



New South Wales

Environmental Planning and Assessment Amendment Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* (the Act) so as:

- (a) to remove any doubt that the provision and maintenance of affordable housing is an object of the Act, and
- (b) to remove any doubt that environmental planning instruments may be made for or with respect to providing and maintaining affordable housing, and
- (c) to extend the range of purposes for which development funds established for development areas may be used to include urban and regional improvement programs, and
- (d) to ensure that an application to modify a development consent is compared with the development consent as originally granted, not with the development consent as modified by previous modifications (if any), and

- (e) to give councils greater control over the notification and advertisement of applications to modify development consents for certain kinds of development, and
- (f) to make other miscellaneous or minor amendments to the Act, the *Environmental Planning and Assessment Regulation 1994* and the *Environmental Planning and Assessment Model Provisions 1980*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except Schedules 5, 6 and 7 [5], which commence on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* (the Act) set out in Schedules 1–6.

Clause 4 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Regulation 1994* set out in Schedule 7.

Clause 5 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Model Provisions 1980* set out in Schedule 8.

Schedules

Schedule 1 makes amendments to the Act that expressly recognise affordable housing as a matter that may be provided for under the Act, but only to remove any remaining doubt that affordable housing is a matter that can be provided for under the current objects of the Act.

The Bill proposes to amend the objects of the Act to include “the provision and maintenance of affordable housing” (**Schedule 1 [2]**). A definition of “affordable housing” as “housing for very low income households, low income households or moderate income households” is inserted into the Act (**Schedule 1 [1]**). The means by which such households will be identified are to be prescribed by the regulations or provided by environmental planning instruments. To this end, **Schedule 1 [4]**

adds to the general regulation-making power in the Act a power to make regulations for or with respect to the purposes and objectives of affordable housing, including the means for determining whether a household is a very low income, low income or moderate income household.

In addition, the regulations will be able to specify means for determining housing costs payable for affordable housing, and will also enable the Minister by order to determine matters relating to affordable housing (such as the income levels that qualify a household as “very low income”, “low income” and so on, or the percentages of household income that may be payable as housing costs for affordable housing).

Schedule 1 [3] removes any doubt that an environmental planning instrument, such as a local or regional environmental plan, may deal with the provision and maintenance of affordable housing, and regulate matters relating to affordable housing.

Schedule 2 amends the Act so as to expand the range of purposes for which Development Funds may be used.

Under the Act, development areas may be constituted, and money held in a Development Fund in respect of the area may be used for specified purposes. **Schedule 2 [3]** extends the purposes for which development funds may be used, after consideration of the likely future applications of such funds for other purposes, to include programs to improve public amenity by enhancing open space or the public domain, or providing infrastructure or facilities.

The remaining items in Schedule 2 make consequential amendments to the Act. **Schedule 2 [1]** allows the Minister administering the Act (who is incorporated as a corporation sole under section 8 of the Act for the purposes of exercising certain functions) to exercise functions for the purposes of the application of development funds. **Schedule 2 [2]** prevents delegation of the Minister’s functions relating to development funds.

Schedule 3 amends the Act in relation to the modification of development consents.

Schedule 3 [1] and **[6]** make amendments that give councils some control over requirements for notifying or advertising applications to modify development consents. Currently the *Environmental Planning and Assessment Regulation 1994* (clause 72A) sets out the requirements for advertising an application for modification of a development consent. The Bill proposes to limit the kinds of development to which the modification application advertisement requirements in the Regulation apply (Schedule 7 [3]). For other kinds of development, councils will be able to adopt development control plans that set out the advertisement

requirements for a modification application for particular kinds of development in that council's area. A development control plan will be able to provide that no notification or advertising is required for applications to modify specified development.

To this end, **Schedule 3 [1]** expands the range of matters that a council's development control plan can deal with to include providing for the notification or advertising of an application for the modification of a development consent for specified development. **Schedule 3 [6]** provides that a development consent may be modified if, among other matters, the modification application has been notified in accordance with any applicable regulations or development control plan.

Schedule 3 [4] establishes a simplified procedure for applications to modify a development consent where the proposed modification is of minimal environmental impact. These modification applications may not need to be the subject of consultation with other bodies. Amendments consequential to this amendment, and to clarify the operation of the section, are made by **Schedule 3 [2]**, **[3]** and **[7]**.

Schedule 3 [5] reverses the effect of the decision of the Land and Environment Court in *North Sydney Council v Michael Standley & Associates Pty Limited* (1998) 43 NSWLR 468 that when a consent authority is considering an application to modify a development consent, it is to compare the development as proposed to be modified with the development as it has previously been modified (if at all). The proposed amendment ensures that the development as proposed to be modified is compared with the development to which consent was originally granted.

