

Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (2018 SI 67)

[2018-67]



New South Wales

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Provisions in force

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

Notes—

- **See also**
[Planning Legislation Amendment Bill 2019](#)
[Greater Cities Commission Bill 2022](#)

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](#).

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New South Wales

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Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (2018 SI 67)



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

2 Commencement

This Regulation commences on the commencement of Schedule 13 to the *Environmental Planning and Assessment Amendment Act 2017*.

Note—

See section 10.16 of the Act for provisions relating to the making of this Regulation and the application to this Regulation of provisions of the *Interpretation Act 1987* and the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation—

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

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Provisions consequent on enactment of *Environmental Planning and Assessment Amendment Act 2017*

4 Definitions—Part 2

In this Part—

amending Act means the *Environmental Planning and Assessment Amendment Act 2017*.

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

former building and subdivision provisions means—

- (a) sections 81A(2)–(6) and 86 of the Act, as in force immediately before the substitution of those provisions by the amending Act, and
- (b) Part 4A of the Act, as in force immediately before the repeal of that Part by the amending Act, and the regulations made under that Part as so in force.

liabilities means all liabilities, debts and obligations (whether present or future and whether vested or contingent and whether personal or assignable).

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent and whether personal or assignable).

4A Interpretation—renumbered or relocated provisions of Act

(1) In this clause—

document means any Act or statutory or other instrument or any contract or agreement, and includes any document issued or made under or for the purposes of any Act or statutory or other instrument.

- (2) A reference in any document (whether enacted, issued or made before or after the commencement of this clause) to a provision of the Act that has been renumbered or relocated by the *Environmental Planning and Assessment Amendment Act 2017* is taken to be a reference to the renumbered or relocated provision. Anything done or omitted to be done under any such provision of the Act before it was renumbered or relocated is taken to have been done or omitted under the provision as renumbered or relocated.
- (3) A reference in any document (whether enacted, issued or made before or after the commencement of this clause) to any such renumbered or relocated provision of the Act is taken to include a reference to the provision before it was renumbered or relocated.
- (4) This clause is subject to any contrary intention in the provision in which a relevant reference occurs.
- (5) In this clause—

relocated includes repealed and re-enacted, with or without modification.

Note—

See the concordance table of renumbered and relocated provisions at the end of historical notes to the in-force version of the [Environmental Planning and Assessment Act 1979](#) on the NSW legislation website.

5 Interpretation of transferred provisions not affected by transfer

The provisions of Schedules 1, 2 and 3 are, to the extent that as a result of the amending Act they re-enact provisions of the Act, transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.

6 Ministerial corporation sole (cf previous s 8)

- (1) The Planning Ministerial Corporation constituted under this Act is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the corporation constituted as the “Minister administering the [Environmental Planning and Assessment Act 1979](#)” under section 8 of the Act immediately before the repeal of that section by the amending Act.
- (2) Without limiting the operation of this clause, the assets, rights and liabilities of the corporation so constituted are the assets, rights and liabilities of the Planning Ministerial Corporation.

7 Planning Assessment Commission (cf previous s 23B)

- (1) The Independent Planning Commission constituted under the Act is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the Planning Assessment Commission established under section 23B of the Act immediately before the repeal of that section by the amending Act.
- (2) Without limiting the operation of this clause, the assets, rights and liabilities of the Planning Assessment Commission are the assets, rights and liabilities of the Independent Planning Commission constituted under the Act.
- (3) A person holding office as a member of the Planning Assessment Commission immediately before the commencement of this clause is taken to have been appointed as a member of the Independent Planning Commission for the balance of the member’s term of office under the Act.
- (4) A determination (or purported determination) by the chairperson of the Planning Assessment Commission before the commencement of this clause for the Commission to be constituted by more or fewer than 3 members for the purposes of exercising its functions with respect to a particular matter is taken to be, and always to have been, valid.

8 Sydney planning panels

- (1) A person holding office as a member of a Sydney planning panel (including a council nominee) under Part 3 of the *Greater Sydney Commission Act 2015* immediately before the commencement of this clause is taken to have been appointed or nominated as a member of the corresponding Sydney district planning panel established under the Act for the balance of the person's term of office.
- (2) A reference in this clause to a member includes a reference to an alternate of a member appointed under the *Greater Sydney Commission Act 2015*.

9 Joint regional planning panels

- (1) A person holding office as a member of a joint regional planning panel (including a council nominee) under section 23G of, and Schedule 4 to, the Act immediately before the commencement of this clause is taken to have been appointed or nominated as a member of the corresponding regional planning panel established under the Act for the balance of the person's term of office.
- (2) A reference in this clause to a member includes a reference to an alternate of a member appointed under the Act.

10 Local planning panels

- (1) A person holding office as a member of a local planning panel under section 23K immediately before the commencement of this clause is taken to have been appointed by the applicable council as a member of a local planning panel under the Act for the balance of the person's term of office.
- (2) A reference in this clause to a member includes a reference to an alternate of a member appointed under the Act.

10A Mining and Petroleum Gateway Panel

- (1) The Mining and Petroleum Gateway Panel constituted by the Minister under clause 17N of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* immediately before the substitution of that clause by Schedule 11.7 to the amending Act is taken to have been constituted under that clause, as so substituted, as a subcommittee of the Independent Planning Commission.
- (2) A person holding office as a member of the Panel immediately before the substitution of clause 17N is taken to have been appointed as a member of the Panel (as constituted in accordance with this clause) for the balance of the person's term of office.

11 Existing delegations

A delegation of a function under section 23 of the Act (as in force before the repeal of that section by the amending Act) is, on that repeal, taken to be a delegation of that function under section 2.4 of the Act.

11A First local strategic planning statements prepared by councils

- (1) The council of an area is required to make its first local strategic planning statement under section 3.9 of the Act (as inserted by the amending Act)—
 - (a) in the case of an area within the Greater Sydney Region—before 31 March 2020,
or
 - (b) in any other case—before 1 July 2020.
- (2) The council of an area within the Greater Sydney Region is required to exhibit a draft local strategic planning statement before 1 October 2019.

11B Planning instruments—local plan-making authority for pending proposals

- (1) A gateway determination may authorise a council to make a local environmental plan in accordance with section 3.34(2)(g) of the Act, as inserted by the amending Act, even if it relates to a planning proposal made before the commencement of section 3.34(2)(g) of the Act.
- (2) A delegation under the Act to a council to make a local environmental plan in relation to a planning proposal that was the subject of a gateway determination made before that commencement is taken to be an authorisation under section 3.34(2)(g) of the Act.

12 Registration of consent on NSW planning portal

A provision of the Act inserted by the amending Act that provides for the registration of a development consent or other approval on the NSW planning portal is taken, until the planning portal provides a facility for that registration, to provide for the notification of the consent or approval to the applicant for the consent or approval.

13 Construction of references to Part 5 or 5.1 of Act

- (1) Without limiting clause 4A, a reference in any Act or statutory or other instrument under an Act, or in any contract or agreement, to Part 5 or Part 5.1 of the Act is, on and after the amendment of that Part by the amending Act, to be read as a reference to Division 5.1 or Division 5.2, respectively, of Part 5 of the Act.
- (2) This clause does not apply to any such reference in the Act or this Regulation and is subject to any contrary intention in the provision in which the reference occurs.

14 Existing building and other Part 4A certificates etc

- (1) A certificate that was issued under Part 4A of the Act (as in force immediately before the repeal of that Part) and that continues to have effect is taken to be a corresponding certificate issued under Part 6 of the Act.
- (2) Part 4A of the Act (as in force immediately before the repeal of that Part) continues to apply to an application for a certificate under that Part pending on the repeal of that Part. Subclause (1) extends to a certificate issued on the determination of any such application.
- (3) A subdivision works certificate is not required under section 6.13 of the Act (as inserted by the amending Act) for the carrying out of subdivision work in accordance with a development consent granted before the commencement of that section.

15 Proceedings to declare CDC's and certificates under Part 6 invalid

- (1) Section 4.31 of the Act (as inserted by the amending Act) does not apply to any proceedings commenced in the Court before the commencement of that section.
- (2) Section 6.32 of the Act (as inserted by the amending Act) does not apply to any proceedings commenced in the Court before the commencement of that section.

16 Community participation plans

- (1) A planning authority is required to prepare its first community participation plan under section 2.23 of the Act (as inserted by the amending Act) before 1 December 2019.
- (2) Until the first community participation plan of a planning authority is prepared and published, mandatory community participation requirements under Schedule 1 to the Act that are to be determined by reference to the community participation plan of the planning authority are required to be determined by reference to the requirements of or made under the Act that would have applied but for the enactment of the amending Act.

17 Public notification of reasons for planning decisions and how community views taken into account

The mandatory notification requirements under clause 20(2)(c) and (d) of Schedule 1 to the Act do not apply to a decision made before 1 July 2018.

18 Postponement of revised building and subdivision certification provisions

- (1) (Repealed)
- (2) Until 1 December 2019, Part 6 of the Act (as inserted by the amending Act), other than Division 6.7, does not apply and the former building and subdivision provisions continue to apply in respect of a matter (whether or not the matter was pending on

the repeal of those provisions).

- (3) For the avoidance of doubt, the following provisions as in force immediately before 1 March 2018 continue to apply to and in respect of a breach, occurring on or after that day, of a former building and subdivision provision—
- (a) Division 4 of Part 6 of the Act,
 - (b) any other provision of the Act, or a regulation made under the Act, that provides for the prosecution of an offence in relation to the breach, including by way of issuing a penalty notice.

18A Continuation of matters arising under former building and subdivision certification provisions

The former building and subdivision provisions continue to apply, despite their repeal, to or in respect of the following—

- (a) an interim occupation certificate or final occupation certificate in force under those provisions immediately before 1 December 2019,
- (b) a development consent granted before that date.

18B Subdivision certificates issued by Newcastle Port Corporation and private port operators

Until 1 December 2022, a subdivision certificate under Part 6 of the Act may be issued in relation to a subdivision carried out by or on behalf of any of the following persons by that person or by another person acting on that person's behalf—

- (a) Newcastle Port Corporation,
- (b) port operator of the Port of Botany Bay within the meaning of the *Ports and Maritime Administration Act 1995*,
- (c) port operator of the Port of Port Kembla within the meaning of the *Ports and Maritime Administration Act 1995*,
- (d) port operator of the Port of Newcastle within the meaning of the *Ports and Maritime Administration Act 1995*.

18BA Subdivision certificates issued by Transport for NSW

Until 1 December 2022, a subdivision certificate under Part 6 of the Act may be issued in relation to a subdivision carried out by or on behalf of Transport for NSW by—

- (a) Transport for NSW, or
- (b) a person acting on behalf of Transport for NSW.

18C Building and subdivision certification for ski resort area

Until 1 December 2022, the Minister may issue a certificate under Part 6 of the Act for any work or activity carried out in a ski resort area within the meaning of Part 8A of Schedule 1 as if the Minister was a certifier under Part 6 of the Act.

18D (Repealed)

19 References to Minister as consent authority for State significant development

(1) In this clause—

document includes any Act, statutory instrument, contract, agreement or other instrument issued or made under or for the purposes of any Act or statutory or other instrument.

(2) A reference in section 7.14 or 7.16(3) of the *Biodiversity Conservation Act 2016*, or in any other document, to the Minister for Planning as consent authority for an application for development consent for State significant development includes a reference to the Independent Planning Commission as consent authority for any such application as a consequence of the enactment of section 4.5(a) of the Act by Schedule 4.1 to the *Environmental Planning and Assessment Amendment Act 2017*.

20 Community consultation

Section 57 of the Act, as in force immediately before the repeal of that section by the amending Act, continues to have effect for the purposes of section 29 of the *Local Government Act 1993*.

Part 3 Provisions consequent on enactment of Planning Legislation Amendment (Greater Sydney Commission) Act 2018

21 Continuation of LEP-making processes for areas in Greater Sydney Region

- (1) The Minister may, on or after the commencement of this clause, make a local environmental plan that applies to a local government area in the Greater Sydney Region even though the process under Part 3 of the Act (including the preparation of the relevant planning proposal, community consultation and gateway determination) was commenced, or occurred, before that commencement.
- (2) For that purpose, anything done by or for the Greater Sydney Commission before that commencement under Part 3 of the Act in connection with the proposed plan is taken to have been done by or for the Minister.
- (3) Nothing in this clause prevents a council designated, before that commencement, as the local plan-making authority for a local environmental plan that applies to a local government area in the Greater Sydney Region from making the plan.

22 Delegation of plan-making powers

- (1) Any delegation by the Greater Sydney Commission of any of the Commission's functions under Part 3 of the Act (as in force before 10 December 2018) relating to the making of local environmental plans that apply to local government areas in the Greater Sydney Region, being a delegation in force immediately before that day, is taken to be a delegation by the Minister of those functions.
- (2) Accordingly a reference to the Greater Sydney Commission in the instrument of any such existing delegation is taken to be a reference to the Minister.

23 Consultation about proposed instruments and planning proposals in Greater Sydney Region

- (1) Section 3.30(2) of the Act, as inserted by the *Planning Legislation Amendment (Greater Sydney Commission) Act 2018*, does not apply to an environmental planning instrument made by the Governor before 1 January 2019.
- (2) Section 3.34(3A) and (3B) of the Act, as inserted by the *Planning Legislation Amendment (Greater Sydney Commission) Act 2018*, do not apply in respect of the determination of a planning proposal by the Minister until on and after 1 January 2019.

Part 4 Provision consequent on commencement of Environmental Planning and Assessment Amendment (Integrated Development and Concurrences) Regulation 2018

24 Payment of fees for integrated development and development requiring concurrence through NSW planning portal

- (1) The *Environmental Planning and Assessment Regulation 2000*, as in force immediately before the commencement of the *Environmental Planning and Assessment Amendment (Integrated Development and Concurrences) Regulation 2018*, continues to apply in relation to a development application lodged before 1 January 2020 as if Schedule 1[1], [3], [7] and [11] to that Regulation had not been made.
- (2) Subclause (1) does not apply in relation to a development application if—
 - (a) the Planning Secretary has, by order published in the Gazette, exempted a consent authority from the application of the subclause on and from a specified day, and
 - (b) the development application is lodged with the consent authority on or after that day.

Part 5 Provisions consequent on amendments to BCA

25 References to AS 3959 in Building Code of Australia

- (1) A reference in the Building Code of Australia to “AS 3959 as amended by Planning for Bush Fire Protection” (however worded) is for the purposes of the *Environmental Planning and Assessment Regulation 2000* taken to be a reference to Australian Standard AS 3959—2009, *Construction of buildings in bushfire-prone areas* as amended by *Planning for Bush Fire Protection 2006—Addendum: Appendix 3* dated 2010.
- (2) This clause ceases to have effect when clause 272 of the *Environmental Planning and Assessment Regulation 2000* is amended or substituted to update the reference to the version of *Planning for Bush Fire Protection* dated December 2006 to a later version of that document.

Part 6 Provisions consequent on commencement of Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2020

26 Definitions

In this Part—

amending regulation means the *Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2020*.

principal regulation means the *Environmental Planning and Assessment Regulation 2000*.

27 Practice notes about planning agreements

Clause 25B(3) of the principal regulation does not apply to a new planning agreement or an amendment or revocation of an existing planning agreement if public notice of the agreement, amendment or revocation has been given under section 7.5 of the Act before the commencement of clause 25B(3).

28 Annual statements and financial reports

Clauses 25F(3)(d), 25G(3)(d) and 25H(3)(d) of the principal regulation do not apply to a planning agreement entered into before the commencement of the paragraphs.

29 Contributions register

Clause 34(2)(a) of the principal regulation as substituted by the amending regulation does not apply to a development application received before the substitution.

30 Accounting for contributions and levies

Clause 35(1A) of the principal regulation does not apply to a contribution received before

the commencement of that subclause.

Schedule 1 Transferred savings, transitional and other provisions—former Schedule 6 to the Act

Part 1 Preliminary

1 Interpretation—renumbered or relocated provisions of Act

(1) After the commencement of Schedule 13 to the *Environmental Planning and Assessment Amendment Act 2017*, a reference in this Schedule to a provision of the Act that has been renumbered or relocated by that Act is taken to be a reference to the renumbered or relocated provision (unless the context or subject-matter otherwise indicates or requires).

(2) In this clause—

relocated includes repealed and re-enacted, with or without modification.

Part 2 Environmental Planning and Assessment (Amendment) Act 1994

2 Performance-based conditions of consent

Section 91(3B) extends to a condition imposed in the determination of a development application before the commencement of that subsection.

3 Determination of Crown development applications

Section 91A, as substituted by the *Environmental Planning and Assessment (Amendment) Act 1994*, applies to a development application made but not determined as at the date of commencement of Schedule 1(3) to that Act.

Part 2A Environmental Planning Legislation Amendment Act 1995

3A Application of amendment

(1) The amendment made by the amending Act extends to the consents granted by Port Stephens Shire Council on 7 June 1978 and 28 March 1979 to RZM (Newcastle) Limited in respect of mineral sandmining on land comprised in Mining Leases 594, 1226 and 744 despite the decision of the Land and Environment Court in *Paul Winn v Director-General of National Parks and Wildlife and RZM Pty Limited*(No 40209 of 1995).

(2) Subclause (1) re-enacts (with minor modifications) section 4 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

(3) In this clause—

amending Act means the *Environmental Planning Legislation Amendment Act 1995*.

Part 3 Environmental Planning and Assessment Amendment Act 1996

4 References to joint and multiple owners and lessees of land

Section 4(12), as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, is taken to have commenced on 1 September 1980.

5 Instruments controlling advertising

Section 26(1)(g), as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, extends to environmental planning instruments made, or in the course of preparation, before it was so inserted.

6 Relationship between instruments

Section 36, as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, extends to environmental planning instruments that took effect before that section was so inserted.

7 Amendment of draft instruments

Part 3, as amended by an item of Schedule 1 to the *Environmental Planning and Assessment Amendment Act 1996*, extends to environmental planning instruments in the course of preparation before that item commenced.

8 Preparation of draft regional environmental plans

Sections 41 and 45, as amended by an item of Schedule 2 to the *Environmental Planning and Assessment Amendment Act 1996*, apply only to environmental studies and draft regional environmental plans if their preparation commences after that item commences.

9 Joint exhibition of development application and draft environmental planning instrument

Division 4B of Part 3 extends to a development application made to a consent authority but not finally determined before the commencement of that Division.

10 Compliance with non-discretionary development standards

Section 90A extends to a development application made to a consent authority but not finally determined before the commencement of that section.

11 Date from which development consent operates

A date endorsed pursuant to section 92 on a notice and described on the notice as the “date of consent” is taken to be the date from which the consent becomes effective and operates, if the date was so endorsed before sections 92(2) and 93(1) were amended by the *Environmental Planning and Assessment Amendment Act 1996*.

12 Existing uses

Section 106(b), as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, is taken to have commenced on 1 September 1980.

13 Modification of approvals under Division 4 of Part 5

Division 4 of Part 5, as amended by an item of Schedule 4 to the *Environmental Planning and Assessment Amendment Act 1996*, extends to approvals granted by the Minister under that Division before the commencement of that item.

14 Minister's consent for certain proceedings

Section 127, as amended by the *Environmental Planning and Assessment Amendment Act 1996*, extends to proceedings for offences alleged to have been committed before the commencement of Schedule 5 to that Act.

Part 4 Environmental Planning and Assessment Amendment (Contaminated Land) Act 1996

16 Application of section 145B to acts or omissions before commencement

Section 145B extends to anything done or omitted to be done before the commencement of Schedule 1[1] to the *Environmental Planning and Assessment Amendment (Contaminated Land) Act 1996* if—

- (a) the thing was done or omitted to be done substantially in accordance with planning guidelines relating to contaminated land published before that commencement, and
- (b) those guidelines were notified in a manner that, had section 145C been in force, would have complied with subsection (1) of that section (whether or not the notification complied with subsection (2) of that section).

Part 5 Environmental Planning and Assessment Amendment (Public Authorities) Act 1996

17 Validation of role of certain concurrence authorities

Anything done or omitted to be done before the commencement of the *Environmental Planning and Assessment Amendment (Public Authorities) Act 1996* that would have been valid if the Act, as amended by the *Environmental Planning and Assessment Amendment (Public Authorities) Act 1996*, had been in force when the thing was done or omitted to be done is validated.

