.

## **11 Cross-boundary issues**

- (1) A requirement for a community infrastructure contribution may be imposed for the benefit (or partly for the benefit) of an area that adjoins the local government area in which the development is to be carried out.
- (2) Any monetary contribution payable pursuant to such a requirement 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.

## **12 Public infrastructure may be provided outside NSW**

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

## **13 Community infrastructure contributions imposed by Minister or Director-General in growth centres etc**

- (1) This clause applies where the Minister or the Director-General, as the consent authority, imposes a requirement for a community infrastructure contribution in relation to:
  - (a) land within a growth centre, or

- (b) other land within one or more council areas.
- (2) This Schedule and Part 5B apply to land within a growth centre as if references in this Schedule and that Part to the area were references to the growth centre.
- (3) Any monetary contribution paid as a community infrastructure contribution:
  - (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 required.
- (4) This clause does not apply in respect of a monetary contribution in respect of development within a growth centre (or other area of land) that is specified in Schedule 3 (Community Infrastructure Trust Fund areas) to the *Growth Centres (Development Corporations) Act 1974*.

**Note—**

Section 25 of the *Growth Centres (Development Corporations) Act 1974* requires these community infrastructure contributions to be paid into a Community Infrastructure Trust Fund. The other areas of land referred to in this subclause are former growth centres.

## **Part 2 State infrastructure contributions**

### **14 How State infrastructure contributions are imposed**

- (1) Having determined a State infrastructure contribution for development, the Minister may direct a consent authority to require the State infrastructure contribution for the development. The consent authority must comply by requiring the contribution as a condition of development consent for the development.

**Note—**

If the Minister is the consent authority, the Minister may impose the condition without such a direction.

- (2) If a consent authority given a direction to require a State infrastructure contribution fails to comply with the direction in accordance with its terms, the Minister may impose the necessary condition on development consent and it has effect as if it had been imposed by the consent authority.

### **15 Consultation on proposed State infrastructure contributions**

- (1) In determining the level and nature of State infrastructure contributions in respect of development within a particular State contributions area, the Minister may:
  - (a) consult with owners of land in the State contributions area and other

relevant stakeholders, or consult with a panel of those owners and stakeholders established by the Minister, or

(b) publicly exhibit within the State contributions area a proposal in relation to the level of State infrastructure contributions and seek submissions within a reasonable time in relation to that proposal.

(2) The Minister's determination of a State infrastructure contribution:

(a) is to contain reasons for the level and nature of the contribution, and

(b) is to be made publicly available by the Minister.

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

(1) A person cannot appeal to the Court under this Act (including section 123) or make a review application under Division 2 of Part 4 in respect of a determination or direction of the Minister, or a condition imposed by a consent authority or the Minister, under Division 3 of Part 5B or under this Part.

(2) A condition imposed by a consent authority or the Minister under Division 3 of Part 5B cannot be modified without the approval of the Minister.

## **17 Dedication of land or material public benefit in satisfaction of contribution**

The consent authority may, with the consent of the Minister, accept the dedication of land or the provision of a material public benefit in partial or full satisfaction of a condition of development consent that requires a State infrastructure contribution.

## **18 Special provision for council infrastructure and other components of development contributions**

(1) The Minister's determination of a State infrastructure contribution is to identify what part (if any) of the contribution is for the provision of public infrastructure by a council or for any action of a planning authority in connection with the exercise of any statutory function under this Act.

(2) Any part of a State infrastructure contribution identified under this clause:

(a) is, for the purposes of Division 6 (State Infrastructure Fund) of Part 5B, deemed not to have been received by the consent authority under that Part, and

(b) is not to be taken into account in calculating the cost of public infrastructure for the purposes of the requirement that the Minister consult the Treasurer when the cost of public infrastructure exceeds \$30 million, and



- (c) is, if the part is identified as being for the provision of public infrastructure by a council, to be provided to the council and is to be held and applied by the council in accordance with section 116F (Use of development contributions), and
  - (d) is, if the part is identified as being for any action of a planning authority in connection with the exercise of any statutory function under this Act, to be provided to the Department and is to be held and applied by the Department in accordance with section 116F.
- (3) Subclause (1) does not limit any payments being made out of the Fund to a council or the Department under section 116ZF (1) (a).

### **19 Land contributed as State infrastructure contribution**

The Minister may direct a consent authority to sell all or part of any land it receives as a State infrastructure contribution or to transfer any such land to a public authority that is to provide, or has provided, public infrastructure in relation to the development to which the land relates or the class of development to which that development belongs.

### **20 Minister may make, amend or repeal State contributions areas**

- (1) The Minister may, by order published on the NSW legislation website, amend Schedule 5A for the purpose of:
- (a) creating a State contributions area, or
  - (b) repealing a State contributions area, or
  - (c) changing a State contributions area.
- (2) The Minister is to consult with the Treasurer before amending Schedule 5A.
- (3) Any such order may contain savings and transitional provisions.
- (4) 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.

## **Part 3 Planning agreements**

### **21 Parties to planning agreements**

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

another council or other planning authority merely because it applies to any land not within, or any purposes not related to, the area of the council.