Schedule 3 [8] provides a new right of appeal against a determination of a consent authority of an application to modify a development consent to carry out State significant development. Currently there is no right of appeal against such a determination. The proposed amendment would allow a person who has applied to modify a consent to carry out State significant development to appeal to the Land and Environment Court against a determination of that application, unless the development consent was originally granted after an inquiry into the development by a Commission of Inquiry. **Schedule 3 [9]** makes a consequential amendment.

Schedule 4 makes miscellaneous amendments to the Act to streamline its operation.

Schedule 4 [1] clarifies that a document created or kept in electronic form can be an "original document", a term used in section 150 (Evidence) of the Act.

Schedule 4 [2] and **[7]** deal with the stage of development by which a long service levy must be paid. Currently, section 80 (10A) provides that any long service levy (or instalment of such a levy) payable is to be paid by the time development consent is granted. This subsection is proposed to be repealed (**Schedule 4 [2]**), and

instead any long service levy is to be paid by the time a construction certificate for the development is issued (**Schedule 4 [7]**).

Schedule 4 [3] removes an anomaly relating to appeals against a decision to grant consent to designated development. Section 83 (1) (b) currently provides that if an objection was made to an application to carry out designated development, the development consent does not take effect until 28 days from the date that consent was granted. This gives an objector time to lodge an appeal under section 98. However, if consent to designated development was granted following an inquiry by a Commission of Inquiry, there is no right of appeal against the granting of consent (section 80 (8)). Section 83 (1) (b) is therefore proposed to be amended so that a consent to carry out designated development that was granted following an inquiry by a Commission of Inquiry takes effect when consent is granted, and not after 28 days.

Schedule 4 [4] amends the long service levy payment pre-condition for the issue of a complying development certificate to make it consistent with the amendments set out in Schedule 4 [2] and [7].

Schedule 4 [5] enables regulations to be made for or with respect to advertising, including the display of advertisements and the erection of advertising structures.

Schedule 4 [6] expands the range of matters that may be certified in a compliance certificate issued by a consent authority or an accredited certifier. The amendment allows a compliance certificate to certify that development complies with standards or requirements (including design of the development) specified in the certificate.

Schedule 4 [8] clarifies that if a development consent to a subdivision is a “deferred commencement” consent, the applicant must comply with the requirements relating to the deferred commencement and also any other conditions of the development consent.

Schedule 4 [9] expands the range of circumstances in which an accredited certifier may issue a certificate for development. Currently an accredited certifier is not permitted to issue a certificate where he or she is “associated” with the council of the area in which the development is to be carried out. A certifier employed by a council is “associated” with the council. The amendment allows a certifier employed by a council to issue a certificate for development to be carried out in that council’s area if the council is not the consent authority for the development and the certifier is acting in the course of his or her employment with the council.

Schedule 4 [10] deals with parties to an action for damages arising from building work or subdivision work. The proposed amendment would ensure that third parties joined to the proceedings by the defendant may be required by the court to

contribute to the payment of any damages, even if those parties were not directly sued by the plaintiff.

Schedule 4 [11] creates a simplified procedure for a public authority to apply for a modification of a Minister's approval to correct a minor error, misdescription or miscalculation in the approval. The Director-General of the Department of Urban Affairs and Planning is required to report to the Minister on such a modification application (**Schedule 4 [12]**).

Schedule 4 [13] expands the purposes for which entry onto residential premises may be authorised to include an inspection for the purposes of issuing a building certificate for the premises. Building certificates are issued by councils with respect to the state of a building, and once issued the council is estopped from issuing an order requiring, or taking proceedings for, the demolition or rectification of building work, encroachments or other matters. The amendment prevents tenants or owner-occupiers of residential premises frustrating the issue of a building certificate.

Schedule 4 [14] provides a dispute resolution procedure for disputes between public authorities about specified matters where neither of the disputants is a council. Such a dispute may be submitted to the Premier. **Schedule 4 [15]** makes consequential amendments.

Schedule 4 [16] expands the range of persons who may be ordered by a council or other person acting as a consent authority to alter or remove any advertisement or advertising structure. Currently such an order may only be made to the person who caused the advertisement to be displayed, or the owner or occupier of the premises on which it is displayed. The amendment would allow an order to be made to the person who paid for the printing of the advertisement, or the person who paid or otherwise rewarded the person who caused the advertisement to be displayed.

Schedule 4 [17]–[18] increase the monetary penalties for an offence against the Act or the regulations, and **Schedule 4 [19]** increases the monetary penalty that a Local Court can impose for an offence against the Act.

Schedule 4 [20] expands the range of matters for which fees may be prescribed or determined under the regulations to include:

- supplying any product, commodity or publication, and
- issuing any certificate, requirement or direction, and
- allowing admission to any building.

Schedule 4 [21] and **[22]** extend the statutory exemption from liability in relation to contaminated land to councils and accredited certifiers issuing complying development certificates. The current exemption for councils applies only in relation to development applications.

Schedule 5 makes amendments to the Act of a statute law review nature.