Part 6 Environmental Planning and Assessment Amendment Act 1997

18 General saving

- (1) If anything done or commenced under a provision of this or any other Act that is amended or repealed by the *Environmental Planning and Assessment Amendment Act 1997* has effect or is not completed immediately before the amendment or repeal of the provision and could have been done or commenced under a provision of such an Act if the provision had been in force when the thing was done or commenced—
 - (a) the thing continues to have effect, or
 - (b) the thing commenced may be completed.
- (2) This clause is subject to any express provision of the Act or the regulations on the matter.

18A Saving of assumed concurrences

- (1) A notification given under section 81 before 1 July 1998 and in force immediately before that date is taken (until revoked) to be—
 - (a) until 1 January 2001—a notice given under clause 51B of the *Environmental Planning and Assessment Regulation 1994*, and
 - (b) on and from 1 January 2001—a notice given under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.
- (2) This clause is taken to have commenced on 1 July 1998.

19 Effect of other savings and transitional provisions

Regulations made as referred to in clause 1 as a consequence of the enactment of the *Environmental Planning and Assessment Amendment Act 1997* may have effect despite the terms of any savings or transitional provisions contained in this or any other Act, if the regulations so provide.

20 (Repealed)

Part 7 Darling Harbour Authority Amendment and Repeal Act 1998

21 Definitions

In this Part—

amending Act means the *Darling Harbour Authority Amendment and Repeal Act 1998*.

appointed day means the day appointed for the commencement of Schedule 1 to the amending Act by proclamation under section 2 of that Act.

Darling Harbour Development Area has the same meaning as **Development Area** in the 1984 Act.

the 1984 Act means the [Darling Harbour Authority Act 1984](#).

22 Consent authority

- (1) The consent authority with respect to land in the Darling Harbour Development Area is the Minister.
- (2) Subclause (1) does not apply with respect to land in the Darling Harbour Development Area if a State environmental planning policy referred to in clause 26(1) or a regional environmental plan or local environmental plan referred to in clause 26(3) specifies a consent authority with respect to that land.

23 Development plans

- (1) The [Darling Harbour Development Plan No 1](#) is taken to be a regional environmental plan, and may be amended and repealed accordingly.
- (2) A draft development plan for which an approval was in force under section 25 of the 1984 Act immediately before the appointed day is taken to be a draft regional environmental plan prepared under Division 3 of Part 3 of the Act.
- (3) Without limiting clause 1, a regulation referred to in that clause may make such amendments to the [Darling Harbour Development Plan No 1](#) as are necessary to enable that plan to have effect as a regional environmental plan.

24 Permits

- (1) An application for a permit under the 1984 Act that had not been finally determined before the appointed day is to be dealt with under Part 5 of that Act as if the amending Act had not been enacted.
- (2) For the purposes of this clause, an application is not finally determined unless—
 - (a) a permit is granted or refused and no appeal against the decision to grant or refuse the permit is made within 12 months after the date on which the permit is granted or refused, or
 - (b) if such an appeal is made, the appeal is withdrawn or finally disposed of.
- (3) A permit under the 1984 Act, including a permit granted in accordance with this clause, is taken to be a development consent granted under the Act.
- (4) The Act applies to a development consent arising under this clause as if it had been granted when the permit referred to in subclause (3) was granted.

25 (Repealed)

26 Application of environmental planning instruments within Darling Harbour Development Area

- (1) Any State environmental planning policy that is expressed to apply—
 - (a) to the whole of the State, or
 - (b) to land within the Darling Harbour Development Area, or
 - (c) to land of which the Darling Harbour Development Area forms part, applies, in accordance with its provisions, to land within the Darling Harbour Development Area.
- (2) Any regional environmental plan, local environmental plan or deemed environmental planning instrument that was in force before the commencement of this clause does not apply to land within the Darling Harbour Development Area.
- (3) Subclause (2) does not prevent—
 - (a) a regional environmental plan or local environmental plan made after the commencement of this clause from applying to land within the Darling Harbour Development Area, or
 - (b) a regional environmental plan or local environmental plan made before the commencement of this clause from applying to land within the Darling Harbour Development Area as a consequence of an amendment to the plan made after that commencement.

Part 8 Sydney Cove Redevelopment Authority Amendment Act 1998

27 Definitions

In this Part—

amending Act means the *Sydney Cove Redevelopment Authority Amendment Act 1998*.

appointed day means the day appointed for the commencement of Schedule 1 to the amending Act by proclamation under section 2 of that Act.

approved scheme means the approved scheme for the purposes of the 1968 Act, as that scheme was in force immediately before the appointed day, and as amended from time to time in accordance with the regulations.

Sydney Cove Development Area has the same meaning as **development area** in the 1968 Act.

the 1968 Act means the *Sydney Cove Redevelopment Authority Act 1968*.

28 Consent authority

- (1) The consent authority with respect to land in the Sydney Cove Development Area is the Minister.
- (2) Subclause (1) does not apply to land in the Sydney Cove Development Area if a State environmental planning policy referred to in clause 32(1) or a regional environmental plan or local environmental plan referred to in clause 32(3) specifies a consent authority with respect to that land.

29 Carrying out of development

- (1) This clause applies to such land within the Sydney Cove Development Area as is not the subject of a local environmental plan.
- (2) Development of any kind may not be carried out on land to which this clause applies without development consent, subject to the provisions of any State environmental planning policy or regional environmental plan that allows development to be carried out on that land without development consent.
- (3) For the purposes of section 76A—
 - (a) the approved scheme has effect as if it were an environmental planning instrument, and
 - (b) subclause (2) has effect as if it were a provision of an environmental planning instrument.

Consequently, all development on land to which this clause applies must have development consent and must comply with the requirements of the approved scheme.

- (4) For the purposes of section 79C, the approved scheme has effect as if it were an environmental planning instrument.
- (5) The regulations may make provision for the amendment of the approved scheme.

30 Consents

- (1) An application for the consent of the Sydney Cove Redevelopment Authority under section 23 or 25 of the 1968 Act that had not been finally determined before the appointed day is to be dealt with under Part 4 of that Act as if the amending Act had not been enacted.
- (2) However, the application is to be dealt with by the Minister and not (subject to any delegation by the Minister under section 23) by the Sydney Cove Redevelopment Authority.
- (3) A consent under the 1968 Act, including a consent granted in accordance with this

clause, is taken to be development consent granted under the Act.

- (4) The Act applies to development consent arising under this clause as if it had been granted when the consent referred to in subclause (3) was granted.

31 Power of Minister, corporation and Secretary to delegate functions

For the purposes of section 23, the Sydney Harbour Foreshore Authority is taken to be a council.

32 Application of environmental planning instruments within Sydney Cove Development Area

- (1) Any State environmental planning policy that is expressed to apply—

- (a) to the whole of the State, or
- (b) to land within the Sydney Cove Development Area, or
- (c) to land of which the Sydney Cove Development Area forms part,

applies, in accordance with its provisions, to land within the Sydney Cove Development Area.

- (2) Any regional environmental plan, local environmental plan or deemed environmental planning instrument that was in force before the commencement of this clause does not apply to land within the Sydney Cove Development Area.

- (3) Subclause (2) does not prevent—

- (a) a regional environmental plan or local environmental plan made after the commencement of this clause from applying to land within the Sydney Cove Development Area, or
- (b) a regional environmental plan or local environmental plan made before the commencement of this clause from applying to land within the Sydney Cove Development Area as a consequence of an amendment to the plan made after that commencement.

Part 8A Environmental Planning and Assessment Amendment (Ski Resort Areas) Act 2001

32A Definitions

- (1) In this Part—

existing Part 5 approval means a Part 5 approval granted before the commencement of this clause and in force immediately before that commencement.

Part 5 approval means an approval (however described or arrived at) within the

meaning of Part 5 relating to a ski resort area.

ski resort area means an area of land within the national park reserved for the time being under the *National Parks and Wildlife Act 1974*, and known as Kosciuszko National Park, that is identified for the purposes of this clause by the Minister by order published in the Gazette.

- (2) An order may be made for the purposes of the definition of **ski resort area** only with the concurrence of the Minister for the Environment.

32B Transitional regulations relating to ski resort areas in Kosciuszko National Park

The regulations may make provision, in relation to a ski resort area, for or with respect to the following—

- (a) savings and transitional matters arising from development consent being required by an environmental planning instrument for any activity within a ski resort area that did not previously require development consent,
- (b) converting any existing Part 5 approval into a current development consent,
- (c) converting any certificate, permission or other authority given for the purposes of an existing Part 5 approval (or any requirement for such a certificate, permission or other authority) into a Part 4A certificate (or into a requirement for a Part 4A certificate),
- (d) authorising the Secretary to issue a certificate certifying that any existing Part 5 approval, certificate, permission or other authority is to be treated as a current development consent or a Part 4A certificate,
- (e) providing that any activity carried out in a ski resort area in accordance with any specified instrument, or any instrument of a specified class, in existence immediately before the commencement of this clause, is taken to be carried out in accordance with a development consent,
- (f) enabling anything lodged in connection with an application for a Part 5 approval that has been lodged before the commencement of this clause, but not determined before that commencement, to be accepted as lodged in connection with an application for a development consent,
- (g) any matter that is ancillary or incidental to, or otherwise related to, a matter referred to in any of the preceding paragraphs, but only to the extent to which the matter relates to an activity or development in a ski resort area.

32C Modification of Act with respect to ski resort areas

- (1) The regulations may modify the application of any provision of the Act to or in respect of a ski resort area, but only in relation to—

- (a) the person or authority to be responsible for exercising any function, or complying with any requirement, under the Act, under any existing Part 5 approval converted by regulations under this Part or under any certificate, permission or other authority given for the purposes of any such approval, and
- (b) the way in which such functions are to be exercised or such requirements are to be complied with.

(2) Despite any other provision of the Act—

- (a) the Minister is the consent authority for all development applications relating to land within a ski resort area and a regulation made pursuant to this Part can not make a council responsible for exercising any other function referred to in subclause (1), and
- (b) a regulation may be made pursuant to this Part for or with respect to a ski resort area only on the recommendation of the Minister made after consultation with the Minister for the Environment, and
- (c) a State environmental planning policy may be made for or with respect to a ski resort area only on the recommendation of the Minister made after consultation with the Minister for the Environment, and
- (d) any other environmental planning instrument for or with respect to a ski resort area may be made by the Minister only after consultation with the Minister for the Environment.

If the Minister recommends that any such regulation or State environmental planning policy be made, or makes any such other environmental planning instrument, against the advice of the Minister for the Environment, the Minister is to publish the reasons for making the recommendation or instrument in the same Gazette as that in which the regulation, policy or instrument is published.

(3) When consulting with the Minister about whether a recommendation should be made for the making of a regulation or State environmental planning policy, and about whether any other environmental planning instrument should be made, for or with respect to a ski resort area, the Minister for the Environment must take into account whether the proposed regulation, policy or instrument—

- (a) promotes the objects of the *National Parks and Wildlife Act 1974*, and
- (b) is consistent with the plan of management under that Act for the land concerned.

32D Application of Chapter 7 of *Local Government Act 1993* to ski resort areas

- (1) Except as may otherwise be provided by the regulations, Chapter 7 of the *Local Government Act 1993* does not apply to or in respect of a ski resort area.

- (2) A regulation made for the purposes of this clause may modify the application of any provision of Chapter 7 of the *Local Government Act 1993* to or in respect of a ski resort area.

32E Effect of certain regulations

To remove any doubt, a regulation made pursuant to this Schedule can not have the effect of making any provision prevail over the *National Parks and Wildlife Act 1974*.

32F State of the environment report

- (1) The Secretary is to present to the Minister a report as to the state of the environment in each ski resort area on each second anniversary of the day on which this clause commenced.
- (2) Section 428(2)(c) of the *Local Government Act 1993* applies to the content of a state of the environment report under this clause, except that references in that paragraph to a council are to be read as references to the Department and the National Parks and Wildlife Service.
- (3) Copies of each report must be furnished to such persons and bodies as are prescribed under section 428(3) of the *Local Government Act 1993*.

Part 9 Environmental Planning and Assessment Amendment Act 1999

33 Modification of development consents

An amendment made by Schedule 3 to the *Environmental Planning and Assessment Amendment Act 1999* extends to a development consent granted before the commencement of the amendment.

34 Date from which consent operates

Section 83(1)(b), as substituted by the *Environmental Planning and Assessment Amendment Act 1999*, extends to a development application made before the commencement of the substitution.

35 Building and construction industry long service levy

If a long service levy, or the first instalment of such a levy, has been paid under section 80(10A) before its repeal, section 109F as amended by the *Environmental Planning and Assessment Amendment Act 1999* does not apply in respect of the levy, or the first instalment of the levy.

36 Apportionment of liability

Section 109ZJ, as amended by the *Environmental Planning and Assessment Amendment Act 1999*, does not apply to or in respect of any development referred to in clause 34 of the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998*.

37 Entry to residences for building certificate inspections

Section 118J, as amended by the *Environmental Planning and Assessment Amendment Act 1999*, extends to an application for a building certificate that was made before the commencement of the amendment.

Part 9A Environmental Planning and Assessment Amendment (Affordable Housing) Act 2000

37A Compensation

- (1) To remove any doubt, the *Land Acquisition (Just Terms Compensation) Act 1991* does not apply to anything done or required to be done pursuant to a consent granted before or after 5 June 2000 (the commencement of the amending Act) in accordance with a provision referred to in section 7(1)(a), (b) or (c) of the amending Act.
- (2) Subclause (1) re-enacts (with minor modifications) section 9 of the amending Act. Subclause (1) is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.
- (3) In this clause—

amending Act means the *Environmental Planning and Assessment Amendment (Affordable Housing) Act 2000*.

Part 10 Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001

38 Definition

In this Part—

amending Act means the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001*.

39 Pending applications for approvals for places of public entertainment

Any application for an approval under the *Local Government Act 1993*, as in force immediately before the commencement of this clause—

- (a) for use of a building or temporary structure as a place of public entertainment, or
- (b) for the installation of a temporary structure on land,

being an application that had been made, but not determined, before the commencement of this clause is to be determined under that Act as if the amending Act had not been enacted.

40 Conditions applying to places of public entertainment

- (1) Subject to the regulations under the Act, the conditions applying to the use of a building as a place of public entertainment—
 - (a) pursuant to any regulation in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
 - (b) pursuant to any approval in force under Part 1 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, including an approval granted as referred to in clause 39, or
 - (c) pursuant to any local policy in force under Part 3 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
 - (d) pursuant to any exemption in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause,continue to apply to the use of a building as a place of public entertainment as if those conditions were contained in regulations under the Act.
- (2) (Repealed)
- (3) This clause does not authorise the use of a building as a place of public entertainment if, apart from this clause, the building may not lawfully be used for that purpose under the Act.
- (4) This clause ceases to have effect 2 years after the date on which it commences.

41 Conditions applying to installation of temporary structures

- (1) Subject to the regulations under the Act, the conditions applying to the installation of a temporary structure on land—
 - (a) pursuant to any regulation in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
 - (b) pursuant to any approval in force under Part 1 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, including an approval granted as referred to in clause 39, or
 - (c) pursuant to any local policy in force under Part 3 of Chapter 7 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, or
 - (d) pursuant to any exemption in force under the *Local Government Act 1993*, as in force immediately before the commencement of this clause,

continue to apply to the installation of a temporary structure on land as if those conditions were contained in regulations under the Act.

- (2) This clause does not authorise the installation of a temporary structure on land if, apart from this clause, such a structure may not lawfully be installed on the land under the Act.
- (3) This clause ceases to have effect 2 years after the date on which it commences.

Part 11 Rural Fires and Environmental Assessment Legislation Amendment Act 2002

42 Bush fire prone land

- (1) The following land within the area of a council is taken to be bush fire prone land for the area of the council until a bush fire prone land map for the area has been certified by the Commissioner of the NSW Rural Fire Service under section 146—
 - (a) land that is within, or within 100 metres of, a high or medium bush fire hazard that is identified on a hazard map prepared for the purposes of a bush fire risk management plan applying to the land, and
 - (b) land within, or within 30 metres of, a low bush fire hazard that is identified on a hazard map prepared for the purposes of a bush fire risk management plan applying to the land.

- (2) In this clause—

bush fire risk management plan has the same meaning as it has in the *Rural Fires Act 1997*.

Part 12 Building Legislation Amendment (Quality of Construction) Act 2002

43 Definition

In this Part, ***the 2002 amending Act*** means the *Building Legislation Amendment (Quality of Construction) Act 2002*.

44 Status of certain committees

A committee referred to in section 20 or 22 is taken from the time of its constitution to have been a statutory body representing the Crown.

45 Delegations

Any authorisation granted to the Director-General under clause 199 of the *Environmental Planning and Assessment Regulation 2000* that was in force immediately before the

commencement of section 23(1A), as inserted by the 2002 amending Act, is taken to be a delegation under section 23(1), and may be subdelegated accordingly.

46-56 (Repealed)

57 Exclusion of personal liability

Section 158, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that section.

58-60 (Repealed)

Part 13 Statute Law (Miscellaneous Provisions) Act 2003

61 Definition

In this Part, **the 2003 amending Act** means the *Statute Law (Miscellaneous Provisions) Act 2003*.

62 Modification of development consents—generally

Section 96(8), as in force before the amendment made to that subsection by the 2003 amending Act, applies in respect of an application for a modification of a development consent made before the commencement of that amendment.

63 Modification by consent authorities of development consents granted by the Court

- (1) Section 96AA(1A) and (1B), as inserted by the 2003 amending Act, apply only in respect of an application for a modification of a development consent made on or after the commencement of those subsections.
- (2) Section 96AA(1C), as inserted by the 2003 amending Act, extends to a modification (of a development consent) granted before the commencement of that subsection.

Part 14 Environmental Planning and Assessment Amendment (Development Consents) Act 2003

64 Lapsing of development consents for State significant development

Section 95B, as inserted by the *Environmental Planning and Assessment Amendment (Development Consents) Act 2003*, extends to the following—

- (a) any development consent granted pursuant to *State Environmental Planning Policy No 34—Major Employment-Generating Industrial Development*, or *State Environmental Planning Policy No 48—Major Putrescible Landfill Sites*, that was determined after 1 July 1998 by the operation of clause 18 or 19 of this Schedule,
- (b) any consent granted in response to an application for consent to State significant development made before, but not finally determined on, the commencement of this

clause.

65 Voluntary surrender of development consents

Section 104A, as inserted by the *Environmental Planning and Assessment Amendment (Development Consents) Act 2003*, extends to a development consent granted before the commencement of the section.

Part 15 Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003

66 Definition

In this Part, **the 2003 amending Act** means the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003*.

67 Saving of appointment of Chairperson by Secretary

The substitution of section 22(3) by the 2003 amending Act does not affect any appointment of a Chairperson under that provision as in force before the substitution.

68 Nature of construction certificate

Section 80(12), as amended by the 2003 amending Act, extends to any variation to a construction certificate, plan or specification that lawfully occurred before the commencement of that amendment.

69 Commencement of development under development consents

Section 81A, as amended by the 2003 amending Act, extends to building work or subdivision work the subject of a development consent granted before the commencement of those amendments unless the work had begun before that commencement.

70 Commencement of development under complying development certificates

Section 86, as amended by the 2003 amending Act, extends to building work or subdivision work the subject of a complying development certificate issued before the commencement of those amendments unless the work had begun before that commencement.

71 Part 4A certificates

Section 109C(1A), as inserted by the 2003 amending Act, extends to matters arising before the commencement of that subsection.

72 Appointment of principal certifying authorities

Section 109E, as amended by the 2003 amending Act, extends to any development

consent or complying development certificate issued before the commencement of those amendments for which a principal certifying authority needs to be appointed after that commencement.

73 Replacement of principal certifying authorities

Section 109EA, as inserted by the 2003 amending Act, extends to the replacement of a principal certifying authority who had been appointed before the commencement of that section.

74 Restriction on issue of occupation certificates

Section 109H(1B), as inserted by the 2003 amending Act, does not apply to any building work that commenced before that amendment.

75 Saving of occupation certificates

An occupation certificate issued in accordance with section 109H, as in force before it was amended by the 2003 amending Act, is taken to have been issued in accordance with that section, as so amended.

76 Previously suspended, withdrawn or lapsed accreditation

Section 109ZF(2), as inserted by the 2003 amending Act, extends to complaints that were made but not finally dealt with before the date of assent to that Act and to a person whose right to practise as an accredited certifier was suspended, or whose accreditation was withdrawn or lapsed, before that date.