## **22 Limitations on planning agreements**

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

## **23 Contents of planning agreements**

- (1) A planning agreement must provide for the following:
  - (a) a description of the land to which the agreement applies,
  - (b) a description of the change to or the making or revocation of the environmental planning instrument, or 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 Divisions 2 and 3 of Part 5B to the development,
  - (e) if the agreement does not exclude the application to the development of provisions of Division 2 of Part 5B for requiring a direct contribution, whether benefits under the agreement are or are not to be taken into consideration in connection with requiring such a contribution,
  - (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.
- (2) There is not required to be any connection between the development to which a planning agreement applies and the object of expenditure of any money required to be paid by the agreement.

**Note—**

See section 116F, which requires money paid under a planning agreement to be applied for the purpose for which it was paid within a reasonable time.

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

- (1) A planning agreement can be registered under this clause if the following persons agree to its registration:
  - (a) if the agreement relates to land under the *Real Property Act 1900*—each person who has an estate or interest in the land registered under that Act,
  - (b) if the agreement relates to land not under the *Real Property Act 1900*—each person who is seised or possessed of an estate or interest in the land.
- (2) On lodgment 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 clause is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.
- (4) A reference in this clause to a planning agreement includes a reference to any amendment or revocation of a planning agreement.

## **25 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 8 July 2005) has no effect to the extent that the provision:
  - (a) expressly requires a planning agreement to be entered into before a development application can be made, considered or determined, or
  - (b) expressly prevents a development consent from being granted or having effect unless or until a planning agreement is entered into.
- (2) A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.
- (3) However, a consent authority can require a planning agreement to be entered

into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with:

- (a) the development application, or a change to or the amendment or revocation of an environmental planning instrument sought by the developer for the purposes of making the development application, or
- (b) a commitment made by the proponent in a statement of commitments made under Part 3A.

- (4) In this clause, **planning agreement** includes any agreement (however described) containing provisions similar to those contained in a planning agreement.

## **26 Appeals**

- (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 clause does not affect the jurisdiction of the Court under section 123 (Restraint etc of breaches of this Act).

## **27 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, or
- (d) the kinds of material public benefit that a planning agreement may or may not require a developer to provide.

## **28 Regulations—planning agreements**

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

- (a) the form of planning agreements,
- (b) the subject-matter of planning agreements,
- (c) the making, amendment and revocation of planning agreements, including the giving of public notice and inspection by the public,

- (d) requiring the provision to a planning authority of a copy of a planning agreement and any amendment or notice of revocation of a planning agreement,
- (e) the public inspection of planning agreements after they have been made.

**[8] Schedule 5A, heading and source reference**

Omit the heading and the source reference. Insert instead:

## **Schedule 5A State contributions areas**

(Schedule 116A and Schedule 1, clause 20)

**[9] Schedule 6 Savings, transitional and other provisions**

Insert in appropriate order in Part 21 (as inserted by Schedule 5.1 [12]):

## **Division 4 Provisions relating to development contributions**

### **127 Definitions**

In this Division:

**former contributions provisions** means the provisions of Division 6 or 6A of Part 4 as in force before their repeal by the amending Act.

**new contributions provisions** means the provisions of Part 5B and Schedule 1.

### **128 Savings and transitional regulations**

Regulations made under Part 1 of this Schedule have effect despite anything to the contrary in this Part.

### **129 Existing contributions conditions, agreements and actions**

- (1) A condition of development consent imposed under the former contributions provisions is taken to have been imposed under the corresponding provision of the new contributions provisions.
- (2) A planning agreement in force under the former contributions provisions immediately before the repeal of those provisions by the amending Act is taken to be a planning agreement under the corresponding provisions of the new contributions provisions.
- (3) Any action taken by the Minister or a consent authority under or for the purposes of the former contributions provisions is, to the extent that the action

has any force or effect immediately before the repeal of those provisions by the amending Act, taken to be an action of the Minister or consent authority under and for the purposes of the corresponding provisions of the new contributions provisions.

- (4) A reference in this Act to a State infrastructure contribution includes a reference to a special infrastructure contribution (being a contribution provided for under Subdivision 4 of Division 6 of Part 4) paid or required to be paid by a condition of development consent imposed before the commencement of this clause.
- (5) The new contributions provisions extend to levies paid or payable under the former contributions provisions as if those levies were monetary contributions paid or payable under the new contributions provisions.

### **130 Existing contributions plans**

- (1) A contributions plan in force under the former contributions provisions immediately before the commencement of this clause (an **existing contributions plan**) is repealed on 31 March 2010 unless the contributions plan is remade by the Minister under this clause before that date.
- (2) The Minister may, by direction in writing to a council, remake an existing contributions plan on behalf of the council if the Minister is satisfied that the plan provides for a community infrastructure contribution in respect of community infrastructure that is:
  - (a) the subject of a contract with the council for its construction, or
  - (b) the subject of a loan or other debt financing arrangement with a bank or other recognised financial institution for its forward funding, or
  - (c) the subject of a commitment for its construction in the council's budget for the 2007-08 financial year, or
  - (d) for which land acquisition has been commenced by the council, either by exchange of contracts for purchase or a compulsory acquisition process.
- (3) The Minister may call on councils to submit contributions plans together with supporting information by 31 March 2009 (or a later date determined by the Minister) for consideration for remaking by the Minister under this clause.
- (4) In remaking a contributions plan under this clause, the Minister is not subject to section 116I (Councils limited to contributions for key community infrastructure) or to the regulations.
- (5) The remaking of a contributions plan by the Minister under this clause has effect as if the contributions plan had been made by the council.