Schedule 5 [1] and **[2]** remove references to a repealed provision, and update a reference to the Traffic Authority of New South Wales.

Schedule 5 [3]–[5] clarify that in submitting a draft regional or local environmental plan, the Director-General, a council or the Minister may exclude provisions of the plan, or parts of the land to which the plan applies, or both, for later consideration.

Schedule 5 [6] clarifies that if State significant development would be subject to Part 5 but for section 76A (8), the State significant development may be carried out with development consent.

Schedule 5 [7]–[9] replace references in the provisions dealing with determination of development applications to an “objection” with references to a “submission”, for greater consistency of language with section 79 (5). That subsection provides that a submission with respect to a development application may be a submission by way of objection.

Schedule 5 [10] replaces outdated cross-references dealing with requirements to obtain the concurrence of the Director-General of National Parks and Wildlife to certain activities proposed to be carried out by a public authority.

Schedule 5 [11] clarifies the pre-conditions with which a public authority proposing to carry out certain activities must comply before seeking the Minister’s approval to carry out the activities. The proposed amendment makes it explicit that an authority is required to obtain a species impact statement before seeking approval if the activity is in respect of land that is “critical habitat” or is likely to significantly affect threatened species, populations or ecological communities.

Schedule 5 [12] similarly clarifies the pre-conditions with which a public authority must comply before seeking a modification of the Minister’s approval. The proposed amendment makes it explicit that an authority is required to obtain a species impact statement if the proposed modification requires a further environmental impact statement, and if the activity as modified is in respect of land that is “critical habitat” or is likely to significantly affect threatened species, populations or ecological communities.

Schedule 5 [13] and **[14]** correct minor drafting discrepancies.

Schedule 5 [15] and **[16]** remove references to the Darling Harbour Authority and the Sydney Harbour Foreshore Authority to ensure that the Minister is the sole consent authority for land in the Darling Harbour Development Area and the Sydney Cove Development Area unless otherwise specified in an environmental planning instrument.

Schedule 6 deals with savings and transitional provisions.

Schedule 6 [1] allows savings and transitional regulations to be made with respect to the proposed Act, and another Act. **Schedule 6 [2]** contains savings and transitional provisions for certain amendments proposed to be made by the Bill to the Act.

Schedule 7 makes amendments to the *Environmental Planning and Assessment Regulation 1994*.

Schedule 7 [1] and **[2]** make amendments to clause 71A and 72 of the Regulation consequential to the amendments made by Schedule 3 [1], [4] and [5].

Schedule 7 [3] amends clause 72A of the Regulation to specify the kinds of development for which applications to modify the development consent must be notified or advertised in accordance with the Regulation. This amendment supports the amendments made by Schedule 3 [6].

Schedule 7 [4] inserts proposed clause 72B in the Regulation, which provides that applications to modify development applications (other than applications provided for by Schedule 7 [3]), are to be notified or advertised in the same way as the original development application, unless a development control plan made by a council provides otherwise. Proposed clause 72C provides that applications to modify development consents that are of minimal environmental impact are to be notified in accordance with any applicable development control plan.

Schedule 7 [5] makes an amendment consequential to the amendment made by Schedule 5 [10] and prescribes the manner in which the concurrence of the Director-General to certain activities is to be sought and obtained.

Schedule 7 [6] updates the definition of “drinking water catchment” in Schedule 3 to the Regulation to refer to declared or proclaimed catchment areas, removing the current reference to “potable groundwater supply bore”.

Schedule 8 makes amendments to the *Environmental Planning and Assessment Model Provisions 1980*.

Schedule 8 [1] and **[2]** remove definitions that are now located in section 4 (1) of the Act.

Schedule 8 [3] replaces an outdated reference to the “Department of Environment and Planning”.

Schedule 8 [4]–[6] and **[9]** replace outdated references to Acts that have been renamed or repealed.

Schedule 8 [7] replaces an outdated reference to the “Housing Commission of New South Wales”.

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Schedule 8 [8] and [10]–[12] replace outdated references to the “Traffic Authority of New South Wales” and the “Commissioner for Main Roads”.

Schedule 8 [13] and [14] replace outdated references to a “Pastures Protection Board” and the “Water Resources Commission”.