77 Conflicts of interest

Section 109ZG(1AA), as inserted by the 2003 amending Act, extends to matters arising before the commencement of that subsection.

78 Investigation of certifying authorities

- (1) Subject to subclause (2), Division 1B of Part 6, as inserted by the 2003 amending Act, extends to matters arising before the commencement of that Division.
- (2) Section 109U, as in force immediately before its repeal by the 2003 amending Act, continues to apply to any investigation that had commenced before the repeal of that section as if that Act had not been enacted.

79 Proceedings for offences

Section 127(5), as substituted by the 2003 amending Act, does not apply to offences arising before the commencement of that amendment.

80 Improper influence with respect to conduct of accredited certifier

Section 148A, as inserted by the 2003 amending Act, does not apply to conduct occurring

before the commencement of that section.

81 Conditions of development consent

Clauses 98A and 98B of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2003 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

82 Conditions of complying development certificate

Clauses 136B and 136C of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2003 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

83 Time limits for accredited certifiers

The amendments to clauses 130, 138, 142, 151 and 160 of the *Environmental Planning and Assessment Regulation 2000* made by the 2003 amending Act do not apply to any determination made under any of those clauses, or any certificate issued under any of those clauses, before the commencement of those amendments.

Part 16 Environmental Planning and Assessment Amendment (Development Contributions) Act 2005

84 Definition

In this Part, **2005 amending Act** means the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*.

85 Application of amendments

The substitution of Division 6 of Part 4 of the Act by the 2005 amending Act does not affect anything done under that Division before its substitution, and anything so done is taken to have been done under the corresponding provision of that Division as so substituted.

Part 17 Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005

Division 1 Preliminary

86 Definition

In this Part—

2005 Amending Act means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

87 Savings and transitional regulations

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

Division 2 Major infrastructure and other projects amendments

88 Pending or previous matters under Division 4 of Part 5

- (1) Despite its repeal by Schedule 1 to the 2005 Amending Act, Division 4 of Part 5 of the Act continues to apply to and in respect of the carrying out of any activity for which the Minister's approval under that Division was sought before its repeal.
- (2) If the activity is a project to which Part 3A of the Act applies—
 - (a) subclause (1) applies to the activity (unless the instrument that declares it a project otherwise provides), and
 - (b) Part 3A of the Act does not apply to the activity while Division 4 of Part 5 of the Act continues to apply to the activity (subject to subclause (3)).
- (3) The approval of the Minister for an activity that was given under Division 4 of Part 5 of the Act before its repeal (or under that Division as continued by subclause (1)) is taken to be an approval under Part 3A of the Act, and that Part (sections 75U and 75V excepted) applies accordingly.
- (4) Until regulations are made under section 115P(3) (as substituted by the 2005 Amending Act), the provisions of Division 4 of Part 5 of the Act continue to apply (with necessary modifications) to approvals under that section of the Minister administering the Act.

89 State significant development matters

- (1) If a development application for State significant development is pending on the commencement of Part 3A of the Act, the application is to be determined (unless withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the 2005 Amending Act had not been made.
- (2) A reference in any Act or instrument to State significant development within the meaning of the Act is taken to be a reference to a project to which Part 3A of the Act applies.

This subclause ceases to have effect on the repeal of Part 3A of the Act.

90 Special heritage provision with respect to Opera House

- (1) Section 75U (as inserted by the 2005 Amending Act), in so far as it excludes the requirement for an approval under Part 4 of the *Heritage Act 1977*, does not apply to the carrying out of any development in connection with the Opera House that is a

project to which Part 3A applies.

- (2) In that case, section 75V applies instead as if an approval under Part 4 of the *Heritage Act 1977* were included in section 75V(1).

Division 3 Planning instruments amendments

91 Review of SEPPs and REPs

- (1) The Minister may, by order published on the NSW legislation website, transfer any provisions of State environmental planning policies or regional environmental plans (with or without modification) to the principal local environmental plans for the local government areas to which the existing provisions apply.
- (2) Subclause (1) does not prevent an environmental planning instrument being made to transfer any of those existing provisions in respect of a particular local area.
- (3) The transfer of any of those existing provisions is taken to be a matter of State environmental planning significance for the purposes of the Act.

92 Standard instruments

The Secretary may issue a certificate under section 65 or furnish a report under section 69 (despite sections 65(1A) and 69(2), as inserted by the 2005 Amending Act) if the Secretary is satisfied that—

- (a) significant council resources have been expended in the preparation of the draft instrument before the prescription of the relevant standard instrument, or
- (b) the draft instrument makes a necessary amendment of a principal environmental planning instrument made before the prescription of the relevant standard instrument, or a necessary amendment of an instrument referred to in paragraph (a),

and the Secretary is satisfied that satisfactory arrangements have been made for the making of a replacement instrument in accordance with the relevant standard instrument.

93 Model provisions

- (1) Model provisions made under section 33 (as in force immediately before its repeal by the 2005 Amending Act) continue in force for the purposes of any existing environmental planning instruments that adopt those model provisions.
- (2) The Minister may, by order published in the Gazette, amend or revoke any of those model provisions, and section 33(2) (as so in force) applies accordingly.

94 Development control plans

- (1) A development control plan made under section 51A or 72 and in force immediately before the repeal of that section by the 2005 Amending Act is taken to be a

development control plan made under Division 6 of Part 3 (as inserted by that Act).

- (2) Section 74C (as inserted by the 2005 Amending Act) does not render invalid any provision of a development control plan that is continued in force by subclause (1) during the period until a development control plan is made under section 74C in respect of the land concerned.
- (3) Anything done under section 51A or 72 immediately before its repeal by the 2005 Amending Act in connection with a proposed development control plan is taken to have been done under Division 6 of Part 3 (as inserted by that Act).
- (4) Regulations made for the purposes of section 51A or 72 and in force immediately before the repeal of that section by the 2005 Amending Act are taken to have been made for the purposes of Division 6 of Part 3 (as inserted by that Act).

95 Master plans under existing instruments

- (1) This clause applies to any provision of an environmental planning instrument that is in force on the commencement of this clause and that requires, before the grant of development consent, a master plan (within the meaning of clause 92A of the [Environmental Planning and Assessment Regulation 2000](#) as in force before its amendment by the 2005 Amending Act) for the land concerned.
- (2) While that provision continues in force, it is to be construed as requiring a development control plan under section 74D (as inserted by the 2005 Amending Act) with respect to the matters required to be included in the master plan, and in accordance with the procedures provided for making the master plan, by the environmental planning instrument.
- (3) Any master plan made under that provision before the commencement of this clause is taken to be a development control plan under section 74D (as inserted by the 2005 Amending Act).

96 Section 117(2) directions

- (1) Directions given under section 117(2) before the commencement of section 117(2A) by the 2005 Amending Act cease to have effect on that commencement.
- (2) However, those directions continue in force for the purposes of any draft local environmental plan that is the subject of a certificate under section 65 issued before that commencement.

Division 4 Development consent amendments

97 Section 80(5)—staged development conditional consents

- (1) The substitution of section 80(5) by the 2005 Amending Act does not affect a condition of a development consent that requires another development consent

before development may be carried out.

- (2) Section 95 (as in force immediately before the amendment of that section by the 2005 Amending Act) continues to apply to a development consent that is subject to such a condition.

98 Staged development applications as alternative to master plans

Section 83C (as inserted by the 2005 Amending Act) applies as if a reference in that section to a provision of an environmental planning instrument that requires a development control plan included a reference to any such provision made before the commencement of this clause that requires a master plan.

Division 5 Environmental assessment amendments

99 Application of section 111A (Exemptions)

Section 111A (as inserted by the 2005 Amending Act) extends to an activity that was carried out or began to be carried out before the commencement of that section.

Part 18 Building Professionals Act 2005

100 Compliance certificates

- (1) Section 80A(10A) does not apply to a consent issued before the commencement of the subsection.
- (2) Section 85(5A) does not apply to a complying development certificate issued before the commencement of the subsection.

101 Construction certificates

Section 109F(1A) does not apply to a construction certificate issued before the commencement of that subsection or in relation to building work or subdivision work that was physically commenced on the land to which the relevant development consent applies before the commencement of that subsection.

Part 19 Provisions consequent on enactment of [Environmental Planning and Assessment Amendment Act 2006](#)

102 Definition

In this Part—

amending Act means the [Environmental Planning and Assessment Amendment Act 2006](#).

103 Contributions plans

Section 94EA(2A), as inserted by the amending Act, does not affect a condition imposed under section 94 before the commencement of section 94EA(2A) and any such condition continues to have effect as if that subsection had not commenced.

104 Contributions for affordable housing

Section 94F(6), as inserted by the amending Act, does not affect a condition imposed under section 94F before the commencement of section 94F(6) and any such condition continues to have effect as if that subsection had not commenced.

105 Review

- (1) The Minister is to review Subdivision 4 of Division 6 of Part 4 of the Act to determine whether the policy objectives of that Subdivision remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to the amending Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

Part 20 Environmental Planning Legislation Amendment Act 2006

106 Definition

In this Part—

amending Act means the *Environmental Planning Legislation Amendment Act 2006*.

107 Savings and transitional regulations

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

108 Part 3A matters

- (1) The amendments made by Schedule 1[3], [4] and [5] to the amending Act apply to declarations made (or purporting to be made) before the commencement of those amendments.
- (2) The amendment made by Schedule 1[12] to the amending Act applies only to applications lodged after the commencement of the amendment.
- (3) The other amendments to Part 3A of the Act made by Schedule 1 to the amending Act extend to matters pending under Part 3A on the commencement of those amendments.

- (4) A concept plan that was submitted before the commencement of the amendments made by Schedule 1[11], [21] and [29] to the amending Act may continue to be dealt with after that commencement as if it were an application for approval of a concept plan.

109 Planning agreements—exclusion of section 94 or 94A

Section 93F(3A), as inserted by the amending Act, applies only to a planning agreement that is entered into after the commencement of that subsection and that was the subject of public notice under section 93G after that commencement.

110 Contributions for public service or amenity outside NSW

Section 94CA, as inserted by the amending Act, extends to permit contributions provided for a public amenity or service, as a result of a condition allowed under a contributions plan that is in force before the commencement of that section, to be applied, with the written approval of the Minister, to an equivalent, similar or related public amenity or service.

111 Lapsing of consent

A development consent granted before the commencement of section 95(6), as inserted by the amending Act, that is subject to a deferred commencement condition under section 80(3), lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within—

- (a) 5 years after the date consent was granted, or
- (b) 2 years after the date of the commencement of section 95(6),

whichever is the later.

112 Occupation certificates

Section 109H, as substituted by the amending Act, does not apply to or in respect of an application for an occupation certificate made, but not determined, before that substitution and that section, as in force immediately before that substitution, continues to apply to and in respect of any such application.

113 Subdivision certificates

Section 109J, as substituted by the amending Act, does not apply to or in respect of an application for a subdivision certificate made, but not determined, before that substitution and that section, as in force immediately before that substitution, continues to apply to and in respect of any such application.

114 Reference of undetermined applications to the Minister

Section 116D, as amended by the amending Act, does not apply to an application made,

but not determined, before that amendment and that section, as in force immediately before that amendment, continues to apply to any such application.

115 Negotiating determination of development application

Section 116E, as amended by the amending Act, does not apply to an application made, but not determined, before that amendment and that section, as in force immediately before that amendment, continues to apply to any such application.

116 Time limit for bringing proceedings

Section 127(5A)–(5C), as inserted by the amending Act, apply only in respect of offences alleged to have been committed after the commencement of those subsections.

Part 21 Environmental Planning and Assessment Amendment Act 2008

Division 1 Preliminary

117 Interpretation

In this Part—

amending Act means the *Environmental Planning and Assessment Amendment Act 2008*.

118 Savings and transitional regulations

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

Division 2 Provisions consequent on Schedule 1 to amending Act

119 Definitions

In this Division—

deemed environmental planning instrument means a former environmental planning instrument referred to in clause 2 of Schedule 3 to the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979*, and includes an instrument referred to in clause 3(2) of that Schedule.

existing local environmental plan means a local environmental plan made under Part 3 of the Act (as in force immediately before the relevant commencement day).

existing regional environmental plan means a regional environmental plan made under Part 3 of the Act (as in force immediately before the relevant commencement day).

existing State environmental planning policy means a State environmental planning

policy made under Part 3 of the Act (as in force immediately before the relevant commencement day).

the relevant commencement day means the day on which Schedule 1.1[4] to the amending Act commences.

120 Continuation in force of existing SEPPs and REPs

All existing State environmental planning policies and existing regional environmental plans are, on the relevant commencement day, taken to be environmental planning instruments made by the Governor under Division 2 of Part 3 of the Act, as amended by the amending Act.

121 Review of existing REPs

- (1) As soon as practicable after the relevant commencement day, the Minister is to review the provisions of all existing regional environmental plans.
- (2) An environmental planning instrument (whether a principal or amending instrument) may be made by the Governor under Division 2 of Part 3 of the Act, or by the Minister under Division 4 of that Part, to transfer those existing environmental planning provisions (with or without modification) to appropriate new or existing principal instruments that apply to the land concerned.
- (3) Any such instrument may be made without compliance with the provisions of Part 3 of the Act relating to the conditions precedent to the making of the instrument.

122 Continuation in force of existing LEPs

- (1) All existing local environmental plans are, on the relevant commencement day, taken to be environmental planning instruments made by the Minister under Division 4 of Part 3 of the Act, as amended by the amending Act.
- (2) The Minister may dispense with any conditions precedent to the making of an environmental planning instrument under that Division if satisfied that the instrument was in the course of preparation before the commencement of this clause.

123 Continuation in force of deemed environmental planning instruments

- (1) All deemed environmental planning instruments that are in force immediately before the relevant commencement day continue in force and have effect according to their tenor.
- (2) Any such instrument may be amended or repealed by an environmental planning instrument made under Part 3 of the Act.

Division 3 Provisions relating to development assessment

124 Commissioners of Inquiry

- (1) A person who held office as a Commissioner of Inquiry immediately before the repeal of Division 4 of Part 2 by the amending Act ceases to hold office on that repeal.
- (2) A Commissioner of Inquiry is not entitled to any remuneration or compensation because of the loss of that office as a consequence of the amendments made by the amending Act.

125 Committees

- (1) A person who held office as a member of the Local Government Liaison Committee immediately before the repeal of Division 5 of Part 2 by the amending Act ceases to hold office on that repeal.
- (2) Any such member is not entitled to any remuneration or compensation because of the loss of that office as a consequence of the amendments made by the amending Act.

Division 5 Provisions relating to certification

133 Section 109ZK

The amendment made to section 109ZK by the amending Act does not apply to any building work or subdivision work commenced before the commencement of the amendment.

Part 22 Bennelong Point (Parking Station) Act 1985

134 Repeal of Act

The repeal of the *Bennelong Point (Parking Station) Act 1985* does not affect the carrying out of development authorised by that Act.

Part 23 Statute Law (Miscellaneous Provisions) Act 2009

135 Restrictions on the issue of occupation or subdivision certificate

The amendments made by Schedule 1.13[6] and [8] to the *Statute Law (Miscellaneous Provisions) Act 2009* apply only in relation to an application for an occupation certificate or a subdivision certificate made on or after the commencement of those amendments.

Part 24 Planning Appeals Legislation Amendment Act 2010

136 Review and appeal changes

The amendments made to Part 4 of the Act by the *Planning Appeals Legislation Amendment Act 2010* do not apply to or in respect of a development application lodged

with a consent authority before the commencement of section 82B (as inserted by that amending Act).

Part 25 Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009

137 Definitions

In this Part—

authorisation means an authorisation under section 24 of the Nation Building Act to carry out an infrastructure project.

Co-ordinator General means the NSW Infrastructure Co-ordinator General.

infrastructure project has the same meaning as in the Nation Building Act.

nation building consent means an authorisation declared to be a development consent under this Part.

the Nation Building Act means the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*.

138 Authorisations declared to be development consents

- (1) An authorisation is declared to be a development consent under the Act for the development comprising the infrastructure project if the Co-ordinator General has certified in writing that this Part applies to the project.
- (2) The Act, as modified by this Part and with any other necessary modifications, applies to a nation building consent as if it were a development consent granted under the Act and to any conditions of that consent as if they were conditions of a development consent.
- (3) A nation building consent is, for the purposes of the Act, taken to have been effective and to operate from the date the relevant authorisation was granted under the Nation Building Act.
- (4) For the purposes of the Act and any instrument made under the Act, the consent authority for a nation building consent is the council for the area in which the infrastructure project is situated or, if the project is situated in the Western Division, the Western Lands Commissioner.
- (5) In any instrument, a reference—
 - (a) to an authorisation that has been declared by this Part to be a development consent under the Act is taken to be a reference to a development consent, and
 - (b) to a condition of any such authorisation is taken to be a reference to a condition of

the development consent, and

- (c) to the NSW Infrastructure Co-ordinator General in respect of any such development consent is taken to be a reference to the consent authority referred to in subclause (4).

139 Infrastructure projects taken to be exempt development

Development for the purposes of an infrastructure project is taken to be exempt development for the purposes of the Act if—

- (a) it is the subject of an order under section 23(1)(a) of the Nation Building Act, and
- (b) an authorisation under section 24 of that Act was not required for the carrying out of the project, and
- (c) the Co-ordinator General has certified in writing that this Part applies to the project or a class of projects of which the project is a member.

140 Certification of infrastructure projects

- (1) The Co-ordinator General must notify the council of the area in which an infrastructure project is situated in writing if the Co-ordinator General certifies that this Part applies to the project, or a class of projects of which the project is a member.
- (2) The Co-ordinator General must keep a register of certificates given under this Part. The register is to be kept in the form and manner determined by the Co-ordinator General.
- (3) A council must keep a register of notices given under this clause for infrastructure projects situated in the area of the council.
- (4) A register kept by a council under this clause may form part of the register kept by the council under section 100.
- (5) Section 100(2) applies to a register kept by a council under this clause.
- (6) If a council is given notice under this clause that this Part applies to an infrastructure project, or a class of projects of which an infrastructure project is a member, the council is not required to include advice about previous exemptions or authorisations under the Nation Building Act in any planning certificate issued for the land concerned under section 149 of the Act.

141 Application of EPA Act to nation building consents generally

- (1) Divisions 1–6A (other than section 81A), 8 and 10 of Part 4 of the Act, and sections 95, 95A, 96AA, 96A, 100 and 101, do not apply to a nation building consent except to the extent that any of those provisions are applicable because of the operation of section 96 in respect of a modification to the nation building consent.

- (2) Section 96 applies to a nation building consent with the following modifications—
- (a) the consent authority must not consider any provisions of an environmental planning instrument, proposed environmental planning instrument or development control plan insofar as they prohibit the proposed modification,
 - (b) the consent authority must not refuse to consent to the application for modification on the ground that the application does not comply with non-discretionary development standards in a regulation or an environmental planning instrument, if the non-compliance is of a kind already permitted under the nation building consent,
 - (c) section 96(5) does not apply.
- (3) If a nation building consent relates to particular development for the purposes of an educational establishment, any other development for the purposes of an educational establishment is taken to be substantially the same development for the purposes of section 96.
- (4) If a nation building consent relates to particular development for the purposes of affordable housing or seniors housing, any other development for the purposes of residential accommodation (other than affordable housing or seniors housing) is taken not to be substantially the same development for the purposes of section 96.

Part 26 Environmental Planning and Assessment Amendment Act 2012

142 Definition

In this Part—

amending Act means the *Environmental Planning and Assessment Amendment Act 2012*.

143 Application of DCP amendments

- (1) The amendments made by Schedule 1[1]–[3] and [5] to the amending Act extend to development control plans in force immediately before the commencement of those amendments.
- (2) Section 79C(3A), as inserted by the amending Act, does not apply to the determination of a development application made before the commencement of section 79C(3A).

Part 27 Environmental Planning and Assessment Amendment (Staged

Development Applications) Act 2017

144 Definition

In this Part—

amending Act means the *Environmental Planning and Assessment Amendment (Staged Development Applications) Act 2017*.

145 Pending staged development applications and consents

- (1) A staged development application that, immediately before the commencement of the amending Act, was pending under Division 2A of Part 4 of the Act (as in force before the substitution of that Division by the amending Act) is, on and from that substitution, taken to be a concept development application under that Division (as so substituted), and may be dealt with accordingly.
- (2) A consent granted to a staged development application under Division 2A of Part 4 of the Act (as in force before the substitution of that Division by the amending Act) is, on and from that substitution, taken to be a consent granted to a concept development application under that Division (as so substituted), and has effect accordingly.

