



New South Wales

# Environmental Planning and Assessment Amendment Act 1997 No 152

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	2
4 Amendment of Conveyancing Act 1919 No 6	2
5 Amendment of Local Government Act 1993 No 30	2
6 Amendment of other Acts	2
7 Repeal of local government legislation	2

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## Schedules

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1 Amendment of Environmental Planning and Assessment Act 1979	3
2 Amendment of Conveyancing Act 1919	167
3 Amendment of Local Government Act 1993	181
4 Amendment of other Acts	191

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New South Wales

# **Environmental Planning and Assessment Amendment Act 1997 No 152**

Act No 152, 1997

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An Act to amend the *Environmental Planning and Assessment Act 1979* in relation to environmental planning control; to make consequential amendments to the *Conveyancing Act 1919*, the *Local Government Act 1993* and certain other Acts; to repeal the unrepealed portion of the *Local Government Act 1919*; and for other purposes. [Assented to 19 December 1997]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Environmental Planning and Assessment Amendment Act 1997*.

**2 Commencement**

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

**3 Amendment of Environmental Planning and Assessment Act 1979 No 203**

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedule 1.

**4 Amendment of Conveyancing Act 1919 No 6**

The *Conveyancing Act 1919* is amended as set out in Schedule 2.

**5 Amendment of Local Government Act 1993 No 30**

The *Local Government Act 1993* is amended as set out in Schedule 3.

**6 Amendment of other Acts**

An Act specified in Schedule 4 is amended as set out in that Schedule.

**7 Repeal of local government legislation**

- (1) The unrepealed portion of the *Local Government Act 1919* is repealed.
- (2) *Ordinance No 32* under the *Local Government Act 1919* and taken (by clause 5 (1) of Schedule 7 to the *Local Government Act 1993*) to be a regulation under the *Local Government Act 1993* is repealed.

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## Schedule 1    Amendment of Environmental Planning and Assessment Act 1979

(Section 3)

### [1]    Section 4 Definitions

Omit the definitions of *advertised development*, *building*, *consent authority*, *designated development*, *development*, *development application*, *development consent*, *objector*, *owner* and *Secretary* from section 4 (1).

### [2]    Section 4 (1)

Insert in alphabetical order:

*accredited certifier*, in relation to matters of a particular kind, means a person who is accredited by an accreditation body under section 109T in relation to those matters.

*accreditation body*, in relation to matters of a particular kind, means a professional association that is authorised under section 109S to accredit persons as accredited certifiers in relation to those matters.

*advertised development* means development, other than designated development, that is identified as advertised development by the regulations, an environmental planning instrument or a development control plan.

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

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

*alignment* means the boundary line between any public place and any land abutting that place.

***associated structure*** has the same meaning as in the *Local Government Act 1993*.

***building*** includes part of a building and any structure or part of a structure, but does not include:

- (a) a manufactured home, a moveable dwelling or associated structure or part of a manufactured home, a moveable dwelling or associated structure, or
- (b) a temporary structure within the meaning of the *Local Government Act 1993*.

***Building Code of Australia*** means the document of that name published on behalf of the Australian Building Codes Board in October 1996, together with:

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

as are prescribed by the regulations.

***building work*** means any physical activity involved in the erection of a building.

***certifying authority*** means a person who, by or under section 109D, is authorised to issue Part 4A certificates.

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

***compliance certificate*** means a certificate referred to in section 109C (1) (a).

***complying development*** is development for which provision is made as referred to in section 76A (5).

***complying development certificate*** means a complying development certificate referred to in section 85.



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**consent authority**, in relation to a development application or an application for a complying development certificate, means:

- (a) the council having the function to determine the application, or
- (b) if a provision of this Act, the regulations or an environmental planning instrument specifies a Minister or public authority (other than a council) as having the function to determine the application—that Minister or public authority, as the case may be.

**construction certificate** means a certificate referred to in section 109C (1) (b).

**Crown land** has the same meaning as in the *Crown Lands Act 1989*.

**designated development** has the meaning given by section 77A.

**development** means:

- (a) the use of land, and
- (b) the subdivision of land, and
- (c) the erection of a building, and
- (d) the carrying out of a work, and
- (e) the demolition of a building or work, and
- (f) any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument,

but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.

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

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

***exempt development*** is development for which provision is made as referred to in section 76 (2).

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

***local development*** has the meaning given by section 76A (4).

***manufactured home*** has the same meaning as in the *Local Government Act 1993*.

***moveable dwelling*** has the same meaning as in the *Local Government Act 1993*.

***objector*** means a person who has made a submission under section 79 (5) by way of objection to a development application for consent to carry out designated development.

***occupation certificate*** means a certificate referred to in section 109C (1) (c).

***owner*** has the same meaning as in the *Local Government Act 1993* and includes, in Division 2A of Part 6, in relation to a building, the owner of the building or the owner of the land on which the building is erected.

***Part 4A certificate*** means a certificate referred to in section 109C (1) (a), (b), (c) or (d).

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

***premises*** means any of the following:

- (a) a building of any description or any part of it and the appurtenances to it,
- (b) a manufactured home, moveable dwelling and associated structure,

- (c) land, whether built on or not,
- (d) a tent,
- (e) a swimming pool,
- (f) a ship or vessel of any description (including a houseboat).

***principal certifying authority*** means a principal certifying authority appointed under section 109E.

***prohibited development*** means:

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

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

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

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

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

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

***relevant accreditation body***, in relation to an accredited certifier, means the accreditation body by which he or she is accredited.

***State significant development*** has the meaning given by section 76A (7).

*subdivision certificate* means a certificate referred to in section 109C (1) (d).

*subdivision of land* has the meaning given by section 4B.

*subdivision work* means any physical activity authorised to be carried out under the conditions of a development consent for the subdivision of land, as referred to in section 81A (3).

**[3]      Section 4 (1), definition of “development standards”**

Insert “or the regulations” after “instrument”.

**[4]      Section 4 (1), definition of “land”**

Insert at the end of paragraph (c):

, and

(d)    a building erected on the land.

**[5]      Section 4 (2)**

Omit the subsection. Insert instead:

(2)    A reference in this Act to:

- (a)    the use of land includes a reference to a change of building use, and
- (b)    the erection of a building includes a reference to:
  - (i)    the rebuilding of, the making of structural alterations to, or the enlargement or extension of, a building, or
  - (ii)   the placing or relocating of a building on land, or
  - (iii)   enclosing a public place in connection with the construction of a building, or
  - (iv)   erecting an advertising structure over a public road, or
  - (v)    extending a balcony, awning, sunshade or similar structure or an essential service pipe beyond the alignment of a public road, and



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- (c) the carrying out of a work includes a reference to:
    - (i) the rebuilding of, the making of alterations to, or the enlargement or extension of, a work, or
    - (ii) enclosing a public place in connection with the carrying out of a work, and
  - (d) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be a work for the purposes of this Act, and
  - (e) the demolition of a building or work includes a reference to enclosing a public place in connection with the demolition of a building or work, and
  - (f) the carrying out of development includes a reference to the use of land or a building, the subdivision of land, the erection of a building, the carrying out of a work, the demolition of a building or work or the doing of any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument.

**[6] Section 4 (6A)**

Omit the subsection. Insert instead:

- (6A) However, for the purposes of sections 5A, 79B (5) and 112D, a region has the same meaning as in the *Threatened Species Conservation Act 1995*.

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

Insert after section 4 (7):

- (7A) A power, express or implied, of the Minister to make a declaration under this Act includes a power to revoke or amend the declaration.

**[8]      Section 4 (13)**

Insert after section 4 (12):

- (13) Notes in this Act are explanatory notes and do not form part of this Act.

**[9]      Section 4B**

Insert before section 5:

**4B Subdivision of land**

- (1) For the purposes of this Act, *subdivision of land* means the division of land into two or more parts that, after the division, would be obviously adapted for separate occupation, use or disposition. The division may (but need not) be effected:
- (a) by conveyance, transfer or partition, or
  - (b) by any agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.
- (2) Without limiting subsection (1), *subdivision of land* includes the procuring of the registration in the office of the Registrar-General of:
- (a) a plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919*, or
  - (b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

**Note.** The definition of *plan of subdivision* in section 195 of the *Conveyancing Act 1919* extends to plans of subdivision for lease purposes (within the meaning of section 23H of that Act) and to various kinds of plan under the *Community Land Development Act 1989*.

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- (3) However, *subdivision of land* does not include:
- (a) a lease (of any duration) of a building or part of a building, or
  - (b) the opening of a public road, or the dedication of land as a public road, by the Crown, a statutory body representing the Crown or a council, or
  - (c) the acquisition of land, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or
  - (d) a division of land effected by means of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or
  - (e) the procuring of the registration in the office of the Registrar-General of:
    - (i) a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of section 195 of the *Conveyancing Act 1919*, or
    - (ii) a strata plan of consolidation or a building alteration plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

**[10] Section 5 Objects**

Insert after section 5 (a) (vi):

and

(vii) ecologically sustainable development, and

**[11] Section 5A Significant effect on threatened species, populations or ecological communities, or their habitats**

Omit “77, 90”. Insert instead “78A, 79C (1)”.

**[12]    Section 5B**

Insert after section 5A:

**5B   Planning authorities to have regard to register of critical habitat**

- (1)    Each planning authority must have regard to the register of critical habitat kept by the Director-General of National Parks and Wildlife under the *Threatened Species Conservation Act 1995* when exercising its functions under this Act.
- (2)    In this section, *planning authority* in relation to a function under this Act means:
  - (a)    in the case of a function relating to a development application—the consent authority (or a person or body taken to be a consent authority), and
  - (b)    in the case of any other function—the public authority or other person responsible for exercising the function.

**[13]   Sections 12 (4), 23 (7), 34 (7) and (8), 47 (d), 48, 49 (1) (d), 54 (4), 64, 65 (1), 68 (4), 112 (1) (d) and (e), (2) and (3), 113 (3), 150 (2) (a) and 157 (1) (b)**

Omit “Secretary” wherever occurring. Insert instead “Director”.

**[14]   Section 23 Delegation**

Omit “89, 101” from section 23 (8) (b).  
Insert instead “80 (7), 88A, 89”.

**[15]   Section 26 Contents of environmental planning instruments**

Omit section 26 (1) (d).



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**[16] Section 27 Reservation of land for public purposes**

Omit “26 (c)” from section 27 (1). Insert instead “26 (1) (c)”.

**[17] Section 29A**

Insert after section 29:

**29A Advertised development**

- (1) Without limiting the generality of section 26 (1) (b), an environmental planning instrument may identify development, other than designated development, as advertised development.
- (2) Any such provisions may add to or extend, but not replace or reduce, the provisions of the regulations concerning the notification and advertising of development and the making of submissions relating to advertised development.

**[18] Section 30 Consents and concurrences**

Omit “26 (b)” from section 30 (1). Insert instead “26 (1) (b)”.

**[19] Section 30 (4)**

Omit the subsection.

**[20] Section 31 Prohibitions**

Omit “26 (b)”. Insert instead “26 (1) (b)”.

**[21] Section 72 Development control plans**

Omit section 72 (1). Insert instead:

- (1) If a council considers it necessary or desirable:
  - (a) to provide more detailed provisions than are contained in a local environmental plan or a draft local environmental plan in respect of a part or parts of the land to which that plan or draft plan applies, or

- (b) to identify development as advertised development, or
  - (c) to provide for the notification or advertising to the public, a section of the public or specified persons of a development application for specified development (other than designated development or advertised development) or an application for a complying development certificate, or
  - (d) to specify criteria, in addition to any criteria that may be specified in the regulations, that it is to take into consideration in determining whether or not to give an order under Division 2A of Part 6,
- it may prepare or cause to be prepared a development control plan.
- (1A) A provision of a kind to which subsection (1) (b) applies may add to or extend, but not replace or reduce, the provisions of the regulations concerning the notification and advertising of development applications and the making of submissions relating to advertised development.
  - (1B) If a council makes a development control plan that specifies criteria that it is to take into consideration in determining whether or not to give an order under Division 2A of Part 6, the criteria may add to, but must not be inconsistent with, any criteria that may be specified in the regulations.

**[22] Section 72A Making of application**

Omit "100A and 101" wherever occurring from section 72A (2).  
Insert instead "88A and 89".

**[23] Section 72A (3) (b)**

Omit "77". Insert instead "78A".

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**[24] Section 72B Preparation of local environmental plan and advertising of development application**

Omit section 72B (1) (c). Insert instead:

- (c) provide in the draft plan, unless the development is designated development, for the development to be advertised development, and

**[25] Section 72B (1) (e)**

Omit "section 84 or 85 as if it was an application to carry out designated development".

Insert instead "section 79A".

**[26] Section 72B (1) (f)**

Omit "84 or 85". Insert instead "79".

**[27] Section 72B (2) (b)**

Omit "section 87 (1)".

Insert instead "the regulations or section 79 (5)".

**[28] Section 72D Determination of development application by council**

Omit "90 (1)" from section 72D (2).

Insert instead "79C (1)".

**[29] Section 72D (4)**

Omit "Section 96". Insert instead "Section 82".

**[30] Section 72G Date from which consent operates**

Omit "Division 1 of" from section 72G (a).

**[31] Section 72G (b)**

Omit "93". Insert instead "83".

**[32] Parts 4–4C**

Omit Part 4. Insert instead:

**Part 4      Development assessment**

**Note.** The environmental planning legislation comprises 3 elements, namely, this Act, the environmental planning instruments and the regulations made under this Act. The legislative scheme for environmental planning control is, broadly speaking, distributed between the 3 elements as follows:

- (a) This Part of the Act, Part 4, lays the foundation for the legislative scheme. It contains the major concepts and addresses the major matters of principle.
- (b) The environmental planning instruments identify particular forms of development according to the threefold classification that is established by Division 1 of this Part. They also determine whether development is exempt development as referred to in section 76 (2) or complying development as referred to in section 76A (5).
- (c) The regulations contain much of the detail of the various processes that, having regard to the nature of the proposed development, lead to the granting of development consent. They also largely determine whether development is designated development.

**Division 1      Carrying out of development—the threefold classification**

**76 Development that does not need consent**

**(1)      General**

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

**Note.** Environmental assessment of the development may nevertheless be required under Part 5.



(2) **Exempt development**

An environmental planning instrument may provide that development of a specified class or description that is of minimal environmental impact is exempt development.

(3) If development is exempt development:

(a) the development may be carried out, in accordance with the instrument, on land to which the provision applies without the need for development consent, unless that land:

(i) is critical habitat, or

(ii) is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*), and

(b) Part 5 does not apply to the development.

A provision made under subsection (2) ceases to have effect in relation to land if the land becomes land to which paragraph (a) (i) or (ii) applies.

**76A Development that needs consent**

(1) **General**

If an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies unless:

(a) such a consent has been obtained and is in force, and

(b) the development is carried out in accordance with the consent and the instrument.

(2) For the purposes of subsection (1), development consent may be obtained:

(a) by the making of a determination by a consent authority to grant development consent, or

- (b) in the case of complying development, by the issue of a complying development certificate.
- (3) **Two types of development that need consent**  
Development that may not be carried out except with development consent comprises 2 types, namely:
  - (a) local development (which includes complying development), and
  - (b) State significant development.
- (4) **Local development**  
Local development is development that is described in subsection (1) and that is not State significant development.
- (5) **Complying development**  
An environmental planning instrument may provide that local development that can be addressed by specified predetermined development standards is complying development.
- (6) A provision under subsection (5) cannot be made:
  - (a) if the development is State significant development, or
  - (b) if the development is designated development, or
  - (c) if the development is development for which development consent cannot be granted except with the concurrence of a person other than:
    - (i) the consent authority, or
    - (ii) the Director-General of National Parks and Wildlife as referred to in section 79B (3), or
  - (d) so as to apply to land that is critical habitat, or
  - (e) so as to apply to land that is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*), or

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- (f) so as to apply to land that comprises, or on which there is, an item of the environmental heritage:
    - (i) to which an order under the *Heritage Act 1977* applies, or
    - (ii) that is identified as such an item in an environmental planning instrument, or
  - (g) so as to apply to land that is identified as an environmentally sensitive area in the environmental planning instrument that makes provision for the complying development.

A provision made under subsection (5) ceases to have effect in relation to development or land if the development or land becomes development or land to which paragraph (a)–(g) applies.

**Note.** Further provisions concerning complying development are found in Division 3 of this Part.

(7) **State significant development**

State significant development is:

- (a) development:
  - (i) that is declared by a State environmental planning policy or a regional environmental plan to be State significant development, and
  - (ii) that may be carried out with development consent, or
- (b) particular development, or a particular class of development:
  - (i) that, under an environmental planning instrument, may be carried out with development consent, and
  - (ii) that, in the opinion of the Minister, is of State or regional environmental planning significance, and
  - (iii) that is declared by the Minister, by notice in the *Gazette*, to be State significant development, or

- (c) development that is proposed to be carried out in accordance with a development application that the Minister has directed, under section 88A, to be referred to the Minister for determination, or
  - (d) prohibited development in respect of which a direction by the Minister under section 89 is in force.
- (8) If:
  - (a) a project comprises development part of which is State significant development, all other development comprised in the project is taken to be State significant development, and
  - (b) but for this provision, part of State significant development would be subject to Part 5, this Part applies to the exclusion of Part 5, and
  - (c) but for this provision, part of State significant development would be prohibited, the development may be carried out with development consent.
- (9) The Minister is the consent authority for State significant development.

#### **76B Development that is prohibited**

If:

- (a) an environmental planning instrument provides that specified development is prohibited on land to which the provision applies, or
- (b) development cannot be carried out on land with or without development consent,

a person must not carry out the development on the land.

#### **76C Relationship of this Division to this Act**

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



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## **Division 2      The procedures for development that needs consent**

### **77 Application of Division**

This Division:

- (a) applies to development that may not be carried out except with development consent, but
- (b) does not apply to complying development.

**Note.** Under this Part, the procedures by which development consent is obtained differ according to whether the development:

- (a) is local development (including complying development) or State significant development, and
- (b) is or is not designated development (which it may be declared to be by an environmental planning instrument or the regulations), and
- (c) is or is not integrated development (see Division 5).

### **77A Designated development**

Designated development is development that is declared to be designated development by an environmental planning instrument or the regulations.

### **78 The development consent process—the main steps**

The main steps in the development consent process are set out in sections 78A–81 and in the regulations made for the purposes of this Part.

### **78A Application**

- (1) A person may, subject to the regulations, apply to a consent authority for consent to carry out development.
- (2) A single application may be made in respect of one or more of the types of development referred to in paragraphs (a)–(f) of the definition of *development* in section 4 (1).

- (3) If the consent authority is a council, a person (other than the Crown or a person acting on behalf of the Crown) may, in the same development application, apply for development consent and approval for anything that requires approval under the following provisions of the Table to section 68 of the *Local Government Act 1993*, namely:

paragraph 1, 2 or 3 of Part A

paragraph 1–6 of Part B

paragraph 1–5 of Part C

paragraph 1 of Part E

paragraph 1–6, 8, 9 or 10 of Part F.

**Note.** The relevant approvals under the *Local Government Act 1993* are:

**Structures or places of public entertainment**

Installing a manufactured home, moveable dwelling or associated structure on land

Installing a temporary structure on land

Using a building or temporary structure as a place of public entertainment or permitting its use as a place of public entertainment

**Water supply, sewerage and stormwater drainage work**

Carrying out water supply work

Drawing water from a council water supply or a standpipe or selling water so drawn

Installing, altering, disconnecting or removing a meter connected to a service pipe

Carrying out sewerage work

Carrying out stormwater drainage work

Connecting a private drain or sewer with a public drain or sewer under the control of a council or with a drain or sewer which connects with such a public drain or sewer

**Management of waste**

For fee or reward, transporting waste over or under a public place

Placing waste in a public place

Placing a waste storage container in a public place

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Disposing of waste into a sewer of the council

Installing, constructing or altering a waste treatment device or a human waste storage facility or a drain connected to any such device or facility

**Public roads**

Swinging or hoisting goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway

**Other activities**

Operating a public car park

Operating a caravan park or camping ground

Operating a manufactured home estate

Installing a domestic oil or solid fuel heating appliance, other than a portable appliance

Installing or operating amusement devices (within the meaning of the *Construction Safety Act 1912*)

Installing or operating amusement devices prescribed by the regulations under the *Local Government Act 1993* in premises

Operating an undertaker's business

Operating a mortuary

Carrying out an activity prescribed by the regulations under the *Local Government Act 1993* or an activity of a class or description so prescribed

- (4) In determining a development application to which subsection (3) applies, the council may apply any of the provisions of or under the *Local Government Act 1993* that it could apply if the development application were an application under that Act for the relevant approval. In particular, if development consent is granted, the council may impose a condition that is authorised under that Act to be imposed as a condition of an approval.
- (5) If development consent is granted to a development application to which subsection (3) applies, the council is taken to have granted the relevant approval under the *Local Government Act 1993* that authorises the activity, but that Act has no application to the approval so taken to have been granted.
- (6) In granting development consent to a development application to which subsection (3) applies, the council may, without limiting any other condition it may impose,



impose, in relation to the approval taken to have been granted under the *Local Government Act 1993*, either or both of the following conditions:

- (a) a condition that the approval is granted only to the applicant and does not attach to or run with the land to which it applies,
  - (b) a condition that the approval is granted for a specified time.
- (7) A development application cannot be made in respect of land that is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*) unless any consent to the development required under that Act has been obtained.
- (8) A development application must be accompanied by:
- (a) if the application is in respect of designated development—an environmental impact statement prepared by or on behalf of the applicant in the form prescribed by the regulations, or
  - (b) if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitats—a species impact statement prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*.
- (9) The regulations may specify other things that are required to be submitted with a development application.

## **79 Public participation—designated development**

### **(1) Public exhibition and notification**

As soon as practicable after a development application is made for consent to carry out designated development, the consent authority must:

- (a) place the application and any accompanying information on public exhibition for a period of not less than 30 days (the *submission period*) commencing on the day after which notice of the application is published as referred to in paragraph (d), and



- (b) give written notice of the application in accordance with the regulations:
    - (i) to such persons as appear to it to own or occupy the land adjoining the land to which the development application relates, and
    - (ii) if practicable, to such other persons as appear to it to own or occupy land the use or enjoyment of which, in its opinion, may be detrimentally affected if the designated development is carried out, and
    - (iii) to such other persons as are required to be notified by the regulations, and
  - (c) cause notice of the application to be exhibited in accordance with the regulations on the land to which the application relates, and
  - (d) cause notice of the application to be published in accordance with the regulations in a newspaper circulating in the locality.
- (2) If land is:
- (a) a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973*, a written notice to the owners corporation is taken to be a written notice under subsection (1) (b) to the owner or occupier of each lot within the strata scheme, or
  - (b) a lot within the meaning of the *Strata Schemes (Leasehold Development) Act 1986*, a written notice to the lessor under the leasehold strata scheme concerned and to the owners corporation is taken to be a written notice under subsection (1) (b) to the owner or occupier of each lot within the scheme.
- (3) If land is owned or occupied by more than one person, a written notice to one owner or one occupier is taken to satisfy the requirements of subsection (1) (b).

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

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

(6)    **Circumstances in which public exhibition may be dispensed with**  
If:

- (a)    a development application for designated development is amended, or substituted, or withdrawn and later replaced before it has been determined by the consent authority, and
- (b)    the consent authority has complied with subsections (1), (2) and (3) in relation to the original application, and
- (c)    the consent authority is of the opinion that the amended, substituted or later application differs only in minor respects from the original application,

the consent authority may decide to dispense with further compliance with subsection (1) in relation to the amended, substituted or later application. In that event, compliance with subsection (1) in relation to the original application is taken to be compliance in relation to the amended, substituted or later application.

(7)    The consent authority must give written notice to the applicant of its decision under subsection (6) at or before the time notice of the determination of the development application is given under section 81.

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**79A Public participation—advertised development and other notifiable development**

- (1) Notice of a development application for consent to carry out advertised development is to be given in accordance with this Act, the regulations, the relevant environmental planning instrument and any relevant development control plan.
- (2) A development application for specified development (other than designated development or advertised development) must be notified or advertised in accordance with the provisions of a development control plan if the development control plan provides for the notification or advertising of the application.

**79B Consultation and concurrence**

- (1) **General**  
If, by an environmental planning instrument, the consent authority, before determining the development application, is required to consult with or to obtain the concurrence of a person, the consent authority must, in accordance with the environmental planning instrument and the regulations, consult with or obtain the concurrence of the person, unless the consent authority determines to refuse to grant development consent.
- (2) However, if, by an environmental planning instrument, the Minister, before determining a development application, is required to obtain the concurrence of a person, the Minister is required only to consult with the person.
- (3) **Consultation and concurrence—threatened species**  
Development consent cannot be granted for:
  - (a) development on land that is, or is a part of, critical habitat, or
  - (b) development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat,



without the concurrence of the Director-General of National Parks and Wildlife or, if a Minister is the consent authority, unless the Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*.