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No. , 1999

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* in various respects, including to remove any doubt that affordable housing is an object of that Act and to provide for development funds to improve public amenity; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Environmental Planning and Assessment Amendment Act 1999</i> .	3 4
2 Commencement	5
(1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.	6 7
(2) Schedules 5, 6 and 7 [5], and sections 3 and 4 in their application to those provisions, commence on the date of assent to this Act.	8 9
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	10 11
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedules 1–6.	12 13
4 Amendment of Environmental Planning and Assessment Regulation 1994	14 15
The <i>Environmental Planning and Assessment Regulation 1994</i> is amended as set out in Schedule 7.	16 17
5 Amendment of Environmental Planning and Assessment Model Provisions 1980	18 19
(1) The <i>Environmental Planning and Assessment Model Provisions 1980</i> are amended as set out in Schedule 8.	20 21
(2) An amendment to the <i>Environmental Planning and Assessment Model Provisions 1980</i> made by this Act may be amended or repealed by an order under section 33 of the <i>Environmental Planning and Assessment Act 1979</i> .	22 23 24 25

Schedule 1	Amendments relating to affordable housing	1
		2
	(Section 3)	3
[1]	Section 4 Definitions	4
	Insert in alphabetical order in section 4 (1):	5
	<i>affordable housing</i> means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.	6 7 8 9 10
[2]	Section 5 Objects	11
	Insert after section 5 (a) (vii):	12
	(viii) the provision and maintenance of affordable housing, and	13 14
[3]	Section 26 Contents of environmental planning instruments	15
	Insert after section 26 (1) (c):	16
	(d) providing, maintaining, and regulating matters relating to affordable housing,	17 18
[4]	Section 157 Regulations	19
	Insert after section 157 (1) (d):	20
	, or	21
	(e) the purposes, objectives, provision and maintenance of affordable housing, including:	22 23
	(i) means for determining whether a household is a very low income, low income or moderate income household (for example, by reference to income statistics produced by the Australian Bureau of Statistics), and	24 25 26 27 28

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Schedule 1 Amendments relating to affordable housing

- (ii) means for determining affordable housing costs payable in respect of affordable housing (for example, by reference to percentages of household income), and 1
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3
4
- (iii) enabling the Minister by order to determine matters relating to affordable housing (including the matters referred to in subparagraphs (i) and (ii)). 5
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8

Schedule 2	Amendments relating to Development Funds	1
		2
	(Section 3)	3
[1]	Section 11 Functions of corporation	4
	Insert after section 11 (6):	5
	(7) In relation to any land (whether vested in the corporation or not), the corporation may exercise any function that is necessary or convenient to be exercised in, or for any purpose of, the application of any part of a Development Fund referred to in Division 1 of Part 7.	6 7 8 9 10
[2]	Section 23 Delegation	11
	Omit “or by Division 4 of Part 5” from section 23 (8) (b).	12
	Insert instead “, by Division 4 of Part 5 or by section 130 (4)”.	13
[3]	Section 130 Development Funds	14
	Insert after section 130 (3):	15
	(4) The Development Fund may also be applied, with the approval of the Minister, to the development of land (whether vested in the corporation or not) within the development area for the purpose of an improvement program, if:	16 17 18 19
	(a) the Minister has considered likely future applications of the Development Fund for all the purposes in subsection (3), and	20 21 22
	(b) in the opinion of the Minister, implementation of the improvement program will improve public amenity by:	23 24
	(i) enhancing open space or the public domain, or	25
	(ii) providing suitable infrastructure or facilities at a regional or local level.	26 27
	(5) The Development Fund in respect of each development area may be applied to purposes that are necessary, incidental, subordinate or supplementary to any of the purposes specified in subsection (3) or (4).	28 29 30 31

Schedule 3	Amendments relating to modification of development consents	1
		2
	(Section 3)	3
[1]	Section 72 Development control plans	4
	Omit section 72 (1) (c). Insert instead:	5
	(c) to provide for the notification or advertising to the public, a section of the public or specified persons of any of the following:	6
	(i) a development application for specified development (other than designated development or advertised development),	7
	(ii) an application for the modification of a development consent for specified development (including advertised development but not including designated development),	8
	(iii) an application for a complying development certificate,	9
	or to provide that the relevant application does not need to be notified or advertised, or	10
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		19
[2]	Section 96 Modification of consents	20
	Omit “ Minor modifications ” from the heading to section 96 (1).	21
	Insert instead “ Modifications involving minor error, misdescription or miscalculation ”.	22
		23
[3]	Section 96 (1)	24
	Omit “(2), (3), (6)”. Insert instead “(1A), (2), (3), (5), (6), (6A)”.	25

[4] Section 96 (1A)	1
Insert after section 96 (1):	2
(1A) Modifications involving minimal environmental impact	3
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	4 5 6 7
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	8 9
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and	10 11 12 13 14 15
(c) it has notified the application in accordance with:	16
(i) the regulations, if the regulations so require, or	17
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	18 19 20 21 22 23
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	24 25 26 27
Subsections (1), (2) and (5) do not apply to such a modification.	28 29
[5] Section 96 (2) (a)	30
Insert “as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) under this section” after “the same development”.	31 32 33