- (6) A provision of an existing contributions plan that is remade by the Minister under this clause operates to allow the council to require a community infrastructure contribution for community infrastructure even if it is not key community infrastructure (despite section 116I).
- (7) Subclause (6) does not apply to any provision of a contributions plan that results from the amendment of the contributions plan after it is remade by the Minister unless the effect of the amendment is only:
  - (a) to update a works schedule to reflect revised construction costs or the completion of works on the schedule, or
  - (b) to make minor or consequential amendments arising from any change to an environmental planning instrument or a development control plan.
- (8) A person cannot appeal to the Court under this Act (despite section 123 or any other provision of this Act) in respect of:
  - (a) the remaking of a contributions plan by the Minister under this clause, or
  - (b) the reasonableness in the particular circumstances of a requirement for a community infrastructure contribution that is determined in accordance with any such contributions plan.
- (9) In this clause:

**key community infrastructure** means community infrastructure that is key community infrastructure for the purposes of section 116I.

### **131 State Infrastructure Fund**

The State Infrastructure Fund established by the amending Act under the new contributions provisions is a continuation of the Special Contributions Areas Infrastructure Fund established under the former contributions provisions.

## **3.2 Amendment of Growth Centres (Development Corporations) Act 1974 No 49**

### **[1] Sections 25 and 26**

Insert after section 24:

### **25 Community Infrastructure Trust Fund**

- (1) There is established by this section a fund called the Community Infrastructure Trust Fund.
- (2) The Fund is to be administered by the Secretary of the Treasury. The Secretary is

to consult the Director-General and the trustees appointed under subsection (9) in relation to the administration of the Fund.

- (3) The following is to be paid into the Fund:
- (a) monetary contributions paid under, and the proceeds of the sale of land dedicated under, Division 2 (Community infrastructure contributions) of Part 5B of the *Environmental Planning and Assessment Act 1979* in respect of development within a growth centre (or other area of land) that is specified in Schedule 3 (Community Infrastructure Trust Fund areas),
  - (b) any money appropriated by Parliament for the purposes of the Fund,
  - (c) the proceeds of the investment of money in the Fund,
  - (d) any other money required to be paid into the Fund by or under this or any other Act or the regulations under this Act.
- (4) The following is to be paid from the Fund:
- (a) payments to public authorities for the provision of public 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.
- (5) The assets of the Fund can only be applied for the purposes referred to in this section.
- (6) Money in the Fund may be kept in one or more financial institutions.
- (7) 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 Secretary of the Treasury to invest the money, in any other manner approved by the Treasurer.
- (8) The Secretary of the Treasury may delegate any function of the Secretary under this section (other than this power of delegation) to:
- (a) in the case of a growth centre that is specified in Schedule 3—the chief executive of the development corporation constituted for the growth centre, or
  - (b) in the case of any other area of land specified in Schedule 3—the Director-



General.

- (9) The Minister is to appoint an independent board of 6 trustees for the purposes of this section, comprising 2 representatives of local government, 2 representatives of the Department of Planning, and 2 representatives of the Treasury nominated by the Treasurer.

## **26 Minister may make, amend or repeal Community Infrastructure Trust Fund areas**

- (1) The Minister may, by order published on the NSW legislation website, amend Schedule 3 for the purpose of:
- (a) including a reference to a growth centre, or
  - (b) removing a reference to a growth centre or other area of land, or
  - (c) changing a reference to a growth centre or other area of land.
- (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.

### **[2] Schedule 3**

Insert after Schedule 2:

## **Schedule 3 Community Infrastructure Trust Fund areas**

(Section 26)

- 1** The land shown edged heavy red on the map entitled "*North West Growth Centre—Community Infrastructure Trust Fund Area*" and on the map entitled "*South West Growth Centre—Community Infrastructure Trust Fund Area*", copies of which are deposited in the office of the Department of Planning.

### **Note—**

Both these areas of land were formerly listed as growth centres under this Act.

## **3.3 Amendment of Environmental Planning and Assessment Regulation 2000**

### **[1] Clause 25D**

Omit the clause. Insert instead:

## **25D Public notification of planning agreements**

- (1) A planning agreement cannot be entered into, amended or revoked unless:
  - (a) public notice has been given of the proposed agreement, amendment or revocation, and
  - (b) an explanatory note for the proposed agreement, amendment or revocation has been made available for inspection by the public for a period of not less than 28 days.
- (2) If a proposed planning agreement or amendment of a planning agreement is changed after public notice is given of the proposed agreement or amendment but the change does not result in a significant reduction in the public benefit to be provided by the developer under the proposed agreement or amendment:
  - (a) no further public notice is required under this clause of the proposed agreement or amendment, and
  - (b) the requirement that an explanatory note for the proposed agreement or amendment be made available does not require that an explanatory note be made available for the proposed agreement or amendment as changed.
- (3) If the proposed planning agreement, amendment or revocation is in connection with a development application or a project application, the responsible planning authority is to ensure that the required public notice of the proposed agreement, amendment or revocation is given:
  - (a) in the case of an agreement in connection with a development application:
    - (i) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of the development application that is required to be given by a consent authority for a development application by or under the Act, or
    - (ii) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of the development application that is required to be given by a consent authority for a development application by or under the Act and in the manner determined by the planning authorities that are parties to the agreement, or
  - (b) in the case of an agreement in connection with a project application:
    - (i) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of an environmental assessment in connection with the application that is required to be given by the Director-General by or under the Act, or