- (4) Despite subsection (3), if the Minister administering the *Threatened Species Conservation Act 1995* considers that it is appropriate, that Minister may:
  - (a) elect to act in place of the Director-General of National Parks and Wildlife for the purposes of that subsection, or
  - (b) review and amend any recommendations that the Director-General proposes to make, or any advice that the Director-General proposes to offer, for the purposes of that subsection.
- (5) In deciding whether or not concurrence should be granted under subsection (3), the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995* must take the following matters into consideration:
  - (a) any species impact statement that accompanied the development application,
  - (b) any assessment report prepared by the consent authority,
  - (c) any submissions or objections received concerning the development application,
  - (d) any relevant recovery plan or threat abatement plan,
  - (e) whether the development proposed is likely to reduce the long-term viability of the species, population or ecological community in the region,
  - (f) whether the development is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,

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- (g) the principles of ecologically sustainable development (as described by section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (h) the likely social and economic consequences of granting or of not granting concurrence.
- (6) The Minister administering the *Threatened Species Conservation Act 1995* must provide the Minister who is the consent authority with any recommendations made by the Director-General of National Parks and Wildlife concerning determination of a development application relating to development referred to in subsection (3) and, if that Minister does not accept any one or more of the recommendations, that Minister must include in the determination the recommendations not accepted and that Minister's reasons for not accepting them.
- (7) A copy of the reasons referred to in subsection (6) must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.
- (8) **Granting or refusal of concurrence**  
A person whose concurrence to development is required may:
- (a) grant concurrence to the development, either unconditionally or subject to conditions, or
- (b) refuse concurrence to the development.

In deciding whether to grant concurrence, the person must take into consideration only the matters stated pursuant to section 30 (3) and applicable to the development (unless the relevant environmental planning instrument is a deemed environmental planning instrument).

- (9) **Giving effect to concurrence**  
A consent authority that grants consent to the carrying out of development for which a concurrence has been granted must grant the consent subject to any conditions of the concurrence. This does not affect the right of the

consent authority to impose conditions under section 80A not inconsistent with the conditions of the concurrence or to refuse consent.

(10) **Avoidance of consents subject to concurrence**

If, by an environmental planning instrument or the regulations, a development application may not be determined by the granting of consent without the concurrence of a specified person, a consent granted:

- (a) without that concurrence, or
- (b) not subject to any conditions of the concurrence, is, subject to sections 102–104, voidable.

(11) However, if the specified person fails to inform the consent authority of the decision concerning concurrence within the time allowed for doing so, the consent authority may determine the development application without the concurrence of the specified person and a development consent so granted is not voidable on that ground.

(12) Nothing in this section affects any liability of a consent authority in respect of a consent granted as referred to in subsection (10) (a) or (b).

## **79C Evaluation**

(1) **Matters for consideration—general**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
  - (i) any environmental planning instrument, and
  - (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and



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- (iii) any development control plan, and
  - (iv) any matters prescribed by the regulations, that apply to the land to which the development application relates,
  - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
  - (c) the suitability of the site for the development,
  - (d) any submissions made in accordance with this Act or the regulations,
  - (e) the public interest.
- (2) **Compliance with non-discretionary development standards—development other than complying development**
- If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:
- (a) is not entitled to take those standards into further consideration in determining the development application, and
  - (b) must not refuse the application on the ground that the development does not comply with those standards, and
  - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
  - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

**Note.** The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

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



## **80 Determination**

(1) **General**

A consent authority is to determine a development application by:

- (a) granting consent to the application, either unconditionally or subject to conditions, or
- (b) refusing consent to the application.

- (2) Despite subsection (1), the consent authority must refuse an application for development, being the subdivision of land, that would, if carried out, result in a contravention of this Act, an environmental planning instrument or the regulations, whether arising in relation to that or any other development.

(3) **"Deferred commencement" consent**

A development consent may be granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority, in accordance with the regulations, as to any matter specified in the condition. Nothing in this Act prevents a person from doing such things as may be necessary to comply with the condition.

(4) **Staged development**

A development consent may be granted:

- (a) for the development for which the consent is sought, or
- (b) for that development, except for a specified part or aspect of that development, or
- (c) for a specified part or aspect of that development.

- (5) A development consent referred to in subsection (4) may be granted subject to a condition that the development or the specified part or aspect of the development, or any thing associated with the development or the carrying out of the development, must be the subject of another development consent.

(6)    **Restrictions on determination of development applications where Commission of Inquiry is held concerning environmental aspects of proposed development**

A consent authority that has received notice that the Minister has directed that an inquiry be held, in accordance with section 119, with respect to the environmental aspects of proposed development or part of any such proposed development the subject of a development application:

- (a)    must not determine the development application in so far as it relates to proposed designated development, and
  - (b)    must not determine the development application in so far as it relates to development that is not designated development until:
    - (i)    the inquiry has been held, and
    - (ii)   the consent authority has considered the findings and recommendations of the Commission of Inquiry and any comments made by the Minister that accompanied those findings and recommendations when they were forwarded to the consent authority.
- (7)    If the Minister has directed that an inquiry be held by a Commission of Inquiry in relation to any proposed designated development the subject of a development application, the Minister is to determine the application after the inquiry has been held and the Minister has considered the findings and recommendations of the Commission of Inquiry.
- (8)    Sections 82, 97 and 98 do not apply to or in respect of the development application determined by the Minister under subsection (7) or its determination.

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(9) **Restrictions on determination of development applications for designated development**

A consent authority must not determine a development application for designated development:

- (a) until after the submission period (within the meaning of section 79 (1) (a)) has expired, or
- (b) if 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 is forwarded to the Director have expired.

(10) Subsection (9) (b) does not apply:

- (a) to a consent authority being the Minister or the Director, or
- (b) if the Director has waived the requirement that objections be forwarded to the Director for a specified development application or for a specified class of development applications.

(11) **Other restrictions on determination of development applications**

The regulations may specify other matters of a procedural nature that are to be complied with before a development application may be determined.

(12) **Effect of endorsing plans and specifications**

If a consent authority or an accredited certifier endorses plans and specifications in accordance with section 81A (2) or (4), the plans and specifications are taken to form part of the relevant development consent.

(13) **Classification of buildings**

A development consent for the erection of a building must identify the classification of the building in accordance with the *Building Code of Australia*.

(14) A development consent may indicate different classifications for different parts of the same building.

**Note.** To the extent to which it deals with the classification of a



proposed building, a complying development certificate under this Division replaces the statement of classification formerly issued under the regulations under the *Local Government Act 1993*.

### **80A Imposition of conditions**

(1)      **Conditions—generally**

A condition of development consent may be imposed if:

- (a) it relates to any matter referred to in section 79C (1) of relevance to the development the subject of the consent, or
- (b) it requires the modification or surrender of a consent granted under this Act or a right conferred by Division 10 in relation to the land to which the development application relates, or
- (c) it requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out on land (whether or not being land to which the development application relates), or
- (d) it limits the period during which development may be carried out in accordance with the consent so granted, or
- (e) it requires the removal of buildings and works (or any part of them) at the expiration of the period referred to in paragraph (d), or
- (f) it requires the carrying out of works (whether or not being works on land to which the application relates) relating to any matter referred to in section 79C (1) applicable to the development the subject of the consent, or
- (g) it modifies details of the development the subject of the development application, or
- (h) it is authorised to be imposed under section 80 (3) or (5), subsections (5)–(9) of this section or section 94.



(2) **Ancillary aspects of development**

A consent may be granted subject to a condition that a specified aspect of the development that is ancillary to the core purpose of the development is to be carried out to the satisfaction, determined in accordance with the regulations, of the consent authority or a person specified by the consent authority.

(3) A consent authority that has not determined a request to indicate whether a specified aspect of development has been carried out to the satisfaction of the consent authority, or a person specified by the consent authority, within the relevant period, prescribed by the regulations, applicable to the aspect or the development is, for the purpose only of section 97, taken to have determined the request by indicating that it, or the person, is not satisfied as to the specified aspect.

(4) **Conditions expressed in terms of outcomes or objectives**

A consent may be granted subject to a condition expressed in a manner that identifies both of the following:

- (a) one or more express outcomes or objectives that the development or a specified part or aspect of the development must achieve,
- (b) clear criteria against which achievement of the outcome or objective must be assessed.

(5) **Modification or surrender of consents or existing use rights**

If a consent authority imposes (as referred to in subsection (1) (b)) a condition requiring the modification or surrender of a consent granted under this Act or a right conferred by Division 10, the consent or right may be modified or surrendered subject to and in accordance with the regulations.

(6) **Conditions and other arrangements concerning security**

A development consent may be granted subject to a condition, or a consent authority may enter into an

agreement with an applicant, that the applicant must provide security for the payment of the cost of any one or more of the following:

- (a) making good any damage caused to any property of the consent authority (or any property of the corporation) as a consequence of the doing of anything to which the consent relates,
  - (b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,
  - (c) remedying any defects in any such public work that arise within 6 months after the work is completed.
- (7) The security is to be for such reasonable amount as is determined by the consent authority.
- (8) The security may be provided, at the applicant's choice, by way of:
- (a) deposit with the consent authority, or
  - (b) a guarantee satisfactory to the consent authority.
- (9) The security is to be provided before carrying out any work in accordance with the development consent or at such other time as may be agreed to by the consent authority.
- (10) The funds realised from a security may be paid out to meet any cost referred to in subsection (6). Any balance remaining is to be refunded to, or at the direction of, the persons who provided the security.
- (11) **Prescribed conditions**  
A development consent is subject to such conditions as may be prescribed by the regulations.

## **81 Post-determination notification**

- (1) The consent authority must, in accordance with the regulations, notify its determination of a development application to:
- (a) the applicant, and

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- (b) in the case of a development application for consent to carry out designated development:
    - (i) each person who made a submission under section 79 (5), and
    - (ii) each person who made a submission under section 79 (5) by way of objection of the person's rights to appeal against the determination, and
  - (c) such other persons as are required by the regulations to be notified of the determination of the development application.
- (2) If the consent authority is not the council, the consent authority must notify the council of its determination.

**81A Effects of development consents and commencement of development**

**(1) Erection of buildings**

A development consent that enables the erection of a building is sufficient to authorise the use of the building when erected for the purpose for which it was erected if that purpose is specified in the development application, subject to section 109M.

**Note.** Section 109M prohibits the occupation or use of a new building unless an occupation certificate has been issued for the building.

- (2) The erection of a building in accordance with a development consent must not be commenced until:
- (a) detailed plans and specifications of the building have been endorsed with a construction certificate by:
    - (i) the consent authority, or
    - (ii) an accredited certifier, and
  - (b) the person having the benefit of the development consent:
    - (i) has appointed a principal certifying authority, and



- (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

(3) **Subdivision of land**

A development consent that enables the subdivision of land may authorise the carrying out of any physical activity in, on, under or over land in connection with the subdivision, including the construction of roads and stormwater drainage systems.

**Note.** A plan of subdivision cannot be registered under the *Conveyancing Act 1919* unless a subdivision certificate has been issued for the subdivision.

- (4) Subdivision work in accordance with a development consent must not be commenced until:
  - (a) detailed engineering plans and specifications relating to the work have been endorsed with a construction certificate by:
    - (i) the consent authority, or
    - (ii) an accredited certifier, and
  - (b) the person having the benefit of the development consent:
    - (i) has appointed a principal certifying authority, and
    - (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
  - (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.



(5) **Regulations may provide for the endorsement of plans and specifications**

The regulations may make provision concerning the endorsement of plans and specifications for the erection of buildings and the subdivision of land.

**82 Circumstances in which consent is taken to have been refused**

- (1) A consent authority that has not determined a development application within the relevant period, prescribed by the regulations, applicable to the development the subject of the development application is, for the purpose only of section 97, taken to have determined the application by refusing consent on the date on which the period expires.
- (2) Nothing in subsection (1) prevents a consent authority from determining a development application after the expiration of the relevant period referred to in that subsection, whether on a review under section 82A or otherwise.
- (3) A determination pursuant to subsection (2) does not, subject to subsection (4), prejudice or affect the continuance or determination of an appeal made under section 97 in respect of a determination that is taken by subsection (1) to have been made.
- (4) If a determination pursuant to subsection (2) is made by granting consent, the consent authority is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal (being an appeal made under section 97 in respect of a determination that is taken by subsection (1) to have been made) withdrawn at any time prior to the determination of that appeal.

**82A Review of determination**

- (1) If the consent authority is a council, an applicant may request the council to review a determination of the applicant's application, other than:
  - (a) a determination to issue or refuse to issue a complying development certificate, or

- (b) a determination in respect of designated development, or
- (c) a determination in respect of integrated development.

**Note.** This section does not apply to State significant development because it only applies if the consent authority is a council.

- (2) The request for a review must be made within 28 days after the date of the determination.
- (3) The prescribed fee must be paid in connection with a request for a review.
- (4) The council may review the determination and, as a consequence of its review, may confirm or change the determination.
- (5) The decision whether or not to review the determination must not be made by the person who made the determination unless that person was the council, but is to be made by a person who is qualified under subsection (6) to make the review.
- (6) If the council reviews the determination, the review must be made by:
  - (a) if the determination was made by a delegate of the council—the council or another delegate of the council who is not subordinate to the delegate who made the determination, or
  - (b) if the determination was made by the council—the council.
- (7) The council must give notice of the result of the review to the applicant as soon as practicable after the review.
- (8) If on the review the council grants development consent, or varies the conditions of a development consent, the council must endorse on the notice the date from which the consent, or the consent as varied, operates.
- (9) If on a review the council changes a determination, the changed determination replaces the earlier determination as from the date of the review.

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- (10) If on a review the council grants development consent, or varies the conditions of a development consent, the council is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 97 in respect of its determination withdrawn at any time prior to the determination of that appeal.
  - (11) A decision on a review may not be further reviewed under this section.

### **83 Date from which consent operates**

- (1) Subject to subsections (2) and (3), if a determination is made by the granting of consent, the consent becomes effective and operates from:
  - (a) except as provided in paragraph (b)—the date that is endorsed on the notice given to the applicant in accordance with section 81 (1) of the determination of the development application or under section 82A (7), or
  - (b) in the case of designated development to which an objection has been made in accordance with section 79 (5)—the expiration of 28 days from the date that is endorsed on the notice given to the applicant in accordance with section 81 (1) of the determination of the development application.
- (2) Subject to subsection (3), if a determination is made by the granting of consent or the granting of consent subject to conditions, and an appeal has been made under section 97 or 98, the consent:
  - (a) ceases to be, or does not become, effective pursuant to subsection (1), and
  - (b) becomes effective and operates from the date of the determination of that appeal, except where that decision is to refuse development consent.
- (3) A consent referred to in subsection (1) or (2) is void and, except for the purposes of section 97 or 98, is taken never to have been granted if:



- (a) an appeal under section 97 is dismissed and development consent is refused, or
  - (b) an appeal under section 98 is upheld, with the effect that development consent is refused.
- (4) If a determination is made by refusing consent or if an application is taken by section 82 to have been so determined, and the decision on the appeal made pursuant to section 97 in respect of that determination has the effect of granting consent, the decision is taken to be a consent granted under this Division and that consent is effective and operates from the date of that decision.
- (5) Despite any other provision of this section, a development consent is taken to become effective and operate from such date as may be fixed by:
  - (a) a court (whether or not the Land and Environment Court) that finally determines an appeal on a question of law which confirms the validity of, or results in the granting of, the consent, or
  - (b) the Land and Environment Court, if the validity of a consent granted by that Court is confirmed by, or the consent is granted by that Court as a result of, such a final determination made by another court that has not fixed that date.
- (6) A development consent in respect of a development application that is taken to have been determined under Part 5A operates from the date on which it is taken to have been determined.

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

**Note.** This Division applies to development that is declared by an environmental planning instrument to be complying development which means that the **whole** of the development is subject to specified development standards.

#### **84 Application of this Division**

This Division applies to complying development.



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**84A Carrying out of complying development**

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

**84B Carrying out of complying development being subdivision of land**

A person is taken to have been issued with a complying development certificate for the subdivision of land that does not involve the carrying out of subdivision work, if a subdivision certificate is endorsed on the relevant plan of subdivision under Part 4A.

**85 What is a “complying development certificate”?**

**(1) Terms of complying development certificate**

A complying development certificate is a certificate:

- (a) that states that particular proposed development is complying development and (if carried out as specified in the certificate) will comply with all development standards applicable to the development, and
- (b) in the case of development involving the erection of a building, that identifies the classification of the building in accordance with the *Building Code of Australia*.

- (2)** A complying development certificate may indicate different classifications for different parts of the same building.

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

**(3) Erection of buildings**

A complying development certificate that enables the erection of a building is sufficient to authorise the use of the building when erected for the purpose for which it was erected if that purpose is specified in the application for the complying development certificate, subject to section 109M.

**Note.** Section 109M prohibits the occupation or use of a new building unless an occupation certificate has been issued for the building.

**(4) Subdivision of land**

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

**Note.** A plan of subdivision cannot be registered under the *Conveyancing Act 1919* unless a subdivision certificate has been issued for the subdivision.

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(5) **Other requirements for complying development certificates**

The regulations:

- (a) may impose other requirements concerning the issue of complying development certificates, and
- (b) may provide for the form in which a complying development certificate is to be issued.

**85A Process for obtaining complying development certificate**

(1) **Application**

An applicant may, in accordance with the regulations, apply to:

- (a) the council, or
- (b) an accredited certifier,

for a complying development certificate.

(2) **Public notification**

An application for a complying development certificate is to be publicly notified in accordance with a development control plan if the development control plan requires the public notification of the complying development.

(3) **Evaluation**

The council or accredited certifier must consider the application and determine:

- (a) whether or not the proposed development is complying development, and
- (b) whether or not the proposed development complies with the relevant development standards, and
- (c) if the proposed development is complying development because of the provisions of a local environmental plan, or a local environmental plan in relation to which the council has made a development control plan, that specifies standards



and conditions for the complying development, whether or not the proposed development complies with those standards and conditions.

- (4) A council or an accredited certifier must not refuse to grant a complying development certificate on the ground that any component, process or design relating to the development is unsatisfactory if the component, process or design is accredited in accordance with the regulations.
- (5) A council, an employee of a council and an accredited certifier do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) **Determination**  
The council or an accredited certifier may determine an application:
  - (a) by issuing a complying development certificate, unconditionally or subject to such conditions as are prescribed by the regulations or as may be required by an environmental planning instrument or a development control plan, or
  - (b) by refusing to issue a complying development certificate.
- (7) The council or an accredited certifier must not refuse to issue a complying development certificate if the proposed development complies with the development standards applicable to it.
- (8) The determination of an application by the council or accredited certifier must be completed within 7 days (or such longer period as may be agreed to by the applicant) after lodgment of the application.
- (9) In determining the application, the council or the accredited certifier must impose a condition that is required to be imposed under Division 6 in relation to the complying development.
- (10) There is no right of appeal against the determination of, or a failure or refusal to determine, an application for a complying development certificate by a council or an accredited certifier.



(11) **Post-determination notification**

On the determination of an application for the issue of a complying development certificate:

- (a) the council or accredited certifier must notify the applicant of the determination, and
- (b) the accredited certifier must notify the council of the determination.

**86 Commencement of complying development**

(1) **Erection of buildings**

The erection of a building in accordance with a complying development certificate must not be commenced until:

- (a) the person having the benefit of the complying development certificate:
  - (i) has appointed a principal certifying authority, and
  - (ii) has notified the council of the appointment, and
- (b) the person having the benefit of the complying development certificate has given at least 2 days' notice to the council of the person's intention to commence the erection of the building.

(2) **Subdivision of land**

Subdivision work in accordance with a complying development certificate must not be commenced until:

- (a) the person having the benefit of the complying development certificate:
  - (i) has appointed a principal certifying authority, and
  - (ii) has notified the council of the appointment, and
- (b) the person having the benefit of the complying development certificate has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.

**86A Duration of complying development certificate**

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

**87 Modification of complying development**

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

**Division 4      Additional procedures concerning State significant development**

**88 Application of this Division**

- (1) This Division applies to State significant development.
- (2) Division 2 applies to the determination of a development application under this Division, but in the event of any inconsistency between this Division and Division 2, this Division prevails to the extent of the inconsistency.

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**88A Development applications directed to be referred to the Minister for determination**

- (1) The Minister may direct a council to refer a particular development application made to it for determination by the Minister if, having regard to matters that in the Minister's opinion are of significance for State or regional environmental planning, the Minister considers it is expedient in the public interest to do so.
- (2) On giving the direction:
  - (a) the Minister becomes the consent authority for the development application to the exclusion of the council, except for such functions as the Minister's direction specifies the council is to perform in relation to the development application, and
  - (b) the council must deliver the development application to the Minister within 7 days after receiving the Minister's direction, and
  - (c) if the development application is being advertised, the advertising is to be completed as if the direction had not been given.
- (3) The council must perform the functions specified in the Minister's direction as referred to in subsection (2) (a) in accordance with the appropriate requirements.
- (4) If the Minister's direction is given during or after any period for which the development application is or was being advertised, the council must, at the end of that period, give written notice to each person who made a submission concerning the development application of their rights in the event that the Minister directs, under subsection (5), that a Commission of Inquiry be held.
- (5) If the Minister directs that a Commission of Inquiry be held in accordance with section 119:
  - (a) the council, the applicant, an approval body (within the meaning of Division 5) and any person



who made a submission concerning the development application are entitled to appear and be heard at the Commission of Inquiry, and

- (b) the Minister must consider the findings and recommendations of the Commission of Inquiry before determining the application.

### **89 Carrying out of prohibited development**

- (1) The Minister may direct in writing, that specified prohibited development on specified land may be the subject of a development application for determination by the Minister if, having regard to matters that in the Minister's opinion are of significance for State or regional environmental planning, the Minister considers it is expedient in the public interest to do so.
- (2) On giving the direction:
  - (a) a person may make a development application to the Minister as consent authority for consent to carry out the prohibited development, and
  - (b) the Minister may determine the development application, and
  - (c) if the development application is determined by granting consent, a person may carry out the development,

despite any other provision of this Act or an environmental planning instrument.

- (3) The council may request that a Commission of Inquiry be held into the development application before it is determined by the Minister. If the council makes the request, the Minister must direct that such an inquiry be held in accordance with section 119.
- (4) If a Commission of Inquiry is held:
  - (a) the council, the applicant, an approval body and any person who made a submission concerning the development application are entitled to appear and be heard at the Commission of Inquiry, and



- (b) the Minister must consider the findings and recommendations of the Commission of Inquiry before determining the application.

**89A Application of sections 82, 97 and 98 to State significant development**

- (1) Section 82 does not apply to or in respect of a development application for State significant development for which a Commission of Inquiry has been held.
- (2) Sections 97 and 98 do not apply to the determination of a development application for State significant development that has been the subject of a Commission of Inquiry.

**Division 5 Special procedure for integrated development**

**90 Application of this Division**

- (1) This Division applies to integrated development.
- (2) However, this Division does not apply to development the subject of a development application to which Part 5A applies.

**90A Definitions**

In this Division:

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

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

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

**91 What is "integrated development"?**

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

Environmental Planning and Assessment Amendment Act 1997 No 152

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Act	Provision	Approval
<i>Fisheries Management Act 1994</i>	s 144	aquaculture permit
	s 201	permit to carry out dredging or reclamation work in any waters
	s 205	permit to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease
<i>Heritage Act 1977</i>	s 58	approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57 (1)
<i>Mine Subsidence Compensation Act 1961</i>	s 15	approval to alter or erect improvements within a mine subsidence district or to subdivide land therein
<i>National Parks and Wildlife Act 1974</i>	s 90	consent to knowingly destroy, deface or damage or knowingly cause or permit the destruction or defacement of or damage to, a relic or Aboriginal place
<i>Pollution Control Act 1970</i>	s 17A (including s 17C) and s 17D	licence in respect of any one or more of the following:
		(a) scheduled premises or scheduled equipment within the meaning of the <i>Clean Air Act 1961</i> ,  (b) the pollution of waters within the meaning of the <i>Clean Waters Act 1970</i> ,

Act	Provision	Approval
		(c) a drain which discharges or is likely to be used for discharging any pollutants into any classified waters within the meaning of the <i>Clean Waters Act 1970</i> ,
		(d) scheduled premises within the meaning of the <i>Noise Control Act 1975</i>
	s 17I	pollution control approval
<i>Rivers and Foreshores Improvement Act 1948</i>	Part 3A	permit under Part 3A
<i>Roads Act 1993</i>	s 138	consent to:
		(a) erect a structure or carry out a work in, on or over a public road, or
		(b) dig up or disturb the surface of a public road, or
		(c) remove or interfere with a structure, work or tree on a public road, or
		(d) pump water into a public road from any land adjoining the road, or
		(e) connect a road (whether public or private) to a classified road
<i>Soil Conservation Act 1938</i>	s 21D	authority authorising the ringbarking, cutting down, felling, poisoning or destruction in any other manner or the topping, lopping or removing of any trees on protected land



Environmental Planning and Assessment Amendment Act 1997 No 152

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Act	Provision	Approval
<i>Waste Minimisation and Management Act 1995</i>	s 44	licence to occupy a controlled waste facility
<i>Water Act 1912</i>	s 10	licence to construct and use a work, and to take and use water, if any, conserved or obtained by the work, and to dispose of the water for the use of occupiers of land
	s 13A	licence to construct a supply work and to take and use water obtained thereby
	s 18F	permit to construct and use a work, and to take and use water, if any, conserved or obtained by the work, and to dispose of the water for the use of occupiers of land for any purpose other than irrigation
	s 20B	authority to take water from a river or lake for the purposes of a joint water supply scheme
	s 20CA	authority to construct a supply work and to take and use water conserved or obtained thereby
	s 20L	group licence
	s 116	licence to commence sinking a bore or to enlarge, deepen or alter a bore
	Part 8	approval to construct a controlled work

(2) Development is not integrated development in respect of the consent required under section 90 of the *National Parks and Wildlife Act 1974* unless:

- (a) a relic referred to in that section is known, immediately before the development application is made, to exist on the land to which the development application applies, or

- (b) the land to which the development application applies is an Aboriginal place within the meaning of that Act immediately before the development application is made.