[6] Section 96 (2) (c)	1
Omit section 96 (2) (c) and (d). Insert instead:	2
(c) it has notified the application in accordance with:	3
(i) the regulations, if the regulations so require, or	4
(ii) a development control plan, if the consent	5
authority is a council that has made a	6
development control plan under section 72 that	7
requires the notification or advertising of	8
applications for modification of a development	9
consent, and	10
(d) it has considered any submissions made concerning the	11
proposed modification within the period prescribed by	12
the regulations or provided by the development control	13
plan, as the case may be.	14
Subsections (1) and (1A) do not apply to such a modification.	15
[7] Section 96 (5)	16
Omit “(except in the case of a minor modification)”.	17
[8] Section 96 (6A)	18
Insert after section 96 (6):	19
(6A) In the case of State significant development, an applicant who	20
is dissatisfied with the determination of the application or the	21
failure of the consent authority to determine the application	22
within 40 days after the application is made may appeal to the	23
Court unless the consent for the State significant development	24
that was originally granted was granted following the holding	25
of an inquiry by a Commission of Inquiry. The Court may	26
determine any such appeal.	27
[9] Section 96 (7)	28
Insert “or (6A)” after “Subsection (6)”.	29

Schedule 4	Miscellaneous amendments	1
	(Section 3)	2
[1]	Section 4 Definitions	3
	Insert after section 4 (13):	4
	(14) A reference in this Act to an original document, map or plan includes a reference to a document, map or plan created, or a copy of which is kept, in electronic form.	5 6 7
[2]	Section 80 Determination	8
	Omit section 80 (10A).	9
[3]	Section 83 Date from which consent operates	10
	Omit section 83 (1) (b). Insert instead:	11
	(b) in the case of designated development to which an objection has been made in accordance with section 79 (5):	12 13 14
	(i) if consent was granted under section 80 (7) following the holding of an inquiry by a Commission of Inquiry—the date that is endorsed on the notice of the determination of the development application given to the applicant in accordance with section 81 (1), or	15 16 17 18 19 20
	(ii) in any other case—the expiration of 28 days from the date that is endorsed on the notice of the determination of the development application given to the applicant in accordance with section 81 (1).	21 22 23 24 25
[4]	Section 85A Process for obtaining complying development certificates	26
	Omit “that would enable the erection of a building” from section 85A (10A).	27 28

[5] Section 105 Regulations—Part 4	1
Insert after section 105 (1) (t):	2
(u) advertising, including the display of advertisements and the erection of advertising structures.	3 4
[6] Section 109C Part 4A certificates	5
Insert after section 109C (1) (a) (iv):	6
, or	7
(v) any specified aspect of development (including design of development) complies with standards or requirements specified in the certificate with respect to the development,	8 9 10 11
[7] Section 109F Restriction on issue of construction certificates	12
Omit “that the requirements of the regulations referred to in section 81A (5) have been complied with.” from section 109F (1).	13 14
Insert instead:	15
that:	16
(a) the requirements of the regulations referred to in section 81A (5) have been complied with, and	17 18
(b) any long service levy payable under section 34 of the <i>Building and Construction Industry Long Service Payments Act 1986</i> (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.	19 20 21 22 23
[8] Section 109J Restriction on issue of subdivision certificates	24
Omit section 109J (1) (c) and (d). Insert instead:	25
(c) in the case of subdivision for which a development consent has been granted, that the applicant has complied with all conditions of the consent that, by its terms, are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision,	26 27 28 29 30 31

(d)	in the case of subdivision for which a “deferred commencement” consent under section 80 (3) has been granted, that the applicant has satisfied the consent authority concerning all matters as to which the consent authority must be satisfied before the consent can operate,	1 2 3 4 5 6
[9]	Section 109ZG Conflicts of interest	7
	Insert after section 109ZG (1):	8
	(1A) Despite subsection (1), an accredited certifier who is an employee of a council may issue a Part 4A certificate in relation to development that is to be carried out in the area of the council if:	9 10 11 12
	(a) the certificate relates to development for which the council is not the consent authority, and	13 14
	(b) the accredited certifier issues the certificate in the course of his or her employment with the council.	15 16
[10]	Section 109ZJ Apportionment of liability	17
	Add “or other party” after “defendant” in section 109ZJ (4).	18
[11]	Section 115BAA	19
	Insert after section 115BA:	20
115BAA	Minor modification of Minister’s approval	21
	(1) The Minister may, on application by a proponent, modify an approval for the proponent to carry out an activity to correct a minor error, misdescription or miscalculation in the approval.	22 23 24
	(2) If a proponent requests modification of an approval under this section, the Minister is required to modify the approval (without conditions) or disapprove of the modification. The Minister is to notify the proponent of the decision.	25 26 27 28
	(3) The Minister’s decision on a modification of an approval is to be made within 21 days after the Minister receives the Director’s report under section 115C (1B). The proponent may agree to an extension of the period.	29 30 31 32

