

# Environmental Planning and Assessment Act 1979 No 203

[1979-203]



New South Wales

## Status Information

### Currency of version

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

### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Water Industry Competition Amendment \(Review\) Act 2014 No 57](#), Sch 2.2[2] (not commenced)
  - [Building and Development Certifiers Act 2018 No 63](#) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2019 No 14](#) (not commenced — to commence on 5.12.2019)
- **See also**
  - [Planning Legislation Amendment Bill 2019](#)
  - [Environmental Planning and Assessment Amendment \(Territorial Limits\) Bill 2019](#)
- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-rules (em-dashes). Text of the legislation is not affected.

This version has been updated.

### 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 21 November 2019

# Environmental Planning and Assessment Act 1979 No 203



New South Wales

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# Environmental Planning and Assessment Act 1979 No 203



New South Wales

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

## Part 1 Preliminary

### 1.1 Name of Act (cf previous s 1)

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

### 1.2 Commencement (cf previous s 2)

This Act commenced on 1 September 1980.

**Note—**

The Historical notes set out at the end of the Act on the NSW legislation website sets out the various Acts and instruments that have amended this Act and the dates on which each commenced.

### 1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows—

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including

Aboriginal cultural heritage),

- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

#### **1.4 Definitions** (cf previous s 4)

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

**accredited certifier**—see Part 6.

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

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

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

**amend** includes alter, vary or substitute (and amend provisions or a document includes amend a map or spatial dataset adopted by or under the provisions or document).

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

**authorised fire officer**—see section 9.35(1)(d).

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

**building** includes part of a building, and also includes any structure or part of a structure (including any temporary structure or part of a temporary structure), but does not include a manufactured home, moveable dwelling or associated structure within the meaning of the [Local Government Act 1993](#).

**Building Code of Australia** means the document, published by or on behalf of the

Australian Building Codes Board, that is prescribed for purposes of this definition by the regulations, together with—

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

**Building Professionals Board** means the Building Professionals Board constituted under the [Building Professionals Act 2005](#).

**building work**—see Part 6.

**certifier**—see Part 6.

**Note—**

Under Part 6, a certifier is a council or the holder of a certificate of accreditation as an accredited certifier under the [Building Professionals Act 2005](#) acting in relation to matters to which the accreditation applies.

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

**community participation plan** means a community participation plan prepared and published under Division 2.6.

**complying development** is development for which provision is made as referred to in section 4.2(5).

**complying development certificate** means a complying development certificate referred to in section 4.27.

**consent authority**—see Division 4.2.

**construction certificate, subdivision works certificate, occupation certificate, subdivision certificate, compliance certificate**—see Part 6.

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

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

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

**Court** means the Land and Environment Court.

**Crown land** has the same meaning as in the [Crown Land Management Act 2016](#).

**demolition** of a building or work includes enclosing a public place in connection with the demolition of a building or work.

**Department** means the Department of Planning and Environment.

**designated development** has the meaning given by section 4.10.

**development**—see section 1.5.

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

**development area** means land constituted as a development area in accordance with Division 7.3.

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

**development control order** means an order under Division 9.3.

**development control plan** (or **DCP**) means a development control plan made, or taken to have been made, under Division 3.6 and in force.

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the

environment,

- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.

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

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

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

**erection** of a building includes—

- (a) the rebuilding of, the making of alterations to, or the enlargement or extension of, a building, or
- (b) the placing or relocating of a building on land, or
- (c) enclosing a public place in connection with the construction of a building, or
- (d) erecting an advertising structure over a public road, or
- (e) extending a balcony, awning, sunshade or similar structure or an essential service pipe beyond the alignment of a public road,

but does not include any act, matter or thing excluded by the regulations (either generally for the purposes of this Act or only for the purposes of specified provisions of this Act).

**exempt development**—see section 1.6.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**Greater Sydney Region** has the same meaning it has in the [Greater Sydney Commission Act 2015](#).

**Independent Planning Commission** means the Independent Planning Commission constituted under Part 2.

**integrated development** has the meaning given by section 4.46.

**land** includes—

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

**local environmental plan** (or **LEP**)—see section 3.13(2).

**local planning panel** means a local planning panel constituted under Part 2.

**Ministerial planning order** means an order made by the Minister and published on the NSW planning portal.

**NSW planning portal** means the website with the URL of [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au), or any other website, used by the Planning Secretary to provide public access to documents or other information in the NSW planning database.

**objector** means a person who has made a submission under Schedule 1 by way of objection to a development application for consent to carry out designated development.

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

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

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

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

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



**Planning Ministerial Corporation** means the corporation constituted under Part 2.

**Planning Secretary** means the Secretary of the Department of Planning and Environment.

**premises** means any of the following—

- (a) a building of any description or any part of it and the appurtenances to it,
- (b) manufactured home, moveable dwelling or associated structure within the meaning of the [Local Government Act 1993](#),
- (b1) a vehicle of any description,
- (c) land, whether built on or not,
- (d) a tent,
- (e) a swimming pool,
- (f) a ship or vessel of any description (including a houseboat).

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

**Note—**

If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the [Home Building Act 1989](#).

**prohibited development** means—

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

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

- (a) the safety of persons in the event of fire,
- (b) the prevention of fire,
- (c) the detection of fire,
- (d) the suppression of fire,
- (e) the prevention of the spread of fire.

**public authority** means—

- (a) a public or local authority constituted by or under an Act, or

- (b) a Public Service agency, or
- (c) a statutory body representing the Crown, or
- (d) a Public Service senior executive within the meaning of the *Government Sector Employment Act 2013*, or
- (e) a statutory State owned corporation (and its subsidiaries) within the meaning of the *State Owned Corporations Act 1989*, or
- (f) a chief executive officer of a corporation or subsidiary referred to in paragraph (e), or
- (g) a person prescribed by the regulations for the purposes of this definition.

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

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

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

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

**residential building work** has the same meaning as in the *Home Building Act 1989*.

**State environmental planning policy** (or **SEPP**)—see section 3.13(2).

**State significant development** has the meaning given by Division 4.7.

**State significant infrastructure** has the meaning given by Division 5.2.

**subdivision of land**—see Part 6.

**subdivision work**—see Part 6.

**Sydney district or regional planning panel** means a Sydney district planning panel or a regional planning panel constituted under Part 2.

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

**Tier 1, Tier 2 or Tier 3 monetary penalty**, in relation to an offence, indicates the maximum monetary penalty that a court may impose for the offence—see sections 9.52–9.54 for the relevant maximum amounts.

**use** of land includes a change of building use.

**work** includes any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act, but does not include a reference to any

activity that is specified by a regulation not to be a work for the purposes of this Act. The **carrying out** of a work includes—

- (a) the renewal of, the making of alterations to, or the enlargement or extension of, a work, or
- (b) enclosing a public place in connection with the carrying out of a work.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) (Repealed)
- (3) Where functions are conferred or imposed by or under this Act on a council—
  - (a) except as provided in paragraph (b), those functions may be exercised in respect of an area by the council of that area, or
  - (b) if the functions are conferred or imposed in respect of part of an area, those functions may be exercised in respect of that part by the council of that area.
- (3A) Where functions are conferred or imposed by or under this Act on a public authority, being a Public Service agency or some other unincorporated group of persons, those functions may be exercised by a person who is authorised to exercise those functions on behalf of the public authority.
- (4) (Repealed)
- (5) A reference in this Act to an authority or person preparing a document includes a reference to the authority or person causing the document to be prepared on the authority's or person's behalf.
- (6), (6A) (Repealed)
- (7) A reference in this Act to a direction is a reference to a direction in writing.
- (7A) (Repealed)
- (8) A power, express or implied, to make or give an order, direction, declaration, determination or other instrument under this Act or under an instrument made under this Act includes a power to revoke or amend the order, direction, declaration, determination or other instrument.
- (8A), (9) (Repealed)
- (10) A reference in this Act to any act, matter or thing as specified in an environmental planning instrument includes a reference to any act, matter or thing that is of a class or description as specified in such an instrument.

- (11) A reference in this Act to the granting of consent includes a reference to the granting of consent subject to conditions.
- (12) Without affecting the generality of section 8(b) of the *Interpretation Act 1987*, a reference in this Act to the owner or lessee of land includes a reference to joint or multiple owners or lessees of land.
- (13) Notes in this Act are explanatory notes and do not form part of this Act.
- (14) A reference in this Act to an original document, map or plan includes a reference to a document, map or plan created, or a copy of which is kept, in electronic form.
- (15) A reference in this Act to a map includes a reference to a spatial dataset.

### 1.5 Meaning of “development” (cf previous s 4)

- (1) For the purposes of this Act, **development** is any of the following—
  - (a) the use of land,
  - (b) the subdivision of land,
  - (c) the erection of a building,
  - (d) the carrying out of a work,
  - (e) the demolition of a building or work,
  - (f) any other act, matter or thing that may be controlled by an environmental planning instrument.
- (2) However, development does not include any act, matter or thing excluded by the regulations (either generally for the purposes of this Act or only for the purposes of specified provisions of this Act).
- (3) For the purposes of this Act, the **carrying out of development** is the doing of the acts, matters or things referred to in subsection (1).

#### Note—

There are the following categories of development under this Act—

- (a) exempt development (development that is exempt from the assessment and consent or approval requirements of this Act),
- (b) development requiring development consent under Part 4, including the following—
  - (i) complying development (development that complies with pre-determined development standards and requires consent in the form of a complying development certificate by a consent authority or accredited certifier),
  - (ii) development that requires consent by a council or other public authority specified as the consent

- authority (including by a local planning panel or delegated council staff on behalf of a council),
- (iii) regionally significant development (development that requires consent by a Sydney district or regional planning panel),
- (iv) State significant development (development that requires consent by the Independent Planning Commission or the Minister),
- (v) designated development (development, other than State significant development, that requires an environmental impact statement for an application for consent),
- (vi) integrated development (development that also requires approvals under other legislation that are integrated under general terms of approval),
- (c) development that is an activity requiring environmental assessment under Division 5.1 before it is carried out by a public authority or before a public authority gives approval for the carrying out of the activity,
- (d) State significant infrastructure (including critical State significant infrastructure) requiring approval under Division 5.2 by the Minister.

### **1.6 Exempt development** (cf previous s 4)

- (1) The carrying out of exempt development does not require—
  - (a) development consent under Part 4, or
  - (b) environmental impact assessment under Division 5.1, or
  - (c) State significant infrastructure approval under Division 5.2, or
  - (d) a certificate under Part 6 (Building and subdivision certification).
- (2) Exempt development is development that is declared to be exempt development by an environmental planning instrument because of its minor impact.

### **1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994** (cf previous s 5AA)

This Act has effect subject to the provisions of Part 7 of the *Biodiversity Conservation Act 2016* and Part 7A of the *Fisheries Management Act 1994* that relate to the operation of this Act in connection with the terrestrial and aquatic environment.

**Note—**

Those Acts contain additional requirements with respect to assessments, consents and approvals under this Act.

## **Part 2 Planning administration**

### **Division 2.1 Minister and Planning Secretary**

#### **2.1 The Minister** (cf previous s 7)

- (1) The Minister has portfolio responsibility for planning and for the administration of the provisions of this Act allocated to the Minister by an administrative arrangements

order under the *Constitution Act 1902*.

- (2) The Minister has the functions conferred or imposed on the Minister under this Act.

## **2.2 The Planning Secretary** (cf previous ss 13, 15, 17)

- (1) The Planning Secretary has departmental responsibility for planning and for the administration of the provisions of this Act allocated to the Minister by an administrative arrangements order under the *Constitution Act 1902*.
- (2) The Planning Secretary has the functions conferred or imposed on the Planning Secretary under this Act.
- (3) The Planning Secretary may provide advice, recommendations and reports to the Minister in connection with the administration of this Act (whether on the Planning Secretary's own initiative or as required by the Minister).
- (4) The Planning Secretary is, in the exercise of any function under this Act, subject to the control and direction of the Minister (except in relation to the contents of any advice, recommendation or report provided to the Minister by the Planning Secretary).

## **2.3 Panels established by Minister or Planning Secretary** (cf previous s 22)

- (1) The Minister or the Planning Secretary may, by order published on the NSW legislation website, establish panels for the purposes of this Act.
- (2) The chairperson and other members of any such panel are to be appointed by the Minister or the Planning Secretary (as the case requires).
- (3) The functions of any such panel are to be as specified in the order by which it is established, and (without limitation) may include—
  - (a) the investigation of any matter relevant to the administration of this Act, or
  - (b) the provision of advice, recommendations or reports with respect to any such matter to the Minister, the Planning Secretary or other person or body engaged in the administration of this Act.

This subsection does not limit any functions conferred on any such panel under this or any other Act.

- (4) Any such panel is not subject to the direction or control of the Minister or the Planning Secretary (except in relation to the procedure of the panel and any directions under section 9.1).
- (5) The order establishing any such panel is to specify the name of the panel. The word "panel" is not required to be included in the name of the panel.
- (6) Schedule 2 contains provisions with respect to the members and procedure of any

such panel.

- (7) The regulations may make provision for or with respect to the functions, members and procedure of any such panel.
- (8) Any such panel is a NSW Government agency, unless the order by which it is established provides that it is not a NSW Government agency.

**Note—**

By virtue of section 13A of the *Interpretation Act 1987*, a NSW Government agency has the status, privileges and immunities of the Crown.

**2.4 Delegation by Minister, Planning Ministerial Corporation or Planning Secretary** (cf previous s 23)

- (1) The Minister, the Planning Ministerial Corporation or the Planning Secretary may delegate any of their functions under this Act to—
  - (a) a person employed in the Department of Planning and Environment, or
  - (b) the Greater Sydney Commission, or
  - (c) the Independent Planning Commission, or
  - (d) a Sydney district planning panel, or
  - (e) a regional planning panel, or
  - (f) a public authority or member of staff of a public authority, or
  - (g) a council or member of staff of a council, or
  - (h) a person, or person of a class, authorised for the purposes of this section by the regulations.
- (2) A reference in this section to a function under this Act includes a reference to—
  - (a) a function of the Minister under any other Act that is conferred or imposed on the Minister in his or her capacity as the Minister administering this Act or in connection with the administration of this Act, or
  - (b) a function of the Planning Ministerial Corporation under any other Act, or
  - (c) a function of the Planning Secretary under any other Act that is conferred or imposed on the Planning Secretary in connection with the administration of this Act.
- (3) This section does not authorise the delegation of—
  - (a) the power of delegation conferred by this section, or

- (b) the function of the Minister under Division 5.2 of determining an application for approval to carry out critical State significant infrastructure, or
- (c) any function of the Minister of giving directions under section 9.1 or of appointing a planning administrator or exercising other functions under section 9.6.

## **Division 2.2 Planning Ministerial Corporation**

### **2.5 Constitution and functions of Corporation** (cf previous s 8)

- (1) There is constituted by this Act a corporation with the corporate name of the Planning Ministerial Corporation.
- (2) The Planning Ministerial Corporation has such functions as are conferred or imposed on it under this or any other Act.
- (3) The Planning Ministerial Corporation is a NSW Government agency.

### **2.6 Management of Corporation** (cf previous s 8)

- (1) The affairs of the Planning Ministerial Corporation are to be managed by the Planning Secretary in accordance with any directions of the Minister.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Planning Ministerial Corporation by the Planning Secretary, or with the authority of the Planning Secretary, is taken to have been done by the Corporation.
- (3) The regulations may make provision with respect to the seal of the Planning Ministerial Corporation.
- (4) The annual report of the Planning Ministerial Corporation is to be published as part of the annual report of the Department of Planning and Environment.

**Note—**

Schedule 2 contains property provisions relating to the Planning Ministerial Corporation and Division 7.3 contains financial provisions relating to the Corporation.

## **Division 2.3 Independent Planning Commission**

### **2.7 Independent Planning Commission** (cf previous s 23B)

- (1) There is constituted by this Act a corporation with the corporate name of the Independent Planning Commission of New South Wales.
- (2) The Commission is not subject to the direction or control of the Minister (except in relation to the procedure of the Commission and any directions authorised to be given to the Commission under section 9.1 or other provision of this Act).
- (3) The Commission is a NSW Government agency.



**2.8 Members of Commission** (cf previous Sch 3, cl 2)

- (1) The Independent Planning Commission is to consist of such members as are appointed by the Minister.
- (2) One member of the Commission is, in the instrument of appointment or a subsequent instrument, to be appointed as the chairperson of the Commission.
- (3) Each member is to have expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, soil or agricultural science, hydro-geology, mining or petroleum development, traffic and transport, law, engineering, tourism or government and public administration.
- (4) In appointing a member of the Commission, the Minister is to have regard to the need to have a range of expertise represented among the Commission's members.
- (5) The Minister may appoint additional members of the Commission for the purposes of exercising specific functions of the Commission. An additional member is not required to have expertise in an area referred to in this section but is required to have expertise in an area relevant to the functions the member is to exercise.
- (6) Without limiting subsection (5), the Minister may appoint as an additional member for the purposes of that subsection a person who is a member of a subcommittee of the Commission. Any such appointment may be limited to a particular matter or matters, in addition to any limitation relating to specific functions.

**2.9 Functions of Commission** (cf previous s 23D)

- (1) The Independent Planning Commission has the following functions—
  - (a) the functions of the consent authority under Part 4 for State significant or other development that are (subject to this Act) conferred on it under this Act,
  - (b) any functions under this Act that are delegated to the Commission,
  - (c) to advise the Minister or the Planning Secretary on any matter on which the Minister or the Planning Secretary requests advice from the Commission,
  - (d) to hold a public hearing into any matter into which the Minister requests the Commission to hold a public hearing,
  - (e) any function of a Sydney district or regional planning panel or a local planning panel in respect of a particular matter that the Minister requests the Commission to exercise (to the exclusion of the panel),
  - (f) if a Sydney district or regional planning panel has not been appointed for any part of the State, any function that is conferred on any such panel under an environmental planning instrument applicable to that part or that is otherwise

conferred on any such panel under this Act,

(g) any other function conferred or imposed on it under this or any other Act.

**Note—**

Division 5 of Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* provides that a subcommittee appointed by the Independent Planning Commission exercises the gateway functions of the Mining and Petroleum Gateway Panel under that Policy.

(2) The matters on which advice may be provided under subsection (1)(c), or into which a public hearing may be held under subsection (1)(d), include any general or particular planning or development matter, the administration of this Act or any related matter.

**2.10 Constitution of Commission for particular matters** (cf previous Sch 3, cl 4)

- (1) For the purpose of exercising any of its functions with respect to a particular matter, the Independent Planning Commission is, subject to any direction of the Minister under this section, to be constituted by one or more members determined by the chairperson of the Commission.
- (2) The Minister may give any of the following directions to the chairperson with respect to the constitution of the Commission for a particular matter or class of matters—
  - (a) a direction as to the number of members that are to constitute the Commission,
  - (b) a direction as to the specified members, or members with specified qualifications or expertise, that are to constitute the Commission.
- (3) The Commission may, at any time, exercise by the same or different members one or more of its functions.

**2.11 Miscellaneous provisions relating to Commission** (cf previous ss 23C, 23E)

- (1) Schedule 2 contains provisions with respect to the Independent Planning Commission (including with respect to public hearings by, and to the members and procedures of, the Commission).
- (2) The work of the Independent Planning Commission is, subject to this Act, to be allocated by the chairperson of the Commission. The chairperson may nominate another member to allocate the work of the Commission during any period the chairperson is unavailable.
- (2A) The allocation of the work of the Commission includes the determination of the constitution of the Commission for the matter in accordance with section 2.10.
- (3) The Independent Planning Commission may—
  - (a) arrange for the use of the services of any staff or facilities of the Department of Planning and Environment or other public authority, and

(b) engage such consultants as it requires to exercise its functions.

- (4) The Independent Planning Commission may, with the approval of the Minister, delegate any function of the Commission under this or any other Act (other than this power of delegation) to any person or body specified in the Minister's approval.

## **Division 2.4 Sydney district and regional planning panels**

### **2.12 Constitution of Sydney district and regional planning panels** (cf previous s 23G)

- (1) The Sydney district planning panels specified in Part 3 of Schedule 2 are constituted for the particular parts of the Greater Sydney Region so specified in relation to each such panel.
- (2) The regional planning panels specified in Part 3 of Schedule 2 are constituted for the particular parts of the State (other than the Greater Sydney Region) so specified in relation to each such panel.
- (3) A Sydney district or regional planning panel is not subject to the direction or control of the Minister (except in relation to the procedure of the panel and any directions authorised to be given to the panel under section 9.1 or other provision of this Act).
- (4) A Sydney district or regional planning panel is a NSW Government agency.
- (5) The Minister may, by order published on the NSW legislation website, amend Part 3 of Schedule 2 for any of the following purposes—
- (a) to constitute a Sydney district planning panel and to specify the part of the Greater Sydney Region for which it is constituted (including by constituting a single panel for the whole of the Region),
  - (b) to constitute a regional planning panel and to specify the part of the State (other than the Greater Sydney Region) for which it is constituted,
  - (c) to abolish a Sydney district or regional planning panel,
  - (d) to change the name of a Sydney district or regional planning panel or to change the part of the Greater Sydney Region or State for which it is constituted,
  - (e) to make savings and transitional provisions consequent on any of the above.

### **2.13 Members of Sydney district and regional planning panels** (cf previous Sch 4, cl 2)

- (1) A Sydney district planning panel is to consist of the following 5 members—
- (a) 3 members appointed by the Minister (the **State members**),
  - (b) 2 nominees of an applicable council (the **council nominees**) who are councillors, members of council staff or other persons nominated by the council.

- (2) A regional planning panel is to consist of the following 5 members—
- (a) 3 members appointed by the Minister (the **State members**),
  - (b) 2 nominees of an applicable council (the **council nominees**) who are councillors, members of council staff or other persons nominated by the council.
- (3) A person is not eligible to be a member of a Sydney district or regional planning panel if the person is—
- (a) a property developer within the meaning of section 53 of the *Electoral Funding Act 2018*, or

**Note—**

Section 53 of the *Electoral Funding Act 2018* provides that **property developer** includes a person who is a close associate of a property developer.

- (b) a real estate agent within the meaning of the *Property, Stock and Business Agents Act 2002*.

However, a person is not ineligible to be a member of a Sydney district or regional planning panel merely because the person carries on the business of a planning consultant.

- (4) The State members of a Sydney district or regional planning panel are to be persons who have expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration. In appointing State members, the Minister is to have regard to the need to have a range of expertise represented among the panel's members.
- (5) At least one of the council nominees of a Sydney district or regional planning panel is to be a person who has expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.
- (6) Each applicable council is to nominate 2 persons as council nominees for the purposes of a Sydney district or regional planning panel. If an applicable council fails to nominate one or more council nominees, a Sydney district or regional planning panel is not required to include 2 council nominees for the purposes of exercising its functions in relation to the area of the council concerned.
- (7) For the purposes of exercising the functions of a Sydney district or regional planning panel in relation to a matter, the council nominees on the panel are to be those nominated by the applicable council for the land to which the matter relates.
- (8) In this section—

***applicable council*** means the council of an area that is situated (wholly or partly) in a part of the State for which a Sydney district or regional planning panel is constituted.

**2.14 Chairperson of Sydney district and regional planning panels** (cf previous Sch 4, cl 2)

- (1) One of the State members of a Sydney district or regional planning panel is to be appointed by the Minister as chairperson of the panel.
- (2) The Minister is required to obtain the concurrence of Local Government NSW to the appointment of a chairperson unless Local Government NSW—
  - (a) fails to notify its concurrence or refusal to concur within 21 days of being requested to do so by the Minister, or
  - (b) refuses to concur in the appointment of 2 different persons proposed by the Minister.

**2.15 Functions of Sydney district and regional planning panels** (cf previous s 23G)

A Sydney district or regional planning panel has the following functions—

- (a) the functions of the consent authority under Part 4 for regionally significant development that are (subject to this Act) conferred on it under this Act,
- (b) any functions under this Act of a council within its area that are conferred on it under section 9.6,
- (c) to advise the Minister or the Planning Secretary as to planning or development matters relating to the part of the State for which it is constituted (or any related matters) if requested to do so by the Minister or the Planning Secretary,
- (d) any other function conferred or imposed on it under this or any other Act.

**Note—**

Under section 9.7, a panel (or the Independent Planning Commission if acting in place of the panel) is, in the exercise of a function referred to in paragraph (b), taken to be the council and is to exercise the function to the exclusion of the council.

**2.16 Miscellaneous provisions relating to Sydney district and regional planning panels** (cf previous ss 23H, 118AD, 118AE)

- (1) Schedule 2 contains provisions with respect to the members and procedure of Sydney district or regional planning panels.
- (2) A Sydney district or regional planning panel is required to give written reasons for its decisions and make them publicly available on a website of or used by the panel. A decision is not invalid merely because of a failure to give or publish the reasons or all of the reasons for the decision.

- (3) The regulations may make provision for or with respect to the following—
- (a) the functions conferred under this Act on a Sydney district or regional planning panel, including its procedures in exercising its functions,
  - (b) without limiting paragraph (a), providing that parties to matters being determined by a Sydney district or regional planning panel are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,
  - (c) the provision of information and reports by Sydney district or regional planning panels.
- (4) The Planning Secretary is, in the annual report of the Department of Planning and Environment, to report on the activities of Sydney district or regional planning panels during the reporting year under section 9.6.
- (5) Legal proceedings by or against a Sydney district or regional planning panel are to be taken in the name of the panel and not by or against the members of the panel.
- (6) A Sydney district or regional planning panel may, with the approval of the Minister, delegate any function of the panel under this or any other Act (other than this power of delegation) to—
- (a) a council, or
  - (b) a local planning panel of a council, or
  - (c) the general manager or other staff of a council,
- for any area or part of any area for which the Sydney district or regional planning panel is constituted.
- (7) For the avoidance of doubt, a member of a Sydney district or regional planning panel is a public official for the purposes of the [Independent Commission Against Corruption Act 1988](#).

## **Division 2.5 Local planning panels**

### **2.17 Constitution of local planning panels**

- (1) A council may constitute a single local planning panel for the whole of the area of the council.
- (2) The following councils must constitute a single local planning panel for the whole of the area of the council—
- (a) the council of an area that is wholly within the Greater Sydney Region,

- (b) the council of the City of Wollongong,
  - (c) the council of any other area prescribed by the regulations.
- (3) A single local planning panel may be constituted by 2 or more councils. In that case, any function exercisable by a council in relation to the panel is to be exercised jointly by all those councils.
- (4) The Minister may, under section 9.1, direct 2 or more particular councils referred to in subsection (2) to constitute a single local planning panel.
- (5) If a council fails to constitute a local planning panel that it is required to constitute, the Minister may constitute the panel and for that purpose is taken to be the council.
- (6) A local planning panel is subject to any directions of the Minister under section 9.1.
- (7) A local planning panel is not subject to the direction or control of the council, except in relation to any matter relating to the procedure of the panel (or to the time within which it is to deal with a matter) that is not inconsistent with any directions of the Minister under section 9.1.

## 2.18 Members of local planning panels

- (1) The members of a local planning panel are to be appointed by the relevant council.
- (2) Each local planning panel is to comprise (subject to this section) the following 4 members—
- (a) an approved independent person appointed as the chairperson of the panel with relevant expertise that includes expertise in law or in government and public administration,
  - (b) 2 other approved independent persons with relevant expertise,
  - (c) a representative of the local community who is not a councillor or mayor.
- (3) A person is not eligible to be a member of a local planning panel constituted by a council if the person is—
- (a) a councillor of that or any other council, or
  - (b) a property developer within the meaning of section 53 of the *Electoral Funding Act 2018*, or

### Note—

Section 53 of the *Electoral Funding Act 2018* provides that **property developer** includes a person who is a close associate of a property developer.

- (c) a real estate agent within the meaning of the *Property, Stock and Business Agents Act 2002*.

However, a person is not ineligible to be a member of a local planning panel merely because the person carries on the business of a planning consultant.

- (4) For the purposes of this section, an **approved independent person** is an independent person approved by the Minister for appointment to the local planning panel or a person selected from a pool of independent persons approved by the Minister for appointment to the local planning panel. The Minister may approve different pools of independent persons.
- (5) If the area of the relevant council is divided into wards, the council is to appoint representatives of the local community for each ward as members of the local planning panel. All those representatives are entitled to attend a meeting of the local planning panel, but only one of them designated by the chairperson of the panel comprises the quorum for the meeting and is entitled to vote and be heard on a matter before the panel.
- (6) The representative so designated by the chairperson for a matter before the panel is to be the representative for the ward that the chairperson considers is most closely associated with that matter.
- (7) Relevant expertise for the purposes of this section is expertise in at least one area of planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism or government and public administration.

### **2.19 Functions of local planning panels**

- (1) A local planning panel constituted by a council has the following functions—
  - (a) the specified functions of a council as a consent authority under Part 4 that are conferred on it under this Act,
  - (b) to advise the council on any planning proposal that has been prepared or is to be prepared by the council under section 3.33 and that is referred to the panel by the council,
  - (c) to advise the council on any other planning or development matter that is to be determined by the council and that is referred to the panel by the council.
- (2) The Minister may give directions to councils under section 9.1 (either to particular councils or to councils generally) on the planning proposals that are required to be referred to a local planning panel for advice.
- (3) This section does not limit the functions that may be exercised by a local planning panel under this Act.

### **2.20 Miscellaneous provisions relating to local planning panels**

- (1) Schedule 2 contains provisions with respect to the members and procedure of local



planning panels.

- (2) A local planning panel is required to give written reasons for its decisions and make them publicly available on a website of or used by the panel. A decision is not invalid merely because of a failure to give or publish the reasons or all of the reasons for the decision.
- (3) The regulations may make provision for or with respect to the following—
  - (a) the functions conferred under this Act on local planning panels, including the procedures of panels in exercising their functions,
  - (b) without limiting paragraph (a), providing that parties are not to be represented (whether by an Australian legal practitioner or any other person) or are only to be represented in specified circumstances,
  - (c) the provision of information or reports by councils with respect to the exercise of functions by local planning panels.
- (4) The council is to provide staff and facilities for the purpose of enabling a local planning panel to exercise its functions.
- (5) The council is to monitor the performance of local planning panels constituted by the council.
- (6) A council that has constituted a local planning panel must provide a report to the Planning Secretary, each year or other period directed by the Planning Secretary, as to the following—
  - (a) whether a local planning panel had been constituted by the council during the reporting period,
  - (b) the matters referred to the panel in the reporting period,
  - (c) the persons appointed to the panel,
  - (d) any other matters relating to the exercise of functions by the panel as directed by the Planning Secretary.
- (7) Legal proceedings by or against a local planning panel are to be taken in the name of the panel and not by or against the members of the panel.
- (8) A local planning panel may delegate any function of the panel under this or any other Act (other than this power of delegation) to the general manager or other staff of the council. Section 381 of the *Local Government Act 1993* does not apply to any such delegation.
- (9) For the avoidance of doubt, a member of a local planning panel is a public official for

the purposes of the *Independent Commission Against Corruption Act 1988*.

## **Division 2.6 Community participation**

### **2.21 Planning authorities and functions subject to community participation requirements**

- (1) This Division applies to the following planning authorities—
  - (a) the Minister,
  - (b) the Planning Secretary,
  - (c) the Greater Sydney Commission,
  - (d) the Independent Planning Commission,
  - (e) a Sydney district or regional planning panel,
  - (f) a council,
  - (g) a local planning panel,
  - (h) a determining authority under Part 5,
  - (i) a public authority prescribed by the regulations.
- (2) This Division applies to the exercise of the following planning functions by any such planning authority (***relevant planning functions***)—
  - (a) planning instrument functions under Part 3,
  - (b) development consent functions under Part 4,
  - (c) environmental impact assessment functions under Division 5.1 if an environmental impact statement is required,
  - (d) State significant infrastructure approval functions under Division 5.2,
  - (e) contribution plan functions under Part 7,
  - (f) any other function under this Act prescribed by the regulations.

### **2.22 Mandatory community participation requirements**

- (1) Part 1 of Schedule 1 sets out the mandatory requirements for community participation by planning authorities with respect to the exercise of relevant planning functions.

**Note—**

The mandatory requirements include public exhibition for a minimum period, public notification requirements and the giving of reasons for decisions by planning authorities. The regulations under that Schedule may also require community consultation by applicants for consents or other approvals.

- (2) Those mandatory requirements for community participation include any other forms of community participation that are set out in a community participation plan under this Division and that are identified in that plan as mandatory requirements.

### **2.23 Community participation plans—preparation**

- (1) A planning authority to which this Division applies is required to prepare a community participation plan about how and when it will undertake community participation when exercising relevant planning functions (subject to this section).

**Note—**

Schedule 1 requires a proposed plan to be publicly exhibited for at least 28 days.

- (2) A planning authority is to have regard to the following when preparing a community participation plan—
  - (a) The community has a right to be informed about planning matters that affect it.
  - (b) Planning authorities should encourage effective and on-going partnerships with the community to provide meaningful opportunities for community participation in planning.
  - (c) Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.
  - (d) The community should be given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.
  - (e) Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.
  - (f) Members of the community who are affected by proposed major development should be consulted by the proponent before an application for planning approval is made.
  - (g) Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions (including how community views have been taken into account).
  - (h) Community participation methods (and the reasons given for planning decisions) should be appropriate having regard to the significance and likely impact of the proposed development.
- (3) For the purposes of this Division—
  - (a) a community participation plan prepared by the Planning Secretary applies to the exercise of relevant planning functions by the Minister, and
  - (b) a general community participation plan prepared by the Planning Secretary

applies to the exercise of relevant planning functions by determining authorities under Division 5.1 (other than councils or prescribed public authorities), and

(c) the regulations may provide that the community participation plan of a planning authority applies to the exercise of relevant planning functions by another planning authority and that the other planning authority is not required to prepare its own community participation plan.

(4) A council need not prepare a separate community participation plan if it includes all the matters required under this section in its plan and strategies under section 402 of the *Local Government Act 1993*.

#### **2.24 Community participation plans—miscellaneous provisions**

(1) Community participation plans are to be published on the NSW planning portal.

(2) If the validity of a community participation plan has not been challenged in proceedings commenced in the Court within 3 months after the plan is published, the plan is taken to have been validly made under this Division.

(3) Community participation plans are to be reviewed periodically.

(4) The regulations may make provision for or with respect to—

(a) the form, content and procedures for making and publishing community participation plans (or any amendment of those plans), and

(b) reports on the implementation of community participation plans.

### **Division 2.7 Miscellaneous**

#### **2.25 NSW planning portal and other online services and information** (cf previous ss 158B, 158C)

(1) The Planning Secretary is to establish and facilitate the online delivery of planning services and information (including the NSW planning portal).

(2) Schedule 3 contains provisions relating to the NSW planning portal and the online delivery of those services and information.

#### **2.26 Obligation of Commission and panels to consult with council about certain decisions** (cf previous s 23M)

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

(2) This section does not apply to the determination of a development application made

by a council.

**2.27 Obligations of councils to assist Commission and panels** (cf previous s 23N)

- (1) The Independent Planning Commission or a Sydney district or regional planning panel is entitled, on request made to the general manager of a council—
  - (a) to have access to, and to make copies of and take extracts from, records of the council relevant to the exercise of the Commission's or panel's functions, and
  - (b) to the use of the staff and facilities of the council in order to exercise the Commission's or panel's functions, and
  - (c) to any other assistance or action by the council for the purposes of exercising the Commission's or panel's functions.
- (2) The regulations may make provision with respect to assistance and action under this section.

**2.28 Exclusion of personal liability** (cf previous ss 23(9), 158)

A matter or thing done, or omitted to be done, by—

- (a) the Minister, or
- (b) the Planning Secretary, or
- (c) any person employed in the Department of Planning and Environment, or
- (d) an investigation officer under Part 9, or
- (e) a member of a panel established by the Minister or the Planning Secretary under this Part, or
- (f) a member of the Independent Planning Commission, or
- (g) a member of a Sydney district or regional planning panel, or
- (h) a member of a local planning panel, or
- (i) any individual acting under the direction of a person or body referred to above, or
- (j) any individual acting as the delegate of a person or body referred to above,

does not subject the Minister, the Planning Secretary or any such person, officer, member or individual so acting personally to any action, liability, claim or demand if the matter or thing was done, or omitted to be done, in good faith for the purpose of the administration of this Act.

## **2.29 Delegation by public authorities other than councils** (cf previous s 153A)

(1) In this section, **public authority** does not include a council.

### **Note—**

See sections 377–381 of the *Local Government Act 1993* in relation to the delegation of functions by councils.

- (2) A public authority may delegate any function of the public authority under this Act (other than this power of delegation) to a member of staff of the public authority. If the public authority is a chief executive officer, the function may be delegated to any member of staff of the public authority of which he or she is the chief executive officer.
- (3) A member of staff of a public authority may delegate any function of the member of staff under this Act (other than this power of delegation) to any other member of staff of the public authority. However, if the function is a delegated function, the function cannot be subdelegated unless subdelegation is authorised by the terms of the original delegation.
- (4) A power conferred by this section is in addition to any other power of delegation of the public authority or member of staff or any power of a person to exercise functions on behalf of the public authority.

## **2.30 Section 381 of Local Government Act 1993 excluded**

Section 381 of the *Local Government Act 1993* does not apply to a delegation under this Act to the general manager or other employee of a council.

## **2.31 Publication of instruments of delegation**

- (1) Any instrument of delegation under this Act by the Minister, the Planning Ministerial Corporation, the Planning Secretary, the Independent Planning Commission, a Sydney district planning panel or a regional planning panel is to be published on the NSW planning portal.
- (2) Failure to comply with this section does not affect the validity of any such delegation.

# **Part 3 Planning instruments**

### **Note—**

This Part deals with the following planning instruments—

- (a) strategic plans (comprising regional strategic plans and district strategic plans) and local strategic planning statements,
- (b) environmental planning instruments (comprising State environmental planning policies and local environmental plans),
- (c) development control plans.

## **Division 3.1 Strategic planning**

### 3.1 Definitions (cf previous s 75AA)

(1) In this Division—

**district** means a part of a region declared to be a district under section 3.2(b).

**district strategic plan** means a district strategic plan made under this Division.

**local strategic planning statement** means a local strategic planning statement made under this Division.

**region** means—

(a) the Greater Sydney Region, or

(b) any other area declared to be a region under section 3.2(a).

**regional strategic plan** means a regional strategic plan made under this Division.

**relevant strategic planning authority** means—

(a) in the case of the Greater Sydney Region—the Greater Sydney Commission, or

(b) in the case of any other region—the Planning Secretary or any other person or body prescribed by the regulations for the purposes of this paragraph.

**strategic plan** means a regional strategic plan or a district strategic plan.

(2) For the purposes of this Division, preparing or making a strategic plan or local strategic planning statement includes preparing or making a strategic plan or local strategic planning statement to amend, replace or repeal a strategic plan or local strategic planning statement.

### 3.2 Declaration of regions and districts (cf previous s 75AB)

The Minister may, by order published on the NSW legislation website, declare—

(a) any area of the State (other than the Greater Sydney Region) to be a region for the purposes of this Division, and

(b) any part of the Greater Sydney Region or other region to be a district for the purposes of this Division.

### 3.3 Regional strategic plans—preparation and content (cf previous s 75AC)

(1) The relevant strategic planning authority for a region may, or must if directed to do so by the Minister, prepare a draft regional strategic plan for the region.

(2) A draft regional strategic plan must include or identify the following—

(a) the basis for strategic planning in the region, having regard to economic, social

- and environmental matters,
- (b) a vision statement and objectives consistent with the vision statement,
  - (c) strategies and actions for achieving those objectives,
  - (d) the basis on which the relevant strategic planning authority is to monitor and report on the implementation of those actions,
  - (e) such other matters as the relevant strategic planning authority considers relevant to planning for the region.
- (3) In preparing a draft regional strategic plan, the relevant strategic planning authority is to have regard to the following—
- (a) State environmental planning policies that apply to the region,
  - (b) any other strategic plan that applies to the region,
  - (c) any 20-year State infrastructure strategy, 5-year infrastructure plan and sectoral State infrastructure strategy statement under Part 4 of the *Infrastructure NSW Act 2011*,
  - (d) any other relevant government policies and plans in force at the time the draft plan is prepared,
  - (e) in the case of a draft plan that applies to the Greater Sydney Region—any report prepared by the Strategic Planning Committee constituted under the *Greater Sydney Commission Act 2015*,
  - (f) any matter that the Minister directs the relevant strategic planning authority to have regard to in preparing the draft plan,
  - (g) any other matters the relevant strategic planning authority considers relevant.
- (4) If there is no district strategic plan for any part of the region, the draft regional strategic plan may identify for that part of the region matters that may be identified in a district strategic plan (until there is a district strategic plan).

### **3.4 District strategic plans—preparation and content** (cf previous s 75AD)

- (1) The relevant strategic planning authority for a region (other than the Greater Sydney Region) may, or must if directed to do so by the Minister, prepare a draft district strategic plan for a district in the region.
- (2) If a district is declared for the Greater Sydney Region, the Greater Sydney Commission is to prepare a draft district strategic plan for the district, and ensure that the public exhibition of the draft plan commences, within the period of 12 months after the district is declared.



- (3) A draft district strategic plan must include or identify the following—
- (a) the basis for strategic planning in the district, having regard to economic, social and environmental matters,
  - (b) the planning priorities for the district that are consistent with the objectives, strategies and actions specified in the regional strategic plan for the region in respect of which the district is part,
  - (c) the actions required for achieving those planning priorities,
  - (d) the basis on which the relevant strategic planning authority is to monitor and report on the implementation of those actions,
  - (e) areas of State, regional or district significance, including priority growth areas,
  - (f) such other matters as the relevant strategic planning authority considers relevant to planning for the district.
- (4) In preparing a draft district strategic plan, the relevant strategic planning authority is to have regard to the following—
- (a) any environmental planning instrument applying to the district,
  - (b) any other strategic plan that applies to the district (including areas adjoining the district),
  - (c) any 20-year State infrastructure strategy, 5-year infrastructure plan and sectoral State infrastructure strategy statement under Part 4 of the [Infrastructure NSW Act 2011](#),
  - (d) any other relevant government policies and plans in force at the time the draft plan is prepared,
  - (e) in the case of a draft plan that applies to a district in the Greater Sydney Region—any report prepared by the Strategic Planning Committee constituted under the [Greater Sydney Commission Act 2015](#),
  - (f) any matter that the Minister directs the relevant strategic planning authority to have regard to in preparing the draft plan,
  - (g) any other matters the relevant strategic planning authority considers relevant.
- (5) If there is no regional strategic plan for any part of the district concerned, the draft district strategic plan may identify for that part of the district matters that may be identified in a regional strategic plan (until there is a regional strategic plan).

### **3.5 Making and review of regional strategic plans** (cf previous s 75AE)

- (1) The relevant strategic planning authority for a region may, or must if directed to do so by the Minister, submit a draft regional strategic plan it has prepared to the Minister.
- (2) The Minister may make a regional strategic plan in the form in which it is submitted or with such modifications as the Minister considers appropriate. The Minister may decide not to make the draft plan.
- (3) The document entitled *A Plan for Growing Sydney*, published on the website of the Department and in force as at the commencement of this Division, is taken to be the regional strategic plan made under this Division for the Greater Sydney Region (the **initial GSR plan**).
- (4) The Greater Sydney Commission is to review the initial GSR plan before the end of 2017, at the end of 2023 and at the end of every subsequent period of 5 years.
- (5) The relevant strategic planning authority for a region other than the Greater Sydney Region is to review any regional strategic plan for the region at such times and in such manner as the Minister may direct.
- (6) Following any review under subsection (4) or (5), the Minister may make a regional strategic plan for the region concerned.

### **3.6 Making of district strategic plans** (cf previous s 75AF)

- (1) The relevant strategic planning authority for a region other than the Greater Sydney Region may, or must if directed to do so by the Minister, submit a draft district strategic plan it has prepared to the Minister.
- (2) The Minister may make a district strategic plan in the form in which it is submitted or with such modifications as the Minister considers appropriate. The Minister may decide not to make the draft plan.
- (3) A district strategic plan for a district in the Greater Sydney Region may be made by the Greater Sydney Commission.
- (4) The Greater Sydney Commission is to review a district strategic plan every 5 years after it is made by the Commission.

### **3.7 Publication and commencement of strategic plans** (cf previous s 75AG)

A strategic plan—

- (a) must be published on the NSW planning portal, and
- (b) commences on the date of publication or a later date specified in the plan.

### **3.8 Implementation of strategic plans** (cf previous s 75A1)

- (1) In preparing a draft district strategic plan, the relevant strategic planning authority is to give effect to any regional strategic plan applying to the region in respect of which the district is part.
- (2) In preparing a planning proposal under section 3.33, the planning proposal authority is to give effect—
  - (a) to any district strategic plan applying to the local government area to which the planning proposal relates (including any adjoining local government area), or
  - (b) if there is no district strategic plan applying to the local government area—to any regional strategic plan applying to the region in respect of which the local government area is part.
- (3) As soon as practicable after a district strategic plan is made, the council for each local government area in the district to which the plan applies must review the local environmental plans for the area and prepare such planning proposals under section 3.33 as are necessary to give effect to the district strategic plan.
- (4) In addition to the requirement under subsection (3), the council for each local government area in the Greater Sydney Region must, on the making of a district strategic plan that applies to that area, report to the Greater Sydney Commission—
  - (a) on the review by the council of the local environmental plans for the area, and
  - (b) on the preparation of planning proposals under section 3.33 to give effect to the district strategic plan.

### **3.9 Local strategic planning statements of councils**

- (1) The council of an area must prepare and make a local strategic planning statement and review the statement at least every 7 years.
- (2) The statement must include or identify the following—
  - (a) the basis for strategic planning in the area, having regard to economic, social and environmental matters,
  - (b) the planning priorities for the area that are consistent with any strategic plan applying to the area and (subject to any such strategic plan) any applicable community strategic plan under section 402 of the *Local Government Act 1993*,
  - (c) the actions required for achieving those planning priorities,
  - (d) the basis on which the council is to monitor and report on the implementation of those actions.