146 Validation

- (1) Anything done or omitted to be done before the commencement of the amending Act that would have been valid if the Act, as amended by the amending Act, had been in force when the thing was done or omitted to be done is validated.
- (2) However, subclause (1) does not render valid—
 - (a) a development consent that was, before 30 June 2017, declared by a court to be invalid, or
 - (b) a development application that was lodged after (and in reliance on) the grant of such a development consent.

147 Superseded references

A reference in any other Act or in any statutory or other instrument, or in any contract or agreement, to a staged development application under the Act is to be read as a reference to a concept development application under the Act.

Part 28 Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017

148 Definitions

In this Part—

amending Act means the *Environmental Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Act 2017*.

existing local panel means—

- (a) an independent hearing and assessment panel constituted by a relevant council, as at 1 September 2017, under section 23I (as in force before the substitution of that section by the amending Act), or
- (b) any other panel constituted by a relevant council, as at 1 September 2017, under the *Local Government Act 1993* to advise on development applications or to determine development applications as a delegate of the council.

relevant council means—

- (a) the council of an area that is wholly within the Greater Sydney Region, and
- (b) the council of the City of Wollongong.

149 Existing local panels to continue as local planning panels

- (1) An existing local panel is taken to have been constituted by the relevant council as a local planning panel under section 23J (as substituted by the amending Act).
- (2) The members of the existing local panel (as at 1 September 2017) are taken to have been appointed by the relevant council as members of the local planning panel. Any such member may not be removed from office by the council without the approval of the Minister.
- (3) Subclause (2) ceases to have effect on 1 March 2018.

150 Interim arrangements for councils that do not have existing local panel

- (1) This clause applies in relation to a relevant council that has not constituted an existing local panel as at 1 September 2017.
- (2) A relevant council is not required to constitute a local planning panel under section 23J (as substituted by the amending Act) until 1 March 2018.

151 Regional panel amendments do not affect pending matters

The amendments made by the amending Act in relation to regional panels do not affect any application pending on the commencement of those amendments or any decision made under the Act before that commencement.

152 Extension of period for instituting local government election offences

The extension from 12 months to 3 years of the period within which proceedings for offences in connection with the conduct of local government elections may be

commenced (as a consequence of the amendment to section 693 of the *Local Government Act 1993* made by the amending Act) applies to offences committed after the commencement of the amending Act.

153 Savings and transitional regulations

- (1) This clause applies to regulations made under Part 1 of this Schedule that contain provisions of a savings or transitional nature consequent on the enactment of the amending Act.
- (2) The provisions of those regulations have effect despite anything to the contrary in this Part.
- (3) The regulations may make separate savings and transitional provisions or amend this Part to consolidate the savings and transitional provisions.

Schedule 2 Transferred transitional arrangements on repeal of Part 3A—former Schedule 6A to the Act

1 Definitions and application

- (1) In this Schedule—

environmental assessment requirements means—

- (a) environmental assessment requirements for approval to carry out a project, or for approval of a concept plan for a project, notified to the proponent of the project under Part 3A (as modified from time to time under that Part), or
- (b) environmental assessment requirements adopted by the Secretary as environmental assessment requirements for approval to carry out a project, or for approval of a concept plan for a project, under clause 8J of the *Environmental Planning and Assessment Regulation 2000*,

but does not include draft environmental assessment requirements.

Part 3A project or concept plan application means an application under Part 3A for approval to carry out a project (or part of a project) or for approval of a concept plan for a project.

relevant Part 3A repeal date means—

- (a) the date on which Part 3A was repealed, except as provided by paragraph (b), or
- (b) in the case of a project to which clause 17(1) of *State Environmental Planning Policy (Major Development) 2005* applies—8 April 2011.

transitional Part 3A project—see clause 2.

- (2) Words and expressions used in this Schedule have the same meaning as they had in Part 3A immediately before its repeal.
- (3) This Schedule applies, on and from the commencement of this Schedule, with the amendments made by the *Environmental Planning and Assessment Further Amendment (Part 3A Repeal) Regulation 2011*.
- (4) After the commencement of Schedule 13 to the *Environmental Planning and Assessment Amendment Act 2017*, a reference in this Schedule to a provision of the Act that has been renumbered or relocated by that Act is taken to be a reference to the renumbered or relocated provision (unless the context or subject-matter otherwise indicates or requires).
- (5) In subclause (4)—
relocated includes repealed and re-enacted, with or without modification.

2 Transitional Part 3A projects

- (1) The following are, subject to this Schedule, **transitional Part 3A projects**—
 - (a) an approved project (whether approved before or after the repeal of Part 3A),
 - (b) a project that is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A),
 - (c) a project for which environmental assessment requirements for approval to carry out the project, or for approval of a concept plan for the project, were last notified or adopted within 2 years before the relevant Part 3A repeal date (unless the environmental assessment is not duly submitted on or before 30 November 2012 or on or before such later day as the Secretary may allow by notice in writing to the proponent),
 - (d) a project for which an environmental assessment (whether for approval to carry out the project or for approval of a concept plan for the project) was duly submitted before the relevant Part 3A repeal date.
- (2) Environmental assessment requirements referred to in subclause (1)(c) do not include environmental assessment requirements determined under section 75P(1)(a).
- (3) If the environmental assessment requirements referred to in subclause (1)(c) are expressed to expire at a particular time, those requirements continue and do not expire at that time.
- (4) A part of a project is a transitional Part 3A project if that part of the project meets the criteria under this clause for a transitional Part 3A project even though the whole project does not meet those criteria.

- (5) A transitional Part 3A project extends to the project as varied by changes to the Part 3A project or concept plan application, to the concept plan approval or to the project approval, whether made before or after the repeal of Part 3A.
- (6) Development is not a transitional Part 3A project if it ceased to be a project to which Part 3A applies before the repeal of Part 3A or if it ceases to be such a project after that repeal in accordance with the provisions of or continued by this Schedule.
- (7) The repeal, on the commencement of this Schedule, of provisions of the *State Environmental Planning Policy (Major Development) 2005* that declared development as projects to which Part 3A applied (or as critical infrastructure projects) does not affect the operation of this Schedule.
- (8) (Repealed)

2A Public interest consideration for Part 3A projects

- (1) To avoid doubt, it is declared that the Minister is authorised (and is taken always to have been authorised) to take the public interest into account when deciding whether or not to approve the carrying out of a project or to give approval for a concept plan under Part 3A, before or after the repeal of that Part.
- (2) It does not matter whether the Secretary's report on the project did or did not give consideration to or make any recommendation about the public interest or any particular aspect of the public interest.

3 Continuation of Part 3A—transitional Part 3A projects

- (1) Part 3A of the Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project.
- (2) For that purpose—
 - (a) any State environmental planning policy or other instrument made under or for the purposes of Part 3A, as in force on the repeal of that Part and as amended after that repeal, continues to apply to and in respect of a transitional Part 3A project, and
 - (b) declarations, orders, directions, determinations or other decisions with respect to a transitional Part 3A project continue to have effect and may continue to be made under Part 3A (including for the purpose of the application or continued application of Part 4 or 5 or other provisions of the Act in relation to the project).

Editorial note—

For orders under former sec 75B, declarations under former sec 75C, or orders or declarations in relation to those sections under this paragraph, see the Historical notes at the end of the Act.

(2A) To avoid doubt, on and after the repeal of Part 3A of the Act—

- (a) Part 4 of the Act does not operate to require development consent by the Minister or other consent authority, and
- (b) Part 5.1 of the Act does not operate to require the approval of the Minister, for any project, or for any part of a project, that is a transitional Part 3A project and that is an approved project (whether approved before or after the repeal of Part 3A).

(3) This clause is subject to the other provisions of this Schedule.

3A Projects that cease to be dealt with under Part 3A

- (1) Approval cannot be granted for the carrying out of a transitional Part 3A project if the development concerned is a transitional Part 3A project only because it is the subject of—
 - (a) an approved concept plan, or
 - (b) environmental assessment requirements for approval of a concept plan, or
 - (c) an environmental assessment for approval of a concept plan.

However, approval may be granted to such a project if it is to be granted under section 75P(1)(c) when the concept plan is approved (but not if it is to be granted when the concept plan is modified).

- (2) An application under Part 3A for approval to carry out such a project cannot be lodged or dealt with.
- (3) This clause does not prevent the determination of an application for approval of a concept plan.

3B Provisions applying with respect to approval of concept plans

- (1) This clause applies to development (other than an approved project) for which a concept plan has been approved under Part 3A, before or after the repeal of Part 3A, and so applies whether or not the project or any stage of the project is or was a transitional Part 3A project.
- (2) After the repeal of Part 3A, the following provisions apply to any such development (whether or not a determination was made under section 75P(1)(b) when the concept plan was approved)—
 - (a) if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),

- (b) if Part 5 applies to the carrying out of the development, the development is taken to be development that may be carried out without development consent under Part 4 (despite anything to the contrary in an environmental planning instrument),
 - (c) any development standard that is within the terms of the approval of the concept plan has effect,
 - (d) a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan,
 - (e) a consent authority may grant consent under Part 4 for the development without complying with any requirement under any environmental planning instrument relating to a master plan,
 - (f) the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan,
 - (g) this clause applies instead of section 75P(2), but any direction, order or determination made under section 75P(2) in connection with the concept plan continues to have effect.
- (3) If a determination was not made under section 75P(1)(b) in relation to the project (or any stage of the project) when any such concept plan was approved and the project (or that stage) can no longer be approved under Part 3A, Part 4 is taken to apply to the carrying out of the development in relation to the project (or that stage) for the purposes of subclause (2) (unless an environmental planning instrument provides that it is development that may be carried out without development consent or it is exempt development).
- (4) For the purposes of determining whether development to which Part 4 applies is State significant development, a provision of this clause that permits the development to be carried out with development consent under Part 4 is taken to be a provision of an environmental planning instrument.
- (5) This clause does not apply to development that is State significant infrastructure.
- (6) The amendments made to this Schedule by the *Environmental Planning and Assessment Amendment (Transitional) Regulation 2016* extend to things done before the commencement of those amendments.

3BA Winding-up of transitional Part 3A modification provisions on cut-off date of 1 March 2018 and other provisions relating to modifications

- (1) For the purposes of this clause, the **cut-off date** is 1 March 2018.

- (2) An approved project or a concept plan cannot be modified under section 75W on or after the cut-off date, except as provided by this clause.
- (3) Subclause (2) does not apply if the request to modify the approved project or concept plan under section 75W was lodged before the cut-off date. Accordingly, the provisions of this Schedule relating to a modification made pursuant to such a request continue to apply.
- (4) A request to modify an approved project or concept plan under section 75W that may be dealt with because of subclause (3) cannot be dealt with under section 75W if—
 - (a) the request has not been determined by 1 September 2018, and
 - (b) the Secretary is of the opinion that insufficient information has been provided to deal with the request and notifies the person who made the request that it will not be dealt with under section 75W.
- (5) A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that—
 - (a) the proposed modification is to correct a minor error, misdescription or miscalculation, or
 - (b) the proposed modification is of minimal environmental impact, or
 - (c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).
- (6) In the application of section 4.55(1A) or (2) or 4.56(1) of the Act to the following development, the consent authority need only be satisfied that the development to which the consent as modified relates is substantially the same development as the development authorised by the consent (as last modified under section 75W)—
 - (a) development that was previously a transitional Part 3A project and whose approval was modified under section 75W,
 - (b) development that was taken to be an approved project pursuant to clause 8J of the *Environmental Planning and Assessment Regulation 2000* and whose consent was modified under section 75W.
- (7) To avoid doubt, subclause (2)—
 - (a) applies whether the project remains or has ceased to be a transitional Part 3A project, and
 - (b) extends to a modification under section 75W in relation to a development consent

that is taken to be an approved project pursuant to clause 8J of the *Environmental Planning and Assessment Regulation 2000*.

3C Modification of concept plans

- (1) Section 75W continues to apply (subject to clause 3BA) for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A, whether or not the project or any stage of the project is or was a transitional Part 3A project.
- (2) This clause applies despite anything to the contrary in this Schedule (other than provisions relating to approval for the carrying out of a project or stage of a project that is given in connection with an approval to modify a concept plan).

3D Modification of environmental assessment provisions—sections 75H and 75I

For the purposes of the application of Part 3A to a transitional Part 3A project—

- (a) section 75H(3) is taken not to require the Secretary to accept an environmental assessment before making an environmental assessment publicly available in accordance with that subsection, and
- (b) section 75I(2)(g) does not apply to or in respect of a transitional Part 3A project, and
- (c) the Minister is not required to consider a statement relating to compliance with environmental assessment requirements for the purposes of section 75J(2)(a) or 75O(2)(a).

Note—

Section 75N applies sections 75H and 75I to approval for a concept plan for a project in the same way as they apply with respect to an approval to carry out a project.

3E Time limits for proponents to comply with environmental assessment requirements

- (1) If the Secretary requires a proponent to make a submission under section 75H(6), the proponent must comply with that requirement—
 - (a) in relation to a response under section 75H(6)(a)—within 30 days, or
 - (b) in relation to a preferred project report referred to in section 75H(6)(b)—within 60 days, or
 - (c) in relation to a revised statement of commitments referred to in section 75H(6)(c)—within 60 days,after being notified of that requirement, or within such other period as the Secretary notifies in writing from time to time to the proponent.
- (2) If the proponent fails to make a submission within a period specified in this clause, to avoid doubt, the Minister may approve or disapprove the carrying out of a project

(under section 75J) or may give or refuse to give approval for a concept plan (under section 75O).

- (3) If the Secretary has notified a proponent of a requirement under section 75H(6) before the commencement of this clause, this clause applies to that requirement as if the period specified in relation to the requirement commences on the date of the commencement of this clause.
- (4) This clause does not affect the operation of clause 8D of the *Environmental Planning and Assessment Regulation 2000*.

4 Construing references to Part 3A

- (1) A reference in the Act (other than this Schedule) or in any other Act or in any instrument made under an Act to Part 3A or to a provision of that Part is to be construed as a reference to that Part or that provision as continued by this Schedule.
- (2) Without limiting subclause (1), on and from the commencement of this subclause, a reference in clause 6 of either of the Redfern–Waterloo contributions plans to a project to which Part 3A of the EP&A Act applies is taken to include a reference to State significant development.
- (3) The Redfern–Waterloo contributions plans, as taken to be amended by subclause (2), apply to development for which a development application was made but not determined before the commencement of that subclause in the same way as they apply to development for which an application is made after that commencement.

- (4) In this clause—

Redfern–Waterloo contributions plans means the following plans preserved under clause 18 of Schedule 6 to the *Growth Centres (Development Corporations) Act 1974*—

- (a) the *Redfern–Waterloo Authority Contributions Plan 2006*,
- (b) the *Redfern–Waterloo Authority Affordable Housing Contributions Plan 2006—Redfern–Waterloo Authority Operational Area*.

5 Part 3A projects that become State significant infrastructure

- (1) Specified development on specified land that was a project (or a specified class of development that were projects) to which Part 3A applied immediately before its repeal may be declared to be State significant infrastructure by an order of the Minister (published in the Gazette).
- (2) Any such development may be declared to be State significant infrastructure whether or not the development is a transitional Part 3A project. On the making of the declaration it ceases to be a transitional Part 3A project.

- (3) Despite anything to the contrary in any environmental planning instrument, any such development that is declared to be State significant infrastructure is taken to be development that may be carried out without development consent under Part 4.
- (4) For the purposes of Part 5.1 of the Act in its application to any such development—
 - (a) a concept plan approved under Part 3A in relation to the development (whether before or after the repeal of Part 3A) is taken to be an approval (and the concept proposals) for a staged infrastructure application under Division 3 of Part 5.1, and
 - (b) any approval under Part 3A to carry out development is taken to be approval under Division 5.2 for the carrying out of that development, and
 - (c) any environmental assessment requirements, any statement of environmental assessment, any public exhibition, any response to submissions, any preferred project report by a proponent or any other action under Part 3A in relation to the development is taken to be environmental assessment requirements, an environmental impact statement, public exhibition, a response to submissions, a preferred infrastructure report by a proponent or other action taken under the corresponding provisions of Part 5.1, unless the Secretary directs that any such action be taken again under Part 5.1.
- (4A) Despite subclause (4), a request to modify an approved project or concept plan under section 75W that, by operation of clause 3BA(4), cannot be dealt with under that section is not taken to be an action taken under a provision of Part 5.1.
- (5) If a single proposed development comprises development that is only partly State significant infrastructure declared under this clause, the remainder of the development (except so much of the remainder of the development as is State significant development or as the Secretary determines is not sufficiently related to the State significant infrastructure)—
 - (a) may be carried out without development consent under Part 4 of the Act, and
 - (b) is also declared to be State significant infrastructure for the purposes of the Act.
- (6) State significant infrastructure declared under this clause is taken to be State significant infrastructure declared under section 115U(4).
- (7) An approved project (whether approved before or after the repeal of Part 3A) that is State significant infrastructure declared under this clause and that is also declared to be a critical infrastructure project is taken to be critical State significant infrastructure declared under section 5.13 of the Act.

5A Additional provision relating to modification of approvals for North West Rail Link development

- (1) This clause applies to modification request no MP06_0157 MOD 1 to modify the

staged infrastructure approval (dated 6 May 2008) relating to the North West Rail Link development and to any subsequent modification requests to modify that approval.

Note—

The North West Rail Link development is declared to be State significant infrastructure by the operation of clause 5 of this Schedule and Schedule 4 to the *State Environmental Planning Policy (State and Regional Development) 2011*. The concept plan approved under Part 3A in relation to the development is taken to be an approval for a staged infrastructure application (see clause 5(4)(a) of this Schedule).

- (2) Section 115ZI applies to a modification request to which this clause applies as if that request were a request to modify a Minister's approval within the meaning of that section.
- (3) Any actions taken before the commencement of this clause with respect to any modification request to which this clause applies have effect for the purposes of the application of section 115ZI to the request.
- (4) This clause is in addition to clause 5.

5B Postponing the lapsing of approval to carry out State significant infrastructure

- (1) This clause applies to development that was a transitional Part 3A project and that has been declared to be State significant infrastructure by an order under clause 5.
- (2) A condition that causes the approval for the development to lapse on a day (the **original lapsing day**) does not have effect and the approval instead lapses on the day specified in subclause (3) if—
 - (a) a request has been duly made to the Minister to modify the approval to specify a later day on which the approval will lapse (a **relevant modification request**), and
 - (b) the relevant modification request is made before the original lapsing day and the request has not been determined on or before that day.
- (3) The approval lapses 12 months after the relevant modification request is made unless before the end of that period—
 - (a) the relevant modification request is refused or withdrawn, in which case the approval lapses on the day on which the refusal or withdrawal occurs, or
 - (b) the relevant modification request is granted, in which case the approval lapses on the day specified in the modified approval.
- (4) This clause extends to a relevant modification request that was duly made before the commencement of this clause.
- (5) If a relevant modification request was made before the commencement of this clause and was not determined before the approval lapsed, the approval is revived for the

purposes of the application of this clause and of any other request made before that commencement in relation to the approval. In that case, the period of 12 months referred to in subclause (3) is taken to be the 12 months after the commencement of this clause.

6 Part 3A projects that become State significant development

- (1) Specified development on specified land that was a project (or a specified class of development that were projects) to which Part 3A applied immediately before its repeal may be declared to be State significant development by an order of the Minister (published in the Gazette).
- (2) Any such development may be declared to be State significant development whether or not the development is a transitional Part 3A project. On the making of the declaration it ceases to be a transitional Part 3A project.
- (3) For the purposes of Part 4 in its application to any such development—
 - (a) any approval under Part 3A to carry out part of the development is taken to be a development consent under Part 4 for the carrying out of that part of the development, and
 - (b) any environmental assessment requirements, any statement of environmental assessment, any public exhibition, any response to submissions by a proponent or any other action under Part 3A in relation to the development are taken to be environmental assessment requirements, an environmental impact statement, public exhibition, a response to submissions by an applicant or other action taken under the corresponding provisions of Part 4, unless the Secretary directs that any such action be taken again under Part 4.
- (3A) Despite subclause (3), a request to modify an approved project or concept plan under section 75W that, by operation of clause 3BA(4), cannot be dealt with under that section is not taken to be an action taken under a provision of Part 4.
- (4) If a single proposed development comprises development that is only partly State significant development declared under this clause, the remainder of the development is also declared to be State significant development (except so much of the remainder of the development as the Secretary determines is not sufficiently related to the State significant development).
- (5) State significant development declared under this clause is taken to be State significant development declared under section 89C(3).