(4) Section 115BB (2) and (3), and section 115C (1), (1A), (2), (2A), (5) and (6) do not apply to such a modification.	1 2
[12] Section 115C Director’s report	3
Insert after section 115C (1A):	4
(1B) The Director is also to report to the Minister on the assessment of a proposed modification of an approval requested by a proponent under section 115BAA.	5 6 7
[13] Section 118J In what circumstances can entry be made to a residence?	8
Insert after section 118J (c):	9
, or	10
(d) if an application for a building certificate has been made under section 149B in respect of premises used for residential purposes and entry is necessary for the purpose of inspecting the premises in order to issue a building certificate in accordance with sections 149A–149E.	11 12 13 14 15 16
[14] Section 121 Settlement of disputes	17
Insert after section 121 (1):	18
(1A) Where a dispute arises between a public authority, other than a council, and another public authority, other than a council, with respect to:	19 20 21
(a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument, or	22 23 24
(b) the exercise of any function conferred or imposed upon any such public authority by or under this Act, the regulations or an environmental planning instrument,	25 26 27
a party to the dispute may submit that dispute to the Premier for settlement in accordance with this section.	28 29
[15] Section 121 (3) and (7)	30
Insert “, (1A)” after “subsection (1)” wherever occurring.	31

[16] Section 121B What orders may be given by a consent authority?	1
Omit the matter in Column 3 relating to Order No 5 in the Table.	2
Insert instead:	3
(a) The person who caused the advertisement to be displayed or advertising structure to be erected	4 5
(b) The person who paid or otherwise rewarded the person who printed the advertisement or the person who caused the advertisement to be displayed or the advertising structure to be erected, or both of them, for so printing or displaying the advertisement or erecting the advertising structure	6 7 8 9 10 11
(c) The owner or occupier of the premises on which the advertisement is displayed or the advertising structure is erected	12 13 14
[17] Section 126 Penalties	15
Omit “1,000 penalty units and to a further daily penalty not exceeding 100 penalty units” from section 126 (1).	16 17
Insert instead “10,000 penalty units and to a further daily penalty not exceeding 1,000 penalty units”.	18 19
[18] Section 126 (2)	20
Omit “100 penalty units”. Insert instead “1,000 penalty units”.	21
[19] Section 127 Proceedings for offences	22
Omit “100 penalty units” from section 127 (3).	23
Insert instead “1,000 penalty units”.	24
[20] Section 137 Charges and fees fixed by regulation	25
Omit section 137 (1) (a)–(e). Insert instead:	26
(a) supplies any service, product, commodity or publication, or	27 28
(b) makes any registration, or	29
(c) gives any permission, or	30

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Schedule 4 Miscellaneous amendments

(d)	furnishes any information, or	1
(e)	receives any application for its approval, or	2
(f)	issues any certificate, requirement or direction, or	3
(g)	allows admission to any building,	4
[21]	Section 145A Definitions	5
	Insert after paragraph (a) of the definition of <i>planning authority</i> :	6
(a1)	in the case of a function relating to an application for a complying development certificate—the council or accredited certifier to whom the application is made, and	7 8 9 10
[22]	Section 145B Exemption from liability—contaminated land	11
	Insert after section 145B (2) (d):	12
(d1)	the processing and determination of an application for a complying development certificate,	13 14

Schedule 5	Amendments by way of statute law revision	1
		2
	(Section 3)	3
[1]	Section 11 Functions of corporation	4
	Omit section 11 (5).	5
[2]	Section 11 (6)	6
	Omit “subsection (4) (c) or (g), consultations shall be held with the Traffic Authority of New South Wales”.	7
		8
	Insert instead “subsection (4) (g), consultations are to be held with the Roads and Traffic Authority”.	9
		10
[3]	Section 50 Submission of draft regional environmental plan to the Minister	11
		12
	Omit “exclude certain provisions thereof or exclude from the application thereof part of the region to which that draft plan applied” from section 50 (2).	13
		14
		15
	Insert instead “exclude certain provisions of the draft plan or exclude part of the region from the draft plan, or both”.	16
		17
[4]	Section 68 Consideration of submissions	18
	Omit “exclude certain provisions thereof or exclude from the application thereof part of the land to which the draft plan applied” from section 68 (5).	19
		20
	Insert instead “exclude certain provisions of the draft plan or exclude part of the land from the draft plan, or both”.	21
		22
[5]	Section 70 Making of local environmental plan	23
	Omit “exclude certain provisions thereof or exclude from the application thereof part of the land to which the draft plan applied” from section 70 (4).	24
		25
	Insert instead “exclude certain provisions of the draft plan or exclude part of the land from the draft plan, or both”.	26
		27

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Schedule 5 Amendments by way of statute law revision