- (3) The statement for an area that is divided into wards may deal separately with each ward. In that case, the councillors of a ward are to be given a reasonable opportunity to participate in the preparation of the provisions of the statement that deal with the ward and those provisions are required to be—
- (a) endorsed by those councillors as being consistent with the strategic plans referred to in subsection (2)(b) as they relate to the ward, or
  - (b) if not so endorsed by those councillors—so endorsed at the request of the council by the relevant strategic planning authority referred to in Division 3.1.

However, the Minister may direct that the endorsement of those provisions is not required in specified circumstances (for example, because of the small number of persons living in the ward).

- (3A) The council for an area that is in the Greater Sydney Region must not make a local strategic planning statement unless the Greater Sydney Commission has advised the council in writing that the Commission supports the statement as being consistent with the applicable regional and district strategic plans.
- (4) The Planning Secretary may issue requirements with respect to the preparation and making of local strategic planning statements (including requirements with respect to the participation of councillors of a ward and the support of the Greater Sydney Commission if it is required by this section in the preparation of such a statement).
- (5) A local strategic planning statement must be published on the NSW planning portal.

**Note—**

See section 3.33(2) in relation to the requirement for the planning proposal for a proposed local environmental plan to address whether the proposal will give effect to the local strategic planning statement.

**3.10 Dispensing with conditions precedent to making strategic plans** (cf previous s 75A)

- (1) For the purposes of doing any one or more of the following, a strategic plan may be made without compliance with the conditions precedent under this Act to the making of strategic plans—
- (a) to correct an obvious error or misdescription,
  - (b) to make changes that will not have any significant adverse impact on the environment or adjoining land,
  - (c) to make provision for matters that are, in the opinion of the Minister, of State or regional significance or of significance to a district (but only if the proposed plan has been publicly exhibited for the period determined by the Minister).
- (2) The publication of a strategic plan made in reliance on subsection (1) is to contain a statement that it is so made.

### **3.11 Legal proceedings relating to strategic planning** (cf previous s 75AK)

(1) In this section—

**legal proceedings** means proceedings for an order under Division 9.5 or any other kind of legal proceedings (other than criminal proceedings).

- (2) Legal proceedings (other than those instituted by or with the approval of the Minister) in relation to the validity of a strategic plan or local strategic planning statement cannot be instituted after the period of 3 months following the publication of the strategic plan or local strategic planning statement on the NSW planning portal.
- (3) The only requirement of or made under this Act in relation to a strategic plan or local strategic planning statement is the requirement to publicly exhibit the draft plan or statement.
- (4) Nothing in this Division prevents a local environmental plan from being made or invalidates the plan once it is made.
- (5) This section applies despite any other provision of this Act or any other Act or law.

### **3.12 Regulations relating to strategic planning** (cf previous s 75AL)

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

- (a) the review of strategic plans or local strategic planning statements,
- (b) the appointment and functions of relevant strategic planning authorities for regions other than the Greater Sydney Region,
- (c) the form and content of strategic plans or local strategic planning statements (including the standardisation of the provisions of strategic plans or local strategic planning statements),
- (d) requirements for the submission of reports and documents relating to the preparation and review of strategic plans or local strategic planning statements,
- (e) (Repealed)
- (f) any other matter relating to the strategic planning framework under this Division (including, without limitation, the preparation, making and online delivery of strategic plans or local strategic planning statements).

## **Division 3.2 Environmental planning instruments—general**

### **3.13 Making of environmental planning instruments** (cf previous s 24)

- (1) Without affecting the generality of any other provisions of this Act, an environmental planning instrument may be made in accordance with this Part for the purposes of

achieving any of the objects of this Act.

- (2) Environmental planning instruments may be made—
- (a) under Division 3.3 (called a State environmental planning policy or SEPP), or
  - (b) under Division 3.4 (called a local environmental plan or LEP).

**3.14 Contents of environmental planning instruments** (cf previous s 26)

- (1) Without affecting the generality of section 3.13 or any other provision of this Act, an environmental planning instrument may make provision for or with respect to any of the following—
- (a) protecting, improving or utilising, to the best advantage, the environment,
  - (b) controlling (whether by the imposing of development standards or otherwise) development,
  - (c) reserving land for use for the purposes of open space, a public place or public reserve within the meaning of the *Local Government Act 1993*, a national park or other land reserved or dedicated under the *National Parks and Wildlife Act 1974*, a public cemetery, a public hospital, a public railway, a public school or any other purpose that is prescribed as a public purpose for the purposes of this section,
  - (d) providing, maintaining and retaining, and regulating any matter relating to, affordable housing,
  - (e) protecting or preserving trees or vegetation,
  - (e1) protecting and conserving native animals and plants, including threatened species and ecological communities, and their habitats,
  - (f) controlling any act, matter or thing for or with respect to which provision may be made under paragraph (a) or (e),
  - (g) controlling advertising,
  - (h) such other matters as are authorised or required to be included in the environmental planning instrument by this or any other Act.
- (1A)–(3) (Repealed)
- (3A) An environmental planning instrument may make provision for any zoning of land or other provision to have effect only for a specified period or only in specified circumstances.
- (4) An environmental planning instrument that makes provision for or with respect to protecting or preserving trees or other vegetation may make provision—

- (a) for authorising the council (or other person or body) to determine the trees or other vegetation included in or excluded from the relevant provisions, and
- (b) for requiring a permit, approval or other authorisation to remove or otherwise affect trees or other vegetation that is granted by the council (or other person or body), and
- (c) for an appeal to the Court against a refusal to grant any such permit, approval or other authorisation.

**3.15 Owner-initiated acquisition of land reserved for public purposes** (cf previous s 27)

- (1) An environmental planning instrument that reserves land for use exclusively for a purpose referred to in section 3.14(1)(c) must specify an authority of the State that will be the relevant authority to acquire the land if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) Section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991* applies for the purposes of determining whether an environmental planning instrument reserves land for use exclusively for a purpose referred to in section 3.14(1)(c).
- (3) An environmental planning instrument (whenever made) is not to be construed as requiring an authority of the State to acquire land, except as required by Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (4) Subsection (3) applies despite—
  - (a) any provision of an environmental planning instrument (whenever made) to the contrary, or
  - (b) the service of a notice to acquire the land on an authority of the State on or after the day on which notice was given in Parliament for leave to introduce the Bill for the *Environmental Planning and Assessment Amendment (Reserved Land Acquisition) Act 2006*.

**3.16 Suspension of laws etc by environmental planning instruments** (cf previous s 28)

- (1) In this section, **regulatory instrument** means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made.
- (2) For the purpose of enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent granted under this Act, an environmental planning instrument may provide that, to the extent necessary to serve that purpose, a regulatory instrument specified in that environmental planning instrument shall not apply to any such development or shall apply subject to the modifications specified in that environmental planning instrument.

- (3) A provision referred to in subsection (2) shall have effect according to its tenor, but only if the Governor has, before the making of the environmental planning instrument, approved of the provision.
- (4) Where a Minister is responsible for the administration of a regulatory instrument referred to in subsection (2), the approval of the Governor for the purposes of subsection (3) shall not be recommended except with the prior concurrence in writing of that Minister.
- (5) A declaration in the environmental planning instrument as to the approval of the Governor as referred to in subsection (3) or the concurrence of a Minister as referred to in subsection (4) shall be prima facie evidence of the approval or concurrence.
- (6) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

**3.17 Designated development: declaration by environmental planning instruments** (cf previous s 29)

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

**3.18 Consents and concurrences** (cf previous s 30)

- (1) Without limiting the generality of section 3.14(1)(b), an environmental planning instrument may provide that development specified therein—
  - (a) may be carried out without the necessity for consent under this Act being obtained therefor, or
  - (b) may not be carried out except with consent under this Act being obtained therefor.
- (2) Where provision is made in accordance with subsection (1)(b), the instrument may provide that a development application in respect of development specified in the instrument shall not be determined by the granting of consent under this Act, except with the concurrence of such Minister or public authority as is specified in the instrument to the carrying out of the development.
- (3) An environmental planning instrument which makes provision in accordance with subsection (2) shall state the matters which shall be taken into consideration in deciding whether concurrence should be granted.
- (4), (5) (Repealed)

**3.19 Prohibitions** (cf previous s 31)

Without limiting the generality of section 3.14(1)(b), an environmental planning



instrument may provide that development specified therein is prohibited.

**3.20 Standardisation of environmental planning instruments** (cf previous s 33A)

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

instrument is taken to be a matter of State environmental planning significance for the purposes of this Act.

- (8A) An environmental planning instrument may be made under this Part without compliance with the provisions of this Act relating to the conditions precedent to the making of the instrument if—
- (a) the instrument adopts the provisions of a standard instrument for the purposes of replacing instruments that apply to the land concerned (being existing instruments that do not adopt the provisions of a standard instrument), and
  - (b) the Minister is of the opinion that the replacement instrument does not make any substantial changes to the general effect of the existing instrument or instruments.
- (9) Subject to this Act and the regulations, the form and subject-matter of an environmental planning instrument is (if there is no applicable standard instrument) to be as determined by the Minister.
- (10) In this section—
- form** includes structure.

### **3.21 Review of environmental planning instruments** (cf previous s 73)

- (1) The Planning Secretary shall keep State environmental planning policies and councils shall keep their local environmental plans and development control plans under regular and periodic review for the purpose of ensuring that the objects of this Act are, having regard to such changing circumstances as may be relevant, achieved to the maximum extent possible.
- (2) Every 5 years following such a review, the Planning Secretary is to determine whether relevant State environmental planning policies should be updated and a council is to determine whether relevant local environmental plans should be updated.

### **3.22 Expedited amendments of environmental planning instruments** (cf previous s 73A)

- (1) An amending environmental planning instrument may be made under this Part without compliance with the provisions of this Act relating to the conditions precedent to the making of the instrument if the instrument, if made, would amend or repeal a provision of a principal instrument in order to do any one or more of the following—
  - (a) correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error,
  - (b) address matters in the principal instrument that are of a consequential,

transitional, machinery or other minor nature,

(c) deal with matters that the Minister considers do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land.

(2) A reference in this section to an amendment of an instrument includes a reference to the amendment or replacement of a map adopted by an instrument.

**3.23 Public access to environmental planning instruments and related documents** (cf previous s 33C)

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

(a) the Minister may determine standard technical requirements with respect to the preparation of those instruments, plans or other documents and of the maps or other documents that are referred to in (or adopted under) them, and

(b) a council is to provide the Planning Secretary, when requested, with copies and electronic files (in a specified format) of any such instruments, plans, maps or other documents prepared or held by the council.

**3.24 Publication, amendment and repeal of environmental planning instruments** (cf previous s 34)

(1)-(4) (Repealed)

(5) An environmental planning instrument shall—

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

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

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

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

(6)-(8) (Repealed)

(9) An environmental planning instrument shall be deemed to have been published on

the NSW legislation website notwithstanding that any planning map or other instrument or material referred to, embodied or incorporated in the environmental planning instrument is not so published.

(10) (Repealed)

(11) An environmental planning instrument may be amended or repealed by a subsequent environmental planning instrument, whether of the same or a different type.

**Note—**

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

**3.25 Special consultation procedures concerning threatened species** (cf previous s 34A)

(1) In this section, the **relevant authority** means—

(a) in the case of a proposed SEPP—the Planning Secretary, or

(b) in the case of a proposed LEP—the relevant planning authority.

(2) Before an environmental planning instrument is made, the relevant authority must consult with the Chief Executive of the Office of Environment and Heritage if, in the opinion of the relevant authority, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be adversely affected by the proposed instrument.

(3) For the purposes of the consultation, the relevant authority is to provide such information about the proposed instrument as would assist in understanding its effect (including information of the kind prescribed by the regulations).

(4) The consultation in relation to a proposed local environmental plan is to commence after a decision under section 3.34 (Gateway determination) that the matter should proceed, unless the regulations otherwise provide.

(5) The Chief Executive of the Office of Environment and Heritage may comment to the relevant authority on the proposed instrument within the following period after the consultation commences—

(a) the period agreed between the Chief Executive and the relevant authority,

(b) in the absence of any such agreement, the period of 21 days or such other period as is prescribed by the regulations.

(6) The consultation required by this section is completed when the relevant authority has considered any comments so made.

- (7) In this section, a reference to the Chief Executive of the Office of Environment and Heritage includes, in the application of this section to fish and marine vegetation, a reference to the Secretary of the Department of Industry, Skills and Regional Development.

**3.26 Special provision for development in Sydney water catchment relating to water quality** (cf previous s 34B)

- (1) In this section, **Sydney drinking water catchment** means a declared catchment area (within the meaning of the [Water NSW Act 2014](#)) that is declared by a State environmental planning policy to be the Sydney drinking water catchment.
- (2) Provision is to be made in a State Environmental Planning Policy requiring a consent authority to refuse to grant consent to a development application relating to any part of the Sydney drinking water catchment unless the consent authority is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on the quality of water.
- (2A) A State environmental planning policy that requires proposed development to have a neutral or beneficial effect on the quality of water may deal with the application of that test in the case of proposed development that extends or expands existing development.
- (3) (Repealed)
- (4) The Minister is not to recommend the making of a State Environmental Planning Policy that relates to the declaration of the Sydney drinking water catchment unless—
- (a) the Minister administering the [Water NSW Act 2014](#) approves of the declaration, and
  - (b) the Minister administering the [Protection of the Environment Operations Act 1997](#) has been consulted about the declaration.

**3.27 Validity of instruments** (cf previous s 35)

The validity of an environmental planning instrument shall not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date of its publication on the NSW legislation website.

**3.28 Inconsistency between instruments** (cf previous s 36)

- (1) In the event of an inconsistency between environmental planning instruments and unless otherwise provided—
- (a) there is a general presumption that a State environmental planning policy prevails over a local environmental plan or other instrument made before or after that State environmental planning policy, and

(b) (Repealed)

(c) the general presumptions of the law as to when an Act prevails over another Act apply to when one kind of environmental planning instrument prevails over another environmental planning instrument of the same kind.

(2), (3) (Repealed)

(4) Nothing in this section prevents an environmental planning instrument from being expressly amended by a later environmental planning instrument, of the same or a different kind, to provide for the way in which an inconsistency between them is to be resolved.

### **Division 3.3 Environmental planning instruments—SEPPs**

#### **3.29 Governor may make environmental planning instruments (SEPPs) (cf previous s 37)**

- (1) The Governor may make environmental planning instruments for the purpose of environmental planning by the State. Any such instrument may be called a State environmental planning policy (or SEPP).
- (2) Without limiting subsection (1), an environmental planning instrument may be made by the Governor to make provision with respect to any matter that, in the opinion of the Minister, is of State or regional environmental planning significance or of environmental planning significance to a district within the meaning of Division 3.1.

#### **3.30 Consultation requirements (cf previous s 38)**

- (1) Before recommending the making of an environmental planning instrument by the Governor, the Minister is to take such steps, if any, as the Minister considers appropriate or necessary—
  - (a) to publicise an explanation of the intended effect of the proposed instrument, and
  - (b) to seek and consider submissions from the public on the matter.
- (2) Before recommending the making of an environmental planning instrument by the Governor, the Minister must consult with the Greater Sydney Commission if—
  - (a) the proposed instrument relates to land within the Greater Sydney Region, and
  - (b) the Minister is of the opinion that the proposed instrument is likely to significantly affect the implementation of a strategic plan affecting that Region.

**Note—**

See also section 3.25.

### **Division 3.4 Environmental planning instruments—LEPs**

**3.31 Making of environmental planning instruments for local areas (LEPs)** (cf previous ss 53, 53A)

- (1) A local plan-making authority may make environmental planning instruments for the purpose of environmental planning—
  - (a) in each local government area, and
  - (b) in such other areas of the State (including the coastal waters of the State) as the local plan-making authority determines.
- (2) Any such instrument may be called a local environmental plan (or LEP).
- (3) For the purposes of this Division, the following are **local plan-making authorities**—
  - (a) the Minister,
  - (b) a council for its local government area if the gateway determination under this Division authorises the council to make the local environmental plan concerned.

**3.32 Planning proposal authority** (cf previous s 54)

- (1) For the purposes of this Division, the **planning proposal authority** in respect of a proposed instrument is as follows—
  - (a) the council for the local government area to which the proposed instrument is to apply, subject to paragraph (b),
  - (b) if so directed under subsection (2)—the Planning Secretary, a Sydney district or regional planning panel or any other person or body prescribed by the regulations.
- (2) The Minister may direct that the Planning Secretary (or any such panel, person or body) is the planning proposal authority for a proposed instrument in any of the following cases—
  - (a) the proposed instrument relates to a matter that, in the opinion of the Minister, is of State or regional environmental planning significance or of environmental planning significance to a district under Division 3.1,
  - (b) the proposed instrument makes provision that, in the opinion of the Minister, is consequential on the making of another environmental planning instrument or is consequential on changes made to a standard instrument under section 3.20,
  - (c) the Planning Secretary, the Independent Planning Commission or a Sydney district or regional planning panel has recommended that the proposed instrument should be submitted for a determination under section 3.34 (Gateway determination) or that the proposed instrument should be made,
  - (d) the council for the local government area concerned has, in the opinion of the

Minister, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner,

- (e) the proposed instrument is to apply to an area that is not within a local government area.
- (3) A planning proposal authority that is requested by the owner of any land to exercise its functions under this Division in relation to the land may, as a condition of doing so, require the owner to carry out studies or provide other information concerning the proposal or to pay the costs of the authority in accordance with the regulations.
- (4) The Minister may, in a direction under this section, require a council to provide studies or other information in its possession relating to the proposed instrument to the person or body specified in the direction as the planning proposal authority for the proposed instrument.
- (5) Two or more relevant local authorities may together exercise the functions under this Division of a planning proposal authority in connection with the making of a single principal or amending instrument in relation to the whole of their combined areas.
- (6) A reference in this section to a local government area includes a reference to an adjoining area that is not within a local government area and that is designated as part of that local government area for the purposes of this Division by a Ministerial planning order.

**3.33 Planning proposal authority to prepare explanation of and justification for proposed instrument—the planning proposal** (cf previous s 55)

- (1) Before an environmental planning instrument is made under this Division, the planning proposal authority is required to prepare a document that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument (the **planning proposal**).
- (2) The planning proposal is to include the following—
  - (a) a statement of the objectives or intended outcomes of the proposed instrument,
  - (b) an explanation of the provisions that are to be included in the proposed instrument,
  - (c) the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will give effect to the local strategic planning statement of the council of the area and will comply with relevant directions under section 9.1),
  - (d) if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing



sufficient detail to indicate the substantive effect of the proposed instrument,

(e) details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

(3) The Planning Secretary may issue requirements with respect to the preparation of a planning proposal.

**3.34 Gateway determination** (cf previous s 56)

(1) After preparing a planning proposal, the planning proposal authority may forward it to the Minister.

(2) After a review of the planning proposal, the Minister is to determine the following—

(a) whether the matter should proceed (with or without variation),

(b) whether the matter should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal),

(c) the minimum period of public exhibition of the planning proposal (or a determination that no such public exhibition is required because of the minor nature of the proposal),

**Note—**

Under Schedule 1, the mandatory period of public exhibition is 28 days if a determination is not made under paragraph (c).

(d) any consultation required with State or Commonwealth public authorities that will or may be adversely affected by the proposed instrument,

(e) whether a public hearing is to be held into the matter by the Independent Planning Commission or other specified person or body,

(f) the times within which the various stages of the procedure for the making of the proposed instrument are to be completed,

(g) if the planning proposal authority is a council—whether the council is authorised to make the proposed instrument and any conditions the council is required to comply with before the instrument is made.

(3) A determination of the community consultation requirements includes a determination under section 3.22 (or other provision of this Act) that the matter does not require community consultation.

(3A) Before making a determination under subsection (2), the Minister must refer the planning proposal to the Greater Sydney Commission if—

(a) the proposal relates to land within the Greater Sydney Region, and

(b) the Minister is of the opinion that the proposal is likely to significantly affect the implementation of a strategic plan affecting that Region.

(3B) On referral of a proposal, the Greater Sydney Commission must, within the period specified by the Minister, advise the Minister as to whether or not the Commission supports the planning proposal.

(4) The regulations may provide for the categorisation of planning proposals for the purposes of this section, and may prescribe standard community consultation requirements for each such category.

(5) The Minister may arrange for the review of a planning proposal (or part of a planning proposal) under this section to be conducted by, or with the assistance of, the Independent Planning Commission or a Sydney district or regional planning panel—

(a) if there has been any delay in the matter being finalised, or

(b) if for any other reason the Minister considers it appropriate to do so.

(6) The planning proposal authority may, at any time, forward a revised planning proposal to the Minister.

(7) The Minister may, at any time, alter a determination made under this section.

(8) A failure to comply with a requirement of a determination under this section in relation to a proposed instrument does not prevent the instrument from being made or invalidate the instrument once it is made. However, if community consultation is required under Schedule 1, the instrument is not to be made unless the community has been given an opportunity to make submissions and the submissions have been considered under that Schedule.

### **3.35 Planning proposal authority may vary proposals or not proceed** (cf previous s 58)

(1) The planning proposal authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason.

(2) If it does so, the planning proposal authority is to forward a revised planning proposal to the Minister.

(3) Further community consultation under Schedule 1 is not required unless the Minister so directs in a revised determination under section 3.34.

(4) The planning proposal authority may also, at any time, request the Minister to determine that the matter not proceed.

### **3.36 Making of local environmental plan by local plan-making authority** (cf previous s 59)

(1) The Planning Secretary is to make arrangements for the drafting of any required local

environmental plan to give effect to the final proposals of the planning proposal authority. The Planning Secretary is to consult the planning proposal authority, in accordance with the regulations, on the terms of any such draft instrument.

- (2) The local plan-making authority may, following completion of community consultation—
  - (a) make a local environmental plan (with or without variation of the proposals submitted by the planning proposal authority) in the terms the local plan-making authority considers appropriate, or
  - (b) decide not to make the proposed local environmental plan.
- (3) The local plan-making authority may defer the inclusion of a matter in a proposed local environmental plan.
- (4) If the local plan-making authority does not make the proposed local environmental plan or defers the inclusion of a matter in a proposed local environmental plan, the local plan-making authority may specify which procedures under this Division the planning proposal authority must comply with before the matter is reconsidered by the local plan-making authority.

### **3.37 Regulations** (cf previous s 60)

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

- (a) requirements with respect to consultation about proposed instruments by a planning proposal authority with particular persons or bodies, and
- (b) requirements with respect to planning proposals and the submission of other related reports and documents, and
- (c) requirements with respect to advertising in connection with community consultation on proposed instruments, and
- (d) provisions relating to consultation by the Planning Secretary with relevant planning authorities and others on the drafting of proposed instruments, and
- (e) requirements for concurrence of public authorities in relation to the reservation of land for a purpose referred to in section 3.14(1)(c).

**Note—**

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

## **Division 3.5 Planning instrument amendments and development applications**

**3.38 Application of Division** (cf previous s 72I)

- (1) This Division applies if a development application is made to a consent authority for consent to carry out development that may only be carried out if an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended.
- (2) (Repealed)
- (3) A reference in this Division to the appropriate amendment of an environmental planning instrument includes a reference to the making of an appropriate principal environmental planning instrument.

**3.39 Making and consideration of certain development applications** (cf previous s 72J)

Nothing in this Act prevents—

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

**3.40 Joint exhibition of instrument and advertising of application** (cf previous s 72K)

- (1) Public notice that is required to be given under this Act in connection with the making of a proposed environmental planning instrument and notice that is required to be given under this Act of a development application in circumstances where this Division applies are to be given by the same notice if that is practicable or, if that is not practicable, as closely together as is practicable.
- (2) The period during which the public may inspect the documents relating to the proposed environmental planning instrument and the development application the subject of the same notice, if those periods are different, is to be the longer of them.
- (3) If the proposed environmental planning instrument makes the development the subject of the development application State significant development or designated development, the period for public inspection of the development application that is to be relevant in determining the period for public inspection under subsection (2) is the period relevant to the inspection of a development application for State significant development or designated development.

**Division 3.6 Development control plans (DCPs)**

**3.41 Definition (DCPs)** (cf previous s 74B)

(1) In this Division—

**relevant planning authority**, in relation to any matter, means the council of the area to which the matter relates or the Planning Secretary. However, the council is not the relevant planning authority in relation to a SEPP and the Planning Secretary is not the relevant planning authority in relation to a LEP for which a council is the planning proposal authority under Division 3.4.

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

**3.42 Purpose and status of development control plans** (cf previous s 74BA)

(1) The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development—

- (a) giving effect to the aims of any environmental planning instrument that applies to the development,
- (b) facilitating development that is permissible under any such instrument,
- (c) achieving the objectives of land zones under any such instrument.

The provisions of a development control plan made for that purpose are not statutory requirements.

- (2) The other purpose of a development control plan is to make provisions of the kind referred to in section 3.43(1)(b)–(e).
- (3) Subsection (1) does not affect any requirement under Division 4.5 in relation to complying development.

**3.43 Preparation of development control plans** (cf previous s 74C)

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

- (a) to provide the guidance referred to in section 3.42(1), or
- (b) (Repealed)
- (c) to provide for (or exclude) public or particular advertising or notification of any of the following—
  - (i) a development application for specified development (other than State significant development or designated development),

- (ii) a request for the review of a determination of a development application where the applicant for review makes amendments to the development described in the original development application,
  - (iii) an application for the modification of a development consent for specified development (but not State significant development or designated development), or
  - (iv) (Repealed)
- (d) in the case of a council—to specify criteria (in addition to but not inconsistent with any criteria prescribed by the regulations) that the council is to take into consideration in determining whether or not to give a development control order, or
- (e) to make provision for anything permitted by this Act to be prescribed by a development control plan.

**Note—**

See for example section 3.14(4)(a).

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

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

**Note—**

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

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

(b) it is inconsistent or incompatible with a provision of any such instrument.

**3.44 Development control plans required or authorised by environmental planning instruments** (cf previous s 74D)

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

**Note—**

Section 4.23 provides that a concept development application may be made for development requiring consent under Part 4 as an alternative to a development control plan required by an environmental planning instrument.

**3.45 Miscellaneous provisions relating to development control plans** (cf previous s 74E)

- (1) The regulations may make provision for or with respect to development control plans, including—
  - (a) the form, structure and subject-matter of development control plans, and

(b) the procedures for the preparation, public exhibition, making, amendment and repeal of development control plans, and

(c) the fees payable to the relevant planning authority by owners submitting draft development control plans under section 3.44.

(2) (Repealed)

(2A) Regulations relating to the form, structure and subject-matter of development control plans may require the standardisation of those plans and, for that purpose, authorise the Minister to publish requirements as to their form, structure and subject-matter that are to be complied with by relevant planning authorities.

(3) An environmental planning instrument may exclude or modify the application of development control plans in respect of land to which the instrument applies (whether the plan was prepared before or after the making of the instrument).

(4) A development control plan must be available for public inspection (without charge)—

(a) at the principal office of the relevant planning authority that prepared the plan, and

(b) in such other manner as is prescribed by the regulations.

**3.46 Minister may direct councils with respect to development control plans** (cf previous s 74F)

(1) The Minister may, subject to the regulations (if any), direct a council to make, amend or revoke a development control plan in the time and manner specified in the direction.

(2) A council to which a direction is given under this section must comply with the direction in accordance with its terms.

(3) If a council fails to comply with a direction of the Minister under this section, the Minister may make, amend or revoke the development control plan as if the Minister were the council.

(4) A development control plan made, amended or revoked by the Minister under this section has effect, or ceases to have effect as the case may be, as if it were made, amended or revoked by the council.

(5) The Minister in making, amending or revoking a development control plan under this section is not subject to the regulations.

(6) Section 3.43(2) does not apply to development control plan made by or at the direction of the Minister under this section.



## Part 4 Development assessment and consent

### Division 4.1 Carrying out of development—without consent, without consent and prohibited

#### 4.1 Development that does not need consent (cf previous s 76)

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

**Note—**

Environmental assessment of the development may nevertheless be required under Division 5.1.

- (2), (3) (Repealed)

#### 4.2 Development that needs consent (cf previous s 76A)

- (1) **General** If an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies unless—

- (a) such a consent has been obtained and is in force, and
- (b) the development is carried out in accordance with the consent and the instrument.

Maximum penalty—Tier 1 monetary penalty.

- (2) For the purposes of subsection (1), development consent may be obtained—
- (a) by the making of a determination by a consent authority to grant development consent, or
  - (b) in the case of complying development, by the issue of a complying development certificate.

- (3), (4) (Repealed)

- (5) **Complying development** An environmental planning instrument may provide that development, or a class of development, that can be addressed by specified predetermined development standards is complying development.

- (6)–(9) (Repealed)

**Note—**

Division 4.7 makes provision with respect to State significant development.

#### **4.3 Development that is prohibited** (cf previous s 76B)

If an environmental planning instrument provides that—

- (a) specified development is prohibited on land to which the provision applies, or
  - (b) development cannot be carried out on land with or without development consent,
- a person must not carry out the development on the land.

Maximum penalty—Tier 1 monetary penalty.

#### **4.4 Relationship of this Division to this Act** (cf previous s 76C)

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

### **Division 4.2 Consent authority**

#### **4.5 Designation of consent authority**

For the purposes of this Act, the **consent authority** is as follows—

- (a) in the case of State significant development—the Independent Planning Commission (if the development is of a kind for which the Commission is declared the consent authority by an environmental planning instrument) or the Minister (if the development is not of that kind),
- (b) in the case of development of a kind that is declared by an environmental planning instrument as regionally significant development—the Sydney district or regional planning panel for the area in which the development is to be carried out,
- (c) in the case of development of a kind that is declared by an environmental planning instrument as development for which a public authority (other than a council) is the consent authority—that public authority,
- (d) in the case of any other development—the council of the area in which the development is to be carried out.

#### **4.6 Provisions relating to Independent Planning Commission**

The following consent authority functions of the Independent Planning Commission are to be exercised by the Planning Secretary on behalf of the Commission—

- (a) receiving development applications and determining and receiving fees for the applications,
- (b) undertaking assessments of the proposed development and providing them to the Commission (but without limiting the assessments that the Commission may undertake),

- (c) obtaining any concurrence, and undertaking any consultation, that the consent authority is required to obtain or undertake,
- (d) carrying out the community participation requirements of Division 2.6,
- (e) notifying or registering the determinations of the Commission,
- (f) the functions under section 4.17 in relation to the provision of security,
- (g) the determination of applications to extend the period before consents lapse,
- (h) any other function prescribed by the regulations.

#### **4.7 Provisions relating to Sydney district or regional planning panels**

- (1) Development of the following kind cannot be declared as regionally significant development for which a Sydney district or regional planning panel is the consent authority—
  - (a) complying development,
  - (b) development for which development consent is not required,
  - (c) development that is State significant development,
  - (d) development for which a person or body other than a council is the consent authority,
  - (e) development within the City of Sydney.
- (2) The following consent authority functions of a Sydney district or regional planning panel are to be exercised on behalf of the panel by the council of the area in which the proposed development is to be carried out—
  - (a) receiving development applications and determining and receiving fees for the applications,
  - (b) undertaking assessments of the proposed development and providing them to the panel (but without limiting the assessments that the panel may undertake),
  - (c) obtaining any concurrence, and undertaking any consultation, that the consent authority is required to obtain or undertake,
  - (d) carrying out the community participation requirements of Division 2.6,
  - (e) notifying or registering the determinations of the panel,
  - (f) the functions under section 4.17 in relation to the provision of security,
  - (g) the determination of applications to extend the period before consents lapse,

(h) any other function prescribed by the regulations.

**4.8 Exercise of consent authority functions on behalf of councils where local planning panel constituted** (cf previous s 23I)

- (1) This section applies in respect of an area of a council for which a local planning panel has been constituted.
- (2) The functions of a council as a consent authority in respect of any such area are not exercisable by the councillors. They are exercisable on behalf of the council by—
  - (a) the local planning panel, or
  - (b) an officer or employee of the council to whom the council delegates those functions.
- (3) The Minister may give directions to councils under section 9.1 (either to particular councils or to councils generally) on the development applications that are to be determined on behalf of the council by a local planning panel.
- (4) For the purposes of this section, the functions of a council as consent authority include—
  - (a) the determination of development applications, and
  - (b) without limiting paragraph (a), the functions of a consent authority under Divisions 4.3 and 4.4 and sections 4.34, 4.54(2), 4.56(2), 4.57, 7.7, 7.11, 7.12, 7.13, 7.14, 7.15, 7.24 and 7.32, and
  - (c) the functions of a consent authority or council under this Act or any other Act that relate to the carrying out of development (including the making of development applications) and that are declared by the regulations to be functions of a council as consent authority,

but do not include the functions of a consent authority or council that the regulations declare are not the functions of a council as consent authority.

- (5) In this section, **development applications** includes applications to modify development consents.

**Division 4.3 Development that needs consent (except complying development)**

**4.9 Application of Division** (cf previous s 77)

This Division—

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

(b) does not apply to complying development.

**Note—**

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

- (a) is or is not State significant development, and
- (b) is or is not designated development (which it may be declared to be by an environmental planning instrument or the regulations), and
- (c) is or is not integrated development (see Division 4.8).

**4.10 Designated development** (cf previous s 77A)

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

**4.11 The development consent process—the main steps** (cf previous s 78)

The main steps in the development consent process are set out in sections 4.12–4.18 and in the regulations made for the purposes of this Part.

**4.12 Application** (cf previous s 78A)

- (1) A person may, subject to the regulations, apply to a consent authority for consent to carry out development.

**Note—**

Section 380AA of the [Mining Act 1992](#) provides that an application for development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

- (2) A single application may be made in respect of one or more of the types of development referred to in paragraphs (a)–(f) of the definition of **development** in section 1.5(1).
- (3) If the consent authority is a council, a person (other than the Crown or a person acting on behalf of the Crown) may, in the same development application, apply for development consent and approval for anything that requires approval under the following provisions of the Table to section 68 of the [Local Government Act 1993](#), namely—
  - paragraph 1 of Part A
  - paragraph 1–6 of Part B
  - paragraph 1–5 of Part C

paragraph 1 of Part E

paragraph 1-5 or 10 of Part F.

- (4) In determining a development application to which subsection (3) applies, the council may apply any of the provisions of or under the *Local Government Act 1993* that it could apply if the development application were an application under that Act for the relevant approval. In particular, if development consent is granted, the council may impose a condition that is authorised under that Act to be imposed as a condition of an approval.
- (5) If development consent is granted to a development application to which subsection (3) applies, the council is taken to have granted the relevant approval under the *Local Government Act 1993* that authorises the activity, but that Act has no application to the approval so taken to have been granted.
- (6) In granting development consent to a development application to which subsection (3) applies, the council may, without limiting any other condition it may impose, impose, in relation to the approval taken to have been granted under the *Local Government Act 1993*, either or both of the following conditions—
  - (a) a condition that the approval is granted only to the applicant and does not attach to or run with the land to which it applies,
  - (b) a condition that the approval is granted for a specified time.
- (6A) A reference to a council in subsections (3)–(6) includes a reference to a Sydney district or regional planning panel, or a local planning panel or delegate, that has the function of determining the development application.
- (7) A development application cannot be made in respect of land that is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*) unless any consent to the development required under that Act has been obtained.
- (8) A development application for State significant development or designated development is to be accompanied by an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations.
- (8A) (Repealed)
- (9) The regulations may specify other things that are required to be submitted with a development application.

#### **4.13 Consultation and concurrence** (cf previous s 79B)

- (1) **General** If, by an environmental planning instrument, the consent authority, before determining the development application, is required to consult with or to obtain the concurrence of a person, the consent authority must, in accordance with the

environmental planning instrument and the regulations, consult with or obtain the concurrence of the person, unless the consent authority determines to refuse to grant development consent.

**Note—**

See also section 48 of the *Dams Safety Act 2015* which requires the consent authority, before granting development consent for carrying out mining operations in a notification area declared under that section, to refer the application to Dams Safety NSW and to take into consideration any matters raised by Dams Safety NSW.

- (2) However, if, by an environmental planning instrument, the Minister, before determining a development application, is required to obtain the concurrence of a person, the Minister is required only to consult with the person.
- (2A) **State significant development—exclusion** This section does not apply to State significant development unless the requirement of an environmental planning instrument for consultation or concurrence specifies that it applies to State significant development.
- (3)–(7) (Repealed)
- (8) **Granting or refusal of concurrence** A person whose concurrence to development is required may—
- (a) grant concurrence to the development, either unconditionally or subject to conditions, or
  - (b) refuse concurrence to the development.
- In deciding whether to grant concurrence, the person must take into consideration only the matters stated pursuant to section 3.18(3) and applicable to the development.
- (8A), (8B) (Repealed)
- (9) **Giving effect to concurrence** A consent authority that grants consent to the carrying out of development for which a concurrence has been granted must grant the consent subject to any conditions of the concurrence. This does not affect the right of the consent authority to impose conditions under section 4.17 not inconsistent with the conditions of the concurrence or to refuse consent.
- (10) **Avoidance of consents subject to concurrence** If, by an environmental planning instrument, a development application may not be determined by the granting of consent without the concurrence of a specified person, a consent granted—
- (a) without that concurrence, or
  - (b) not subject to any conditions of the concurrence,

is, subject to sections 4.60–4.62, voidable.

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

**4.14 Consultation and development consent—certain bush fire prone land** (cf previous s 79BA)

- (1) Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land (being land for the time being recorded as bush fire prone land on a relevant map certified under section 10.3(2)) unless the consent authority—
  - (a) is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled *Planning for Bush Fire Protection* prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (***the relevant specifications and requirements***), or
  - (b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.
- (1A) If the consent authority is satisfied that the development does not conform to the relevant specifications and requirements, the consent authority may, despite subsection (1), grant consent to the carrying out of the development but only if it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.
- (1B) This section does not apply to State significant development.
- (1C) The regulations may exclude development from the application of this section subject to compliance with any requirements of the regulations. The regulations may (without limiting the requirements that may be made)—
  - (a) require the issue of a certificate by the Commissioner of the NSW Rural Fire Service or other qualified person in relation to the bush fire risk of the land concerned, and



(b) authorise the payment of a fee for the issue of any such certificate.

(2) In this section—

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

**4.15 Evaluation** (cf previous s 79C)

(1) **Matters for consideration—general** In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—

(a) the provisions of—

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

(v) (Repealed)

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

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

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

complying development, the subject of a development application complies with those standards, the consent authority—

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards—
  - (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

**Note—**

The application of non-discretionary development standards to complying development is dealt with in section 4.28(3) and (4).

- (3A) **Development control plans** If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority—
  - (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
  - (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
  - (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.

- (4) **Consent where an accreditation is in force** A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) **Definitions** In this section—
  - (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
  - (b) **non-discretionary development standards** means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

#### **4.16 Determination** (cf previous s 80)

- (1) **General** A consent authority is to determine a development application by—
  - (a) granting consent to the application, either unconditionally or subject to conditions, or
  - (b) refusing consent to the application.
- (2) Despite subsection (1), the consent authority must refuse an application for development, being the subdivision of land, that would, if carried out, result in a contravention of this Act, an environmental planning instrument or the regulations, whether arising in relation to that or any other development.
- (3) **“Deferred commencement” consent** A development consent may be granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority, in accordance with the regulations, as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.
- (4) **Total or partial consent** A development consent may be granted—
  - (a) for the development for which the consent is sought, or
  - (b) for that development, except for a specified part or aspect of that development, or
  - (c) for a specified part or aspect of that development.
- (5) The consent authority is not required to refuse consent to any specified part or aspect of development for which development consent is not initially granted under

subsection (4), but development consent may subsequently be granted for that part or aspect of the development.

**Note—**

See also Division 4.4 for special procedures concerning concept development applications.

- (6) **Restrictions on determination of development applications involving Independent Planning Commission** If a consent authority (other than the Minister) has received notice that the Minister has requested that a review (with or without a public hearing) be conducted by the Independent Planning Commission in relation to all or any part of the development the subject of a development application, the consent authority must not determine the development application until—
- (a) the review has been conducted, and
  - (b) the consent authority has considered the findings and recommendations of the Independent Planning Commission and any comments made by the Minister that accompanied those findings and recommendations when they were forwarded to the consent authority.
- (7) If the Minister has requested that a review (with or without a public hearing) be conducted by the Independent Planning Commission in relation to all or any part of the development the subject of a development application for which the Minister is the consent authority, the Minister must not determine the development application until—
- (a) the review has been conducted, and
  - (b) the Minister has considered the findings and recommendations of the Independent Planning Commission.
- (8) (Repealed)
- (9) **Restrictions on determination of development applications for designated development A** consent authority must not determine a development application for designated development—
- (a) until after the submission period (within the meaning of Schedule 1) has expired, or
  - (b) if a submission is made with respect to the application within the submission period, until after 21 days following the date on which a copy of the submission is forwarded to the Planning Secretary have expired.
- (10) Subsection (9)(b) does not apply—
- (a) to a consent authority being the Minister or the Planning Secretary, or
  - (b) if the Planning Secretary has waived the requirement that submissions be

forwarded to the Planning Secretary for a specified development application or for a specified class of development applications.

(10A) (Repealed)

(11) **Other restrictions on determination of development applications** The regulations may specify other matters of a procedural nature that are to be complied with before a development application may be determined.

(12) **Effect of issuing construction certificate** If a consent authority or an accredited certifier issues a construction certificate, the construction certificate and any approved plans and specifications issued with respect to that construction certificate, together with any variations to the construction certificate or plans and specifications that are effected in accordance with this Act or the regulations, are taken to form part of the relevant development consent (other than for the purposes of section 4.55).

(13), (14) (Repealed)

#### **4.17 Imposition of conditions** (cf previous s 80A)

(1) **Conditions—generally** A condition of development consent may be imposed if—

- (a) it relates to any matter referred to in section 4.15(1) of relevance to the development the subject of the consent, or
- (b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 4.11 in relation to the land to which the development application relates, or
- (c) it requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out on land (whether or not being land to which the development application relates), or
- (d) it limits the period during which development may be carried out in accordance with the consent so granted, or
- (e) it requires the removal of buildings and works (or any part of them) at the expiration of the period referred to in paragraph (d), or
- (f) it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 4.15(1) applicable to the development the subject of the consent, or
- (g) it modifies details of the development the subject of the development application, or
- (h) it is authorised to be imposed under section 4.16(3) or (5), subsections (5)–(9) of this section or section 7.11, 7.12, 7.24 or 7.32.

- (2) **Ancillary aspects of development** A consent may be granted subject to a condition that a specified aspect of the development that is ancillary to the core purpose of the development is to be carried out to the satisfaction, determined in accordance with the regulations, of the consent authority or a person specified by the consent authority.
- (3) A consent authority that has not determined a request to indicate whether a specified aspect of development has been carried out to the satisfaction of the consent authority, or a person specified by the consent authority, within the relevant period, prescribed by the regulations, applicable to the aspect or the development is, for the purpose only of section 97, taken to have determined the request by indicating that it, or the person, is not satisfied as to the specified aspect.
- (4) **Conditions expressed in terms of outcomes or objectives** A consent may be granted subject to a condition expressed in a manner that identifies both of the following—
- (a) one or more express outcomes or objectives that the development or a specified part or aspect of the development must achieve,
  - (b) clear criteria against which achievement of the outcome or objective must be assessed.
- (4A) **Conditions replaced by other legislative controls** A development consent for the carrying out of development may be granted subject to specified conditions that cease to have effect on the issue of an authorisation under another Act relating to that development (or any part of it) if the consent authority is satisfied that the matters regulated by those conditions will be adequately addressed by such an authorisation when it is issued. The regulations may restrict the imposition of any such condition.
- (4B) **Conditions relating to financial assurance** A development consent may be granted subject to a condition of a kind described in Part 9.4 of the *Protection of the Environment Operations Act 1997* to secure or guarantee funding for or towards the carrying out of works or programs required by or under the consent. The regulations may restrict the imposition of any such condition and may make provisions with respect to any such condition of the kind set out in that Part (including in relation to the calling on and use of any financial assurance).
- (5) **Modification or surrender of consents or existing use rights** If a consent authority imposes (as referred to in subsection (1)(b)) a condition requiring the modification or surrender of a consent granted under this Act or a right conferred by Division 4.11, the consent or right may be modified or surrendered subject to and in accordance with the regulations.
- (6) **Conditions and other arrangements concerning security** A development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost

of any one or more of the following—

- (a) making good any damage caused to any property of the consent authority (or any property of the Planning Ministerial Corporation) as a consequence of the doing of anything to which the consent relates,
  - (b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,
  - (c) remedying any defects in any such public work that arise within 6 months after the work is completed,
  - (d) in relation to coastal protection works (within the meaning of the *Coastal Management Act 2016*), either or both of the following—
    - (i) the maintenance of the works,
    - (ii) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works.
- (7) The security is to be for such reasonable amount as is determined by the consent authority.
- (8) The security may be provided, at the applicant's choice, by way of—
- (a) deposit with the consent authority, or
  - (b) a guarantee satisfactory to the consent authority.
- (9) The security is to be provided before carrying out any work in accordance with the development consent or at such other time as may be agreed to by the consent authority.
- (10) The funds realised from a security may be paid out to meet any cost referred to in subsection (6). Any balance remaining is to be refunded to, or at the direction of, the persons who provided the security.
- (10A) (Repealed)
- (10B) **Review of extended hours of operation and number of persons permitted** A development consent that is granted subject to a reviewable condition may be granted subject to a further condition that the consent authority may review that condition at any time or at intervals specified by the consent and that the reviewable condition may be changed on any such review.
- (10C) The regulations may make provision for or with respect to the kinds of development that may be subject to a further condition referred to in subsection (10B), the matters that must be included in such a condition and the procedures for a review under such

a condition.