#### **91A Local development that is integrated development**

- (1) This section applies to the determination of a development application for local development that is integrated development.
- (2) Before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.
- (3) A consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed. For the purposes of this Part, the consent authority is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.
- (4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.
- (5) If the approval body fails to inform the consent authority, in accordance with the regulations, whether or not it will grant the approval, or of the general terms of its approval:
  - (a) the consent authority may determine the development application, and

(b) if the consent authority determines the development application by granting consent:

- (i) the approval body cannot refuse to grant approval to an application for approval in respect of the development, and
- (ii) an approval granted by the approval body must not be inconsistent with the development consent, and
- (iii) section 93 applies to an approval so granted as if it were an approval the general terms of which had been provided to the consent authority,

despite any other Act or law.

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

**Note.** If a dispute arises under this section between a consent authority and an approval body, the dispute may be dealt with under section 121.

## **92 State significant development that is integrated development**

- (1) This section applies to the determination of a development application for State significant development that is integrated development.
- (2) Before granting development consent to an application for consent to carry out the development, the Minister must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to the development. Nothing in this section requires the Minister to obtain the general terms of any such approval if the Minister determines to refuse to grant development consent.



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- (3) For the purposes of this Part, the Minister is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.
- (4) If the approval body informs the Minister that:
- (a) it will not grant an approval that is required in order for the development to be lawfully carried out, or
  - (b) it will grant the approval but subject to general terms that, in the Minister's opinion, are inappropriate,
- and a resolution of the matter cannot be agreed between the approval body and the Minister, the Minister must submit the dispute to the Premier for settlement under section 121.
- (5) For the purpose of the application of section 121 to any such dispute, the Minister and the approval body are taken to be public authorities.
- (6) If the approval body fails to inform the Minister, in accordance with the regulations, whether or not it will grant the approval, or of the general terms of any approval proposed to be granted by it:
- (a) the Minister may determine the development application, and
  - (b) if the Minister determines the development application by granting consent:
    - (i) the approval body cannot refuse to grant approval to an application for approval in respect of the development, and
    - (ii) an approval granted by the approval body must not be inconsistent with the development consent, and
    - (iii) section 93 applies to an approval so granted as if it were an approval the general terms of which had been provided to the consent authority,

despite any other Act or law.

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

### **92A Effect of giving notice**

If, in relation to integrated development:

- (a) notice of a development application is given under section 79 or 79A, and
- (b) the consent authority obtains from an approval body the general terms of any approval proposed to be granted by the approval body in relation to the development or the approval body fails to inform the consent authority, in accordance with the regulations, whether or not it will grant the approval or of the general terms of its approval, and
- (c) the consent authority determines the application by granting consent,

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

### **93 Granting and modification of approval by approval body**

- (1) Despite any other Act or law, an approval body must, in respect of integrated development for which development consent has been granted following the provision by the approval body of the general terms of the approval proposed to be granted by the approval body in relation to the development, grant approval to any application for approval that is made within 3 years after the date on which the development consent is granted if, within that 3-year period, the development consent has not lapsed or been revoked.

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- (2) The approval may be granted subject to conditions that are not inconsistent with the development consent. Neither the provisions of section 80A (6)–(10) nor the imposition of conditions as to security by the consent authority prevent an approval body from imposing conditions, or additional conditions, as to security.
  - (3) Subsection (1) does not apply to or limit the granting of approval to an application for renewal of an approval.
  - (4) An approval body cannot vary the terms of an approval granted for integrated development for which development consent has been granted before the expiration, lapsing or first renewal of the approval, whichever first occurs, other than to make variations that are not inconsistent with the development consent.
  - (5) Subsection (4) does not prevent:
    - (a) the modification, in accordance with section 96 or 96A, of the development consent at any time, or
    - (b) if a development consent is modified as referred to in paragraph (a) before the expiration, lapsing or first renewal, whichever first occurs, of the approval, the modification in accordance with law of the approval to any necessary consequential extent, or
    - (c) the exercise by the approval body of any of its other functions, such as the issuing of orders, the suspension or cancellation of an approval or the prosecution of offences.

**93A Effect of approval if the approval body is also a concurrence authority**

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



### **93B Rights of appeal**

(1)    **Applicant's appeal rights**

This Division does not affect any right of objection, appeal or review conferred on an applicant for an approval under the Act that provides for the granting of the approval, except as provided by subsection (2).

(2)    **Restriction on appellate body**

Despite any other Act or law, section 93 applies to a person, court or tribunal that deals with an objection, appeal or review referred to in this section in the same way as it applies to an approval body.

### **Division 6      Conditions requiring contributions towards public amenities and services**

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

(1)    Subject to subsection (2), if a consent authority is satisfied that a development, the subject of a development application or of an application for a complying development certificate, will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant consent to that application subject to a condition requiring:

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

(2)    A condition referred to in subsection (1) is to be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services mentioned in that subsection.

(3)    Subject to subsection (4), if:

- (a)    a consent authority has, at any time, whether before or after the date of commencement of this

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Part, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area, and

- (b) development, the subject of a development application or of an application for a complying development certificate, will, if carried out, benefit from the provision of those public amenities or public services,

the consent authority may grant consent to the application subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services.

- (4) A condition referred to in subsection (3) is, subject to any direction of the Minister under section 94E (1), to be imposed only to require a reasonable contribution towards recoupment of the cost referred to in subsection (3).

- (5) The consent authority may accept:

- (a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (3), or
- (b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (3).

- (6) The consent authority is to hold any monetary contribution paid in accordance with a condition referred to in subsection (1) (and any additional amount earned from its investment) for the purpose for which the payment was required and apply the money towards providing public amenities or public services or both within a reasonable time and in such a manner as will meet the increased demand for those amenities or services or both.

- (7) The consent authority is to apply any monetary contribution paid in accordance with a condition referred to in subsection (3), if the whole or any part of the cost incurred in providing the public amenities or public services with respect to which the contribution is paid remains unpaid, towards repayment of that cost.
- (8) Land dedicated in accordance with a condition imposed under subsection (1) or in part or full satisfaction of a condition imposed under subsection (3) is to be made available by the consent authority for the purpose of providing public amenities or public services or both within a reasonable time.
- (9) If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, the consent authority must take into consideration any land or other sum of money that the applicant has elsewhere dedicated free of cost within the area or previously paid to the consent authority other than as a condition of the grant of consent under this Act.
- (10) If:
  - (a) a condition imposed under subsection (1) or (3) in relation to development the subject of a development application has been complied with, and
  - (b) a public authority would, but for this subsection, be entitled under any other Act to require, in relation to or in connection with that development, a dedication of land or payment of money in respect of the provision of public amenities or public services or both,

then, notwithstanding that other Act, compliance with the condition referred to in paragraph (a) is taken to have satisfied the requirement referred to in paragraph (b) to the extent of the value (determined, if the regulations so provide, in accordance with the regulations) of the land dedicated or the amount of money paid in compliance with the condition.



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- (11) A council may impose a condition referred to in this section only if it is of a kind allowed by, and is determined in accordance with, a contributions plan approved under section 94B.
  - (12) A condition of a kind allowed by a contributions plan may be disallowed or amended by the Court on appeal because it is unreasonable, even if it was determined in accordance with the plan.
  - (13) This section does not apply to public amenities or public services comprising water supply or sewerage works.

**94A Section 94 conditions imposed by the Minister or Director**

- (1) The Minister or the Director, as the consent authority determining a development application, may impose conditions under this Division if the application relates to:
  - (a) land within a growth centre, or
  - (b) other land within a single area.
- (2) This Division, as modified by this section, applies to the Minister or the Director determining such a development application as consent authority.
- (3) This Division applies to a development application relating to land within a growth centre as if references in this Division to the area were references to the growth centre.
- (4) Before imposing any condition under this Division, the Minister or the Director must have regard to any contributions plan approved under section 94B that applies to the whole or any part of the growth centre or area in which the relevant land is situated.
- (5) The Minister or the Director may impose a condition under this Division even though it is not of a kind allowed by, or is not in accordance with, a contributions plan.

- (6) Any monetary contribution paid in accordance with a condition under this Division imposed by the Minister or the Director:
  - (a) must be paid by the Minister or Director to the corporation for the growth centre or the council of the area concerned, and
  - (b) must (together with any additional amount earned from its investment) be applied within a reasonable time for the purpose for which it was levied.
- (7) This section applies to the Minister as consent authority whether or not the Minister is consent authority pursuant to section 88A.
- (8) In this section, *growth centre* means:
  - (a) a growth centre, within the meaning of the *Growth Centres (Development Corporations) Act 1974*, or
  - (b) a designated area, within the meaning of the *Albury-Wodonga Development Act 1974*.

#### **94B Contributions plans—making**

- (1) A council may, subject to and in accordance with the regulations, prepare and approve a contributions plan for the purpose of imposing conditions referred to in this Division.
- (2) It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a contributions plan have been complied with and performed.

#### **94C Contributions plans—judicial notice, validity etc**

- (1) Judicial notice is to be taken of a contributions plan and of the date on which the plan came into effect.
- (2) The validity of any procedure required to be followed in making or approving a contributions plan is not to be

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questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date on which the plan came into effect.

- (3) The amendment or repeal, whether in whole or in part, of a contributions plan does not affect the previous operation of the plan or anything duly done under the plan.

#### **94D Contributions plans—complying development**

- (1) In relation to an application made to an accredited certifier for a complying development certificate, a contributions plan:
- (a) is to specify whether or not the accredited certifier must, if a complying development certificate is issued, impose a condition of the kind referred to in this Division, and
  - (b) can only authorise the imposition of a condition by an accredited certifier that requires the payment of a monetary contribution, and
  - (c) if the contributions plan authorises the imposition of a condition by an accredited certifier that requires the payment of a monetary contribution, must specify the amount of the monetary contribution or the precise method by which the amount of the contribution is to be determined.
- (2) This section does not limit anything for which a contributions plan may make provision in relation to a consent authority.

#### **94E Directions by the Minister**

- (1) The Minister may, generally or in any particular case or class of cases, direct a consent authority as to:
- (a) the public amenities and public services in relation to which a condition under this Division may or may not be imposed, and



- (b) in the case of a condition requiring the payment of a monetary contribution:
    - (i) the means by which or the factors in relation to which the amount of the contribution may or may not be calculated or determined, and
    - (ii) the maximum amount of any such contribution, and
  - (c) the things which may or may not be accepted as a material public benefit.
- (2) A consent authority to which a direction is given under this section must comply with the direction in accordance with its terms.
  - (3) A consent authority must not, in granting consent to a development application in relation to which a direction under this section applies, impose a condition that is not in accordance with the terms of the direction, despite the other provisions of this Division.

## **Division 7 Post-consent provisions**

### **95 Lapsing of consent**

- (1) A development consent lapses:
  - (a) 5 years after the date from which it operates, except as provided by paragraph (b), or
  - (b) in the case of a development consent that is subject to a condition under section 80 (5), 5 years after the date from which the initial development consent operates, or 2 years after the date from which a later or the latest development consent granted in accordance with the condition operates, whichever is the longer.
- (2) A consent authority, in granting development consent, may vary either or both of the periods referred to in subsection (1), despite that subsection.

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- (3) Such a variation may not be made so as to cause:
- (a) a development consent to erect or demolish a building or to subdivide land to lapse within 2 years after the date from which the consent operates, or
  - (b) a development consent of a kind prescribed by the regulations to lapse within the period prescribed by the regulations in relation to the consent.
- (4) Development consent for:
- (a) the erection of a building, or
  - (b) the subdivision of land, or
  - (c) the carrying out of a work,
- does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.
- (5) Development consent for development other than that referred to in subsection (4) does not lapse if the use of any land, building or work the subject of that consent is actually commenced before the date on which the consent would otherwise lapse.

#### **95A Extension of lapsing period for 1 year**

- (1) If, in granting a development consent, the consent authority reduces the period after which the consent lapses to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.
- (2) The consent authority may grant the extension if satisfied that the applicant has shown good cause.
- (3) A person making an application under subsection (1) who is dissatisfied with the determination of the

application or the failure of the consent authority to determine the application within 40 days after it is made, may, except where the application is made in respect of a consent granted by the Minister under section 88A or 89, appeal to the Court, and the Court may determine the appeal.

- (4) An extension of 1 year granted under this section commences to run from the later of the following:
  - (a) the date on which the consent would have lapsed but for the extension,
  - (b) the date on which the consent authority granted the extension or, if the Court has allowed the extension in determining an appeal, the date on which the Court determined the appeal.
- (5) This section does not apply to complying development.

## **96 Modification of consents**

### **(1) Minor modifications**

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

### **(2) Other modifications**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development, and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a



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

- (c) it has notified the application in accordance with the regulations, and
  - (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations.
- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.
- (4) Modification of a development consent in accordance with this section is not to be construed as the granting of development consent under this Part but a reference in this or any other Act to a development consent is a reference to the development consent so modified.
- (5) **Threatened species**  
Development consent of the kind referred to in section 79B (3) is not to be modified (except in the case of a minor modification) unless the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the proposed modification were an application for development consent.
- (6) **Appeals**  
Except in the case of State significant development, an applicant who is dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days after the application is made may appeal to the Court and the Court may determine the appeal.

- (7) Subsection (6) does not enable an appeal to be made against the determination of, or the failure to determine, an application to modify a development consent, being a development consent granted by the Court.

**96A Revocation or modification of development consent**

- (1) If at any time it appears to:
- (a) the Director, having regard to the provisions of any draft State environmental planning policy or draft regional environmental plan, or
  - (b) a council (being the consent authority in relation to the development application referred to in this subsection), having regard to the provisions of any draft local environmental plan,

that any development for which consent under this Division is in force in relation to a development application should not be carried out or completed, or should not be carried out or completed except with modifications, the Director or council may, by instrument in writing, revoke or modify that consent.

- (2) This section applies to complying development for which a complying development certificate has been issued in the same way as it applies to development for which development consent has been granted and so applies to enable a council to revoke or modify a complying development certificate whether the certificate was issued by the council or by an accredited certifier.
- (3) Before revoking or modifying the consent, the Director or council must:
- (a) by notice in writing inform, in accordance with the regulations:
    - (i) each person who in the Director's or council's opinion will be adversely affected by the revocation or modification of the consent, and

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- (ii) such persons as may be prescribed by the regulations,  
of the intention to revoke or modify the consent,  
and
    - (b) afford each such person the opportunity of appearing before the Director or council, or a person appointed by the Director or council, to show cause why the revocation or modification should not be effected.
  - (4) The revocation or modification of a development consent takes effect, subject to this section, from the date on which the instrument referred to in subsection (1) is served on the owner of the land to which the consent applies.
  - (5) Within 3 months after the date on which the revocation or modification of the consent takes effect, the applicant for the consent, or any other person entitled to rely on the consent, who is aggrieved by the revocation or modification may appeal to the Court, and the Court may determine the appeal.
  - (6) The Court may determine the appeal by affirming, varying or cancelling the instrument of revocation or modification.
  - (7) If a development consent is revoked or modified under this section, a person aggrieved by the revocation or modification is entitled to recover from:
    - (a) the Government of New South Wales—if the Director is responsible for the issue of the instrument of revocation or modification, or
    - (b) the council—if the council is responsible for the issue of that instrument,

compensation for expenditure incurred pursuant to the consent during the period between the date on which the consent becomes effective and the date of service of the notice under subsection (3) which expenditure is rendered abortive by the revocation or modification of that consent.



- (8) The Director or council must, on or as soon as practicable after the date on which the instrument referred to in subsection (1) is served on the owner of the land referred to in subsection (4), cause a copy of the instrument to be sent to each person who is, in the Director's or council's opinion, likely to be disadvantaged by the revocation or modification of the consent.
- (9) This section does not apply to or in respect of a consent granted by the Court or by the Minister.

## **Division 8      Appeals and related matters**

### **97 Appeal by an applicant—development applications**

- (1) An applicant who is dissatisfied with the determination of a consent authority with respect to the applicant's development application (including a determination on a review under section 82A) may appeal to the Court within 12 months after:
  - (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application, or
  - (b) the date on which that application is taken to have been determined under section 82 (1).
- (2) An applicant who is dissatisfied with a decision that a consent authority, or a person specified by the consent authority, is not satisfied as to a matter, being a specified aspect of the development that is to be carried out to the satisfaction of the consent authority, or person, pursuant to a condition imposed under section 80A (2), may appeal to the Court within 12 months after:
  - (a) the consent authority or person notifies the applicant of its decision, or
  - (b) the date on which the applicant's request is taken to have been determined under section 80A (3).
- (3) An applicant who is dissatisfied with a decision that a consent authority is not satisfied as to a matter, being a matter as to which it must be satisfied before a "deferred

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commencement" consent under section 80 (3) can operate, may appeal to the Court within 12 months after the consent authority notifies the applicant of its decision.

- (4) If an appeal has been made under this section relating to a development application for consent to carry out designated development, each objector to that application is to be given notice by the consent authority of that appeal and is, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, entitled to be heard at the hearing of the appeal as if he, she or it were a party to the appeal.
- (5) If:
  - (a) an appeal has been made under this section relating to a development application, and
  - (b) the application is one:
    - (i) in relation to which the concurrence of a Minister or public authority is required under this Act, or
    - (ii) for consent to carry out integrated development that involves an approval body (within the meaning of Division 5),

that Minister, public authority or approval body must be given notice by the consent authority of that appeal and is, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, entitled to be heard at the hearing of the appeal as if he, she or it were a party to the appeal.

- (6) An appeal under this section relating to a development application for consent to carry out designated development in respect of which an objection has been made in accordance with the regulations must not be heard by the Court until after the expiration of the time within which an objector may appeal to the Court under section 98.

**98 Appeal by an objector**

- (1) An objector who is dissatisfied with the determination of a consent authority to grant consent to a development application for designated development (including designated development that is integrated development) either unconditionally or subject to conditions may, within 28 days after the date on which notice of the determination was given in accordance with the regulations, and in accordance with rules of court, appeal to the Court.
- (2) If an appeal has been made under subsection (1), the person who made the development application and the consent authority referred to in that subsection are to be given notice of that appeal, in accordance with rules of court, and are entitled to be heard at the hearing of the appeal as parties to the appeal.
- (3) If:
  - (a) an appeal has been made under subsection (1) relating to a development application, and
  - (b) the consent authority referred to in subsection (1) is given notice of an appeal under that subsection, and
  - (c) the application is one:
    - (i) in relation to which the concurrence of a Minister or public authority is required under this Act, or
    - (ii) for consent to carry out integrated development that involves an approval body (within the meaning of Division 5),

that Minister, public authority or approval body must be given notice of that appeal by the consent authority and is, on application made to the Court in accordance with rules of court within 28 days after the date of the notice, entitled to be heard at the hearing of the appeal as if he, she or it were a party to the appeal.



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### **98A Appeal concerning security**

- (1) An applicant who is dissatisfied with:
  - (a) a decision of a consent authority with respect to the provision (otherwise than by the imposition of a condition of development consent) of security of a kind referred to in section 80A (6), or
  - (b) the failure or refusal of the consent authority to release a security held by it,

may appeal to the Court.

**Note.** The right to appeal against the imposition of a condition of development consent is excluded from subsection (1) (a) so as not to duplicate the right of appeal conferred by section 97.

- (2) An appeal with respect to a decision referred to in subsection (1) (a) may be made within 12 months after the applicant received notice of the decision.
- (3) An appeal with respect to a failure or refusal referred to in subsection (1) (b) may be made:
  - (a) except as provided by paragraph (b), within 6 months after the work to which the security relates has been completed, or
  - (b) if the security is provided in respect of contingencies that may arise on or after completion of the work to which the security relates, not earlier than 6 months and not later than 12 months after the completion of the work.

### **99 Joint hearing of certain appeals**

- (1) If an appeal is made under section 97 with respect to a development application, the appeal is, as far as practicable, to be heard together with any appeals under section 98 made with respect to the application.
- (2) Without affecting subsection (1), if 2 or more appeals are made under section 98 with respect to the same development application, the appeals are, as far as practicable, to be heard together.

- (3) If 2 or more appeals are made under section 96A (5) with respect to the same notice referred to in section 96A, the appeals are, as far as practicable, to be heard together.

## **Division 9      Miscellaneous**

### **100 Register of consents and certificates**

- (1) A council must, in the prescribed form and manner (if any), keep a register of:
- (a) applications for development consent, and
  - (b) the determination of applications for development consent (including the terms of development consents granted under this Part), and
  - (c) the determination of applications for complying development certificates (including the terms of complying development certificates issued under this Part), and
  - (d) decisions on appeal from any determination made under this Part.
- (2) The register is to be available for public inspection, without charge, at the office of the council during ordinary office hours.

### **101 Validity of development consents and complying development certificates**

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

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**102 Non-compliance with certain provisions regarding State significant development**

- (1) This section applies to a development consent granted, or purporting to be granted, by the Minister, before or after the commencement of this section.
- (2) The only requirements of this Act that are mandatory in connection with the validity of a development consent to which subsection (1) applies are as follows:
  - (a) A requirement that a development application to carry out designated development and its accompanying information be publicly exhibited for the minimum period of time.
  - (b) A requirement that a development application to carry out development, being development, other than designated development, to which some or all of the provisions of sections 84, 85, 86, 87 (1) and 90, as in force immediately before the commencement of this section, applied by virtue of an environmental planning instrument, as referred to in section 30 (4), as then in force.
  - (c) A requirement that a development application to carry out advertised development and its accompanying information be publicly exhibited for the minimum period of time prescribed by the regulations.

**103 Revocation or regrant of development consents after order of Court**

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



- (3) However, if the terms imposed by the Court have been substantially complied with, the consent authority may revoke the development consent to which this section applies and grant a new development consent with such alterations to the revoked consent as the consent authority thinks appropriate having regard to the terms themselves and to any matters arising in the course of complying with the terms. Such a grant of a development consent is referred to as a *regrant* of the consent.
- (4) No preliminary steps need be taken with regard to the regrant of a development consent under this section, other than those that are required to secure compliance with those terms.
- (5) Section 81 and such other provisions of this Act as may be prescribed by the regulations apply to development consents regranted under this section.

**104 Appeals and other provisions relating to development consents after order of Court**

- (1) A development consent declared to be valid under section 25C of the *Land and Environment Court Act 1979*:
  - (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and
  - (b) is operative as from the date the development consent originally took effect or purported to take effect, unless the Court otherwise orders.
- (2) A development consent declared under section 25C of the *Land and Environment Court Act 1979* to be validly regranted:
  - (a) is final and the provisions of sections 97 and 98 do not apply to or in respect of it, and
  - (b) takes effect from the date of the declaration or another date specified by the Court.