7, 8 (Repealed)

9 Compensation not payable

- (1) Compensation is not payable by or on behalf of the State—

- (a) because of the enactment, making or operation of any of the following—
 - (i) the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*,
 - (ii) *State Environmental Planning Policy (Major Development) Amendment 2011* or any other environmental planning instrument, regulation or decision relating to the removal of any project from the operation of Part 3A (whether made before or after the commencement of this clause), or
 - (b) because of any consequence of any such enactment, making or operation, or
 - (c) because of any statement or conduct relating to any such enactment, making or operation, or
 - (d) because of any other statement or conduct relating to the repeal or proposed repeal of Part 3A (including the termination of consideration of any application or proposal under that Part in anticipation of its repeal).
- (2) This clause extends to statements, conduct and any other matter occurring before the commencement of this clause.

(3) In this clause—

compensation includes damages or any other form of monetary compensation.

conduct includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

statement includes a representation of any kind—

- (a) whether made verbally or in writing, and
- (b) whether negligent, false, misleading or otherwise.

the State means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

10 (Repealed)

11 Lapsing of Part 3A approvals

- (1) An approval for carrying out a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A unless—
 - (a) the project is physically commenced (within the meaning of section 95) on or before that day on the land to which the approval relates, or
 - (b) the approval of the project is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.

- (2) Despite subclause (1), an approval for carrying out a transitional Part 3A project that authorises the use of any land, building or work does not lapse if that use is actually commenced before the date on which the approval would otherwise lapse.
- (3) The approval of a concept plan for a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A unless—
 - (a) any part of the project is physically commenced (within the meaning of section 95) on or before that day, in accordance with an approval or development consent, on the land to which the approval or consent relates, or
 - (b) the approval of the concept plan is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.

11A Requests to extend date that Part 3A approval lapses

- (1) This clause applies to an approval for carrying out, or an approval of a concept plan for, a transitional Part 3A project in respect of which a request has been duly made to the Minister to extend the date on which the approval would otherwise lapse (a **relevant modification request**). This clause extends to any such request that was duly made before the commencement of this clause.
- (2) If a relevant modification request is made before the date on which the approval would otherwise lapse and the request has not been determined before that date, the approval does not lapse on that date but continues in force until—
 - (a) the request is determined or withdrawn, or
 - (b) the date that is 12 months after the request was made,whichever first occurs.
- (3) If a relevant modification request is determined and the date on which the approval would otherwise lapse is extended, the approval continues in force in accordance with the determination despite subclause (2).
- (4) If a relevant modification request was made before the commencement of this clause and was not determined before the approval lapsed, the approval is revived for the purposes of the application of this clause and of any other request made before that commencement in relation to the approval. In that case, the period of 12 months referred to in subclause (2)(b) is taken to be the period of 12 months after the commencement of this clause.

12 Continuing application of Part 3A to modifications of certain development consents

Section 75W of Part 3A continues to apply (subject to clause 3BA) to modifications of the development consents referred to in clause 8J(8) of the *Environmental Planning and Assessment Regulation 2000*, and so applies whether an application for modification is

made before or after the commencement of this clause.

13 Application of amendments to existing development applications

The amendments made to the Act by Schedule 1.2[16], [18], [19], [25] and [26] to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* do not apply to or in respect of a development application lodged on or before the commencement of the amendment concerned.

14 Joint regional planning panels and matters previously determined by such panels

Section 23G(4A), as inserted by Schedule 1.5[2] to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*, does not apply to proceedings commenced by or against a joint regional planning panel before the commencement of that amendment.

15 Matters determined by joint regional planning panels

(1) If—

- (a) a development application was made but not determined before the commencement of Schedule 4A and a regional panel was exercising the consent authority functions of the council when the application was made, and
- (b) the regional panel ceased to exercise those functions on the commencement of that Schedule,

the council may exercise those functions.

(2) An application (whether made before or after the commencement of Schedule 4A) for modification of a development application for development for which a regional panel ceased to exercise the consent authority functions of a council on that commencement is to be determined by that council.

(3) Despite subclause (1), the applicable regional panel continues to exercise the consent authority functions of a council for the following development applications (but not for the modification of those development applications)—

- (a) a development application for development that has a capital investment value of more than \$10 million if the development application was made, but not determined by the panel, before the commencement of Schedule 4A,
- (b) a development application for development referred to in clause 13B(1)(f) of the *State Environmental Planning Policy (Major Development) 2005*, if the development application was made, but not determined by the panel, before the commencement of Schedule 4A,
- (c) the first stage of a staged development application for development referred to in

clause 13G of the *State Environmental Planning Policy (Major Development) 2005*, if the development application was made, but not determined by the panel, before the commencement of Schedule 4A.

16 Sydney Opera House—continuation of heritage provisions

If development in connection with the Opera House is declared to be State significant development or State significant infrastructure, clause 90 of Schedule 6 continues to apply as if references in that clause to provisions of Part 3A were references to the corresponding provisions relating to State significant development or State significant infrastructure.

17 Planning Assessment Commission

- (1) The amendments made to section 23D of the Act by Schedule 1.4 to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* do not affect any review under that section that was requested by the Minister before the commencement of those amendments.
- (2) The amendment made to clause 5(3) of Schedule 3 to the Act by Schedule 1.4[7] to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* extends to persons who were appointed as members before the commencement of that amendment.

18 Joint Regional Planning Panels

The amendment made to clause 2 of Schedule 4 to the Act by Schedule 1.5[4] to the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* does not apply to or in respect of the appointment or reappointment of a person who was the chairperson of a regional panel immediately before the commencement of that amendment.

19 Existing development applications not to be determined by regional panels

- (1) This clause applies to a development application for development if—
 - (a) the development application was made before 1 July 2009 and not finally determined before the commencement of Schedule 4A, and
 - (b) the development is development specified in Schedule 4A.
- (2) A development application to which this clause applies is to be dealt with as if it were for development not specified in Schedule 4A.
- (3) This clause applies to the determination of a development application before the commencement of this clause.

20 Modification of certain approved projects and development consents relating to mining

or petroleum development on strategic agricultural land

- (1) **Application of clause** This clause applies to the following requests and applications—
- (a) a request to modify an approved project,
 - (b) an application for the modification of a development consent referred to in clause 8J(8) of the *Environmental Planning and Assessment Regulation 2000*,

but only if the request or application relates to mining or petroleum development on the following land—
 - (c) land shown on the Strategic Agricultural Land Map,
 - (d) any other land that is the subject of a site verification certificate.
- (2) **Meaning of “mining or petroleum development”** In this clause, **mining or petroleum development** means—
- (a) development specified in clause 5 of Schedule 1 to *State Environmental Planning Policy (Major Development) 2005* (as in force immediately before the repeal of that Schedule), but only if—
 - (i) a mining lease under the *Mining Act 1992* is required to be issued to enable the development to be carried out under the modified approval or consent because—
 - (A) the development is proposed to be carried out outside the mining area of an existing mining lease, or
 - (B) there is no current mining lease in relation to the proposed development,
or
 - (ii) the development is for the purposes of extracting a bulk sample as part of resource appraisal or a trial of a mine comprising the extraction of more than 20,000 tonnes of coal or of any mineral ore, or
 - (b) development specified in clause 6 of Schedule 1 to *State Environmental Planning Policy (Major Development) 2005* (as in force immediately before the repeal of that Schedule), but only if a production lease under the *Petroleum (Onshore) Act 1991* is required to be issued to enable the development to be carried out under the modified approval or consent because—
 - (i) the development is proposed to be carried out outside the area of an existing production lease, or
 - (ii) there is no current production lease in relation to the proposed development,
or

(c) development specified in clause 6(2) of Schedule 1 to *State Environmental Planning Policy (State and Regional Development) 2011*.

(3) However, **mining or petroleum development** does not include development carried out on land that is outside—

- (a) the mining area of a mining lease or proposed mining lease, or
- (b) the area of a production lease or proposed production lease.

(4) **Request or application to which this clause applies to be accompanied by gateway certificate or site verification certificate** A request or application to which this clause applies must be accompanied by—

- (a) in relation to land shown on the Strategic Agricultural Land Map as critical industry cluster land—a current gateway certificate in respect of the proposed development to be carried out under the modified approval or consent, or
- (b) in relation to any other land—
 - (i) a current gateway certificate in respect of the proposed development to be carried out under the modified approval or consent or
 - (ii) a site verification certificate that certifies that the land concerned is not biophysical strategic agricultural land.

(5) **Part 4AA of Mining, Petroleum Production and Extractive Industries SEPP applies to requests and applications to which this clause applies** Part 4AA (Mining and petroleum development on strategic agricultural land) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (other than Divisions 1, 2 and 5) applies (with all necessary changes) to a request or application to which this clause applies as if it were an application for development consent.

(6) **Assessment of requests and applications to which this clause applies** Before determining a request or application to which this clause applies that is accompanied by a gateway certificate, the Minister must—

- (a) refer the request or application to the Minister for Primary Industries for advice regarding the impact of the proposed development on water resources, and
- (b) if the request or application is accompanied by an unconditional gateway certificate issued by operation of clause 17I(3) of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (as applied by this clause), refer the request or application to the Gateway Panel for advice, and
- (c) consider—
 - (i) any recommendations set out in the certificate, and

- (ii) any written advice provided by the Minister for Primary Industries in response to a referral under paragraph (a), and
 - (iii) any written advice provided by the Gateway Panel in response to a referral under paragraph (b), and
 - (iv) any written advice of the IES Committee provided to the Gateway Panel under clause 17G(1) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (as applied by this clause).
- (7) In determining a request or application to which this clause applies that is accompanied by a gateway certificate, the Minister must consider whether any recommendations set out in the certificate have or have not been addressed and if addressed, the manner in which those recommendations have been addressed.
- (8) The Minister for Primary Industries, when providing advice under this clause on the impact of the proposed development on water resources, must have regard to—
 - (a) the minimal impact considerations set out in the document entitled *Aquifer Interference Policy* published by the NSW Office of Water, Department of Primary Industries dated September 2012, and
 - (b) the other provisions of that Policy.
- (9) **Miscellaneous provisions** For the avoidance of doubt, a site verification certificate or a gateway certificate may be issued for the purposes of this clause with respect to the part of land or the part of the proposed development to which the modification relates (rather than the whole of the land or the whole development to which the approval or consent relates).
- (10) This clause does not apply to or with respect to a request or application that was made but not determined on or before 10 September 2012.
- (10A) In addition to subclause (10), this clause does not apply to or with respect to a request or application if—
 - (a) the land to which the request or application relates was not shown (whether in whole or in part) on the *Strategic Agricultural Land Map* before 28 January 2014, and
 - (b) the request or application was made, but not determined, on or before 3 October 2013.
- (10B) However, the Minister or the Secretary, in dealing with a request or application referred to in subclause (10) or (10A), may seek the advice of the Gateway Panel.
- (11) Words and expressions used in this clause have the same meanings as they have in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive*

Industries) 2007.

21 Transitional arrangements for certain declared light rail projects

- (1) To avoid doubt, development that is an activity under Part 5 of the Act because of the operation of section 104P(3) of the *Transport Administration Act 1988* may be declared to be State significant infrastructure or critical State significant infrastructure.
- (2) If any such development has been declared to be State significant infrastructure or critical State significant infrastructure, section 104P(3) of that Act does not apply to the extent that it provides that TfNSW is the determining authority for the development.
- (3) Except as provided by subclause (2), the declaration of any such development as State significant infrastructure or critical State significant infrastructure does not affect the application of section 104P of that Act to the development.

22 Continuation of enforcement arrangements in relation to Part 3A approvals

- (1) In this clause—

Part 3A approval means an approval for a transitional Part 3A project, whether granted before or after the repeal of Part 3A.

- (2) A person who contravenes or fails to comply with section 75D of the Act is guilty of an offence. The maximum penalty applicable to the offence is the same maximum penalty that applies to an offence in connection with the carrying out of State significant infrastructure in contravention of an approval under Division 5.2 of the Act.
- (3) Division 9.3 of, and Schedule 5 to, the Act apply to a Part 3A approval in the same way as they apply to an approval for State significant infrastructure.

Note—

A development control order in connection with State significant infrastructure may be given only by the Minister or the Planning Secretary (see section 9.35(2) of the Act).

Schedule 3 Other transferred provisions—former Parts 1-3 of Schedule 7 to the Act

Part 1 Botany and Randwick Sites Development Act 1982

1 Bus depot

- (1) The Minister may, by order published in the Gazette, declare that such land within the Municipality of Botany or the Municipality of Randwick or both as is specified or described in the order may be developed by the Urban Transit Authority, or by any other persons nominated in the order, for the purpose of a bus depot.

- (2) Notwithstanding anything in any planning instrument or in any other environmental planning instrument, the Urban Transit Authority, and any other persons nominated pursuant to subclause (1), or any of them, may carry out development for the purpose of a bus depot, without the necessity for consent under this Act being obtained therefor, on the land for the time being specified or described pursuant to subclause (1).
- (3) Subclauses (1) and (2) re-enact (with minor modifications) section 7(1) and (2) of the *Botany and Randwick Sites Development Act 1982* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Part 2 Walsh Bay Development (Special Provisions) Act 1999

2 Meaning of “Walsh Bay”

In this Part, **Walsh Bay** means the land to which *Sydney Regional Environmental Plan No 16—Walsh Bay* applied immediately before 31 May 1999, or any part of the land, and includes any thing in, on, under or over that land or any part of that land.

3 Applicants appeals

The provisions of section 97 and, to the extent applicable, section 97AA do not apply to an applicant who is dissatisfied with a determination or decision, or a failure to make a determination, of a kind referred to in those provisions in relation to a development application to carry out development on land at Walsh Bay.

4 Objectors appeals

Section 98 does not apply to an objector who is dissatisfied with a determination of the consent authority to grant consent to a development application of a kind referred to in that section in relation to a development application to carry out development on land at Walsh Bay.

5 Restraint of breaches

Proceedings under section 123 may not be brought in connection with—

- (a) a determination or decision in relation to a development application, or the modification of a development consent, to carry out development on land at Walsh Bay, or
- (b) any thing done or omitted to be done in compliance, or purported compliance, with a determination or decision referred to in paragraph (a),

except by the Minister or a person with the consent of the Minister.

6 Transferred provisions to which *Interpretation Act 1987* applies

Clauses 2–5 re-enact (with minor modifications) the definition of **Walsh Bay** in section 3,

and sections 11, 12 and 14, of the *Walsh Bay Development (Special Provisions) Act 1999* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Part 3 Western Sydney Regional Park (Revocation for Western Sydney Orbital) Act 2001

7 Dealings with certain land at Fairfield

- (1) This clause applies to all those pieces or parcels of land situated in the County of Cumberland, Parish of Melville, local government area of Fairfield and being so much of the following land as is, at the commencement of this clause, vested in the corporation—
 - (a) lots 12, 13 and 15–20, DP 1021938,
 - (b) lots 33–37 and 40–42, DP 1021940,
 - (c) lots 22–29 and 31, DP 1022008.
- (2) The corporation may sell, grant leases of, dispose of or otherwise deal with the land to which this clause applies.
- (3) Proceeds of any dealing by the corporation with that land are to be paid into the Development Fund created under section 129 for the Sydney Region.
- (4) Subclauses (1)–(3) re-enact (with minor modifications) sections 4 and 6(2) and (3) of the *Western Sydney Regional Park (Revocation for Western Sydney Orbital) Act 2001* and are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Schedule 4 Transferred savings, transitional and other provisions—former provisions of Environmental Planning and Assessment Regulation 2000

Part 1A Preliminary

1 Interpretation of transferred provisions not affected by transfer

The provisions of this Schedule are, to the extent that as a result of the *Environmental Planning and Assessment Amendment Regulation 2018* and the *Environmental Planning and Assessment Further Amendment (Miscellaneous) Regulation 2018* they re-enact provisions of the *Environmental Planning and Assessment Regulation 2000*, transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

Part 1B Miscellaneous provisions

8A Definitions

(1) In this Schedule—

environmental assessment requirements for a project (including a concept plan for a project) means environmental assessment requirements prepared by the Secretary under section 75F of the Act.

project means development to which Part 3A of the Act applies.

project application means—

- (a) an application for the Minister's approval to carry out a project under Part 3A of the Act, or
- (b) an application for the Minister's approval for a concept plan for a project under Part 3A of the Act, or
- (c) a single application for both an approval to carry out a project under Part 3A of the Act and for a concept plan for a project under that Part.

(2) In this Schedule—

- (a) a reference to the end of the public consultation period for a project or concept plan is a reference to the end of the period of 30 days referred to in section 75H(3) of the Act in relation to the project or concept plan, and
- (b) a reference to the end of the proponent's environmental assessment period for a project or concept plan is a reference to the time at which the proponent has complied with all of the Secretary's requirements under section 75H of the Act.

(3) In this Schedule, a reference to section 75F, 75H or 75I of the Act includes, in the case of a concept plan for a project, a reference to any such section as applied by section 75N of the Act.

8B Matters for environmental assessment and Ministerial consideration

The Secretary's report under section 75I of the Act in relation to a project is to include the following matters (to the extent that those matters are not otherwise included in that report in accordance with the requirements of that section)—

- (a) an assessment of the environmental impact of the project,
- (b) any aspect of the public interest that the Secretary considers relevant to the project,
- (c) the suitability of the site for the project,
- (d) copies of submissions received by the Secretary in connection with public consultation

under section 75H or a summary of the issues raised in those submissions.

Note—

Section 75J(2) of the Act requires the Minister to consider the Secretary's report (and the reports, advice and recommendations contained in it) when deciding whether or not to approve the carrying out of a project.

8C Time limits for dealing with applications and other matters

The following time limits are prescribed for dealing with applications and other matters under Part 3A of the Act—

- (a) The time within which the Secretary is to notify the proponent of environmental assessment requirements with respect to a project or concept plan is 28 days after the proponent requests the Secretary to prepare those requirements.
- (b) The time within which the Secretary is to accept the environmental assessment with respect to a project or concept plan, or require the proponent to submit a revised environmental assessment, under section 75H of the Act is 21 days after the environmental assessment is received by the Secretary.
- (c) The time within which the Secretary is required to send copies of submissions received or a report of the issues raised in those submissions to the proponent and others under section 75H(5) of the Act (or to notify the proponent that no submissions were received) is 10 days after the end of the public consultation period for the project or concept plan.

8D Rejection of applications if proponent fails to comply with requirements

- (1) This clause applies to project applications.
- (2) If—
 - (a) any such application has not been duly made, and
 - (b) the Secretary has notified the proponent of the action required to ensure that the application is duly made, and
 - (c) the proponent has failed to take that action within 14 days after being so notified, the Minister may decide to reject the application without determining whether to approve or disapprove of the carrying out of the project or to give or refuse to give approval for the concept plan (as the case requires).
- (3) If—
 - (a) the proponent has failed to comply with the Secretary's requirements under section 75H of the Act in connection with an application, and
 - (b) the Secretary has notified the proponent of the requirements that have not been

complied with, and

- (c) the proponent has failed to comply with those requirements within 21 days after being so notified,

the Minister may decide to reject the application without determining whether to approve or disapprove of the carrying out of the project or to give or refuse to give approval for the concept plan (as the case requires).

- (4) An application is taken to be rejected and never to have been made when the proponent is given notice of the Minister's decision to reject the application under this clause.
- (5) The Secretary must refund to the proponent the whole of any fee paid in connection with an application that is rejected under this clause.