(10D) A decision by a consent authority to change a reviewable condition on a review is taken to be a determination of a development consent for the purposes of this Act.

**Note—**

Accordingly, an application for review or appeal under Part 8 may be made in relation to a decision to change a reviewable condition.

(10E) For the purposes of subsections (10B)–(10D), a **reviewable condition** means any of the following—

- (a) a condition that permits extended hours of operation (in addition to other specified hours of operation),
- (b) a condition that increases the maximum number of persons permitted in a building (in addition to the maximum number otherwise permitted).

(11) **Prescribed conditions** A development consent is subject to such conditions as may be prescribed by the regulations.

**Note—**

Section 6.16(2) provides that a condition of consent has no effect to the extent that it requires a compliance certificate to be obtained in respect of any development.

**4.18 Post-determination notification** (cf previous s 81)

- (1) The consent authority must, in accordance with the regulations, notify its determination of a development application to—
  - (a) the applicant, and
  - (b) in the case of a development application for consent to carry out designated development, each person who made a submission under Schedule 1, and
  - (c) such other persons as are required by the regulations to be notified of the determination of the development application.
- (2) If the consent authority is not the council, the consent authority must notify the council of its determination.
- (3) In the case of a development application for consent to carry out designated development, the consent authority must also notify each person who made a submission under Schedule 1 by way of objection of the person's rights to appeal against the determination and of the applicant's rights to appeal against the determination.
- (4) For the purposes of this section, **designated development** includes State significant development that would be designated development but for section 4.10(2).



**4.19 Consent for erection of building authorises use of building** (cf previous s 81A)

A development consent that authorises the erection of a building (but not the use of the building once erected) is sufficient to authorise the use of the building when erected for the purpose for which it was erected if that purpose was specified in the application for development consent. This section does not authorise the occupation of such a building if Part 6 requires an occupation certificate to be issued.

**4.20 Date from which development consent has effect** (cf previous s 83)

- (1) A development consent has effect on and from the date it is registered on the NSW planning portal, except as provided by subsection (2).
- (2) A development consent for designated development has effect on and from the end of 28 days after the date it is registered on the NSW planning portal unless—
  - (a) the development consent was granted following a public hearing by the Independent Planning Commission, or
  - (b) the development is State significant development.

**Note—**

The date of effect of a consent for any such designated development is delayed by the period within which an objector may appeal to the Land and Environment Court against the grant of consent.

- (3) This section is subject to Part 8 (Reviews and appeals).

**Division 4.4 Concept development applications**

**4.21 Application of this Division** (cf previous s 83A)

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

**4.22 Concept development applications** (cf previous s 83B)

- (1) For the purposes of this Act, a **concept development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.
- (2) In the case of a staged development, the application may set out detailed proposals for the first stage of development.
- (3) A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.
- (4) If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site

concerned unless—

- (a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or
- (b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

- (5) The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

**Note—**

The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged (subject to subsection (2)).

**4.23 Concept development applications as alternative to DCP required by environmental planning instruments** (cf previous s 83C)

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

**Note—**

Section 3.44(5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.

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

**4.24 Status of concept development applications and consents** (cf previous s 83D)

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

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

**Note—**

See section 4.53(2) which prevents a reduction in the 5-year period of a development consent.

## **Division 4.5 Complying development**

### **4.25 Application of this Division** (cf previous s 84)

This Division applies to complying development.

### **4.26 Carrying out of complying development** (cf previous s 84A)

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

**4.27 What is a “complying development certificate”?** (cf previous s 85)

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

**Note—**

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

- (3) **Erection of buildings** A complying development certificate that enables the erection of a building is sufficient to authorise the use of the building when erected for the purpose for which it was erected if that purpose is specified in the application for the complying development certificate, subject to section 6.9.

**Note—**

Section 6.9 prohibits the occupation or use of a new building unless an occupation certificate has been issued for the building.

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

**Note—**

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

- (5) **Other requirements for complying development certificates** The regulations—
- (a) may impose other requirements concerning the issue of complying development certificates, and
  - (b) may provide for the form in which a complying development certificate is to be issued.
- (5A) A complying development certificate has no effect to the extent that it requires a compliance certificate to be obtained in respect of any development.

- (6) For the purposes of this section, **development standard** includes a provision of a development control plan that would be a development standard, within the meaning of section 1.4, if the provision were in an environmental planning instrument.

**4.28 Process for obtaining complying development certificates** (cf previous s 85A)

- (1) An applicant may, in accordance with the regulations, apply to a council or accredited certifier for a complying development certificate.
- (2) The regulations may specify the kind of development for which an accredited certifier is not authorised to issue a complying development certificate.
- (3) **Evaluation** The council or accredited certifier must consider the application and determine—
- (a) whether or not the proposed development is complying development, and
  - (b) whether or not the proposed development complies with the relevant development standards, and
  - (c) if the proposed development is complying development because of the provisions of a local environmental plan, or a local environmental plan in relation to which the council has made a development control plan, that specifies standards and conditions for the complying development, whether or not the proposed development complies with those standards and conditions.
- (4) A council or accredited certifier must not refuse to issue a complying development certificate on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A council, an employee of a council and an accredited certifier do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) **Determination** The council or an accredited certifier may determine an application—
- (a) by issuing a complying development certificate, unconditionally or (to the extent required by the regulations, an environmental planning instrument or a development control plan) subject to conditions, or
  - (b) by refusing to issue a complying development certificate.

**Note—**

Part 8 provides that there is no right of review or appeal in relation to a determination of, or a failure to determine, an application for a complying development certificate.

- (7) The council or an accredited certifier must not refuse to issue a complying

development certificate if the proposed development complies with the development standards applicable to it and complies with other requirements prescribed by the regulations relating to the issue of a complying development certificate.

- (8) The determination of an application by the council or accredited certifier must be completed within the period prescribed by the regulations (or such longer period as may be agreed to by the applicant) after lodgment of the application.
- (9) In determining the application, the council or the accredited certifier must impose a condition that is required to be imposed under Division 7.1 in relation to the complying development.
- (9A) **“Deferred commencement” certificate** A complying development certificate may be granted subject to a condition that the certificate is not to operate until the applicant satisfies the council or certifier who issued the certificate, in accordance with the regulations, as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.
- (10) (Repealed)
- (10A) **Payment of long service levy** Where a council or accredited certifier completes a complying development certificate, that certificate is not to be forwarded or delivered to the applicant, unless any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.
- (11) **Post-determination notification** On the determination of an application for the issue of a complying development certificate—
  - (a) the council or accredited certifier must notify the applicant of the determination, and
  - (b) the accredited certifier must notify the council of the determination, and
  - (c) if the determination is to issue a complying development certificate, the council or accredited certifier must notify any other person, if required to do so by the regulations, in accordance with the regulations.
- (12) For the purposes of subsection (7), **development standard** includes a provision of a development control plan that would be a development standard, within the meaning of section 1.4, if the provision were in an environmental planning instrument.

#### **4.29 Duration of complying development certificate** (cf previous s 86A)

- (1) A complying development certificate becomes effective and operates from the date endorsed on the certificate.
- (2) A complying development certificate lapses 5 years after the date endorsed on the

certificate.

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

#### **4.30 Modification of complying development** (cf previous s 87)

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

#### **4.31 Validity of complying development certificate**

Without limiting the powers of the Court under section 9.46(1), the Court may by order under that section declare that a complying development certificate is invalid if—

- (a) proceedings for the order are brought within 3 months after the issue of the certificate, and
- (b) the certificate authorises the carrying out of development for which the Court determines that a complying development certificate is not authorised to be issued.

### **Division 4.6 Crown development**

#### **4.32 Definitions** (cf previous s 88)

- (1) In this Division—

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

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

- (2) A reference in this Division to the Crown—
  - (a) includes a reference to a person who is prescribed by the regulations to be the Crown for the purposes of this Division, and
  - (b) does not include a reference to—
    - (i) a capacity of the Crown that is prescribed by the regulations not to be the Crown for the purposes of this Division, or

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

**4.33 Determination of Crown development applications** (cf previous s 89)

- (1) A consent authority (other than the Minister) must not—
  - (a) refuse its consent to a Crown development application, except with the approval of the Minister, or
  - (b) impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.
- (2) If the consent authority fails to determine a Crown development application within the period prescribed by the regulations, the applicant or the consent authority may refer the application—
  - (a) to the Minister, if the consent authority is not a council, or
  - (b) to the applicable regional panel, if the consent authority is a council.
- (2A) A Crown development application for which the consent authority is a council must not be referred to the Minister unless it is first referred to the applicable regional panel.
- (3) An applicable regional panel to which a Crown development application is referred may exercise the functions of the council as a consent authority (subject to subsection (1)) with respect to the application.
- (4) A decision by a regional panel in determining a Crown development application is taken for all purposes to be the decision of the council.
- (5) If an applicable regional panel fails to determine a Crown development application within the period prescribed by the regulations, the applicant or the panel may refer the application to the Minister.
- (6) The party that refers an application under this section must notify the other party in writing that the application has been referred.
- (7) When an application is referred under this section to an applicable regional panel or the Minister, the consent authority must, as soon as practicable, submit to the panel or the Minister—
  - (a) a copy of the development application, and
  - (b) details of its proposed determination of the development application, and
  - (c) the reasons for the proposed determination, and



(d) any relevant reports of another public authority.

(8) An application may be referred by a consent authority or applicable regional panel before the end of a relevant period referred to in subsection (2) or (5).

#### **4.34 Directions by Minister** (cf previous s 89A)

(1) On a referral being made by a consent authority or an applicable regional panel, or an applicant, to the Minister under this Division, the Minister may direct the relevant consent authority, within the time specified in the direction—

(a) to approve the Crown development application, with or without specified conditions, or

(b) to refuse the Crown development application.

(2) A consent authority must comply with a direction by the Minister.

(3) If the consent authority fails to comply, the consent authority is taken, on the last date for compliance specified in the direction, to have determined the Crown development application in accordance with the Minister's direction.

(4) Despite subsection (2), a consent authority may vary a condition specified by the Minister with the approval of the applicant.

#### **4.35 Modification of Crown development consents** (cf previous s 89B)

This Division applies to an application made by or on behalf of the Crown under section 4.55 in the same way as it applies to an application for development consent.

### **Division 4.7 State significant development**

#### **4.36 Development that is State significant development** (cf previous s 89C)

(1) For the purposes of this Act, **State significant development** is development that is declared under this section to be State significant development.

(2) A State environmental planning policy may declare any development, or any class or description of development, to be State significant development.

(3) The Minister may, by a Ministerial planning order, declare specified development on specified land to be State significant development, but only if the Minister has obtained and made publicly available advice from the Independent Planning Commission about the State or regional planning significance of the development.

#### **Editorial note—**

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

(4) A State environmental planning policy that declares State significant development

may extend the provisions of the policy relating to that development to State significant development declared under subsection (3).

**Note—**

See section 5.12(6) and (7) in relation to development that is, but for those provisions, both State significant development and State significant infrastructure.

**4.37 Staged State significant development** (cf previous s 89D)

If a concept development application is made in respect of State significant development—

- (a) the consent authority may determine that a subsequent stage of the development is to be determined by the relevant council as consent authority, and
- (b) that stage of the development ceases to be State significant development and that council becomes the consent authority for that stage of the development.

**4.38 Consent for State significant development** (cf previous s 89E)

- (1) The consent authority is to determine a development application in respect of State significant development by—
  - (a) granting consent to the application with such modifications of the proposed development or on such conditions as the consent authority may determine, or
  - (b) refusing consent to the application.

**Note—**

Section 380AA of the [Mining Act 1992](#) provides that an application in respect of State significant development for the mining of coal can only be determined if it is made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

- (2) Development consent may not be granted if the development is wholly prohibited by an environmental planning instrument.
- (3) Development consent may be granted despite the development being partly prohibited by an environmental planning instrument.
- (4) If part of a single proposed development that is State significant development requires development consent to be carried out and the other part may be carried out without development consent—
  - (a) Division 5.1 does not apply to that other part of the proposed development, and
  - (b) that other part of the proposed development is taken to be development that may not be carried out except with development consent.
- (5) A development application in respect of State significant development that is wholly

or partly prohibited may be considered in accordance with Division 3.5 in conjunction with a proposed environmental planning instrument to permit the carrying out of the development. The Planning Secretary may (despite anything to the contrary in section 3.32) undertake the functions of the planning proposal authority under Part 3 for a proposed instrument if it is initiated for the purpose of permitting the carrying out of the development (whether or not it contains other provisions).

- (6) If the determination under section 3.34 (Gateway determination) for a planning proposal declares that the proposed instrument is principally concerned with permitting the carrying out of State significant development that would otherwise be wholly prohibited—
- (a) the proposed instrument may be made only by the Independent Planning Commission under a delegation from the Minister, and
  - (b) the development application for the carrying out of that development may be determined only by the Independent Planning Commission under a delegation from the Minister.

**4.39 Regulations—State significant development** (cf previous s 89G)

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

- (a) the environmental impact statements to accompany development applications in respect of State significant development,
- (b) the requirements for the preparation of those environmental impact statements, including consultation requirements with respect to government agencies and other affected persons,
- (c) the making of orders under section 4.36(3) declaring specified development to be State significant development,
- (d) the making of information publicly available relating to development applications in respect of State significant development and the determination of those applications,
- (e) requiring applicants to provide responses to submissions made on development applications in respect of State significant development.

**4.40 Evaluation of development application (s 4.15)** (cf previous s 89H)

Section 4.15 applies, subject to this Division, to the determination of the development application.

**4.41 Approvals etc legislation that does not apply** (cf previous s 89J)

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

**4.42 Approvals etc legislation that must be applied consistently** (cf previous s 89K)

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

**Note—**

Under section 380A of the *Mining Act 1992*, a mining lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.

(d) a production lease under the *Petroleum (Onshore) Act 1991*,

**Note—**

Under section 24A of the *Petroleum (Onshore) Act 1991*, a production lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.

(e) an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act),

(f) a consent under section 138 of the *Roads Act 1993*,

(g) a licence under the *Pipelines Act 1967*.

(2) This section does not apply to or in respect of—

(a) an application for the renewal of an authorisation or a renewed authorisation, or

(b) an application for a further authorisation or a further authorisation following the expiry or lapsing of an authorisation, or

(c) in the case of an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—any period after the first review of the licence under section 78 of that Act.

(3) A reference in this section to an authorisation or development consent includes a reference to any conditions of the authorisation or consent.

(4) This section applies to a person, court or tribunal that deals with an objection, appeal or review conferred on a person in relation to an authorisation in the same way as it applies to the person giving the authorisation.

**4.43 This Division prevails** (cf previous s 89L)

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

## **Division 4.8 Integrated development**

**4.44 Application of this Division** (cf previous s 90)

(1) This Division applies to integrated development.

(2) However, this Division does not apply to development the subject of a development application made by or on behalf of the Crown (within the meaning of Division 4.6), other than development that requires a heritage approval.

**4.45 Definitions** (cf previous s 90A)

In this Division—

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

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

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

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

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

**4.46 What is “integrated development”?** (cf previous s 91)

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

<b>Act</b>	<b>Provision</b>	<b>Approval</b>
<i>Coal Mine Subsidence Compensation Act 2017</i>	s 22	approval to alter or erect improvements, or to subdivide land, within a mine subsidence district
<i>Fisheries Management Act 1994</i>	s 144	aquaculture permit
	s 201	permit to carry out dredging or reclamation work
	s 205	permit to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease
	s 219	permit to— (a) set a net, netting or other material, or (b) construct or alter a dam, floodgate, causeway or weir, or (c) otherwise create an obstruction, across or within a bay, inlet, river or creek, or across or around a flat

<i>Heritage Act 1977</i>	s 58	approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57(1)
<i>Mining Act 1992</i>	ss 63, 64	grant of mining lease
<i>National Parks and Wildlife Act 1974</i>	s 90	grant of Aboriginal heritage impact permit
<i>Petroleum (Onshore) Act 1991</i>	s 16	grant of production lease
<i>Protection of the Environment Operations Act 1997</i>	ss 43(a), 47 and 55	Environment protection licence to authorise carrying out of scheduled development work at any premises.
	ss 43(b), 48 and 55	Environment protection licence to authorise carrying out of scheduled activities at any premises (excluding any activity described as a “waste activity” but including any activity described as a “waste facility”).
	ss 43(d), 55 and 122	Environment protection licences to control carrying out of non-scheduled activities for the purposes of regulating water pollution resulting from the activity.
		consent to—
		(a) erect a structure or carry out a work in, on or over a public road, or
		(b) dig up or disturb the surface of a public road, or
<i>Roads Act 1993</i>	s 138	(c) remove or interfere with a structure, work or tree on a public road, or
		(d) pump water into a public road from any land adjoining the road, or
		(e) connect a road (whether public or private) to a classified road

<a href="#">Rural Fires Act 1997</a>	s 100B	authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes
<a href="#">Water Management Act 2000</a>	ss 89, 90, 91	water use approval, water management work approval or activity approval under Part 3 of Chapter 3

- (1A) Development is integrated development in respect of a licence that may be granted under the [Protection of the Environment Operations Act 1997](#) to control the carrying out of non-scheduled activities for the purpose of regulating water pollution only if—
- (a) the development application stipulates that an application for such a licence has been or will be made in respect of the development, or
  - (b) the Environment Protection Authority notifies the consent authority in writing before the development application is granted or refused that an application for such a licence has been or may be made in respect of the development.
- (2) Development is not integrated development in respect of an Aboriginal heritage impact permit required under Part 6 of the [National Parks and Wildlife Act 1974](#) unless—
- (a) an Aboriginal object referred to in that Part is known, immediately before the development application is made, to exist on the land to which the development application applies, or
  - (b) the land to which the development application applies is an Aboriginal place within the meaning of that Act immediately before the development application is made.
- (3) Development is not integrated development in respect of the consent required under section 138 of the [Roads Act 1993](#) if, in order for the development to be carried out, it requires the development consent of a council and the approval of the same council.
- (4) Development is not integrated development in respect of the approval required under section 57 of the [Heritage Act 1977](#) if the approval that is required is the approval of a council.

#### **4.47 Development that is integrated development** (cf previous s 91A)

- (1) This section applies to the determination of a development application for development that is integrated development.



- (2) Before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.
- (3) A consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed. For the purposes of this Part, the consent authority is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.
- (4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.
- (4A) The Planning Secretary may act on behalf of an approval body for the purposes of informing the consent authority under this section whether or not the approval body will grant the approval, or of the general terms of its approval, if—
  - (a) the Planning Secretary is authorised to do so by the regulations because of the failure of the approval body to do so or because of an inconsistency in the general terms of approval of 2 or more approval bodies, and
  - (b) the Planning Secretary has taken into consideration assessment requirements prescribed by the regulations as State assessment requirements.

The decision of the Planning Secretary is taken, for the purposes of this Division, to be the decision of the approval body, unless the approval body has informed the consent authority of its own decision on the matter.

- (5) If the approval body and the Planning Secretary fail to inform the consent authority, in accordance with the regulations, whether or not it will grant the approval, or of the general terms of its approval—
  - (a) the consent authority may determine the development application, and
  - (b) if the consent authority determines the development application by granting consent—
    - (i) the approval body cannot refuse to grant approval to an application for approval in respect of the development, and
    - (ii) an approval granted by the approval body must not be inconsistent with the development consent, and
    - (iii) section 4.50 applies to an approval so granted as if it were an approval the

general terms of which had been provided to the consent authority,

despite any other Act or law.

**Note—**

Under section 380A of the *Mining Act 1992* and section 24A of the *Petroleum (Onshore) Act 1991*, a mining lease or production lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.

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

**Note—**

If a dispute arises under this section between a consent authority and an approval body, the dispute may be dealt with under section 10.2.

**4.48 Consent authority may not refuse certain development applications** (cf previous s 92)

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

**4.49 Effect of giving notice** (cf previous s 92A)

If, in relation to integrated development—

- (a) notice of a development application is given under Schedule 1, and
- (b) the consent authority obtains from an approval body the general terms of any approval proposed to be granted by the approval body in relation to the development or the approval body fails to inform the consent authority, in accordance with the regulations, whether or not it will grant the approval or of the general terms of its approval, and
- (c) the consent authority determines the application by granting consent,

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

**4.50 Granting and modification of approval by approval body** (cf previous s 93)

- (1) Despite any other Act or law, an approval body must, in respect of integrated development for which development consent has been granted following the provision by the approval body of the general terms of the approval proposed to be granted by

the approval body in relation to the development, grant approval to any application for approval that is made within 3 years after the date on which the development consent is granted if, within that 3-year period, the development consent has not lapsed or been revoked.

**Note—**

Under section 380A of the *Mining Act 1992* and section 24A of the *Petroleum (Onshore) Act 1991*, a mining lease or production lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.

- (2) The approval may be granted subject to conditions that are not inconsistent with the development consent. Neither the provisions of section 4.17(6)–(10) nor the imposition of conditions as to security by the consent authority prevent an approval body from imposing conditions, or additional conditions, as to security.
- (3) Subsection (1) does not apply to or limit the granting of approval to an application for renewal of an approval.
- (4) An approval body cannot vary the terms of an approval granted for integrated development for which development consent has been granted before the expiration, lapsing or first renewal of the approval, whichever first occurs, other than to make variations that are not inconsistent with the development consent.
- (5) Subsection (4) does not prevent—
  - (a) the modification, in accordance with section 4.55 or 4.57, of the development consent at any time, or
  - (b) if a development consent is modified as referred to in paragraph (a) before the expiration, lapsing or first renewal, whichever first occurs, of the approval, the modification in accordance with law of the approval to any necessary consequential extent, or
  - (c) the exercise by the approval body of any of its other functions, such as the issuing of orders, the suspension or cancellation of an approval or the prosecution of offences.

**4.51 Effect of approval if the approval body is also a concurrence authority** (cf previous s 93A)

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

**4.52 Rights of appeal** (cf previous s 93B)

- (1) **Applicant's appeal rights** This Division does not affect any right of objection, appeal or review conferred on an applicant for an approval under the Act that provides for the granting of the approval, except as provided by subsection (2).
- (2) **Restriction on appellate body** Despite any other Act or law, section 4.50 applies to a person, court or tribunal that deals with an objection, appeal or review referred to in this section in the same way as it applies to an approval body.

**Division 4.9 Post-consent provisions**

**4.53 Lapsing of consent** (cf previous s 95)

- (1) A development consent lapses 5 years after the date from which it operates.
- (2) However, a consent authority may reduce that period of 5 years in granting development consent. This subsection does not apply to development consent granted to a concept development application under Division 4.4 for development that requires a subsequent development application and consent.
- (3) Such a reduction may not be made so as to cause—
  - (a) a development consent to erect or demolish a building or to subdivide land to lapse within 2 years after the date from which the consent operates, or
  - (b) a development consent of a kind prescribed by the regulations to lapse within the period prescribed by the regulations in relation to the consent.
- (3A) A reduction that has been made under subsection (2) is to be disregarded if—
  - (a) the development consent operated before, and lapses after, the commencement of this subsection (or the development consent lapsed during the period commencing on 22 April 2010 and ending on the commencement of this subsection), or
  - (b) the development consent operated before, and lapses after, a date after 1 July 2011 prescribed by the regulations.

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

- (4) Development consent for—
  - (a) the erection of a building, or
  - (b) the subdivision of land, or

(c) the carrying out of a work,

does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.

- (5) Development consent for development other than that referred to in subsection (4) does not lapse if the use of any land, building or work the subject of that consent is actually commenced before the date on which the consent would otherwise lapse.
- (6) Despite any other provision of this section, a development consent that is subject to a deferred commencement condition under section 4.16(3) lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within 5 years from the grant of the consent or, if a shorter period is specified by the consent authority, within the period so specified.
- (7) The regulations may set out circumstances in which work is or is not taken to be physically commenced for the purposes of this section.

#### **4.54 Extension of lapsing period for 1 year** (cf previous s 95A)

- (1) If, in granting a development consent, the consent authority reduces the period after which the consent lapses to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.
- (2) The consent authority may grant the extension if satisfied that the applicant has shown good cause.
- (3) (Repealed)
- (4) An extension of 1 year granted under this section commences to run from the later of the following—
  - (a) the date on which the consent would have lapsed but for the extension,
  - (b) the date on which the consent authority granted the extension or, if the Court has allowed the extension in determining an appeal, the date on which the Court determined the appeal.
- (5) This section does not apply to complying development.

#### **4.55 Modification of consents—generally** (cf previous s 96)

- (1) **Modifications involving minor error, misdescription or miscalculation** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error,

misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.

**Note—**

Section 380AA of the *Mining Act 1992* provides that an application for modification of development consent to mine for coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

**(1A) Modifications involving minimal environmental impact** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with—
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

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

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

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general

terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

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

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

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.
- (5) (Repealed)
- (6) **Deemed refusals** The regulations may make provision for or with respect to the following—
  - (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,
  - (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,
  - (c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.
- (6A), (7) (Repealed)
- (8) **Modifications by the Court** The provisions of this section extend, subject to the regulations, to enable the Court to modify a consent granted by it but, in the

extension of those provisions, the functions imposed on a consent authority under subsection (1A)(c) or subsection (2)(b) and (c) are to be exercised by the relevant consent authority and not the Court.

**4.56 Modification by consent authorities of consents granted by the Court** (cf previous s 96AA)

- (1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—
  - (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
  - (b) it has notified the application in accordance with—
    - (i) the regulations, if the regulations so require, and
    - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
  - (c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and
  - (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.
- (1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.
- (1B) (Repealed)
- (1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.
- (2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a



submission in respect of the application for modification.

- (3) The regulations may make provision for or with respect to the following—
- (a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,
  - (b) the effect of any such deemed determination on the power of a consent authority to determine any such application,
  - (c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.
- (4) (Repealed)

**4.57 Revocation or modification of development consent** (cf previous s 96A)

- (1) If at any time it appears to—
- (a) the Planning Secretary, having regard to the provisions of any proposed State environmental planning policy, or
  - (b) a council (being the consent authority in relation to the development application referred to in this subsection), having regard to the provisions of any proposed local environmental plan,
- that any development for which consent under this Division is in force in relation to a development application should not be carried out or completed, or should not be carried out or completed except with modifications, the Planning Secretary or council may, by instrument in writing, revoke or modify that consent.
- (2) This section applies to complying development for which a complying development certificate has been issued in the same way as it applies to development for which development consent has been granted and so applies to enable a council to revoke or modify a complying development certificate whether the certificate was issued by the council or by an accredited certifier.
- (3) Before revoking or modifying the consent, the Planning Secretary or council must—
- (a) by notice in writing inform, in accordance with the regulations—
    - (i) each person who in the Planning Secretary's or council's opinion will be adversely affected by the revocation or modification of the consent, and
    - (ii) such persons as may be prescribed by the regulations,
- of the intention to revoke or modify the consent, and

- (b) afford each such person the opportunity of appearing before the Planning Secretary or council, or a person appointed by the Planning Secretary or council, to show cause why the revocation or modification should not be effected.
- (4) The revocation or modification of a development consent takes effect, subject to this section, from the date on which the instrument referred to in subsection (1) is served on the owner of the land to which the consent applies.
- (5), (6) (Repealed)
- (7) If a development consent is revoked or modified under this section, a person aggrieved by the revocation or modification is entitled to recover from—
  - (a) the Government of New South Wales—if the Planning Secretary is responsible for the issue of the instrument of revocation or modification, or
  - (b) the council—if the council is responsible for the issue of that instrument,compensation for expenditure incurred pursuant to the consent during the period between the date on which the consent becomes effective and the date of service of the notice under subsection (3) which expenditure is rendered abortive by the revocation or modification of that consent.
- (8) The Planning Secretary or council must, on or as soon as practicable after the date on which the instrument referred to in subsection (1) is served on the owner of the land referred to in subsection (4), cause a copy of the instrument to be sent to each person who is, in the Planning Secretary's or council's opinion, likely to be disadvantaged by the revocation or modification of the consent.
- (9) This section does not apply to or in respect of a consent granted by the Court or by the Minister.

## **Division 4.10 Miscellaneous Part 4 provisions**

### **4.58 Register of consents and certificates** (cf previous s 100)

- (1) A council must, in the prescribed form and manner (if any), keep a register of—
  - (a) applications for development consent, and
  - (b) the determination of applications for development consent (including the terms of development consents granted under this Part), and
  - (c) the determination of applications for complying development certificates (including the terms of complying development certificates issued under this Part), and
  - (d) decisions on appeal from any determination made under this Part.

- (2) The register is to be available for public inspection, without charge, at the office of the council during ordinary office hours.

**4.59 Validity of development consents and complying development certificates** (cf previous s 101)

If public notice of the granting of a consent or a complying development certificate is given in accordance with the regulations by a consent authority or a certifier, the validity of the consent or certificate cannot be questioned in any legal proceedings except those commenced in the Court by any person at any time before the expiration of 3 months from the date on which public notice was so given.

**4.60 Non-compliance with certain provisions regarding State significant development** (cf previous s 102)

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, before or after the commencement of this section.
- (2) The only requirements of this Act that are mandatory in connection with the validity of a development consent to which subsection (1) applies are as follows—
  - (a) A requirement that a development application to carry out State significant development or designated development and its accompanying information be publicly exhibited for the minimum period of time.
  - (b) A requirement that a development application to carry out development, being development, other than State significant development or designated development, to which some or all of the provisions of sections 4.25, 4.27, 86, 4.30(1) and 4.44, as in force immediately before the commencement of this section, applied by virtue of an environmental planning instrument, as referred to in section 3.18(4), as then in force, be publicly exhibited for the minimum period of time.
  - (c) (Repealed)

**4.61 Revocation or regrant of development consents after order of Court** (cf previous s 103)

- (1) This section applies to a development consent granted, or purporting to be granted, by a consent authority, to which an order of suspension applies under section 25B of the *Land and Environment Court Act 1979*.
- (2) The consent authority may revoke a development consent to which this section applies, whether or not the terms imposed by the Court under section 25B of the *Land and Environment Court Act 1979* have been complied with.
- (3) However, if the terms imposed by the Court have been substantially complied with, the consent authority may revoke the development consent to which this section applies and grant a new development consent with such alterations to the revoked

consent as the consent authority thinks appropriate having regard to the terms themselves and to any matters arising in the course of complying with the terms. Such a grant of a development consent is referred to as a **regrant** of the consent.

- (4) No preliminary steps need be taken with regard to the regrant of a development consent under this section, other than those that are required to secure compliance with those terms.
- (5) Section 4.18 and such other provisions of this Act as may be prescribed by the regulations apply to development consents regranted under this section.

**4.62 Appeals and other provisions relating to development consents after order of Court** (cf previous s 104)

- (1) A development consent declared to be valid under section 25C of the *Land and Environment Court Act 1979*—
  - (a) is final and the provisions of Part 8 do not apply to or in respect of it, and
  - (b) is operative as from the date the development consent originally took effect or purported to take effect, unless the Court otherwise orders.
- (2) A development consent declared under section 25C of the *Land and Environment Court Act 1979* to be validly regranted—
  - (a) is final and the provisions of Part 8 do not apply to or in respect of it, and
  - (b) takes effect from the date of the declaration or another date specified by the Court.

**4.63 Voluntary surrender of development consent** (cf previous s 104A)

- (1) A development consent may be surrendered, subject to and in accordance with the regulations, by any person entitled to act on the consent.
- (2) A development consent may be surrendered under this section even if, on an appeal under Part 8, the consent has ceased to be, or does not become, effective.
- (3) If a development consent is to be surrendered as a condition of a new development consent and the development to be authorised by that new development consent includes the continuation of any of the development authorised by the consent to be surrendered—
  - (a) the consent authority is not required to re-assess the likely impact of the continued development to the extent that it could have been carried out but for the surrender of the consent, and
  - (b) the consent authority is not required to re-determine whether to authorise that continued development under the new development consent (or the manner in

which it is to be carried out), and

- (c) the consent authority may modify the manner in which that continued development is to be carried out for the purpose of the consolidation of the development consents applying to the land concerned.

In this subsection, a reference to a development consent that is to be surrendered includes a reference to the surrender of a development consent under section 4.17(5) or the surrender of an approval given under Part 3A when that Part was in force or continued in operation.

**4.64 Regulations—Part 4** (cf previous s 105)

- (1) In addition to any other matters for or with respect to which regulations may be made for the purposes of this Part, the regulations may make provision for or with respect to the following—
  - (a) any matter that is necessary or convenient to be done before making a development application,
  - (b) the persons who may make development applications,
  - (c) the making, consideration and determination of development applications that are made by or on behalf of the Crown, public authorities and persons prescribed by the regulations,
  - (c1) requiring the New South Wales Aboriginal Land Council to consent to applications for the modification of development consents relating to land owned by Local Aboriginal Land Councils,
  - (d) the form of development applications,
  - (e) the documents and information required to accompany development applications, including documents that will assist the consent authority in assessing the environmental effects of development,
  - (f) the fees for development applications,
  - (f1) the reimbursement of the costs incurred by councils in investigating and enforcing compliance with the requirements of this Act relating to development requiring consent (including complying development) by a levy on applicants making development applications and the procedures for the imposition and collection of the levies,
  - (f2) authorising officers of a council to suspend the carrying out of work under a complying development certificate (for a period not exceeding 7 days) pending an investigation into compliance of the work with applicable development standards,

- (g) the notification and advertising of development applications (and proposed development),
  - (h) the form and contents of notices of development applications, the manner of giving notices and the persons to whom notices are to be given,
  - (i) the requirement for consultation with, or obtaining the concurrence of, the Planning Secretary, public authorities and other persons concerning proposed development,
  - (j) the preparation, contents, form and submission of environmental impact statements and statements of environmental effects,
  - (k) the documents and information required to accompany statements of environmental effects and environmental impact statements,
  - (l) the making of submissions, by way of objection or otherwise, with respect to proposed development and the consideration of submissions,
  - (m) the holding of inquiries into proposed development,
  - (n) (Repealed)
  - (n1) authorising a consent authority or council to impose a fee with respect to the lodging of any complying development certificate with it, whether pursuant to a requirement made by or under this Act or otherwise,
  - (o) procedures concerning integrated development,
  - (p), (p1) (Repealed)
  - (q) the modification of development consents, including the fees for applications for modification,
  - (r) the periods within which specified aspects of the environmental planning control process must be completed and the variation of those periods,
  - (s) the effect of a failure to comply with any requirement of the regulations,
  - (t) the notification of applicants and persons making submissions (including by way of objection) of the determination of development applications, reasons for the determinations and any rights of appeal.
- (2) (Repealed)
- (3) The regulations may provide for the accreditation of building products and systems, including the following—
- (a) applications for accreditation,

- (b) the determination of applications for accreditation,
  - (c) revocation of accreditation,
  - (d) extension or renewal of accreditation,
  - (e) the adoption, application or incorporation (whether with or without modification) of a scheme of accreditation (however described) of building products and systems,
  - (f) the notification of consent authorities of information concerning accreditation (including accreditation referred to in paragraph (e)).
- (4) The regulations may provide for the adoption and application of the *Building Code of Australia*.
- (5) The regulations may make provision for or with respect to the remission of part of the fees for development applications to the Planning Secretary for payment, in accordance with subsection (6), into the Building Professionals Board Fund established under the *Building Professionals Act 2005*.
- (6) The Planning Secretary is to pay into the Building Professionals Board Fund established under the *Building Professionals Act 2005* such part of the fees for development applications remitted to the Planning Secretary—
- (a) as may be provided for in the regulations, or
  - (b) subject to the regulations (if any), as the Minister directs to be paid into the Fund.

## Division 4.11 Existing uses

### 4.65 Definition of “existing use” (cf previous s 106)

In this Division, **existing use** means—

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and
- (b) the use of a building, work or land—
  - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
  - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

**4.66 Continuance of and limitations on existing use** (cf previous s 107)

- (1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.
- (2) Nothing in subsection (1) authorises—
  - (a) any alteration or extension to or rebuilding of a building or work, or
  - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
  - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or
  - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or
  - (e) the continuance of the use therein mentioned where that use is abandoned.
- (3) Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

**4.67 Regulations respecting existing use** (cf previous s 108)

- (1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—
  - (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and
  - (b) the change of an existing use to another use, and
  - (c) the enlargement or expansion or intensification of an existing use.
  - (d) (Repealed)
- (2) The provisions (in this section referred to as **the incorporated provisions**) of any regulations in force for the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.
- (3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.



- (4) Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 4.33 to a development application for consent to carry out prohibited development.

**4.68 Continuance of and limitations on other lawful uses** (cf previous s 109)

- (1) Nothing in an environmental planning instrument operates so as to require consent to be obtained under this Act for the continuance of a use of a building, work or land for a lawful purpose for which it was being used immediately before the coming into force of the instrument or so as to prevent the continuance of that use except with consent under this Act being obtained.
- (2) Nothing in subsection (1) authorises—
  - (a) any alteration or extension to or rebuilding of a building or work, or
  - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
  - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of the use therein mentioned, or
  - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or
  - (e) the continuance of the use therein mentioned where that use is abandoned.
- (3) Without limiting the generality of subsection (2)(e), a use is presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.
- (4) (Repealed)

**4.69 Uses unlawfully commenced** (cf previous s 109A)

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

and for the purposes of any deemed environmental planning instrument applying, or which at any time applied, to or in respect of the building, work or land.

**4.70 Saving of effect of existing consents** (cf previous s 109B)

- (1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.
- (2) This section—
  - (a) applies to consents lawfully granted before or after the commencement of this Act, and
  - (b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and
  - (c) has effect despite anything to the contrary in section 4.66 or 4.68.
- (3) This section is taken to have commenced on the commencement of this Act.

**Part 5 Infrastructure and environmental impact assessment**

**Division 5.1 Environmental impact assessment (except for State significant infrastructure)**

**Subdivision 1 Preliminary**

**5.1 Definitions** (cf previous s 110)

- (1) In this Division—

**activity** means—

  - (a) the use of land, and
  - (b) the subdivision of land, and
  - (c) the erection of a building, and
  - (d) the carrying out of a work, and
  - (e) the demolition of a building or work, and
  - (f) any other act, matter or thing referred to in section 3.14 that is prescribed by the regulations for the purposes of this definition,

but does not include—

  - (g) any act, matter or thing for which development consent under Part 4 is required or

has been obtained, or

- (h) any act matter or thing that is prohibited under an environmental planning instrument, or
- (i) exempt development, or
- (j) development carried out in compliance with a development control order, or
- (k) any development of a class or description that is prescribed by the regulations for the purposes of this definition.

**approval** includes—

- (a) a consent, licence or permission or any form of authorisation, and
- (b) a provision of financial accommodation by a determining authority to another person, not being a provision of such financial accommodation, or financial accommodation of such class or description, as may be prescribed for the purposes of this definition by a determining authority so prescribed.

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

**nominated determining authority**, in relation to an activity, means the determining authority nominated by the Minister in accordance with section 5.2 in relation to the activity.

**proponent**, in relation to an activity, means the person proposing to carry out the activity, and includes any person taken to be the proponent of the activity by virtue of section 5.3.

- (2) The Minister is not a determining authority in relation to an activity for the purposes of this Division merely because the Minister's approval is required under Part 3A or Division 5.2.

## **5.2 Nomination of nominated determining authority** (cf previous s 110A)

- (1) Where the approval of more than one determining authority is required in relation to an activity or an activity of a specified class or description (either in respect of the carrying out of the activity or the granting of an approval in respect of the activity), the Minister may, by a Ministerial planning order, nominate a determining authority to be the nominated determining authority in relation to the activity or an activity of that class or description for the purposes of this Division.
- (2) Where, under subsection (1), the Minister has nominated a determining authority to

be the nominated determining authority in relation to an activity or an activity of a specified class or description, any other determining authority which would otherwise be required to comply with the provisions of this Division in relation to the activity or an activity of that class or description is not required—

- (a) to comply with section 5.7(2) or (3), or
- (b) to comply with section 5.8,

in relation to the activity or any activity which comes within that class or description but shall, in all other respects, comply with the relevant provisions of this Division.

- (3) A determining authority (other than the nominated determining authority) is required to forward to the nominated determining authority a copy of any submissions made to it under section 5.8(2) and to provide other information to the nominated determining authority, as required by the regulations, to enable the nominated determining authority to co-ordinate the preparation and furnishing of reports in relation to the activity or activity of the specified class or description.

### **5.3 Determining authorities taken to be proponents of activities** (cf previous s 110B)

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

### **5.4 Exemptions for certain activities** (cf previous s 110E)

Sections 5.5 and 5.7 do not apply to or in respect of the following (despite the terms of those sections)—

- (a) a modification of an activity, whose environmental impact has already been considered, that will reduce its overall environmental impact,
- (b) a routine activity (such as the maintenance of infrastructure) that the Minister determines has a low environmental impact and that is carried out in accordance with a code approved by the Minister,

- (c) an activity (or part of an activity) that has been approved, or is to be carried out, by another determining authority after environmental assessment in accordance with this Division.

## **Subdivision 2 Duty of determining authorities to consider environmental impact of activities**

### **5.5 Duty to consider environmental impact** (cf previous s 111)

- (1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.
- (2) (Repealed)
- (3) Without limiting subsection (1), a determining authority shall consider the effect of an activity on any wilderness area (within the meaning of the [Wilderness Act 1987](#)) in the locality in which the activity is intended to be carried on.
- (4) (Repealed)

### **5.6 Regulations for environmental impact assessment by prescribed determining authorities** (cf previous s 111A)

- (1) In this section, **prescribed determining authority** means a person prescribed for the purposes of the definition of **public authority** in section 1.4(1) so as to allow the person to be a determining authority within the meaning of this Division.
- (2) The regulations may make provision for or with respect to the exercise by a prescribed determining authority of its functions under section 5.5 (**environmental impact assessment functions**), including (without limitation) provision for or with respect to the following—
  - (a) the manner in which environmental impact assessment functions must be exercised including the matters that must be considered in the exercise of those functions,
  - (b) requirements for public and other consultation in connection with environmental impact assessment functions, including requirements for consultation with the Planning Secretary and the consideration of advice given by the Planning Secretary,
  - (c) requirements for the documentation of the exercise of environmental impact assessment functions (**assessment documentation**),

- (d) requirements for making assessment documentation available to the Minister and the Planning Secretary and for the public release of assessment documentation,
  - (e) requirements for auditing the exercise of environmental impact assessment functions and compliance with requirements imposed by or under the regulations.
- (3) The regulations may provide for the approval by the Minister of a code (an **approved code**) that makes provision for or with respect to the matters for which the regulations under this section may make provision.
- (4) An approved code may make provision for or with respect to a matter by applying, adopting or incorporating, with or without modification, the provisions of a specified document as in force for the time being or a document formulated, issued or published by a specified person or body.

### **Subdivision 3 Activities for which EIS required**

#### **5.7 Decision of determining authority in relation to certain activities** (cf previous s 112)

- (1) A determining authority shall not carry out an activity, or grant an approval in relation to an activity, being an activity that is a prescribed activity, an activity of a prescribed kind or an activity that is likely to significantly affect the environment, unless—
- (a) the determining authority has obtained or been furnished with and has examined and considered an environmental impact statement in respect of the activity—
    - (i) prepared in the prescribed form and manner by or on behalf of the proponent, and
    - (ii) except where the proponent is the determining authority, submitted to the determining authority in the prescribed manner,
  - (b) notice referred to in section 5.8(1) has been duly given by the determining authority (or, where a nominated determining authority has been nominated in relation to the activity, by the nominated determining authority), the period specified in the notice has expired and the determining authority has examined and considered any representations made to it or any other determining authority in accordance with section 5.8(2),
  - (c) the determining authority has complied with section 5.8(3),
- (c1) (Repealed)
- (d) where it receives notice from the Planning Secretary that the Minister has requested that a review be held by the Independent Planning Commission with respect to the activity, the review has been held and the determining authority has considered the findings and recommendations of the Independent Planning Commission and any advice given to it by the Minister in accordance with section

5.9, and

(e) where it receives notice from the Planning Secretary that the Planning Secretary has decided that an examination be undertaken in accordance with section 5.8(5), that examination has been carried out and the determining authority has considered the report furnished to it in accordance with that subsection.

(1A) A determining authority shall not grant an approval in relation to an activity referred to in subsection (1) that is to be carried out in respect of land that is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*) unless any consent to the activity required under that Act has been obtained.

(1B)-(1D) (Repealed)

(2) The determining authority or nominated determining authority, as the case requires, shall, as soon as practicable after an environmental impact statement is obtained by or furnished to it, as referred to in subsection (1), but before giving notice under section 5.8(1), furnish to the Planning Secretary a copy of the statement.

(3) A determining authority or nominated determining authority, as the case requires, shall furnish such number of additional copies of an environmental impact statement to the Planning Secretary as the Planning Secretary may request.

(4) Before carrying out an activity referred to in subsection (1) or in determining whether to grant an approval in relation to such an activity, a determining authority which is satisfied that the activity will detrimentally affect the environment—

(a) may, except where it is the proponent of the activity—

(i) impose such conditions or require such modifications as will in its opinion eliminate or reduce the detrimental effect of the activity on the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats, or

(ii) disapprove of the activity, or

(b) may, where it is the proponent of the activity—

(i) modify the proposed activity so as to eliminate or reduce the detrimental effect of the activity on the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats, or

(ii) refrain from undertaking the activity.

(5) Where a determining authority, not being the proponent of an activity, imposes conditions as referred to in subsection (4)(a)(i) or disapproves of an activity as referred to in subsection (4)(a)(ii), the determining authority shall, by notice in writing to the proponent, indicate the reasons for the imposition of the conditions or for

disapproving of the activity.

- (6) The provisions of subsection (4) have effect notwithstanding any other provisions of this Act (other than Part 3A or Division 5.2) or the provisions of any other Act or of any instrument made under this or any other Act.
- (6A) (Repealed)
- (7) Where a nominated determining authority has been nominated in relation to an activity, no other determining authority which may grant an approval in relation to the activity shall be concerned to inquire whether or not the nominated determining authority has complied with this section or section 5.8.