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### 105 Regulations—Part 4

- (1) In addition to any other matters for or with respect to which regulations may be made for the purposes of this Part, the regulations may make provision for or with respect to the following:
- (a) any matter that is necessary or convenient to be done before making a development application,
  - (b) the persons who may make development applications,
  - (c) the making, consideration and determination of development applications that are made by or on behalf of the Crown, public authorities and persons prescribed by the regulations,
  - (d) the form of development applications,
  - (e) the documents and information required to accompany development applications, including documents that will assist the consent authority in assessing the environmental effects of development,
  - (f) the fees for development applications,
  - (g) the notification and advertising of development applications (and proposed development),
  - (h) the form and contents of notices of development applications, the manner of giving notices and the persons to whom notices are to be given,
  - (i) the requirement for consultation with, or obtaining the concurrence of, the Director, public authorities and other persons concerning proposed development,
  - (j) the form of statements of environmental effects and environmental impact statements,
  - (k) the documents and information required to accompany statements of environmental effects and environmental impact statements,

- (l) the making of submissions, by way of objection or otherwise, with respect to proposed development and the consideration of submissions,
  - (m) the holding of inquiries into proposed development,
  - (n) procedures concerning complying development, advertised development and designated development,
  - (o) procedures concerning integrated development,
  - (p) notifications and notices for the purposes of sections 81A and 86,
  - (q) the modification of development consents, including the fees for applications for modification,
  - (r) the periods within which specified aspects of the environmental planning control process must be completed and the variation of those periods,
  - (s) the effect of a failure to comply with any requirement of the regulations,
  - (t) the notification of applicants and persons making submissions (including by way of objection) of the determination of development applications, reasons for the determinations and any rights of appeal.
- (2) The regulations may provide that an applicant who is not entitled to copyright in a document forming part of or accompanying the development application is taken to have indemnified all persons using the application and document in accordance with this Act against any claim or action in respect of breach of copyright.
- (3) The regulations may provide for the accreditation of components, processes and designs, including the following:
- (a) applications for accreditation,
  - (b) the determination of applications for accreditation,



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- (c) revocation of accreditation,
  - (d) extension or renewal of accreditation,
  - (e) the acceptance, status and effect of accreditation granted under schemes other than that provided for in the regulations,
  - (f) the notification of consent authorities of information concerning accreditation (including accreditation referred to in paragraph (e)).
- (4) The regulations may provide for the adoption and application of the *Building Code of Australia*.

## **Division 10 Existing uses**

### **106 Definition of "existing use"**

In this Division, *existing use* means:

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and
- (b) the use of a building, work or land:
  - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
  - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

### **107 Continuance of and limitations on existing use**

- (1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.

- (2) Nothing in subsection (1) authorises:
- (a) any alteration or extension to or rebuilding of a building or work, or
  - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
  - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or
  - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or
  - (e) the continuance of the use therein mentioned where that use is abandoned.
- (3) Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

#### **108 Regulations respecting existing use**

- (1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to:
- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and
  - (b) the change of an existing use to another use, and
  - (c) the enlargement or expansion or intensification of an existing use.
- (2) The provisions (in this section referred to as *the incorporated provisions*) of any regulations in force for

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the purposes of subsection (1) are taken to be incorporated in every environmental planning instrument.

- (3) An environmental planning instrument may, in accordance with this Act, contain provisions extending, expanding or supplementing the incorporated provisions, but any provisions (other than incorporated provisions) in such an instrument that, but for this subsection, would derogate or have the effect of derogating from the incorporated provisions have no force or effect while the incorporated provisions remain in force.
- (4) Any right or authority granted by the incorporated provisions or any provisions of an environmental planning instrument extending, expanding or supplementing the incorporated provisions do not apply to or in respect of an existing use which commenced pursuant to a consent of the Minister under section 88A to a development application for consent to carry out prohibited development.

#### **109 Continuance of and limitations on other lawful uses**

- (1) Nothing in an environmental planning instrument operates so as to require consent to be obtained under this Act for the continuance of a use of a building, work or land for a lawful purpose for which it was being used immediately before the coming into force of the instrument or so as to prevent the continuance of that use except with consent under this Act being obtained.
- (2) Nothing in subsection (1) authorises:
  - (a) any alteration or extension to or rebuilding of a building or work, or
  - (b) any increase in the area of the use made of a building, work or land from the area actually and lawfully used immediately before the coming into operation of the instrument therein mentioned, or



- (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of the use therein mentioned, or
  - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or
  - (e) the continuance of the use therein mentioned where that use is abandoned.
- (3) Without limiting the generality of subsection (2) (e), a use is presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

#### **109A Uses unlawfully commenced**

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

#### **109B Saving of effect of existing consents**

- (1) Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.

- (2) This section:
  - (a) applies to consents lawfully granted before or after the commencement of this Act, and
  - (b) does not prevent the lapsing, revocation or modification, in accordance with this Act, of a consent, and
  - (c) has effect despite anything to the contrary in section 107 or 109.
- (3) This section is taken to have commenced on the commencement of this Act.

## **Part 4A Certification of development**

### **109C Part 4A certificates**

- (1) The following certificates (known collectively as ***Part 4A certificates***) may be issued for the purposes of this Part:
  - (a) a ***compliance certificate***, being a certificate to the effect that:
    - (i) specified building work or subdivision work has been completed as specified in the certificate and complies with specified plans and specifications, or
    - (ii) a condition with respect to specified building work or subdivision work (being a condition attached to a development consent or complying development certificate) has been duly complied with, or
    - (iii) a specified building or proposed building has a specified classification identified in accordance with the *Building Code of Australia*, or
    - (iv) any specified aspect of development complies with the requirements of any other provisions prescribed by the regulations,

- (b) a **construction certificate**, being a certificate to the effect that work completed in accordance with specified plans and specifications will comply with the requirements of the regulations referred to in section 81A (5),
  - (c) an **occupation certificate**, being a certificate that authorises:
    - (i) the occupation and use of a new building, or
    - (ii) a change of building use for an existing building,
  - (d) a **subdivision certificate**, being a certificate that authorises the registration of a plan of subdivision under Division 3 of Part 23 of the *Conveyancing Act 1919*.
- (2) An occupation certificate:
- (a) may be an interim certificate or a final certificate, and
  - (b) may be issued for the whole or any part of a building.

**Notes.** (1) Sections 109M and 109N prohibit the occupation or use of a new building, and the change of building use for an existing building, unless an occupation certificate has been issued for the building.

(2) A plan of subdivision (whether or not the subdivision requires development consent) is not in registrable form for the purposes of the *Conveyancing Act 1919* unless it is endorsed with a subdivision certificate issued under this Division. Plans prepared for the purposes of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* are not plans of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* and are therefore not subject to this Division. The regulations under the *Conveyancing Act 1919* provide for the manner and form in which a plan of subdivision is to be endorsed for the purpose of enabling the plan to be registered under that Act.



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**109D Certifying authorities**

- (1) Subject to subsections (2) and (3), the following kinds of Part 4A certificate may be issued by the following kinds of persons (known collectively as *certifying authorities*):
  - (a) a compliance certificate may be issued by a consent authority or accredited certifier,
  - (b) a construction certificate may be issued by a consent authority or accredited certifier,
  - (c) an occupation certificate may be issued by a consent authority or accredited certifier,
  - (d) a subdivision certificate may be issued:
    - (i) in the case of subdivision the subject of development consent, by the consent authority,
    - (ii) in the case of subdivision that is not the subject of development consent, by the council,
    - (iii) in the case of subdivision carried out by or on behalf of the Crown or a prescribed person, by the Crown or prescribed person or by any person acting on behalf of the Crown or prescribed person,
    - (iv) in the case of subdivision of a kind identified by an environmental planning instrument as one in respect of which an accredited certifier may be a certifying authority, by an accredited certifier.
- (2) An occupation certificate must not be issued to authorise a person to commence occupation or use of a new building except by the principal certifying authority appointed for the erection of the building.
- (3) A subdivision certificate must not be issued for a subdivision involving subdivision work except by the principal certifying authority appointed for the carrying out of the subdivision.

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

- (1) A person who proposes to carry out development involving building work or subdivision work pursuant to a development consent or complying development certificate may appoint the consent authority or an accredited certifier as the principal certifying authority for the development.
- (2) Despite subsection (1), an accredited certifier must not be appointed as the principal certifying authority for development involving subdivision work unless the subdivision to which the work relates is of a kind identified by an environmental planning instrument as one in respect of which an accredited certifier may be a certifying authority.
- (3) An accredited certifier who has been appointed as a principal certifying authority must not be replaced by another accredited certifier except with the approval of the relevant accreditation body.
- (4) Such an approval may be given only if the relevant accreditation body is satisfied that replacement of the accredited certifier is appropriate in the circumstances of the particular case.

**Note.** Section 81A prohibits the commencement of building work or subdivision work unless the consent authority has been notified of the appointment of a principal certifying authority for the work. Section 109D (2) prohibits the issue of an occupation certificate authorising the occupation and use of a new building except by the principal certifying authority appointed for the erection of the building. Section 109D (3) prohibits the issue of a subdivision certificate for a subdivision involving subdivision work except by the principal certifying authority appointed for the carrying out of the subdivision.

### **109F Restriction on issue of construction certificates**

A construction certificate must not be issued with respect to the plans and specifications for any building work or subdivision work unless the certifying authority is satisfied that the requirements of the regulations referred to in section 81A (5) have been complied with.

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**109G Restriction on issue of compliance certificates**

A compliance certificate of the kind referred to in section 109C (1) (a) (i) or (ii) must not be issued for any building work or subdivision work unless the certifying authority is satisfied that a development consent or complying development certificate is in force with respect to the building or subdivision to which the work relates.

**109H Restriction on issue of occupation certificates**

- (1) A final occupation certificate must not be issued to authorise a person to commence occupation or use of a new building unless the certifying authority is satisfied:
  - (a) that a development consent or complying development certificate is in force with respect to the building, and
  - (b) that a construction certificate has been issued with respect to the plans and specifications for the building, and
  - (c) that the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
  - (d) that such other matters as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (2) A final occupation certificate must not be issued to authorise a person to commence a change of building use for an existing building unless the certifying authority is satisfied:
  - (a) that a development consent or complying development certificate is in force with respect to the change of building use, and
  - (b) that the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and



- (c) that such other matters as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (3) An interim occupation certificate must not be issued to authorise a person:
  - (a) to commence occupation or use of a partially completed new building,
  - (b) to commence a change of building use for part of an existing building,unless the certifying authority is satisfied that such matters as are required by the regulations to be complied with before such a certificate may be issued have been complied with.
- (4) In this section:  
*new building* includes an altered portion of, or an extension to, an existing building.

**109I Effect of occupation certificate on earlier occupation certificates**

- (1) A final occupation certificate for the whole of a building revokes any earlier occupation certificate for that building.
- (2) An interim occupation certificate for a part of a building additional to the part or parts in respect of which an earlier interim occupation certificate is in force:
  - (a) revokes the earlier interim occupation certificate, and
  - (b) applies to the part in respect of which it is issued and to the part or parts in respect of which the earlier interim occupation certificate was in force.
- (3) An occupation certificate (whether interim or final) for a part of a building revokes any earlier occupation certificate to the extent to which it applies to that part.

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**109J Restriction on issue of subdivision certificates**

- (1) A subdivision certificate must not be issued for a subdivision unless the certifying authority is satisfied of each of the following:
- (a) that the subdivision is not prohibited by or under this Act,
  - (b) in the case of subdivision that may not be carried out except with development consent, that a development consent (or, in the case of complying development, a complying development certificate) is in force with respect to the subdivision,
  - (c) 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,
  - (d) in the case of subdivision for which a development consent (other than a “deferred commencement” consent under section 80 (3)) 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,
  - (e) in the case of subdivision that relates to land within a water supply authority’s area of operations, that the applicant has obtained a certificate of compliance from the water supply authority with respect to the division of the land,
  - (f) in the case of subdivision the subject of an order made by the Court under section 40 of the *Land and Environment Court Act 1979* concerning the provision of drainage easements, that all such drainage easements have been acquired by the council referred to in that section,

- (g) in the case of subdivision the subject of a development consent for which the consent authority is required by the regulations to notify any objector:
    - (i) that at least 28 days have elapsed since the objector was notified, or
    - (ii) if an appeal has been made by the objector within that time, that the appeal has been finally determined.
- (2) Without limiting subsection (1), a subdivision certificate must not be issued for a subdivision that involves subdivision work unless the certifying authority is satisfied:
  - (a) that the work has been completed, or
  - (b) that agreement has been reached between the applicant for the certificate and the consent authority:
    - (i) as to the payment by the applicant to the consent authority of the cost of carrying out the work, and
    - (ii) as to when the work will be completed by the consent authority, or
  - (c) that agreement has been reached between the applicant for the certificate and the consent authority:
    - (i) as to the security to be given by the applicant to the consent authority with respect to the work to be completed, and
    - (ii) as to when the work will be completed by the applicant.
- (3) Subsection (2) does not prohibit the issue of a subdivision certificate for part only of land that may be subdivided in accordance with a development consent as long as the requirements of that subsection have been complied with in relation to that part.



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- (4) In this section:

***certificate of compliance***, in relation to a water supply authority, means a certificate of compliance issued by the water supply authority under the Act under which the water supply authority is constituted.

***water supply authority*** means:

- (a) the Sydney Water Corporation Limited, the Hunter Water Corporation Limited or a water supply authority constituted under the *Water Supply Authorities Act 1987*, or
- (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

**109K Appeals against failure or refusal to issue Part 4A certificates**

- (1) An applicant for:
- (a) a construction certificate, or
  - (b) a final occupation certificate, or
  - (c) a subdivision certificate,

may appeal to the Court against a consent authority's (or, in the case of a subdivision certificate for subdivision that is not the subject of development consent, a council's) decision to refuse to issue such a certificate.

- (2) An appeal under this section is to be made within 12 months after the date on which the decision was made.
- (3) For the purposes only of an appeal under this section, a consent authority or council is taken to have made a decision to refuse to issue a certificate if, following an application for the certificate, it has failed to issue the certificate:
  - (a) in the case of an application for a construction certificate, within 28 days after the application was made, or

- (b) in the case of an application for a final occupation certificate, within 14 days after the application was made, or
- (c) in the case of an application for a subdivision certificate for subdivision that does not constitute designated development:
  - (i) within 14 days after the application was made, where development consent to the subdivision is required, or
  - (ii) within 7 days after the application was made, where development consent to the subdivision is not required, or
- (d) in the case of an application for a subdivision certificate for subdivision that constitutes designated development:
  - (i) within 14 days after the application was made, or
  - (ii) within 14 days after the period in which an appeal may be made under section 98 against the granting of development consent to that development, or
  - (iii) if such an appeal is made, within 14 days after the final determination of the appeal, whichever is the longer.

**109L Accredited certifiers may issue notices requiring work to be carried out**

- (1) An accredited certifier who is the principal certifying authority for any development may, by notice served on a person on whom an order under section 121B may be served, direct that person to do anything that the consent authority could require that person to do by means of such an order.
- (2) A notice under this section has the same effect as a notice referred to in section 121H (1), and the provisions of Division 2A of Part 6 have effect accordingly:
  - (a) subject to the accredited certifier being:

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- (i) present when representations are made under section 121I, and
    - (ii) entitled to make representations to the consent authority or nominated person to whom the representations under section 121I are made, and
    - (iii) entitled to have the representations made by the accredited certifier heard and considered under section 121J in the same way as the representations under section 121I are heard and considered, and
  - (b) subject to such other modifications as the regulations may prescribe.
  - (3) Within 2 working days after the date on which an accredited certifier serves a notice under this section, the accredited certifier must send copies of the notice:
    - (a) to the council, and
    - (b) if the development is the subject of development consent given by a consent authority other than the council, to the consent authority, and
    - (c) if the person on whom the notice is served is not the owner of the land on which the development is being carried out, to the owner of the land.

**109M Occupation and use of new building requires occupation certificate**

- (1) A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 109H (4)) unless an occupation certificate has been issued in relation to the building or part.

Maximum penalty: 25 penalty units.

- (2) This section does not apply to:
  - (a) the occupation or use of a new building for any purpose if the erection of the building is or forms part of exempt development or development that does not otherwise require development consent, or



- (b) the occupation or use of a new building at any time after the expiration of 12 months after the date on which the building was first occupied or used, or
- (c) the occupation or use of a new building by such persons or in such circumstances as may be prescribed by the regulations, or
- (d) the occupation or use of a new building that has been erected by or on behalf of the Crown or by or on behalf of a prescribed person.

**109N Change of building use of existing building requires occupation certificate**

- (1) A person must not commence a change of building use for the whole or any part of an existing building unless an occupation certificate has been issued in relation to the building or part.

Maximum penalty: 25 penalty units.

- (2) This section does not apply to:
  - (a) a change of building use of an existing building if the erection of the building is or forms part of exempt development or development that does not otherwise require development consent, or
  - (b) the continued occupation or use of a building at any time after the expiration of 12 months after the date on which the building was first occupied or used, or
  - (c) a change of building use of an existing building by such persons or in such circumstances as may be prescribed by the regulations, or
  - (d) a change of building use of an existing building that has been erected by or on behalf of the Crown or by or on behalf of a prescribed person.

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**109O Certifying authorities may be satisfied as to certain matters**

- (1) For the purpose of enabling a Part 4A certificate or a complying development certificate to be issued by a certifying authority, the regulations may provide that any requirement for a consent authority or council to be satisfied as to any specified matter (or any matter of a specified class of matters) is taken to have been complied with if the certifying authority is satisfied as to that matter.
- (2) This section applies whether the requirement is imposed by or under:
  - (a) this Act, the regulations or an environmental planning instrument, or
  - (b) the terms of a development consent or complying development certificate.

**109P Satisfaction as to compliance with conditions precedent to the issue of certificates**

- (1) A person who exercises functions under this Act in reliance on a Part 4A certificate or a complying development certificate is entitled to assume:
  - (a) that the certificate has been duly issued, and
  - (b) that all conditions precedent to the issuing of the certificate have been duly complied with, and
  - (c) that all things that are stated in the certificate as existing or having been done do exist or have been done,and is not liable for any loss or damage arising from any matter in respect of which the certificate has been issued.
- (2) This section does not apply to an accredited certifier in relation to any Part 4A certificate or complying development certificate that he or she has issued.

### **109Q Regulations under Part 4A**

In addition to any other matters for or with respect to which regulations may be made for the purposes of this Part, the regulations may make provision for or with respect to the following:

- (a) the matters to be notified to a consent authority under this Part,
- (b) the records to be kept by certifying authorities under this Part.

## **Part 4B Accreditation of certifiers**

### **Division 1 Preliminary**

#### **109R Definitions**

In this Part:

***complaint*** means a complaint about an accredited certifier made under section 109V.

***disciplinary finding*** means a finding of unsatisfactory professional conduct or professional misconduct.

***professional misconduct***, in relation to an accredited certifier, means conduct that is unsatisfactory professional conduct of a sufficiently serious nature to justify suspension of the accredited certifier's accreditation as an accredited certifier or the withdrawal of the accredited certifier's accreditation.

***Tribunal*** means the Administrative Decisions Tribunal.

***unsatisfactory professional conduct*** includes conduct (whether consisting of an act or omission):

- (a) occurring in connection with the exercise of an accredited certifier's functions as a certifying authority that falls short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent accredited certifier, or



- (b) by which an accredited certifier exercises his or her functions as a certifying authority in a partial manner, or
- (c) by which an accredited certifier wilfully disregards matters to which he or she is required to have regard in exercising his or her functions as a certifying authority, or
- (d) by which an accredited certifier fails to comply with:
  - (i) any relevant code of conduct established by the accreditation body by which he or she is accredited, or
  - (ii) any other Act or law prescribed by the regulations, or
- (e) by which an accredited certifier contravenes this Act, whether or not he or she is prosecuted or convicted for the contravention.

## **Division 2      Accreditation of certifiers**

### **109S Authorisation of accreditation bodies**

- (1) The Minister may, in accordance with the regulations:
  - (a) authorise any professional association as an accreditation body with respect to any specified class of matters, and
  - (b) withdraw any authorisation so granted.
- (2) More than one professional association may be authorised as an accreditation body with respect to the same class of matters.

### **109T Accreditation of accredited certifiers**

- (1) An accreditation body may accredit persons (other than bodies corporate) as accredited certifiers in accordance with its authorisation as an accreditation body.

- (2) An accreditation body may refuse to accredit a person as an accredited certifier or suspend or withdraw a person's accreditation as an accredited certifier:
  - (a) if it is satisfied that the person does not have the qualifications or expertise to exercise the functions of an accredited certifier, or
  - (b) if it is satisfied that the person is not covered by the required insurance (within the meaning of section 109ZN), or
  - (c) for such other reasons as may be prescribed by the regulations.
- (3) An accreditation body must refuse to accredit a person as an accredited certifier or suspend or withdraw a person's accreditation as an accredited certifier if directed to do so by an order made by the Tribunal under this Part.
- (4) Neither an accreditation body, nor any member or member of staff of an accreditation body, is liable for any act or omission done or omitted to be done in good faith in the exercise of any function under this section.

#### **109U Auditing of accredited certifiers**

- (1) The Director-General of the Department of Local Government (referred to in this section as the ***Director-General***) may authorise any person (referred to in this section as a ***Departmental inspector***) to carry out an investigation into the work and activities of an accredited certifier.
- (2) For the purpose of carrying out the investigation, the Departmental inspector may exercise the same functions under sections 431 and 432 of the *Local Government Act 1993* as may be exercised by a Departmental representative referred to in those sections.
- (3) The Departmental inspector must report to the Director-General on the results of the investigation.

- (4) If satisfied that the report indicates that the accredited certifier is or may be guilty of unsatisfactory professional conduct or professional misconduct, the Director-General:
  - (a) must furnish a copy of the report to the accredited certifier, and
  - (b) may furnish a copy of the report to the relevant accreditation body and any person prescribed by the regulations, and
  - (c) may apply to the Tribunal for a disciplinary finding against an accredited certifier with respect to any matter arising from the report.

### **Division 3      Disciplinary proceedings**

#### **109V Persons who may make complaints**

- (1) A person may make a complaint to the relevant accreditation body against an accredited certifier that the accredited certifier has been guilty of unsatisfactory professional conduct or professional misconduct.
- (2) A complaint is:
  - (a) to be in writing, and
  - (b) to contain particulars of the allegations on which it is founded, and
  - (c) to be verified by statutory declaration.
- (3) The accreditation body may require the complainant to provide further particulars of the complaint.
- (4) The accreditation body must, after receiving a complaint against an accredited certifier:
  - (a) inform the accredited certifier of the nature of the complaint, and
  - (b) by notice, invite the accredited certifier to make, within such time (being at least 7 days) as the accreditation body specifies in the notice, such representations to the accreditation body with respect to the complaint as he or she thinks fit.



**109W Investigation by accreditation body of complaints**

- (1) The relevant accreditation body must, subject to this Division, conduct an investigation into each complaint made to it under this Division.
- (2) An accreditation body may deal with one or more complaints about an accredited certifier in an investigation.
- (3) If during an investigation of any one or more complaints it appears to an accreditation body that there is matter in respect of which another complaint could have been made against the accredited certifier concerned, the accreditation body may deal with the matter in its investigation as if a complaint had been made about it under section 109V.
- (4) For the purposes of subsection (3), the accreditation body may deal with a matter that could have been the subject of another complaint:
  - (a) whether that complaint could have been made instead of or in addition to any complaint that was in fact made, and
  - (b) whether or not that complaint could have been made by the same complainant.
- (5) The accreditation body may dismiss any complaint without investigation if further particulars of the complaint are not given, or the complaint or the further particulars are not verified, as required by the accreditation body.

**109X Powers of accreditation body in investigation of complaint**

- (1) For the purpose of investigating any complaint, the relevant accreditation body may, by notice served on any person accredited by it as an accredited certifier, require the person to do any one or more of the following:
  - (a) to provide written information, by a date specified in the notice, and to verify the information by statutory declaration,

- (b) to produce, at a time and place specified in the notice, any document (or a copy of any document) specified in the notice,
  - (c) to otherwise assist in, or co-operate with, the investigation of the complaint in a specified manner.
- (2) The accreditation body may inspect any document produced before the accreditation body under this section and may retain it for such period as the accreditation body thinks necessary for the purposes of an investigation in relation to which it was produced. The accreditation body may make copies of the document or any part of the document.
- (3) If the accredited certifier against whom any complaint is made (or taken to be made) claims a lien over documents relating to the matter the subject of the complaint, the accreditation body may require the accredited certifier to waive the lien if satisfied it is necessary for the orderly transaction of the complainant's business.
- (4) A requirement under this section is to be notified in writing to the accredited certifier and is to specify a reasonable time for compliance.
- (5) An accredited certifier who, without reasonable excuse, fails to comply with such a requirement is guilty of professional misconduct.
- (6) An accredited certifier must not mislead or obstruct an accreditation body in the exercise of any function under this Division. The wilful contravention of this subsection is capable of being professional misconduct.

**109Y Investigation into complaint to be conducted expeditiously**

An investigation by an accreditation body is to be conducted as expeditiously as possible.