8E Provisions relating to appeals

- (1) **Date of receipt of notice of determination** For the purposes of determining the commencement of the appeal period under section 75K(2)(a), 75L(3) or 75Q(2)(a) of the Act, notice of the determination concerned is received on the date that the notice is received (or taken to have been received) in accordance with section 153 of the Act.
- (2) **Proponent appeal relating to approval of project—deemed refusal** For the purposes of section 75K(2)(b) of the Act, the date on which a pending application for approval to carry out a project is taken to have been refused for the purposes only of enabling an appeal within 3 months after the date of the deemed refusal is as follows—
- (a) 60 days from the end of the proponent's environmental assessment period for the project, except as provided by paragraph (b) or (c),
- (b) 120 days from the end of that period if the Secretary notifies the proponent, when notifying the environmental assessment requirements for the project, that the project involves a complex environmental assessment and approval process,
- (c) 30 days from the end of that period if the Secretary notifies the proponent, when notifying the environmental assessment requirements for the project, that the project does not involve a complex environmental assessment and approval process.
- (3) **Proponent appeal relating to concept plan or modification of concept plan—deemed refusal** For the purposes of section 75Q(2)(b) of the Act, the date on which a pending application for approval of a concept plan or to modify a concept plan is taken to have been refused for the purposes only of enabling an appeal within 3 months after the date of the deemed refusal is as follows—
- (a) 60 days from the end of the proponent's environmental assessment period for the concept plan, except as provided by paragraph (b) or (c),

- (b) 120 days from the end of that period if the Secretary notifies the proponent, when notifying the environmental assessment requirements for the concept plan, that the concept plan involves a complex environmental assessment and approval process,
- (c) 30 days from the end of that period if the Secretary notifies the proponent, when notifying the environmental assessment requirements for the concept plan, that the concept plan does not involve a complex environmental assessment and approval process.

(4) **Proponent appeal relating to modifications of approval** The time within which an appeal may be made under section 75W(5) of the Act is 3 months after—

- (a) the date on which the proponent received (or is taken to have received) notice of the determination of the request for a modification of the approval for a project in accordance with section 153 of the Act, or
- (b) the expiration of the period of 40 days after the request for the modification was made during which the Minister has failed to determine the request.

8F Owner's consent or notification

(1) The consent of the owner of land on which a project is to be carried out is required for a project application or modification application unless—

- (a) the application is made by a public authority, or
- (b) the application relates to a critical infrastructure project, or
- (c) the application relates to a mining or petroleum production project, or
- (d) the application relates to a linear infrastructure project, or
- (e) the application relates to a project on land with multiple owners designated by the Secretary for the purposes of this clause.

(1A) The consent of the New South Wales Aboriginal Land Council is required for a project application or modification application relating to land owned by a Local Aboriginal Land Council if the consent of the Local Aboriginal Land Council is required as owner of the land to the application.

(2) Any such consent may be obtained at any time before the determination of the application.

(3) If the consent of the owner of the land is not required for a project application under this clause, then the proponent is required to give notice of the application—

- (a) in the case of a linear infrastructure project or a project designated under subclause (1)(e)—to the public by advertisement published in a newspaper

circulating in the area of the project before the start of the public consultation period for the project, or

- (b) in the case of a project that comprises mining or petroleum production (other than a project that also comprises a linear infrastructure project)—to the public by advertisement published in a newspaper circulating in the area of the project before the end of the period of 14 days after the application is made, or
- (c) in the case of a critical infrastructure project (other than a project that also comprises a linear infrastructure project or mining or petroleum production project)—to the owner of the land before the end of period of 14 days after the application is made, or
- (d) in any other case—to the owner of the land at any time before the application is made.

(4) In this section—

linear infrastructure project means development for the purposes of linear transport or public utility infrastructure.

mining or petroleum production includes any activity that is related to mining or petroleum production, but does not include any activity to the extent that it is carried out on land that is a state conservation area reserved under the [National Parks and Wildlife Act 1974](#).

modification application means a request for modification of approval for a project under section 75W of the Act.

8G Public information about documents relating to projects

- (1) This clause applies to the duty of the Secretary under section 75X(2) of the Act to make specified documents relating to a project publicly available.
- (2) The documents are to be made available on the Department's website and in such other locations as the Secretary determines.
- (3) The documents are to be posted on the Department's website and in those other locations within 14 days of—
 - (a) in the case of a document that is an application, request or submission—the date on which the application, request or submission is made, or
 - (b) in the case of a document that is a determination of environmental assessment requirements, a report or an approval—the date on which the determination, report or approval is made or given.
- (4) In addition to the documents referred to in section 75X(2) of the Act, the Secretary is

to include on the Department's website and in such other locations as the Secretary determines the following documents—

- (a) the declaration of development as a project to which Part 3A of the Act applies or its declaration as a critical infrastructure project,
- (b) guidelines published under section 75F or 75H of the Act,
- (c) any environmental assessment in relation to a project that has been placed on public exhibition under section 75H of the Act,
- (d) responses to submissions, preferred project reports and other material in relation to a project provided to the Secretary by the proponent after the end of the public consultation period (whether under section 75H(6) of the Act or otherwise),
- (e) reports of panels under section 75G of the Act (as in force before its repeal) or of reviews by the Planning Assessment Commission or reports by the Planning Assessment Commission where a public hearing has been held,
- (f) any reasons given to the proponent by the Minister as referred to in section 75X(3) of the Act.

(5) A document may be made available on the Department's website by providing an electronic link to the document on another website.

8H Fees

The fees for applications and exercise of functions under Part 3A of the Act are as set out in Part 15 of this Regulation.

8I Enforcement: critical infrastructure

In accordance with section 75R(5) of the Act, Division 2A of Part 6 of the Act applies to a critical infrastructure project only to the extent that it authorises the Minister or the Secretary to give an order or exercise any other function under that Division.

8J Transitional provisions

(1AA) The Secretary may accept, as an application for approval of a project under Part 3A of the Act, any development application made under Part 4 of the Act with respect to any development before it becomes a project to which Part 3A of the Act applies. The Secretary may, for that purpose, require any matter to be provided by the applicant that he or she could require to be included in the application under section 75E of the Act.

(1) The Secretary may adopt (with or without modification), as environmental assessment requirements for a project or concept plan, environmental assessment requirements issued by the Secretary under Part 4 or Part 5 of the Act with respect to any

development or activity before it becomes a project to which Part 3A of the Act applies.

- (2) The Secretary may accept (with or without modification), as an environmental assessment for a project or part of a project or concept plan—
- (a) an environmental impact statement obtained in accordance with the requirements of the Secretary under Part 4 or Part 5 of the Act with respect to any development or activity before it becomes a project or part of a project to which Part 3A of the Act applies, or
 - (b) a statement of environmental effects (as referred to in clause 2(1)(c) of Schedule 1) prepared in connection with the development concerned before it becomes a project or part of a project to which Part 3A of the Act applies, or
 - (c) a written assessment arising out of the consideration, under section 111 of the Act, of the environmental impact of an activity and prepared before the activity becomes a project or part of a project to which Part 3A of the Act applies.
- (2A) If the Secretary accepts (with or without modification) an environmental impact statement, a statement of environmental effects or a written assessment as an environmental assessment for a project or part of a project or a concept plan—
- (a) the Secretary is taken to have prepared environmental assessment requirements in respect of the project or part of a project or concept plan, and
 - (b) the environmental assessment as so accepted is taken to comply with those requirements.
- (3) The Secretary may accept, as a period of public availability of the environmental assessment for a project or part of a project or concept plan (under section 75H(3) of the Act), a period of public exhibition of an environmental impact statement or a statement of environmental effects referred to in subclause (2) before the relevant development or activity becomes a project or part of a project to which Part 3A of the Act applies. For that purpose, and to avoid doubt, if the period of public exhibition is less than 30 days, it is accepted only to the extent of the actual period of public exhibition.
- (3A) If any such period of public exhibition of an environmental impact statement or a statement of environmental effects is accepted by the Secretary, the proponent must provide the Secretary with any written submissions made during the public exhibition period in relation to the relevant development or activity.
- (4) Despite its repeal, section 88A of the Act continues to apply (and Parts 3A and 5.1 and Division 4.1 of Part 4 of the Act do not apply) to development that is the subject of a development application that was directed to be referred to the Minister under that section before its repeal.

(4A) If a development application is made after the commencement of Part 3A of the Act in respect of any development that—

(a) was, immediately before the repeal of section 89 of the Act, the subject of a direction under that section, and

(b) is not a project to which Part 3A of the Act applies,

the Minister may direct that the application is to be determined (unless the development application is withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.

(5) If a development application is made after the commencement of Part 3A of the Act in respect of any development that, immediately before the commencement of Part 3A, was declared to be State significant development by notice in force under section 76A(7) of the Act, the Minister may direct that the application is to be determined (unless the development application is withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.

(6) Clause 89 of Part 17 to Schedule 6 to the Act extends to development applications pending on the commencement of Part 3A of the Act for development that was State significant development on the commencement of the *State Environmental Planning Policy (State Significant Development) 2005*.

(7) If—

(a) a development application was made before the commencement of Part 3A of the Act on the basis that the development was State significant development, and

(b) the Minister is required to form an opinion that the development is State significant development in order to determine the application on that basis (but the Minister had not, before that commencement, formed an opinion on the matter),

the Minister may, after that commencement, form an opinion that the development was, at the time the application was made, State significant development. In that case, the application is to be determined (unless withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.

Note—

The references to State significant development in this subclause refer to the meaning that term had before the commencement of Part 3A and not to its current meaning.

- (8) For the purposes only of modification, the following development consents are taken to be approvals under Part 3A of the Act and section 75W of the Act applies to any modification of such a consent—
- (a) a development consent granted by the Minister under section 100A or 101 of the Act,
 - (b) a development consent granted by the Minister under *State Environmental Planning Policy No 34—Major Employment-Generating Industrial Development*,
 - (c) a development consent granted by the Minister under Part 4 of the Act (relating to State significant development) before 1 August 2005 or under clause 89 of Schedule 6 to the Act,
 - (d) a development consent granted by the Land and Environment Court, if the original consent authority was the Minister and the consent was of a kind referred to in paragraph (c).

The development consent, if so modified, does not become an approval under Part 3A of the Act.

- (8A) Subclause (8), as in force before its substitution by the *Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2010*, applies to any development consent for which approval for the treatment of the consent as an approval for the purposes of section 75W of the Act—

- (a) was given before that substitution, or
- (b) is given after that substitution, but where the application for the approval was made before that substitution.

- (8B) The Secretary may waive any fee payable in respect of an application under section 75W of the Act if the application relates to a development consent that is taken to be an approval under Part 3A of the Act and a fee has been paid in respect of the application under section 96 of the Act.

- (9) For the purposes of this clause, and to avoid doubt, a development application is made by a person when the person first applies to the consent authority for consent to carry out the particular development, whether or not the application at that time had been consented to by the owner of the land to which the development application relates.

8K Transitional provision—existing mining leases

- (1) Despite its repeal by Schedule 7.11 to the Amending Act, section 74 of the *Mining Act 1992* (Mining unaffected by *Environmental Planning and Assessment Act 1979*) continues to have effect in respect of an existing mining lease in respect of which mining operations are carried out underground until—

- (a) the end of the relevant transition period, or
- (b) such time as an approval is given to carry out mining operations in the mining area,

whichever is the sooner.

- (2) However, if any such approval is limited to the carrying out of mining operations in a part of the mining area only, section 74 of the *Mining Act 1992* continues to have effect in respect of so much of the existing mining lease as relates to the other parts of the mining area, but only until the end of the relevant transition period or until such time as an approval is given to carry out mining operations in those other parts (whichever is the sooner).

- (3) In this clause—

Amending Act means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

approval means an approval under Part 3A of the Act, but does not include the approval of a concept plan under that Part.

existing mining lease means a mining lease in force immediately before 16 December 2005.

mining area, mining lease and **mining operations** have the same meanings as in the *Mining Act 1992*.

relevant transition period means—

- (a) the period ending on 30 September 2012 if, on or before 16 December 2010, the Secretary has notified environmental assessment requirements under section 75F(3) of the Act for approval to carry out mining operations in the mining area, or
- (b) the period ending on 16 December 2010, in any other case.

8L Transitional provision—objections under Mining Act in relation to Part 3A projects

- (1) The reference in clause 28(b) of Schedule 1 to the *Mining Act 1992* to any person who is entitled to make submissions in relation to the granting of development consent to use land for the purpose of obtaining minerals or for one or more mining purposes (**the relevant development**) is taken to include—
 - (a) if the relevant development is development to which Part 3A of the Act applies—a reference to any person who is entitled, under section 75H of the Act, to make a written submission in relation to the approval of that project, or
 - (b) if the Secretary has, under clause 8J(3) of this Regulation, accepted a period of public exhibition of an environmental impact assessment with respect to the

relevant development before it becomes a project to which Part 3A of the Act applies—a reference to any person who was entitled to make a written submission during the public exhibition period in relation to the relevant development.

- (2) Pursuant to Part 1 of Schedule 6 to the Act, this clause is taken to have commenced on the commencement of Part 3A of the Act.

8M Transitional provisions—development consents under Part 4 of the Act and approvals under Part 5 of the Act

- (1) If development is declared to be a project under Part 3A of the Act, any development consent under Part 4 of the Act or approval under Part 5 of the Act that applies to the project or land on which the project is to be carried out continues in force despite that declaration.
- (2) If a declaration of a project under Part 3A of the Act is revoked before or after approval has been given under that Part to carry out the project, the Minister may make any of the following determinations—
- (a) that the whole or part of the effect of the approval is preserved and is taken to be a development consent granted under Part 4 of the Act by an appropriate consent authority nominated by the Minister,
 - (b) that the whole or a specified part of an action under Part 4 or Part 5 of the Act in respect of the whole or part of a project is revived and has effect,
 - (c) that an environmental assessment under Part 3A of the Act is to be recognised for the purpose of complying with a specified environmental assessment requirement under Part 4 or Part 5 of the Act.
- (3) A determination of the Minister under subclause (2) has effect on the revocation of the declaration of the project.
- (4) Subclause (2) does not apply if a project ceases to be a project to which Part 3A of the Act applies because of section 75P(1)(b) of the Act.

8N Projects or concept plans for which approval may not be given concerning environmentally sensitive land or sensitive coastal locations

- (1) For the purposes of sections 75J(3) and 75O(3) of the Act, approval for a project application may not be given under Part 3A of the Act for any project, or part of a project, that—
- (a) is located within an environmentally sensitive area of State significance or a sensitive coastal location, and
 - (b) is prohibited by an environmental planning instrument that would not (because of section 75R of the Act) apply to the project if approved.

- (2) To avoid doubt, a project is not prohibited for the purposes of subclause (1)(b) if—
- (a) it is not permitted because of the application of a development standard under the environmental planning instrument, or
 - (b) it is prohibited under the environmental planning instrument but is permitted to be carried out because of the application of another environmental planning instrument to the environmental planning instrument.

- (3) In this clause—

environmentally sensitive area of State significance has the same meaning as it has in *State Environmental Planning Policy (State and Regional Development) 2011*.

sensitive coastal location has the same meaning as it has in Schedule 4A to the Act.

80 Other projects prohibited by environmental planning instruments for which project approval may not be given

- (1) For the purposes of section 75J(3) of the Act, approval for the carrying out of a project may not be given under Part 3A of the Act for any project, or part of a project, that—
- (a) is not the subject of an authorisation or requirement under section 75M of the Act to apply for approval of a concept plan, and
 - (b) is prohibited by an environmental planning instrument that would not (because of section 75R of the Act) apply to the project if approved.
- (2) To avoid doubt, a project is not prohibited for the purposes of subclause (1)(b) if—
- (a) it is not permitted because of the application of a development standard under the environmental planning instrument, or
 - (b) it is prohibited under the environmental planning instrument but is permitted to be carried out because of the application of another environmental planning instrument to the environmental planning instrument.
- (3) This clause does not apply to a project for which the giving of approval is prohibited by clause 8N.

80A Transitional provision—projects or concept plans otherwise prohibited for which approval may be given

Clauses 8N and 80 do not apply to a project application if, before the commencement of those clauses, the Secretary had notified the proponent of environmental assessment requirements under section 75F of the Act relating to the project, or part of the project, concerned.

8P Surrender of approvals given under Part 3A of the Act or existing use rights

- (1) A surrender of an approval under Part 3A of the Act or a right conferred by Division 10 of Part 4 of the Act (referred to in section 75YA of the Act) is to be made by giving to the Secretary a notice in writing of the surrender of the approval or right.
- (2) The notice must contain the following information—
 - (a) the name and address of the person by whom the notice is given,
 - (b) the address, and formal particulars of title, of the land to which the approval or right relates,
 - (c) a description of the approval or right to be surrendered,
 - (d) if the person giving notice is not the owner of the land, a statement by the owner of the land to the effect that the owner consents to the surrender of the approval or right.
- (3) A duly signed and delivered notice of surrender of an approval or right conferred by Division 10 of Part 4 of the Act takes effect on the date determined by the Secretary and operates, according to its terms, to surrender the approval or right to which it relates.

12 Continuation of former provisions for making LEPs

- (1) In this clause—

amending LEP means a LEP that (apart from provisions for citation, commencement, definitions, purpose, land to which it applies and similar ancillary provisions) contains only direct amendments to or repeals of other environmental planning instruments. Any other LEP is a principal LEP even if it also contains direct amendments to or repeals of other environmental planning instruments.

former LEP plan-making provisions means the provisions of—

- (a) Part 3 of the Act and the regulations under the Act, and
- (b) Part 5 of the *Heritage Act 1977*, and
- (c) sections 28 and 29 of the *Local Government Act 1993*,

relating to the making of LEPs, as in force immediately before 1 July 2009 (the date of commencement of Schedule 1 to the *Environmental Planning and Assessment Amendment Act 2008*).

pending LEP means—

- (a) a draft principal LEP, if the Secretary was informed of the decision to prepare the plan under section 54 of the Act before 1 July 2009, or

- (b) a draft amending LEP, if the Secretary was informed of the decision to prepare the plan under section 54 of the Act before 1 July 2009, but only until 1 July 2010 (or if the Secretary had not issued a certificate under section 65 for public exhibition of the draft before 1 July 2009, until 1 January 2011).
- (2) The former LEP plan-making provisions continue to apply to the making of a pending LEP unless the Secretary notifies the council that they cease to apply. In that case, the Minister may, under clause 122(2) of Schedule 6 to the Act, dispense with any conditions precedent to the making of the LEP (subject to compliance with such other requirements, if any, as are imposed by the Minister).
- (3) Despite subclause (2), section 25 of the Act, as in force immediately before 1 July 2009, does not continue to apply to the making of a pending LEP that is an amending LEP.
- (4) A pending LEP made under the former LEP plan-making provisions is taken to be a LEP made by the Minister under Division 4 of Part 3 of the Act, as amended by Schedule 1 to the *Environmental Planning and Assessment Amendment Act 2008*.
- (5) In any Act or instrument, a reference in relation to a pending LEP—
 - (a) to a planning proposal includes a reference to a draft local environmental plan, and
 - (b) to community consultation includes a reference to the public exhibition of any such draft plan.

12A Operation of 2010 amending Regulation

- (1) This clause applies to any pending LEP to which the former LEP plan-making provisions continue to apply because of clause 12, as amended by the *Environmental Planning and Assessment Amendment (Transitional Arrangements) Regulation 2010*, but to which those provisions did not apply before the commencement of that Regulation.
- (2) For the purposes of the application of the former LEP plan-making provisions to a pending LEP to which this clause applies, any thing purporting to have been done or omitted before the commencement of that Regulation in accordance with the former LEP plan-making provisions in respect of the pending LEP is taken to have been done or omitted under and in accordance with the former LEP plan-making provisions.
- (3) The amendments to clause 12 made by the *Environmental Planning and Assessment Amendment (Transitional Arrangements) Regulation 2010* apply, but this clause does not apply, to the proposed local environmental plan relating to South Tralee submitted to the Secretary on or about 6 November 2009 by the Queanbeyan City Council.

14 Saving of actions taken for preparation of SEPP

Anything done in relation to a proposed SEPP before 1 July 2009 under Division 2 of Part 3 of the Act, as in force immediately before that date, is (if the SEPP is not made before that date) taken to have been done under that Division as in force after that date.

15 REPs deemed to be SEPPs—interpretation

- (1) A provision of a regional environmental plan that becomes a SEPP on 1 July 2009 does not prevail over any other environmental planning instrument because the plan becomes a SEPP on that date if it would not have prevailed over that instrument before that date.
- (2) A provision of a regional environmental plan that becomes a SEPP on 1 July 2009 does not have the same effect as a provision of a SEPP for the purposes of Part 3A of the Act if it would not have had that effect before 1 July 2009.