**5.8 Publicity and examination of environmental impact statements** (cf previous s 113)

- (1) A determining authority shall give notice in the prescribed form and manner that a copy of an environmental impact statement prepared by or submitted to it, as referred to in section 5.7(1), may be inspected at—
  - (a) the office of the determining authority and the Department at any time during ordinary office hours, and
  - (b) such other premises operated or controlled by them respectively and at such times as may be prescribed,within such period, being not less than 30 days after the day on which the notice is given, as may be specified in the notice.
- (2) Any person may, during the period specified in the notice, inspect the environmental impact statement (except any part thereof the publication of which would, in the opinion of the determining authority, be contrary to the public interest by reason of its confidential nature or for any other reason) and may within that period make submissions in writing to the determining authority with respect to the activity to which the environmental impact statement relates.
- (3) A determining authority shall, as soon as practicable and not less than 21 days before carrying out an activity or granting an approval in relation to an activity, being an activity referred to in section 5.7(1), furnish to the Planning Secretary a copy of any submissions made to it under subsection (2) with respect to the activity.
- (3A) The determining authority must, at that time, also forward copies of those submissions to the Environment Protection Authority if the activity is a scheduled activity under the *Protection of the Environment Operations Act 1997*.
- (4) (Repealed)
- (5) Except where the Minister has requested that a review be held by the Independent Planning Commission, the Planning Secretary may examine or cause to be examined



in the Department an environmental impact statement furnished in accordance with section 5.7(2) and any submissions made with respect to the activity to which the statement relates under subsection (2) and shall forward, as soon as practicable to the relevant determining authority, a report containing the findings of that examination together with any recommendations arising therefrom.

- (6) After the report referred to in subsection (5) has been forwarded to the determining authority, the Planning Secretary shall make public that report.
- (7) Any public authority or body to which an appeal may be made by or under any Act in relation to the activity the subject of an examination carried out under subsection (5) shall, in deciding the appeal, consider and take into account the report forwarded to the determining authority under that subsection.
- (8) In this section, **environmental impact statement** includes a fauna impact statement and a species impact statement.

### **5.9 Consideration of findings and recommendations of Independent Planning**

#### **Commission** (cf previous s 114)

Where the Minister has requested that a review be held by the Independent Planning Commission, with respect to any activity referred to in section 5.7(1)—

- (a) the Minister shall consider the findings and recommendations of the Independent Planning Commission and forward to the relevant determining authority (whether or not that determining authority is the nominated determining authority) a copy of the findings and recommendations and may give advice to the authority as to whether, in the Minister's opinion—
  - (i) there are no environmental grounds which would preclude the carrying out of the activity to which the findings and recommendations relate in accordance with the proponent's proposal,
  - (ii) there are no environmental grounds which would preclude the carrying out of the activity subject to its being modified in the manner specified in the advice,
  - (iii) there are no environmental grounds which would preclude the carrying out of the activity subject to the observance of conditions specified in the advice, or
  - (iv) there are environmental grounds which would preclude the carrying out of the activity, and
- (b) any public authority or body to which an appeal may be made by or under any Act in relation to the activity shall, in deciding the appeal, consider and take into account the findings and recommendations of the Independent Planning Commission and any such advice given by the Minister.

### 5.10 Regulations (cf previous s 115)

The regulations may make provision for or with respect to—

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

## Division 5.2 State significant infrastructure

### Subdivision 1 Preliminary

#### 5.11 Definitions (cf previous s 115T)

In this Division—

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

**critical State significant infrastructure** means State significant infrastructure that is critical State significant infrastructure, as referred to in section 5.13.

**development** includes an activity within the meaning of Division 5.1.

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

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

**State significant infrastructure**—see section 5.12.

#### 5.12 Development that is State significant infrastructure (cf previous s 115U)

- (1) For the purposes of this Act, **State significant infrastructure** is development that is declared under this section to be State significant infrastructure.

- (2) A State environmental planning policy may declare any development, or any class or description of development, to be State significant infrastructure.
- (3) Development that may be so declared to be State significant infrastructure is development of the following kind that a State environmental planning policy permits to be carried out without development consent under Part 4—
  - (a) infrastructure,
  - (b) other development that (but for this Division and within the meaning of Division 5.1) would be an activity for which the proponent is also the determining authority and would, in the opinion of the proponent, require an environmental impact statement to be obtained under Division 5.1.

Paragraph (b) does not apply where the proponent is a council, county council or joint organisation under the [Local Government Act 1993](#).

- (4) Specified development on specified land is State significant infrastructure despite anything to the contrary in this section if it is specifically declared to be State significant infrastructure. Any such declaration may be made by a State environmental planning policy or by an order of the Minister (published on the NSW legislation website) that amends a State environmental planning policy for that purpose.
- (5) The Independent Planning Commission or Infrastructure NSW may recommend to the Minister that a declaration be made under subsection (4) in respect of particular development.
- (6) If, but for this subsection, development is both State significant infrastructure because of a declaration under subsection (2) and State significant development, it is not State significant infrastructure despite any such declaration.
- (7) If, but for this subsection, development is both State significant infrastructure because of a declaration under subsection (4) and State significant development, it is not State significant development despite any declaration under Division 4.7.

### **5.13 Critical State significant infrastructure** (cf previous s 115V)

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

#### **Note—**

In the case of critical State significant infrastructure, this Division contains the following additional provisions—

- (a) section 5.22(4),
- (b) section 5.23(3),
- (c) section 5.27.

Section 2.4(3) also prevents the Minister delegating his or her function under this Division of determining an application for approval to carry out critical State significant infrastructure.

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

### **5.14 Minister's approval required for State significant infrastructure** (cf previous s 115W)

- (1) A person is not to carry out development that is State significant infrastructure unless the Minister has approved of the carrying out of the State significant infrastructure under this Division.
- (2) The person is to comply with any conditions to which such an approval is subject.

Maximum penalty—Tier 1 monetary penalty.

### **5.15 Application for approval of State significant infrastructure** (cf previous s 115X)

- (1) The proponent may apply for the approval of the Minister under this Division to carry out State significant infrastructure.

**Note—**

Section 380AA of the *Mining Act 1992* provides that an application in respect of State significant infrastructure for the mining of coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

- (2) The application is to—
  - (a) describe the infrastructure, and
  - (b) contain any other matter required by the Planning Secretary.
- (3) The application is to be lodged with the Planning Secretary.

### **5.16 Environmental assessment requirements for approval** (cf previous s 115Y)

- (1) When an application is made for the Minister's approval for State significant infrastructure, the Planning Secretary is to prepare environmental assessment requirements in respect of the infrastructure.
- (2) For the purposes of the environmental assessment, the environmental assessment requirements must require an environmental impact statement to be prepared by or on behalf of the proponent in the form prescribed by the regulations.
- (3) In preparing the environmental assessment requirements, the Planning Secretary is to

consult relevant public authorities and have regard to the need for the requirements to assess any key issues raised by those public authorities.

- (4) The Planning Secretary is to notify the proponent of the environmental assessment requirements. The Planning Secretary may modify those requirements by further notice to the proponent.

**5.17 Environmental assessment and public consultation** (cf previous s 115Z)

- (1) The proponent is to submit to the Planning Secretary the environmental impact statement required under this Subdivision for approval to carry out the State significant infrastructure.
- (2) The Planning Secretary may require the proponent to submit a revised environmental impact statement to address the matters notified to the proponent.
- (3), (4) (Repealed)
- (5) The Planning Secretary is to provide copies of submissions received by the Planning Secretary or a report of the issues raised in those submissions to—
  - (a) the proponent, and
  - (b) if the State significant infrastructure will require an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—the Public Service agency responsible to the Minister for the Environment, and
  - (c) any other public authority the Planning Secretary considers appropriate.
- (6) The Planning Secretary may require the proponent to submit to the Planning Secretary—
  - (a) a response to the issues raised in those submissions, and
  - (b) a preferred infrastructure report that outlines any proposed changes to the State significant infrastructure to minimise its environmental impact or to deal with any other issue raised during the assessment of the application concerned.
- (7) If the Planning Secretary considers that significant changes are proposed to the nature of the State significant infrastructure, the Planning Secretary may make the preferred infrastructure report available to the public.

**5.18 Planning Secretary's environmental assessment report** (cf previous s 115ZA)

- (1) The Planning Secretary is to give a report on the State significant infrastructure to the Minister for the purposes of the Minister's consideration of the application for approval to carry out the infrastructure.
- (2) The Planning Secretary's report is to include—

- (a) a copy of the proponent's environmental impact statement and any preferred infrastructure report, and
- (b) any advice provided by public authorities on the State significant infrastructure, and
- (c) a copy of any report or advice of the Independent Planning Commission in respect of the State significant infrastructure, and
- (d) any environmental assessment undertaken by the Planning Secretary or other matter the Planning Secretary considers appropriate.

**5.19 Giving of approval by Minister to carry out project** (cf previous s 115ZB)

(1) If—

- (a) the proponent makes an application for the approval of the Minister under this Division to carry out State significant infrastructure, and
- (b) the Planning Secretary has given his or her report on the State significant infrastructure to the Minister,

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

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

- (a) the Planning Secretary's report on the infrastructure and the reports, advice and recommendations contained in the report, and
- (b) any advice provided by the Minister having portfolio responsibility for the proponent, and
- (c) any findings or recommendations of the Independent Planning Commission following a review in respect of the State significant infrastructure.

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

### **Subdivision 3 Staged infrastructure applications**

**5.20 Staged infrastructure applications** (cf previous s 115ZD)

- (1) For the purposes of this Division, a **staged infrastructure application** is an application for approval of State significant infrastructure under this Division that sets out concept proposals for the proposed infrastructure, and for which detailed proposals for separate parts of the infrastructure are to be the subject of subsequent

applications for approval. The application may set out detailed proposals for the first stage.

- (2) If approval is granted under this Division on the determination of a staged infrastructure application, the approval does not authorise the carrying out of any part of the State significant infrastructure unless—
  - (a) approval is subsequently granted to carry out that part of the infrastructure following a further application for approval in respect of that part of the infrastructure, or
  - (b) the staged infrastructure application also provided the requisite details of that part of the infrastructure and approval is granted for that first stage without the need for further approval.
- (3) The terms of an approval granted on the determination of a staged infrastructure application are to reflect the operation of subsection (2).

**5.21 Status of staged infrastructure applications and approvals** (cf previous s 115ZE)

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

**Subdivision 4 Application of other provisions of this and other Acts**

**5.22 Application of other provisions of Act** (cf previous s 115ZF)

- (1) Part 4 and Division 5.1 do not, except as provided by this Division, apply to or in respect of State significant infrastructure (including the declaration of the infrastructure as State significant infrastructure and any approval or other requirement under this Division for the infrastructure).
- (2) Part 3 and environmental planning instruments do not apply to or in respect of State significant infrastructure, except that—
  - (a) they apply to the declaration of infrastructure as State significant infrastructure or as critical State significant infrastructure (and to the declaration of development that does not require consent), and
  - (b) they apply in so far as they relate to section 3.16, and for that purpose a reference in that section to enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent

granted under this Act is to be construed as a reference to enabling State significant infrastructure to be carried out in accordance with an approval granted under this Division.

- (3) Divisions 7.1 and 7.2 apply to State significant infrastructure that is not carried out by or on behalf of a public authority (and to the giving of approval for the carrying out of any such infrastructure under this Division) in the same way as they apply to development and the granting of consent to the carrying out of development under Part 4, subject to any necessary modifications and any modifications prescribed by the regulations.
- (4) A development control order cannot be given in relation to critical State significant infrastructure.
- (5) (Repealed)
- (6) Section 6.28 applies to approved State significant infrastructure.

**Note—**

Section 6.33(2) authorises the regulations to apply provisions of Part 6 relating to building and subdivision certification to State significant infrastructure.

**5.23 Approvals etc legislation that does not apply** (cf previous s 115ZG)

- (1) The following authorisations are not required for approved State significant infrastructure (and accordingly the provisions of any Act that prohibit an activity without such an authority do not apply)—
  - (a) (Repealed)
  - (b) a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*,
  - (c) an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*,
  - (d) an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*,
  - (e) (Repealed)
  - (f) a bush fire safety authority under section 100B of the *Rural Fires Act 1997*,
  - (g) a water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *Water Management Act 2000*.
- (2) Division 8 of Part 6 of the *Heritage Act 1977* does not apply to prevent or interfere with the carrying out of approved State significant infrastructure.



- (3) The following directions, orders or notices cannot be made or given so as to prevent or interfere with the carrying out of approved critical State significant infrastructure—
- (a) an interim protection order (within the meaning of the *National Parks and Wildlife Act 1974*),
  - (b) an order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974* or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*,
  - (c) a remediation direction under Division 3 (Remediation directions) of Part 6A of the *National Parks and Wildlife Act 1974*,
  - (c1) an order or direction under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016*,
  - (d) an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*,
  - (e) an order under section 124 of the *Local Government Act 1993*.
- (4) A reference in this section to approved State significant infrastructure includes a reference to any investigative or other activities that are required to be carried out for the purpose of complying with any environmental assessment requirements under this Division in connection with an application for approval to carry out the State significant infrastructure.

**5.24 Approvals etc legislation that must be applied consistently** (cf previous s 115ZH)

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

**Note—**

Under section 380A of the *Mining Act 1992*, a mining lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.

- (d) a production lease under the *Petroleum (Onshore) Act 1991*,

**Note—**

Under section 24A of the *Petroleum (Onshore) Act 1991*, a production lease can be refused on the ground that the applicant is not a fit and proper person, despite this section.

- (e) an environment protection licence under Chapter 3 of the *Protection of the*

*Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act),

(f) a consent under section 138 of the *Roads Act 1993*,

(g) a licence under the *Pipelines Act 1967*.

(2) This section does not apply to or in respect of—

(a) an application for the renewal of an authorisation or a renewed authorisation, or

(b) an application for a further authorisation or a further authorisation following the expiry or lapsing of an authorisation, or

(c) in the case of an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*—any period after the first review of the licence under section 78 of that Act.

(3) A reference in this section to an authorisation or approval includes a reference to any conditions of the authorisation or approval.

(4) This section applies to a person, court or tribunal that deals with an objection, appeal or review conferred on a person in relation to an authorisation in the same way as it applies to the person giving the authorisation.

## Subdivision 5 Miscellaneous

### 5.25 Modification of Minister's approval (cf previous s 115ZI)

(1) In this section—

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

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

(2) The proponent may request the Minister to modify the Minister's approval for State significant infrastructure. The Minister's approval for a modification is not required if the infrastructure as modified will be consistent with the existing approval under this Division.

#### Note—

Section 380AA of the *Mining Act 1992* provides that a request for the modification of approval for State significant infrastructure for the mining of coal can only be made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

- (3) The request for the Minister's approval is to be lodged with the Planning Secretary. The Planning Secretary may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.

**5.26 Validity of action under this Division** (cf previous s 115Z)

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

**5.27 Third-party appeals and judicial review—critical State significant infrastructure** (cf previous s 115ZK)

- (1) In this section—

**breach** has the meaning given by Division 9.5.

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

**the third-party appeal provisions** means Division 9.5 of this Act and sections 252 and 253 of the [Protection of the Environment Operations Act 1997](#).

- (2) The third-party appeal provisions do not apply in relation to the following (except in relation to an application to the Court made or approved by the Minister)—
  - (a) a breach of this Act arising under this Division in respect of critical State significant infrastructure, including the declaration of the development as State significant infrastructure (and as critical State significant infrastructure) and any approval or other requirement under this Division for the infrastructure,
  - (b) a breach of any conditions of an approval under this Division for critical State significant infrastructure,

- (c) a breach of this or any other Act arising in respect of the giving of an authorisation of a kind referred to in section 5.24(1) for critical State significant infrastructure (or in respect of the conditions of such an authorisation).
- (3) The conditions of approval under this Division for critical State significant infrastructure are conditions that may only be enforced by or with the approval of the Minister (whether under the third-party appeal provisions, the judicial review jurisdiction of the Court or in any other proceedings).
- (4) The third-party appeal provisions and the judicial review jurisdiction of the Court are subject to the provisions of section 5.26.

**5.28 Miscellaneous provisions relating to approvals under this Division** (cf previous s 115ZL)

- (1) The following documents under this Division in relation to State significant infrastructure are to be made publicly available by the Planning Secretary in accordance with the regulations—
  - (a) applications to carry out State significant infrastructure,
  - (b) environmental assessment requirements for State significant infrastructure,
  - (c) environmental impact statements placed on public exhibition and responses provided to the Planning Secretary by the proponent after the end of the public exhibition period,
  - (d) environmental assessment reports of the Planning Secretary to the Minister,
  - (e) any advice, recommendations or reports received from the Independent Planning Commission,
  - (f) approvals to carry out State significant infrastructure given by the Minister,
  - (g) requests for modifications of approvals given by the Minister and any modifications made by the Minister,
  - (h) any reasons given to the proponent by the Minister as referred to in subsection (2),
  - (i) any other matter prescribed by the regulations.
- (2) The Minister is to give reasons to the proponent for a decision—
  - (a) not to approve State significant infrastructure under this Division, or
  - (b) to modify the State significant infrastructure for which the proponent has sought approval under this Division.
- (3) An approval under this Division may be subject to a condition that it lapses on a

specified date unless specified action with respect to the approval has been taken (such as the commencement of work on the infrastructure). Any such condition may be modified to extend the lapsing period.

- (4) An approval under this Division may be surrendered, subject to and in accordance with the regulations, by any person entitled to act on the approval.
- (5) A condition of the approval of State significant infrastructure under this Division may require any one or more of the following—
  - (a) the surrender under this section of any other approval under this Division (or under Part 3A) relating to the infrastructure or the land concerned,
  - (b) the surrender under section 4.63 of any development consent relating to the infrastructure or the land concerned,
  - (c) the surrender, subject to and in accordance with the regulations, of a right conferred by Division 4.11 relating to the infrastructure or the land concerned.

#### **5.29 Regulations for purposes of Division** (cf previous s 115ZM)

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

- (a) the requirements and procedures for making applications for approvals under this Division, and
- (b) requiring owners of land on which State significant infrastructure is proposed to be carried out to consent to applications for approvals under this Division, and
- (c) the amendment of applications for approvals under this Division, and
- (d) the preparation, notification and modification of requirements for environmental assessment of State significant infrastructure, and
- (e) the requirements for environmental impact statements under this Division, and
- (f) the fees for applications and the exercise of functions under this Division, and
- (g) requiring the New South Wales Aboriginal Land Council to consent to applications for approvals under this Division on land owned by Local Aboriginal Land Councils, if the consent of the Local Aboriginal Land Council concerned is required as owner of the land, and
- (h) providing for public exhibition, notification and public registers of applications for approvals under this Division (or for the modification of approvals) and of the determination of those applications, and

- (i) the effect of the revocation of the declaration of development as State significant infrastructure.

## **Division 5.3 Infrastructure corridors—concurrences and notifications**

### **5.30 Designation of “infrastructure corridors”**

- (1) A State environmental planning policy may designate land to be an infrastructure corridor for the purposes of this Division if it has been set aside for future use as a road, railway, public transit way, electricity transmission line, pipeline or other linear infrastructure.
- (2) Land may not be so designated unless—
  - (a) the land is zoned for that future use under an environmental planning instrument, or
  - (b) the land is identified for that future use under a strategic plan under Division 3.1, or
  - (c) the land is identified in an environmental planning instrument as requiring the concurrence of a public authority before consent is granted to development on the land if the public authority is required to take into account the likely impact of the development on that future use.

### **5.31 Concurrence and notification requirements for activities within infrastructure corridors**

- (1) A State environmental planning policy may require a determining authority to obtain the concurrence of a specified public authority (or to notify a specified public authority) before carrying out an activity, or granting an approval in relation to an activity, within an infrastructure corridor.
- (2) A specified public authority may refuse concurrence if it is satisfied that the activity concerned will unreasonably interfere with the use for which the infrastructure corridor has been set aside (including unreasonably increasing the cost of constructing and operating the infrastructure for that use).
- (3) A determining authority that fails to comply with the requirements of a State environmental planning policy under this Division in relation to an activity is taken not to have complied with its obligations for environmental assessment of the activity under this Part.

### **5.32 Review of decisions to refuse concurrence**

- (1) If the specified public authority refuses concurrence under this Division, the determining authority concerned may seek a review of the refusal—

- (a) if the specified public authority is not a Minister—by the Planning Secretary, or
  - (b) if the specified public authority is a Minister or is the Planning Secretary—by the Minister administering this Act.
- (2) On such a review, the Planning Secretary or the Minister administering this Act may confirm the refusal or act in the place of the specified authority and give concurrence.

## Part 6 Building and subdivision certification

### Division 6.1 Preliminary

#### 6.1 Definitions: Part 6

In this Part—

**accredited certifier** means the holder of a certificate of accreditation as an accredited certifier under the *Building Professionals Act 2005* acting in relation to matters to which the accreditation applies.

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

**certifier** means a council or an accredited certifier.

**change of building use** means a change of the use of a building from a use as a class of building recognised by the *Building Code of Australia* to a use as a different class of building recognised by the *Building Code of Australia*.

**Crown** has the meaning given to that expression by the regulations.

**Crown building work** means development (other than exempt development), or an activity that is subject to environmental impact assessment under Division 5.1, by the Crown that comprises—

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

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

**principal certifier** for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6(1) or for the subdivision work under section 6.12(1).

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

**residential building work, owner-builder, contractor licence**—see [Home Building Act 1989](#).

**subdivision work** means any physical activity authorised to be carried out in connection with a subdivision under the conditions of a development consent for the subdivision of land. For the purposes of this definition, a development consent includes an approval for State significant infrastructure if the regulations under Part 5 apply this Part to subdivision work under such an approval.

**Note—**

Section 1.4 (Definitions) includes a complying development certificate in the definition of **development consent** for the purposes of this Act.

**6.2 Meaning of “subdivision” of land** (cf previous s 4B)

- (1) For the purposes of this Act, **subdivision** of land means the division of land into 2 or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected—
  - (a) by conveyance, transfer or partition, or
  - (b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.
- (2) Without limiting subsection (1), **subdivision** of land includes the procuring of the registration in the office of the Registrar-General of—
  - (a) a plan of subdivision within the meaning of section 195 of the [Conveyancing Act 1919](#), or
  - (b) a strata plan or a strata plan of subdivision within the meaning of the [Strata Schemes Development Act 2015](#).

**Note—**

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

- (3) However, **subdivision** of land does not include—
  - (a) a lease (of any duration) of a building or part of a building, or
  - (b) the opening of a public road, or the dedication of land as a public road, by the Crown, a statutory body representing the Crown or a council, or
  - (c) the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or



- (d) a division of land effected by means of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or
- (e) the procuring of the registration in the office of the Registrar-General of—
  - (i) a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of section 195 of the *Conveyancing Act 1919*, or
  - (ii) a strata plan of consolidation or a building alteration plan within the meaning of the *Strata Schemes Development Act 2015*.

## Division 6.2 Certificates required under this Part

### 6.3 Work or activity that requires certificate under this Part (cf previous s 109C)

- (1) A person must not carry out any of the following work or activity without a certificate under this Part that is required by this Part for that work or activity—
  - (a) building work,
  - (b) subdivision work,
  - (c) the occupation or use of a building (including a change of use),
  - (d) the subdivision of land,
  - (e) any other activity to which this Part applies.
- (2) A person must not, in carrying out any such work or activity, contravene a certificate under this Part that applies to the carrying out of the work or activity.
- (3) A certificate under this Part is not required for the carrying out of exempt development.
- (4) This section does not apply to a compliance certificate.

Maximum penalty—Tier 1 monetary penalty.

**Note—**

For civil enforcement—see Division 9.5.

### 6.4 Kinds of certificates under this Part (cf previous s 109C)

There are the following kinds of certificates under this Part—

- (a) **construction certificate**—a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the regulations.

**Note—**

See also section 54 of the *Strata Schemes Development Act 2015* for requirement for construction certificate in connection with issue of strata certificate for proposed strata plan.

- (b) **subdivision works certificate**—a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the regulations.
- (c) **occupation certificate**—a certificate that authorises—
  - (i) the occupation and use of a new building in accordance with a development consent, or
  - (ii) a change of building use for an existing building in accordance with a development consent.

When issued, an occupation certificate is taken to be part of the development consent to which it relates.

- (d) **subdivision certificate**—a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

When issued, a subdivision certificate is taken to be part of the development consent that authorised the carrying out of the subdivision.

**Note—**

Section 195A of the *Conveyancing Act 1919* requires a person to lodge a subdivision certificate when lodging a plan of subdivision for registration under that Act.

- (e) **compliance certificate**—a certificate to the effect that—
  - (i) any completed building work or subdivision work complies with particular plans and specifications or with particular standards or requirements, or

**Note—**

A compliance certificate may be an authorised alternative in certain cases to an occupation certificate.

- (ii) a particular condition with respect to building work or subdivision work (being a condition attached to a planning approval) has been complied with, or
- (iii) a building or proposed building has a particular classification identified in accordance with the *Building Code of Australia*, or
- (iv) any aspect of development (including design of development) complies with particular standards or requirements.

A compliance certificate may certify strict, substantial or other compliance with a relevant matter.

**Note—**

A complying development certificate is a form of development consent that is issued under Part 4 that authorises the carrying out of complying development. Unlike other development consents, construction certificates or subdivision works certificates are not required for building or subdivision work authorised by a development consent in the form of a complying development certificate.

**6.5 Functions of certifiers (including principal certifiers)** (cf previous s 109E)

- (1) A certifier has the following functions in relation to building work—
- (a) issuing construction certificates for building work,
  - (b) carrying out inspections of building work (but only if the certifier is the principal certifier or the inspection is carried out with the approval of the principal certifier),
  - (c) issuing occupation certificates (but only if the certifier is the principal certifier),
  - (d) issuing compliance certificates (but only if the certifier is the principal certifier when the certificate is an authorised alternative to an occupation certificate).

**Note—**

Section 6.27 requires a principal certifier who issues an occupation certificate to ensure that a building manual is provided to the owner of the building.

- (2) A certifier has the following functions in relation to subdivision work—
- (a) issuing subdivision works certificates for subdivision work,
  - (b) carrying out inspections of subdivision work (but only if the certifier is the principal certifier or the inspection is carried out with the approval of the principal certifier).
- (3) A certifier has the function of issuing subdivision certificates (whether or not the subdivision involves subdivision works), but only if—
- (a) the certifier is a council or is an accredited certifier in a case in which an environmental planning instrument authorises an accredited certifier to issue the certificate, and
  - (b) in the case of a subdivision that involves subdivision works—the certifier is the principal certifier.
- (4) A certifier also has any other functions conferred or imposed on the certifier under this or any other Act.

**Note—**

A certifier has the function of issuing complying development certificates under Part 4.

- (5) A certifier must not issue a certificate under this Part—
- (a) in any case in which this Part provides that the certificate is not to be issued, or

(b) in any case in which the function of issuing the certificate is not conferred on the certifier by this Part.

Maximum penalty—Tier 3 monetary penalty.

(6) The Minister may provide guidance to certifiers on the exercise of their functions under this Part.

## **Division 6.3 Building work and certificates relating to building**

### **6.6 Requirements before building work commences** (cf previous s 81A)

- (1) A development consent does not authorise building work until a certifier has been appointed as the principal certifier for the work by (or with the approval of) the person having the benefit of the development consent or other person authorised by the regulations.
- (2) The following requirements apply before the commencement of building work in accordance with a development consent—
  - (a) the principal certifier has, no later than 2 days before the building work commences, notified the consent authority and the council (if the council is not the consent authority) of his or her appointment as the principal certifier,
  - (b) the principal certifier has, no later than 2 days before the building work commences, notified the person having the benefit of the development consent of any inspections that are required to be carried out in respect of the building work,
  - (c) the person carrying out the building work has notified the principal certifier that the person will carry out the building work as an owner-builder, if that is the case,
  - (d) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has—
    - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
    - (ii) notified the principal certifier of the appointment, and
    - (iii) unless that person is the principal contractor, notified the principal contractor of any inspections that are required to be carried out in respect of the building work,
  - (e) the person having the benefit of the development consent has given at least 2 days notice to the council, and the principal certifier if not the council, of the person's intention to commence the erection of the building,
  - (f) any other requirements of the regulations have been complied with.

- (3) A person must not fail to give a notice that the person is required to give under this section.

Maximum penalty—Tier 3 monetary penalty.

- (4) For the purposes of subsection (1), the person having the benefit of a development consent does not include any contractor or other person who will carry out the building work unless the contractor or other person is the owner of the land on which the work is to be carried out.

- (5) This section does not apply to Crown building work that is certified under this Part to comply with the *Building Code of Australia*.

**6.7 Requirement for construction certificate** (cf previous s 81A)

- (1) A construction certificate is required for the erection of a building in accordance with a development consent.
- (2) However, a construction certificate is not required for the following—
- (a) the erection of a building in accordance with a complying development certificate,
  - (b) Crown building work that is certified under this Part to comply with the *Building Code of Australia*.

**6.8 Restriction on issue of construction certificate** (cf previous s 109F)

- (1) A construction certificate must not be issued with respect to the plans and specifications for any building work unless—
- (a) the requirements of the regulations have been complied with, and
  - (b) any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.
- (2) A construction certificate has no effect if it is issued after the building work to which it relates is physically commenced on the land to which the relevant development consent applies.

**6.9 Requirement for occupation certificate** (cf previous ss 109H(1), 109M, 109N)

- (1) An occupation certificate is required for—
- (a) the commencement of the occupation or use of the whole or any part of a new building, or
  - (b) the commencement of a change of building use for the whole or any part of an existing building.

- (2) However, an occupation certificate is not required—
- (a) for the commencement of the occupation or use of a new building—
    - (i) for any purpose if the erection of the building is or forms part of exempt development or development that does not otherwise require development consent, or
    - (ii) that is the subject of a compliance certificate in circumstances in which that certificate is an authorised alternative to an occupation certificate (such as a swimming pool or altered part of an existing building), or
    - (iii) by such persons or in such circumstances as may be prescribed by the regulations, or
    - (iv) that has been erected by or on behalf of the Crown or by or on behalf of a person prescribed by the regulations, or
  - (b) for the commencement of a change of building use for the whole or any part of an existing building—
    - (i) if the change of building use is or forms part of exempt development or development that does not otherwise require development consent, or
    - (ii) by such persons or in such circumstances as may be prescribed by the regulations, or
    - (iii) if the existing building has been erected by or on behalf of the Crown or by or on behalf of a person prescribed by the regulations.

**6.10 Restrictions on issue of occupation certificates** (cf previous s 109H)

- (1) An occupation certificate must not be issued unless any preconditions to the issue of the certificate that are specified in a development consent have been complied with.
- (2) An occupation certificate must not be issued to authorise a person to commence occupation or use of a new building (or part of a new building) unless—
  - (a) a development consent is in force with respect to the building (or part of the building), and
  - (b) in the case of a building erected pursuant to a development consent (other than a complying development certificate), a construction certificate has been issued with respect to the plans and specifications for the building (or part of the building), and
  - (c) the completed building (or part of the building) is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and

- (d) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (3) An occupation certificate must not be issued to authorise a person to commence a new use of a building (or of part of a building) resulting from a change of building use for an existing building unless—
  - (a) a development consent is in force with respect to the change of building use, and
  - (b) the building (or part of the building) is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
  - (c) such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.

**6.11 Effect of occupation certificate on earlier occupation certificates** (cf previous s 109I)

- (1) An occupation certificate for a building revokes any earlier occupation certificate for that building.
- (2) An occupation certificate for a part of a building revokes any earlier occupation certificate to the extent to which it applies to that part.

**Division 6.4 Subdivision work and certificates relating to subdivision**

**6.12 Requirements before subdivision work commences** (cf previous s 81A(4))

- (1) A development consent does not authorise subdivision work until a certifier has been appointed as the principal certifier for the work by (or with the approval of) the person having the benefit of the development consent or other person authorised by the regulations.
- (2) The following requirements apply before the commencement of subdivision work in accordance with a development consent—
  - (a) the principal certifier has, no later than 2 days before the subdivision work commences, notified the consent authority and the council (if the council is not the consent authority) of his or her appointment as the principal certifier,
  - (b) the principal certifier has, no later than 2 days before the subdivision work commences, notified the person having the benefit of the development consent of any inspections that are required to be carried out in respect of the subdivision work,
  - (c) the person having the benefit of the development consent has given at least 2 days notice to the council, and the principal certifier if not the council, of the person's intention to commence the subdivision work.

- (3) A person must not fail to give a notice that the person is required to give under this section.

Maximum penalty—Tier 3 monetary penalty.

- (4) For the purposes of subsection (1), the person having the benefit of a development consent does not include any contractor or other person who will carry out the subdivision work unless the contractor or other person is the owner of the land on which the work is to be carried out.
- (5) This section does not apply to Crown building work that is certified under this Part to comply with the *Building Code of Australia*.

**6.13 Requirement for subdivision works certificate** (cf previous s 81A(3))

- (1) A subdivision works certificate is required for the carrying out of subdivision work in accordance with a development consent.
- (2) However, a subdivision works certificate is not required for the following—
  - (a) subdivision work carried out in accordance with a complying development certificate,
  - (b) Crown building work that comprises subdivision work and that is certified under this Part to comply with the *Building Code of Australia*.

**6.14 Restriction on issue of subdivision works certificate** (cf previous s 81A(3))

- (1) A subdivision works certificate must not be issued with respect to the plans and specifications for any subdivision work unless—
  - (a) the requirements of the regulations have been complied with, and
  - (b) any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.
- (2) A subdivision works certificate has no effect if it is issued after the subdivision work to which it relates is physically commenced on the land to which the relevant development consent applies.

**6.15 Restrictions on issue of subdivision certificates** (cf previous s 109))

- (1) A subdivision certificate must not be issued for a subdivision unless—
  - (a) the subdivision is not prohibited by or under this Act, and
  - (b) in the case of subdivision that cannot be carried out except with development consent, a development consent is in force with respect to the subdivision, and



- (c) in the case of subdivision for which a development consent has been granted, all the conditions of the development consent that, by its terms, are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision have been complied with, and
  - (d) in the case of subdivision of land to which a planning agreement referred to in Part 7 applies, all the requirements of the agreement that, by its terms, are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision have been complied with, and
  - (e) in the case of subdivision for which the operation of the development consent has been deferred under Part 4, the applicant has satisfied the consent authority concerning all matters as to which the consent authority must be satisfied before the development consent can operate, and
  - (f) in the case of subdivision the subject of a development consent for which the consent authority is required by or under this Act to notify any objector—
    - (i) at least 28 days have elapsed since the objector was notified, or
    - (ii) if an appeal has been made by the objector within that time, the appeal has been finally determined.
- (2) Without limiting subsection (1), a subdivision certificate must not be issued for a subdivision that involves subdivision work unless—
- (a) the work has been completed, or
  - (b) agreement has been reached between the applicant for the certificate and the consent authority—
    - (i) as to the payment by the applicant to the consent authority of the cost of carrying out the work, and
    - (ii) as to when the work will be completed by the consent authority, or
  - (c) agreement has been reached between the applicant for the certificate and the consent authority—
    - (i) as to the security to be given by the applicant to the consent authority with respect to the work to be completed, and
    - (ii) as to when the work will be completed by the applicant,
- and such other requirements as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (3) Subsection (2) does not prevent the issue of a subdivision certificate for part only of land that may be subdivided in accordance with a development consent as long as the

requirements of that subsection have been complied with in relation to that part.

## **Division 6.5 Compliance certificates**

### **6.16 Requirement for compliance certificate** (cf previous s 109C(1)(a))

- (1) A compliance certificate is required in relation to building work or subdivision work in such circumstances as are prescribed by the regulations.

**Note—**

For example, the regulations require compliance certificates to be obtained for certain fire safety aspects of development before a complying development certificate, construction certificate or occupation certificate can be issued and require compliance certificates to be obtained for certain alternative solutions to the BCA before a complying development certificate can be issued.

- (2) A condition of a development consent has no effect to the extent that it requires a compliance certificate to be obtained in respect of any development.
- (3) A certifier may obtain a compliance certificate from another person in relation to building work or subdivision work for which the certifier is responsible even if a compliance certificate is not required.

### **6.17 Persons who may issue compliance certificates** (cf previous s 109D(1))

A compliance certificate may be issued by—

- (a) a certifier, or
- (b) a person of a class prescribed by the regulations as being authorised to issue a compliance certificate in relation to the matters to be certified.

### **6.18 Restriction on issue of compliance certificates** (cf previous s 109G)

The regulations may prevent the issue of particular kinds of compliance certificates for building work or subdivision work unless a consent, approval or certificate is in force under this Act with respect to the building or subdivision to which the work relates.

## **Division 6.6 Liability for defective building or subdivision work**

### **6.19 Definitions** (cf previous s 109ZI)

In this Division—

**building work** includes the design or inspection of building work and the issue of a complying development certificate or a certificate under this Part in respect of building work.

**civil action** includes a counter-claim.

**subdivision work** includes the design or inspection of subdivision work and the issue of

a complying development certificate or a certificate under this Part in respect of subdivision work.

**6.20 Limitation on time when action for defective building or subdivision work may be brought** (cf previous s 109ZK)

- (1) A civil action for loss or damage arising out of or in connection with defective building work or defective subdivision work cannot be brought more than 10 years after the date of completion of the work.
- (2) Building work is taken to be completed on—
  - (a) the date on which an occupation certificate is issued that authorises the occupation of the building or part of the building for which the work was carried out (or if an occupation certificate is not required, the date on which a compliance certificate is issued for the completed building work), or
  - (b) if no such certificate has been issued—the date on which a required inspection of the completed building work was carried out by a certifier, or
  - (c) if no such certificate has been issued and no such inspection carried out—the date on which the building or part of the building for which the work was carried out is first occupied or used.
- (3) Subdivision work is taken to be completed on—
  - (a) if the work was completed before the issue of a subdivision certificate in respect of the subdivision for which the work was carried out—the date on which that certificate is issued, or
  - (b) if the work was completed after the issue of that certificate—the date on which a compliance certificate is issued that certifies the work has been completed.
- (4) This section has effect despite any other Act or law, but does not operate to extend any period of limitation under the *Limitation Act 1969* or the *Home Building Act 1989*.

**6.21 Division not to affect rights to recover damages for death or personal injury** (cf previous s 109ZL)

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

## **Division 6.7 Building information certificates**

**6.22 Who may apply for building information certificates** (cf previous s 149B)

The following persons may apply for a building information certificate in relation to a building—

- (a) the owner of the land on which the building is erected,
- (b) any other person with the consent of the owner of that land,
- (c) the purchaser under a contract for the sale of property that comprises or includes the building, or the purchaser's Australian legal practitioner or agent,
- (d) a public authority that has notified the owner of that land of its intention to apply for the certificate.

**6.23 Making of applications for building information certificates** (cf previous s 149B)

- (1) Applications for building information certificates are to be made to the council for the area in which the land to which the application relates is situated.
- (2) The regulations may provide for the procedure for making and dealing with applications for building information certificates.

**Note—**

Division 7.4 enables the regulations to prescribe the fee for an application for a certificate.

- (3) The regulations may assign an area that is outside a local government area to be part of a specified adjoining local government area in relation to building information certificates. For the purposes of this Division, the assigned area is taken to be a part of the local government area concerned.

**6.24 Issue of building information certificates** (cf previous s 149D)

- (1) A council is (subject to this Division) required to issue a building information certificate as soon as practicable after an application for the certificate is made to the council.
- (2) The regulations may prescribe the form and manner in which a building information certificate is issued.

**6.25 Issue, nature and effect of building information certificate** (cf previous ss 149D, 149E)

- (1) A building information certificate is to be issued by a council only if it appears that—
  - (a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the *Local Government Act 1993*—
    - (i) to order the building to be repaired, demolished, altered, added to or rebuilt, or
    - (ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or
    - (iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or

- (b) there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.
- (2) A building information certificate is a certificate that states that the council will not make an order or take proceedings referred to in subsections (3) and (4).
- (3) A building information certificate operates to prevent the council—
  - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
  - (b) from taking civil proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,in relation to matters existing or occurring before the date of issue of the certificate.
- (4) A building information certificate operates to prevent the council, for a period of 7 years from the date of issue of the certificate—
  - (a) from making an order (or taking proceedings for the making of an order or injunction) under this Act or the *Local Government Act 1993* requiring the building to be repaired, demolished, altered, added to or rebuilt, and
  - (b) from taking civil proceedings in relation to any encroachment by the building onto land vested in or under the control of the council,in relation to matters arising only from the deterioration of the building as a result solely of fair wear and tear.
- (5) However, a building information certificate does not operate to prevent a council from making a development control order that is a fire safety order or a building product rectification order (within the meaning of the *Building Products (Safety) Act 2017*).
- (6) An order or proceeding that is made or taken in contravention of this section is of no effect.

**6.26 Miscellaneous provisions relating to building information certificates** (cf previous ss 149A, 149C, 149D, 149G)

- (1) A building information certificate may apply to the whole or to part only of a building.
- (2) On receipt of an application for a building information certificate, the council may, by notice in writing served on the applicant, require the applicant to supply it with such information (including building plans, specifications, survey reports and certificates) as may reasonably be necessary to enable the proper determination of the application.
- (3) If the applicant is able to provide evidence that no material change has occurred in relation to the building since the date of a survey certificate which, or a copy of which,

is supplied to the council by the applicant, the council is not entitled to require the applicant to supply a more recent survey certificate.

- (4) If the council refuses to issue a building information certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.
- (5) The reasons must be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building information certificate.
- (6) The council must not refuse to issue or delay the issue of a building information certificate by virtue of the existence of a matter that would not entitle the council to make any order or take any proceedings of the kind referred to in section 6.25(1)(a) (Issue, nature and effect of building information certificate).
- (7) Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building information certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work.
- (8) The council must keep a record of building information certificates issued.
- (9) A person may inspect the record at any time during the ordinary office hours of the council.
- (10) A person may obtain a copy of a building information certificate from the record with the consent of the owner of the building.

## **Division 6.8 Miscellaneous**

### **6.27 Owners building manual**

- (1) A certifier is not to issue an occupation certificate for a building that is of a class prescribed by the regulations unless a building manual for the building has been prepared and provided to the owner of the building in accordance with the requirements of the regulations.
- (2) The regulations may make provision for or with respect to building manuals and, in particular, for or with respect to the following—
  - (a) the preparation, form and maintenance of building manuals,
  - (b) the content of a building manual (including requirements that a building manual identify in a consolidated format matters for on-going compliance in relation to the building concerned),
  - (c) the inspection of building manuals,
  - (d) extending the circumstances in which a building manual is required to be

prepared and provided under this section.

**6.28 Crown subdivision, building, demolition and incidental work** (cf previous s 109R)

- (1) In the case of a subdivision carried out by the Crown, a reference in this Part to a certifier in relation to that subdivision includes a reference to a person acting on behalf of the Crown.
- (2) Crown building work cannot be commenced unless the Crown building work is certified by or on behalf of the Crown to comply with the *Building Code of Australia* in force as at—
  - (a) the date of the invitation for tenders to carry out the Crown building work, or
  - (b) in the absence of tenders, the date on which the Crown building work commences, except as provided by this section.
- (3) A Minister may at any time, by Ministerial planning order, determine in relation to buildings generally or a specified building or buildings of a specified class that a specified provision of the *Building Code of Australia*—
  - (a) does not apply, or
  - (b) does apply, but with such exceptions and modifications as may be specified.The determination has effect according to its tenor.
- (4) A determination of a Minister applies only to—
  - (a) a building erected on behalf of the Minister, or
  - (b) a building erected by or on behalf of a person appointed, constituted or regulated by or under an Act administered by the Minister.
- (5) The application of this section is subject to the regulations.

**6.29 Certifiers may be satisfied as to certain matters** (cf previous s 109O)

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

**6.30 Satisfaction as to compliance with conditions precedent to the issue of**

**certificates** (cf previous s 109P)

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

**6.31 Directions by principal certifiers**

- (1) If a principal certifier for an aspect of development becomes aware of any non-compliance to which this section applies in respect of the aspect of development, the principal certifier must issue (or, if the principal certifier is a council, may 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.
- (2) If a principal certifier gives a direction under this section and the direction is not complied with within the time specified in the notice containing the direction, the principal certifier who issued the direction (if not the consent authority) 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.
- (3) The regulations may make provision for or with respect to the following—
  - (a) the non-compliances to which this section applies,
  - (b) the procedure for issuing notices under this section,
  - (c) requirements in relation to follow-up action,
  - (d) the keeping of records in relation to notices given and follow-up action taken,



- (e) requirements for any matter or record relating to a notice or follow-up action to be notified to specified persons.

### **6.32 Validity of certificates under this Part**

Without limiting the powers of the Court under section 9.46(1), the Court may by order under that section declare that a certificate under this Part (other than an occupation certificate) is invalid if—

- (a) proceedings for the order are brought within 3 months after the issue of the certificate, and
- (b) the plans and specifications or standards of building work or subdivision work specified in the certificate are not consistent with the development consent for the building work or subdivision work.

### **6.33 Regulations: Part 6** (cf previous s 109Q)

- (1) The regulations may make provision for or with respect to the carrying out of building work or subdivision work and, in particular, for or with respect to the following—
  - (a) requirements to comply with provisions of the *Building Code of Australia* or other specified standards in relation to building work or subdivision work,
  - (b) applications for and the issue of certificates under this Part,
  - (c) the form and contents of certificates under this Part,
  - (d) conditions of certificates under this Part,
  - (e) modification of certificates under this Part,
  - (f) exempting classes of manufactured homes or temporary structures from requirements relating to construction certificates or occupation certificates,
  - (g) inspection of building work and subdivision work,
  - (h) the functions of certifiers under this Part,
  - (i) the replacement of certifiers,
  - (j) exemptions in relation to the requirement to obtain a certificate under this Part,
  - (k) the keeping of records in relation to building work or subdivision work,
  - (l) notices and information to be given in relation to the carrying out of building work and subdivision work,
  - (m) the procedure for dealing with complaints about building work or subdivision work.