**109Z Decision after investigation of complaint**

- (1) After an accreditation body has completed an investigation into a complaint against an accredited certifier, the complaint is to be dealt with in accordance with this section.
- (2) The accreditation body may apply to the Tribunal for a disciplinary finding against an accredited certifier with respect to any complaint against the accredited certifier.
- (3) Subject to subsection (4), the accreditation body must institute proceedings in the Tribunal with respect to the complaint against the accredited certifier if satisfied that there is a reasonable likelihood that the accredited certifier will be found guilty by the Tribunal of unsatisfactory professional conduct or professional misconduct.
- (4) If the accreditation body is satisfied that there is a reasonable likelihood that the accredited certifier will be found guilty by the Tribunal of unsatisfactory professional conduct (but not professional misconduct), the accreditation body may instead:
  - (a) with the consent of the accredited certifier do any one or more of the following:
    - (i) caution or reprimand the accredited certifier,
    - (ii) direct that such conditions as it considers appropriate be imposed on the accredited certifier's accreditation to practise as an accredited certifier,
    - (iii) order that the accredited certifier complete such educational courses as are specified by the Tribunal,
    - (iv) order that the accredited certifier report on his or her practice as an accredited certifier at the times, in the manner and to the persons specified by the Tribunal, or



- (b) dismiss the complaint if satisfied that the accredited certifier is generally competent and diligent and that no other material complaints have been made against the accredited certifier.
- (5) The accreditation body is to dismiss the complaint against the accredited certifier if satisfied that there is no reasonable likelihood that the accredited certifier will be found guilty by the Tribunal of either unsatisfactory professional conduct or professional misconduct.

**109ZA Tribunal may make certain disciplinary findings on application of accreditation body**

- (1) If an application is made to the Tribunal under section 109U or 109Z for a disciplinary finding in relation to an accredited certifier, the Tribunal is to determine whether or not the accredited certifier is guilty of unsatisfactory professional conduct or professional misconduct.
- (2) If the Tribunal finds that the accredited certifier is guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal may make any one or more of the following decisions:
  - (a) caution or reprimand the accredited certifier,
  - (b) direct that such conditions as it considers appropriate be imposed on the accredited certifier's accreditation to practise as an accredited certifier,
  - (c) order that the accredited certifier complete such educational courses as are specified by the Tribunal,
  - (d) order that the accredited certifier report on his or her practice as an accredited certifier at the times, in the manner and to the persons specified by the Tribunal,
  - (e) order the accredited certifier to pay a fine of an amount, not exceeding 300 penalty units, specified in the order,

- (f) order the accredited certifier to pay to the complainant such amount (not exceeding \$20,000) as the Tribunal considers appropriate by way of compensation for any damage suffered by the complainant as a result of the unsatisfactory professional conduct or professional misconduct,
  - (g) suspend the accredited certifier's accreditation for such period as the Tribunal thinks fit,
  - (h) withdraw the accredited certifier's accreditation.
- (3) If the Tribunal finds that the accredited certifier is not guilty of unsatisfactory professional conduct or professional misconduct, it is to dismiss the application.
- (4) If the Tribunal orders that an accredited certifier's accreditation be withdrawn, it may also order that he or she cannot re-apply for accreditation (whether by his or her relevant accreditation body or by any other accreditation body) within such period (including the period of his or her lifetime) as may be specified by the Tribunal.

#### **109ZB Tribunal may award costs**

The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings commenced by an application made under this Division.

#### **109ZC Appeals to Appeal Panel against decisions and orders of the Tribunal**

An order or other decision made by the Tribunal under this Division may be appealed to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* by a party to the proceedings in which the order or decision is made.

#### **109ZD Duty of confidentiality of client communications**

- (1) An accredited certifier must comply with a requirement under this Division to answer a question or to produce information or a document despite any duty of confidentiality in respect of a communication between

the accredited certifier and a client (but only if the client is the complainant or consents to its disclosure).

- (2) An accredited certifier may disclose a matter to the relevant accreditation body or the Tribunal in breach of any such duty of confidentiality if the accreditation body or Tribunal is satisfied that it is necessary for the accredited certifier to do so in order to rebut an allegation in the complaint.

#### **109ZE Confidential information in statement of reasons**

- (1) The Tribunal is not required to include confidential information in the statement of reasons given under section 89 or 117 of the *Administrative Decisions Tribunal Act 1997*. If a statement would be false or misleading if it did not include the confidential information, the Tribunal is not required to provide the statement.
- (2) When confidential information is not included in the statement of a decision provided to a person or the statement is not provided to a person because of subsection (1), the Tribunal must give a confidential information notice to the person.
- (3) A ***confidential information notice*** is a notice that indicates that confidential information is not included or that the statement will not be provided (as appropriate) and gives the reasons for this. The notice must be in writing and must be given within one month after the decision is made.
- (4) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

#### **109ZF General provisions concerning disciplinary proceedings**

- (1) If an accredited certifier has died:
  - (a) a person cannot make a complaint against the accredited certifier, and
  - (b) the accreditation body is not to investigate (or continue to investigate) a complaint made against



the accredited certifier or to make an application to the Tribunal for a disciplinary finding against the accredited certifier, and

- (c) the Tribunal is not to determine an application for a disciplinary finding against the accredited certifier.
- (2) A complaint against an accredited certifier may be made and dealt with even though the accredited certifier's accreditation has been withdrawn. For that purpose, a reference to an accredited certifier in this Division includes a reference to a person whose right to practise as an accredited certifier has been suspended or whose accreditation has been withdrawn.
- (3) Despite subsection (2), the accreditation body or the Tribunal may decide not to investigate or determine an application (or may decide to terminate an investigation or dismiss proceedings for an application) if the person to whom the investigation or application relates is no longer an accredited certifier.

#### **Division 4      Offences**

##### **109ZG Conflicts of interest**

- (1) An accredited certifier must not issue a Part 4A certificate or complying development certificate in relation to any aspect of development:
  - (a) if he or she has been involved in the preparation of the plans or specifications for that aspect of the development, or
  - (b) if he or she has been involved in the carrying out of work on that aspect of the development, or
  - (c) if he or she is the applicant for the certificate or is related to the applicant for the certificate, or
  - (d) if he or she is associated with the council of the area in which the development is to be carried out, or
  - (e) if he or she has a pecuniary interest in that or any other aspect of the development.

Maximum penalty: 200 penalty units.

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- (2) An accredited certifier is related to another person for the purposes of this section if the accredited certifier:
- (a) is an employer, partner or employee of the other person, or
  - (b) is a spouse, de facto partner (whether of the same or the opposite sex), sibling, parent or child of the other person, or
  - (c) has a contractual arrangement with the other person that might reasonably be seen to give rise to a conflict between the accredited certifier's duties as an accredited certifier and the accredited certifier's interests under the arrangement.
- (3) An accredited certifier is associated with a council if he or she:
- (a) is a councillor or employee of the council, or
  - (b) is related to a councillor or employee of the council, or
  - (c) has a contractual arrangement with the council that might reasonably be seen to give rise to a conflict between the accredited certifier's duties as an accredited certifier and the accredited certifier's interests under the arrangement.
- (4) An accredited certifier has a pecuniary interest in an aspect of development if there is a reasonable likelihood or expectation of appreciable financial gain or loss to the person, or to a person to whom he or she is related, but does not have such an interest if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to that aspect of the development.

#### **109ZH False representations**

- (1) A person who:
- (a) issues a Part 4A certificate or complying development certificate that he or she is not authorised by or under this Act to issue, or

- (b) makes any statement that is false or misleading in a material particular in, or in connection with, a Part 4A certificate or complying development certificate,

is guilty of an offence against this Act.

Maximum penalty: 300 penalty units.

- (2) An accredited certifier who falsely represents that he or she is a certifying authority or principal certifying authority in relation to any development is guilty of an offence against this Act.

Maximum penalty: 300 penalty units.

## **Part 4C Liability and insurance**

### **Division 1 Preliminary**

#### **109ZI Definitions**

In this Part:

***building action*** means an action (including a counter-claim) for loss or damage arising out of or concerning defective building work.

***building work*** includes the design, inspection and issuing of a Part 4A certificate or complying development certificate in respect of building work.

***subdivision action*** means an action (including a counter-claim) for loss or damage arising out of or concerning defective subdivision work.

***subdivision work*** includes the design, inspection and issuing of a Part 4A certificate or complying development certificate in respect of subdivision work.

### **Division 2 Liability**

#### **109ZJ Apportionment of liability**

- (1) After determining an award of damages in a building action or subdivision action, a court must give judgment against each contributing party for such proportion of the total amount of damages as the court considers to be just



and equitable, having regard to the extent of that party's responsibility for the loss or damage in respect of which the award is made.

- (2) Despite any Act or law to the contrary, the liability for damages of a contributing party is limited to the amount for which judgment is given against that party by the court.
- (3) A contributing party cannot be required:
  - (a) to contribute to the damages apportioned to any other person in the same building action or subdivision action, or
  - (b) to indemnify any such other person in respect of those damages.
- (4) In this section ***contributing party***, in relation a building action or subdivision action, means a defendant to the action found by the court to be jointly or severally liable for the damages awarded, or to be awarded, in the action.

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

- (1) Despite any Act or law to the contrary:
  - (a) a building action may not be brought in relation to any building work more than 10 years after the date on which the relevant final occupation certificate is issued, and
  - (b) a subdivision action may not be brought in relation to any subdivision work more than 10 years after:
    - (i) in the case of work completed before the relevant subdivision certificate is issued, the date on which the relevant subdivision certificate is issued, or
    - (ii) in the case of work completed after the relevant subdivision certificate is issued, the date on which the compliance certificate that certifies that the work has been completed is issued.
- (2) This section does not operate to extend any period of limitation under the *Limitation Act 1969*.

**109ZL Division not to affect rights to recover damages for death or personal injury**

Nothing in this Division applies to or affects any right to recover damages for death or personal injury arising out of or concerning defective building work or subdivision work.

**Division 3 Insurance**

**109ZM Application of Division**

This Division applies to:

- (a) accredited certifiers, and
- (b) such other persons as are prescribed by the regulations for the purposes of this section (referred to in this Division as *building practitioners*).

**109ZN Accredited certifiers**

- (1) An accredited certifier must not:
  - (a) exercise the functions of a certifying authority in relation to any building work or subdivision work, or
  - (b) hold himself or herself out as being covered by the required insurance,

unless he or she is covered by the required insurance.

Maximum penalty: 100 penalty units.

- (2) For the purposes of this section, an accredited certifier is covered by the required insurance if he or she is indemnified by an insurance policy that complies with the regulations against any liability to which he or she may become subject as a result of exercising the functions of a certifying authority.

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**109ZO Building practitioners**

- (1) A building practitioner must not:
- (a) carry out any building work or subdivision work, or
  - (b) hold himself or herself out as being covered by the required insurance,
- unless he or she is covered by the required insurance.
- Maximum penalty: 500 penalty units (in the case of a corporation) or 100 penalty units (in any other case).
- (2) For the purposes of this section, a building practitioner is covered by the required insurance if he or she is indemnified by an insurance policy that complies with the regulations against any liability to which he or she may become subject as a result of carrying out building work or subdivision work.

**109ZP Regulations under this Division**

Without limiting the matters for which the regulations may provide in relation to an insurance policy, the regulations may prescribe:

- (a) the persons or bodies who may be the insurers under such a policy, and
- (b) the period for which the insured is to be indemnified under such a policy, and
- (c) the amount in respect of which the insured is to be indemnified under such a policy, and
- (d) the risks in respect of which the insured is to be indemnified under such a policy, and
- (e) the form in which such a policy must be expressed.

**[33] Section 110 Definitions**

Omit the definition of *activity* from section 110 (1). Insert instead:

*activity* means:

- (a) the use of land, and
- (b) the subdivision of land, and



- (c) the erection of a building, and
- (d) the carrying out of a work, and
- (e) the demolition of a building or work, and
- (f) any other act, matter or thing referred to in section 26 that is prescribed by the regulations for the purposes of this definition,

but does not include:

- (g) any act, matter or thing for which development consent under Part 4 is required or has been obtained, or
- (h) any act matter or thing that is prohibited under an environmental planning instrument, or
- (i) exempt development, or
- (j) development carried out in compliance with an order under Division 2A of Part 6, or
- (k) any development of a class or description that is prescribed by the regulations for the purposes of this definition.

**[34] Part 5A**

Insert after Part 5:

**Part 5A Development by the Crown**

**115G Relationship between Parts 4 and 5A**

Part 4 applies to development to which this Part applies but this Part prevails over Part 4 to the extent of any inconsistency between this Part and Part 4.

**115H References to the Crown**

A reference in a provision of this Part to the Crown:

- (a) includes a reference to a person who is prescribed by the regulations to be the Crown for the purposes of the provision, and

- (b) does not include a reference to:
  - (i) a capacity of the Crown that is prescribed by the regulations not to be the Crown for the purposes of the provision, or
  - (ii) a person who is prescribed by the regulations not to be the Crown for the purposes of the provision.

#### **115I Determination of Crown development applications**

A consent authority, in respect of a development application made by or on behalf of the Crown, must not:

- (a) refuse its consent to the application, except with the written approval of the Minister, or
- (b) impose a condition of its consent, except with the written approval of the Minister or the applicant.

#### **115J Reference of undetermined applications to the Minister**

- (1) The applicant or the consent authority may refer the development application to the Minister if it has not been determined by the consent authority within 60 days after being lodged with the consent authority.
- (2) The party who refers the application to the Minister must notify the other party in writing that the application has been referred.
- (3) When an application is referred to the Minister by either party, the consent authority must, as soon as practicable after the application is referred, submit to the Minister:
  - (a) a copy of the development application, and
  - (b) details of its proposed determination of the development application, and
  - (c) the reasons for the proposed determination, and
  - (d) any relevant reports of another public authority.

- (4) The Minister is required to notify the Director in writing that the application has been referred.

**115K Negotiating determination of development application**

- (1) On being notified of the reference of a development application, the Director must convene a meeting between the consent authority and the applicant for the purpose of negotiating, as far as possible, a determination of the development application that is acceptable to them and that is in accordance with this Act.
- (2) If agreement is reached between the consent authority and the applicant that development consent be granted, unconditionally or subject to conditions, the Director must prepare a report of the agreement. The report:
- (a) may include any recommendations that may be necessary or desirable to ensure the implementation of the agreement, and
  - (b) must specify the date by which consent is to be granted.

The Director must give a copy of the report to the consent authority and the applicant.

- (3) After receiving the Director's report, the consent authority must determine the application by granting consent in accordance with the report and recommendations and must do so on or before the date specified for the purpose in the report. Such a consent is taken to have been granted in accordance with the written approval of the Minister.
- (4) If agreement is not reached between the consent authority and the applicant that development consent be granted, unconditionally or subject to conditions, the Minister must notify the consent authority and the applicant in writing of:
- (a) the Minister's approval to the refusal of consent, or



- (b) the Minister's approval to the imposition of the consent authority's proposed conditions and the date on or before which the development application must be determined, or
  - (c) the Minister's intention not to agree with the consent authority's proposed refusal and that the consent authority may submit any conditions it wishes to impose as conditions of consent to the Minister within 40 days after the date of the Minister's notification, or
  - (d) the Minister's refusal to agree with the consent authority's proposed conditions, any conditions that may be imposed with the Minister's approval and the date on or before which the development application must be determined.
- (5) At the end of the 40-day period specified in subsection (4) (c), the Minister must notify the consent authority and the applicant in writing:
  - (a) whether the Minister approves of the imposition of any of the conditions submitted by the consent authority during that period and, if so, which conditions, or
  - (b) of the conditions that may be imposed with the Minister's approval,or both, and that the consent authority must determine the application in accordance with the Minister's notification on or before the date notified by the Minister for the purpose.
- (6) The Minister must notify the consent authority and the applicant in writing of the reasons for a decision under subsection (4) or (5).
- (7) If the consent authority does not determine the application on or before the date specified in the Director's report under subsection (2), or on or before the date notified for the purpose by the Minister under

subsection (4) (b) or (d) or subsection (5), the consent authority is taken, on the date so specified or notified, to have determined the application:

- (a) in the case of a report under subsection (2)—by granting consent in accordance with the report and recommendations, or
- (b) in the case of a notification under subsection (4) (b) or (d)—by granting consent subject to the conditions that may be imposed with the Minister's approval, or
- (c) in the case of a notification under subsection (5)—in accordance with the Minister's approval as notified to it.

#### **115L Modification of Crown development consents**

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

#### **115M Building, demolition and incidental work**

- (1) In this section:

***Crown building work*** means development, or an activity within the meaning of Part 5, by the Crown that comprises:

- (a) the erection of a building, or
- (b) the demolition of a building or work, or
- (c) the doing of anything that is incidental to the erection of a building or the demolition of a building or work.

***technical provisions of the State's building laws*** means those provisions of:

- (a) the regulations, or
- (b) a publication, the provisions of which have been applied, adopted or incorporated by the regulations,

that are prescribed by the regulations to be technical provisions of the State's building laws for the purposes of this section.

- (2) Crown building work cannot be commenced to be carried out unless the Crown building work is certified by or on behalf of the Crown to comply with the technical provisions of the State's building laws in force as at:
  - (a) the date of the invitation for tenders to carry out the Crown building work, or
  - (b) in the absence of tenders, the date on which the carrying out of the Crown building work commences, except as provided by this section.
- (3) A Minister, by order in writing, may at any time determine in relation to buildings generally or a specified building or buildings of a specified class that a specified technical provision of the State's building laws:
  - (a) does not apply, or
  - (b) does apply, but with such exceptions and modifications as may be specified.
- (4) A determination of a Minister applies only to:
  - (a) a building erected on behalf of the Minister, or
  - (b) a building erected by or on behalf of a person appointed, constituted or regulated by or under an Act administered by the Minister.
- (5) A determination of a Minister has effect according to its tenor.

#### **115N Applicant's rights of appeal**

This Part does not affect the right of an applicant to appeal under section 96 (6) or 97.



**[35]    Sections 117A and 117B**

Omit the sections.

**[36]    Part 6, Division 1A**

Insert after Division 1:

**Division 1A    Entry on to land and other powers**

**118A Power of entry**

- (1) For the purpose of enabling a council to exercise the council's functions, the council may authorise a person, in writing, to enter any premises.
- (2) For the purpose of enabling the Minister to exercise the Minister's functions, the Minister may authorise a person, in writing, to enter any premises.
- (3) Entry may only be made at any reasonable hour in the daytime or at any hour during which business is in progress or is usually carried on at the premises.

**118B Inspections and investigations**

For the purpose of enabling a council or the Minister to exercise the council's or the Minister's functions, a person authorised to enter premises under this Division may:

- (a) inspect the premises and any article, matter or thing on the premises, and
- (b) for the purpose of an inspection:
  - (i) open any ground and remove any flooring and take such measures as may be necessary to ascertain the character and condition of the premises and of any pipe, sewer, drain, wire or fitting, and
  - (ii) require the opening, cutting into or pulling down of any work if the person authorised has reason to believe or suspect that anything on the premises has been done in contravention of this Act, the regulations or an environmental planning instrument, and

- (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks, and
- (d) require any person at those premises to answer questions or otherwise furnish information in relation to the matter the subject of the inspection or investigation, and
- (e) take samples or photographs in connection with any inspection.

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

- (1) Before a person authorised to enter premises under this Division does so, the council, the Minister or the person must give the owner or occupier of the premises written notice of the intention to enter the premises.
- (2) The notice must specify the day on which the person intends to enter the premises and must be given before that day.
- (3) This section does not require notice to be given:
  - (a) if entry to the premises is made with the consent of the owner or occupier of the premises, or
  - (b) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or
  - (c) if entry is required urgently and the case is one in which the general manager of the council or the Minister has authorised in writing (either generally or in the particular case) entry without notice.

#### **118D Use of force**

- (1) Reasonable force may be used for the purpose of gaining entry to any premises (other than residential premises) under a power conferred by this Division, but only if authorised by the council or the Minister in accordance with this section.

- (2) The authority of the council or the Minister:
  - (a) must be in writing, and
  - (b) must be given in respect of the particular entry concerned, and
  - (c) must specify the circumstances which are required to exist before force may be used.

**118E Notification of use of force or urgent entry**

- (1) A person authorised to enter premises under this Division who:
  - (a) uses force for the purpose of gaining entry to the premises, or
  - (b) enters the premises in an emergency without giving written notice to the owner or occupier,must promptly advise the council or the Minister.
- (2) The council or the Minister must give notice of the entry to such persons or authorities as appear to the council or the Minister to be appropriate in the circumstances.

**118F Care to be taken**

- (1) In the exercise of a function under this Division, a person authorised to enter premises must do as little damage as possible. The council or the Minister must provide, if necessary, other means of access in place of any taken away or interrupted by a person authorised by it.
- (2) As far as practicable, entry on to fenced land is to be made through an existing opening in the enclosing fence. If entry by that means is not practicable, a new opening may be made in the enclosing fence, but the fence is to be fully restored when the need for entry ceases.



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### **118G Recovery of cost of entry and inspection**

If a person authorised by a council or the Minister enters any premises under this Division for the purpose of making an inspection and as a result of that inspection, under a power conferred on the council or the Minister, the council or the Minister requires any work to be carried out on or in the premises, the council or the Minister may recover the reasonable costs of the entry and inspection from the owner or occupier of the premises.

### **118H Compensation**

A council or the Minister must pay compensation for any damage caused by any person authorised by the council or the Minister under this Division to enter premises, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this Act, the regulations or an environmental planning instrument.

### **118I Authority to enter premises**

- (1) A power conferred by this Division to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the owner or occupier of the premises.
- (2) The authority must be a written authority which is issued by the council or the Minister and which:
  - (a) states that it is issued under this Act, and
  - (b) gives the name of the person to whom it is issued, and
  - (c) describes the nature of the powers conferred and the source of the powers, and

- (d) states the date (if any) on which it expires, and
  - (e) describes the kind of premises to which the power extends, and
  - (f) in the case of a council, bears the signature of the general manager.
- (3) This section does not apply to a power conferred by a search warrant.

**118J In what circumstances can entry be made to a residence?**

The powers of entry and inspection conferred by this Division are not exercisable in relation to that part of any premises being used for residential purposes except:

- (a) with the permission of the occupier of that part of the premises, or
- (b) if entry is necessary for the purpose of inspecting work being carried out under a development consent (including a complying development certificate), or
- (c) under the authority conferred by a search warrant.

**118K Search warrants**

- (1) A person generally or specially authorised by a council or the Minister for the purposes of this section may apply to an authorised justice if the authorised person has reasonable grounds for believing that the provisions of this Act, the regulations, an environmental planning instrument or the terms of a development consent, complying development certificate or order under this Act have been or are being contravened in or on any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the warrant:

- (a) to enter the premises, and
  - (b) to search the premises for evidence of a contravention of this Act, the regulations, an environmental planning instrument or the terms of a development consent, complying development certificate or order under this Act.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 18 of the *Search Warrants Act 1985*, a police officer:
  - (a) may accompany an authorised person executing a search warrant issued under this section, and
  - (b) may take all reasonable steps to assist the authorised person in the exercise of the person's functions under this section.
- (5) In this section, ***authorised justice*** has the same meaning as in the *Search Warrants Act 1985*.

#### **118L Special provision with respect to fire brigades**

- (1) An authorised fire officer within the meaning of section 121ZC may exercise the functions conferred on a person authorised by a council or the Minister under this Division for the purpose of inspecting a building to determine:
  - (a) whether or not adequate provision for fire safety has been made in or in connection with the building, or
  - (b) whether or not such of the provisions of this or any other Act or law as may be prescribed for the purposes of this paragraph have been complied with.
- (2) An inspection for the purposes of subsection (1) (a) is not, however, authorised for premises other than places of shared accommodation except:



- (a) when requested by the council of the area in which the building is located, or
  - (b) when requested by a person who holds himself or herself out as the owner, lessee or occupier of the building, or
  - (c) when the Commissioner of New South Wales Fire Brigades has received a complaint in writing that adequate provision for fire safety has not been made concerning the building.
- (3) A council must, at the request of the Commissioner of New South Wales Fire Brigades, make available a person authorised by the council for the purposes of the inspection, and the person concerned is to be present during the inspection.
- (4) The Commissioner of New South Wales Fire Brigades must send a report of any inspection carried out under this section to the council concerned.
- (5) This Division applies to an authorised fire officer within the meaning of section 121ZC in the same way as it applies to a council and a council employee (or other person) authorised by the council.

**118M Councils to carry out fire-safety inspections on request of Commissioner of NSW Fire Brigades**

- (1) A council must, at the written request of the Commissioner of New South Wales Fire Brigades, cause any building specified in the request to be inspected for the purpose of determining whether or not adequate provision for fire safety has been made in or in connection with the building.
- (2) As soon as practicable after such an inspection has been carried out, the council must send a report of the inspection to the Commissioner of New South Wales Fire Brigades.

### **118N Obstruction of authorised persons**

A person must not obstruct, hinder or interfere with an authorised person in the exercise of the person's functions under this Division.

Maximum penalty: 20 penalty units.

## **[37] Part 6, Division 2A**

Insert after Division 2:

### **Division 2A Orders**

#### **121A Definition**

In this Division:

*order* means an order under this Division.

#### **121B What orders may be given by a consent authority?**

- (1) An order may be given to a person by:
  - (a) a council, or
  - (b) any other person who exercises functions as a consent authority, except in relation to complying development for which a complying development certificate has been issued,

to do or to refrain from doing a thing specified in the following Table if the circumstances specified opposite it in Column 2 of the Table exist and the person comes within the description opposite it in Column 3 of the Table.