- (ii) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of an environmental assessment for the project that is required to be given by the Director-General by or under the Act and in the manner determined by the planning authorities that are parties to the agreement.
- (4) If the proposed planning agreement, amendment or revocation is in connection with a proposed change to a local environmental plan, the responsible planning authority is to ensure that the required public notice of the proposed agreement, amendment or revocation is given:
  - (a) if practicable, as part of and contemporaneously with, and in the same manner as, any community consultation on the relevant planning proposal under Part 3 of the Act, or
  - (b) if it is not practicable for notice to be given contemporaneously, as soon as possible after any community consultation on the relevant planning proposal under Part 3 of the Act and in the manner determined by the planning authorities that are parties to the agreement.
- (5) In the case of a planning agreement of a kind other than an agreement referred to in subclause (1), (2) or (3) of which public notice is required to be given under this clause, the Director-General is to ensure that public notice of the proposed agreement, amendment or revocation is given not less than 28 days before the agreement is entered into or amended or revoked and in the manner determined by the planning authorities that are parties to the agreement.
- (6) The public notice of a proposed agreement, amendment or revocation must specify the arrangements relating to inspection by the public of copies of the explanatory note for the proposed agreement, amendment or revocation.
- (7) In this clause:

**explanatory note** means an explanatory note prepared in accordance with clause 25E.

**project application** has the same meaning as it has in Part 1A.

**responsible planning authority** for a proposed planning agreement or the amendment or revocation of a planning agreement is the planning authority that proposes to enter into the planning agreement or the agreement that revokes or amends the planning agreement.

## [2] Clause 25E Explanatory note

Omit clause 25E (5) and (6). Insert instead:

- (5) If a council is not a party to a planning agreement that applies to the area of the council, a copy of the explanatory note must be provided to the council when a copy of the agreement is provided to the council under clause 25EA.

**[3] Clause 25EA**

Insert after clause 25E:

**25EA Copies of planning agreements to be provided to Minister and council**

- (1) 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.
- (2) 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.
- (3) 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.

**[4] Clauses 31A and 31B**

Insert after clause 31:

**31A Key community infrastructure and additional community infrastructure**

- (1) The following community infrastructure is prescribed as key community

infrastructure for the purposes of sections 116I and 116V of the Act:

- (a) local roads,
  - (b) local bus facilities,
  - (c) local parks,
  - (d) local sporting, recreational and cultural facilities and local social facilities (being community and child care centres and volunteer rescue and volunteer emergency services facilities),
  - (e) local car parking facilities,
  - (f) drainage and stormwater management works,
  - (g) land for any community infrastructure (except land for riparian corridors),
  - (h) district infrastructure of the kind referred to in paragraphs (a)–(e) but only if there is a direct connection with the development to which a contribution relates.
- (2) Public infrastructure comprising land for riparian corridors cannot be approved under section 116I or 116V of the Act as additional community infrastructure or additional public infrastructure.
- (3) In this clause:

**facilities** means buildings and works.

### **31B Material to be provided by council seeking approval for additional infrastructure contributions**

A council requesting the Minister's approval under section 116I or 116V of the Act to the making of a contributions plan or the entering into of a planning agreement providing for development contributions for additional community infrastructure or the provision of public infrastructure must provide to the Minister:

- (a) a business plan that establishes how the infrastructure concerned can be fully funded by the council and can be provided and fully operational within the period to be specified in the contributions plan or planning agreement, and
- (b) a report (provided by a suitably qualified person who is independent of the council) that assesses the proposed development contributions against the key considerations for development contributions for the purposes of Part 5B of the Act.

### 3.4 Amendment of **City of Sydney Act 1988 No 48**

#### [1] Section 61 Development contributions

Omit section 61 (1). Insert instead:

- (1) Despite Part 5B of the Planning Act, a contributions plan prepared and approved under that Part in respect of the whole or any part of the land to which the *Central Sydney Local Environmental Plan 1996* applies may authorise the imposition of a condition that the applicant for development consent pay a levy to the City Council of 1% of the cost, as estimated by the consent authority, of the proposed development.

#### [2] Section 61 (4) (a)

Omit "Division 6 of Part 4 of". Insert instead "Part 1 of Schedule 1 to".

#### [3] Section 61 (5)

Omit "Part 4". Insert instead "Part 5B".

#### [4] Section 61 (7)

Omit the subsection. Insert instead:

- (7) A condition authorised by this section is not affected by the enactment of the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*. However, this section ceases to apply if a contributions plan is prepared and approved under Part 5B of the Planning Act that authorises a requirement for an indirect contribution under Division 2 of that Part in relation to the land to which this section applies.

### Schedule 4 Amendments relating to certification of development

(Section 3)

#### 4.1 Amendment of **Environmental Planning and Assessment Act 1979 No 203**

##### [1], [2] (Repealed)

##### [3] Section 80A Imposition of conditions

Insert after section 80A (6) (c):

- (d) ensuring compliance with the terms of the development consent during the

carrying out of any building work or subdivision work.

**[4] Section 80A (7A)**

Insert after section 80A (7):

(7A) Despite subsection (7), if the regulations make provision for or with respect to the maximum amount of security that may be required for a purpose referred to in subsection (6) (d), the security required for any such purpose is not to exceed the maximum amount determined in accordance with the regulations.