15A Transitional provision relating to affordable housing

Until the commencement of Part 5B of the Act (to be inserted by Schedule 3 to the *Environmental Planning and Assessment Amendment Act 2008*), section 94F(3)(b) of the Act is to be construed as if the reference to a condition authorised to be imposed by a LEP (which before the commencement of Schedule 1 to that Act included a reference to a condition authorised to be imposed by a regional environmental plan) were a reference to a condition authorised to be imposed by a SEPP or a LEP.

25AD Further transitional provisions: 2005 Amending Act

- (1) In this clause—

deemed DCP means a master plan, in force under a provision of an environmental planning instrument immediately before the relevant commencement, that is taken to be a development control plan under section 74D of the Act because of clause 95 of Schedule 6 to the Act, and includes a master plan that is taken to be a development control plan as provided by subclause (4).

relevant commencement means the date on which Schedule 2 to the 2005 Amending Act commences.

2005 Amending Act means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

- (2) **Effect of section 74C on deemed DCPs** Section 74C(2) and (5) of the Act (as inserted by the 2005 Amending Act) does not render invalid any deemed DCP until such time as the principal local environmental planning instrument applying to the land concerned adopts the applicable mandatory provisions of the Standard Instrument.
- (3) **Amendment of deemed DCPs** A deemed DCP may be amended or revoked only in

accordance with the procedures provided in relation to the making of the master plan by the environmental planning instrument under which it was made. Accordingly, section 74C(4) of the Act does not apply in relation to a deemed DCP.

- (4) **Pending master plans** Any master plan lodged under a provision of an environmental planning instrument but not made or adopted as at the relevant commencement may, after that commencement, proceed to be made or adopted as if the amendments made to the Act and this Regulation by Schedules 2 and 7.3 to the 2005 Amending Act had not been made. Once it is made or adopted, the master plan is taken to be a development control plan under section 74D of the Act.

123A Effect of amendments made by [Land and Environment Court Amendment Act 2002](#)

- (1) The Act, as in force immediately before the commencement of the [Land and Environment Court Amendment Act 2002](#), continues to apply to and in respect of—
- (a) a review of a determination requested under section 82A of the Act, but not completed, before that commencement, and
 - (b) an appeal made under section 97 of the Act, but not finally determined, before that commencement.
- (2) The Act, as in force immediately before the commencement of the [Land and Environment Court Amendment Act 2002](#), continues to apply to and in respect of the modification of a development consent the application for which was made, but not finally determined, before that commencement.

Part 1 Provisions consequent on enactment of [Environmental Planning and Assessment Amendment Act 2008](#)

1 Definitions

In this Part—

amending Act means the [Environmental Planning and Assessment Amendment Act 2008](#).

place of public entertainment has the same meaning as it had before the commencement of Schedule 5.1[1] to the amending Act.

2 Costs payable if amended development application filed: section 97B of the Act

Section 97B of the Act does not apply to an appeal made before the commencement of that section.

3 Appointment of principal certifying authorities: section 109E of the Act

- (1) An amendment made to section 109E of the Act by the amending Act does not affect

any appointment of a principal certifying authority made before the commencement of the amendment.

- (2) However, any such amendment applies in respect of any change of principal certifying authority made on or after the commencement of the amendment.

4 Applications for construction certificates, occupation certificates and subdivision certificates

- (1) Clause 139(1A) of the *Environmental Planning and Assessment Regulation 2000* (as inserted by the amending Act) does not apply to an application for a construction certificate made before the commencement of that subclause.
- (2) Clause 149(2B) of the *Environmental Planning and Assessment Regulation 2000* (as inserted by the amending Act) does not apply to an application for an occupation certificate made before the commencement of that subclause.
- (3) Clause 157(2A) of the *Environmental Planning and Assessment Regulation 2000* (as inserted by the amending Act) does not apply to an application for a subdivision certificate made before the commencement of that subclause.

5 Fees for building certificates

The provisions of clause 260(3A)–(3C) of the *Environmental Planning and Assessment Regulation 2000* (as inserted by the amending Act) do not apply to an application for a building certificate made under section 149B of the Act before the commencement of those provisions.

6 Strata certificates

- (1) Section 36A of the *Strata Schemes (Freehold Development) Act 1973* (as inserted by the amending Act) does not apply to an application for a strata certificate made before the commencement of that section.
- (2) Section 65A of the *Strata Schemes (Leasehold Development) Act 1986* (as inserted by the amending Act) does not apply to an application for a strata certificate made before the commencement of that section.

7 Existing independent hearing and assessment panels

Sections 75G, 75I, 75K, 75L, 75N, 75Q and 75X of the Act, and the provisions of any regulations made under or for the purposes of, or referring to, those provisions, as in force immediately before the repeal of section 75G by the amending Act, continue in force in relation to any panel established under section 75G immediately before that repeal.

8 Existing committees

Section 158(f) of the Act, as in force before its repeal by the amending Act, continues to

apply in respect of a member of a committee established under section 22 of the Act before that repeal.

9 Application of obligation to assist planning assessment panel

Section 118AD(2A) of the Act, as inserted by the amending Act, does not apply in respect of a direction given before the commencement of that provision by a panel established under Division 1AA of Part 6 of the Act.

10 Existing planning assessment panels

Division 1 of Part 16B of the *Environmental Planning and Assessment Regulation 2000* applies to a panel in existence under Division 1AA of Part 6 of the Act immediately before the commencement of Schedule 2.2[61] to the amending Act, despite any provision of an order establishing the panel.

11 Notification of commencement of certain building work and subdivision work

- (1) The amendment of section 81A(2)(c) of the Act by the amending Act does not apply to the erection of a building if the notice required by that paragraph in relation to the erection of the building had been given before the commencement of that amendment.
- (2) The amendment of section 81A(4)(c) of the Act by the amending Act does not apply to subdivision work if the notice required by that paragraph in relation to the subdivision work had been given before the commencement of that amendment.
- (3) The amendment of section 86(1)(b) of the Act by the amending Act does not apply to the erection of a building if the notice required by that paragraph in relation to the erection of the building had been given before the commencement of that amendment.
- (4) The amendment of section 86(2)(b) of the Act by the amending Act does not apply to subdivision work if the notice required by that paragraph in relation to the subdivision work had been given before the commencement of that amendment.

12 Action following investigation into council activities

Section 117B of the Act does not apply to an investigation under section 45 of the *Building Professionals Act 2005* commenced before the commencement of section 117B.

13 Applications for complying development certificates

- (1) Clause 130AA, as inserted by the *Environmental Planning and Assessment Amendment (Complying Development) Regulation 2009*, does not apply to an application for a complying development certificate made but not determined before the commencement of that clause.

- (2) Clauses 130(5) and (6) and 134(1A), as inserted by the *Environmental Planning and Assessment Amendment (Complying Development) Regulation 2009*, apply to an application for a complying development certificate made but not determined before the commencement of the applicable subclause.
- (3) Any provision of a development control plan that requires public or particular advertising or notification of an application for a complying development certificate has no effect.

14 Section 121B orders

An order No 19 (as inserted by the amending Act) in the Table to section 121B of the Act may not be made in relation to building work or subdivision work that commenced before the commencement of that insertion.

15 Inspections

- (1) Clause 129B applies only to the issue of a complying development certificate for which an application was made after the commencement of that clause.
- (2) Clause 143B applies only to the issue of a construction certificate for which an application was made after the commencement of that clause.
- (3) An amendment made to clause 162A by the *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009* does not apply in relation to building work for which the application for the relevant complying development certificate or construction certificate was made before the commencement of the amendment.

16 New time limits for referral of certain matters

- (1) The amendment made to clause 144(2) by the *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009* does not apply to an application for a construction certificate that was made before the commencement of the amendment.
- (2) The amendment made to clause 162B(2) by the *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009* does not apply to a record in respect of an inspection that occurred before the commencement of the amendment.
- (3) An amendment made to clause 162C(4) or (5) by the *Environmental Planning and Assessment Amendment (Inspections and Penalty Notices) Regulation 2009* does not apply in respect of an inspection that was missed before the commencement of the amendment.

17 Notification of determination of complying development certificates

On and from the commencement of the *Environmental Planning and Assessment Amendment (Complying Development Certificates) Regulation 2009*, notice is not required to be issued under clause 130 to the owner or occupier of land on which no dwelling is situated in relation to a determination to issue a complying development certificate that was made before that commencement.

18 Crown developments

- (1) Division 4 of Part 4 of the Act, as inserted by the amending Act, does not apply in respect of a development application, or an application to modify a development application, made by or on behalf of the Crown but not finally determined before the commencement of that Division.
- (2) The Act and the *Environmental Planning and Assessment Regulation 2000* and section 57(1A) of the *Heritage Act 1977*, as in force before the commencement of Division 4 of Part 4 of the Act, continue to apply in respect of a development application referred to in subclause (1).
- (3) Section 116H of the Act, as repealed by the amending Act, continues to have effect as if a reference in that section to “this Part” were a reference to Division 4 of Part 4 of the Act.
- (4) Subclause (3) ceases to have effect on the commencement of section 89C of the Act, as inserted by Schedule 2.1[27] to the amending Act.
- (5) On the constitution of the Wagga Wagga Interim Joint Planning Panel and the Western Region Joint Planning Panel, a development application made by or on behalf of the Crown relating to land within a part of the State covered by those Panels that was referred to the Planning Assessment Commission under sections 23D(1)(d) and 89 of the Act, and not finally dealt with by the Commission, is to be dealt with by the applicable Panel instead of the Commission.

19 Existing planning assessment panels

- (1) This clause applies to planning assessment panels established under Division 1AA of Part 6 of the Act before the commencement of Division 3 of Part 2A of the Act.
- (2) A planning assessment panel may not exercise any consent authority functions of a council (the **affected council**) conferred on the planning assessment panel in respect of development if—
 - (a) the development is of a class for which a regional panel is to exercise council functions as a consent authority, and
 - (b) a regional panel has been constituted for the area of the affected council.

- (3) This clause does not apply in respect of any development application made but not finally determined before the commencement of this clause.
- (4) Despite subclause (3), this clause applies in respect of a development application that may be determined by the Wagga Wagga Interim Joint Planning Panel.

20 Section 121B Order No 13A

- (1) An order No 13A in the Table to section 121B(1) of the Act, in force before the omission of order No 13A by Schedule 5.1[6] to the amending Act, continues to have effect, if the building concerned is used as an entertainment venue, subject to subclauses (2) and (3).
- (2) Any part of any such order that relates to a matter prescribed by Schedule 3A to the *Environmental Planning and Assessment Regulation 2000* that is repealed by *Environmental Planning and Assessment Amendment (Entertainment Venues) Regulation 2009* ceases to have effect.
- (3) If any such order is affected by subclause (2), enforcement action in respect of the order cannot be commenced or continued until the person to whom the order was given has been given notice of the content of the order as revised by subclause (2).

21 Section 121H Notice of proposed order No 13A

A notice under section 121H of the Act of a proposed order No 13A in the Table to section 121B(1) that was given before the omission of that order by Schedule 5.1[6] to the amending Act ceases to have effect.

21A Compliance cost notices

A compliance cost notice may only be served on a person if the order to which it relates is given to the person on or after the commencement of section 121CA of the Act.

21A References to section 76A(6)

In any Act, regulation, environmental planning instrument or other instrument, a reference to section 76A(6) of the Act is taken to be a reference to clause 1.17A of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

21B Transitional provisions for development consents for bush fire prone land

- (1) This clause applies to applications for development consent lodged before 25 February 2012.
- (2) The consent authority may grant development consent to development referred to in section 79BA(1) of the Act if it has consulted with the Commissioner of the NSW Rural Fire Service about development consents for bush fire prone land to ensure appropriate measures are taken with respect to development to protect persons,

property and the environment from danger that may arise from a bush fire.

Part 2 Provisions consequent on enactment of [Aboriginal Land Rights Amendment Act 2009](#)

22 Application of amendments to existing development and project applications

The amendments made by the [Aboriginal Land Rights Amendment Act 2009](#) do not apply to or in respect of an application of the following kind that was made, but not finally determined, before the commencement of that Act—

- (a) a development application,
- (b) an application for approval of a project under Part 3A of the Act,
- (c) an application to modify a development consent or project approval under Part 3A of the Act.

Part 3 Provisions consequent on enactment of [Planning Appeals Legislation Amendment Act 2010](#)

23 (Repealed)

24 No review of modification decisions determined before 28 February 2011

Section 96AB of the Act does not apply in respect of an application for the modification of a development consent if that application was determined before the commencement of the [Environmental Planning and Assessment Amendment \(Planning Appeals\) Regulation 2011](#).

25 Appeals by applicants—modifications

Section 96(6) of the Act, as in force immediately before its substitution by the [Planning Appeals Legislation Amendment Act 2010](#), continues to apply in respect of an application under section 96 or 96AA of the Act that was determined before 28 February 2011, and section 97AA of the Act does not apply.

Part 4 Provisions consequent on making of [Environmental Planning and Assessment Amendment \(Part 3A Repeal\) Regulation 2011](#)

26 Definition

In this Part—

amending regulation means the [Environmental Planning and Assessment Amendment \(Part 3A Repeal\) Regulation 2011](#).

27 General savings

The *Environmental Planning and Assessment Regulation 2000* as in force immediately before its amendment by the amending regulation continues to apply to the following—

- (a) the determination of a development application made under Part 4 of the Act but not finally determined before the commencement of the amending Regulation,
- (b) the modification of a development application under Part 4 of the Act where the application for the modification has been made but not finally determined before the commencement of the amending Regulation,
- (c) the preparation or exhibition of an environmental impact statement if requirements of the Director-General were issued under clause 73 or 231 in respect of an environmental impact statement before the commencement of the amending Regulation.

28 Notice of determination of development application

The amendment made to clause 100 by the amending regulation does not apply in respect of a development application if, before the commencement of that amendment, the Minister had requested the Planning Assessment Commission to conduct a review in respect of the development application.

29 Deemed refusal of development applications

The amendments made to clause 113(1)(a)–(c) by the amending regulation do not apply in respect of a development application that was made but not finally determined before the commencement of those amendments.

30 Planning Assessment Commission

The amendments made to Division 4 of Part 16B by the amending regulation do not apply to a review or public hearing requested by the Minister before the commencement of those amendments.

Part 5 Provisions consequent on enactment of *Environmental Planning and Assessment Amendment Act 2012*

31 Compliance cost notices

Section 121CA(1)(c)–(e) of the Act, as inserted by the *Environmental Planning and Assessment Amendment Act 2012*, apply only in relation to an order given on or after 1 March 2013.

Part 6 Provision consequent on making of *Environmental Planning and Assessment Amendment (Complying Development and Fire Safety)*

Regulation 2013

32 General savings

The *Environmental Planning and Assessment Regulation 2000*, as in force immediately before its amendment by *Environmental Planning and Assessment Amendment (Complying Development and Fire Safety) Regulation 2013*, continues to apply to the determination of all applications for complying development certificates or construction certificates made, but not finally determined, before the commencement of the amending Regulation.

Part 7 Provisions consequent on making of *Environmental Planning and Assessment Amendment (Fees) Regulation 2015*

33 Staged application fees—State significant development and State significant infrastructure

(1) In this clause—

completed staged application means a staged application in respect of which the concept component of that staged application, and all subsequent applications relating to the staged application, have been lodged and determined.

(2) Expressions in this clause have the same meaning as they have in Division 1AA of Part 15 of the *Environmental Planning and Assessment Regulation 2000*.

(3) A fee under clause 256KA is payable in respect of the concept component of a staged application (other than a completed staged application) and is so payable regardless of whether the concept component of the staged application has been determined.

(4) Clause 256D(3), as in force immediately before its repeal by the *Environmental Planning and Assessment Amendment (Fees) Regulation 2015*—

(a) does not apply to or in respect of any application other than an application that is part of a completed staged application, and

(b) cannot be relied on to reduce any fee payable in respect of an application that has not been determined before the repeal of that subclause.

Part 8 Provisions consequent on enactment of *Environmental Planning and Assessment Amendment Act 2014*

34 Definition

In this Part—

amending Act means the *Environmental Planning and Assessment Amendment Act 2014*.

35 Delayed application of requirement for historical documents and alert facility

- (1) Section 158C(3) of the Act, as inserted by the amending Act, does not require the NSW planning database to maintain historical versions of documents or other material until 1 July 2016.
- (2) Section 158E(4) of the Act, as inserted by the amending Act, does not require the Secretary to establish an alert facility until 1 March 2016.

36 Existing investigations may continue

An investigation may be conducted under Division 1C of Part 6 of the Act in relation to a matter that arose before the commencement of that Division.

37 Existing requirements to furnish information imposed by council officers

- (1) Section 119M(1) of the Act does not apply to a failure to comply with an existing requirement to furnish information. Section 118N(1)(a) of the Act, as in force immediately before its repeal by the amending Act, continues to apply in such circumstance, as if it had not been repealed by the amending Act.
- (2) Section 119M(2) of the Act does not apply to the provision of information in response to an existing requirement to furnish information. Section 118N (1)(c) of the Act, as in force immediately before its repeal by the amending Act, continues to apply in such circumstance, as if it had not been repealed by the amending Act.
- (3) In this clause—

existing requirement to furnish information means a requirement to furnish information, or to answer a question (including by requiring attendance at a specified place at a specified time to answer a question), imposed on a person by a person authorised by a council under Division 1A of Part 6 of the Act (as in force immediately before its repeal by the amending Act) that has not been fully complied with before the commencement of section 119M of the Act.

38 Existing requirements to furnish information imposed by Departmental officers

- (1) Section 119M(1) of the Act does not apply to a failure to comply with an existing requirement to furnish information. Section 122T(1) of the Act, as in force immediately before its repeal by the amending Act, continues to apply in such circumstance, as if it had not been repealed by the amending Act.
- (2) Section 119M(2) of the Act does not apply to the provision of information in response to an existing requirement to furnish information. Section 122T(2) of the Act, as in force immediately before its repeal by the amending Act, continues to apply in such circumstance, as if it had not been repealed by the amending Act.
- (3) In this clause—

existing requirement to furnish information means a requirement to furnish information, or to answer a question (including by requiring attendance at a specified place at a specified time to answer a question), imposed on a person by a person authorised by the Department under Division 2C of Part 6 of the Act (as in force immediately before its repeal by the amending Act) that has not been fully complied with before the commencement of section 119M of the Act.

39 Existing authorised council investigation officers

- (1) For the purposes of the operation of Division 1C of Part 6 of the Act, persons who were authorised by a council under section 118A(1) of the Act immediately before the commencement of the Division are taken to be council investigation officers.
- (2) A written authority issued under section 118I(2) of the Act, that was in force immediately before the repeal of that subsection by the amending Act, is taken to be an identification card for the purposes of section 119B(4) of the Act.

40 Existing authorised departmental investigation officers

- (1) For the purposes of the operation of Division 1C of Part 6 of the Act, persons who were authorised officers appointed by the Secretary under section 122I(1) of the Act immediately before the commencement of the Division are taken to be departmental investigation officers.
- (2) An identification card issued under section 122I(3) of the Act, that was in force immediately before the repeal of that subsection by the amending Act, is taken to be an identification card for the purposes of section 119B(4) of the Act.

41 Enforcement of existing brothel closure orders by cessation of utilities

Section 121ZS of the Act, as in force immediately before it was substituted by the amending Act, continues to apply to proceedings instituted under that section before its substitution in relation to existing failures to comply with a brothel closure order.

42 Enforcement of existing orders to cease use as backpackers' accommodation or boarding houses by cessation of utilities

Section 121ZS of the Act, as substituted by the amending Act, extends to a brothel closure order or an order to cease the use of premises as backpackers' accommodation or a boarding house that was made before the date of substitution, but only where the failure to comply with the relevant order occurred after the date of substitution.

43 Alternative sentencing options in relation to existing proceedings

Section 126(2A) of the Act, as inserted by the amending Act, extends to the power to make court orders in connection with offences in proceedings that have been instituted, but not finally disposed of, before the commencement of the subsection (including proceedings where the offence has been proven before the commencement of the

subsection but where the offender has not yet been sentenced).

44 Construction of reference to maximum penalty relating to native vegetation

The reference to section 126 of the *Environmental Planning and Assessment Act 1979* in section 12(2) of the *Native Vegetation Act 2003* is to be read as a reference to section 126(1) of the *Environmental Planning and Assessment Act 1979* as in force immediately before its repeal by the amending Act.