## Schedule 1      Amendment of Environmental Planning and Assessment Act 1979

Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
1. To cease using premises for a purpose specified in the order	(a) Premises are being used for a purpose that is prohibited (b) Premises are being used for a purpose for which development consent is required but has not been obtained (c) Premises are being used in contravention of the conditions of a development consent	Owner of premises, or person by whom premises are being used for the purpose specified in the order
2. To demolish or remove a building	(a) Building is erected without prior development consent of consent authority in a case where prior development consent is required (b) Building is or is likely to become a danger to the public (c) Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood	Owner of building



Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
3. Not to demolish, or to cease demolishing a building	<p>(a) Building is likely to be demolished without prior development consent of consent authority in a case where prior development consent is required</p> <p>(b) Building is being demolished without prior development consent of consent authority or otherwise than in accordance with prior development consent of consent authority in a case where prior development consent is required</p>	Owner of building, person likely to demolish or person engaged in demolition
4. To repair or make structural alterations to a building	<p>(a) Building is or is likely to become a danger to the public</p> <p>(b) Building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood</p>	Owner of building

## Schedule 1      Amendment of Environmental Planning and Assessment Act 1979

Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
5. To alter, obliterate, demolish or remove an advertisement and any associated advertising structure	<p>(a) The advertisement is unsightly, objectionable or injurious to the amenity of any natural landscape, foreshore, public reserve or public place at or near where the advertisement is displayed</p> <p>(b) The advertisement is displayed contrary to a provision made by or under this Act</p> <p>(c) The advertising structure is erected contrary to a provision made by or under this Act</p>	The person who caused the advertisement or advertising structure to be erected or the owner or occupier of the premises on which the advertisement is displayed or the advertising structure is erected
6. To do or refrain from doing such things as are specified in the order so as to ensure or promote adequate fire safety or fire safety awareness	<p>(a) Provisions for fire safety or fire safety awareness are not adequate to prevent fire, suppress fire or prevent the spread of fire or ensure or promote the safety of persons in the event of fire</p> <p>(b) Maintenance or use of the premises constitutes a significant fire hazard</p>	Owner of premises or, in the case of a place of shared accommodation, the owner or manager

Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
7. To erect or install on or around a building such structures or appliances as are necessary to protect persons or property on or in a public place	(a) Building is about to be erected (b) Building is situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place (c) Building is about to be demolished (d) Work is about to be carried out (e) Work is about to be demolished	Owner or occupier of land
8. Not to conduct, or to cease conducting, an activity on premises (being an activity that is, or is capable of being, the subject of a development consent, whether or not the activity is the subject of a development consent)	The activity constitutes or is likely to constitute: (a) a life threatening hazard, or (b) a threat to public health or public safety, and is not regulated or controlled under any other Act by a public authority	Any person apparently engaged in promoting, conducting or carrying out the activity



## Schedule 1      Amendment of Environmental Planning and Assessment Act 1979

Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
9. To cease the use of a building	<p>The use of the building:</p> <p>(a) is not consistent with its classification under this Act, the <i>Local Government Act 1993</i> or the <i>Local Government Act 1919</i>, and</p> <p>(b) constitutes or is likely to constitute a life threatening hazard or a threat to public health or public safety, and</p> <p>(c) is not regulated or controlled under any other Act by a public authority</p>	The owner or occupier of the building
10. To cease the use of premises or to evacuate premises	A person to whom order No 6 or 8 is given has failed to comply with the order	The person to whom order No 6 or 8 is given
11. To leave premises or not to enter premises	A person to whom order No 6 or 8 is given has failed to comply with the order	Any person
12. To do such things as are specified in the order to restore premises to the condition in which they were before building was unlawfully erected or before work was unlawfully carried out	<p>(a) Building has been unlawfully erected, and an order No 2 has been given requiring the building to be demolished or removed</p> <p>(b) Work has been unlawfully carried out</p>	The owner of the premises, any person entitled to act on a development consent or complying development certificate or any person acting otherwise than in compliance with a development consent or complying development certificate

Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
13. To do such things as are necessary to bring into compliance with relevant development standards any building or part of a building that has been unlawfully erected	Building has been unlawfully erected and does not comply with relevant development standards	The owner of the premises
14. To repair or remove a building	The building is situated wholly or partly in a public place	Owner or occupier of building
15. To comply with a development consent	The development consent is not being complied with	Person entitled to act on the development consent or person acting otherwise than in compliance with the development consent
16. To complete development that is subject to a development consent within such time (not being less than 12 months from the date of service of the order) as the consent authority considers reasonable, having regard to all relevant circumstances, including the nature of the development, and including, if the development is the subject of:	The development has been commenced within the period specified in section 95 (1) but has not been completed within that period	The owner of the land to which the development consent applies

## Schedule 1      Amendment of Environmental Planning and Assessment Act 1979

Column 1	Column 2	Column 3
To do what?	In what circumstances?	To whom?
<p>(a) a proposed strata development contract referred to in the <i>Strata Schemes (Freehold Development) Act 1973</i> or the <i>Strata Schemes (Leasehold Development) Act 1986</i>, or</p> <p>(b) a development contract registered with a community plan or precinct plan under the <i>Community Land Development Act 1989</i>,</p> <p>the proposals relating to the stages in which the development is to be effected</p>		
17. To carry out works associated with a subdivision	There has been a failure to carry out the works in accordance with a development consent or an agreement made with the applicant for development consent	The person required to carry out the works



- (2) The regulations may prescribe acts and circumstances that are taken to be included in or excluded from any of the acts or circumstances specified in Column 1 or 2 of the Table to subsection (1).

#### **121C Giving orders to public authorities**

- (1) An order under this Division may not be given in respect of the following land without the prior written consent of the Minister:
- (a) vacant Crown land,
  - (b) a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*,
  - (c) a common within the meaning of the *Commons Management Act 1989*.
- (2) The Minister must not give consent in respect of vacant Crown land or a reserve within the meaning of Part 5 of the *Crown Lands Act 1989* until after the Minister has consulted the Minister administering the *Crown Lands Act 1989*.

#### **121D Circumstances in which compliance with secs 121H–121J is required**

Before giving an order, the person who gives the order must comply with sections 121H–121J, except for:

- (a) order No 9 in the Table to section 121B, or
- (b) an order given, and expressed to be given, in an emergency.

#### **121E Effect of compliance with secs 121H–121J**

A person who complies with sections 121H–121J is taken to have observed the rules of natural justice (the rules of procedural fairness).

**121F Criteria to be considered before order is given**

If a council has adopted criteria in a development control plan under section 72 on which it is to give an order, the council is required to take the criteria into consideration before giving the order.

**121G Orders that make or are likely to make residents homeless**

- (1) If an order will or is likely to have the effect of making a resident homeless, the person who gives the order must consider whether the resident is able to arrange satisfactory alternative accommodation in the locality.
- (2) If the resident is not able to arrange satisfactory alternative accommodation in the locality, the person who gives the order must provide the resident with:
  - (a) information as to the availability of satisfactory alternative accommodation in the locality, and
  - (b) any other assistance that the person considers appropriate.

**121H Notice to be given of proposed order**

- (1) **Notice to whom the order is to be given**

Before giving an order, the person who gives the order must give notice to the person to whom the order is proposed to be given of the intention to give the order, the terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with.
- (2) The notice must also indicate that the person to whom the order is proposed to be given may make representations to the person who gives the order as to why the order should not be given or as to the terms of or period for compliance with the order.
- (3) The notice may provide that the representations are to be made to the person who gives the order or a nominated

person on a nominated date, being a date that is reasonable in the circumstances of the case. In the case of a council this may be a specified committee of the council on a specified meeting date or to a specified employee of the council on or before a specified date.

**(4) Notice to the other consent authorities**

If a council proposes to give an order in relation to development for which another person is the consent authority, the council must give the other person notice of its intention to give the order.

**121I Making of representations**

- (1)** A person may, in accordance with a notice under section 121H make representations concerning the proposed order.
- (2)** For the purpose of making the representations, the person may be represented by a barrister, solicitor or agent.

**121J Hearing and consideration of representations**

The person who gives the order or the nominated person is required to hear and to consider any representations made under section 121I.

**121K Procedure after hearing and consideration of representations**

- (1)** After hearing and considering any representations made concerning the proposed order, the person who gives the order or the nominated person may determine:
  - (a)** to give an order in accordance with the proposed order, or
  - (b)** to give an order in accordance with modifications made to the proposed order, or
  - (c)** not to give an order.



- (2) If the determination is to give an order in accordance with modifications made to the proposed order, the person who gives the order is not required to give notice under this Division of the proposed order as so modified.

**121L Reasons for orders to be given**

- (1) A person who gives an order must give the person to whom the order is directed the reasons for the order.
- (2) The reasons may be given in the order or in a separate instrument.
- (3) The reasons must be given when the order is given, except in a case of urgency. In a case of urgency, the reasons may be given the next working day.

**121M Period for compliance with order**

- (1) An order must specify a reasonable period within which the terms of the order are to be complied with, subject to this section.
- (2) An order may require immediate compliance with its terms in circumstances which the person who gives the order believes constitute a serious risk to health or safety or an emergency.

**121N Notice of right to appeal against order**

A person who gives an order must, in giving a person notice of the order:

- (a) state that the person or any other person affected by the order may appeal to the Court against the order or a specified part of the order, and
- (b) specify the period within which an appeal may be made.

**121O Development consent not required to comply with order**

A person who carries out work in compliance with a requirement of an order does not have to make an application under Part 4 for consent to carry out the work.

**121P Order may specify standards and work that will satisfy those standards**

- (1) Instead of specifying the things the person to whom the order is given must do or refrain from doing, an order:
  - (a) may specify the standard that the premises are required to meet, and
  - (b) may indicate the nature of the work that, if carried out, would satisfy that standard.
- (2) Such an order may require the owner or occupier to prepare and submit to the person who gives the order, within the period (not exceeding 3 months) specified in the order, particulars of the work the owner or occupier considers necessary to make provision for such matters as may be so specified.

**121Q Compliance with order under sec 121P**

- (1) A person complies with a requirement of an order under section 121P (2) by submitting to the person who gives the order such matters as the person would be required to submit if applying to a consent authority for development consent to carry out the work.
- (2) A person who complies with such a requirement does not have to make a development application for consent to carry out the work.

**121R Consent authority's response to submission of particulars of work by owner**

- (1) A person who gives an order must, within 28 days after particulars of work are submitted to the person in accordance with section 121P (2):
  - (a) accept the particulars without modification or with such modifications as the person thinks fit, or
  - (b) reject the particulars.
- (2) If a person accepts the particulars of work without modification, the person must forthwith order the owner to carry out that work.

- (3) If a person accepts the particulars of work with modifications or rejects the particulars, or if an owner fails to submit particulars of work in accordance with section 121P (2), the person must:
  - (a) prepare, within 3 months after the acceptance, rejection or failure, particulars of the work that the person considers necessary to make provision for the matters specified in the order given to the owner under section 121P, and
  - (b) order the owner to carry out that work.
- (4) An order under this section is not invalid merely because of the failure of the person to accept or reject any particulars of work or prepare particulars of any work, as the case may be, within the period it is required to do so by this section.
- (5) A person may recover from an owner as a debt the person's expenses of preparing particulars of work under this section.

#### **121S Orders affecting heritage items**

- (1) This section applies to an item of the environmental heritage:
  - (a) to which an order under the *Heritage Act 1977* applies, or
  - (b) that is identified as such an item in an environmental planning instrument.
- (2) A person must not give an order under this Division in respect of an item of the environmental heritage to which this section applies until after the person has considered the impact of the order on the heritage significance of the item.
- (3) A person must not give an order under this Division in respect of an item of the environmental heritage to which subsection (1) (a) applies until after the person has given notice of the order to the Heritage Council and has considered any submissions duly made to the person by the Heritage Council.



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- (4) The Heritage Council may, by instrument in writing served on a person, exempt the person from the requirements of subsection (3).
  - (5) An exemption under subsection (4) may be given unconditionally or subject to such conditions as the Heritage Council determines, and may be varied or revoked by a subsequent instrument in writing made by the Heritage Council and served on the person.
  - (6) The Heritage Council may make a submission:
    - (a) within 28 days after it is given notice by the person, or
    - (b) if, within 28 days after it is given notice by the person, the Heritage Council requests that a joint inspection of the item be made, within 28 days after the joint inspection is made.
  - (7) If the Heritage Council notifies a person that it wishes to be consulted in connection with an order under section 121R, the person must include a statement to that effect in any order under section 121P.
  - (8) This section does not apply to:
    - (a) order No 3 in the Table to section 121B if given by a person in an emergency, or
    - (b) order No 8, 10 or 11.

#### **121T Combined orders**

A person who gives an order may include two or more orders in the same instrument.

#### **121U Giving and taking effect of orders**

An order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service or a later time specified in the order.

**121V Orders may be given to two or more persons jointly**

If appropriate in the circumstances of the case, an order may direct two or more people to do the thing specified in the order jointly.

**121W Notice in respect of land or building owned or occupied by more than one person**

- (1) If land, including land on which a building is erected, is owned or occupied by more than one person:
  - (a) an order in respect of the land or building is not invalid merely because it was not given to all of those owners or occupiers, and
  - (b) any of those owners or occupiers may comply with such an order without affecting the liability of the other owners or occupiers to pay for or contribute towards the cost of complying with the order.
- (2) Nothing in this Division affects the right of an owner or occupier to recover from any other person all or any of the expenses incurred by the owner or occupier in complying with such an order.

**121X Notice of giving of order No 16**

A person who gives an order must, on or as soon as practicable after the day on which the person gives an order in the terms of order No 16 in the Table to section 121B, send a copy of the order to:

- (a) such persons (if any) as are, in the opinion of the person, likely to be disadvantaged by the giving of the order, and
- (b) such persons (if any) as are referred to in the regulations for the purposes of this section.

**121Y Effect of order on successors in title**

An order given to a person binds any person claiming through or under or in trust for or in succession to the person or who is a subsequent owner or occupier to the person, as if the order had been given to that person.

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**121Z Compliance with orders by occupiers or managers**

If an occupier or manager complies with an order, the occupier or manager may (unless the occupier or manager has otherwise agreed) deduct the cost of so complying (together with interest at the rate currently prescribed by the Supreme Court rules in respect of unpaid judgment debts) from any rent payable to the owner or may recover the cost (and that interest) from the owner as a debt in any court of competent jurisdiction.

**121ZA Occupier of land may be required to permit owner to carry out work**

- (1) The person who gives an order may order the occupier of any land to permit the owner of the land to carry out such work on the land as is specified in the order (being work that is, in the person's opinion, necessary to enable the requirements of this Act or the regulations, or of any order under section 121B, to be complied with).
- (2) An occupier of land on whom such an order is served must, within 2 days after the order is served, permit the owner to carry out the work specified in the order.
- (3) The owner of the land is not guilty of an offence arising from his or her failure to comply with the requirements of this Act or the regulations, or of any order under section 121B, if, while an order under this section is in force, the occupier of the land refuses to permit the owner to carry out the work specified in the order.
- (4) Subsection (3) applies only if the owner of the land satisfies the Court that the owner has, in good faith, tried to comply with the requirements concerned.

**121ZB Notice of fire safety orders to be given to Commissioner of NSW Fire Brigades**

A person who gives an order must immediately give notice to the Commissioner of New South Wales Fire Brigades of an order given by the person in terms of order No 6 in the Table to section 121B.



### **121ZC Powers of fire brigades**

- (1) An authorised fire officer who inspects a building in accordance with section 118L may give:
  - (a) order No 6 in the Table to section 121B if the order does not require the carrying out of any structural work to the premises concerned, or
  - (b) order No 8 in the Table to section 121B if the premises concerned are a place of shared accommodation, or
  - (c) order No 10 or 11 in the Table to section 121B if a person to whom an order under paragraph (a) or (b) is given has failed to comply with the order.
- (2) The provisions of:
  - (a) sections 121D–121K, and
  - (b) section 121Q,do not apply to an order given in accordance with this section in circumstances which the authorised fire officer believes constitute an emergency or a serious risk to safety.
- (3) For the purpose of giving such an order, an authorised fire officer may exercise such of the powers of a person who gives an order under this Division as are specified in the fire officer's authorisation under this section.
- (4) In exercising a power under this Division, an authorised fire officer may be accompanied and assisted by a police officer.
- (5) An authorised fire officer must forward a copy of an order given under this section to the relevant council.
- (6) In this section, a reference to an ***authorised fire officer***, in relation to the exercise of a power under this Division, is a reference to:
  - (a) the Commissioner of New South Wales Fire Brigades, or

- 
- (b) a member of staff of New South Wales Fire Brigades who is for the time being authorised by the Minister administering the *Fire Brigades Act 1989* to exercise that power, or
  - (c) an officer or member of a fire brigade who is for the time being authorised by the Minister administering the *Fire Brigades Act 1989* to exercise that power.

**121ZD Inspection reports by fire brigades**

- (1) If the Commissioner of New South Wales Fire Brigades carries out an inspection of a building under section 118L, the Commissioner must furnish to the council of the area in which the building is located:
  - (a) a report of the inspection, and
  - (b) if of the opinion that adequate provision for fire safety has not been made concerning the building, such recommendations as to the carrying out of work or the provision of fire safety and fire-fighting equipment as the Commissioner considers appropriate.
- (2) A council must:
  - (a) table any report and recommendations it receives under this section at the next meeting of the council, and
  - (b) at any meeting of the council held within 28 days after receiving the report and recommendations or at the next meeting of the council held after the tabling of the report and recommendations, whichever is the later, determine whether it will exercise its powers to give order No 6 or 8 in the Table to section 121B.
- (3) A reference in subsection (2) to a meeting of a council does not include a reference to a special meeting of the council unless the special meeting is called for the purpose of tabling any report and recommendations or making any determination referred to in that subsection.

- (4) A council must give notice of a determination under this section to the Commissioner of New South Wales Fire Brigades.

**121ZE Details of orders and notices to be given to councils**

- (1) A person, other than a council, who gives a notice or an order under this Division must immediately give a copy of the notice or order to the council.
- (2) The person, if requested by the council, must immediately inform the council whether or not the notice is outstanding or the order is in force and of any action proposed to be taken by the person in relation to the notice or order.

**121ZF Modification of orders**

A person who gives an order may, at any time, modify an order it has given to a person (including a modification of the period specified for compliance with the order) if the person to whom the order is given agrees to that modification.

**121ZG Revocation of orders**

- (1) An order given by a consent authority may be revoked by the consent authority at any time.
- (2) An order given by the Minister may be revoked by the Minister at any time.
- (3) An order given by an authorised fire officer (as referred to in section 121ZC (6)) may be revoked by an authorised fire officer at any time.

**121ZH Minister may revoke or modify a council's order**

- (1) The Minister may revoke or modify an order given by a council.
- (2) Notice of the revocation or modification must be given to the council and the person to whom the order was given.



- (3) The revocation or modification takes effect from the date specified in the Minister's notice. The date may be the date on which the order was given by the council or a later date.
- (4) The Minister may prohibit a council from re-making an order that is revoked or modified under this section, totally or within such period or except in accordance with such terms and conditions (if any) as the Minister may specify.
- (5) Notice of a prohibition may be given in the same notice as notice of the revocation or modification of an order or in a separate notice.

#### **121ZI Limitation on Minister's orders**

The Minister must not give an order under section 121ZH that is inconsistent with, or has the effect of revoking or modifying, an order given by the council unless the Minister is of the opinion that:

- (a) it is necessary because of an emergency, or
- (b) it is necessary because of the existence or reasonable likelihood of a serious risk to health or safety, or
- (c) the order relates to a matter of State or regional significance, or
- (d) the order relates to a matter in which the intervention of the Minister is necessary in the public interest.

#### **121ZJ Failure to comply with order—carrying out of work by consent authority**

- (1) If a person fails to comply with the terms of an order given to the person under this Division, the person who gave the order may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.

- (2) If the person who gave the order gives effect to it by demolishing a building, the person:
  - (a) may remove any materials concerned, and
  - (b) may sell the materials, unless the person's expenses in giving effect to the terms of the order are paid to the person within 14 days after removal of the materials.
- (3) If the proceeds of such a sale exceed the expenses incurred by the person who gave the order in relation to the demolition and the sale, the person:
  - (a) may deduct out of the proceeds of the sale an amount equal to those expenses, and
  - (b) must pay the surplus to the owner on demand.
- (4) If the proceeds of sale do not exceed those expenses, the person who gave the order:
  - (a) may retain the proceeds, and
  - (b) may recover the deficiency (if any) together with the person's costs of recovery from the owner as a debt.
- (5) Materials removed that are not saleable may be destroyed or otherwise disposed of.
- (6) If work required by the order is carried out by the person who gave the order in relation to development for which an amount of security was provided and the amount of the security is more than the costs of carrying out the work, the person, after being recompensed from the security, must pay the surplus to the person entitled to it on demand.
- (7) Any expenses incurred under this section by a person who gave an order (less the proceeds, if any, of any sale under this section or the amount of any security provided in respect of development to which the order relates) together with all associated costs may be recovered by the person in any court of competent jurisdiction as a debt due to the person by the person required to comply with the order.

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- (8) Nothing in subsection (3), (4), (6) or (7) affects the owner's right to recover any amount from any lessee or other person liable for the expenses of repairs.
  - (9) A reference in subsection (4), (6) or (7) to costs is a reference to costs incurred by the person who gave the order in seeking to recover the deficiency or expenses otherwise than by proceedings in a court, but nothing in this section prevents the person from receiving costs as between party and party in respect of those proceedings.
  - (10) The person who gave the order may exercise the person's functions under this section irrespective of whether the person required to comply with the order has been prosecuted for an offence against this Act.
  - (11) In any proceedings before the Land and Environment Court that are brought by a person who gave an order against another person as a result of the other person's failure to comply with the order, the Court may, at any stage of the proceedings, order the person who gave the order to exercise the person's functions under this section. Having made such an order, the Court may continue to hear and determine the proceedings or may dismiss the proceedings.
  - (12) If the Minister or the Director gave the order, the Minister's or Director's functions under this section may be exercised by the corporation.

#### **121ZK Appeals concerning orders**

- (1) A person on whom an order is served may appeal against the order to the Court.
- (2) However, a person may not appeal against order No 6 in the Table to section 121B if the order is given by an authorised fire officer (as referred to in section 121ZC (6)).
- (3) The appeal must be made within 28 days after the service of the order on the person or, if an order is given under section 121R, within 28 days after the service of



the order given under section 121R on the person. The person may make an appeal within the later period whether or not the person has made an appeal within the earlier period.

- (4) On hearing an appeal, the Court may:
- (a) revoke the order, or
  - (b) modify the order, or
  - (c) substitute for the order any other order that the person who gave the order could have made, or
  - (d) find that the order is sufficiently complied with, or
  - (e) make such order with respect to compliance with the order as the Court thinks fit, or
  - (f) make any other order with respect to the order as the Court thinks fit.

#### **121ZL Awarding of compensation concerning orders**

- (1) The Land and Environment Court, on the hearing of an appeal or otherwise, has a discretion to award compensation to a person on whom an order is served for any expense incurred by the person as a consequence of the order, including the cost of any investigative work or reinstatement carried out by the person as a consequence of the order, but only if the person satisfies the Court that the giving of the order was unsubstantiated or the terms of the order were unreasonable.
- (2) A claim for compensation may not be made more than 28 days after the date on which the Court gives its decision on the appeal or more than 3 months after the date of the order if an appeal is not made against the order.
- (3) Compensation under this section is to be awarded against the person who gave the order.

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**121ZM Appeals concerning particulars of work submitted to person who gave order**

- (1) A person may appeal to the Court against the failure of a person who gave an order:
  - (a) to accept or reject, under section 121R (1), particulars of work submitted to the person in accordance with section 121P (2), or
  - (b) to prepare, under section 121R (3) (a), particulars of the work that the person considers necessary to make provision for the matters specified in an order given to an owner under section 121P.
- (2) The appeal must be made within 28 days after the period limited under section 121R (1) or (3) (a) for compliance by the person who gave the order.
- (3) On hearing an appeal, the Court may:
  - (a) make any order that the person who gave the order could have made, or
  - (b) order the person to perform the person's functions under section 121R (1) or (3) (a) within such time as is specified in the order.

**121ZN Effect of appeal on order**

If an appeal is duly made to the Land and Environment Court against an order, the appeal does not effect a stay of the order.

**121ZO Court's powers not limited by this Division**

This Division does not limit a power of the Land and Environment Court under the *Land and Environment Court Act 1979*.

**121ZP Certificate as to orders**

- (1) A person may apply to a council for a certificate as to whether there are:
  - (a) any outstanding notices issued under section 121H,
  - (b) any orders under this Division in force, in respect of any land within the council's area.