**[5] Section 80A (10)-(10AC)**

Omit section 80A (10). Insert instead:

(10) The funds realised from a security may:

- (a) be paid out to meet any cost referred to in subsection (6) (a)-(c), and
- (b) be paid out to meet any cost referred to in subsection (6) (d), but only in the circumstances prescribed by the regulations.

(10AA) Any balance of the funds realised from a security remaining after meeting the costs referred to in subsection (10) is to be refunded to, or at the direction of, the persons who provided the security.

(10AB) A person who provides security for the purposes referred to in subsection (6) (d) is entitled to request the release of any such balance of funds realised from the security only after:

- (a) in the case of building work where an occupation certificate is issued:
  - (i) the date of issue of a final occupation certificate as a result of the building work, or
  - (ii) the date that is 12 months after the date of issue of an interim occupation certificate as a result of the building work,

whichever occurs first, or

- (b) in the case of building work where no occupation certificate is issued—the date of the first lawful occupation or use of a building or part of a building resulting from that building work (as determined in accordance with section 109M), or
- (c) in the case of subdivision work—the date of issue of a subdivision certificate as a result of the subdivision work.

(10AC) If the consent authority has paid out any of those funds for a purpose referred

to in subsection (6) (d), the consent authority must, within 14 days after receiving a request under subsection (10AB) for the release of the funds, give written reasons to the person who provided the security as to why the consent authority considers it was entitled to use those funds.

**[6]-[9] (Repealed)**

**[10] Section 98A Appeal concerning security**

Insert “that relates to security of a kind referred to in section 80A (6) (a)-(c)” after “subsection (1) (b)” in section 98A (3).

**[11] Section 98A (4)**

Insert after section 98A (3):

- (4) An appeal with respect to a failure or refusal referred to in subsection (1) (b) that relates to security of a kind referred to in section 80A (6) (d) may be made within 6 months after the date after which the person who provided the security may request the release of funds realised from the security under section 80A (10AB).

**[12]-[15] (Repealed)**

**[16] Section 109EB**

Insert after section 109EA:

**109EB Directions by certifying authorities**

- (1) A reference in this section to a non-compliance in respect of an aspect of development is a reference to:
  - (a) a failure to comply with a condition of a development consent relating to the manner in which construction of that aspect of development is carried out on the relevant site (including, for example, a condition relating to the hours during which construction may be carried out or the measures to be taken to reduce impacts on adjoining land), and
  - (b) any matter arising during the course of carrying out that aspect of development that would prevent the issuing of a final occupation certificate or a subdivision certificate in respect of that aspect of development.
- (2) If a certifying authority for an aspect of development becomes aware of any non-compliance in respect of the aspect of development, the certifying authority must issue a notice in writing to the person responsible for carrying out that aspect of the development:



- (a) identifying the matter that has resulted or would result in the non-compliance, and
  - (b) directing the person to take specified action within a specified period to remedy the matter.
- (3) If a certifying authority gives a direction under this section and the direction is not complied with within the time specified in the notice containing the direction, the certifying authority that issued the direction is, within the period prescribed by the regulations, to send a copy of the notice to the consent authority and to notify the consent authority of the fact that the direction has not been complied with.
- (4) The regulations may make provision for or with respect to the following:
- (a) the procedure for issuing notices under this section,
  - (b) requirements in relation to follow-up action,
  - (c) the keeping of records in relation to notices given and follow-up action taken,
  - (d) requirements for any matter or record relating to a notice or follow-up action to be notified to specified persons.

**[17] (Repealed)**

**[18] Section 109L Accredited certifiers may issue notices requiring work to be carried out**

Omit the section.

**[19] Section 109PA**

Insert after section 109P:

**109PA Certifying authorities may apply for advice**

- (1) Before issuing a construction certificate for building work or subdivision work, a certifying authority may make an application to the consent authority for advice as to whether, in the opinion of the consent authority, the design and construction of any building or work to which the certificate relates is consistent with the relevant development consent.
- (2) Before issuing a final occupation certificate for a building or part of a building, a certifying authority may make an application to the consent authority for advice as to whether, in the opinion of the consent authority, the design and construction of the building is consistent with the relevant development consent or complying development certificate.

- (3) If the consent authority does not deal with an application made to it under this section within 21 days after receiving the application, the consent authority is taken to have given advice that the building, part of the building or work concerned is consistent with the relevant development consent or complying development certificate.
- (4) If a consent authority has given advice under this section that the design and construction of a building, part of a building or work is consistent with the relevant development consent or complying development certificate, a construction certificate or final occupation certificate issued in reliance on that advice may not be challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings at the request of the consent authority on the basis that the design and construction of the building (or part) or work concerned is not consistent with the relevant development consent or complying development certificate.
- (5) The regulations may make provision for or with respect to applications for advice under this section (including the information to be provided with such applications), the form in which advice is to be given under this section and fees in connection with the making of such applications and the giving of advice.
- (6) In this section:
  - (a) a reference to the design and construction of a building is, in relation to the issue of a construction certificate, a reference to the design and construction of the building as depicted in the plans and specifications furnished to the certifying authority and as described in any other information furnished to the certifying authority in accordance with the regulations, and
  - (b) a reference to a building, part of a building or work being consistent with a development consent or complying development certificate is a reference to the building, part or work being consistent with the development consent or complying development certificate as determined in accordance with the regulations (if any).