[6] Section 76A Development that needs consent	1
Insert “and the development may be carried out with development consent” after “the exclusion of Part 5” in section 76A (8) (b).	2 3 4
[7] Section 79B Consultation and concurrence	5
Omit “or objections” from section 79B (5) (c).	6
[8] Section 80 Determination	7
Omit “an objection is made to the application within the submission period, until after 21 days following the date on which a copy of the objection” from section 80 (9) (b).	8 9 10
Insert instead “a submission is made with respect to the application within the submission period, until after 21 days following the date on which a copy of the submission”.	11 12 13
[9] Section 80 (10) (b)	14
Omit “objections”. Insert instead “submissions”.	15
[10] Section 112C Concurrence of or consultation with Director-General of National Parks and Wildlife if Minister is not determining authority	16 17
Omit “Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82” from section 112C (3).	18 19
Insert instead “Section 79B (8), (9) and (11) and the prescribed provisions of the regulations”.	20 21
[11] Section 115B Minister’s approval	22
Insert “and (1B)” after “section 112 (1) (a)–(c)” in section 115B (1).	23
[12] Section 115BA (5)	24
Insert “and (1B)” after “section 112 (1) (a)–(c)” in section 115BA (5) (a).	25
[13] Section 157 Regulations	26
Insert “or” after “person,” in section 157 (1) (a).	27

[14] Section 157 (1) (b)	1
Omit “, and”. Insert instead “, or”.	2
[15] Schedule 6 Savings, transitional and other provisions	3
Omit “, except in relation to a Part 4A certificate for which the consent authority is the Darling Harbour Authority and, on its dissolution, the Sydney Harbour Foreshore Authority” from clause 22 (1).	4 5 6
[16] Schedule 6, clause 28 Consent authority	7
Omit “, except in relation to a Part 4A certificate, for which the consent authority is the Sydney Harbour Foreshore Authority” from clause 28 (1).	8 9

Schedule 6 Amendments by way of savings and transitional provisions	1 2
(Section 3)	3
[1] Schedule 6 Savings, transitional and other provisions	4
Insert at the end of clause 1 (1) the following:	5
<i>Protection of the Environment Operations Act 1997</i>	6
<i>Environmental Planning and Assessment Amendment Act 1999</i>	7
[2] Schedule 6, Part 9	8
Insert after Part 8:	9
Part 9 Environmental Planning and Assessment Amendment Act 1999	10 11
33 Modification of development consents	12
An amendment made by Schedule 3 to the <i>Environmental Planning and Assessment Amendment Act 1999</i> extends to a development consent granted before the commencement of the amendment.	13 14 15 16
34 Date from which consent operates	17
Section 83 (1) (b), as substituted by the <i>Environmental Planning and Assessment Amendment Act 1999</i> , extends to a development application made before the commencement of the substitution.	18 19 20 21
35 Building and construction industry long service levy	22
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 <i>Environmental Planning and Assessment Amendment Act 1999</i> does not apply in respect of the levy, or the first instalment of the levy.	23 24 25 26 27

36	Apportionment of liability	1
	Section 109ZJ, as amended by the <i>Environmental Planning and Assessment Amendment Act 1999</i> , does not apply to or in respect of any development referred to in clause 34 of the <i>Environmental Planning and Assessment (Savings and Transitional) Regulation 1998</i> .	2 3 4 5 6
37	Entry to residences for building certificate inspections	7
	Section 118J, as amended by the <i>Environmental Planning and Assessment Amendment Act 1999</i> , extends to an application for a building certificate that was made before the commencement of the amendment.	8 9 10 11

Schedule 7	Amendments to Environmental Planning and Assessment Regulation 1994	1
		2
	(Section 4)	3
[1]	Clause 71A What are the requirements for an application for modification of a development consent under sec 96 (1), (1A) or (2) of the Act?	4
		5
		6
	Insert “, (1A)” after “section 96 (1)”.	7
[2]	Clause 72 Applications for modification of development consents granted by the Land and Environment Court or the Minister	8
		9
	Insert “, (1A)” after “section 96 (1)” wherever occurring in clause 72 (1).	10
[3]	Clause 72A Public participation—application under sec 96 (2) of the Act for modification of certain development consents	11
		12
	Omit clause 72A (1). Insert instead:	13
	(1) This clause applies to an application under section 96 (2) of the Act to modify a development consent if the original development application for the consent was an application to carry out any of the following:	14
		15
		16
		17
	(a) designated development,	18
	(b) State significant advertised development as referred to in clause 63 (1) (a) of this Regulation,	19
		20
	(c) nominated integrated development as referred to in clause 63 (1) (b) of this Regulation,	21
		22
	(d) any other advertised development where the application was made to a consent authority other than a council.	23
		24

[4] Clauses 72B and 72C	1
Insert after clause 72A:	2
72B Public participation—application under sec 96 (2) for modification of other development consents	3 4
(1) This clause applies to an application under section 96 (2) of the Act to which clause 72A does not apply.	5 6
(2) An application to which this clause applies must be notified or advertised for a period not exceeding 14 days but otherwise in the same manner as the original development application was notified or advertised.	7 8 9 10
(3) However, if the application is made to a council that has provided in a development control plan made under section 72 of the Act for the notification or advertising of such an application (or has provided that such an application is not required to be notified or advertised), the application is to be notified or advertised in accordance with the development control plan.	11 12 13 14 15 16 17
(4) If an application to which this clause applies is required by this clause or a development control plan to be notified or advertised and the development consent was granted by the Court on appeal, the application must be so notified or advertised by the council to which the original development application was made.	18 19 20 21 22 23
(5) A council referred to in subclause (4) must notify the Court of:	24
(a) the manner in which the application was notified or advertised, and	25 26
(b) any submission period required by the development control plan, and	27 28
(c) the date (or dates) on which the application was notified or advertised.	29 30
(6) During the period referred to in subclause (2) or, if a development control plan provides for a period for notification or advertising of an application, during that period, any person may inspect the application and any accompanying information and make extracts from or copies of them.	31 32 33 34 35