- (2) The regulations may apply the provisions of this Part to State significant infrastructure.

**6.34 Regulations: smoke alarms in buildings providing sleeping accommodation** (cf previous s 146A)

- (1) The regulations may make provision for or with respect to—
- (a) the installation of one or more smoke alarms in buildings in which persons sleep, and
  - (b) the maintenance of smoke alarms installed in such buildings, and
  - (c) prohibiting persons from removing or interfering with the operation of smoke alarms installed in such buildings.
- (2) The regulations made under this section may (without limitation) do any one or more of the following—
- (a) specify the kinds of buildings in which smoke alarms are to be installed,
  - (b) specify the kinds of smoke alarms to be installed,
  - (c) specify where a smoke alarm is to be located,
  - (d) specify the maintenance that may be required in relation to a smoke alarm that has been installed,
  - (e) specify circumstances in which development consent is not required in relation to the installation of a smoke alarm,
  - (f) specify circumstances in which the consent of an owners corporation (within the meaning of the *Strata Schemes Management Act 2015*) is not required in relation to the installation of a smoke alarm.

- (3) In this section—

**building** includes a manufactured home, moveable dwelling or associated structure within the meaning of the *Local Government Act 1993*.

**6.35 Regulations: Transport for NSW requirements for development affecting rail infrastructure**

The regulations may make provision for or with respect to—

- (a) certificates granted by Transport for NSW certifying compliance with its requirements for particular development that affects rail infrastructure and that requires its concurrence for consent for the development, including the following—
  - (i) the making of an application for a certificate, the grant of a certificate and the

conditions of a certificate,

(ii) the giving of a notice of requirements before the grant of a certificate, which may include requirements relating to—

(A) the payment of costs, and

(B) the construction, installation or alteration of infrastructure, and

(C) the transfer of infrastructure to Transport for NSW,

(iii) the enforcement of requirements set out in any such notice, and

(b) providing for relevant development consents to be subject to a condition requiring the grant of such a certificate by Transport for NSW and preventing the issue of certificates under this Part until such a certificate has been granted.

## **Part 7 Infrastructure contributions and finance**

### **Division 7.1 Development contributions**

#### **Subdivision 1 Preliminary**

##### **7.1 Definitions** (cf previous s 93C)

In this Division—

**contributions plan** means a contributions plan approved under section 7.18.

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

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

**planning agreement** means a voluntary agreement referred to in section 7.4.

**planning authority** means—

(a) a council, or

(b) the Minister, or

(c) the Planning Ministerial Corporation, or

(d) a development corporation (within the meaning of the [Growth Centres \(Development Corporations\) Act 1974](#)), or

(e) a public authority declared by the regulations to be a planning authority for the purposes of this Division.

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

**special contributions area** means land for the time being described in Schedule 4.

## 7.2 Relationship to planning instruments (cf previous s 93D)

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

## 7.3 Provisions relating to money etc contributed under this Division (other than Subdivision 4) (cf previous s 93E)

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

## Subdivision 2 Planning agreements

### 7.4 Planning agreements (cf previous s 93F)

- (1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the **developer**)—
  - (a) who has sought a change to an environmental planning instrument, or
  - (b) who has made, or proposes to make, a development application or application for a complying development certificate, or
  - (c) who has entered into an agreement with, or is otherwise associated with, a person

to whom paragraph (a) or (b) applies,

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

- (2) A public purpose includes (without limitation) any of the following—
- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
  - (b) the provision of (or the recoupment of the cost of providing) affordable housing,
  - (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
  - (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
  - (e) the monitoring of the planning impacts of development,
  - (f) the conservation or enhancement of the natural environment.
- (3) A planning agreement must provide for the following—
- (a) a description of the land to which the agreement applies,
  - (b) a description of—
    - (i) the change to the environmental planning instrument to which the agreement applies, or
    - (ii) the development to which the agreement applies,
  - (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
  - (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development,
  - (e) if the agreement does not exclude the application of section 7.11 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11,
  - (f) a mechanism for the resolution of disputes under the agreement,
  - (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

- (3A) A planning agreement cannot exclude the application of section 7.11 or 7.12 in respect of development unless the consent authority for the development or the Minister is a party to the agreement.
- (4) A provision of a planning agreement in respect of development is not invalid by reason only that there is no connection between the development and the object of expenditure of any money required to be paid by the provision.

**Note—**

See section 7.3(1), which requires money paid under a planning agreement to be applied for the purpose for which it was paid within a reasonable time.

- (5) If a planning agreement excludes the application of section 7.11 or 7.12 to particular development, a consent authority cannot impose a condition of development consent in respect of that development under either of those sections (except in respect of the application of any part of those sections that is not excluded by the agreement).
- (5A) A planning authority, other than the Minister, is not to enter into a planning agreement excluding the application of section 7.24 without the approval of—
- (a) the Minister, or
  - (b) a development corporation designated by the Minister to give approvals under this subsection.
- (6) If a planning agreement excludes benefits under a planning agreement from being taken into consideration under section 7.11 in its application to development, section 7.11(6) does not apply to any such benefit.
- (7) Any Minister, public authority or other person approved by the Minister is entitled to be an additional party to a planning agreement and to receive a benefit under the agreement on behalf of the State.
- (8) A council is not precluded from entering into a joint planning agreement with another council or other planning authority merely because it applies to any land not within, or any purposes not related to, the area of the council.
- (9) A planning agreement cannot impose an obligation on a planning authority—
- (a) to grant development consent, or
  - (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.
- (10) A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach this section or any other provision of this Act, or would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.

- (11) A reference in this section to a change to an environmental planning instrument includes a reference to the making or revocation of an environmental planning instrument.

**7.5 Information about planning agreements** (cf previous s 93G)

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

**7.6 Registered planning agreements to run with land** (cf previous s 93H)

- (1) A planning agreement can be registered under this section if the following persons

agree to its registration—

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

**7.7 Circumstances in which planning agreements can or cannot be required to be made** (cf previous s 93I)

- (1) A provision of an environmental planning instrument (being a provision made after the commencement of this section)—
  - (a) that expressly requires a planning agreement to be entered into before a development application or application for a complying development certificate can be made, considered or determined, or
  - (b) that expressly prevents a development consent from being granted or having effect unless or until a planning agreement is entered into,has no effect.
- (2) A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.
- (3) However, a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with—
  - (a) the development application or application for a complying development



certificate, or

- (b) a change to an environmental planning instrument sought by the developer for the purposes of making the development application or application for a complying development certificate,

or that is in the terms of a commitment made by the proponent in a statement of commitments made under Part 3A.

- (4) In this section, **planning agreement** includes any agreement (however described) containing provisions similar to those that are contained in an agreement referred to in section 7.4.

### **7.8 Jurisdiction of Court with respect to planning agreements** (cf previous s 93J)

- (1) A person cannot appeal to the Court under this Act against the failure of a planning authority to enter into a planning agreement or against the terms of a planning agreement.
- (2) This section does not affect the jurisdiction of the Court under section 9.45.

### **7.9 Determinations or directions by Minister** (cf previous s 93K)

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
- (b1) the method of determining the extent of the provision of the public benefit to be made by the developer under a planning agreement, or
- (c) other standard requirements with respect to planning agreements.

### **7.10 Regulations—planning agreements** (cf previous s 93L)

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

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

## **Subdivision 3 Local infrastructure contributions**

**7.11 Contribution towards provision or improvement of amenities or services** (cf previous s 94)

- (1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring—
  - (a) the dedication of land free of cost, or
  - (b) the payment of a monetary contribution,or both.
- (2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.
- (3) If—
  - (a) a consent authority has, at any time, whether before or after the date of commencement of this Part, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area, and
  - (b) development for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services,the consent authority may grant the development consent subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations).
- (4) A condition referred to in subsection (3) may be imposed only to require a reasonable contribution towards recoupment of the cost concerned.
- (5) The consent authority may accept—
  - (a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (3), or
  - (b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (3).
- (6) If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, the consent authority must take into consideration any land, money or other material public benefit that the applicant has

elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority, other than—

- (a) a benefit provided as a condition of the grant of development consent under this Act, or
- (b) a benefit excluded from consideration under section 7.4(6).

(7) If—

- (a) a condition imposed under subsection (1) or (3) in relation to development has been complied with, and
- (b) a public authority would, but for this subsection, be entitled under any other Act to require, in relation to or in connection with that development, a dedication of land or payment of money in respect of the provision of public amenities or public services or both,

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

#### **7.12 Fixed development consent levies** (cf previous s 94A)

- (1) A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development.
- (2) A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under section 7.11.
- (2A) A consent authority cannot impose a condition under this section in relation to development on land within a special contributions area without the approval of—
  - (a) the Minister, or
  - (b) a development corporation designated by the Minister to give approvals under this subsection.
- (3) Money required to be paid by a condition imposed under this section is to be applied towards the provision, extension or augmentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation). The application of the money is subject to any relevant provisions of the contributions plan.
- (4) A condition imposed under this section is not invalid by reason only that there is no

connection between the development the subject of the development consent and the object of expenditure of any money required to be paid by the condition.

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

**7.13 Section 7.11 or 7.12 conditions subject to contributions plan** (cf previous s 94B)

- (1) A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).
- (2) However, in the case of a consent authority other than a council—
  - (a) the consent authority may impose a condition under section 7.11 or 7.12 even though it is not authorised (or of a kind allowed) by, or is not determined in accordance with, a contributions plan, but
  - (b) the consent authority must, before imposing the condition, have regard to any contributions plan that applies to the whole or any part of the area in which development is to be carried out.
- (3) A condition under section 7.11 that is of a kind allowed by a contributions plan (or a direction of the Minister under this Division) may be disallowed or amended by the Court on appeal because it is unreasonable in the particular circumstances of that case, even if it was determined in accordance with the relevant contributions plan (or direction). This subsection does not authorise the Court to disallow or amend the contributions plan or direction.
- (4) A condition under section 7.12 that is of a kind allowed by, and determined in accordance with, a contributions plan (or a direction of the Minister under this Division) may not be disallowed or amended by the Court on appeal.

**7.14 Cross-boundary issues** (cf previous s 94C)

- (1) A condition may be imposed under section 7.11 or 7.12 for the benefit (or partly for the benefit) of an area that adjoins the local government area in which the development is to be carried out.
- (2) Any monetary contribution that is required to be paid under any such condition is to be apportioned among the relevant councils—
  - (a) in accordance with any joint or other contributions plan approved by those

councils, or

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

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

**7.15 Public service or public amenity may be provided outside NSW** (cf previous s 94CA)

A condition may, with the written approval of the Minister, be imposed under section 7.11 or 7.12 for the provision of a public amenity or public service on land in another State or Territory if the area in which the development the subject of the condition is to be carried out adjoins the other State or Territory.

**7.16 Section 7.11 or 7.12 conditions imposed by Minister or Planning Secretary in growth centres, council areas etc** (cf previous s 94D)

(1) This section applies where the Minister or the Planning Secretary, as the consent authority, imposes conditions under section 7.11 or 7.12 in relation to—

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

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

(3) Any monetary contribution paid in accordance with a condition under section 7.11 or 7.12—

- (a) must be paid by the Minister or Planning Secretary to the corporation for the growth centre or to the councils of the areas concerned, and
- (b) must (together with any additional amount earned from its investment) be applied within a reasonable time for the purpose for which it was levied.

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

(5) (Repealed)

**7.17 Directions by Minister** (cf previous s 94E)

(1) The Minister may, generally or in any particular case or class of cases, direct a consent authority as to—

- (a) the public amenities and public services in relation to which a condition under section 7.11 may or may not be imposed, and

- (b) in the case of a condition under section 7.11 requiring the payment of a monetary contribution—
    - (i) the means by which or the factors in relation to which the amount of the contribution may or may not be calculated or determined, and
    - (ii) the maximum amount of any such contribution, and
  - (c) the things that may or may not be accepted as a material public benefit for the purposes of a condition under section 7.11, and
  - (d) the type or area of development in respect of which a condition under section 7.12 may be imposed and the maximum percentage of the levy, and
  - (e) the use of monetary contributions or levies for purposes other than those for which they were paid, and
  - (f) the preparation of joint contributions plans by two or more councils.
- (2) A consent authority to which a direction is given under this section must comply with the direction in accordance with its terms.
- (3) A consent authority must not, in granting development consent in relation to which a direction under this section applies, impose a condition that is not in accordance with the terms of the direction, despite the other provisions of this Division and despite the provisions of any contributions plan.

**7.18 Contributions plans—making** (cf previous s 94EA)

- (1) A council, or two or more councils, may, subject to and in accordance with the regulations, prepare and approve a contributions plan for the purpose of imposing conditions under this Division (other than Subdivision 4).
- (2) If a contributions plan authorises the imposition of conditions under section 7.12, the plan is to specify the type or area of development in respect of which a condition under section 7.12 may be imposed and is to preclude the imposition of a condition under section 7.11 in respect of that type or area of development.
- (2A) A contributions plan does not authorise the imposition of a condition under section 7.11 on a grant of development consent if the public amenities or public services to which that condition relates are, in whole or in part, infrastructure provided, or to be provided, in relation to the development out of contributions collected under Subdivision 4.
- (3) The regulations may make provision for or with respect to the preparation and approval of contributions plans, including the format, structure and subject-matter of plans.

- (4) A council is, as soon as practicable after approving a contributions plan, to provide the Minister with a copy of the plan.

**7.19 Contributions plans—making, amendment or repeal by Minister** (cf previous s 94EAA)

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

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

- (3) The Minister in making, amending or repealing a contributions plan under this section is not subject to the regulations.
- (4) A person cannot appeal to the Court under this Act in respect of—
  - (a) the making, amending or repealing of a contributions plan by or at the direction of the Minister under this section, or
  - (b) the reasonableness in the particular circumstances of a condition under section 7.11 that is determined in accordance with any such contributions plan, despite section 7.13(3) or any other provision of this Act.

**7.20 Contributions plans—judicial notice, validity etc** (cf previous s 94EB)

- (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.

**7.21 Contributions plans—complying development** (cf previous s 94EC)

- (1) In relation to an application made to an accredited certifier for a complying development certificate, a contributions plan—
  - (a) is to specify whether or not the accredited certifier must, if a complying development certificate is issued, impose a condition under section 7.11 or 7.12, and
  - (b) can only authorise the imposition by an accredited certifier of a condition under section 7.11 that requires the payment of a monetary contribution, and
  - (c) must specify the amount of the monetary contribution or levy that an accredited certifier must so impose or the precise method by which the amount is to be determined.
- (1A) The imposition of a condition by an accredited certifier as authorised by a contributions plan is subject to compliance with any directions given under section 7.17(1)(a), (b) or (d) with which a council would be required to comply if issuing the complying development certificate concerned.
- (2) This section does not limit anything for which a contributions plan may make provision in relation to a consent authority.
- (3) The regulations may make provision for or with respect to anything for which a contributions plan may make provision under this section (being provisions that apply despite anything to the contrary in the contributions plan). The regulations may provide that the amount of a monetary contribution or levy be determined in a manner and by a person or body authorised by the regulations.

**Subdivision 4 Special infrastructure contributions**

**7.22 Provision of infrastructure** (cf previous s 94ED)

- (1) In this Subdivision, a reference to the **provision of infrastructure** includes a reference to—
  - (a) the provision, extension and augmentation of (or the recoupment of the cost of providing, extending or augmenting) public amenities or public services, affordable housing and transport or other infrastructure relating to land, and
  - (b) the funding of recurrent expenditure relating to the provision, extension and augmentation of public amenities or public services, affordable housing and transport or other infrastructure, and
  - (c) the conservation or enhancement of the natural environment, and
  - (d) the Minister, Planning Ministerial Corporation, Department or Planning Secretary



doing any one or more of the following—

- (i) carrying out of any research or investigation,
- (ii) preparing any report, study or instrument,
- (iii) doing any other matter or thing in connection with the exercise of any statutory function under this Act,

but does not include a reference to water supply or sewerage services.

- (2) Subject to section 7.23(2)(c), infrastructure may be regarded as being provided in relation to development whether or not the infrastructure is provided on land within a special contributions area or within New South Wales.

**7.23 Minister to determine development contributions** (cf previous s 94EE)

- (1) The Minister is, subject to the regulations (if any), to determine the level and nature of development contributions to be imposed as conditions under this Subdivision for the provision of infrastructure in relation to a development or a class of development.
- (1A) This section extends to complying development. In that case, a reference in this Subdivision to the consent authority includes a reference to a certifier.
- (2) In determining the level and nature of development contributions—
  - (a) the Minister is, as far as reasonably practicable, to make the contribution reasonable having regard to the cost of the provision of infrastructure in relation to the development or class of development, and
  - (b) if the cost of that infrastructure exceeds \$30 million—the Minister is to consult the Treasurer, and
  - (b1) the Minister may take into account infrastructure (including land for infrastructure) provided or required to be provided under a planning agreement in order to ensure the fair apportionment of the cost of the provision of infrastructure across the special contributions area, and
  - (c) the Minister is not to take into account infrastructure provided on land other than that within the relevant special contributions area, unless, in the opinion of the Minister, the provision of the infrastructure on such land arises as a result of the development or as a result of a class of development of which the development forms a part.
- (3) Despite subsection (2), the Minister may, if he or she sees fit, determine the level and nature of development contributions in the form of a levy of a percentage of the proposed cost of carrying out development or any class of development. The Minister may also determine the level and nature of development contributions in the form of

the carrying out of works or the supply of land for the provision of the infrastructure.

- (3A) The determination of the Minister is to identify what part (if any) of a development contribution, that is to be imposed as a condition under this Subdivision, is for the provision of infrastructure by a council or for any one or more of the matters set out in section 7.22(1)(d).
- (3B) Any part of a development contribution identified in accordance with subsection (3A)—
- (a) is, for the purposes of Subdivision 5, taken not to be received by the consent authority under this Subdivision, and
  - (b) is not to be taken into account in calculating the cost of infrastructure for the purposes of subsection (2)(b), and
  - (c) is, if the part is identified as being for the provision of infrastructure by a council, to be provided to the council and is to be held and applied by the council in accordance with section 7.3, and
  - (d) is, if the part is identified as being for any one or more of the matters set out in section 7.22(1)(d), to be provided to the Department and is to be held and applied by the Department in accordance with section 7.3.
- (4) In determining the level and nature of development contributions to be imposed as conditions under this Subdivision for development within a particular special contributions area (other than a growth centre), the Minister is to do one or more of the following—
- (a) consult with owners of land in the special contributions area and other relevant stakeholders,
  - (b) publicly exhibit a proposal in relation to the level of development contributions and seek submissions within a reasonable time in relation to that proposal,
  - (c) establish a panel that, in the Minister's opinion, represents the interests of the various relevant stakeholders and consult with that panel.
- (5) The determination of the Minister—
- (a) is to contain reasons for the level and nature of the development contributions, and
    - (a1) may contain provisions relating to the timing of the making of development contributions, and
  - (b) is to be made publicly available by the Minister.
- (6) A person cannot appeal to the Court under this Act in respect of a determination of

the Minister under this section.

- (7) Subsection (3A) does not limit any payments being made out of the Fund to a council or the Department under section 7.30(1)(a).

**7.24 Special infrastructure contributions** (cf previous s 94EF)

- (1) The Minister may direct a consent authority to impose a condition on the grant of development consent in relation to development within a special contributions area to which a determination under section 7.23 applies for the purpose of giving effect to the determination.
- (1A) The direction may set out the terms of the condition that is to be imposed, including the following—
- (a) a condition that declares that a development contribution is to be made in accordance with the relevant determination under section 7.23,
  - (b) a condition that requires the person having the benefit of the development consent to obtain a determination by the Planning Secretary as to whether a development contribution is required under section 7.23 and of the obligations arising under that section.
- (1B) A direction to a consent authority under this section may be given by the publication of the direction on the NSW planning portal or in the Gazette.
- (2) If the Minister is the consent authority, the Minister may impose a condition referred to in subsection (1) without giving a direction under that subsection.
- (3) A consent authority to which a direction is given under this section must comply with the direction in accordance with its terms. If the consent authority fails to do so, the condition is taken to have been imposed in the terms required by the direction, and it has effect as if it had been imposed by the consent authority.
- (3A) If the relevant determination under section 7.23 that is given effect to by a condition of development consent under this section provides that the development contribution is to be made before a certificate under Part 6 or a strata certificate under the *Strata Schemes Development Act 2015* is issued in respect of the development, the certificate is not to be issued until the contribution is made. If that determination makes any other provision as to the timing of the making of the development contribution, the provision has effect according to its tenor.
- (4) A condition imposed under this section is in addition to any condition that the consent authority may impose under section 7.11 or 7.12 in relation to the development.
- (5) The consent authority may, subject to the consent of the Minister, accept—
- (a) the dedication of land in part or full satisfaction of a condition imposed in

accordance with this section, or

(b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with this section.

(6) A person cannot appeal to the Court under this Act in respect of a direction of the Minister, or a condition imposed by a consent authority or the Minister, under this section.

(7) A condition imposed by a consent authority or the Minister under this section cannot be modified without the approval of the Minister.

**7.25 Minister may make, amend or repeal special contributions areas** (cf previous s 94EG)

(1) The Minister may, by order published on the NSW legislation website, amend Schedule 4 for the purpose of—

(a) creating a special contributions area, or

(b) repealing a special contributions area, or

(c) changing a special contributions area.

(2) Any such order may contain savings and transitional provisions.

(3) Any such order takes effect on the day that it is published on the NSW legislation website or such later date as may be specified in the order.

(4) Before creating a special contributions area (other than a growth centre), the Minister is to consult with the peak industry organisations that the Minister considers to be relevant.

**7.26 Land contributed under this Subdivision** (cf previous s 94EH)

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

(a) the development to which the land relates, or

(b) the class of development to which that development belongs.

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

**7.27 Definition** (cf previous s 94EI)

In this Subdivision—

**the Fund** means the Special Contributions Areas Infrastructure Fund established under section 7.28.

**7.28 Establishment of Fund** (cf previous s 94E)

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

**7.29 Payments into Fund** (cf previous s 94EK)

The following is to be paid into the Fund—

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

**7.30 Payments out of Fund** (cf previous s 94EL)

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

**7.31 Investment of money in Fund**

The money in the Fund may be invested—

- (a) if the Department is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Department is permitted to invest money under that Part, or
- (b) if the Department is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Treasurer.

## **Division 7.2 Affordable housing contributions**

### **7.32 Conditions requiring land or contributions for affordable housing** (cf previous s 94F)

- (1) This section applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and—
  - (a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
  - (b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
  - (c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or
  - (d) the regulations provide for this section to apply to the application.
- (2) Subject to subsection (3), the consent authority may grant consent to a development application to which this section applies subject to a condition requiring—
  - (a) the dedication of part of the land, or other land of the applicant, free of cost to be used for the purpose of providing affordable housing, or
  - (b) the payment of a monetary contribution to be used for the purpose of providing affordable housing,or both.
- (3) A condition may be imposed under this section only if—
  - (a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and
  - (b) the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and
  - (c) the condition requires a reasonable dedication or contribution, having regard to the following—
    - (i) the extent of the need in the area for affordable housing,
    - (ii) the scale of the proposed development,
    - (iii) any other dedication or contribution required to be made by the applicant under this section or section 7.11.

- (4) A consent authority that proposes to impose a condition in accordance with this section must take into consideration any land or other sum of money that the applicant has previously dedicated free of cost, or previously paid, for the purpose of affordable housing within the area otherwise than as a condition of a consent.
- (5) Nothing in this section prevents the imposition on a development consent of other conditions relating to the provision, maintenance or retention of affordable housing. Such conditions may require, but are not restricted to, the imposition of covenants (including positive covenants) or the entering into of contractual or other arrangements.
- (6) A condition is not to be imposed under this section in relation to development that is within a special contributions area (within the meaning of Division 7.1) if a determination under section 7.23 that applies to the area identifies affordable housing as a class of infrastructure for which development contributions may be required in accordance with the determination.

**7.33 Provision of affordable housing** (cf previous s 94G)

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

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

## Division 7.3 Funds

### 7.34 Department of Environment and Planning Account (cf previous s 128)

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

### 7.35 Funds generally (cf previous s 129)

- (1) In connection with the Account referred to in section 7.34, there shall be created in the books of the Department the following funds—
- (a) a Development Fund in respect of each development area (each of which funds is referred to in this Part as a **Development Fund**), and
  - (b) the Trust Fund (which is referred to in this Part as **the Trust Fund**).
- (2) The funds shall be separate and distinct.
- (3) The funds are to be administered by the Planning Ministerial Corporation.

### 7.36 Development Funds (cf previous s 130)

- (1) The Development Fund in respect of each development area shall consist of—
- (a) all money borrowed for the purpose of the acquisition or development of land within the development area and for the purpose of repaying or renewing a loan obtained for that purpose and the proceeds of any levy or assessment made by the Planning Ministerial Corporation for the purpose of repaying money so borrowed or renewing such a loan,
  - (b) the proceeds of the sale or lease by the Planning Ministerial Corporation of any land situated within the development area,
  - (c) all money and land directed by or under this Act to be allocated to the Development Fund,
  - (d) all money received as a result of the investment of the Development Fund as authorised by this Act, and



- (e) such other money as the Treasurer authorises to be paid into the Development Fund.
- (2) All land vested in the Planning Ministerial Corporation and situated within a development area shall form part of the assets of the Development Fund in respect of that development area.
- (3) The Development Fund in respect of each development area may be applied to any of the following purposes—
  - (a) the acquisition or development of any land within the development area,
  - (b) the payment of rates and charges due and payable by the Planning Ministerial Corporation in respect of land within the development area,
  - (c) transfers to any reserve for loan repayment in respect of money borrowed in respect of the development area or in respect of any loan transferred to the Planning Ministerial Corporation in pursuance of Schedule 3 to the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979*,
  - (d) payment of principal, interest and expenses in respect of money borrowed in respect of the development area or in respect of any loan transferred to the Planning Ministerial Corporation in pursuance of that Schedule,
  - (e) any purpose authorised by or under this Act for the application of the Development Fund,
  - (f) the creation of assets and incurring and discharging liabilities not inconsistent with the purposes of the Development Fund,
  - (g) payment of principal, interest and expenses in respect of money borrowed which is not chargeable to any fund other than the Development Fund, or in respect of a loan or asset transferred from another fund,
  - (h) the investment of money for the creation of reserves for any purposes not inconsistent with the purposes of the Development Fund,
  - (i) any costs incurred in the administration of the Development Fund.
- (4) The Development Fund may also be applied, with the approval of the Minister, to the development of land (whether vested in the Planning Ministerial Corporation or not) within the development area for the purpose of an improvement program, if—
  - (a) the Minister has considered likely future applications of the Development Fund for all the purposes in subsection (3), and
  - (b) in the opinion of the Minister, implementation of the improvement program will improve public amenity by—

- (i) enhancing open space or the public domain, or
  - (ii) providing suitable infrastructure or facilities at a regional or local level.
- (5) The Development Fund in respect of each development area may be applied to purposes that are necessary, incidental, subordinate or supplementary to any of the purposes specified in subsection (3) or (4).

**7.37 Trust Fund** (cf previous s 131)

- (1) The Trust Fund shall consist of the following assets—
- (a) all money and land held by the Planning Ministerial Corporation by way of deposit or in trust for any person,
  - (b) all money and land assigned, conveyed, bequeathed or devised to the Planning Ministerial Corporation in trust for the purpose of any function which the Planning Ministerial Corporation is by or under this Act empowered to exercise,
  - (c) all money received as a result of the investment of the Trust Fund as authorised by this Act.
- (2) The Trust Fund shall be applied as follows—
- (a) where the money or land is held by way of a deposit or in trust for any person, the money may be paid or the land may be assured to or on behalf of the person entitled thereto, but if the money has remained in the Trust Fund for 10 years, the Planning Ministerial Corporation may transfer it to such Development Fund as it may deem proper, subject to repaying it from that fund to any person entitled thereto,
  - (b) except as otherwise provided in this section, for the purposes and according to the trusts upon which the money or land is held by the Planning Ministerial Corporation,
  - (c) by investment in securities authorised under the [Trustee Act 1925](#) or for the purposes of and according to the trusts referred to in paragraph (b).

**7.38 Constitution of development areas** (cf previous s 132)

- (1) Development areas may be constituted in accordance with this section.
- (2) The Planning Secretary may, by notice published in the Gazette, notify a proposal to constitute as a development area any area or areas or parts of areas specified in the notice.
- (3) In determining which areas or parts of areas should be included in the development area, the Planning Secretary shall have regard to any environmental planning instruments relating to those areas or parts, environmental planning principles and

such other matters as the Planning Secretary thinks fit.

- (4) Within 14 days after the publication in the Gazette of the notice referred to in subsection (2), the Planning Secretary shall, in the prescribed manner, notify the councils of the areas or parts of areas proposed to be included in the development area of the proposal and the reasons therefor and otherwise publicise the proposal.
- (5) Any person may, by notice in writing, lodge with the Planning Secretary, within 3 months after the publication in the Gazette of the notice referred to in subsection (2), representations in relation to the proposal.
- (6) Where representations have been lodged under subsection (5), the Planning Secretary shall refer the matter to the Minister who shall either—
  - (a) confirm the proposal, or
  - (b) alter the proposal by excluding, from the proposed development area, any area or part of an area other than an area or part in which the Planning Ministerial Corporation has acquired land pursuant to Part 6 of Schedule 2.
- (7) If the Minister has requested that a review be held by the Independent Planning Commission with respect to the proposal, the Minister must not determine the application until after—
  - (a) the review has been held, and
  - (b) the Minister has considered the findings and recommendations of the Commission following the review.
- (8) If no representations are lodged under subsection (5), the proposal shall be deemed to be confirmed immediately on the expiry of the period allowed for the lodgment of representations.
- (9) The areas or parts of areas specified in the proposal as confirmed or altered shall, upon publication in the Gazette of a notice constituting them as a development area, be constituted as a development area under the name specified in the notice.

**7.39 Alteration or abolition of development area** (cf previous s 133)

The Planning Secretary may, by notice published in the Gazette, notify a proposal to alter a development area constituted under this Division by including therein any land or by excluding therefrom any land or to abolish such a development area, and the provisions of this Division shall apply to the notice as they apply to a notice referred to in section 7.38(2).

**7.40 Land to be in one development area only** (cf previous s 134)

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

**7.41 Disallowance of constitution of development area** (cf previous s 135)

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

**7.42 Assessment of loan commitments** (cf previous s 143)

- (1) The Planning Ministerial Corporation may, in respect of each year ending on 31 December, subject to and in accordance with the regulations, assess the amount required in any such year for the payment of interest on, or repayment of principal of, any loan raised by the Planning Ministerial Corporation upon the councils whose areas or parts of areas are included in the development area to which the purpose for which the loan was raised relates.
- (2) The regulations may make provision for or with respect to—
  - (a) the notification of a council referred to in subsection (1) by the Planning Ministerial Corporation of a decision to make an assessment under that subsection,
  - (b) the provision by such a council of information necessary to determine the amount to be paid by the council in relation to the assessment, and
  - (c) the payment by such a council of the whole or any part of an amount assessed under subsection (1).
- (3) A council required to pay the whole or any part of an amount assessed under subsection (1) shall make the payment from its consolidated fund.
- (4) The Planning Ministerial Corporation may recover as a debt or liquidated demand in any court of competent jurisdiction any amount assessed upon a council and not paid on or before such day as may be prescribed in relation to the assessment.
- (5)–(8) (Repealed)

**Division 7.4 Charges and fees**

**7.43 Right to charges and fees** (cf previous s 136)

For the purpose of this Act, the Planning Secretary may demand, levy and recover the

prescribed charges and fees in accordance with this Division.

**7.44 Charges and fees fixed by regulation** (cf previous s 137)

(1) Where under the provisions of any Act, regulation or environmental planning instrument the Minister, Planning Ministerial Corporation, Department or Planning Secretary—

- (a) supplies any service, product, commodity or publication, or
- (b) makes any registration, or
- (c) gives any permission, or
- (d) furnishes any information, or
- (e) receives any application for its approval, or
- (f) issues any certificate, requirement or direction, or
- (g) allows admission to any building,

the charge or fee shall be as prescribed by the regulations or as determined in accordance with the regulations, including as determined by a person specified in the regulations.

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

**Note—**

Such functions may include making an environmental planning instrument.

- (2) In any such regulation, provision may be made requiring a deposit or prepayment in respect of any such charge or fee.
- (3) Nothing in this section authorises any charge or fee contrary to the provisions of any Act, regulation or environmental planning instrument.

**7.45 Liability for charge or fee** (cf previous s 138)

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

**7.46 Recovery of charges etc** (cf previous s 139)

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

## **Part 8 Reviews and appeals**

### **Division 8.1 Introductory**

#### **8.1 Definitions: Part 8**

In this Part—

**appeal** means an appeal to the Court under Divisions 8.3, 8.4, 8.5 and 8.6.

**Note—**

Section 1.4 defines **Court** as the Land and Environment Court.

**review** means a review by a consent authority under Division 8.2.

### **Division 8.2 Reviews**

#### **8.2 Determinations and decisions subject to review** (cf previous ss 82A(1), 82B(1))

- (1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division—
  - (a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),
  - (b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),
  - (c) the decision of a council to reject and not determine an application for development consent.
- (2) However, a determination or decision in connection with an application relating to the following is not subject to review under this Division—
  - (a) a complying development certificate,
  - (b) designated development,
  - (c) Crown development (referred to in Division 4.6).

- (3) A determination or decision reviewed under this Division is not subject to further review under this Division.

**8.3 Application for and conduct of review** (cf previous ss 82A(2)-(4) (6), 82B(2)-(4))

- (1) An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.
- (2) A determination or decision cannot be reviewed under this Division—
- (a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or
- (b) after the Court has disposed of an appeal against the determination or decision.
- (3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.
- (4) The review of a determination or decision made by a delegate of a council is to be conducted—
- (a) by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or
- (b) by another delegate of the council who is not subordinate to the delegate who made the determination or decision.
- (5) The review of a determination or decision made by a local planning panel is also to be conducted by the panel.
- (6) The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.
- (7) The review of a determination or decision made by a Sydney district or regional planning panel is also to be conducted by the panel.
- (8) The review of a determination or decision made by the Independent Planning Commission is also to be conducted by the Commission.
- (9) The review of a determination or decision made by a delegate of the Minister (other than the Independent Planning Commission) is to be conducted by the Independent Planning Commission or by another delegate of the Minister who is not subordinate to the delegate who made the determination or decision.

#### **8.4 Outcome of review** (cf previous ss 82A(4A), 82B(5))

After conducting its review of a determination or decision, the consent authority may confirm or change the determination or decision.

#### **8.5 Miscellaneous provisions relating to reviews** (cf previous ss 82A(10), 82C, 82D)

- (1) The regulations may make provision for or with respect to reviews under this Division, including—
  - (a) specifying the person or body with whom applications for reviews are to be lodged and by whom applications for reviews and the results of reviews are to be notified, and
  - (b) setting the period within which reviews must be finalised, and
  - (c) declaring that a failure to finalise a review within that time is taken to be a confirmation of the determination or decision subject to review.
- (2) The functions of a consent authority in relation to a matter subject to review under this Division are the same as the functions in connection with the original application or determination.
- (3) If a decision to reject an application for development consent is changed on review, the application is taken to have been lodged on the date the decision is made on the review.
- (4) If a determination is changed on review, the changed determination replaces the earlier determination on the date the decision made on the review is registered on the NSW planning portal.
- (5) Notice of a decision on a review to grant or vary development consent is to specify the date from which the consent (or the consent as varied) operates.
- (6) A decision after the conduct of a review is taken for all purposes to be the decision of the consent authority.
- (7) If on a review of a determination the consent authority grants development consent or varies the conditions of a development consent, the consent authority is entitled (with the consent of the applicant and without prejudice to costs) to have an appeal against the determination made by the applicant to the Court under this Part withdrawn at any time prior to the determination of that appeal.

### **Division 8.3 Appeals—development consents**

#### **8.6 Decisions subject to appeal to Court under this Division** (cf previous s 23F)

- (1) A decision of a consent authority under Part 4 in relation to an application for



development consent or a development consent is (if this Division so provides) subject to appeal to the Court under this Division.

- (2) A decision subject to appeal includes a decision made after a review under Division 8.2.
- (3) There is no right of appeal under this Division against the following decisions—
  - (a) a decision of the Independent Planning Commission as consent authority under this Act in relation to the carrying out of any development that is made after a public hearing by the Commission into the carrying out of that development,
  - (b) the determination of, or a failure to determine, an application for a complying development certificate.

**Note—**

See other restrictions in this Act on the power of the Court to vary conditions of development consent relating to development contributions.

**8.7 Appeal by applicant—applications for development consent** (cf previous s 97)

- (1) An applicant for development consent who is dissatisfied with the determination of the application by the consent authority may appeal to the Court against the determination.
- (2) For the purposes of this section, the determination of an application by a consent authority includes—
  - (a) any decision subsequently made by the consent authority or other person about an aspect of the development that under the conditions of development consent was required to be carried out to the satisfaction of the consent authority or other person, or
  - (b) any decision subsequently made by the consent authority as to a matter of which the consent authority must be satisfied before a deferred commencement consent can operate.
- (3) An appeal under this section relating to an application for development consent to carry out designated development in respect of which an objector may appeal under this Division cannot be heard until after the expiration of the period within which the objector may appeal to the Court.

**8.8 Appeal by an objector—designated development applications** (cf previous s 98)

- (1) This section applies to the determination of an application for development consent for designated development (including any State significant development that would be designated development but for section 4.10(2)), being a determination to grant development consent, either unconditionally or subject to conditions.

- (2) A person who duly made a submission by way of objection during the public exhibition of the application for development consent (an **objector**) and who is dissatisfied with the determination of the consent authority to grant consent may appeal to the Court against the determination.

**8.9 Appeal by applicant—modifications of development consent** (cf previous s 97AA)

An applicant for the modification of a development consent who is dissatisfied with the determination of the application by the consent authority may appeal to the Court against the determination.

**8.10 Time within which appeals may be made** (cf previous ss 97, 98(1))

- (1) An appeal under this Division (except by an objector) may be made only within 6 months after the date the decision appealed against is notified or registered on the NSW planning portal or after the date of deemed refusal under section 8.11.
- (2) An appeal under this Division by an objector may be made only within 28 days after the date the objector is notified of the decision appealed against.

**8.11 Circumstances in which consent taken to have been refused for purposes of appeal rights** (cf previous s 82)

- (1) A consent authority that has not determined an application for development consent (or for the modification of a development consent) within the period prescribed by the regulations for the determination of the application is, for the purpose only of this Division, taken to have determined the application by refusing development consent (or refusing to modify development consent) when that period ends.
- (2) Subsection (1) does not prevent a consent authority from determining an application after the end of that period.
- (3) Any such determination of an application does not affect the continuation or determination of an appeal made under this Division against the deemed refusal of consent (or modification of consent) under subsection (1).
- (4) If any such determination of an application results in the grant of development consent (or the modification of development consent), the consent authority is entitled, with the consent of the applicant and without prejudice to costs, to have the appeal withdrawn at any time prior to the determination of the appeal.

**8.12 Notice of appeals to be given and right to be heard** (cf previous s 97A)

- (1) The following are entitled to be given notice of an appeal made under this Division—
  - (a) an objector, in the case of an appeal by an applicant concerning an application for development consent in respect of which the objector has a right of appeal under this Division,

- (b) an applicant for development consent and the consent authority, in the case of an appeal under this Division by an objector concerning the application for development consent,
  - (c) a Minister or public authority, in the case of an appeal concerning an application for development consent in respect of which the concurrence of the Minister or public authority is required under this Act,
  - (d) the relevant approval body (within the meaning of Division 4.8), in the case of an application for development consent that involves the approval body.
- (2) Any such notice of appeal is to be given by the relevant consent authority.
  - (3) Anyone who is given any such notice of appeal is, on application to the Court within 28 days after the notice is given, entitled to be heard at the hearing of the appeal if not already a party to the proceedings.
  - (4) In this section, a reference to an application for development consent includes an application to modify a development consent.

**8.13 Effect of appeals on operation of consents** (cf previous s 83(2)–(5))

- (1) If the granting of a development consent for development (other than State significant development) is the subject of an appeal made under this Division, the development consent ceases to have effect.
- (2) If an appeal under this Division is discontinued, the consent is revived on the discontinuation of the appeal.
- (3) A development consent that is granted as a result of a decision on an appeal under this Division is taken to be a development consent duly granted under Part 4. Any such development consent takes effect, subject to any order of the Court, on and from the date the decision is registered on the NSW planning portal.
- (4) If the effect of a decision on appeal is that development consent is refused, any development consent granted ceases to have effect.
- (5) Despite anything to the contrary in this section, a development consent is taken to have effect on and from the date fixed by—
  - (a) a court (whether or not the Land and Environment Court) that finally determines an appeal on a question of law which confirms the validity of, or results in the granting of, the development consent, or
  - (b) the Land and Environment Court, if the validity of a development consent granted by that Court is confirmed by, or the development consent is granted by that Court as a result of, such a final determination made by another court that has not fixed that date.

**8.14 Powers of Court on appeals** (cf previous s 39(6A) Land and Environment Court Act)

- (1) In addition to any other functions and discretions that the Court has apart from this subsection, the Court has, for the purposes of hearing and disposing of an appeal under this Division, all the functions and discretions which the consent authority whose decision is the subject of the appeal had in respect of the matter the subject of the appeal.
- (2) The decision of the Court on an appeal under this Division is, for the purposes of this or any other Act or instrument, taken to be the final decision of that consent authority and is to be given effect to accordingly.
- (3) If the consent authority was under this Act required to consult or obtain the concurrence of another person or body before making the decision the subject of an appeal under this Division—
  - (a) the Court may determine the appeal whether or not the consultation has taken place and whether or not the concurrence has been granted, and
  - (b) in a case where the concurrence has been granted—the Court may vary or revoke any conditions imposed by that person or body or may impose any conditions that could have been imposed by that person or body.
- (4) If an appeal under this Division relates to integrated development—
  - (a) the Court may determine the appeal whether or not the consent authority has obtained general terms of approval from each relevant approval body, and
  - (b) the Court is not bound to refuse an application for development consent because a relevant approval body has decided that general terms of approval will not be determined or has decided not to grant a relevant approval, and
  - (c) the Court may determine an appeal even though a development consent granted as a result of the appeal is inconsistent with the general terms of approval of a relevant approval body.

**8.15 Miscellaneous provisions relating to appeals under this Division** (cf previous s 97B; s 39A Land and Environment Court Act)

- (1) Separate appeals under this Division with respect to the determination of an application for development consent are, as far as practicable, to be heard together.
- (2) On an appeal under this Division, the Court may, at any time on the application of a person or of its own motion, order the joinder of a person as a party to the appeal if the Court is of the opinion—
  - (a) that the person is able to raise an issue that should be considered in relation to the appeal but would not be likely to be sufficiently addressed if the person were

not joined as a party, or

(b) that—

(i) it is in the interests of justice, or

(ii) it is in the public interest,

that the person be joined as a party to the appeal.

- (3) If the Court on an appeal by an applicant under this Division allows the applicant to file an amended application for development consent (other than to make a minor amendment), the Court must make an order for the payment by the applicant of those costs of the consent authority that have been thrown away as a result of the amendment of the application for development consent. This subsection does not apply to proceedings to which section 34AA of the *Land and Environment Court Act 1979* applies.
- (4) If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The council is to give notice of the appeal to the panel.
- (5) If the Minister exercised the functions of the council as consent authority (for Crown development) in respect of a determination or decision appealed against under this Division, the council is to be the respondent to the appeal but is subject to the control and direction of the Minister in connection with the conduct of the appeal. The council is to give notice of the appeal to the Minister.

## **Division 8.4 Appeals—building and subdivision certification**

### **8.16 Appeals against failure or refusal to issue certificate under Part 6** (cf previous s 109K(1)-(2))

- (1) An appeal may be made to the Court against the following decisions of a council under Part 6—
- (a) a decision to refuse to issue a construction certificate, occupation certificate, subdivision works certificate or subdivision certificate,
- (b) a decision to issue any such certificate subject to conditions.
- (2) The appeal may be made by the applicant for the certificate concerned.
- (3) An appeal may be made only within 6 months after the date on which the decision was made.

**8.17 Deemed refusal for purposes of appeal** (cf previous s 109K(3))

- (1) For the purposes only of an appeal under this Division, a council is taken to have made a decision to refuse to issue a certificate (a **deemed refusal**) if it has failed to issue the certificate to the applicant within the period prescribed by the regulations.
- (2) Nothing in subsection (1) prevents a council from determining an application for a construction certificate, occupation certificate, subdivision works certificate or subdivision certificate after the expiration of the applicable period specified in that subsection.
- (3) A determination made after the expiration of that applicable period does not affect the continuance or determination of an appeal made under this Division in respect of a deemed refusal.
- (4) If a determination is made after the applicable period to grant the certificate concerned, the council is entitled, with the consent of the applicant and without prejudice to costs, to have any appeal under this Division against a deemed refusal withdrawn at any time prior to the determination of that appeal.