**[20]-[31] (Repealed)**

**[32] Schedule 6 Savings, transitional and other provisions**

Insert in appropriate order in Part 21 (as inserted by Schedule 5.1 [12]):

## **Division 5 Provisions relating to certification**

### **132 Section 109L notices**

Section 109L is taken to continue to have effect in relation to notices served under

that section before its repeal.

### **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.

## **4.2 Amendment of Environmental Planning and Assessment Regulation 2000**

### **[1]-[3] (Repealed)**

### **[4] Clause 145 Compliance with development consent and Building Code of Australia**

Omit “not inconsistent with” wherever occurring in clause 145 (1) (a) and (2).

Insert instead “consistent with”.

### **[5] (Repealed)**

### **[6] Clause 154D**

Insert after clause 154C:

### **154D Compliance with development consent**

- (1) If a certifying authority issues an interim occupation certificate for a building or part of a building where the design and construction of the building or part are not consistent with the relevant development consent or complying development certificate, the certifying authority must record on the certificate information identifying the nature and extent of the inconsistency.
- (2) A certifying authority must not issue a final occupation certificate for a building or part of a building unless the design and construction of the building or part are consistent with the relevant development consent or complying development certificate.

### **[7]-[13] (Repealed)**

## **4.3, 4.4**

(Repealed)

## **Schedule 5 Miscellaneous amendments**

(Section 3)

## **5.1 Amendment of Environmental Planning and Assessment Act 1979**

## No 203

### [1]-[6] (Repealed)

### [7] Section 155

Insert after section 154:

#### **155 Paper subdivisions**

Schedule 5 has effect.

### [8] (Repealed)

### [9] Schedule 5

Insert in appropriate order:

## **Schedule 5 Paper subdivisions**

(Section 155)

### **1 Definitions**

In this Schedule:

**development plan**—see clause 6.

**planning purpose**—see clause 3 (1) (c).

**relevant authority** for subdivision land means the authority designated by a subdivision order as the relevant authority for the land.

**subdivision land** means land subject to a subdivision order.

**subdivision order** means an order under clause 3.

**subdivision works** means works for the following purposes:

- (a) roads,
- (b) water supply, sewerage services and drainage,
- (c) telecommunications,
- (d) electricity supply.

### **2 Subdivision authorities**

Any of the following authorities may be designated in a subdivision order as the

relevant authority for the subdivision land:

- (a) the corporation,
- (b) a council,
- (c) Landcom,
- (d) a development corporation established under the *Growth Centres (Development Corporations) Act 1974*,
- (e) any other body prescribed by the regulations.

### **3 Subdivision orders**

(1) The Minister may, by order published in the Gazette:

- (a) declare specified land to be subdivision land, and
- (b) specify the relevant authority for the subdivision land, and
- (c) specify the purpose for which the order is made (the **planning purpose**), and
- (d) specify the functions (if any) under this Schedule conferred on the relevant authority, and
- (e) specify the conditions (if any) to which the exercise of those functions are subject, and
- (f) specify the subdivision works (if any) to be undertaken by the relevant authority in respect of the subdivision land.

(2) The Minister may make a subdivision order only if:

- (a) the Minister is of the opinion that it is desirable to do so to promote and coordinate the orderly and economic use and development of the land affected by the order, and
- (b) the land has been subdivided and is held by more than one owner and the Minister is satisfied that the land is land for which no provision or inadequate provision has been made for subdivision works, and
- (c) that land is subject to an environmental planning instrument, or a planning proposal, that will facilitate the proposed planning purpose, and
- (d) the Minister has consulted with the proposed relevant authority, any other Minister responsible for that authority and the council of the area in which that land is situated, and

- (e) the Minister is satisfied that a development plan for that land has been prepared by the relevant authority in accordance with this Schedule, and
  - (f) the Minister has considered any provisions of the development plan that modify or disapply the provisions of Division 4 of Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991*, and
  - (g) at least 60% of the total number of owners of that land, and the owners of at least 60% of the total area of that land, have consented to the proposed development plan.
- (3) For the purposes of subclause (2) (b) and (g), 2 or more owners of the same lot are to be treated as one owner.

#### **4 Functions of relevant authority**

- (1) A relevant authority has the functions conferred on it by a subdivision order.
- (2) A relevant authority may only exercise functions conferred on it under a subdivision order for the purposes of, or purposes ancillary to, the planning purpose specified in the subdivision order.
- (3) Functions conferred on a relevant authority by a subdivision order are in addition to any other functions conferred on the authority under any other law.
- (4) Clauses 7-13 set out the functions that may be conferred on a relevant authority under a subdivision order but do not otherwise confer those functions on a relevant authority.
- (5) A relevant authority may not exercise functions under clause 7 or 9 unless there is a development plan in force in relation to the subdivision land.

#### **5 Obligations of relevant authority**

A relevant authority must, in accordance with the subdivision order and any development plan applicable to the subdivision land, give effect to the planning purpose specified in the order and must undertake or arrange for the undertaking of any subdivision works specified in the order.