- (2) The application must be in the form prescribed by the regulations and be accompanied by the fee prescribed by the regulations.
- (3) The council is to issue a certificate to the applicant stating:
  - (a) whether or not a notice is outstanding or an order is in force in respect of the land as at the date of the certificate and, if so, the terms of any such notice or order, and
  - (b) any action proposed to be taken or that may be taken by the council or any other person in relation to any such notice or order.
- (4) The production of the certificate is taken for all purposes to be conclusive proof of the existence or otherwise of any outstanding notices and any orders in force.

**[38] Section 122 Definitions**

Omit section 122 (b). Insert instead:

- (b) a reference to this Act includes a reference to the following:
  - (i) the regulations,
  - (ii) an environmental planning instrument,
  - (iii) a consent granted under this Act, including a condition subject to which a consent is granted,
  - (iv) a complying development certificate, including a condition subject to which a complying development certificate is granted,
  - (v) an order under Division 2A.



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**[39] Section 125 Offences against this Act and the regulations**

Insert after section 125 (3):

- (2) It is a sufficient defence to a prosecution for an offence that arises from the failure to comply with an order under Division 2A if the defendant satisfies the court that the defendant was unaware of the fact that the matter in respect of which the offence arose was the subject of an order.

**[40] Section 127 Proceedings for offences**

Insert “, except as provided by subsection (6)” after “committed” in section 127 (5).

**[41] Section 127 (6)**

Insert after section 127 (5):

- (6) Proceedings for the following offences may be instituted at any time within the period specified in relation to the offence:
  - (a) carrying out development, other than complying development, for which development consent is required without obtaining development consent—12 months after the offence is alleged to have been committed,
  - (b) carrying out complying development without obtaining a complying development certificate—12 months after the offence is alleged to have been committed.

**[42] Section 127A**

Insert after section 127:

**127A Penalty notices for certain offences**

- (1) An authorised person may serve a penalty notice on a person if it appears to the authorised person that the person has committed an offence under this Act, being an offence prescribed by the regulations.

- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice:
  - (a) may be served personally or by post, or
  - (b) if it relates to an offence involving the use of a vehicle, may be addressed to the owner (without naming the owner or stating the owner's address) and may be served by leaving it on or attaching it to the vehicle.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

(9) In this section:

*authorised person* means:

- (a) a person, including an employee of a consent authority, generally or specially authorised by a consent authority to be an authorised person for the purposes of this section, or
- (b) a person, including a person employed within the Department, generally or specially authorised by the Director to be an authorised person for the purposes of this section, or
- (c) a person generally or specially authorised by the Minister to be an authorised person for the purposes of this section, or
- (d) a police officer.

**[43] Section 137 Charges and fees fixed by regulation**

Insert “or as determined in accordance with the regulations, including as determined by a person specified in the regulations” after “the regulations” in section 137 (1).

**[44] Section 148 Disclosure and misuse of information**

Omit “him” from section 148 (2). Insert instead “the person”.

**[45] Section 148 (2) and (3)**

Insert “or herself, or a person with whom he or she is associated” after “himself” wherever occurring.

**[46] Section 148 (3) (c) and (d)**

Insert at the end of section 148 (3) (b):

, or

- (c) a decision concerning a complying development certificate, or
- (d) the giving of an order under Division 2A of Part 6.



**[47]    Section 148 (4)**

Insert after section 148 (3):

- (4)    In this section, a person is associated with another person if the person is the spouse, de facto partner (whether of the same or the opposite sex), sibling, parent or child of the other person.

**[48]    Section 149 Planning certificates**

Insert “(a *planning certificate*)” after “under this section” in section 149 (1).

**[49]    Section 149 (2)**

Insert “planning” after “issue a”.

**[50]    Section 149 (4) and (5)**

Omit “certificate under subsection (2)” wherever occurring.  
Insert instead “planning certificate”.

**[51]    Section 149 (7)**

Omit “certificate under this section”.  
Insert instead “planning certificate”.

**[52]    Sections 149A–149G**

Insert after section 149:

**149A Building certificates**

- (1)    A council may issue a building certificate in accordance with this section and sections 149B–149E.

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- (2) A building certificate may apply to the whole or to part only of a building.
  - (3) The regulations may provide for the form in which a building certificate is to be issued.
  - (4) A building certificate is in force for the period of 7 years from the date on which it is issued.

**Note.** A building certificate under this Part replaces the building certificate formerly issued under the *Local Government Act 1993*.

#### **149B Applications for building certificates**

- (1) An application for a building certificate may be made:
  - (a) by the owner of the land on which the building is erected, or
  - (b) by any other person, with the consent of the owner of that land, or
  - (c) by the purchaser under a contract for the sale of property that comprises or includes the building or part, or by the purchaser's solicitor or agent, or
  - (d) by a public authority that has notified the owner of its intention to apply for the certificate.
- (2) The regulations may provide for the procedures for making an application, the fees payable in connection with an application and the procedures for dealing with an application.

#### **149C Supply of information in connection with applications for building certificates**

- (1) On receipt of an application, the council may, by notice in writing served on the applicant, require the applicant to supply it with such information (including building plans, specifications, survey reports and certificates) as may reasonably be necessary to enable the proper determination of the application.

- (2) If the applicant is able to provide evidence that no material change has occurred in relation to the building since the date of a survey certificate which, or a copy of which, is supplied to the council by the applicant, the council is not entitled to require the applicant to supply a more recent survey certificate.

#### **149D Obligations of council to issue building certificate**

- (1) The council must issue a building certificate if it appears that:
  - (a) there is no matter discernible by the exercise of reasonable care and skill that would entitle the council, under this Act or the *Local Government Act 1993*:
    - (i) to order the building to be demolished, altered, added to or rebuilt, or
    - (ii) to take proceedings for an order or injunction requiring the building to be demolished, altered, added to or rebuilt, or
    - (iii) to take proceedings in relation to any encroachment by the building onto land vested in or under the control of the council, or
  - (b) there is such a matter but, in the circumstances, the council does not propose to make any such order or take any such proceedings.
- (2) If the council refuses to issue a building certificate, it must inform the applicant, by notice, of its decision and of the reasons for it.
- (3) The reasons must be sufficiently detailed to inform the applicant of the work that needs to be done to enable the council to issue a building certificate.
- (4) The council must not refuse to issue or delay the issue of a building certificate by virtue of the existence of a matter that would not entitle the council to make any order or take any proceedings of the kind referred to in subsection (1) (a).



- (5) Nothing in this section prevents the council from informing the applicant of the work that would need to be done before the council could issue a building certificate or from deferring its determination of the application until the applicant has had an opportunity to do that work.

#### **149E Effect of building certificate**

- (1) A building certificate operates to prevent the council or any other person who may be empowered to do so:
- (a) from making an order (or taking proceedings for the making of an order or injunction) under this or any other Act requiring the building to be repaired, demolished, altered, added to or rebuilt by reason only of its design, appearance, form of construction or state of repair, and
  - (b) from taking proceedings in relation to any encroachment by the building or part onto land vested in or under the control of the council or consent authority,
- in relation to matters existing or occurring before the date of issue of the certificate.
- (2) However, a building certificate does not operate to prevent a council or any other person:
- (a) from making an order (or taking proceedings for the making of an order or injunction) requiring the building to be repaired, demolished, altered, added to or rebuilt, where the order is made only in relation to matters arising otherwise than by virtue of the deterioration of the building as a result of fair wear and tear, or
  - (b) from making order No 6 in the Table to section 121B, or

- (c) from taking proceedings against any person under section 125 with respect to that person's failure:
  - (i) to obtain a development consent with respect to the erection or use of the building, or
  - (ii) to comply with the conditions of such a development consent.
- (3) An order or proceeding that is made or taken in contravention of this section is of no effect.

#### **149F Appeals with respect to building certificates**

- (1) An applicant:
    - (a) who is aggrieved by a council's refusal to issue a building certificate, or
    - (b) who is aggrieved by a council's refusal to issue a building certificate within 40 days after:
      - (i) the date of application for the certificate, or
      - (ii) if the applicant receives a notice under section 149C to supply information, the date on which the information is supplied,whichever is the later, or
  - (c) who receives a notice under section 149C to supply information,
- may appeal to the Court.
- (2) The appeal must be made within 12 months after the date on which the refusal is communicated to the person, the date on which the 40-day period expires or the date of the notice under section 149C, as the case requires.
- (3) On hearing the appeal, the Court may do any one or more of the following:
  - (a) it may direct the council to issue a building certificate in such terms and on such conditions as the Court thinks fit,

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- (b) it may revoke, alter or confirm a notice under section 149C,
  - (c) it may make any other order that it considers appropriate.

#### **149G Record of building certificates**

- (1) The council must keep a record of building certificates issued by it in such form as it thinks fit.
- (2) A person may inspect the record at any time during the ordinary office hours of the council.
- (3) A person may obtain a copy of a building certificate from the record with the consent of the owner of the building and on payment of the fee prescribed by the regulations.

### **[53] Section 151**

Insert after section 150:

#### **151 Proof of ownership of land**

- (1) In any legal proceedings under this Act, in addition to any other method of proof available:
  - (a) evidence that the person proceeded against is rated in respect of any land to any rate under the *Local Government Act 1993*, otherwise than as a rate paying lessee, is, until the contrary is proved, evidence that the person is the owner of the land, or
  - (b) a certificate furnished by the Registrar-General under subsection (2) with respect to any land is, until the contrary is proved, evidence that the person described in the certificate as the proprietor or owner of the land was the owner of that land at the time or during the period specified in the certificate pursuant to subsection (3) (b) (i) or (ii).



(2) If:

- (a) written application with respect to any land is made to the Registrar-General under this subsection by a consent authority, and
- (b) the Registrar-General has been paid the prescribed fee,

the Registrar-General is to furnish to the consent authority a certificate setting out such of the particulars specified in subsection (3) as are recorded in the Register kept under the *Real Property Act 1900* or in the General Register of Deeds maintained under Division 1 of Part 23 of the *Conveyancing Act 1919* and as the Registrar-General is able to ascertain from the information about the land furnished in the application.

(3) The particulars are:

- (a) the situation and a description of the land, and
- (b) in the case of:
  - (i) land subject to the provisions of the *Real Property Act 1900*—the names and addresses of the person registered under that Act as the proprietor of the land at the time or during the period in respect of which the application is made and the date of registration of the instruments under which they became so registered, or
  - (ii) land not subject to those provisions—the names and addresses of the owner of the land at the time or during the period in respect of which the application is made and the dates, and dates of registration under Division 1 of Part 23 of the *Conveyancing Act 1919*, of the instruments kept in the General Register of Deeds maintained under that Division under which the owner became the owner of the land.

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- (4) Judicial notice is to be taken for the purposes of this Act of the signature of the Registrar-General and of a Deputy Registrar-General.
- (5) In subsection (2) (b), the reference to the prescribed fee is, in relation to an application made under that paragraph:
- (a) in the case of land subject to the provisions of the *Real Property Act 1900*—a reference to the fee prescribed under that Act for the purposes of that paragraph, or
  - (b) in the case of land not subject to those provisions—a reference to the fee prescribed under the *Conveyancing Act 1919* for the purposes of that paragraph.

**[54] Section 158 Designated development: declaration by regulation**

Omit the section.

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

Insert at the end of clause 1 (1):

*Environmental Planning and Assessment Amendment Act 1997*

**[56] Schedule 6, Part 6**

Insert after Part 5:

**Part 6 Environmental Planning and Assessment Amendment Act 1997**

**18 General saving**

- (1) If anything done or commenced under a provision of this or any other Act that is amended or repealed by the *Environmental Planning and Assessment Amendment Act 1997* has effect or is not completed immediately before

the amendment or repeal of the provision and could have been done or commenced under a provision of such an Act if the provision had been in force when the thing was done or commenced:

- (a) the thing continues to have effect, or
  - (b) the thing commenced may be completed.
- (2) This clause is subject to any express provision of this Act or the regulations on the matter.

## **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 Olympic Co-ordination Authority**

A provision of an Act as in force immediately before the amendment or repeal of the provision by the *Environmental Planning and Assessment Amendment Act 1997* continues to apply to and in respect of the Olympic Co-ordination Authority, and anything done or proposed to be done by or on behalf of the Olympic Co-ordination Authority, as if the provision had not been amended or repealed, subject to the regulations.



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## Schedule 2    Amendment of Conveyancing Act 1919

(Section 4)

### [1]    Section 7 Definitions

Insert in alphabetical order in section 7 (1):

***Crown plan*** means a plan (such as a county or parish map, a town or village map or a portion plan) that has been prepared by or on behalf of the Crown and is held by the Registrar-General, and includes a registered plan that has been lodged for registration at the office of the Registrar-General by or on behalf of the Crown.

***Current plan*** has the meaning given by section 7A.

***Existing lot*** means:

- (a) a lot whose boundaries are shown in a current plan, or
- (b) in relation to land that is not included in a current plan, any distinct lot or portion of land whose current boundaries are identified in the document or documents that evidence current legal interests in the land,

whether comprising the whole of a parcel, or 2 or more parts of a parcel separated by land reserved or acquired for a road, railway or other like purpose.

***Registered plan*** means any of the following:

- (a) a plan of subdivision, a plan of consolidation or a plan of identification (each within the meaning of section 195) that is registered in accordance with Division 3 of Part 23,
- (b) a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*,

- (c) a plan that is registered in accordance with section 53 (1A) of the *Strata Schemes (Freehold Development) Act 1973*, being a plan of the residue of a lot after a road widening referred to in that subsection,
- (d) a plan that is registered for the purpose of showing either or both of the following:
  - (i) land that is proposed to be acquired, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or
  - (ii) the residue of land of which part is proposed to be so acquired,
- (e) a plan (other than a plan referred to in paragraph (a)–(d)) that is registered or recorded in the office of the Registrar-General for the purpose of showing a parcel in a lawful division of land.

**[2]      Section 7A**

Insert after section 7:

**7A Current plan**

- (1) In this Act, *current plan* means a Crown plan or a registered plan, but does not include:
  - (a) so much of a Crown plan or registered plan as is taken not to form part of a current plan because of subsection (2), (3) or (4), or
  - (b) a Crown plan or registered plan that is marked, in accordance with the regulations, so as to indicate that it is not a current plan.

- 
- (2) So much of a Crown plan or registered plan as merely identifies:
- (a) land that is proposed to be acquired, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of the land by compulsory process, or
  - (b) the residue of land of which part is proposed to be so acquired,
- is taken not to form part of a current plan until such time as the land is so acquired.
- (3) So much of a Crown plan or registered plan as merely identifies:
- (a) land that is, or is proposed to be, leased (otherwise than for a period that, including the period of any option to renew, exceeds 5 years), or
  - (b) land the subject of a plan of subdivision for lease purposes (within the meaning of section 23H),
- is taken not to form part of a current plan.
- (4) So much of a Crown plan or registered plan as relates to land the subject of a later current plan (that is, a current plan that was filed or lodged at the office of the Registrar-General after the Crown plan or registered plan was so lodged) is taken not to form part of a current plan.

**[3] Part 2, Divisions 3A, 3B**

Insert after Division 3:

**Division 3A Transactions with respect to existing lots**

**23F Certain transactions to refer to lots shown on current plan**

- (1) This section applies to the following transactions:
- (a) the conveyance or transfer of part of an existing lot,
  - (b) the lease of part of an existing lot,



- (c) the mortgage of part of an existing lot,
  - (d) the partition of an existing lot.
- (2) The Registrar-General may refuse to register a transaction to which this section applies unless:
- (a) the land to which the transaction relates is shown on a current plan, and
  - (b) the boundaries of each part into which the land is divided as a result of the transaction follow the boundaries of an existing lot.
- (3) This section does not apply to an agreement with respect to land the subject of:
- (a) a proposed plan of subdivision, a proposed plan of consolidation or a proposed plan of identification within the meaning of section 195, or
  - (b) a proposed strata plan, proposed strata plan of consolidation or proposed strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*,

but the agreement is taken to be conditional on the registration of the proposed plan.

### **23G Exceptions to sec 23F**

Section 23F does not apply to the following transactions:

- (a) a transaction that relates to the whole of the land comprised in a folio of the Register kept under the *Real Property Act 1900*,
- (b) an application by the Crown to bring Crown land under the provisions of the *Real Property Act 1900*,
- (c) a transaction that relates to the whole of the residue of land comprised in a folio of the Register kept under the *Real Property Act 1900*, where part only of the land is shown in a current plan,

- 
- (d) a transaction that comprises:
    - (i) the lease of part of an existing lot for a period that, including the period of any option to renew, does not exceed 5 years, or
    - (ii) the transfer, conveyance, sublease, variation or mortgage of a leasehold interest so created,
  - (e) a transaction that comprises:
    - (i) the lease of the whole or any part of a building, or
    - (ii) the transfer, conveyance, sublease, variation or mortgage of a leasehold interest so created,
  - (f) a transaction that relates to an existing lot that is owned by 2 or more persons in severalty, where:
    - (i) one of the owners disposes of his or her part of the lot to another owner, or
    - (ii) all of the owners of the lot dispose of the lot to some other person,
  - (g) a transaction that relates to part of an existing lot, where:
    - (i) that part (and no other part of the lot) is held by a person in his or her capacity as a trustee, administrator or executor of, or as a beneficiary of the estate of, an owner referred to in paragraph (f), and
    - (ii) the transaction relates to the whole of that part,
  - (h) a transaction that relates to part of an existing lot, where:
    - (i) the transaction is necessary to give effect to an order, direction or judgment of a court of competent jurisdiction, and
    - (ii) the person by whom the transaction is given effect to does not have power to give effect to such a transaction with respect to any other part of the lot,

- (i) a transaction that relates to part of an existing lot, where:
  - (i) the transaction gives effect to a sale of land under a writ of execution, under Division 5 of Part 2 of Chapter 17 of the *Local Government Act 1993*, under section 24 of the *Protected Estates Act 1983* or under any power conferred by a Commonwealth Act, and
  - (ii) the person giving effect to the transaction does not have power to give effect to such a transaction with respect to any other part of the lot,
- (j) a transaction that relates to part of an existing lot (not being land under the provisions of the *Real Property Act 1900*), where:
  - (i) a person in adverse possession of that part disposes of that part to some other person, and
  - (ii) the firstmentioned person does not have power to dispose of any other part of the existing lot,
- (k) a transaction that relates to part of an existing lot, where the transaction conveys or transfers land to an Aboriginal Land Council in accordance with the requirements of the *Aboriginal Land Rights Act 1983*, the *Native Title (New South Wales) Act 1994* or any other Act or law,
- (l) a transaction that relates to the whole of the residue of an existing lot, where part of the lot:
  - (i) has been the subject of a transaction referred to in paragraph (h), (i), (j) or (k), or
  - (ii) has been acquired, by agreement or compulsory process, under a provision of an Act (including a Commonwealth Act) that authorises the acquisition of land by compulsory process, or
  - (iii) has been dedicated as a public road.



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**Division 3B Transactions with respect to lots in a subdivision for lease purposes**

**23H Definitions**

In this Division, *plan of subdivision for lease purposes* means a plan of subdivision (within the meaning of section 195) of land within a caravan park or a manufactured home estate (within the meaning of the *Local Government Act 1993*) that is marked, in accordance with the regulations, so as to indicate that development consent to the subdivision has been granted under the *Environmental Planning and Assessment Act 1979* subject to the condition that the subdivision is a subdivision for lease purposes.

**23I Transactions**

- (1) The Registrar-General may refuse to register a transaction with respect to a lot in a plan of subdivision for lease purposes unless it comprises:
  - (a) the lease of the whole of the lot for a period that, including the period of any option to renew, does not exceed 20 years, or
  - (b) the transfer, conveyance, sublease, variation or mortgage of a leasehold interest so created.
- (2) This section does not apply to an agreement with respect to land the subject of a proposed plan of subdivision for lease purposes, but the agreement is taken to be conditional on the registration of the proposed plan.

**[4] Section 195**

Omit the section. Insert instead:

**195 Definitions**

- (1) In this Division:

*miscellaneous plan* means a plan that shows one or more of the following matters:

  - (a) the site of an interest in land in the nature of an easement, profit à prendre or restrictive or positive covenant, being an interest that is to be created, by some other instrument, after the plan is registered,

- (b) survey information in relation to land the subject of some other plan,
- (c) such other matters relating to land as are prescribed by the regulations,

but does not include a plan of subdivision, a plan of consolidation or a plan of identification.

***plan of consolidation*** means a plan that shows the consolidation of 2 or more existing lots into a single lot, where there is no simultaneous redivision of them into 2 or more new lots, whether or not the plan also shows one or more of the matters referred to in paragraph (a), (b) or (c) of the definition of ***miscellaneous plan***.

***plan of identification*** means:

- (a) a plan supporting a primary application to bring one or more existing lots under the provisions of the *Real Property Act 1900*, including a surround plan (being a plan that defines the external boundaries of a number of existing lots but merely refers to the existence of, and does not define the boundaries between, those lots), or
- (b) a redefinition plan (being a plan that redefines the boundaries between the lots referred to in a surround plan along the same general lines as those that defined the boundaries between those lots immediately before they were brought under the provisions of the *Real Property Act 1900*, as referred to in paragraph (a)), or
- (c) a delimitation plan (being a plan prepared for the purposes of section 28V of the *Real Property Act 1900*), or
- (d) a plan that is registered for the purpose of showing the boundaries of land for which a folio of the Register kept under the *Real Property Act 1900* has been created as a result of the correction of a misdescription of land, or

- 
- (e) a plan redefining the boundaries of an existing lot, or
  - (f) a plan defining the boundaries of land that has been acquired by compulsory process, or the boundaries of the residue of an existing lot of which part has been so acquired, or
  - (g) a plan defining the boundaries of land that has been dedicated as a public road by means of a notice referred to in section 10, 11 or 12, or a proclamation referred to in section 13, of the *Roads Act 1993*, or the boundaries of the residue of an existing lot of which part has been so dedicated, or
  - (h) a plan supporting a transaction or proposed transaction referred to in section 23G, or
  - (i) a plan of a kind prescribed by the regulations for the purposes of this definition,

whether or not the plan also shows one or more of the matters referred to in paragraph (a), (b) or (c) of the definition of *miscellaneous plan*.

***plan of subdivision*** means a plan that shows:

- (a) the division of an existing lot into 2 or more new lots, or
- (b) the consolidation of 2 or more existing lots and their simultaneous redivision, along new boundaries, into 2 or more new lots, or
- (c) the dedication of an existing lot as a public road under section 9 of the *Roads Act 1993* or as a public reserve under section 49 of the *Local Government Act 1993*, or
- (d) the setting aside of an existing lot as a drainage reserve under section 49 of the *Local Government Act 1993*,

whether or not the plan also shows one or more of the matters referred to in paragraph (a), (b) or (c) of the



definition of *miscellaneous plan*, and includes a plan of subdivision for lease purposes (within the meaning of section 23H) and any other plan that shows the division of land, but does not include a plan of consolidation or a plan of identification.

*signature of a person includes*, in relation to a corporation, the seal of the corporation.

*subdivision certificate* means a subdivision certificate endorsed on a plan of subdivision under Part 4A of the *Environmental Planning and Assessment Act 1979*.

(2) In this Division, a reference to a plan includes a reference to:

- (a) a community plan, a community plan of consolidation or a community plan of subdivision, or
- (b) a neighbourhood plan, a neighbourhood plan of consolidation or a neighbourhood plan of subdivision, or
- (c) a precinct plan, a precinct plan of consolidation or a precinct plan of subdivision,

within the meaning of the *Community Land Development Act 1989*, but does not include a reference to a strata plan, a strata plan of consolidation or a strata plan of subdivision within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

**[5] Section 195A Lodgment of plans with Registrar-General**

Omit “a plan of a consolidated lot, a public road or a division of land” from section 195A (1).

Insert instead “a plan of the division of land”.

**[6] Section 195B Refusal to accept lodgment**

Omit section 195B (a). Insert instead:

- (a) a plan of land under the provisions of the *Real Property Act 1900* that, in the Registrar-General’s opinion, illustrates without material change a lot shown in a current plan, or

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**[7] Section 195B (b)**

Omit “a plan of a division of land”.

Insert instead “a plan of the division of land”.

**[8] Section 195C Form and certification of plans**

Insert at the end of section 195C (d):

, and

- (e) in the case of a plan of subdivision, be endorsed, in accordance with the regulations, with a subdivision certificate.

**[9] Section 195C (2)**

Insert at the end of section 195C:

- (2) Subsection (1) (e) does not apply to a plan of subdivision that is filed or lodged by or on behalf of the Crown in right of the Commonwealth.

**[10] Section 195D Signatures and consents**

Omit “(other than a plan referred to in paragraph (c) or (g) of the definition of *plan of subdivision* in section 327AA (1) of the *Local Government Act 1919*)” from section 195D (1).

Insert instead “(other than a plan referred to in paragraph (b), (c) or (d) of the definition of *Registered plan* in section 7 (1))”.

**[11] Section 195D (1)**

Omit “under section 327AA of that Act”.