**Division 8.5 Appeals—development control orders**

**8.18 Appeals concerning orders** (cf previous s 121ZK)

- (1) A person who is given a development control order may appeal to the Court against the order.
- (2) However, a person may not appeal against a fire safety order given by an authorised fire officer (other than an order that prevents a person using or entering premises).
- (3) The appeal may be made only—
  - (a) within 28 days after the development control order is given to the person, or
  - (b) if an order is given subsequently that forms part of the development control order, within 28 days after the subsequent order is given to the person.
- (4) On hearing an appeal, the Court may—
  - (a) revoke the development control order, or
  - (b) modify the development control order, or
  - (c) substitute for the development control order any other order that the relevant enforcement authority who gave the order could have given, or
  - (d) find that the development control order is sufficiently complied with, or
  - (e) make such order with respect to compliance with the development control order

as the Court thinks fit, or

- (f) make such other order with respect to the development control order as the Court thinks fit.

**8.19 Awarding of compensation concerning orders** (cf previous s 121ZL)

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

**8.20 Effect of appeal on order** (cf previous s 121ZN)

If an appeal is duly made to the Court against a development control order, the appeal does not effect a stay of the order.

**Division 8.6 Appeals—miscellaneous**

**8.21 Appeal concerning decisions on security for development requirements or damage** (cf previous s 98A)

- (1) This section applies in connection with a decision of a consent authority or council relating to security of the kind referred to in section 4.17(6).
- (2) The applicant for development consent to which the security relates, or a person having the benefit of the consent, who is dissatisfied with the decision may appeal to the Court as follows—
  - (a) an appeal may be made against a decision of the consent authority with respect to the provision of the security (otherwise than by the imposition of a condition of development consent),
  - (b) an appeal may be made against the failure or refusal of the consent authority to release a security held by it,
  - (c) an appeal may be made against the failure or refusal of a council to release a

security held by it that has been provided in accordance with a condition of a complying development certificate.

- (3) An appeal under subsection (2)(a) may be made only within 6 months after the applicant for development consent received notice of the decision.
- (4) An appeal under subsection (2)(b) or (c) may be made only—
  - (a) except as provided by paragraph (b), within 6 months after the work to which the security relates has been completed, or
  - (b) if the security is provided in respect of contingencies that may arise on or after completion of the work to which the security relates, not earlier than 6 months and not later than 12 months after the completion of the work.

**8.22 Appeals against refusal to extend consent lapsing period** (cf previous s 95A(3))

- (1) This section applies to an application under section 4.54 for the extension of the period after which a development consent lapses.
- (2) The applicant for the extension who is dissatisfied with the determination of the application, or the failure of the consent authority to determine the application within the period prescribed by the regulations, may appeal to the Court.
- (3) The appeal may be made only within 6 months after the date on which the person is given notice of the decision appealed against or the end of the deemed refusal period referred to in subsection (2).

**8.23 Appeals against revocation or modification of development consent** (cf previous s 96A(5))

- (1) This section applies to a decision of the Planning Secretary or a council under section 4.57 to revoke or modify a development consent.
- (2) The applicant for the consent, or any other person entitled to rely on the consent, may appeal to the Court against the revocation or modification of the consent.
- (3) The appeal can only be made within 3 months after the date on which the revocation or modification of the consent takes effect.
- (4) On hearing the appeal, the Court may—
  - (a) confirm the revocation or modification, or
  - (b) vary the revocation or modification, or
  - (c) cancel the revocation or modification.



**8.24 Appeals concerning compliance cost notices** (cf previous s 121ZKA)

- (1) A person on whom a compliance cost notice is served under Part 12 of Schedule 5 (Development control orders) may appeal against the notice to the Court within 28 days after the service of the notice on the person.
- (2) If an appeal is lodged against an order in relation to which a compliance cost notice has been issued—
  - (a) an appeal may be lodged against the compliance cost notice in the same way as, and at the same time as, the appeal against the development control order concerned, and
  - (b) the Court may deal with the appeal against the compliance cost notice at the same time as it deals with the appeal against the development control order.
- (3) On hearing an appeal against a compliance cost notice, the Court may—
  - (a) revoke the notice, or
  - (b) modify the notice, or
  - (c) make any other order with respect to the notice as the Court thinks fit.

**8.25 Appeals with respect to building information certificates** (cf previous s 149F)

- (1) An applicant—
  - (a) who is dissatisfied with a council's refusal to issue a building information certificate under Part 6, or
  - (b) who is dissatisfied with a council's failure to issue a building information certificate within the period prescribed by the regulations, or
  - (c) who is dissatisfied with a notice from the council to supply information in connection with an application for a building information certificate,may appeal to the Court.
- (2) The appeal may be made only within 6 months after the date on which the person is given notice of the decision appealed against or the end of the deemed refusal period referred to in subsection (1).
- (3) On hearing the appeal, the Court may do any one or more of the following—
  - (a) direct the council to issue a building information certificate in such terms and on such conditions as the Court thinks fit,
  - (b) revoke, alter or confirm a notice to supply information,

(c) make any other order that it considers appropriate.

**8.26 Regulations** (cf previous s 105(1)(p1)(t))

The regulations may make provision for or with respect to reviews and appeals under this Part, and in particular the procedure with respect to any such review or appeal.

**Part 9 Implementation and enforcement**

**Division 9.1 Ministerial and other enforcement powers**

**9.1 Directions by the Minister** (cf previous s 117)

- (1) The Minister may direct a public authority or person having functions under this Act or an environmental planning instrument to exercise those functions at or within such times as are specified in the direction.
- (2) In addition to any direction which may be given under subsection (1), the Minister may direct a council—
  - (a) to exercise its functions under section 3.21 or Division 3.4 of Part 3 in relation to the preparation of a local environmental plan in accordance with such principles, not inconsistent with this Act, as are specified in the direction, and
  - (b) without limiting paragraph (a), to include in a planning proposal prepared by the council provisions which will achieve or give effect to such principles or such aims, objectives or policies, not inconsistent with this Act, as are specified in the direction, and
  - (b1) on a matter relating to the establishment and procedure of a local planning panel, on the development applications (including applications to modify development consents) that are to be determined on behalf of a council by a local planning panel and on the planning proposals that are required to be referred to a local planning panel for advice, and
  - (c) to provide the Minister, in the manner and at the times specified in the direction, with reports, containing such information as the Minister may direct, on the council's performance in relation to planning and development matters.
- (2A) A direction under subsection (2)—
  - (a) may be given to a particular council or to councils generally, and
  - (b) may require the inclusion in planning proposals of provisions to achieve or give effect to particular principles, aims, objectives or policies, and
  - (c) may require planning proposals to be strictly consistent or substantially consistent with the terms of the direction (or provide for the circumstances in which an

inconsistency can be justified).

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

- (2B) A reference to a council in subsections (2) and (2A) includes a reference to a planning proposal authority under Division 3.4 that is not a council.
- (3) A public authority or person to whom a direction is given under subsection (1) or (2) shall comply, and is hereby empowered to comply, with the direction in accordance with the terms of the direction.
- (4) Before giving a direction under subsection (1) or (2), the Minister shall consult with the responsible Minister concerned.
- (4A) Before giving a direction under subsection (2)(c), the Minister is to consult with the Local Government and Shires Association of New South Wales and any other industry organisation the Minister considers to be relevant, in relation to the information that the Minister is proposing to seek. This requirement is in addition to the requirement under subsection (4).
- (5) A local environmental plan (or any planning proposal or purported plan) cannot in any court proceedings be challenged, reviewed, called into question, prevented from being made or otherwise affected on the basis of anything in a direction under subsection (1) or (2).

**9.2 Inquiry into councils by Secretary of Department of Premier and Cabinet** (cf previous s 117A)

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

**9.3 Action that may be taken against council following investigation** (cf previous s 117B)

- (1) If the Building Professionals Board has made its final report of the results of an investigation under section 45 of the *Building Professionals Act 2005* in relation to a council publicly available and is of the opinion that the council has not taken appropriate action about a matter investigated, the Board may—
  - (a) make recommendations to the Chief Executive of the Office of Local Government as to the measures that it considers appropriate to be taken in relation to the matter, or

(b) recommend to the Minister that the Minister take action against the council under this section.

**Note—**

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

- (2) The Minister may, on the recommendation of the Board under this section and following consultation with the Minister administering the *Local Government Act 1993*, make an order suspending a council's authority to exercise all or specified functions of a certifier.
- (3) A council must comply with an order under this section that relates to the council.
- (4) Despite any other provision of this Act, a council that is the subject of an order must not exercise any function of a certifier while the council's authority to exercise that function is suspended by operation of the order.
- (5) An order does not operate to suspend a council's authority to exercise the functions of a certifier in relation to any matter being dealt with by the council as a certifier before the commencement of the order, unless the order provides otherwise.
- (6) An order may contain provisions of a savings or transitional nature consequent on the suspension contained in the order.
- (7) Without limiting subsection (6), an order may contain provisions for or with respect to the following—
  - (a) the way in which any pending matter being dealt with by the relevant council as a certifier is to be completed, including, for example, enabling the council to complete any such matter or providing for the matter to be completed by a certifier,
  - (b) directing any fee paid to the council to act as a certifier in relation to any pending matter to be refunded,
  - (c) directing the council to pay any fees required to be paid to a certifier to complete any pending matter being dealt with by the council as a certifier.
- (8) The Minister must revoke an order if satisfied that the relevant council has implemented measures to address the matters that led to the making of the order.
- (9) Nothing prevents the Minister from amending an order made under this section by another order, including amending the first order to change the functions of a certifier to which the first order relates.
- (10) An order under this section must be in writing and published in the Gazette and takes effect on the day on which it is published in the Gazette or on a later day

specified in the order.

(11) (Repealed)

(12) An order under this section may be made whether or not any action has been taken by the Minister under section 9.6 in relation to the exercise of all or any of the functions of the council concerned.

#### **9.4 Gas and other petroleum activities—enforcement by EPA** (cf previous s 117BA)

Schedule 2A to the *Protection of the Environment Operations Act 1997* (Enforcement of gas and other petroleum legislation) applies to this Act, and the operation of this Act is subject to that Schedule.

#### **9.5 Enforcement of undertakings** (cf previous s 117C)

- (1) The Planning Secretary may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Minister, the Planning Secretary or a public authority has a function under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Planning Secretary. The consent of the Planning Secretary is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (3) The Planning Secretary may apply to the Court for an order under subsection (4) if the Planning Secretary considers that the person who gave the undertaking has breached any of its terms.
- (4) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking—
  - (a) an order directing the person to comply with that term of the undertaking,
  - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
  - (d) an order requiring the person to prevent, control, abate or mitigate any actual or likely damage to the built or natural environment caused by the breach,
  - (e) an order requiring the person to make good any actual or likely damage to the built or natural environment caused by the breach,
  - (f) any other order the Court considers appropriate.

- (5) A public authority may recommend that the Planning Secretary accept an undertaking under this section that the public authority has negotiated with a person proposing to give the undertaking in connection with a function of the public authority under this Act. The Planning Secretary may delegate to the public authority the function of applying to the Court for an order under subsection (4) in relation to the undertaking.

**9.6 Appointment of planning administrator or regional panel** (cf previous s 118)

- (1) The Minister may appoint a planning administrator or a regional panel (or all of them) to exercise functions of a council if—
- (a) the Minister is of the opinion that the council has failed to comply with its obligations under the planning legislation, or
  - (b) the Minister is of the opinion that the performance of a council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters, the time taken or in any other respect, or
  - (c) the council agrees to the appointment, or
  - (d) a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988* recommends that consideration be given to the appointment because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of functions conferred or imposed on the council by or under this Act.
- (2) A planning administrator may be appointed to exercise all or any particular function or class of functions of the council under this Act.
- (3) A regional panel may be appointed to exercise only all or any particular function or class of functions of the council—
- (a) as a consent authority, or
  - (b) in relation to making of environmental planning instruments under Part 3, or under Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993*, or
  - (c) in relation to the preparation, making and approval of development control plans, or
  - (d) in relation to the preparation and approval of contributions plans.
- (4) A regional panel may not exercise the functions of a council for a continuous period of more than 5 years.
- (5), (6) (Repealed)
- (7) A planning administrator is to be appointed by order of the Minister published on the

NSW planning portal or on the NSW legislation website.

- (7A) Functions are to be conferred on a regional panel under this section by order of the Minister published in the Gazette or on the NSW legislation website.
- (7B) Before appointing a planning administrator, or conferring functions under this section on a regional panel, the Minister must notify the council concerned in writing of the proposed action (including the reasons for the proposed action) and request the council to show cause why the action should not be taken.
- (7C) The Minister must consider any written submissions made by the council within 21 days of notice being given under subsection (7B) and must not take action under this section earlier than 21 days after the notice is given.
- (8) Before appointing a planning administrator, or conferring functions on a regional panel under this section, the Minister is to obtain the concurrence of the Minister for Local Government.
- (9) The Minister may appoint a planning administrator, or confer functions on a regional panel under this section, for a reason set out in subsection (1)(b) only if the Minister has, by order published on the NSW planning portal or on the NSW legislation website, provided heads of consideration for the exercise of power under subsection (1)(b), and has taken any of those heads of consideration that are relevant into account.

**Editorial note—**

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

- (10) The Minister may take action under this section in the circumstances specified in subsection (1)(d) without conducting an inquiry but, in that case, the Minister is to inquire into the matter as soon as practicable with a view to confirming or revoking the appointment.
- (11) The Minister must, as soon as reasonably practicable after appointing a planning administrator, or conferring functions on a regional panel under this section, make the reasons for that appointment publicly available.
- (12) In this section—
- failure to comply with obligations under the planning legislation*** includes—
- (a) a failure to carry into effect or enforce the provisions of this Act, an environmental planning instrument or a direction under section 3.33, 7.17 or 9.1, or
- (b) (Repealed)
- (c) without limiting paragraph (a), a failure to comply with a determination under section 3.34, or

(d) without limiting paragraph (a), a failure to provide access to and the use of staff and facilities to a planning body as required by or under this Act.

**regional panel** means a Sydney district or regional planning panel.

**serious corrupt conduct** means corrupt conduct (within the meaning of the *Independent Commission Against Corruption Act 1988*) that may constitute a serious indictable offence, being conduct in connection with the exercise or purported exercise of the functions of a councillor.

### **9.7 Functions of planning administrators or regional panels** (cf previous s 118AB)

- (1) During the period of appointment, the planning administrator or regional panel—
  - (a) is to exercise the functions of the council under this Act that are specified in the order of appointment, and
  - (b) is, in the exercise of those functions, taken to be the council, and
  - (c) is to exercise those functions to the exclusion of the council except to the extent that the order of appointment provides otherwise, and
  - (d) is, in the exercise of those functions, to give priority to particular functions to the extent that the order of appointment so provides.
- (2) Despite subsection (1), a planning administrator is not to enter into contracts in the exercise of the planning administrator's functions except—
  - (a) with the consent of the Minister and the concurrence of the Minister for Local Government, or
  - (b) in the case of contracts for the appointment of staff—with the authority conferred by a regulation made under section 9.11.
- (3) Subsection (1) has effect even if the appointment of the planning administrator is subsequently found not to have been validly made.

### **9.8 Costs of planning administrator** (cf previous s 118AC)

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



expenses.

**9.9 Council to assist planning administrator or Sydney district or regional planning panel** (cf previous s 118AD)

- (1) A council must, if directed to do so by the Minister, provide any of the following with such staff, facilities and documents as are specified in the direction—
  - (a) a planning administrator or Sydney district or regional planning panel appointed to exercise functions of the council,
  - (b) a staff member of any such planning administrator or Sydney district or regional planning panel,
  - (c) a member of any such panel.
- (2) A member of a council, or a member of staff of a council, must not obstruct any of the persons in subsection (1)(a)-(c) in the exercise of his or her functions under this Division.

Maximum penalty—10 penalty units.

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

Maximum penalty—10 penalty units.

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

**9.10 Annual report on activities of planning administrators and planning assessment panels** (cf previous s 118AE)

The Planning Secretary is, in the annual report of the Department, to report on the activities of planning administrators and planning assessment panels during the period covered by the annual report, including—

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

**9.11 Regulations** (cf previous s 118AF)

- (1) The regulations may make provision for or with respect to the appointment and functions of a planning administrator or regional panel and, in particular, for or with respect to—

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

(2) In this section—

**regional panel** means a Sydney district or regional planning panel.

### **9.12 Protection for exercise of certain functions of Minister** (cf previous s 118AG)

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

**exercise** of functions includes—

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

**proceedings** includes—

- (a) proceedings for an order under section 9.46, and
- (b) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (c) without limiting paragraph (b), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the [Supreme Court Act 1970](#).

## **Division 9.2 Investigative powers of departmental or council officers**

### **Subdivision 1 Preliminary**

#### **9.13 Definitions** (cf previous s 119A)

In this Division—

**investigation authority** means—

- (a) a council, in relation to an investigation officer appointed by the council, or
- (b) the Planning Secretary, in relation to any other investigation officer.

**investigation officer** means a person appointed as an investigation officer under this Division by the Planning Secretary (a **departmental investigation officer**) or by a council (a **council investigation officer**).

**investigation purpose** means a purpose for which a power may be exercised under this Division.

**occupier** of premises means the person who has the management or control of the premises (including a tenant or other lawful occupant who is not the owner).

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

**this Act** includes the regulations.

#### **9.14 Appointment of investigation officers** (cf previous s 119B)

- (1) The Planning Secretary or a council may appoint persons (including any class of persons) as investigation officers for the purposes of this Division.

**Note—**

Because of the definition of **investigation officer**, a person appointed by the Planning Secretary becomes a **departmental investigation officer** and a person appointed by the council becomes a **council investigation officer**.

- (2) A person's appointment as an investigation officer may be made generally, or made subject to conditions or restrictions or only for limited purposes.
- (3) A person's appointment as an investigation officer is to be made by written instrument (in the case of an individual appointment) or by notice published on the NSW planning portal or in the Gazette (in the case of the appointment of a class of persons).
- (4) Every investigation officer is to be provided by the investigation authority with an identification card as an investigation officer.
- (5) If persons of a class are appointed as investigation officers, they need not be provided with an identification card if the investigation authority is satisfied that they possess adequate identification as persons of that class.

**9.15 Purposes for which powers under Division may be exercised** (cf previous s 119C)

- (1) A departmental investigation officer may exercise powers under this Division for any of the following purposes—
  - (a) enabling the Minister or the Planning Secretary to exercise their functions under this Act,
  - (b) determining whether there has been compliance with or a contravention of this Act, including any instrument, consent, approval or any other document or requirement issued or made under this Act,
  - (c) obtaining information or records for purposes connected with the administration of this Act,
  - (d) generally for administering this Act.
- (2) A council investigation officer may exercise powers under this Division for any of the following purposes—
  - (a) enabling a council to exercise its functions under this Act,
  - (b) at the request of the Commissioner of Fire and Rescue NSW, determining whether or not adequate provision for fire safety has been made in or in connection with a building.
- (3) Nothing in this Division affects any function under any other provision of this Act or under any other Act.

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

**9.16 Powers of investigation officers to enter premises** (cf previous s 119D)

- (1) An investigation officer may enter—

- (a) any premises at which the officer reasonably suspects that any industrial, agricultural or commercial activities are being carried out—at any time during which those activities are being carried out there, and
  - (b) any other premises—at any reasonable time.
- (2) An investigation officer may enter a part of premises used for residential purposes only—
- (a) with the consent of the occupier, or
  - (b) under the authority of a search warrant issued under this Division, or
  - (c) if it is necessary to do so to inspect work being carried out under a consent, approval or certificate under this Act, or
  - (d) if a building certificate has been sought under this Act and it is necessary to do so to inspect the premises for the purpose of issuing the certificate.
- (3) An investigation officer may enter any premises under the authority of a search warrant issued under this Division.
- (4) The power to enter premises authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.
- (5) Reasonable force may be used to enter premises under this Division.
- (6) An investigation officer may enter premises under this Division with the aid of such investigation officers, police officers or other persons as the investigation officer considers necessary.

**9.17 Notice of entry of residential premises** (cf previous s 119E)

- (1) This section applies to the entry into any part of premises used for residential purposes only for the purpose of inspecting work being carried out under a consent, approval or certificate under this Act or for the purpose of issuing a building certificate sought in respect of the premises.
- (2) An investigation officer or the investigation authority must give the owner or occupier of the premises written notice of the intention to enter the premises before a person authorised to enter premises under this Division does so.
- (3) The notice must specify the day on which the person intends to enter the premises and must be given before that day.
- (4) Notice is not required to be given—
  - (a) if entry to the premises is made with the consent of the owner or occupier of the premises, or

- (b) if entry to the premises is made under the authority of a search warrant issued under this Division, or
- (c) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or
- (d) if entry is required urgently and the case is one in which the investigation authority has authorised in writing (either generally or in the particular case) entry without notice.

**9.18 Powers of investigation officers to do things at premises** (cf previous s 119F)

- (1) An investigation officer who lawfully enters premises may do anything that the officer thinks is necessary to be done for an investigation purpose, including (but not limited to) the following things—
  - (a) examine and inspect any works, plant or other article,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the officer thinks necessary,
  - (d) take such photographs, films, audio, video and other recordings as the officer thinks necessary,
  - (e) for the purpose of an inspection—
    - (i) open any ground and remove any flooring and take any measures that may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting, and
    - (ii) require the opening, cutting into or pulling down of any work if the officer has reason to believe or suspect that anything on the premises has been done in contravention of this Act,
  - (f) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks,
  - (g) require records to be produced for inspection,
  - (h) examine and inspect any records,
  - (i) copy any records,
  - (j) seize anything that the officer has reasonable grounds for believing is connected with an offence against this Act,
  - (k) do any other thing the officer is empowered to do under this Division.
- (2) The power to seize anything connected with an offence includes a power to seize—

- (a) a thing with respect to which the offence has been committed, and
- (b) a thing that will afford evidence of the commission of the offence, and
- (c) a thing that was used for the purpose of committing the offence.

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

**9.19 Search warrants** (cf previous s 119G)

- (1) An investigation officer may apply to an eligible issuing officer for the issue of a search warrant if the investigation officer believes on reasonable grounds that this Act is being or has been contravened at any premises.
- (2) An eligible issuing officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an investigation officer named in the warrant—
  - (a) to enter the premises, and
  - (b) to exercise any function of an investigation officer under this Division.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section—

**eligible issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**9.20 Care to be taken** (cf previous s 119H)

- (1) An investigation officer must do as little damage as possible in the exercise of a power to enter or search premises under this Division. The investigation authority must provide, if necessary, other means of access in place of any taken away or interrupted by an investigation officer.
- (2) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence. If entry by that means is not practicable, a new opening may be made in the enclosing fence, but the fence is to be fully restored when the need for entry ceases.

**9.21 Notification of use of force** (cf previous s 119I)

- (1) An investigation officer who uses force for the purpose of gaining entry to premises must promptly advise the investigation authority.
- (2) The investigation authority must give notice of the entry to such persons or

authorities as appear to the investigation authority to be appropriate in the circumstances.

### **Subdivision 3 Powers to obtain information**

#### **9.22 Requirement to provide information and records** (cf previous s 119J)

- (1) An investigation officer may, by notice in writing given to a person, require the person to furnish to the officer such information or records (or both) as the notice requires in connection with an investigation purpose.
- (2) The notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) The notice may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The person to whom any record is furnished under this section may take copies of it.
- (5) If any record required to be furnished is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.
- (6) An investigation officer may exercise a power under this section whether or not a power of entry is being or has been exercised.

#### **9.23 Power of investigation officers to require answers and record evidence** (cf previous s 119K)

- (1) An investigation officer may require a person to answer questions in relation to a matter connected with an investigation purpose if the officer suspects on reasonable grounds—
  - (a) that it is necessary to require information about the matter for that purpose, and
  - (b) that the person has knowledge of the matter.
- (2) The investigation authority may require a corporation to nominate a director or officer of the corporation who is authorised to represent the corporation for the purposes of answering questions under this section.
- (3) An investigation officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (4) The place and time at which a person may be required to attend is to be—



- (a) a place or time nominated by the person, or
  - (b) if the place and time nominated is not reasonable in the circumstances or a place and time is not nominated by the person, a place and time nominated by the investigation officer that is reasonable in the circumstances.
- (5) An investigation officer may exercise a power under this section whether or not a power of entry is being or has been exercised.

**9.24 Recording of evidence** (cf previous s 119L)

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

**Subdivision 4 Miscellaneous provisions applying to exercise of powers**

**9.25 Offences** (cf previous s 119M)

- (1) A person must not, without reasonable excuse, fail to comply with a requirement made of the person by an investigation officer in accordance with this Division.
- (2) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Division that the person knows is false or misleading in a material respect.
- (3) A person must not intentionally delay or obstruct an investigation officer in the exercise of the officer's powers under this Division.
- (4) (Repealed)

Maximum penalty—Tier 3 monetary penalty.

**9.26 Identification card to be produced** (cf previous s 119N)

- (1) An investigation officer who is exercising a function under this Division must produce the officer's identification card, if requested to do so by a person affected by the exercise of the function.
- (2) In this section, **identification card** means an identification card issued under section 9.14(4) or identification of the kind referred to in section 9.14(5).

**9.27 Assistance for investigation officers** (cf previous s 119O)

The investigation authority may, by notice in writing given to the owner or occupier of premises, require the owner or occupier to provide reasonable assistance and facilities to an investigation officer in the exercise of the officer's powers under this Division. The notice is to specify the assistance and facilities to be provided and the time and manner in which they are to be provided.

**9.28 Compensation** (cf previous s 119P)

The State must compensate all interested parties for any damage caused by a departmental investigation officer (and a council must compensate all interested parties for any damage caused by a council investigation officer) in exercising a power of entering premises but not any damage caused by the exercise of any other power, unless the occupier obstructed or hindered the officer in the exercise of the power of entry.

**9.29 Recovery of cost of entry and inspection** (cf previous s 119Q)

If, as a result of an inspection of premises under this Division by an investigation officer, the investigation authority requires any work to be carried out on or in the premises, the investigation authority may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.

**9.30 Notices** (cf previous s 119R)

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

**9.31 Provisions relating to requirements to furnish records or information or answer questions** (cf previous s 119S)

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

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

**9.32 Fire brigades inspection powers** (cf previous s 119T)

- (1) An authorised fire officer may exercise the powers of an investigation officer under this Division for the purpose of inspecting a building to determine whether or not—
- (a) adequate provision for fire safety has been made in or in connection with the building, or
  - (b) the fire safety provisions prescribed for the purposes of this section by the regulations have been complied with.
- (2) An authorised fire officer cannot inspect premises under this section (other than places of shared accommodation) for the purposes of determining whether or not adequate provision for fire safety has been made except—
- (a) when requested to do so by the council of the area in which the building is located, or
  - (b) when requested to do so by a person who holds himself or herself out as the owner, lessee or occupier of the building, or
  - (c) when the Commissioner of Fire and Rescue NSW has received a complaint in

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

- (3) A council must, at the request of the Commissioner of Fire and Rescue NSW, make available a council investigation officer for the purposes of an inspection under this section, and the officer concerned is to be present during the inspection.
- (4) The Commissioner of Fire and Rescue NSW must send a report of any inspection carried out under this section to the council concerned.
- (5) This Division applies (subject to the regulations) to an authorised fire officer in the same way that it applies to a council investigation officer. For that purpose (and subject to the regulations), a reference in this Division to the investigating authority is taken to be a reference to the Commissioner of Fire and Rescue NSW.
- (6) A council must, at the written request of the Commissioner of Fire and Rescue NSW, cause any building specified in the request to be inspected for the purpose of determining whether or not adequate provision for fire safety has been made in or in connection with the building. As soon as practicable after such an inspection has been carried out, the council must send a report of the inspection to the Commissioner.

#### **9.33 Accredited certifiers** (cf previous s 119U)

- (1) The regulations may confer on an accredited certifier specified powers of a council investigation officer under this Division for the purpose of exercising functions under this Act as an accredited certifier.
- (2) This Act applies (subject to the regulations) to any such accredited certifier in the same way that it applies to a council investigation officer.

### **Division 9.3 Development control orders**

#### **9.34 Orders that may be given** (cf previous s 121B)

- (1) The development control orders that may be given under this Act are as follows—
  - (a) general orders in accordance with the table to Part 1 of Schedule 5,
  - (b) fire safety orders in accordance with the table to Part 2 of Schedule 5,
  - (c) brothel closure orders in accordance with the table to Part 3 of Schedule 5.
- (2) The regulations may amend those tables.
- (3) A reference in those tables to a **planning approval** is a reference to a development consent, an approval for State significant infrastructure or a certificate under Part 6 (other than a compliance certificate).

**Note—**

See also Part 4 of the *Building Products (Safety) Act 2017*.

**9.35 Relevant enforcement authorities who may give orders** (cf previous ss 121B, 121C)

- (1) Development control orders may be given by the following (a **relevant enforcement authority**)—
- (a) the Minister or the Planning Secretary, but only in connection with State significant development, State significant infrastructure or any other development for which the Minister, the Planning Secretary or the Independent Planning Commission is or has been the consent authority,
  - (b) a council,
  - (c) a consent authority (not being the Independent Planning Commission, a Sydney district or regional planning panel, a council or an accredited certifier), but only in connection with development for which the authority is or has been the consent authority,
  - (d) in the case of fire safety orders (and without limiting the authority of other persons or bodies to give those orders)—the Commissioner of Fire and Rescue NSW or a member of staff of Fire and Rescue NSW, or a member of a permanent fire brigade, who is for the time being authorised by the Minister administering the *Fire and Rescue NSW Act 1989* to give fire safety orders (an **authorised fire officer**),
  - (e) in the case of brothel closure orders (and without limiting the authority of other persons or bodies to give those orders)—a person or body exercising planning or regulatory functions in respect of the area in which the premises are situated and authorised by the Minister to give brothel closure orders,
  - (f) any other public authority prescribed by the regulations for the purposes of this paragraph, but only in relation to orders under items 1, 3, 7, 10, 12 and 15 of Part 1 of Schedule 5 concerning land owned or managed by the person or body that is within the coastal zone (within the meaning of the *Coastal Management Act 2016*),
  - (g) the Minister or the Planning Secretary, but only in relation to orders under items 1, 3, 7, 10, 12 and 15 of Part 1 of Schedule 5 concerning land that is within the coastal zone (within the meaning of the *Coastal Management Act 2016*).
- (2) A development control order in connection with State significant infrastructure may be given only by the Minister or the Planning Secretary.
- (3) A development control order cannot be given in respect of the following land unless the written consent of the Minister has first been obtained—
- (a) vacant Crown land within the meaning of the *Crown Lands Act 1989*,

(b) Crown managed land within the meaning of the *Crown Land Management Act 2016*,

(c) a common within the meaning of the *Commons Management Act 1989*.

The Minister must not give consent in respect of vacant Crown land or a reserve within the meaning of Part 5 of the *Crown Lands Act 1989* until after the Minister has consulted the Minister administering the *Crown Lands Act 1989*.

- (4) A copy of any development control order given by a relevant enforcement authority other than a council is to be provided by that authority to the council for the area concerned.

### **9.36 Provisions relating to orders** (cf previous s 121B)

Part 4 of Schedule 5 contains provisions relating to the giving of orders and related matters.

### **9.37 Failure to comply with order—offence** (cf previous s 125)

- (1) A person to whom a development control order is given or is taken to have been given must comply with the terms of the order.
- (2) It is a sufficient defence to a prosecution for an offence against this section if the defendant satisfies the court that the defendant was unaware of the fact that the matter in respect of which the offence arose was the subject of an order.

Maximum penalty—Tier 1 monetary penalty.

#### **Note 1—**

For civil enforcement—see Division 9.5.

#### **Note 2—**

Schedule 5 provides that a development control order that is given to a person binds a successor in title or occupation of the land concerned and is taken to have been given to the successor. Information about outstanding orders can be obtained under this Act by prospective successors.

## **Division 9.4 Monitoring and environmental audits**

### **9.38 Application of Division** (cf previous s 122A)

- (1) This Division applies to—
- (a) the carrying out of State significant development that has development consent under Part 4, and
- (b) the carrying out of State significant infrastructure approved under Division 5.2, and

- (c) the carrying out of a project that was approved under Part 3A when that Part was in force or continued in operation.

In this Division, any such development, infrastructure or project is referred to as a project.

(1A) (Repealed)

(2) This Division does not affect the other provisions of this Act.

**9.39 Nature of monitoring and environmental audits** (cf previous s 122B)

- (1) For the purposes of this Division, **monitoring** of a project is the monitoring of the carrying out of the project to provide data on compliance with the approval of the project or on the project's environmental impact.
- (2) For the purposes of this Division, an **environmental audit** of a project is a periodic or particular documented evaluation of an approved project to provide information to the proponent of the project and to the persons administering this Act on compliance with the approval of the project or on the project's environmental management or impact.
- (3) A reference in this section to compliance with the approval of a project includes a reference to compliance with—
  - (a) the conditions to which the approval of the project is subject, and
  - (b) the requirements of this Act and of relevant provisions of any other Act referred to in Division 5.2.

**9.40 Minister may require monitoring or environmental audits by imposition of conditions on approved projects** (cf previous s 122C)

- (1) The Minister may, by the imposition of conditions on the approval for a project, require monitoring or an environmental audit or audits to be undertaken to the satisfaction of the Minister by the proponent of the project.
- (2) A condition requiring monitoring or an environmental audit—
  - (a) may be imposed at the time of the approval of the project or at any time afterwards, and
  - (b) may be varied or revoked at any time.

The imposition of a condition after the approval of a project, or the variation or revocation of a condition, is to be effected by a notice in writing served on the proponent of the project by the Minister.

(3) (Repealed)

**9.41 Provisions relating to conditions for monitoring and environmental audits** (cf previous s 122D)

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

**9.42 Offences relating to monitoring and environmental audits** (cf previous s 122E)

- (1) **False or misleading information in monitoring or audit report** A person must not include information in (or provide information for inclusion in)—
  - (a) a report of monitoring data, or
  - (b) an audit report produced to the Minister in connection with an environmental audit,if the person knows that the information is false or misleading in a material respect.
- (2) **Information not included in monitoring or audit report** The proponent of an approved project must not fail to include information in (or provide information for inclusion in)—
  - (a) a report of monitoring data, or
  - (b) an audit report produced to the Minister in connection with an environmental audit,if the proponent knows that the information is materially relevant to the monitoring or audit.



- (3) **Retention of monitoring data or audit documentation** The proponent of an approved project must—
- (a) retain any monitoring data in accordance with the relevant condition of the approval for at least 5 years after it was collected, and
  - (b) retain any documentation required to be prepared by the proponent in connection with an environmental audit for a period of at least 5 years after the audit report concerned was produced to the Minister, and
  - (c) produce during that period any such documentation on request to a departmental investigation officer under Division 9.2.
- (4) (Repealed)

Maximum penalty—Tier 3 monetary penalty.

**9.43 Self-incriminatory information and use of information** (cf previous s 122F)

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

## **Division 9.5 Civil enforcement proceedings**

**9.44 Definitions** (cf previous s 122)

In this Division—

- (a) a reference to a breach of this Act is a reference to—
  - (i) a contravention of or failure to comply with this Act, and
  - (ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act, and
- (b) a reference to this Act includes a reference to the following—

- (i) the regulations,
- (ii) an environmental planning instrument,
- (iii) a consent granted under this Act, including a condition subject to which a consent is granted,
- (iv) a complying development certificate, including a condition subject to which a complying development certificate is granted,
- (v) a development control order,
- (vi) a planning agreement referred to in section 7.4.

**9.45 Restraint etc of breaches of this Act** (cf previous s 123)

- (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (4) (Repealed)

**9.46 Orders of the Court** (cf previous s 124)

- (1) Where the Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (2) Without limiting the powers of the Court under subsection (1), an order made under that subsection may—
  - (a) where the breach of this Act comprises a use of any building, work or land—restrain that use,
  - (b) where the breach of this Act comprises the erection of a building or the carrying out of a work—require the demolition or removal of that building or work, or
  - (c) where the breach of this Act has the effect of altering the condition or state of any building, work or land—require the reinstatement, so far as is practicable, of that building, work or land to the condition or state the building, work or land was in

immediately before the breach was committed.

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

**9.47 Evidence of use of premises as backpackers' hostel** (cf previous s 124AA)

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

**Note—**

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

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

**9.48 Proceedings relating to use of premises as brothel** (cf previous s 124AB)

- (1) **Application** This section applies to proceedings before the Court to remedy or restrain a breach of this Act in relation to the use of premises as a brothel. Subsections (5) and (6) extend to any such proceedings in relation to all brothels within the meaning of the *Restricted Premises Act 1943*.
- (2) **Adjournments to obtain consent only in exceptional circumstances** The Court may not

adjourn the proceedings under section 9.46(3) unless it is of the opinion that the adjournment is justified because of the exceptional circumstances of the case. The fact that it is intended to lodge a development application, or that a development application has been made, is not by itself an exceptional circumstance.

- (3) **Time for making development application limited to 10 days** If the Court adjourns the proceedings under section 9.46(3), the proceedings must be brought back before the Court if a development application is not made within 10 working days of the adjournment.
- (4) **Only one adjournment** The Court may make only one adjournment under section 9.46(3) of particular proceedings.
- (5) **Finding may be made on circumstantial evidence** In any proceedings—
  - (a) the Court may rely on circumstantial evidence to find that particular premises are used as a brothel, and
  - (b) the Court may make such a finding without any direct evidence that the particular premises are used as a brothel.
- (6) However, the presence in any premises of articles or equipment that facilitate or encourage safe sex practices does not of itself constitute evidence of any kind that the premises are used as a brothel.

**Note—**

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

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

**9.49 Special provision where development consent tainted by corruption** (cf previous s 124A)

- (1) For the purposes of this section, a decision of a consent authority to grant or modify a development consent is tainted by corrupt conduct—
  - (a) if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the suspension of the development consent or modification with a view to its revocation because of serious corrupt

conduct by the consent authority or by a councillor or other officer or member of staff of the consent authority in connection with the grant of the consent or modification, or

- (b) if criminal proceedings are instituted against the consent authority or against a councillor or other officer or member of staff of the consent authority for serious corrupt conduct in connection with the grant of the consent or modification, or
- (c) if the consent authority, councillor or other officer or member of staff makes an admission of such serious corrupt conduct.

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

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

- (7) A development consent for the erection of a building, the carrying out of a work or the demolition of a building or work (or a modification of any such consent) is not to be suspended or revoked under this section if the building, work or demolition authorised by the consent (or by the modification) has been substantially commenced.

- (8) Section 4.59 does not apply to proceedings to which this section applies.
- (9) Compensation is not payable by the Minister or the State for any loss suffered by a person because—
- (a) a decision is suspended under this section (whether or not the Court decides to revoke the decision), or
  - (b) a decision is revoked under this section.
- (10) This section applies—
- (a) to decisions made by a consent authority before or after the commencement of this section, and
  - (b) to serious corrupt conduct, and to criminal proceedings instituted or admissions made in respect of serious corrupt conduct, before or after that commencement.
- (11) In this section—

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

## Division 9.6 Criminal offences and proceedings

### 9.50 Offences against this Act and the regulations (cf previous s 125)

(1)–(3) (Repealed)

(3A) A person who—

- (a) aids, abets, counsels or procures another person to commit, or
- (b) conspires to commit,

an offence against this Act or the regulations arising under any other provision is guilty of an offence against this Act or the regulations arising under that provision and is liable, on conviction, to the same penalty applicable to an offence arising under that provision.

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

complied with.

**9.51 Maximum monetary penalty—Tier 1, Tier 2 or Tier 3**

If **Tier 1**, **Tier 2** or **Tier 3** is specified as the maximum monetary penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and liable to a monetary penalty not exceeding the relevant penalty specified in the following sections. If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified.

**9.52 Maximum penalty—Tier 1** (cf previous s 125A)

- (1) If **Tier 1** is specified as the maximum monetary penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and (subject to subsection (2)) liable to a penalty not exceeding—
  - (a) in the case of a corporation—
    - (i) \$5 million, and
    - (ii) for a continuing offence—a further \$50,000 for each day the offence continues, or
  - (b) in the case of an individual—
    - (i) \$1 million, and
    - (ii) for a continuing offence—a further \$10,000 for each day the offence continues.
- (2) A Tier 1 maximum monetary penalty applies only if the prosecution establishes (to the criminal standard of proof)—
  - (a) that the offence was committed intentionally, and
  - (b) that the offence—
    - (i) caused or was likely to cause significant harm to the environment, or
    - (ii) caused the death of or serious injury or illness to a person.

For the Tier 1 maximum monetary penalty to apply, the court attendance notice or application commencing the proceedings must allege that those factors apply to the commission of the offence.

- (3) If a Tier 1 maximum monetary penalty is specified in this Act but does not apply because of subsection (2), then a Tier 2 maximum penalty applies instead.

- (4) If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified.

**9.53 Maximum penalty—Tier 2** (cf previous s 125B)

- (1) If **Tier 2** is specified as the maximum penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and liable to a penalty not exceeding—
- (a) in the case of a corporation—
- (i) \$2 million, and
  - (ii) for a continuing offence—a further \$20,000 for each day the offence continues, or
- (b) in the case of an individual—
- (i) \$500,000, and
  - (ii) for a continuing offence—a further \$5,000 for each day the offence continues.
- (2) If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified.

**9.54 Maximum penalty—Tier 3** (cf previous s 125C)

- (1) If **Tier 3** is specified as the maximum penalty at the end of a provision (or a number of provisions) of this Act, a person who contravenes or fails to comply with that provision (or those provisions) is guilty of an offence and liable to a penalty not exceeding—
- (a) in the case of a corporation—
- (i) \$1 million, and
  - (ii) for a continuing offence—a further \$10,000 for each day the offence continues, or
- (b) in the case of an individual—
- (i) \$250,000, and
  - (ii) for a continuing offence—a further \$2,500 for each day the offence continues.
- (2) If a period of imprisonment is also specified, the person is also liable to imprisonment not exceeding the period so specified.

**Note—**



Section 10.13 provides that the regulations may create offences and impose a maximum monetary penalty for an offence against the regulations not exceeding \$110,000.

**9.55 (Repealed)**

**9.56 Additional provisions relating to penalties** (cf previous s 126)

(1), (2) (Repealed)

(2A) Part 8.3 of the *Protection of the Environment Operations Act 1997* (Court orders in connection with offences) applies to an offence against this Act or the regulations in the same way as it applies to an offence against that Act or the regulations under that Act, but only in relation to proceedings before the Court and subject to any modifications prescribed by the regulations under this Act.

**Note—**

An offence under section 251 of that Act in relation to an order will become an offence against this Act.

(3) Where a person is guilty of an offence involving the destruction of or damage to a tree or vegetation, the court dealing with the offence may, in addition to or in substitution for any pecuniary penalty imposed or liable to be imposed, direct that person—

(a) to plant new trees and vegetation and maintain those trees and vegetation to a mature growth, and

(b) to provide security for the performance of any obligation imposed under paragraph (a).

(4) In determining the sentence for a person who has previously been found guilty of an offence that arises from a failure to comply with a brothel closure order within the meaning of Part 3 of Schedule 5 or the unlawful use of premises for the purposes of a brothel, a court must take into account the fact of the previous offence as an aggravating factor and is, accordingly, to impose a higher sentence than it would otherwise impose.

**9.57 Proceedings for offences** (cf previous s 127)

(1) Proceedings for an offence against this Act may be taken before the Local Court or before the Court in its summary jurisdiction.

(2) Proceedings for an offence against the regulations may be taken before the Local Court.

(3) If proceedings in respect of an offence against this Act are brought in the Local Court, the maximum monetary penalty that the court may impose in respect of the offence is, notwithstanding any other provisions of this Act, 1,000 penalty units or the maximum monetary penalty provided by this Act in respect of the offence, whichever is the lesser.

- (4) If proceedings in respect of an offence against this Act are brought in the Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.
- (5) Proceedings for an offence against this Act or the regulations may be commenced not later than 2 years after the offence was alleged to be committed.
- (5A) However, proceedings for any such offence may also be commenced within, but not later than, 2 years after the date on which evidence of the alleged offence first came to the attention of—
- (a) in relation to proceedings for an offence instituted by or with the consent of the Planning Secretary or a member of staff of the Department—any investigation officer who is a member of the staff of the Department, or
  - (b) in relation to proceedings for an offence instituted by or with the consent of a council or a member of staff of a council—any investigation officer who is a member of the staff of that council, or
  - (c) in relation to proceedings for an offence instituted by any other person—any investigation officer.
- In this subsection, **investigation officer** means an investigation officer within the meaning of Division 9.2, whether or not the person has the functions of an investigation officer in connection with the offence concerned.
- (5B) If subsection (5A) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of any such investigation officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any such investigation officer is the date specified in the information or application, unless the contrary is established.
- (5C) This section applies despite anything in the [Criminal Procedure Act 1986](#) or any other Act.
- (6) (Repealed)
- (7) A person shall not be convicted of an offence against this Act or the regulations where the matter constituting the offence is, at the date upon which the conviction would, but for this subsection, be made—
- (a) the subject of proceedings under section 9.45, which proceedings have not been concluded, or
  - (b) the subject of an order made under section 9.46.
- (8) Nothing in subsection (7) precludes a conviction being made where the proceedings

referred to in paragraph (a) of that subsection are concluded otherwise than by the making of an order under section 9.46.

**9.58 Penalty notices for certain offences** (cf previous s 127A)

- (1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice—
  - (a) may be served personally or by post, or
  - (b) if it relates to an offence involving the use of a vehicle, may be addressed to the owner (without naming the owner or stating the owner's address) and may be served by leaving it on or attaching it to the vehicle.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may—
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences, and
  - (d) prescribe different amounts of penalties for the same offence, including, in the case of a continuing offence, different amounts of penalties for different periods during which the offence continues.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

- (9) In this section, **authorised person** means a person who is declared by the regulations to be an authorised person for the purposes of this section or who belongs to a class of persons so declared.