#### **6 Development plans**

- (1) An authority referred to in clause 2 may, and must at the request of the Minister, prepare a development plan for subdivision land or proposed subdivision land.
- (2) A development plan is to contain the following matters:
  - (a) a proposed plan of subdivision for the land,
  - (b) details of subdivision works to be undertaken for the land,

- (c) details of the costs of the subdivision works and of the proposed means of funding those works,
  - (d) details of the proportion of those costs to be borne by the owners of the land and of the manner in which the owners may meet those costs (including details of any proposed voluntary land trading scheme or voluntary contributions or, if voluntary measures are not agreed to by owners, of compulsory land acquisition or compulsory contributions),
  - (e) rules as to the form of compensation for land that is compulsorily acquired and how entitlement to compensation is to be calculated,
  - (f) rules as to the distribution of any surplus funds after the completion of subdivision works for the land,
  - (g) any other matters prescribed by the regulations.
- (3) Regulations may be made for or with respect to procedures for the preparation, public notification, adoption, publication, amendment and repeal of development plans.
- (4) The validity of a development plan must not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date of its publication in the Gazette.

## **7 Land acquisition powers**

- (1) A relevant authority may, for a planning purpose specified in a subdivision order, acquire subdivision land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) A relevant authority may not give a proposed acquisition notice under the *Land Acquisition (Just Terms Compensation) Act 1991* without the approval of the Minister.
- (3) The following provisions apply if compensation provided for that acquisition is in accordance with the rules set out in a development plan in force in relation to the land:
- (a) sections 44 (2), 45 (3), 49–51, 64, 66 (4) and 68 (2) of the *Land Acquisition (Just Terms Compensation) Act 1991* do not apply in relation to compensation other than monetary compensation,
  - (b) all or any provisions of Division 4 of Part 3 of that Act do not apply, or apply with modifications, if the development plan so provides.
- (4) The rules set out in a development plan may provide that all or any of the provisions of Division 4 of Part 3 of the *Land Acquisition (Just Terms*

*Compensation) Act 1991* do not apply to the determination of compensation under that plan, or apply with such modifications as are set out in that plan.

- (5) If the rules set out in a development plan make provision as referred to in subclause (4), the Valuer-General must determine compensation to be offered to a person under the *Land Acquisition (Just Terms Compensation) Act 1991* in respect of land acquired under this clause in accordance with the rules set out in any applicable development plan adopted by a relevant authority for the land.
- (6) For the purposes of this clause, a reference in the *Land Acquisition (Just Terms Compensation) Act 1991* to an amount of compensation includes a reference to compensation other than monetary compensation and a reference to payment of compensation includes a reference to the provision of such compensation.
- (7) Subclauses (3)–(6) have effect despite any provision of the *Land Acquisition (Just Terms Compensation) Act 1991*.

## **8 Other powers to acquire and dispose of land**

A relevant authority may sell, lease, exchange, mortgage or otherwise deal with or dispose of subdivision land vested in the authority, or an interest in that land, and may grant easements, rights-of-way or covenants over that land.

## **9 Contribution powers**

- (1) A relevant authority may, by notice in writing, require an owner of subdivision land to make a reasonable monetary contribution for the provision, extension or augmentation of subdivision works.
- (2) A requirement under this clause must be in accordance with the development plan applicable to the subdivision land.
- (3) The amount payable by the owner of subdivision land under this clause is to be reduced by the amount or value of any voluntary contribution (whether a monetary or other contribution) made by the owner for the provision, extension or augmentation of subdivision works in accordance with the development plan applicable to the subdivision land or an agreement with the relevant authority.
- (4) Compliance with a requirement for a contribution under this clause, or a voluntary contribution made in accordance with a development plan, operates to satisfy any other requirement imposed by a public authority under this or any other Act (in relation to or in connection with the subdivision land) for the dedication of land or the payment of money in respect of the provision of the same subdivision works, to the extent of the value of the land dedicated or the amount of money paid in compliance with the requirement.
- (5) The regulations may make provision for the determination of the value for the



purposes of this clause of the land dedicated or traded to the authority in accordance with a development plan.

- (6) A contribution required to be made under this clause may be in addition to any other contribution required to be made under this Act.

## **10 Use of monetary contributions and other amounts**

- (1) The following are to be paid by the authority to a fund or funds approved by the Minister:

- (a) a monetary contribution paid to a relevant authority by the owner of subdivision land for subdivision works,
- (b) any money paid by the relevant authority to meet contribution amounts under the development plan in respect of land acquired by the authority under this Schedule,
- (c) the proceeds of any disposal by the relevant authority of land acquired under this Schedule.

- (2) The following may be paid from any fund to which contributions or amounts are paid under this clause:

- (a) payments to persons or bodies with respect to the provision of subdivision works,
- (b) payments in connection with the exercise of functions by the relevant authority for the planning purpose specified in the subdivision order,
- (c) payments for the whole or part of compensation payable under clause 7 and any payments required to be made under the *Land Acquisition (Just Terms Compensation) Act 1991*,
- (d) payments for the distribution of any surplus funds after the completion of subdivision works and any other payments under this clause,
- (e) any money required to meet the administrative expenses of the relevant authority in relation to its functions under the subdivision order.

## **11 Powers to carry out subdivision works**

- (1) The relevant authority may carry out, or arrange for the carrying out of, subdivision works with respect to subdivision land.
- (2) The relevant authority may enter into contracts and other arrangements for the carrying out of subdivision works.
- (3) A relevant authority may make a development application to carry out

development on subdivision land for the purposes of subdivision works without the consent of the owner of the land.

- (4) The consent authority may grant consent to any such development application even if the owner of the land has failed to consent to the application.
- (5) In this clause, **subdivision works** includes the carrying out of any research or investigation related to the provision or augmentation of subdivision works.