72C	Public participation—application under sec 96 (1A) for modification of development consents	1 2
(1)	This clause applies to an application under section 96 (1A) of the Act.	3 4
(2)	If an application to which this clause applies is required by a development control plan to be notified or advertised and the development consent was granted by the Court on appeal, the application must be so notified or advertised by the council to which the original development application was made.	5 6 7 8 9
(3)	A council referred to in subclause (2) must notify the Court of:	10
(a)	the manner in which the application was notified or advertised, and	11 12
(b)	any submission period required by the development control plan, and	13 14
(c)	the date (or dates) on which the application was notified or advertised.	15 16
(4)	If a development control plan provides for a period for notification or advertising of an application, any person during that period may inspect the application and any accompanying information and make extracts from or copies of them.	17 18 19 20
[5]	Clause 91B	21
	Insert after clause 91A:	22
91B	Concurrence or consultation with Director-General of National Parks and Wildlife	23 24
	For the purposes of section 112C (3) of the Act, clauses 49A, 50, 50A, 51A and 51B of this Regulation apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under section 112C in the same way as they apply to and in respect of the granting of concurrence under section 79B.	25 26 27 28 29 30

[6] Schedule 3 Designated development	1
Omit the definition of <i>drinking water catchment</i> from Part 3 of the Schedule.	2 3
Insert instead:	4
<i>drinking water catchment</i> means the restricted areas prescribed by the controlling water authority, including the inner and outer catchment areas declared under the <i>Sydney Water Catchment Management Act 1998</i> , and catchment districts proclaimed under section 128 of the <i>Local Government Act 1993</i> .	5 6 7 8 9

Schedule 8	Amendments to Environmental Planning and Assessment Model Provisions 1980	1
		2
	(Section 5)	3
[1]	Clause 4 Definitions	4
	Omit the definition of <i>advertising structure</i> in clause 4 (1).	5
[2]	Clause 4 (1), definition of “advertisement”	6
	Omit the definition.	7
[3]	Clause 4 (1), definition of “Department”	8
	Omit “Department of Environment and Planning constituted under the <i>Environmental Planning and Assessment Act 1979</i> ”.	9
	Insert instead “Department of Urban Affairs and Planning”.	11
[4]	Clause 4 (1), definition of “health care professional”	12
	Omit “ <i>Podiatrists Registration Act 1989</i> ”.	13
	Insert instead “ <i>Podiatrists Act 1989</i> ”.	14
[5]	Clause 4 (1), definition of “main road”	15
	Omit “ <i>Main Roads Act 1924</i> ”.	16
	Insert instead “ <i>Roads Act 1993</i> ”.	17
[6]	Clause 4 (1), definition of “professional consulting rooms”	18
	Omit “ <i>Dentists Act 1934</i> ”.	19
	Insert instead “ <i>Dentists Act 1989</i> ”.	20
[7]	Clause 4 (1), definition of “units for aged persons”	21
	Omit “Housing Commission of New South Wales”.	22
	Insert instead “Department of Housing”.	23

[8] Clauses 5 (2) and (3), 10 (2), 19 and 20 (2)	1
Omit "Traffic Authority of New South Wales" wherever occurring.	2
Insert instead "Roads and Traffic Authority".	3
[9] Clause 8 Preservation of trees	4
Omit "trees required to be lopped in accordance with Regulation 38 or 39 of the <i>Overhead Line Construction and Maintenance Regulations 1962</i> " from clause 8 (7).	5
	6
	7
Insert instead "trees required to be trimmed or removed under section 48 of the <i>Electricity Supply Act 1995</i> ".	8
	9
[10] Clause 9 Relocation of major roads	10
Omit "Commissioner for Main Roads".	11
Insert instead "Roads and Traffic Authority".	12
[11] Clause 10 Opening of public road	13
Omit "and the Commissioner for Main Roads" from clause 10 (2).	14
[12] Clause 10 (2) (c)	15
Omit "or the Commissioner for Main Roads".	16
[13] Schedule 1	17
Omit "Pastures Protection Board" from clause 10 of the Schedule.	18
Insert instead "rural lands protection board".	19
[14] Schedule 1, clause 11	20
Omit "Water Resources Commission".	21
Insert instead "Department of Land and Water Conservation".	22