## Part 10 Miscellaneous

### 10.1 Act to bind Crown (cf previous s 6)

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

### 10.2 Settlement of disputes (cf previous s 121)

- (1) Where a dispute arises between the Department or the Planning Secretary, and a public authority, other than a council, with respect to—

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

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

- (1A) Where a dispute arises between a public authority, other than a council, and another public authority, other than a council, with respect to—

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

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

- (2) Where a dispute arises between a public authority (including the Department and the Planning Secretary) and a council with respect to—

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

a party to the dispute may submit that dispute to the Minister for settlement in

accordance with this section.

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

### **10.3 Bush fire prone land** (cf previous s 146)

- (1) If a bush fire risk management plan applies to land within the area of a council, the council must, within 12 months after the commencement of this section (and before the end of the period of every 5 years after the commencement)—
  - (a) request the Commissioner of the NSW Rural Fire Service to designate land (if any) within the area that the Commissioner considers, having regard to the bush fire risk management plan, to be bush fire prone land, and
  - (b) must record any land so designated on a map.
- (2) The Commissioner of the NSW Rural Fire Service must, if satisfied that the land designated by the Commissioner has been recorded by the council on a map, certify the map as a bush fire prone land map for the area of the council.
- (2A) The Commissioner of the NSW Rural Fire Service may, in accordance with the regulations, review the designation of land on a bush fire prone land map for an area at any time after the map is certified and revise the map accordingly. The revised map—
  - (a) becomes the bush fire prone land map for the area on being certified by the Commissioner, and

(b) is to be provided to the council by the Commissioner.

- (3) Land recorded for the time being as bush fire prone land on a bush fire prone land map for an area is bush fire prone land for the area for the purposes of this or any other Act.
- (4) The bush fire prone land map for an area is to be available for public inspection during normal office hours for the council.
- (5) In this section—

***bush fire risk management plan*** has the same meaning as it has in the *Rural Fires Act 1997*.

**Note—**

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

**10.4 Disclosure of political donations and gifts** (cf previous s 147)

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

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

**Note—**

This Act makes provision for planning applications to be referred to various bodies for advice or determination. Section 9.49 makes special provision where development consent is tainted by corruption. The *Local Government Act 1993* makes provision with respect to voting by local councillors with a conflict of interest in any matter before the council.

- (2) In this section—

**gift** means a gift within the meaning of the *Electoral Funding Act 2018*.

**Note—**

A gift includes a gift of money or the provision of any other valuable thing or service for no consideration or inadequate consideration.

**local councillor** means a councillor (including the mayor) of the council of a local

government area.

**relevant planning application** means—

- (a) a formal request to the Minister, a council or the Planning Secretary to initiate the making of an environmental planning instrument or development control plan in relation to development on a particular site, or
- (b) a formal request to the Minister or the Planning Secretary for development on a particular site to be made State significant development or State significant infrastructure or declared a project to which Part 3A applies, or
- (b1) an application for approval of State significant infrastructure (or for the modification of the approval for any such infrastructure), or
- (c) an application for approval of a concept plan or project under Part 3A (or for the modification of a concept plan or of the approval for a project), or
- (d) an application for development consent under Part 4 (or for the modification of a development consent), or
- (e) any other application or request under or for the purposes of this Act that is prescribed by the regulations as a relevant planning application,

but does not include—

- (f) an application for (or for the modification of) a complying development certificate, or
- (g) an application or request made by a public authority on its own behalf or made on behalf of a public authority, or
- (h) any other application or request that is excluded from this definition by the regulations.

**relevant public submission** means a written submission made by a person objecting to or supporting a relevant planning application or any development that would be authorised by the granting of the application.

**reportable political donation** means a reportable political donation within the meaning of the [Electoral Funding Act 2018](#) that is required to be disclosed under that Act.

**Note—**

Reportable political donations include those of or above \$1,000.

(3) A person—

- (a) who makes a relevant planning application to the Minister or the Planning

Secretary is required to disclose all reportable political donations (if any) made within the relevant period to anyone by any person with a financial interest in the application, or

- (b) who makes a relevant public submission to the Minister or the Planning Secretary in relation to the application is required to disclose all reportable political donations (if any) made within the relevant period to anyone by the person making the submission or any associate of that person.

The relevant period is the period commencing 2 years before the application or submission is made and ending when the application is determined.

- (4) A person who makes a relevant planning application to a council is required to disclose the following reportable political donations and gifts (if any) made by any person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined—
  - (a) all reportable political donations made to any local councillor of that council,
  - (b) all gifts made to any local councillor or employee of that council.

A reference in this subsection to a reportable political donation made to a local councillor includes a reference to a donation made at the time the person was a candidate for election to the council.

- (5) A person who makes a relevant public submission to a council in relation to a relevant planning application made to the council is required to disclose the following reportable political donations and gifts (if any) made by the person making the submission or any associate of that person within the period commencing 2 years before the submission is made and ending when the application is determined—
  - (a) all reportable political donations made to any local councillor of that council,
  - (b) all gifts made to any local councillor or employee of that council.

A reference in this subsection to a reportable political donation made to a local councillor includes a reference to a donation made at the time the person was a candidate for election to the council.

- (6) The disclosure of a reportable political donation or gift under this section is to be made—
  - (a) in, or in a statement accompanying, the relevant planning application or submission if the donation or gift is made before the application or submission is made, or
  - (b) if the donation or gift is made afterwards, in a statement to the person to whom the relevant planning application or submission was made within 7 days after the



donation or gift is made.

- (7) For the purposes of this section, a person has a financial interest in a relevant planning application if—
- (a) the person is the applicant or the person on whose behalf the application is made, or
  - (b) the person is an owner of the site to which the application relates or has entered into an agreement to acquire the site or any part of it, or
  - (c) the person is associated with a person referred to in paragraph (a) or (b) and is likely to obtain a financial gain if development that would be authorised by the application is authorised or carried out (other than a gain merely as a shareholder in a company listed on a stock exchange), or
  - (d) the person has any other interest relating to the application, the site or the owner of the site that is prescribed by the regulations.
- (8) For the purposes of this section, persons are associated with each other if—
- (a) they carry on a business together in connection with the relevant planning application (in the case of the making of any such application) or they carry on a business together that may be affected by the granting of the application (in the case of a relevant planning submission), or
  - (b) they are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
  - (c) they are directors of the same body corporate, or they are directors of different bodies corporate that are related bodies corporate under the *Corporations Act 2001* of the Commonwealth, or
  - (d) one is a director of a body corporate and the other is the body corporate or a related body corporate under the *Corporations Act 2001* of the Commonwealth, or
  - (e) they have any other relationship prescribed by the regulations.
- (9) The disclosure of reportable political donations under this section is to include disclosure of the following details of each such donation made during the relevant disclosure period—
- (a) the name of the party or person for whose benefit the donation was made,
  - (b) the date on which the donation was made,
  - (c) the name of the donor,
  - (d) the residential address of the donor (in the case of an individual) or the address of

- the registered or other official office of the donor (in the case of an entity),
- (e) the amount (or value) of the donation,
- (f) in the case of a donor that is an entity and not an individual—the Australian Business Number of the entity,
- (g) in relation to the disclosure of a political donation that is a reportable political donation by operation of section 6(2) of the *Electoral Funding Act 2018*—details that separately identify that political donation and the earlier political donation or donations with which it is aggregated under that subsection.

**Note—**

The above details are the details required to be disclosed of political donations under the *Electoral Funding Act 2018*.

- (10) The disclosure of gifts under this section is to include disclosure of the following details of each such gift made during the relevant disclosure period—
  - (a) the name of the person to whom the gift was made,
  - (b) the date on which the gift was made,
  - (c) the name of the person who made the gift,
  - (d) the residential address of the person who made the gift (in the case of an individual) or the address of the registered or other official office of the person who made the gift (in the case of an entity),
  - (e) the amount (or value) of the gift.
- (11) A person is guilty of an offence against this section if the person fails to make a disclosure of a political donation or gift in accordance with this section that the person knows, or ought reasonably to know, was made and is required to be disclosed under this section. The maximum penalty for any such offence is the maximum penalty under the *Electoral Funding Act 2018* for making a false statement in a declaration of disclosures lodged under that Part.
- (12) Disclosures of reportable political donations and gifts under this section are to be made available to the public on, or in accordance with arrangements notified on—
  - (a) a website maintained by the Department (in the case of planning applications or submissions made to the Minister or the Planning Secretary), or
  - (b) a website maintained by the council (in the case of planning applications or submissions made to that council).

The disclosures are to be made so available within 14 days after the disclosures are

made under this section.

- (13) This section applies to relevant planning applications or submissions made after the commencement of this section and, in relation to any such application or submission, extends to political donations or gifts made before that commencement.

**10.5 Disclosure and misuse of information** (cf previous s 148)

- (1) A person shall not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made—
- (a) with the consent of the person from whom the information was obtained,
  - (b) in connection with the administration or execution of this Act,
  - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings,
  - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
  - (e) with other lawful excuse.
- (2) A person acting in the administration or execution of this Act shall not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land, for the purpose of gaining either directly or indirectly an advantage for himself or herself, or a person with whom he or she is associated.
- (3) A person acting in the administration or execution of this Act, and being in a position to do so, shall not, for the purpose of gaining either directly or indirectly an advantage for himself or herself, or a person with whom he or she is associated, influence—
- (a) the making of any provision of an environmental planning instrument or proposed environmental planning instrument, or
  - (b) the determination of a development application, or
  - (c) a decision concerning a complying development certificate, or
  - (d) the giving of a development control order.
- (4) In this section, a person is associated with another person if the person is the spouse, de facto partner, sibling, parent or child of the other person.
- (5) (Repealed)
- (6) In this section, **this Act** includes the *Greater Sydney Commission Act 2015*.

**Note—**

“De facto partner” is defined in section 21C of the *Interpretation Act 1987*.

Maximum penalty—Tier 3 monetary penalty or imprisonment for 6 months, or both.

#### **10.6 Offence—false or misleading information** (cf previous s 148B)

- (1) A person must not provide information in connection with a planning matter that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty—Tier 3 monetary penalty.

- (2) (Repealed)

- (3) For the purposes of this section, a person provides information in connection with a planning matter if—

- (a) the person is an applicant for a consent, approval or certificate under this Act (or for the modification of any such consent, approval or certificate) and the information is provided by the applicant in or in connection with the application, or
- (b) the person is engaged by any such applicant and the information is provided by that person for the purposes of the application, or
- (c) the person is a proponent of proposed development and the information is provided in or in connection with a formal request to the Minister, a council, the Planning Secretary or other planning authority for the making of provisions of an environmental planning instrument, Ministerial planning order, plan or other document under this Act in relation to the proposed development, or
- (d) the person provides information in connection with any other matter or thing under this Act that the regulations declare to be the provision of information in connection with a planning matter for the purposes of this section.

- (4) An environmental impact statement or other document is part of information provided in connection with a matter if it forms part of or accompanies the matter or is subsequently submitted in support of the matter.

#### **Note—**

The *Crimes Act 1900* contains other offences relating to false and misleading information: section 192G (Intention to defraud by false or misleading statement—maximum penalty 5 years imprisonment); sections 307A, 307B and 307C (False or misleading applications/information/documents—maximum penalty 2 years imprisonment or \$22,000, or both).

#### **10.7 Planning certificates** (cf previous s 149)

- (1) A person may, on payment of the prescribed fee, apply to a council for a certificate under this section (a **planning certificate**) with respect to any land within the area of the council.

- (2) On application made to it under subsection (1), the council shall, as soon as practicable, issue a planning certificate specifying such matters relating to the land to which the certificate relates as may be prescribed (whether arising under or connected with this or any other Act or otherwise).
- (3) (Repealed)
- (4) The regulations may provide that information to be furnished in a planning certificate shall be set out in the prescribed form and manner.
- (5) A council may, in a planning certificate, include advice on such other relevant matters affecting the land of which it may be aware.
- (6) A council shall not incur any liability in respect of any advice provided in good faith pursuant to subsection (5). However, this subsection does not apply to advice provided in relation to contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land within the meaning of Schedule 6.
- (7) For the purpose of any proceedings for an offence against this Act or the regulations which may be taken against a person who has obtained a planning certificate or who might reasonably be expected to rely on that certificate, that certificate shall, in favour of that person, be conclusively presumed to be true and correct.

**10.8 Evidence** (cf previous s 150)

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

(b) a council—that council shall furnish a certified copy or extract to the person applying for it on payment of the prescribed fee.

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

(a) may be to the same scale as the original document, map or plan or may be an enlarged or reduced copy, and

(b) where the original document, map or plan is coloured, may be a coloured copy or may be a black and white copy.

**10.9 Proof of ownership of land** (cf previous s 151)

(1) In any legal proceedings under this Act, in addition to any other method of proof available—

(a) evidence that the person proceeded against is rated in respect of any land to any rate under the *Local Government Act 1993*, otherwise than as a rate paying lessee, is, until the contrary is proved, evidence that the person is the owner of the land, or

(b) a certificate furnished by the Registrar-General under subsection (2) with respect to any land is, until the contrary is proved, evidence that the person described in the certificate as the proprietor or owner of the land was the owner of that land at the time or during the period specified in the certificate pursuant to subsection (3)(b)(i) or (ii).

(2) If—

(a) written application with respect to any land is made to the Registrar-General under this subsection by a consent authority, and

(b) the Registrar-General has been paid the prescribed fee,

the Registrar-General is to furnish to the consent authority a certificate setting out such of the particulars specified in subsection (3) as are recorded in the Register kept under the *Real Property Act 1900* or in the General Register of Deeds maintained under Division 1 of Part 23 of the *Conveyancing Act 1919* and as the Registrar-General is able to ascertain from the information about the land furnished in the application.

(3) The particulars are—

(a) the situation and a description of the land, and

(b) in the case of—

(i) land subject to the provisions of the *Real Property Act 1900*—the names and addresses of the person registered under that Act as the proprietor of the land at the time or during the period in respect of which the application is made

and the date of registration of the instruments under which they became so registered, or

(ii) land not subject to those provisions—the names and addresses of the owner of the land at the time or during the period in respect of which the application is made and the dates, and dates of registration under Division 1 of Part 23 of the *Conveyancing Act 1919*, of the instruments kept in the General Register of Deeds maintained under that Division under which the owner became the owner of the land.

(4) Judicial notice is to be taken for the purposes of this Act of the signature of the Registrar-General and of a Deputy Registrar-General.

(5) In subsection (2)(b), the reference to the prescribed fee is, in relation to an application made under that paragraph—

(a) in the case of land subject to the provisions of the *Real Property Act 1900*—a reference to the fee prescribed under that Act for the purposes of that paragraph, or

(b) in the case of land not subject to those provisions—a reference to the fee prescribed under the *Conveyancing Act 1919* for the purposes of that paragraph.

#### **10.10 Right to be heard** (cf previous s 152)

Except as provided by this Act or the regulations, if this Act confers a right on a person to be heard, that person shall be entitled to be heard personally or by an Australian legal practitioner or agent.

#### **10.11 Notices** (cf previous s 153)

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

(a) in the case of an individual—

(i) by delivering it to him or her, or

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

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

(i) by leaving it at that person's place of business, or, if that person is a corporation, at the registered office of that corporation, with a person apparently not less than 16 years of age and apparently in the service of the person to whom the notice or other document is required to be given or on

whom the notice or other document is required to be served, or

(ii) by sending it by prepaid post addressed to that person at the address, if any, specified by that person for the giving of notices or service of documents under this Act, or, where no such address is specified, at that person's last known place of business, or

(c) by sending it by facsimile or electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person.

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

**10.12 Transfer or amalgamation of land to which environmental planning instrument applies** (cf previous s 154)

(1) Where land is transferred from one area to another area or is amalgamated with land of another area—

(a) subject to paragraph (b), an environmental planning instrument shall continue to apply to the land to which it applied immediately before the date of the transfer or amalgamation, and so applies as in force at that date, and

(b) the council of that other area has the functions conferred or imposed on a council by or under this Act by virtue of any environmental planning instrument applying to the land so transferred or amalgamated immediately before the date of the transfer or amalgamation.

(2) Where land is transferred from one area to another area—

(a) a planning proposal that has been placed on public exhibition in accordance with Division 3.4 and that applies to land including that land may, with the written consent of the council of that other area given within 2 months after the date of the transfer, be proceeded with as if the transfer had not taken effect,

(b) subject to paragraph (c), the plan, when it takes effect as an environmental planning instrument, shall apply to that land, and so applies as in force at the date of publication of the plan on the NSW legislation website, and

(c) the council of that other area has the functions conferred or imposed on a council by or under this Act by virtue of the plan, when it takes effect as an environmental planning instrument, so far as it applies to that land.

(3) An environmental planning instrument referred to in subsection (1) or (2), to the extent that it applies to land so referred to, so applies subject to any subsequent



environmental planning instrument applying to that land.

- (4) This section applies to and in respect of a transfer or amalgamation of land, whether or not it is effected pursuant to the *Local Government Act 1993*.

**10.13 Regulations** (cf previous s 157)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—
- (a) any function conferred by this Act on any person, or
  - (b) requiring information, particulars, returns and statistics to be furnished to the Planning Secretary by councils and the time and mode of furnishing and the manner of verifying them, or
  - (c) the form, time, manner and mode of giving notices under this Act, or
  - (c1) the content, form, erection, maintenance and removal of signs relating to the carrying out of development or persons involved with the carrying out of development, or
  - (d) obligations on persons regarding fire and building safety, or
  - (d1) temporary structures, or
  - (d2) entertainment venues (including in connection with the existing use of premises), or
  - (e) the purposes, objectives, provision and maintenance of affordable housing, including—
    - (i) means for determining whether a household is a very low income, low income or moderate income household (for example, by reference to income statistics produced by the Australian Bureau of Statistics), and
    - (ii) means for determining affordable housing costs payable in respect of affordable housing (for example, by reference to percentages of household income), and
    - (iii) enabling the Minister by order to determine matters relating to affordable housing (including the matters referred to in subparagraphs (i) and (ii)), or
  - (f) procedural matters in relation to the making of local environmental plans, or
  - (g) the documents to be provided to, and the matters to be notified to, a consent authority, council or certifier under this Act.

- (1A) The regulations may create offences punishable by a monetary penalty not exceeding \$110,000.
- (2) A provision of a regulation may—
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.
- (3) A regulation may apply, adopt or incorporate any publication as in force from time to time.

**10.14 Copyright in documents used for purposes of this Act—indemnification** (cf previous s 158A)

- (1) A relevant person who is not entitled to copyright in a document that is part of a planning matter is taken to have indemnified all persons using the document for the purposes of this Act against any claim or action in respect of a breach of copyright in the document.
- (1A) The regulations may require a relevant person who is entitled to copyright in a document that is part of a planning matter to give (in the planning matter or otherwise) a licence to the State or a council to use the copyright material for the purposes of this Act. The regulations may also require a relevant person who is not so entitled to that copyright to give a warranty (in the planning matter or otherwise) that the relevant person has a licence to so use the copyright material from the person who is entitled to copyright in any such document.
- (2) For the purposes of this section—
  - (a) a development application or an application for a complying development certificate (or an application to modify a development consent) is a planning matter, and the applicant is the relevant person, and
  - (b) an application for approval to carry out State significant infrastructure (or an application to modify an approval of State significant infrastructure) is a planning matter, and the applicant is the relevant person, and
  - (c) a Part 3A project or concept plan application within the meaning of Schedule 6A (or a request to modify an approval or concept plan under Part 3A), and any environmental assessment or report under Part 3A, is a planning matter, and the applicant is the relevant person, and

- (d) an environmental impact statement under Division 5.1 or 5.2 (including any preferred infrastructure report under Division 5.2) is a planning matter, and the proponent under Division 5.1 or 5.2 is the relevant person, and
  - (e) a planning proposal under Part 3 is a planning matter, and the person preparing the proposal is the relevant person, and
  - (f) a planning agreement referred to in section 7.4 is a planning matter, and the developer under the agreement is the relevant person, and
  - (g) a matter or thing under this Act that is declared by the regulations for the purposes of this section is a planning matter, and the person declared by the regulations is the relevant person in respect of that matter or thing.
- (3) For the purposes of this section, a document is part of a planning matter if it forms part of or accompanies the planning matter, or is subsequently submitted by the relevant person in support of the planning matter or is exhibited or made public in accordance with a requirement made by or under this Act in relation to the planning matter.
- (4) The regulations may limit the operation of this section.
- (4A) This section extends to planning matters in paper or electronic form.
- (5) This section extends to a planning matter that was made or submitted before the commencement of this section.

**10.15 Savings and transitional regulations—general** (cf previous s 159)

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any Act or instrument that amends this Act (whether before or after the commencement of this section).
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **10.16 Making of *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* and related provisions**

- (1) Schedule 13 to the *Environmental Planning and Assessment Amendment Act 2017* is taken to be and has effect as a regulation made under this Act.
- (2) Part 2 of the *Subordinate Legislation Act 1989* does not apply to the regulation set out in that Schedule (but applies to any amendment or repeal of the regulation).
- (3) Part 3 of the *Subordinate Legislation Act 1989* does not apply to the regulation set out in that Schedule or to any amendment or repeal of the regulation.
- (4) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the regulation set out in that Schedule (but apply to any amendment or repeal of the regulation).
- (5) Section 30C of the *Interpretation Act 1987* applies to that Schedule as if it were an ancillary provision of the *Environmental Planning and Assessment Amendment Act 2017*. The repeal of that Schedule by the operation of section 30C does not affect the continued effect of the regulation set out in that Schedule.

## **Schedule 1 Community participation requirements**

### **Part 1 Mandatory community participation requirements**

#### **Division 1 Minimum public exhibition periods for plans**

##### **1 Draft community participation plans (Division 2.6)**

28 days.

##### **2 Draft regional or district strategic plans (Division 3.1)** (cf previous s 75AH)

45 days.

##### **3 Draft local strategic planning statements (Division 3.1)**

28 days.

##### **4 Planning proposals for local environmental plans subject to a gateway determination (Division 3.4)** (cf previous s 57)

28 days or—

- (a) if a different period of public exhibition is specified in the gateway determination for the proposal—the period so specified, or
- (b) if the gateway determination specifies that no public exhibition is required because of the minor nature of the proposal—no public exhibition.

**5 Draft development control plans (Division 3.6)** (cf previous cl 18(2) of EPA Reg)

28 days.

**6 Draft contribution plans (Division 7.1)** (cf previous cl 26(4) of EPA Reg)

28 days.

**Division 2 Minimum public exhibition periods for development applications and other matters**

**7 Application for development consent (other than for complying development certificate, for designated development or for State significant development)**

14 days or—

- (a) if a different period of public exhibition is specified for the application in the relevant community participation plan—the period so specified, or
- (b) if the relevant community participation plan specifies that no public exhibition is required for the application—no public exhibition.

**8 Application for development consent for designated development** (cf previous s 79)

28 days.

**9 Application for development consent for State significant development** (cf previous s 89F)

28 days.

**10 Application for modification of development consent that is required to be publicly exhibited by the regulations**

The period (if any) determined by the consent authority in accordance with the relevant community participation plan.

**11 Environmental impact statement obtained under Division 5.1** (cf previous s 113)

28 days.

**12 Environmental impact statement for State significant infrastructure under Division 5.2** (cf previous s 115Z)

28 days.

**13 Re-exhibition of any amended application or matter referred to above required by or under this Schedule**

The period (if any) determined by the person or body responsible for publicly exhibiting the application or matter.

## **Division 3 Provisions relating to public exhibition**

### **14 Publicly exhibited plans, applications etc not to be made or determined until after exhibition period**

- (1) If this Part requires a plan, application or other matter to be publicly exhibited, the plan or application is not to be made or determined (or the other matter finalised) until after the minimum period of public exhibition under this Part.
- (2) If the plan, application or other matter is placed on public exhibition for a specified longer period, the plan or application is not to be made or determined (or the other matter finalised) until after that specified longer period.

### **15 Submissions during exhibition period**

- (1) Submissions with respect to a plan, application or other matter may be made during the minimum period of its public exhibition under this Part.
- (2) If the plan, application or other matter is placed on public exhibition for a specified longer period, submissions may be made during that specified longer period.

### **16 Exclusion of Christmas/New Year period**

The period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition.

**Note—**

See also section 36(2) of the [Interpretation Act 1987](#) for the applicable rule where an exhibition period includes a weekend or public holiday.

### **17 Rule where more than one exhibition period applies**

If a particular matter has different exhibition or notification periods that apply under this Part, the longer period applies.

### **18 Provision relating to public exhibition of EIS**

A public authority is not required to make available for public inspection any part of an environmental impact statement whose publication would, in the opinion of the public authority, be contrary to the public interest because of its confidential nature or for any other reason.

## **Division 4 Mandatory notification requirements for applications and decisions**

### **19 Development and other applications and decisions—general**

The mandatory notification requirements of development and other applications under this Act and of the making of decisions with respect to those applications under this Act

are the requirements prescribed by this Part, or the requirements prescribed by the regulations, as mandatory notification requirements.

## **20 Public notification of certain decisions and reasons for the decisions**

- (1) This clause applies to the following decisions—
  - (a) the determination by the Minister (or the Independent Planning Commission) of an application for State significant infrastructure,
  - (b) the determination by the Minister (or the Independent Planning Commission) of a request for a modification of an approval for State significant infrastructure (being a request that was publicly exhibited),
  - (c) the determination by a consent authority of an application for development consent,
  - (d) the determination by a consent authority of an application for the modification of a development consent (being an application that was publicly exhibited),
  - (e) the granting of an approval, or the decision to carry out development, by a determining authority where an environmental impact statement was publicly exhibited under Division 5.1.
- (2) The mandatory notification requirement in relation to a decision to which this clause applies is public notification of—
  - (a) the decision, and
  - (b) the date of the decision, and
  - (c) the reasons for the decision (having regard to any statutory requirements applying to the decision), and
  - (d) how community views were taken into account in making the decision.
- (3) The requirement in subclause (2)(c) may be satisfied by reference to any document that contains the reasons for decision.

## **Part 2 General provisions**

### **21 Additional or revised mandatory public exhibition and notification requirements**

The regulations may amend Part 1 of this Schedule—

- (a) to prescribe additional mandatory requirements for community participation, or
- (b) to make other changes to that Part.

## 22 Regulations relating to public exhibition

- (1) The regulations may set out the method of public exhibition under this Act, how people can make submissions and how people can obtain further information.
- (2) The regulations may specify the requirements for something to be considered a submission for the purposes of this Act.

## 23 Re-exhibition

- (1) The regulations may specify the circumstances in which a plan or other matter is required or not required to be re-exhibited.
- (2) Re-exhibition is not required if the environmental impact of the development has been reduced or not increased.

## 24 Regulations relating to community consultation by applicants for planning approvals

The regulations may require applicants for development consent or other approvals under this Act (or for the modification of any such consent or approval) to undertake community consultation in relation to their applications.

## Schedule 2 Provisions relating to planning bodies

(Sections 2.3, 2.11, 2.12, 2.16, 2.20)

### Part 1 Preliminary

#### 1 Definitions (cf previous cl 268C of EPA Reg)

In this Schedule—

**appoint** means nominate in relation to a council nominee of a Sydney district or regional planning panel.

**member** means the chairperson, council nominee or other member of a planning body.

**planning body** means any of the following—

- (a) the Independent Planning Commission,
- (b) a Sydney district planning panel,
- (c) a regional planning panel,
- (d) a local planning panel,
- (e) a panel established by the Minister or Planning Secretary under section 2.3.

### Part 2 Independent Planning Commission—public hearings and



## **procedure**

### **2 Definitions**

In this Part—

**chairperson** means the person appointed by the Minister as the chairperson of the Commission.

**Commission** means the Independent Planning Commission.

### **3 Public hearings by Commission** (cf previous cl 268R of EPA Reg)

- (1) The Commission must conduct a public hearing if (and only if)—
  - (a) the Commission is requested to do so by the Minister under section 2.9(1)(d), or
  - (b) the Minister has determined in a gateway determination that the Commission is to conduct a public hearing into a planning proposal for provisions of a local environmental plan.
- (2) The Commission must give reasonable notice of the public hearing—
  - (a) by advertisement published in such manner as the Commission thinks fit, and
  - (b) by notice in writing to any public authorities that the Commission thinks are likely to have an interest in the subject-matter of the public hearing.
- (3) The notice of a public hearing must contain the following matters—
  - (a) the subject-matter of the public hearing,
  - (b) the time, date and place of the public hearing,
  - (c) a statement that submissions may be made to the Commission in relation to the subject-matter concerned not later than the date specified in the notice (being a date not less than 14 days after the notice is given),
  - (d) if the public hearing relates to an application for development consent—a statement of the effect the public hearing will have on any appeal rights in relation to the application.
- (4) If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that part of any public hearing is to take place in private and give directions as to the persons who may be present.

### **4 Attendance of witnesses and production of documents at public hearings** (cf previous cl

268Q of EPA Reg)

(1) The chairperson of the Commission may require a person—

- (a) to attend a public hearing of the Commission to give evidence, or
- (b) to produce to the Commission a document that is relevant to a public hearing conducted by the Commission,

at a time, date and place specified in a notice given to the person.

(2) A person must not, without reasonable excuse, fail to comply with a requirement to attend a public hearing, or to produce a document.

Maximum penalty—\$11,000.

(3) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering a written statement.

**5 Commission may restrict publication of evidence** (cf previous cl 268U of EPA Reg)

(1) If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that evidence given before the Commission or contained in documents lodged with the Commission is not to be published or may only be published subject to restrictions.

(2) A person must not, without reasonable excuse, fail to comply with a direction given by the Commission under this clause.

Maximum penalty—\$11,000.

**6 Reports by Commission after public hearing** (cf previous cl 268V of EPA Reg)

(1) The Commission must provide a copy of its findings and recommendations after a public hearing held by it (a **final report**)—

- (a) to the Minister or to such other person or body as the Minister may direct, and
- (b) in the case of proposed development the subject of an application for development consent—to the consent authority and to any public authority whose concurrence is required to the development, and

(c) to such other persons as the Commission thinks fit.

(2) A final report must contain a summary of any submissions received by the Commission in relation to the subject-matter of the public hearing.

(3) A final report is to be made publicly available on the NSW planning portal within a reasonable time after it has been provided to the Minister or to a person or body

directed by the Minister.

- (4) This clause does not apply if the public hearing relates to proposed development the subject of an application for development consent for which the Commission is the consent authority.

**7 Annual report by Commission** (cf previous cl 268W of EPA Reg)

- (1) The Commission must provide to the Minister an annual report on its operations in the preceding year.
- (2) An annual report is to be made publicly available on a government website within a reasonable time after it has been provided to the Minister.

**8 Regulations**

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

- (a) the procedures of the Commission, including the procedures for public hearings relating to any or all, or a class, of its functions,
- (b) without limiting paragraph (a), providing that parties are not to be represented (whether by an Australian legal practitioner or any other person) or are to be represented only in specified circumstances,
- (c) requiring the provision of information to the Commission for the purposes of a public hearing or the exercise of any of its other functions,
- (d) the provision of information or reports by the Commission.

**Part 3 Sydney district and regional planning panels—constitution**

**9 Constitution of Sydney district planning panels**

The following Sydney district planning panels are constituted for the parts of the Greater Sydney Region (within the meaning of the [Greater Sydney Commission Act 2015](#)) situated within the local government areas specified in relation to each panel—

- (a) Sydney Eastern City Planning Panel—local government areas of Bayside, Burwood, Canada Bay, Inner West, City of Randwick, Strathfield, Waverley and Woollahra.
- (b) Sydney North Planning Panel—local government areas of Hornsby, Hunter’s Hill, Kuring-gai, Lane Cove, Mosman, North Sydney, Northern Beaches, City of Ryde and City of Willoughby.
- (c) Sydney South Planning Panel—local government areas of Canterbury-Bankstown, Georges River and Sutherland Shire.
- (d) Sydney Central City Planning Panel—local government areas of City of Blacktown,

Cumberland, City of Parramatta and The Hills Shire.

- (e) Sydney Western City Planning Panel—local government areas of City of Blue Mountains, City of Campbelltown, Camden, City of Fairfield, City of Hawkesbury, City of Liverpool, City of Penrith and Wollondilly.

## **10 Constitution of regional planning panels**

The following regional planning panels are constituted for the parts of the State situated within the local government areas specified in relation to each panel—

- (a) Hunter and Central Coast Regional Planning Panel—local government areas of Central Coast, Cessnock City, Dungog, Lake Macquarie City, Maitland City, Mid-Coast, Muswellbrook, Newcastle City, Port Stephens, Singleton and Upper Hunter Shire.
- (b) Northern Regional Planning Panel—local government areas of Armidale Regional, Ballina, Bellingen, Byron, Clarence Valley, Coffs Harbour City, Glen Innes Severn Shire, Gunnedah, Gwydir, Inverell, Kempsey, Kyogle, Lismore City, Liverpool Plains, Moree Plains, Nambucca, Narrabri, Port Macquarie-Hastings, Richmond Valley, Tamworth Regional, Tenterfield, Tweed, Uralla and Walcha.
- (c) Southern Regional Planning Panel—local government areas of City of Albury, Bega Valley, Coolamon, Cootamundra-Gundagai Regional, Eurobodalla, Goulburn Mulwaree, Greater Hume Shire, Hilltops, Junee, Kiama, Lockhart, Queanbeyan-Palerang Regional, Shellharbour City, Shoalhaven City, Snowy Monaro Regional, Snowy Valleys, Temora, Upper Lachlan Shire, Wagga Wagga City, Wingecarribee, Wollongong City and Yass Valley.
- (d) Western Regional Planning Panel—local government areas of Balranald, Bathurst Regional, Berrigan, Bland, Blayney, Bogan, Bourke, Brewarrina, Broken Hill City, Cabonne, Carrathool, Central Darling, Cobar, Coonamble, Cowra, Dubbo Regional, Edward River, Federation, Forbes, Gilgandra, Griffith City, Hay, Lachlan, Leeton, City of Lithgow, Mid-Western Regional, Murray River, Murrumbidgee, Narrandera, Narromine, Oberon, Orange City, Parkes, Walgett, Warren, Warrumbungle Shire, Weddin and Wentworth.

## **Part 4 Provisions relating to members of planning bodies**

### **11 Terms of office of members** (cf previous Sch 3, cl 5; Sch 4, cl 4)

- (1) A member of a planning body holds office, subject to this Act and the regulations, for such period (not exceeding 3 years) as is specified in the member's instrument of appointment.
- (2) That period may be determined by reference to the occurrence of a specified event or the completion of the exercise of particular functions of the planning body.

- (3) A member is eligible (if otherwise qualified) for re-appointment.
- (4) A member of the Independent Planning Commission may not hold office as a member for more than 6 years in total.
- (4A) Despite any other provision of this clause, the Minister may, by instrument in writing, extend the term of appointment of a member of the Independent Planning Commission for the purpose of enabling the member to complete a function as a member after the time that the term would otherwise end.
- (5) A State member of a Sydney district planning panel may not hold office as a member of that panel for more than 9 years in total.
- (6) A member of a local planning panel may not hold office as a member of that panel for more than 6 years in total.

**12 Full-time or part-time office** (cf previous Sch 3, cl 6; Sch 4, cl 5)

- (1) The Minister may appoint a member of the Independent Planning Commission on either a full-time or part-time basis. The Minister may change the basis of the appointment during the member's term of office.
- (2) The office of a member of any other planning body is a part-time office.

**13 Deputy chairperson—Sydney district or regional planning panels** (cf previous Sch 4, cl 7)

- (1) A Sydney district planning panel or a regional planning panel may elect a deputy chairperson from among its State members (either for the duration of the person's term of office as a member or for a shorter term).
- (2) The deputy chairperson vacates office as deputy chairperson if he or she—
  - (a) is removed from that office by the panel, or
  - (b) resigns that office by instrument in writing addressed to the panel, or
  - (c) ceases to be a member of the panel.

**14 Remuneration of members** (cf previous Sch 3, cl 7; Sch 4, cl 6; cl 268L of EPA Reg)

- (1) A member of a planning body (other than a full-time member of the Independent Planning Commission) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.
- (2) A full-time member of the Independent Planning Commission is entitled to be paid—
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and

- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

**15 Alternate members (except for Independent Planning Commission)** (cf previous Sch 4, cl 8; cl 268M of EPA Reg)

- (1) In this clause—

**appointing authority** for a member of a planning body means the Minister, the Planning Secretary or the council that appointed the member.

**planning body** does not include the Independent Planning Commission.

- (2) The appointing authority may, from time to time, appoint a person to be the alternate of a member of a planning body, and may revoke any such appointment.
- (3) The Minister may direct appointing authorities to appoint persons as alternates of members of local planning panels.
- (4) A person is not eligible to be appointed as the alternate of a member of a planning body unless the person is eligible to be appointed as that member.
- (5) In the absence of a member, the member's alternate may, if available, act in the place of the member.
- (6) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (7) A person may be appointed as the alternate of 2 or more members, but may represent only one of those members at any meeting of the planning body.
- (8) In the case of State members of a Sydney district or regional planning panel or members of a local planning panel, a number of persons may be appointed as the alternate of one or more members. The person who may act in the place of a member on any particular occasion is the person determined by the chairperson of the panel concerned.
- (9) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (10) If the chairperson of a planning body is appointed from among a number of members of the body, the alternate of a member who is the chairperson does not have the member's functions as chairperson unless the appointing authority authorises the alternate to exercise those functions.

**16 Removal from office of members** (cf previous Sch 3, cl 8; Sch 4, cl 9)

- (1) The Minister may remove a member of a planning body (other than a local planning

panel) from office at any time for any reason and without notice. However, the Minister must provide a written statement of the reasons for removing the member from office and make the statement publicly available.

- (2) The Minister may remove a member of a planning body from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.
- (3) In the case of a council nominee of a Sydney district or regional planning panel, the applicable council may remove the member from office at any time for any reason and without notice. However, the general manager of the applicable council must provide a written statement of the reasons for removing the council nominee from office and make the statement publicly available.
- (4) In the case of a member of a local planning panel, the applicable council may remove the member from office at any time for any reason and without notice. However, the general manager of the applicable council must provide a written statement of the reasons for removing the member from office and make the statement publicly available.

**17 Vacancy in office of member** (cf previous Sch 3, cl 8; Sch 4, cl 9)

- (1) The office of a member becomes vacant if the member—
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister or, in the case of a council nominee of a Sydney district or regional planning panel or a member of a local planning panel), addressed to the applicable council, or
  - (d) is removed from office under this or any other Act, or
  - (e) is absent from 3 consecutive meetings of the planning body of which reasonable notice has been given to the member personally or by post, except on leave granted by the planning body or unless the member is excused by the planning body for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment

for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or

(i) in the case of a member of a Sydney district planning panel, a regional planning panel or a local planning panel—becomes a councillor, property developer or real estate agent and for that reason is not eligible to be appointed as a member of the panel.

(2) If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

**18 Chairperson—vacation of office** (cf previous Sch 3, cl 10; Sch 4, cl 11)

(1) If the chairperson of a planning body is appointed by the Minister or the Planning Secretary from among a number of members of the body, the person vacates office as chairperson if he or she—

(a) is removed from the office of chairperson by the Minister or the Planning Secretary, or

(b) resigns the office of chairperson by instrument in writing addressed to the Minister or the Planning Secretary.

(2) A person vacates office as chairperson of a planning body if the person vacates office as a member of the body.

**19 Effect of certain other Acts** (cf previous Sch 3, cl 12; Sch 4, cl 13)

(1) The statutory provisions relating to the employment of Public Service employees do not apply to the appointment or office of a member.

(2) If by or under any Act provision is made—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

**20 Special provision regarding composition of Sydney district or regional planning panel in the case of coastal protection works**

(1) This clause applies where a Sydney district or regional planning panel deals with the determination of a development application regarding coastal protection works on



land within the coastal zone (within the meaning of the *Coastal Management Act 2016*).

- (2) If any State member of the panel (other than the chairperson) does not have expertise in coastal engineering or coastal geomorphology, the Minister is to appoint an alternate of the member who has that expertise, and that alternate member is to act in the place of the State member when the panel deals with the determination of that development application.

## **Part 5 Provisions relating to procedure of planning bodies**

### **21 General procedure** (cf previous cl 268D of EPA Reg)

- (1) The procedure for the calling of meetings of a planning body and for the conduct of business at those meetings is, subject to this Act, to be as determined by the planning body.
- (2) Subject to this clause, a planning body is not bound by the rules of evidence.
- (3) Nothing in this Schedule derogates from any law relating to Crown privilege.

### **22 Quorum** (cf previous cl 268E of EPA Reg)

The quorum for a meeting of a planning body is a majority of its members for the time being.

### **23 Presiding member** (cf previous cl 268F of EPA Reg)

- (1) The chairperson or, in the absence of the chairperson, the deputy chairperson (if any) or a person elected by the members is to preside at a meeting of a planning body.
- (2) In the case of the Independent Planning Commission, the chairperson may appoint a member to preside at a meeting of the Commission, in which case a reference in subclause (1) to the chairperson includes a reference to any such appointed member.
- (3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **24 Voting** (cf previous cl 268G of EPA Reg)

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

### **25 Meetings** (cf previous cl 268H of EPA Reg)

- (1) The Independent Planning Commission may conduct its meetings in public, and is required to do so for the conduct of any business that is required by the Minister to be conducted in public.

- (2) A planning body (other than the Independent Planning Commission) is required to conduct its meetings in public.
- (3) A planning body is required to record meetings conducted in public (whether an audio/video record, an audio record or a transcription record). The record is required to be made publicly available on the website of or used by the planning body.
- (4) A planning body may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members. Any such meeting is taken to be conducted in public if the meeting is recorded and the record made publicly available as required by subclause (3).

**26 Transaction of business outside meetings** (cf previous cl 268I of EPA Reg)

- (1) A planning body may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the planning body for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the planning body.
- (2) For the purposes of the approval of a resolution under this clause, the chairperson and each member of the planning body have the same voting rights as they have at an ordinary meeting of the planning body.
- (3) A resolution approved under this clause is to be recorded in the minutes of the meetings of the planning body and is to be made publicly available on the website of or used by the planning body.
- (4) Papers may be circulated among the members for the purposes of this clause by electronic transmission of the information in the papers concerned.

**27 Disclosure of pecuniary interests** (cf previous Sch 3, cl 11; Sch 4, cl 12)

- (1) If—
  - (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the planning body, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the planning body.
- (2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of—

- (a) the member, or
  - (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
  - (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.
- (3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2)(b) or (c)—
- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
  - (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
  - (c) just because the member is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.
- (4) A disclosure by a member at a meeting of the planning body that the member, or a spouse, de facto partner, relative, partner or employer of the member—
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the planning body and that record must be open at all reasonable hours to inspection by any person on payment of the fee determined by the planning body.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not—
- (a) be present during any deliberation of the planning body with respect to the matter, or
  - (b) take part in any decision of the planning body with respect to the matter.
- (7) For the purposes of the making of a determination by the planning body under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to

which the disclosure relates must not—

- (a) be present during any deliberation of the planning body for the purpose of making the determination, or
- (b) take part in the making by the planning body of the determination.

- (8) A contravention of this clause does not invalidate any decision of the planning body.
- (9) This clause extends to a council nominee of a Sydney district or regional planning panel, and the provisions of Part 2 (Duties of disclosure) of Chapter 14 of the *Local Government Act 1993* do not apply to any such nominee when exercising functions as a member of the panel.

## **28 Code of conduct**

- (1) The Minister may approve a code of conduct that is applicable to members of a planning body.
- (2) A code of conduct may relate to any conduct (whether by way of act or omission) in carrying out a member's functions that is likely to bring the planning body or its members into disrepute.
- (3) The Minister may authorise a planning body to vary a code of conduct in relation to the members of that planning body.

## **29 Provision of information by planning bodies** (cf previous cl 268NA of EPA Reg)

A planning body must provide the Minister with such information and reports as the Minister may, from time to time, request.

## **Part 6 Planning Ministerial Corporation—property provisions**

### **30 General land functions of Corporation** (cf previous s 11)

- (1) For the purposes of this Act, the Planning Ministerial Corporation may, in such manner and subject to such terms and conditions as it thinks fit, sell, lease, exchange or otherwise dispose of or deal with land vested in the Corporation and grant easements or rights-of-way over that land or any part of it.
- (2) Without affecting the generality of subclause (1), the Planning Ministerial Corporation may, in any contract for the sale of land vested in it, include conditions for or with respect to—
  - (a) the erection of any building on that land by the purchaser within a specified period, or
  - (b) conferring on the Corporation an option or right to repurchase that land if the purchaser has failed to comply with a condition referred to in paragraph (a), or

- (c) conferring on the Corporation an option or right to repurchase that land if the purchaser wishes to sell or otherwise dispose of that land before the expiration of a specified period or requiring the purchaser to pay to the Corporation a sum determined in a specified manner where the Corporation does not exercise that option or right, or
  - (d) the determination of the repurchase price payable by the Corporation pursuant to a condition referred to in paragraph (b) or (c).
- (3) A condition included in a contract of sale pursuant to subclause (2) does not merge in the transfer of title to the land, the subject of the contract of sale, on completion of the sale.
- (4) In addition to other functions conferred or imposed on the Planning Ministerial Corporation under this or any other Act, the Corporation may, for the purposes of this Act—
- (a) manage land vested in the Corporation, and
  - (b) cause surveys to be made and plans of surveys to be prepared in relation to land vested in the Corporation or in relation to any land proposed to be acquired by the Corporation, and
  - (c) demolish, or cause to be demolished, any building on land vested in the Corporation of which it has exclusive possession, and
  - (d) provide, or arrange, on such terms and conditions as may be agreed upon for the location or relocation of utility services within or adjoining or in the vicinity of land vested in the Corporation, and
  - (e) subdivide and re-subdivide land and consolidate subdivided or re-subdivided land vested in the Corporation, and
  - (f) set out and construct roads on land vested in the Corporation or on land of which the Corporation has exclusive possession, or on any other land with the consent of the person in whom it is vested, and
  - (g) erect, alter, repair and renovate buildings on and make other improvements to or otherwise develop land vested in the Corporation or any other land, with the consent of a person in whom it is vested, and
  - (h) cause any work to be done on or in relation to any land vested in the Corporation or any other land, with the consent of the person in whom it is vested, for the purpose of rendering it fit to be used for any purpose for which it may be used under any environmental planning instrument that applies to the land, and
  - (i) by notification published in the Gazette, dedicate any land vested in the

Corporation as a reserve for public recreation or other public purposes and fence, plant and improve any such reserve.