## **12 Roads powers**

- (1) A road within subdivision land cannot be provided, opened, dedicated, closed (within the meaning of Part 4 of the *Roads Act 1993*) or realigned by the Crown, a public authority or any person except with the consent of the relevant authority.
- (2) A private road, or part of a private road, within subdivision land cannot be:
  - (a) provided, opened, closed or realigned, or
  - (b) regulated in its use, or
  - (c) used for a purpose other than a road,except with the consent of the relevant authority.

## **13 Ancillary powers**

A relevant authority has, for the purpose of any other functions conferred under this Schedule, the following functions:

- (a) the authority may enter into agreements with the owners of subdivision land for the purposes of a voluntary land trading scheme or the provision of voluntary contributions or for other purposes connected with the authority's functions under the subdivision order,
- (b) the authority may cause surveys to be made, and plans of survey to be prepared, in relation to subdivision land or proposed subdivision land (whether or not vested in the authority),
- (c) the authority may manage subdivision land vested in the authority in accordance with the development plan,
- (d) the authority may carry out research or investigation relating to subdivision works or proposed subdivision works,
- (e) the authority may (subject to this Act) subdivide and re-subdivide land, and consolidate subdivided or re-subdivided land vested in the authority,

- (f) with the consent of the owner or occupier of the land, a person authorised in writing by the authority may enter subdivision land or proposed subdivision land.

#### **14 Power to investigate land for subdivision order proposals**

An authority specified in clause 2 may, before a subdivision order is made.

- (a) cause surveys to be made, and plans of survey to be prepared, in relation to proposed subdivision land (whether or not vested in the authority), and
- (b) carry out research or investigation relating to proposed subdivision works.

#### **15 Other powers of entry**

- (1) An authorised person may, without the consent of the owner or occupier of subdivision land or proposed subdivision land and in accordance with the regulations:

- (a) enter that land for a planning purpose, or
- (b) enter that land in connection with the carrying out of subdivision works or research or investigation relating to proposed subdivision works, or
- (c) enter that land in connection with the preparation of, or research or investigation for the purposes of, a development plan or proposed development plan.

- (2) In this clause, **authorised person** means the following persons:

- (a) a person authorised in writing by a relevant authority,
- (b) a person authorised in writing by the Minister in connection with the exercise of the powers of an authority under clause 14.

#### **16 Failure to pay contributions**

A monetary contribution required to be paid by an owner of subdivision land under clause 9 may be recovered by the relevant authority in any court of competent jurisdiction as a debt due to the relevant authority by the owner.

#### **17 Voluntary contributions agreements to run with land**

- (1) A **voluntary contributions agreement** is a voluntary agreement between a relevant authority and a person who owns subdivision land under which the owner is required to pay a monetary contribution to be used for or applied for subdivision works.
- (2) A voluntary contributions agreement can be registered under this clause if the following persons agree to its registration:

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

## 18 State taxes

- (1) State tax is not chargeable in respect of any matter or thing done by a relevant authority in the exercise of its functions under this Schedule if the Minister, with the approval of the Treasurer, exempts the authority from payment of any or all State taxes.
- (2) In this clause, **State tax** means duty under the *Duties Act 1997* or any other tax, duty, rate (including a local government rate), fee or other charge imposed by or under any Act or law of the State, other than payroll tax.

## 19 Obstruction of authorised persons

A person must not obstruct, hinder or interfere with a person authorised in writing by an authority specified in clause 2 or authorised under clause 15 in the exercise of the person's functions or functions of the authority under this Schedule.

Maximum penalty: 100 penalty units.

## 20 Regulations

Regulations may be made for or with respect to the following matters:

- (a) the manner in which consent to a development plan is to be given by owners of

land,

- (b) information to be provided to the Minister by, and reports by, relevant authorities.

**[10]-[12] (Repealed)**

**5.2, 5.3**

(Repealed)

**5.4 Amendment of [Local Government Act 1993 No 30](#)**

**[1] Section 68 What activities, generally, require the approval of the council?**

Omit item 1 of Part F of the Table to the section.

**[2] Section 90 Concurrence**

Omit “40 days” from section 90 (5). Insert instead “21 days”.

**[3] Section 90 (6)**

Insert after section 90 (5):

- (6) The amendment made to subsection (5) by the [Environmental Planning and Assessment Amendment Act 2008](#) does not apply in relation to any application for an approval made before the commencement of that amendment.

**[4]-[7] (Repealed)**

**5.5 Amendment of [Local Government \(General\) Regulation 2005](#)**

**Part 2, Division 5, Subdivision 3 (Public car parks)**

Omit the Subdivision.

**5.6 Amendment of [Roads Act 1993 No 33](#)**

**[1] Section 25A**

Insert after section 25:

**25A Review of road widening orders**

- (1) The Minister must review the operation of road widening orders.
- (2) The review of an order must be carried out before the end of each period of 10 years following the date on which the order was published in the Gazette.

- (3) As soon as practicable after carrying out the review of an order, the Minister must notify the owner of any land affected by the order whether or not the order is to continue.
- (4) This section extends to any road widening order in force immediately before the commencement of this section. However, any such order that would, because of the operation of this section, be required to be reviewed during the period of 12 months following that commencement is not required to be reviewed until the end of that 12-month period.

**[2] Section 125 Approval to use footway for restaurant purposes**

Omit section 125 (3).

**5.7**

(Repealed)