44A Proceedings for offences

- (1) This clause applies if, before the substitution of section 127(5A) of the Act by the *Environmental Planning and Assessment Amendment Act 2014*, evidence of an alleged offence against the Act or the regulations under the Act came to the attention of an authorised officer appointed under section 122I of the Act.
- (2) In any such case, the evidence is taken, for the purposes of section 127(5A) of the Act, to have first come to the attention of an investigation officer when the evidence first came to the attention of the authorised officer.

45 Disclosure of existing political donations or gifts by persons associated with each other

- (1) Section 147(8) of the Act, as substituted by the amending Act, applies to all reportable political donations and gifts made on and from 30 September 2015, whether the relevant planning application or relevant public submission was made before or after 30 September 2015.
- (2) To avoid doubt, section 147(8) of the Act, as substituted by the amending Act, applies to all new relevant planning applications and relevant public submissions on and from 30 September 2015, including in relation to political donations and gifts made before 30 September 2015 but only during the period commencing 2 years before the relevant planning application or relevant planning submission is made.

46 Provision of false or misleading information in relation to an existing planning matter

Section 148B of the Act, as inserted by the amending Act, applies to all information provided by a person in connection with a planning matter on or after 30 September 2015, whether the information relates to an application or request made, or a consent, approval or certificate issued, before or after that date.

Part 9 Provision consequent on making of *Environmental Planning and Assessment Amendment (Offences and Enforcement) Regulation 2015*

47 Assessment period for development applications for State significant development

The amendment made to clause 106 by the *Environmental Planning and Assessment*

Amendment (Offences and Enforcement) Regulation 2015 does not apply in respect of a development application that was made but not finally determined before the commencement of that amendment.

Part 10 Provisions consequent on making of *Environmental Planning and Assessment Amendment (Fire Safety Reports) Regulation 2015*

48 Application of amendments relating to fire safety reports

- (1) If a certifying authority has forwarded to the Fire Commissioner the documents required by clause 144 before the commencement of the 2015 amendments and has not, on or before that commencement, determined the application for the construction certificate—
 - (a) the certifying authority must not determine the application otherwise than in accordance with this clause, and
 - (b) the certifying authority must notify the Fire Commissioner within 28 days that it has forwarded those documents and that the application for the construction certificate has not been determined, and
 - (c) clause 144, as amended by the 2015 amendments, applies to the determination of the application for the construction certificate as if the date of the notification given under paragraph (b) were the document receipt date.
- (2) In this clause—

the 2015 amendments means the amendments made by the *Environmental Planning and Assessment Amendment (Fire Safety Reports) Regulation 2015*.

Part 11 Provisions consequent on enactment of *Greater Sydney Commission Act 2015*

49 Existing Ministerial delegations relating to making of LEPs for areas in Greater Sydney Region

- (1) Any delegation by the Minister of any of the Minister's functions under Part 3 of the Act relating to the making of local environmental plans that apply to local government areas in the Greater Sydney Region, being a delegation in force immediately before 27 January 2016, is taken to be a delegation by the Greater Sydney Commission of those functions. Accordingly, a reference to the Minister in the instrument of any such existing delegation is taken to be a reference to the Greater Sydney Commission.
- (2) This clause ceases to have effect on the commencement of Schedule 1[7] to the *Planning Legislation Amendment (Greater Sydney Commission) Act 2018*.
- (3) Subclause (2) does not affect the validity of anything done by the Greater Sydney

Commission or a delegate of the Greater Sydney Commission under this clause before that commencement.

50 Continuation of existing LEP-making processes for areas in Greater Sydney Region

- (1) The Greater Sydney Commission may, on or after 27 January 2016, make a local environmental plan that applies to a local government area in the Greater Sydney Region even though the process under Part 3 of the Act for the preparation of the plan (including the preparation of the relevant planning proposal under section 55 of the Act and any community consultation under section 57 of the Act) was commenced, or occurred, before that date. For that purpose, anything done before that date by the Minister under Part 3 of the Act in connection with any such proposed plan is taken to have been done by the Greater Sydney Commission.
- (2) This clause ceases to have effect on the commencement of Schedule 1[7] to the *Planning Legislation Amendment (Greater Sydney Commission) Act 2018*.

51 Existing directions under section 117 relating to planning proposals in Greater Sydney Region

Any direction given under section 117 of the Act before 27 January 2016 ceases to have effect on that date to the extent that the direction—

- (a) requires a relevant planning authority to give effect to the document entitled *A Plan for Growing Sydney* (as referred to in section 75AE(3) of the Act) in preparing a planning proposal under section 55 of the Act, or
- (b) imposes any obligation on a relevant planning authority that is inconsistent with the requirement under section 75AI(2) of the Act for the planning authority to give effect to certain strategic plans (as referred to in that subsection) in preparing a planning proposal.

52 Proceedings relating to validity of instruments

Despite any other provision of this Part, the Minister (or the Minister's delegate) continues to be a party to any of the following legal proceedings in which the validity of an environmental planning instrument is questioned—

- (a) proceedings commenced but not completed before 27 January 2016,
- (b) proceedings commenced on or after that date relating to an instrument made before that date.

Part 12 Provision consequent on making of *Environmental Planning and Assessment Amendment (Siding Spring Observatory)*

Regulation 2016

53 Existing applications

If a development application or an application for an occupation certificate is made before the commencement of the *Environmental Planning and Assessment Amendment (Siding Spring Observatory) Regulation 2016* and the application has not been finally determined before that commencement, the application must be determined as if that Regulation had not been made.

54 Existing environmental impact statements

If a proponent has been notified of environmental assessment requirements by the Secretary under section 115Y(4) of the Act before the commencement of the *Environmental Planning and Assessment Amendment (Siding Spring Observatory) Regulation 2016*, any environmental impact statement prepared by or on behalf of the proponent for the purposes of the environmental assessment may be prepared as if that Regulation had not been made.

Part 13 Provision consequent on making of *Environmental Planning and Assessment Amendment (Schools) Regulation 2017*

55 General savings

The *Environmental Planning and Assessment Regulation 2000*, as in force immediately before its amendment by the *Environmental Planning and Assessment Amendment (Schools) Regulation 2017*, continues to apply to the determination of all applications for complying development certificates made, but not finally determined, before the commencement of the amending Regulation.

Part 14 Provisions consequent on making of *Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017*

56 Definition

In this Part—

amending Regulation means the *Environmental Planning and Assessment Amendment (Fire Safety and Building Certification) Regulation 2017*.

57 Applications for complying development certificates

An application for a complying development certificate that was made, but not finally determined, before the commencement of the amending Regulation, is to be determined as if the amending Regulation had not been made.

58 Applications for construction certificates or occupation certificates where existing consent

- (1) An application for a construction certificate that is required in relation to building work the subject of an existing consent is to be determined as if the amending Regulation had not been made.
- (2) An application for an occupation certificate that is required in relation to building work the subject of an existing consent is to be determined as if the following provisions of the amending Regulation had not been made—
 - (a) Schedule 1[1]-[10],
 - (b) Schedule 1[12] to the extent that it inserts clause 152B,
 - (c) Schedule 1[13]-[25].
- (3) In this clause—

existing consent means any of the following—

- (a) a development consent granted, or a complying development certificate issued, before the commencement of the amending Regulation,
- (b) a development consent granted, or a complying development certificate issued, after the commencement of the amending Regulation for which application was made before that commencement.

Schedule 5 Transferred provisions—provisions relating to ski resort areas from [Environmental Planning and Assessment Regulation 2000](#)

(Clause 287)

Division 1 Preliminary

1 Definitions

- (1) In this Schedule—

converted Part 5 approval means an existing Part 5 approval that is taken to be a development consent by the operation of clause 2(4).

convertible Part 5 approval means an existing Part 5 approval granted before the commencement of this clause (and in force immediately before that commencement) that authorises the carrying out of development for which development consent is required.

- (2) Expressions used in this Schedule that are defined in clause 32A of Schedule 6 to the

Act have the meanings set out in that clause.

Note—

The terms **existing Part 5 approval**, **Part 5 approval** and **ski resort area** are defined in clause 32A of Schedule 6 to the *Environmental Planning and Assessment Act 1979*.

- (3) The provisions of this Schedule are, to the extent that as a result of the *Environmental Planning and Assessment Regulation 2021* they re-enact provisions of the *Environmental Planning and Assessment Regulation 2000*, transferred provisions to which the *Interpretation Act 1987*, section 30A applies.

Division 2 Provisions relating to existing Part 5 approvals for ski resort areas

2 Conversion of convertible Part 5 approvals to development consents

- (1) The Director-General may issue to the holder of a convertible Part 5 approval a certificate certifying that the convertible Part 5 approval is taken to be a development consent that authorises the carrying out of the development authorised by the convertible Part 5 approval.
- (2) The Director-General may, in the certificate, specify that the development consent is of a particular type because of the conditions imposed on it (for example, a deferred commencement development consent pursuant to in section 4.16(3) of the Act or a development consent for staged development pursuant to section 4.16(5) of the Act).
- (3) The Director-General is not to issue a certificate under this clause unless the certificate identifies the classification, in accordance with the *Building Code of Australia*, of any building or proposed building the subject of the convertible Part 5 approval concerned.
- (4) On the issue of the certificate by the Director-General, the convertible Part 5 approval the subject of the certificate is taken—
 - (a) to be a development consent and to be of the type (if any) specified in the certificate, and
 - (b) to have been granted subject to the same conditions as those to which the convertible Part 5 approval was subject.
- (5) For the avoidance of doubt, section 4.19 of the Act applies to a converted Part 5 approval and, in so applying that subsection, a reference to a purpose specified in the development application is to be read as a reference to a purpose specified in the application for the convertible Part 5 approval concerned.
- (6) A certificate issued under this clause has effect according to its terms.

3 Further development consent required in certain circumstances

If a converted Part 5 approval is expressed so as to require a further Part 5 approval to carry out any development the subject of the converted Part 5 approval, a development consent must be obtained for that development instead of a further Part 5 approval.

4 Conversion of certain authorisations to construction certificates

- (1) In this clause, **building consent** means a consent granted under the *National Parks and Wildlife Act 1974* before the commencement of this Schedule for the purposes of a convertible Part 5 approval, being a consent that authorised the carrying out of building works in a ski resort area.
- (2) Without limiting the generality of clause 5, the Director-General may issue to the holder of a building consent a certificate certifying that the building consent is taken to be a construction certificate that authorises the carrying out of the building works authorised by the consent.
- (3) The certificate issued by the Director-General may provide that the construction certificate is subject to all of the conditions to which the building consent was subject or to such of those conditions as are specified in the Director-General's certificate.
- (4) The Director-General is not to issue a certificate under this clause unless—
 - (a) the Director-General is satisfied that any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or where such a levy is payable by instalments, the first instalment of the levy) has been paid, and
 - (b) the certificate identifies the classification, in accordance with the *Building Code of Australia*, of any building or proposed building the subject of the construction certificate concerned.
- (5) On the issue of the certificate by the Director-General, the building consent the subject of the certificate is taken to be a construction certificate that authorises the carrying out of the building works formerly authorised by the building consent, subject to the conditions imposed by the Director-General under subclause (3).

5 Conversion of certain authorisations to Part 4A certificates

- (1) In this clause, **existing authority** means any certificate, permission or other authority issued or otherwise given before the commencement of this Schedule for the purposes of a convertible Part 5 approval.
- (2) The Director-General may issue to the holder of an existing authority a certificate certifying that the authority is taken to be a Part 4A certificate that authorises the matters formerly authorised by the existing authority.

- (3) The Director-General must, in the certificate, specify the type of Part 4A certificate that the existing authority is taken to be (for example, a compliance certificate or an interim or final occupation certificate).
- (4) The certificate issued by the Director-General may provide that the Part 4A certificate is subject to all of the conditions to which the existing authority was subject or to such of those conditions as are specified in the Director-General's certificate.
- (5) On the issue of the certificate by the Director-General, the existing authority the subject of the certificate is taken to be a Part 4A certificate of the type specified in the Director-General's certificate that authorises the matters that were authorised by the existing authority, subject to the conditions imposed by the Director-General under subclause (4).

6 Construction of certain references in converted Part 5 approvals and construction certificates

- (1) In any converted Part 5 approval—
 - (a) a requirement to obtain a consent or other approval to the carrying out of building works is taken to be a requirement to obtain a construction certificate authorising the carrying out of those building works, and
 - (b) a requirement to obtain an occupation certificate for a building, or any other certificate authorising the occupation of a building, is taken to be a requirement to obtain an occupation certificate (within the meaning of the *Environmental Planning and Assessment Act 1979*) in relation to that building.
- (2) In any converted Part 5 approval, or construction certificate referred to in clause 4(5)—
 - (a) a reference (however expressed) to the Director-General of National Parks and Wildlife, the National Parks and Wildlife Service or an officer of the National Parks and Wildlife Service being of the opinion or satisfied as to a matter is to be read as a reference to the Director-General of the Department of Planning being of the opinion or satisfied as to the matter, and
 - (b) a reference (however expressed) to something being done or required to be done to the satisfaction of the Director-General of National Parks and Wildlife, the National Parks and Wildlife Service or an officer of the National Parks and Wildlife Service is to be read as a reference to the thing being done or required to be done to the satisfaction of the Director-General of the Department of Planning.

7 Certifier

For the purposes of the Act, the Minister—

- (a) is taken to have been appointed as the principal certifier for development authorised

by a converted Part 5 approval, and

- (b) is the only certifier for all aspects of development authorised by a converted Part 5 approval.

8 Pending applications for Part 5 approvals

- (1) Anything lodged in connection with an application for a Part 5 approval in respect of development within a ski resort area (being an application that was lodged before the commencement of this Schedule but not finally determined before that commencement) is, if an application for development consent is lodged for the same development for which the Part 5 approval was sought, taken to have been lodged in connection with the application for development consent.
- (2) Despite any other provision of this Regulation, no fee is required in connection with an application for development consent referred to in subclause (1).

9 Register to be kept

The Director-General is to ensure that a public register is kept of all certificates issued under this Division.

10 Appeals

- (1) The holder of a convertible Part 5 approval who requests, in writing, the Director-General to issue a certificate under clause 2, 4 or 5 in relation to the convertible Part 5 approval may appeal to the Minister against a decision of the Director-General to refuse to issue the certificate.
- (2) For the purposes of this clause, the Director-General is taken to have made a decision to refuse to issue a certificate under clause 2, 4 or 5 if the Director-General has not issued the certificate before the expiration of the period of 40 days after the day on which the request for the certificate was made to the Director-General (or such longer period as is agreed to in writing by the Director-General and the holder of the approval concerned).

Division 3 Modification of provisions in relation to ski resort areas

11 Modification of provisions of the Act in relation to ski resort areas

- (1) The provisions of the Act are modified as set out in this clause in relation to a ski resort area.
- (2) Section 4.18(2) does not require notice to be given to a council of the determination of a development application relating to a ski resort area.
- (3) Section 6.6(2)(c) does not require a notification to be given to a council in respect of a development consent relating to a ski resort area.

- (4) A reference in section 6.6(2)(e) or 6.12(2)(c) and 4.58(1) to a council is to be read as a reference to the Minister.
- (5) Section 81A(4)(b)(ii) does not require notice to be given to a council where the development consent concerned relates to a ski resort area.
- (6) The reference in section 4.58(1) to a council is to be read as a reference to the Director-General.
- (7) The reference in section 4.58(2) to the office of the council is to be read as a reference to the office of the Department of Planning located at Jindabyne.
- (8) Section 6.31(3) does not require copies of notices to be sent to a council where the development concerned relates to a ski resort area.
- (9) A reference in section 118L(2)(a) to the council of the area in which the building is located is to be read as a reference to the Minister.
- (10) A reference in section 118L(3) to a council is to be read as a reference to the Director-General.
- (11) A reference in section 118L(3) to a person authorised by the council is to be read as a reference to a person authorised by the Director-General.
- (12) A reference in section 118L(4) to the council concerned is to be read as a reference to the Director-General.
- (13) A reference in section 118M to a council is to be read as a reference to the Director-General.
- (14) Section 9.34(1) is to be read as authorising only the Minister to make an order referred to in that subsection.
- (15) A reference in Schedule 5 (other than Parts 1, 2, and 3) to a council is to be read as a reference to the Minister.
- (16) Sections 121F, 121H(4), 121ZH and 121ZI do not apply within a ski resort area.
- (17) Section 121ZE does not apply to a notice or order that relates to a ski resort area.
- (18) A reference in section 121ZP(2) to a form determined by the council is to be read as a reference to a form approved by the Minister.
- (19) A reference in section 121ZP(2) to a fee determined by the council under the *Local Government Act 1993* is to be read as a reference to a fee determined by the Minister.
- (20) A reference in Division 2A of Part 6 to an owner of premises, land or a building is, in relation to premises, land or a building within a ski resort area—

- (a) if the premises, land or building are or is subject to a lease, licence or easement, to be read as a reference to the lessee, licensee or person who has the benefit of the easement, except as provided by paragraph (b), or
- (b) if the reference relates to an order that can only be complied with by a person who is occupying premises, land or a building within a ski resort area, to be read as a reference to the occupier of the premises, land or building.

(21) A reference in sections 6.22–6.26 and 8.25 (other than in the provisions referred to in subclause (22))—

- (a) to a council is to be read as a reference to the Minister, and
- (b) to an owner of land is, if the land is subject to a lease, licence or easement, to be read as a reference to the lessee, licensee or person who has the benefit of the easement.

(22) Section 6.25(1)(a)(iii), (3)(b) and (4)(b) do not apply in respect of a building information certificate relating to land within a ski resort area.

12 Modification of provisions of this Regulation in relation to ski resort areas

- (1) The provisions of this Regulation are modified as set out in this clause in relation to a ski resort area.
- (2) Despite clause 49(1), a development application in relation to land within a ski resort area may be made by the lessee of the land.
- (3) Clause 49(3) does not apply to a development application relating to a ski resort area.
- (4) Clause 138(3) does not require a copy of a compliance certificate that relates to a ski resort area to be given to the council.
- (5) Clauses 142(2), 151(2) and 160(2) do not require notice of a determination relating to a ski resort area to be given to a council.
- (6) A reference in clauses 168(3)(d) and 169(1) to the council is to be read as a reference to the Minister.
- (7) Clause 169 does not require copies of a final fire safety certificate, relating to a ski resort area, to be given to the council.
- (8) A reference in clause 182—
 - (a) to the council is to be read as a reference to the Minister, and
 - (b) to the owner of a building is to be read as a reference to the lessee of the building.
- (9) Clause 264 is to be read as if the words preceding subclause (1)(a) were omitted and

the following words inserted—

The Director-General is to maintain a register containing details of the following matters for each development application that is made in relation to a ski resort area

- (10) Clauses 265 and 267 do not apply in relation to a ski resort area.
- (11) A reference in clauses 266 and 268 to a council is to be read as a reference to the Director-General.
- (12) Clause 2(4)(d) of Schedule 1 does not apply to a statement of environmental effects required to accompany a development application relating to a ski resort area if the proposed development is advertised development.

13 Statements of environmental effects for advertised development

- (1) A statement of environmental effects required by Schedule 1 to accompany a development application relating to a ski resort area must be prepared in accordance with guidelines issued under this clause if the proposed development is advertised development.
- (2) A person (***the proposed applicant***) intending to apply for consent to carry out development in a ski resort area that is advertised development must, before doing so, give to the Director-General written particulars of the location, nature and scale of the development.
- (3) The Director-General is to issue guidelines to the proposed applicant specifying matters that must be addressed in the statement of environmental effects required to accompany the development application.
- (4) The guidelines are to be issued within 28 days after the written particulars are given under subclause (2), or within such further time as is agreed between the Director-General and the proposed applicant.
- (5) Before issuing guidelines under this clause, the Director-General is—
 - (a) to consult with the proposed applicant, and
 - (b) to request in writing the Director-General of National Parks and Wildlife, and such government agencies as the Director-General considers have an interest in the proposed development application, to provide the Director-General of the Department of Planning with their requirements in relation to the statement of environmental effects.
- (6) In preparing the guidelines, the Director-General is to consider—

- (a) in particular, the response of the Director-General of National Parks and Wildlife,
and
- (b) all responses from government agencies referred to in subclause (5)(b),
if those responses are made during the period of 14 days after the request under
subclause (5) is made.

Note—

Advertised development for the purposes of the ski resort areas is identified in clause 13 of [State Environmental Planning Policy No 73—Kosciuszko Ski Resorts](#).