- (5) In the exercise of any function under subclause (4)(f), consultations are to be held with Roads and Maritime Services, the relevant council and such other persons as the Minister determines.
- (6) In relation to any land (whether vested in the Planning Ministerial Corporation or not), the Corporation may exercise any function that is necessary or convenient to be exercised in, or for any purpose of, the application of any part of a Development Fund established under Division 7.3.

**31 Power of Corporation to acquire land etc** (cf previous ss 9, 10, 11, 12)

- (1) The Planning Ministerial Corporation may, for the purposes of this Act or pursuant to any function conferred or imposed on the Minister or the Planning Secretary by an environmental planning instrument, acquire land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) Without limiting the generality of subclause (1), the Planning Ministerial Corporation may acquire in any manner authorised by that subclause—
  - (a) any land to which an environmental planning instrument applies and which the Minister considers should be made available in the public interest for any purpose, or
  - (b) any land of which that proposed to be acquired under this clause forms part, or
  - (c) any land adjoining or in the vicinity of any land proposed to be acquired under this clause, or
  - (d) a leasehold or any other interest in land.
- (3) The Planning Ministerial Corporation may acquire, by gift inter vivos, devise or bequest, any property for the purposes of this Act and may agree to the condition of any such gift, devise or bequest.
- (4) The rule of law against remoteness of vesting does not apply to any such condition to which the Planning Ministerial Corporation has agreed.
- (5) If the Planning Ministerial Corporation acquires property under subclause (3), neither an instrument that effects the acquisition nor any agreement pursuant to which the property is acquired is chargeable with duty under the *Duties Act 1997*.
- (6) For the purposes of the *Public Works and Procurement Act 1912*, any acquisition of land under this clause is taken to be for an authorised work and the Planning Ministerial Corporation is, in relation to that authorised work, taken to be the Constructing Authority. Sections 34, 35, 36 and 37 of the *Public Works and*

*Procurement Act 1912* do not apply in respect of works constructed by the Planning Ministerial Corporation.

**32 Notification of interests** (cf previous s 12)

- (1) The Registrar-General must, at the request of the Planning Ministerial Corporation made in a manner approved by the Registrar-General and on payment of the fee prescribed under the *Real Property Act 1900*, make, in the Register kept under that Act, a recording appropriate to signify—
  - (a) that land specified in the request is held subject to a condition authorised under clause 30, or
  - (b) that a recording made pursuant to paragraph (a) has ceased to have effect.
- (2) The Planning Ministerial Corporation is not to make a request pursuant to subclause (1)(a) except for the purpose of ensuring compliance with the conditions in the contract of sale under which the land was sold, but the Registrar-General is not to be concerned to inquire whether any such request has been made for that purpose.
- (3) Where a recording pursuant to subclause (1)(a) has been made in respect of any land, the Registrar-General must not register under the *Real Property Act 1900* a transfer of that land to or by a person other than the Planning Ministerial Corporation unless it would be so registrable if this Schedule had not been enacted and unless—
  - (a) a recording pursuant to subclause (1)(b) has been made in respect of the land, or
  - (b) the consent of the Corporation to the transfer has been endorsed on the transfer.
- (4) When a recording is made pursuant to subclause (1) in respect of any land, the Planning Secretary must notify the council in whose area the land is situated of the recording.

**Schedule 3 NSW planning portal and online delivery of planning services and information**

**1 Establishment, content and maintenance of NSW planning database** (cf previous s 158C)

- (1) The NSW planning database is established for the purposes of this Act.
- (2) The NSW planning database is an electronic repository of—
  - (a) documents that are required by or under this Act to be published on the NSW planning portal, and
  - (b) environmental planning instruments, plans or other documents that are required by or under this Act to be published on the NSW legislation website, and
  - (c) spatial datasets or other maps that are adopted or incorporated by way of

reference by those instruments, plans or documents, and

- (d) other documents or information relating to the administration of this Act required to be published on the NSW planning portal by the regulations or by the Planning Secretary.
- (3) The NSW planning database is to maintain historical as well as current versions of documents and other material required to be published on the NSW planning portal.
- (4) The NSW planning database is to be compiled and maintained as determined by the Planning Secretary.
- (5) The NSW planning database may comprise separate databases for different material. Any such separate databases may be compiled and maintained by other agencies, including the legislation database compiled and maintained by the Parliamentary Counsel for publication of environmental planning instruments or other material on the NSW legislation website.

**2 Public access to documents and information on NSW planning portal** (cf previous s 158D)

- (1) The Planning Secretary is to make arrangements for documents or other information in the NSW planning database to be published on the NSW planning portal and such other websites as are determined by the Planning Secretary.
- (2) The Planning Secretary may certify the form of such documents or other information that is correct.
- (3) Environmental planning instruments, plans or other documents and information need not be published on the NSW planning portal if they are published on the NSW legislation website (or the website of another agency) and can be readily accessed from the NSW planning portal.
- (4) If the NSW planning portal is not available to publish a document or other information for technical or other reasons, the document or other information may be published on the NSW legislation website.

**Note—**

The NSW planning portal is defined by section 1.4 to mean the website with the URL of [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au), or any other website, used by the Planning Secretary to provide public access to documents or other information in the NSW planning database.

**3 Regulations and other provisions relating to online planning services and information** (cf previous s 158E)

- (1) The regulations may make provision for or with respect to the online delivery of planning services and information, including—
  - (a) the NSW planning portal and other specialised planning portals (including the status of services and information delivered online), and



- (b) access to information (and the issue of certificates) about land use zoning, development standards and other information relating to particular land, and
  - (c) the lodgment or submission of applications and other things under this Act, and
  - (d) the assessment of categories of development for which there are codified criteria or standards, and
  - (e) the registration of consents, approvals or certificates (or other documents) and their effect on registration, and
  - (f) the notification of the making or determination of applications for (or the issue or grant of) consents, approvals or certificates (or other documents) by means of the NSW planning portal.
- (2) The charges or fees that may be prescribed by the regulations under this Act extend to charges or fees in relation to the online delivery of planning services and information (including the compilation and maintenance of the NSW planning database, the operation of the NSW planning portal and the enhancement of the NSW planning database and the NSW planning portal).
- (3) For the purpose of facilitating online delivery of planning services and information—
- (a) the Planning Secretary may determine standard technical requirements with respect to—
    - (i) the preparation of environmental planning instruments, plans or other documents and of any spatial datasets or other maps that are referred to in (or adopted under) those instruments, plans or documents, and
    - (ii) the form of applications for consents, approvals or certificates (or other documents) under this Act and the form of any such consents, approvals or certificates (or other documents), and
  - (b) a council or other planning body is to provide the Planning Secretary, when requested, with electronic files (in a specified format) of any such instruments, plans or other documents (or of any spatial datasets or other maps) prepared or held by it, and
  - (c) a council or other planning body is to implement any standard technical requirements determined by the Planning Secretary to facilitate access to relevant data in the electronic systems maintained by the council or other body or to transfer that data to the NSW planning database.
- (4) The Planning Secretary is to establish on a departmental website an alert facility to enable members of the public to register for the purposes of receiving electronic notification of selected new planning decisions and matters.

## Schedule 4 Special contributions areas

(Sections 7.1 and 7.25(1))

- 1 land shown edged heavy black on the map marked “[Western Sydney Growth Areas—Special Contributions Area](#)” deposited in the head office of the Department
- 2 **(Repealed)**
- 3 land within the local government area of Wyong shown edged heavy black on the map marked “*Wyong Employment Zone—Special Contributions Area*” deposited in the head office of the Department
- 4 land shown edged heavy black on the map marked “*Warnervale Town Centre—Special Contributions Area*” deposited in the head office of the Department, as in force at the date of commencement of [State Environmental Planning Policy \(Major Projects\) 2005 \(Amendment No 24\)](#)
- 5 land shown edged heavy black and shaded pink on the map marked “[Gosford City Centre Special Contributions Area Map](#)” deposited in the head office of the Department and approved by the Minister on the making of [Environmental Planning and Assessment Amendment \(Gosford City Centre Special Contributions Area\) Order 2018](#)

## Schedule 4B (Repealed)

## Schedule 5 Development control orders

### Part 1 General orders

Column 1	Column 2	Column 3
To do what?	When?	To whom?

		<p>Premises are being used—</p> <ul style="list-style-type: none"><li>• for a prohibited purpose, or</li><li>• for a purpose for which a planning approval is required but has not been obtained, or</li><li>• in contravention of a planning approval.</li></ul>	
1	<p><b>Stop Use Order</b> To stop using premises or a building Not to conduct or to stop conducting an activity on the premises</p>	<p>Building is being used—</p> <ul style="list-style-type: none"><li>• inconsistently with its classification under this Act or the <i>Local Government Act 1993</i>, and</li><li>• in a manner that constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and</li><li>• in a manner that is not regulated or controlled under any other Act by a public authority.</li></ul>	<ul style="list-style-type: none"><li>• The owner of premises or building</li><li>• The person using the premises or building</li></ul>
		<p>Premises are being used for an activity (that would or would be likely to require planning approval) that—</p> <ul style="list-style-type: none"><li>• constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and</li><li>• is not regulated or controlled under any other Act by a public authority.</li></ul>	
2	<p><b>Stop Work Order</b> To stop building work or subdivision work carried out in contravention of this Act</p>	<p>Building work or subdivision work is carried out—</p> <ul style="list-style-type: none"><li>• in contravention of this Act, or</li><li>• in a manner that would affect the support of adjoining premises.</li></ul>	<ul style="list-style-type: none"><li>• Owner of the land</li><li>• Any person apparently engaged in the work</li></ul>

3	<p><b>Demolish Works Order</b> To demolish or remove a building</p>	<p>A building—</p> <ul style="list-style-type: none"> <li>requiring a planning approval is erected without approval, or</li> <li>requiring approval under the <i>Local Government Act 1993</i> is erected without approval, or</li> <li>is or is likely to become a danger to the public, or</li> <li>is so dilapidated that it is prejudicial to persons or property in the neighbourhood, or</li> <li>is erected in contravention of this Act.</li> </ul>	<p>Owner of building or, if the building is situated wholly or partly in a public place, the person who erected the building</p>
4	<p><b>Stop Demolition Order</b> To stop demolishing, or not to demolish, a building</p>	<p>Demolition requiring a planning approval is being carried out, or would be carried out, without approval or in contravention of an approval.</p>	<ul style="list-style-type: none"> <li>The owner of premises</li> <li>The person carrying out the demolition or likely to carry out the demolition</li> </ul>
5	<p><b>Repair Order</b> To repair or make structural alterations to a building</p>	<p>The building is or is likely to become a danger to the public or is so dilapidated that it is prejudicial to the occupants, persons or property in the neighbourhood.</p>	<p>Owner of building</p>
6	<p><b>Remove Advertising Order</b> To modify, demolish or remove an advertisement and any associated structure</p>	<p>The advertisement is—</p> <ul style="list-style-type: none"> <li>unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed, or</li> <li>displayed contrary to a provision made by or under this Act, or</li> <li>associated with a structure erected contrary to a provision made by or under this Act.</li> </ul>	<ul style="list-style-type: none"> <li>The owner of premises displaying the advertisement or on which the associated structure is erected</li> <li>The person responsible for the display of the advertisement and erection of the associated structure</li> </ul>

7	<p><b>Public Safety Order</b></p> <p>To erect or install structures or appliances necessary for public safety</p>	<p>A building—</p> <ul style="list-style-type: none"> <li>• is about to be erected, or</li> <li>• is dangerous to persons or property on or in a public place, or</li> <li>• is about to be demolished.</li> </ul> <p>Works are—</p> <ul style="list-style-type: none"> <li>• about to be carried out, or</li> <li>• about to be demolished.</li> </ul>	<p>The owner or occupier of the land</p>
8	<p><b>Evacuate Premises Order</b></p> <p>To stop using premises or to evacuate premises</p>	<p>A person who has failed to comply with a Stop Use Order issued because the use constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety.</p>	<p>The person to whom the Stop Use Order was given</p>
9	<p><b>Exclusion Order</b></p> <p>To leave premises or not to enter premises</p>	<p>A person who has failed to comply with a Stop Use Order issued because the use constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety.</p>	<p>Any person</p>
10	<p><b>Restore Works Order</b></p> <p>To restore premises to the condition in which they were before unlawful building or other works occurred</p>	<p>An unauthorised building has been the subject of a Demolish Works Order or unauthorised works have been carried out.</p>	<ul style="list-style-type: none"> <li>• The owner of the premises</li> <li>• Any person entitled to act on a planning approval or acting in contravention of a planning approval</li> <li>• In relation to work unlawfully carried out that was the deposit of material in a public place, the person responsible for unlawfully depositing material in a public place</li> </ul>
11	<p><b>Compliance Order</b></p> <p>To comply with a planning approval for the carrying out of works</p>	<p>A planning approval has not been complied with.</p>	<ul style="list-style-type: none"> <li>• The owner of the premises</li> <li>• Any person entitled to act on a planning approval, or acting in contravention of a planning approval</li> </ul>

	To do whatever is necessary so that any building or part of a building that has been unlawfully erected complies with relevant development standards	Building has been unlawfully erected and does not comply with relevant development standards.	The owner of the premises
	To carry out works associated with subdivision	Authorised subdivision works, or works agreed to by the applicant, have not been carried out.	The person required to carry out the works
	<b>Repair or Remove Works Order</b>		
12	To repair or remove a building in a public place	The building is unlawfully situated wholly or partly in a public place.	Owner or occupier of the building or the person who erected the building
	<b>Complete Works Order</b>		
13	To complete authorised works under a planning approval within a specified time	The authorised works have commenced, but have not been completed, before the planning approval would (but for the commencement of the works) have lapsed.	The owner of the relevant land
	<b>Remedy or Restrain Breach Order</b>		
14	To do or refrain from doing any act to remedy or restrain a breach of Division 5.2 (or an approval under that Division) or a breach of a consent for State significant development	The breach has occurred, is occurring or is likely to occur	The person who caused, is causing or is likely to cause the breach, or the person entitled to act on the approval or consent
	<b>Stop Coastal Activities Order</b>		
15	To cease carrying out or conducting an activity on a beach, dune or foreshore (within the meaning of those terms in the <a href="#">Coastal Management Act 2016</a> ), whether or not the activity is subject to a development consent	The activity is being carried out in contravention of this Act	Any person apparently engaged in promoting, conducting or carrying out the activity

## Part 2 Fire safety orders

Column 1

Column 2

Column 3

	<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>
1	To do or stop doing things for the purposes of ensuring or promoting adequate fire safety or fire safety awareness	<p>When provision for fire safety or fire safety awareness is inadequate to—</p> <ul style="list-style-type: none"> <li>• prevent fire, or</li> <li>• suppress fire, or</li> <li>• prevent the spread of fire.</li> </ul> <p>To ensure or promote the safety of persons in the event of fire.</p> <p>When lack of maintenance of the premises or the use of the premises constitutes a significant fire hazard.</p>	The owner of the premises or, in the case of a place of shared accommodation, the owner or manager
2	To stop doing an activity on premises, including on premises used for the purposes of shared accommodation	<p>The activity is or is likely to be—</p> <ul style="list-style-type: none"> <li>• a life threatening hazard, or</li> <li>• a threat to public health or public safety,</li> </ul> <p>and the activity is not regulated or controlled under any other Act by a public authority.</p>	Any person apparently engaged in promoting, conducting or carrying out the activity
3	To stop the use of premises or to evacuate premises, or not to enter the premises	When an order under item 1 or 2 above has already been served and has not been complied with.	Any person

### Part 3 Brothel closure orders

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>To do what?</b>	<b>In what circumstances?</b>	<b>To whom?</b>

To stop using premises as a brothel, including to specifically stop using the premises for—

- sexual acts or services in exchange for payment, or
- massage services (other than genuine remedial or therapeutic massage services) in exchange for payment, or
- adult entertainment involving nudity, indecent acts or sexual activity in exchange for payment or ancillary to other goods or services.

When premises are being used for a purpose that is prohibited.

When premises are being used for a purpose for which a planning approval is required but has not been obtained.

When premises are being used in contravention of a planning approval.

The owner of the premises, or the person using premises for the purpose specified in the order.

The person entitled to act on a planning approval who is acting in contravention of the approval.

Any person apparently in control of, or managing, or assisting in the control or management of, the brothel.

To prohibit using premises for any of the above uses if those uses are prohibited under an environmental planning instrument or require planning approval and no approval has been granted.

To comply with the conditions of a planning approval for the use of premises as a brothel.

## Part 4 Provisions relating to development control orders

### 1 Order may specify standards and work that will satisfy those standards (cf previous ss 121P, 121R)

(1) A relevant enforcement authority may give a development control order that does the following instead of specifying in the order the things the person to whom the order is given must do or refrain from doing—

- (a) specifies the standard that the premises concerned are required to meet,



- (b) indicates the nature of the work that, if carried out, would satisfy that standard.
- (2) The relevant enforcement authority may, in any such development control order, require the owner or occupier to prepare and submit to the relevant enforcement authority, within the period specified in the order, particulars of the work the owner or occupier considers necessary to make provision for such matters as may be so specified.
- (3) The relevant enforcement authority must, within 28 days after those particulars of work are submitted to the authority—
- (a) accept the particulars without modification or with such modifications as the authority thinks fit, or
- (b) reject the particulars.
- (4) If the relevant enforcement authority accepts the particulars of work without modification, the authority must as soon as possible order the owner to carry out that work.
- (5) If the relevant enforcement authority accepts the particulars of work with modifications or rejects the particulars, or if an owner fails to submit particulars of work as required under this clause, the authority must—
- (a) prepare, within 3 months after the acceptance, rejection or failure, particulars of the work that the authority considers necessary to make provision for the matters specified in the order given to the owner, and
- (b) order the owner to carry out that work.
- (6) An order under this clause is not invalid merely because of the failure of the relevant enforcement authority that gave the order to accept or reject any particulars of work or prepare particulars of any work within the period required by this clause.
- (7) A relevant enforcement authority may recover from an owner as a debt the authority's expenses of preparing particulars of work under this clause.
- (8) An order under this clause forms part of the development control order to which it relates.

**2 Orders that make or are likely to make residents homeless** (cf previous s 121G)

- (1) If a development control order will or is likely to have the effect of making a resident homeless, the relevant enforcement authority proposing to give the order must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality.
- (2) If the resident is not able to arrange satisfactory alternative accommodation in the

locality, the relevant enforcement authority must provide the resident with—

- (a) information as to the availability of satisfactory alternative accommodation in the locality, and
- (b) any other assistance that the relevant enforcement authority considers appropriate.

**3 Orders affecting heritage items** (cf previous s 121S)

- (1) This clause applies to an item of the environmental heritage—
  - (a) to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies or to which an order under section 136 of that Act applies, or
  - (b) that is identified as such an item in an environmental planning instrument.
- (2) A relevant enforcement authority must not give a development control order in respect of an item of the environmental heritage until after the authority has considered the impact of the order on the heritage significance of the item.
- (3) A relevant enforcement authority must not give a development control order in respect of an item of the environmental heritage to which subclause (1)(a) applies until after the authority has given notice of the proposed order to the Heritage Council and has considered any submissions duly made by the Heritage Council.
- (4) The Heritage Council may, by instrument in writing, exempt a relevant enforcement authority from the requirements of subclause (3), either unconditionally or subject to conditions. Any such exemption may be varied or revoked by the Heritage Council by further instrument in writing.
- (5) The Heritage Council may make a submission about a proposed order—
  - (a) within 28 days after it is given notice by the relevant enforcement authority, or
  - (b) if, within 28 days after it is given notice by the relevant enforcement authority, the Heritage Council requests that a joint inspection of the item be made, within 28 days after the joint inspection is made.
- (6) This clause does not apply to—
  - (a) a general order not to demolish or cease demolishing a building if given in an emergency, or
  - (b) a general order of a kind prescribed by the regulations, or
  - (c) a brothel closure order.

**4 Giving and taking effect of orders** (cf previous ss 121N, 121U)

- (1) A development control order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service or a later time specified in the order.
- (2) The copy of the development control order is to be accompanied by a notice stating—
  - (a) that the person to whom the order is addressed may appeal to the Land and Environment Court against the order, and
  - (b) the period within which an appeal may be made.

**5 Reasons for orders to be given** (cf previous s 121L)

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

**Part 5 Process for giving orders**

**6 Natural justice requirements** (cf previous s 121D)

- (1) Before giving a development control order, a relevant enforcement authority must comply with clauses 2, 8 and 9 and Part 7 of this Schedule.
- (2) Subclause (1) does not apply to the following development control orders—
  - (a) a general order (under item 2, Part 1 of this Schedule),
  - (b) a fire safety order (under item 2, Part 2 of this Schedule),
  - (c) an order given, and expressed to be given, in an emergency,
  - (d) an order given by the Minister or the Planning Secretary in connection with State significant infrastructure.

**Note—**

Part 8 of this Schedule has special provisions relating to fire safety orders and Part 9 has special provisions relating to brothel closure orders.

**7 Effect of compliance** (cf previous s 121E)

A relevant enforcement authority that complies with clauses 2, 8 and 9 and Part 7 of this Schedule is taken to have observed the rules of procedural fairness.

## Part 6 Notices to be given

### 8 Notice to be given of proposed order to person who will be subject to order (cf previous s 121H(1)-(3))

- (1) Before giving a development control order, a relevant enforcement authority must give notice to the person to whom the proposed order is directed of the following—
  - (a) the intention to give the order,
  - (b) the terms of the proposed order,
  - (c) the period proposed to be specified as the period within which the order is to be complied with,
  - (d) that the person to whom the order is proposed to be given may make representations to the relevant enforcement authority as to why the order should not be given or as to the terms of or period for compliance with the order.
- (2) The notice may provide that the representations are to be made to the relevant enforcement authority or a nominated person on a nominated date, being a date that is reasonable in the circumstances of the case. In the case of a council this may be to a specified committee of the council on a specified meeting date or to a specified employee of the council on or before a specified date.

### 9 Notice to be given to other persons and bodies of proposed order (cf previous s 121H(4)-(5))

- (1) **Notice to other consent authorities** If a council proposes to give a development control order in relation to development for which another person is the consent authority, the council must give the other person notice of its intention to give the order.
- (2) **Notice to principal certifier** If a council proposes to give a development control order in relation to building work or subdivision work for which the council is not the certifier, the council must give the principal certifier notice of its intention to give the order.

### 10 Notice of fire safety orders to be given to Commissioner of Fire and Rescue NSW (cf previous s 121ZB)

A relevant enforcement authority must immediately give notice to the Commissioner of Fire and Rescue NSW after giving a fire safety order.

### 11 Notice of giving of complete works order (cf previous s 121X)

A relevant enforcement authority must, on or as soon as practicable after the day on which the authority gives a complete works order, send a copy of the order to—

- (a) such persons (if any) as are, in the opinion of the authority, likely to be disadvantaged by the giving of the order, and

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

**12 Details of orders and notices to be given to councils** (cf previous s 121ZE)

- (1) A relevant enforcement authority (other than a council) who gives a notice or an order under this Part must immediately give a copy of the notice or order to the council.
- (2) The relevant enforcement authority, if requested by the council, must immediately inform the council whether or not the notice is outstanding or the order is in force and of any action proposed to be taken by the relevant enforcement authority in relation to the notice or order.

**Part 7 Representations concerning proposed orders**

**13 Making of representations** (cf previous s 121I)

- (1) A person who is given notice under clause 8 of the intention to give a development control order may make representations concerning the proposed order in accordance with the notice.
- (2) For the purpose of making the representations, the person may be represented by an Australian legal practitioner or agent.

**14 Hearing and consideration of representations** (cf previous s 121J)

The relevant enforcement authority that intends to give the development control order or the nominated person is required to hear and to consider any representations made under this Part.

**15 Procedure after hearing and consideration of representations** (cf previous s 121K)

- (1) After hearing and considering any representations made concerning the proposed development control order, the relevant enforcement authority or the nominated person may determine—
  - (a) to give an order in accordance with the proposed order, or
  - (b) to give an order in accordance with modifications made to the proposed order, or
  - (c) not to give an order.
- (2) If the determination is to give a development control order in accordance with modifications made to the proposed order, the relevant enforcement authority is not required to give notice under this Part of the proposed order as so modified.

## **Part 8 Special provisions relating to fire safety orders**

### **16 Powers of fire brigades** (cf previous s 121ZC)

- (1) An authorised fire officer who inspects a building in accordance with section 9.32 (Fire brigades inspection powers) may give—
  - (a) a fire safety order (under item 1) if the order does not require the carrying out of any structural work to the premises concerned, or
  - (b) a fire safety order (under item 2) if the premises concerned are a place of shared accommodation, or
  - (c) a fire safety order (under item 3) if a person to whom an order under paragraph (a) or (b) is given has failed to comply with the order.
- (2) Clauses 2, 6, 8, 9 and 31 and Part 7 of this Schedule do not apply to a development control order given in accordance with this clause in circumstances which the authorised fire officer believes constitute an emergency or a serious risk to safety.
- (3) For the purpose of giving such a development control order, an authorised fire officer may exercise such of the powers of a relevant enforcement authority under this Part as are specified in the fire officer's authorisation under this clause.
- (4) In exercising a power under this Part, an authorised fire officer may be accompanied and assisted by a police officer.
- (5) An authorised fire officer must forward a copy of a development control order given in accordance with this clause to the relevant council.

### **17 Inspection reports by fire brigades** (cf previous s 121ZD)

- (1) If the Commissioner of Fire and Rescue NSW carries out an inspection of a building under section 9.32 (Fire brigades inspection powers), the Commissioner must furnish to the council of the area in which the building is located—
  - (a) a report of the inspection, and
  - (b) if of the opinion that adequate provision for fire safety has not been made concerning the building, such recommendations as to the carrying out of work or the provision of fire safety and fire-fighting equipment as the Commissioner considers appropriate.
- (2) A council must—
  - (a) table any report and recommendations it receives under this clause at the next meeting of the council, and
  - (b) at any meeting of the council held within 28 days after receiving the report and

recommendations or at the next meeting of the council held after the tabling of the report and recommendations, whichever is the later, determine whether it will exercise its powers to give a fire safety order.

- (3) A reference in subclause (2) to a meeting of a council does not include a reference to a special meeting of the council unless the special meeting is called for the purpose of tabling any report and recommendations or making any determination referred to in that subclause.
- (4) A council must give notice of a determination under this clause to the Commissioner of Fire and Rescue NSW.

## **Part 9 Special provisions relating to brothel closure orders**

### **18 Interpretation** (cf previous s 121ZR)

- (1) In this Part—

***brothel closure order*** means a brothel closure order under Part 3 of this Schedule.

- (2) This Part has effect despite any other provision of this Schedule.

#### **Note—**

Failure to comply with a brothel closure order is an offence (see section 9.37).

### **19 Procedure relating to making of brothel closure orders** (cf previous s 121ZR(2)-(4))

- (1) **Natural justice requirements not applicable** A person who gives a brothel closure order is not required to comply with clauses 2, 8 and 9 and Part 7 of this Schedule.
- (2) **Additional prohibitions may be included** A brothel closure order may also prohibit the use of the premises for specified related sex uses, if the use of the premises for the specified uses is a prohibited development or a development for which planning approval is required but has not been obtained.
- (3) **Additional persons to whom order may be given** In addition to any other person to whom a brothel closure order may be given, a brothel closure order may be given to any person apparently in control of or managing, or assisting in the control or management of, the brothel.

### **20 Compliance with brothel closure orders** (cf previous s 121ZR(5) and (7))

- (1) **Period for compliance** A brothel closure order must specify a period of not less than 5 working days within which the order must be complied with.
- (2) **Defences** It is a sufficient defence to a prosecution for an offence that arises from a failure to comply with a brothel closure order if the defendant satisfies the court that—
  - (a) in a case where the defendant is the owner of the premises, the defendant has

taken all reasonable steps to evict the persons operating the brothel or using the premises for the specified related sex uses, or

- (b) in all cases, the defendant has taken all reasonable steps to prevent the use of the premises as a brothel or for the specified related sex uses.

**21 Appeals** (cf previous s 121ZR(8))

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

- (a) the conferral of jurisdiction on the Local Court with respect to appeals against brothel closure orders,
- (b) removing the right to appeal under Part 8 of this Act if an appeal is made to the Local Court against a brothel closure order under the regulations,
- (c) the conferral of jurisdiction on the Land and Environment Court with respect to appeals from decisions of the Local Court on appeals against brothel closure orders,
- (d) the modification of provisions of the *Crimes (Appeal and Review) Act 2001* for the purposes of appeals referred to in paragraph (c).

**Part 10 Modification and revocation of orders**

**22 Modification of orders** (cf previous s 121ZF)

- (1) A relevant enforcement authority that gives a development control order may, at any time, modify the order (including a modification of the period specified for compliance with the order).
- (2) Except in the case of a development control order given by the Minister or the Planning Secretary, a modification may be made only if the person to whom the order is given agrees to that modification.

**23 Revocation of orders** (cf previous s 121ZG)

- (1) A development control order given by the Minister may be revoked by the Minister at any time, and an order given by the Planning Secretary may be revoked by the Minister or the Planning Secretary at any time.
- (2) A development control order given by a consent authority may be revoked by the consent authority at any time.
- (3) A development control order given by a council may be revoked by the council at any time.
- (4) A development control order given by an authorised fire officer may be revoked by an authorised fire officer at any time.



**24 Minister may revoke or modify a council's order** (cf previous s 121ZH)

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

**25 Limitation on Minister's orders** (cf previous s 121ZI)

The Minister must not take any action under clause 24 that is inconsistent with, or has the effect of revoking or modifying, a development control order given by the council unless the Minister is of the opinion that—

- (a) it is necessary because of an emergency, or
- (b) it is necessary because of the existence or reasonable likelihood of a serious risk to health or safety, or
- (c) the order relates to a matter of State or regional significance, or
- (d) the order relates to a matter in which the intervention of the Minister is necessary in the public interest.

**Part 11 Effect of orders and compliance with orders**

**26 Effect of order on successors in title** (cf previous s 121Y)

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

**27 Period for compliance with order** (cf previous s 121M)

- (1) A development control order must specify a reasonable period within which the terms of the order are to be complied with.
- (2) However, a development control order may require immediate compliance with its terms in circumstances which the person who gives the order believes constitute a

serious risk to health or safety or an emergency.

**28 Continuing effect of orders** (cf previous s 121ZQ)

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

**29 Development consent or approval not required to comply with order** (cf previous s 121O)

A person who carries out work in compliance with a requirement of a development control order does not have to make an application under this Act for consent or approval to carry out the work.

**30 Compliance with order under clause 1(2)** (cf previous s 121Q)

A person complies with a requirement of an order under clause 1(2) by submitting to the relevant enforcement authority that gives the order such matters as the person would be required to submit if applying to a consent authority for development consent to carry out the work.

**31 Compliance with orders by occupiers or managers** (cf previous s 121Z)

If an occupier or manager complies with a development control order, the occupier or manager may (unless the occupier or manager has otherwise agreed)—

- (a) deduct the cost of so complying (together with interest at the rate currently prescribed by the Supreme Court rules in respect of unpaid judgment debts) from any rent payable to the owner, or
- (b) recover the cost (and that interest) from the owner as a debt in any court of competent jurisdiction.

**32 Occupier of land may be required to permit owner to carry out work** (cf previous s 121ZA)

- (1) A relevant enforcement authority that gives a development control order may order the occupier of any land to permit the owner of the land to carry out specified work on the land, being work that is, in the relevant authority's opinion, necessary to enable the requirements of this Act or the regulations or of any development control order to be complied with.
- (2) An occupier of land on whom such an order is served must, within 2 days after the order is served, permit the owner to carry out the work specified in the order.
- (3) If an order under this clause is in force, the owner of the land concerned is not guilty of an offence arising from his or her failure to comply with the requirements of this Act

or the regulations, or of any development control order, that is caused by the occupier of the land refusing to permit the owner to carry out the work specified in the order.

- (4) Subclause (3) applies only if the owner of the land satisfies the Court that the owner has, in good faith, tried to comply with the requirements concerned.

**33 Failure to comply with order—carrying out of work by consent authority** (cf previous s 121ZJ(1)(10–(12))

- (1) A relevant enforcement authority that gives a development control order may do all such things as are necessary or convenient to give effect to the terms of the order (including the carrying out of any work required by the order) if the person to whom the order was given fails to comply with the terms of the order.
- (2) The relevant enforcement authority may exercise the relevant authority's functions under this clause irrespective of whether the person required to comply with the order has been prosecuted for an offence against this Act.
- (3) In any proceedings before the Land and Environment Court that are brought by a relevant enforcement authority that gave a development control order to a person as a result of the person's failure to comply with the order, the Court may, at any stage of the proceedings, order the relevant enforcement authority to exercise the authority's functions under this clause. Having made such an order, the Court may continue to hear and determine the proceedings or may dismiss the proceedings.
- (4) If the Minister or the Planning Secretary gave the development control order, the Minister's or Planning Secretary's functions under this clause may be exercised by the Planning Ministerial Corporation.

**34 Recovery of expenses by relevant enforcement authority for carrying out work** (cf previous s 121ZJ(7))

- (1) If a relevant enforcement authority takes action under clause 33 to give effect to a development control order by demolishing a building, the authority may remove any materials concerned.
- (2) The relevant enforcement authority may sell those materials but only if the relevant authority's expenses in giving effect to the terms of the development control order are not paid to the authority within 14 days after removal of the materials.
- (3) If the proceeds of such a sale exceed the expenses incurred by the relevant enforcement authority in relation to the demolition and the sale, the relevant authority—
- (a) may deduct out of the proceeds of the sale an amount equal to those expenses, and
- (b) must pay the surplus to the owner on demand.

- (4) If the proceeds of sale do not exceed those expenses, the relevant enforcement authority—
  - (a) may retain the proceeds, and
  - (b) may recover the deficiency (if any) together with the authority's costs of recovery from the owner as a debt.
- (5) Materials removed that are not saleable may be destroyed or otherwise disposed of.
- (6) A relevant enforcement authority that carries out work under clause 33 in relation to development for which an amount of security has been provided to the authority—
  - (a) may be recompensed for the work from the security if the security is more than the costs of carrying out the work, and
  - (b) must pay any surplus remaining to the person entitled to it on demand.
- (7) Any expenses incurred under this clause by a relevant enforcement authority that gave a development control order, together with all associated costs, may be recovered by the authority in any court of competent jurisdiction as a debt due to the authority by the person required to comply with the order.
- (8) The expenses are to be reduced by the amount of any proceeds of any sale under this clause or the amount of any security provided in respect of development to which the order relates.
- (9) Nothing in this clause affects the owner's right to recover any amount from any lessee or other person liable for the expenses concerned.
- (10) The recovery of costs and expenses by a relevant enforcement authority under this clause does not include the costs and expenses of court proceedings, but nothing in this clause prevents the authority from receiving costs as between party and party in respect of those proceedings.

**35 Enforcement of orders by cessation of utilities** (cf previous s 121ZS)

- (1) This clause applies in relation to a failure to comply with any of the following development control orders—
  - (a) a brothel closure order,
  - (b) a stop use order in respect of such classes of residential, tourist or other development as are prescribed by the regulations.
- (2) In this clause, the **Court** means the Land and Environment Court and, in relation to a brothel closure order, includes the Local Court.
- (3) If a person fails to comply with a development control order to which this clause

applies, the Court may, on the application of the person who gave the order, make an order (a **utilities order**) directing that a provider of water, electricity or gas to the premises concerned cease to provide those services.

- (4) A utilities order is not to be made in respect of a failure to comply with a development control order that is a stop use order unless the Court is satisfied that the failure has caused or is likely to cause a significant adverse impact on health, safety or public amenity.
- (5) A utilities order may apply to the whole or part of the premises.
- (6) A utilities order ceases to have effect on the date specified in the utilities order, or 3 months after the order is made, whichever occurs first.
- (7) An application for a utilities order must not be made unless not less than 7 days notice of the proposed application is given to the following persons—
  - (a) any person to whom the development control order was given,
  - (b) any provider of water, electricity or gas to the premises who is affected by the application,
  - (c) any owner or occupier of the premises.
- (8) An owner or occupier of premises, or a provider of water, electricity or gas to premises, who is affected by an application for a utilities order is entitled to be heard and represented in proceedings for the order.
- (9) In determining whether to make a utilities order, the Court is to take into consideration the following matters—
  - (a) the effects of the failure to comply with the development control order,
  - (b) the uses of the premises,
  - (c) the impact of the order on the owner, occupier or other users of the premises,
  - (d) whether health, safety or public amenity will be adversely affected by the order,
  - (e) any other matter the Court thinks appropriate.
- (10) A utilities order must not be made for premises, or any part of premises, used for residential purposes unless the regulations authorise the making of a utilities order.
- (11) A provider of water, electricity or gas must comply with a utilities order, despite any other law or agreement or arrangement applying to the provision of water, electricity or gas to the premises, or part of the premises, concerned.
- (12) No compensation is payable to any person for any damage or other loss suffered by

that person because of the making or operation of a utilities order or this clause.

- (13) A provider of water, electricity or gas must not, during a period that a utilities order is in force in relation to premises, or part of premises, require payment for the provision of water, electricity or gas services to the premises or part of the premises (other than services related to the implementation of the order).
- (14) The Court may make a utilities order when it determines an appeal against a development control order, if subclauses (7) and (8) have been complied with.

### **36 Special provision relating to tourist parks, residential parks and camping grounds**

Any order that may be given to a person under this Schedule to do or refrain from doing a thing in relation to a premises or building in a tourist park, residential park or camping ground may also be given to a person apparently in charge of or managing the tourist park, residential park or camping ground who has authority to do or refrain from doing the thing.

## **Part 12 Compliance cost notices**

### **37 Compliance cost notices** (cf previous s 121CA)

- (1) A relevant enforcement authority that gives a development control order to a person may also serve a compliance cost notice on the person.
- (2) A **compliance cost notice** is a notice in writing requiring the person on whom it is served to pay all or any reasonable costs and expenses incurred by the relevant enforcement authority in connection with—
- (a) monitoring action under the development control order, and
  - (b) ensuring that the development control order is complied with, and
  - (c) any costs or expenses relating to an investigation that leads to the giving of the development control order, and
  - (d) any costs or expenses relating to the preparation or serving of the notice of the intention to give the development control order, and
  - (e) any other matters associated with the development control order.
- (3) A compliance cost notice is to specify the amount required to be paid and a reasonable period within which the amount is to be paid or, if the regulations prescribe the period to be allowed for payment, that period.
- (4) The relevant enforcement authority may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (5) If the person on whom a compliance cost notice is served complies with the notice but

was not the person who was responsible for the situation giving rise to the issue of the notice, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who was responsible.

- (6) The regulations may make provision for or with respect to the following—
- (a) the issue of compliance cost notices,
  - (b) the form of compliance cost notices,
  - (c) limiting the amounts that may be required to be paid under compliance cost notices or the matters in respect of which costs and expenses may be required to be paid under those notices.

## **Part 13 Miscellaneous**

### **38 Combined orders** (cf previous s 121T)

A person who gives a development control order may include 2 or more orders in the same instrument.

### **39 Orders may be given to 2 or more persons jointly** (cf previous s 121V)

If appropriate in the circumstances of the case, a development control order may direct 2 or more people to do the thing specified in the order jointly.

### **40 Notice in respect of land or building owned or occupied by more than one person** (cf previous s 121W)

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

### **41 Application of [Local Government Act 1993](#) certificate provision**

Section 735A of the [Local Government Act 1993](#) applies to orders and notices under this Schedule in the same way as it applies to notices under that Act.

## Schedule 6 Liability in respect of contaminated land

### 1 Definitions (cf previous s 145A)

In this Schedule—

**contaminated land** means land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

**contaminated land planning guidelines** means guidelines notified in accordance with clause 3.

**planning authority**, in relation to a function specified in clause 2, means—

- (a) in the case of a function relating to a development application—the consent authority (or a person or body taken to be a consent authority), and
- (a1) in the case of a function relating to an application for a complying development certificate—the council or accredited certifier to whom the application is made, and
- (b) in the case of any other function—the public authority or other person responsible for exercising the function.

### 2 Exemption from liability—contaminated land (cf previous s 145B)

- (1) A planning authority does not incur any liability in respect of anything done or omitted to be done in good faith by the authority in duly exercising any planning function of the authority to which this clause applies in so far as it relates to contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land.
- (2) This clause applies to the following planning functions—
  - (a) the preparation or making of an environmental planning instrument, including a planning proposal for the proposed environmental planning instrument,
  - (b) the preparation or making of a development control plan,
  - (c) the processing and determination of a development application and any application under Part 3A or Division 5.2,
  - (d) the modification of a development consent,
  - (d1) the processing and determination of an application for a complying development certificate,
  - (e) the furnishing of advice in a certificate under section 10.7



- (f) anything incidental or ancillary to the carrying out of any function listed in paragraphs (a)–(e).
- (3) Without limiting any other circumstance in which a planning authority may have acted in good faith, a planning authority is (unless the contrary is proved) taken to have acted in good faith if the thing was done or omitted to be done substantially in accordance with the contaminated land planning guidelines in force at the time the thing was done or omitted to be done.
- (4) This clause applies to and in respect of—
  - (a) a councillor, and
  - (b) an employee of a planning authority, and
  - (c) a Public Service employee, and
  - (d) a person acting under the direction of a planning authority,in the same way as it applies to a planning authority.

**3 Contaminated land planning guidelines** (cf previous s 145C)

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

## Schedule 7 Paper subdivisions

### 1 Definitions

In this Schedule—

**development plan**—see clause 6.

**development plan costs** means the following—

- (a) the costs of obtaining or preparing any reports,
- (b) the amount of any levies, fees or other charges applicable to the proposed subdivision or subdivision works,
- (c) administrative costs of the relevant authority relating to the development plan,
- (d) any other costs prescribed by the regulations for the purposes of this definition.

**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,
- (e) any other purpose prescribed by the regulations for the purposes of this definition.

### 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 Planning Ministerial 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 co-ordinate 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) The Minister may repeal a subdivision order only if the Minister—
  - (a) has consulted with the relevant authority for the subdivision land and the council of the area in which the land is situated, and
  - (b) is satisfied that notice of the proposed repeal has been given to the owners of the land subject to the order in the manner prescribed by the regulations.
- (5) Subclause (2)(g) does not apply to an order amending a subdivision order.

**Note—**

Regulations under clause 6(3A) may require consent to be obtained to amendments to an applicable development plan.

#### **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,
  - (c1) details of the development plan costs,
  - (d) details of the proportion of the costs referred to in paragraphs (c) and (c1) 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.
- (3A) Without limiting subclause (3), the regulations may require the consent of the owners of subdivision land to be obtained to proposed amendments to the applicable development plan in the circumstances, and in the manner, specified by the regulations.
- (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 and the development plan costs.
- (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 and the development plan costs 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 or development plan costs,
  - (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 or development plan costs.

- (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,
- (c) the effect of the repeal or amendment of a subdivision order, or of the amendment of a development plan.

## Schedule 8 Special provisions

### Parts 1-3

#### 1-7 (Repealed)

### Part 4 Validation of development consent relating to Springvale mine extension etc

#### 8 Definitions

In this Part—

**Springvale mine extension development consent** means the development consent granted, or purported to have been granted, on 21 September 2015 with respect to State significant development application number SSD 5594 (being the development consent the subject of the proceedings in *4nature Incorporated v Centennial Springvale Pty Ltd*[2017] NSWCA 191), together with any modifications of that consent granted or purported to have been granted before the commencement of the amending Act.

**the amending Act** means the [Environmental Planning and Assessment Amendment \(Sydney Drinking Water Catchment\) Act 2017](#).

**this Act** includes—

- (a) the regulations under this Act, and
- (b) [State Environmental Planning Policy \(Sydney Drinking Water Catchment\) 2011](#) and any other environmental planning instrument.

#### 9 Validation of Springvale mine extension development consent

- (1) The Springvale mine extension development consent is validated (to the extent of any invalidity), and is taken—
  - (a) to have been duly granted in accordance with this Act and otherwise in accordance with law, and
  - (b) to have been duly granted on 21 September 2015, and thereafter to be, and to

have been at all relevant times, a valid development consent.

- (2) Without limiting subclause (1), the granting of a mining lease or any other thing done or omitted to be done on or after 21 September 2015 is as valid as it would have been had the development consent concerned been in force when the mining lease was granted or the thing was done or omitted.
- (3) This clause has effect despite the existence of any proceedings pending in any court immediately before the commencement of the amending Act or the decision in any such proceedings or in any other proceedings instituted before that commencement.
- (4) If any proceedings are withdrawn or terminated (or any decision in any proceedings no longer has effect) because of the operation of the amending Act, the Treasurer may, in the absolute discretion of the Treasurer, pay to any party to those proceedings the whole or any part of any amount that the Attorney General, on application made to the Attorney General in writing by or on behalf of that party, certifies as being the costs of or incidental to the proceedings reasonably incurred by that party. This subclause does not apply to any party to the proceedings to whom or for whose benefit a development consent the subject of the proceedings was granted.

#### **10 Other development consents not subject to challenge**

- (1) This clause applies to any development consent granted, or purported to have been granted, before the commencement of the amending Act (other than the Springvale mine extension development consent) to which *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* applied.
- (2) After the commencement of the amending Act, any such development consent is not subject to challenge on the ground that it was not granted in accordance with this Act and *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* if the development consent was granted in accordance with this Act and that Policy, as amended by the amending Act.