**[12] Section 195D (1) (b)**

Omit paragraphs (b) and (c). Insert instead:

- (b) to dedicate land as a public reserve or to set land aside as a drainage reserve under section 49 of the *Local Government Act 1993*,

**[13]    Section 195J Effect of registration or of rejection of plans**

Omit section 195J (1). Insert instead:

- (1)    The validity of:
  - (a)    a plan that has been registered under this Division,  
         or
  - (b)    any instrument intended to affect or evidence the  
         title to any land to which such a plan relates,

may not be called into question in any proceedings before a court or tribunal on any ground whatever, including the ground that the requirements of this or any other Act or law have not been duly complied with in relation to the plan.

**[14]    Section 196 Presumptions relating to plans**

Insert after section 196 (4):

- (5)    The Registrar-General is entitled to assume that a subdivision certificate that is endorsed on a plan lodged under this Division has been duly endorsed on the plan and that all conditions precedent to the endorsement of the certificate have been duly complied with.

**[15]    Section 202A**

Omit the section. Insert instead:

**202A Savings, transitional and other provisions**

Schedule 9 has effect.



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**[16] Schedule 9**

Insert after Schedule 8:

**Schedule 9      Savings, transitional and other provisions**

(Section 202A)

**Part 1      Preliminary**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Conveyancing (Amendment) Act 1992*

*Environmental Planning and Assessment Amendment Act 1997*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2      Provisions consequent on the enactment of the Environmental Planning and Assessment Amendment Act 1997**

**2 Definitions**

In this Part:

*amending Act* means the *Environmental Planning and Assessment Amendment Act 1997*.

*relevant repeal date* means the date on which the repeal of the repealed Act, or of the relevant provision of the repealed Act, takes effect.

*repealed Act* means the *Local Government Act 1919*.

### **3 Subdivisions for lease purposes**

Section 289K of the repealed Act continues to apply to an application made under that section before the relevant repeal date as if that section had not been repealed.

### **4 Continuation of Part 12 of the repealed Act in relation to existing applications for subdivision approval**

Part 12 of the repealed Act continues to apply to an application made under Division 2 of that Part before the relevant repeal date as if that Part had not been repealed.

### **5 Securities for the execution of work**

- (1) An agreement referred to in section 328 (a) of the repealed Act (being an agreement that is in force immediately before the relevant repeal date) continues to have effect, according to its terms, as if that paragraph had not been repealed.
- (2) A security referred to in section 328 (b) or 331 (2A) of the repealed Act (being a security that continues in force after the registration in the office of the Registrar-General of the relevant plan referred to in section 327 (1) (e) or (2) (c) of that Act) is taken to be a security referred to in section 80A (6) of the *Environmental Planning and Assessment Act 1979*.

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## **Schedule 3    Amendment of Local Government Act 1993**

(Section 5)

**[1]    Section 4 Does this Act bind the Crown?**

Omit the first and second dot points from the note to section 4.

**[2]    Chapter 4 How can the community influence what a council does?**

Omit “and building approvals” from the third paragraph of the Introduction to Chapter 4.

Insert instead “consents”.

**[3]    Section 12 What information is publicly available?**

Insert “under the *Environmental Planning and Assessment Act 1979*” after “records of building certificates” in section 12 (1).

**[4]    Section 64**

Omit the section and the note. Insert instead:

**64 Construction of works for developers**

Division 2 of Part 3 of the *Water Supply Authorities Act 1987* applies to a council exercising functions under this Division in the same way as it applies to a water supply authority exercising functions under that Act.

**Note.** Division 2 of Part 3 of the *Water Supply Authorities Act 1987* contains a scheme whereby works of water, sewerage and drainage required in connection with the development of land can be provided without ultimate cost to a water supply authority (in this case a council).



Under the scheme, a developer is required to obtain a certificate of compliance from the council before a plan of subdivision can be registered. In deciding whether to grant the certificate, the council can do either or both of the following:

- (a) it can require the developer to contribute to the value of existing works which benefit the developer's land,
- (b) it can require the developer to pay the whole or part of the cost of constructing specified additional works.

The imposition of such a requirement is in addition to any requirement the council may impose in granting a development consent.

**[5] Chapter 7 What are the regulatory functions of councils?**

Omit "the erection of a building or" from the third paragraph of the Introduction to Chapter 7.

**[6] Chapter 7, Introduction**

Insert at the end of the third paragraph:

Some of these approvals may also be granted as part of the development consent process under Part 4 of the *Environmental Planning and Assessment Act 1979*.

**[7] Chapter 7, Introduction**

Omit "to demolish a building that has been erected without an approval or" from the fourth paragraph.

**[8] Chapter 7, Introduction**

Omit the eighth and ninth paragraphs.

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

Omit Part A of the Table to section 68. Insert instead:

**Part A Structures or places of public entertainment**

- 1 Install a manufactured home, moveable dwelling or associated structure on land
- 2 Install a temporary structure on land
- 3 Use a building or temporary structure as a place of public entertainment or permit its use as a place of public entertainment

**[10] Section 68, Table, Part E**

Omit "Erect an advertising structure over a public road, or expose" from paragraph 2.

Insert instead "Expose".

**[11] Section 68, Table, Part E**

Omit paragraph 3.

**[12] Section 69**

Omit the section. Insert instead:

**69 Crown exemption from approval to do things incidental to erection or demolition of building**

Section 68 does not require the Crown or a person prescribed by the regulations to obtain the approval of a council to do anything that is incidental to the erection or demolition of a building.

**[13]    Section 70 Compliance by the Crown with building standards**

Omit the section.

**[14]    Section 95 “Deferred commencement” approval**

Omit the note to section 95 (1).

**[15]    Section 102A Evidence of insurance-related matters**

Omit “building work” from section 102A (1) (a).

Insert instead “residential building work (within the meaning of the *Home Building Act 1989*)”.

**[16]    Section 103 When does an approval lapse?**

Omit section 103 (3) (a).

**[17]    Section 104 Lapsing of building approvals**

Omit the section.

**[18]    Section 105 Circumstances in which approval is taken to have been refused**

Omit “public consultation or” from section 105 (1) (b).

**[19]    Chapter 7, Part 1, Division 4 Special provisions relating to notice of applications to erect buildings (secs 114–119)**

Omit the Division.



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**[20] Section 124 What orders may be given, in what circumstances and to whom?**

Omit paragraphs (a), (b) and (c) of the matter relating to order No 1 from Column 2 of the Table.

**[21] Section 124, Table**

Omit order No 2.

**[22] Section 124, Table**

Omit paragraphs (a) and (b) of the matter relating to order No 3 from Column 2 of the Table.

**[23] Section 124, Table**

Omit order No 4.

**[24] Section 124, Table**

Omit paragraph (g) of the matter relating to order No 5 from Column 1 of the Table.

**[25] Section 124, Table**

Omit orders Nos 6, 13, 14, 15A and 26.

**[26] Section 124, Table**

Omit "4 or" wherever occurring from the matter relating to orders Nos 16 and 17 in Columns 2 and 3 of the Table.

**[27] Section 138A Approval or consent not required to comply with order**

Insert “or an application under Part 4 of the *Environmental Planning and Assessment Act 1979* for consent to carry out the work” after “the work”.

**[28] Sections 149–151**

Omit the sections.

**[29] Section 153 Revocation of orders**

Omit section 153 (3).

**[30] Section 154 The Minister may exercise any function concerning an order that a council may exercise**

Insert after section 154 (3):

(3A) The Minister must not give an order that relates to an activity that is the subject of a development consent granted under the *Environmental Planning and Assessment Act 1979* by the Minister administering that Act until after the Minister has consulted that other Minister. However, the Minister is not required to consult, but must notify, the other Minister in the case of:

- (a) an order in terms of order No 15 in the Table to section 124, or
- (b) an order given, and expressed to be given, in an emergency.

**[31] Section 156 Minister may revoke or modify a council's order**

Insert after section 156 (1):

(1A) The Minister administering the *Environmental Planning and Assessment Act 1979* may revoke or modify an order given by a council that relates to an activity that is the subject of a development consent granted under that Act. A reference in this section to the Minister includes a reference to the Minister administering that Act.

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**[32] Section 158 Preparation of draft local policy for approvals**

Omit “(for example, matters referred to in section 115)” from section 158 (5).

**[33] Chapter 7, Part 4 Certificates concerning buildings (secs 168–175)**

Omit the Part.

**[34] Section 180 Appeals concerning orders**

Omit section 180 (2).

**[35] Chapter 7, Part 5, Division 2 Building certificates (sec 185)**

Omit the Division.

**[36] Sections 202 and 203**

Omit the sections.

**[37] Section 377 General power of the council to delegate**

Insert “or an application that may be reviewed under section 82A of the *Environmental Planning and Assessment Act 1979*” at the end of the fifteenth dot point.

**[38] Section 452 Participation in meetings despite pecuniary interests**

Omit the second dot point from section 452 (d).

**[39] Section 608 Council fees for services**

Omit section 608 (5).



**[40]    Section 626 Failure to obtain approval**

Omit section 626 (2).

**[41]    Section 627 Failure to comply with approval**

Omit section 627 (2).

**[42]    Section 628 Failure to comply with order**

Omit “Nos 1–3, 5–14 or 15A” from section 628 (1).  
Insert instead “Nos 1, 3, 5, 7–12 and 15–17”.

**[43]    Section 628 (1A)**

Omit “4,”.

**[44]    Section 628 (2)**

Omit “Nos 18–29”. Insert instead “Nos 18–25 or 27–29”.

**[45]    Chapter 13, Part 7, Offences relating to buildings (secs 653–658)**

Omit the sections.

**[46]    Section 665 False or misleading information**

Omit section 665 (2).

**[47] Section 691 Proceedings for offences**

Omit “section 626 (1) or (2), 627 (1) or (2)” from 691 (2).  
Insert instead “section 626 (1), 627 (1)”.

**[48] Section 691 (3)**

Omit “, except as provided by section 692”.

**[49] Sections 691A and 692**

Omit the sections.

**[50] Section 732 Exemption from liability—accreditation and certification**

Omit section 732 (c).

**[51] Section 733 Exemption from liability—flood liable land and land in coastal zone**

Insert “or the determination of an application for a complying development certificate,” after “development application,” in section 733 (3) (a).

**[52] Section 733 (3) (b)**

Omit the paragraph.

**[53] Section 733 (3) (c)**

Omit “or (b)”.

**[54]    Schedule 6 Regulations**

Omit paragraph 10.

**[55]    Schedule 6, paragraph 21**

Omit:

The prescription of essential fire or other safety measures

The standard of maintenance of essential fire or other safety measures

Certificates as to the maintenance of essential fire or other safety measures

Other matters concerning essential fire or other safety measures

**[56]    Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts**

Insert at the end of clause 1 (1):

*Environmental Planning and Assessment Amendment Act  
1997*

**[57]    Dictionary**

Omit the definitions of *advertisement, advertising structure, alignment, building certificate, essential fire or other safety measures, fire-isolated passageway, fire-isolated ramp, fire-isolated stairway, order, provision for fire safety* and *required exit*.



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## **Schedule 4    Amendment of other Acts**

(Section 6)

### **4.1    Albury-Wodonga Development Act 1974 No 47**

#### **Section 20 Council functions may be transferred to the Corporation**

Omit “or the *Local Government Act 1919*” wherever occurring.

### **4.2    C. B. Alexander Foundation Incorporation Act 1969 No 61**

#### **Section 13 Exemption from local government rates**

Omit “paragraph (j) of subsection one of section one hundred and thirty-two of the *Local Government Act 1919*”.

Insert instead “section 555 (1) (f) of the *Local Government Act 1993*”.

### **4.3    Camperdown Cemetery Act 1948 No 14**

#### **Section 2 Definitions**

Omit section 2 (2).

### **4.4    Chipping Norton Lake Authority Act 1977 No 38**

#### **Section 13 Vesting of certain land in Authority**

Omit “the *Local Government Act 1919*,” from section 13 (2).

Insert instead “the *Local Government Act 1993*,”.

## **4.5      Coastal Protection Act 1979 No 13**

### **Section 37 Definitions**

Omit section 37 (2) (c). Insert instead:

- (c) the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*, but does not include a reference to the subdivision of land under Division 1 of Part 2 of the *Strata Schemes (Freehold Development) Act 1973* or Division 1 of Part 2 of the *Strata Schemes (Leasehold Development) Act 1986*, and

## **4.6      Community Land Development Act 1989 No 201**

### **[1]      Section 3 Definitions**

Omit “the *Local Government Act 1919*,” from the definition of *consent authority* in section 3 (1).

### **[2]      Section 3 (1)**

Omit “under section 327AA of the *Local Government Act 1919*” from the definition of *current plan*.

Insert instead “within the meaning of the *Conveyancing Act 1919*”.

### **[3]      Section 3 (1)**

Omit the definition of *drainage reserve*. Insert instead:

*drainage reserve* means land that is set aside as a drainage reserve, under section 49 of the *Local Government Act 1993*.

**[4] Section 3 (1)**

Omit paragraph (b) of the definition of *land*. Insert instead:

- (b) is land the subject of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or

**[5] Section 15 Severance of a development lot**

Omit “section 327AA of the *Local Government Act 1919*” from section 15 (4).

Insert instead “section 23F of the *Conveyancing Act 1919*”.

**[6] Section 21 Dedication of neighbourhood property**

Omit “under the *Conveyancing Act 1919* of a plan referred to in section 327 of the *Local Government Act 1919*” from section 21 (1).

Insert instead “at the office of the Registrar-General of a plan of subdivision under section 195 of the *Conveyancing Act 1919*”.

**[7] Section 54 Resumption of entire lot—application under Real Property Act 1900**

Omit “section 327AA of the *Local Government Act 1919*” from section 54 (2).

Insert instead “section 23F of the *Conveyancing Act 1919*”.

**[8] Section 70 Variation or termination of scheme by Supreme Court**

Omit “section 327AA of the *Local Government Act 1919*” from section 70 (4).

Insert instead “section 23F of the *Conveyancing Act 1919*”.



#### **4.7      Community Land Management Act 1989 No 202**

##### **[1]      Section 3 Definitions**

Omit “the *Local Government Act 1919*,” from the definition of *consent authority* in section 3 (1).

##### **[2]      Section 3 (1)**

Omit “under section 327AA of the *Local Government Act 1919*” from the definition of *current plan*.

Insert instead “within the meaning of the *Conveyancing Act 1919*”.

##### **[3]      Section 3 (1)**

Omit the definition of *drainage reserve*. Insert instead:

*drainage reserve* means land that is set aside as a drainage reserve, under section 49 of the *Local Government Act 1993*.

##### **[4]      Section 3 (1)**

Omit paragraph (b) from the definition of *land*. Insert instead:

(b) is land the subject of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or

#### **4.8      Darling Harbour Authority Act 1984 No 103**

##### **[1]      Section 3 Definitions**

Omit section 3 (3) (c). Insert instead:

(c) the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*, and

**[2] Section 23J Application of certain legislation**

Omit section 23J (1) (a).

**[3] Section 59 Application of certain legislation within Development Area**

Omit section 59 (1) (b) and (3) (b).

**4.9 Drainage Act 1939 No 29**

**Section 5 Certain Acts not affected**

Omit “the *Local Government Act 1919* or”.

**4.10 Fisheries Management Act 1994 No 38**

**[1] Section 146 Issue or refusal of permit**

Insert after section 146 (1):

- (1A) The issue of an aquaculture permit in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 6 of Part 4 of that Act.

**[2] Section 220 Provisions relating to permits under this Part**

Insert after section 220 (1):

- (1A) The issue of a permit referred to in section 201 or 205 in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 6 of Part 4 of that Act.

**4.11    Gore Hill Memorial Cemetery Act 1986 No 116**

**Section 11 Placement of ashes**

Omit section 11 (2).

**4.12    Growth Centres (Development Corporations) Act 1974  
No 49**

**[1]    Section 3 Definitions**

Omit the definitions of *council* and *local government area* from section 3 (1).

Insert instead in alphabetical order:

*council* has the same meaning as it has in the *Local Government Act 1993*.

**[2]    Section 34 Disclosure of interest**

Omit “within the meaning of the *Local Government Act 1919*” from section 34 (3) (a).

**4.13    Heritage Act 1977 No 136**

**[1]    Section 4 Definitions**

Omit “*Local Government Act 1919*, the *Local Government Act 1993*, any instruments made under those Acts” from the definition of *consent authority* in section 4 (1).

Insert instead “*Local Government Act 1993*, any instruments made under that Act”.



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**[2] Section 4 (5) (d)**

Omit section 4 (5) (d). Insert instead:

- (d) the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*,

**[3] Section 56**

Omit the section. Insert instead:

**56 Definitions**

In this Part:

*integrated development* has the same meaning as in section 91 of the *Environmental Planning and Assessment Act 1979*.

*prescribed application* means an application for the approval of a consent authority under any of the following:

- (a) the *Environmental Planning and Assessment Act 1979*, not being an application relating to integrated development,
- (b) Part 1 of Chapter 7 of the *Local Government Act 1993*,
- (c) any prescribed provision of the *Local Government Act 1993* or any prescribed provision of any instrument made under that Act,
- (d) Division 4 of Part 2 of the *Strata Schemes (Freehold Development) Act 1973*,
- (e) Division 7 of Part 2 of the *Strata Schemes (Leasehold Development) Act 1986*,

in respect of the doing or carrying out of an act, matter or thing the doing or carrying out of which requires an approval of the Heritage Council under Subdivision 1 of Division 3 of this Part.

**[4]      Section 61 Public notice of certain applications**

Insert after section 61 (1):

- (1A) Public notice is not to be given under this section of an application for approval in respect of integrated development of which public notice has been given under the *Environmental Planning and Assessment Act 1979*.

**[5]      Section 63 Determination of application**

Insert after section 63 (1):

- (1A) The determination of an application for approval in relation to integrated development is subject to Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

**[6]      Section 65 Effect of failure to make determination**

Insert “(other than an application for approval in respect of integrated development)” after “application for approval” in section 65 (1).

**[7]      Section 66**

Omit the section. Insert instead:

**66 Application of Subdivision**

This Subdivision prevails the extent of any inconsistency between this Subdivision and the *Environmental Planning and Assessment Act 1979* (Division 6 of Part 4 excepted), any environmental planning instrument in force under that Act, the *Local Government Act 1993*, any instrument made under that Act, the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

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**[8] Section 70 Appeal to the Court against certain determinations of the Heritage Council**

Insert “or, in the case of the determination of an application for approval in respect of integrated development, to the Court” after “the Minister” where firstly occurring.

**[9] Section 70 (c)**

Insert “or the Court” after “the Minister” where secondly occurring.

**[10] Section 76**

Omit the section. Insert instead:

**76 Appeal to Minister in respect of prescribed applications**

If, under the *Environmental Planning and Assessment Act 1979*, any environmental planning instrument in force under that Act, the *Local Government Act 1993*, any instrument made under that Act, the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, an applicant has a right of appeal arising from the making of a prescribed application, that right is to be exercised by making that appeal to the Minister, despite those Acts or any such instrument.

**[11] Sections 78–79B**

Omit section 78. Insert instead:

**78 Appointment of Commissioner of Inquiry to furnish report to the Minister**

If the Minister, pursuant to section 77 (1) (a), decides to determine an appeal, the Minister may appoint a Commissioner of Inquiry to furnish a report to the Minister with respect to the appeal containing:



- (a) a recommendation as to whether the appeal should, in the opinion of the Commissioner, be dismissed or allowed either unconditionally or subject to such conditions as may be specified in the report, and
- (b) the reasons for the recommendation.

#### **79 Right of appearance**

Before making a report under section 78, the Commissioner of Inquiry must, if a party, being:

- (a) the appellant, or
- (b) the Heritage Council, or
- (c) a person who has made representations to the Heritage Council under section 61 (3) with respect to the application for approval from the determination of which the appeal has been made, or
- (d) the consent authority from whose determination, or neglect or delay to make a determination, the appeal is made,

so desires, afford the party an opportunity of appearing personally or by counsel, solicitor or agent.

#### **79A Minister's decision**

- (1) The Minister, after considering such report as may be furnished to the Minister under section 78, may:
  - (a) dismiss the appeal, or
  - (b) allow the appeal either unconditionally or subject to such conditions as the Minister thinks proper to impose, or
  - (c) if the appeal is against the imposition of conditions, refuse to approve the application for approval from the determination of which the appeal has been made, or

- (d) return the report to the Commissioner of Inquiry concerned and request further consideration of the report.
- (2) If a report is returned under subsection (1), sections 78 and 79 and subsection (1) apply in respect of the further consideration of the report in the same way as they apply in respect of the furnishing of the report.

#### **79B Effect of the Minister's decision**

The decision of the Minister under section 79A (1), other than a decision under section 79A (1) (d), is final and has effect as if it were a decision of the consent authority from whose determination, or neglect or delay to make a determination, the appeal is made.

#### **4.14 Housing Act 1976 No 62**

##### **Section 19 Exercise of council's powers by Corporation**

Omit "the *Local Government Act 1919* or" wherever occurring.

#### **4.15 Hunter Valley Flood Mitigation Act 1956 No 10**

##### **Section 3 Certain Acts not affected**

Omit "the *Local Government Act 1919* or".

#### **4.16 Hunter Water Board (Corporatisation) Act 1991 No 53**

##### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (2):

*development* and *carry out development* have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

**[2]      Section 48 Definitions**

Omit paragraph (b) from the definition of *approval* in section 48 (1).

**[3]      Section 48 (2)**

Omit the subsection.

**4.17      Independent Commission Against Corruption Act 1988  
No 35**

**Section 3 Definitions**

Insert after paragraph (k) of the definition of *public official* in section 3 (1):

(k1) an accredited certifier within the meaning of the  
*Environmental Planning and Assessment Act*  
1979,

**4.18      Land and Environment Court Act 1979 No 204**

**[1]      Section 17 Class 1—environmental planning and protection  
appeals**

Omit “97, 98, 99, 102 and 103 (4)” from section 17 (d).

Insert instead “95A, 96, 96A, 97, 98, 98A, 109K, 121K, 121ZM and 149F”.

**[2]      Section 17 (e)**

Insert “appeals under section 70 of the *Heritage Act 1977* and”  
before “appeals”.



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**[3] Section 18 Class 2—local government and miscellaneous appeals and applications**

Omit “, 185” from section 18 (a).

**[4] Section 18 (a2)**

Insert after section 18 (a1):

(a2) appeals under section 26 (3) of the *Water Supply Authorities Act 1987*,

**[5] Section 19 Class 3—land tenure, valuation, rating and compensation matters**

Omit “section 103 (6)” from section 18 (g).

Insert instead “sections 96A (7) and 121ZL”.

**[6] Section 25A Application of Division**

Omit section 25A (1). Insert instead:

(1) This Division applies to:

- (a) a development consent granted, or purporting to be granted, under the *Environmental Planning and Assessment Act 1979*:
  - (i) by the Minister, and
  - (ii) whether before or after the commencement of this subsection, and
- (b) a development consent granted, or purporting to be granted, under the *Environmental Planning and Assessment Act 1979*:
  - (i) by any other consent authority, and
  - (ii) in respect of a development application made on or after the commencement of this subsection.

**[7]      Section 25A (2)**

Insert "or any other consent authority," after "Minister".

**[8]      Section 25A (3)**

Omit "104B". Insert instead "103".

**[9]      Section 25C Orders for validity of development consents**

Insert "or any other consent authority" after "Minister" wherever occurring.

**[10]     Section 25C (2)**

Omit "104C". Insert instead "104".

**4.19    Land Sales Act 1964 No 12**

**[1]      Section 2 Definitions**

Omit the definition of *Subdivision*. Insert instead:

*Subdivision* has the meaning given to *subdivision of land* by section 4B of the *Environmental Planning and Assessment Act 1979*.

**[2]      Section 4 Requirements as to subdivisions**

Omit section 4 (b). Insert instead:

- (b) the boundaries of the various lots in the subdivision follow the boundaries shown in a plan of subdivision that is endorsed with a subdivision certificate within the meaning of section 109C of the *Environmental Planning and Assessment Act 1979*, and
- (b1) in the case of a subdivision that requires development consent under the *Environmental Planning and Assessment Act 1979*, such a consent is in force, and

**4.20 Land Tax Management Act 1956 No 26**

**[1] Section 62J Land that is eligible to have unutilised value ascertained**

Insert “within the meaning of the *Conveyancing Act 1919*” after “current plan” in section 62J (1) (b).

**[2] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1A (1):

*Environmental Planning and Assessment Amendment Act 1997*

**4.21 Luna Park Site Act 1990 No 59**

**Section 21 Exclusion of s 344 of the Local Government Act 1919**

Omit the section.

**4.22 Mine Subsidence Compensation Act 1961 No 22**

**Section 15 Mine subsidence districts**

Omit “*Local Government Act 1919*” from section 15 (4).

Insert instead “*Environmental Planning and Assessment Act 1979*”.

**4.23 Mount Panorama Motor Racing Act 1989 No 108**

**[1] Section 5 Permits for conduct of specified motor racing meetings**

Omit “*Local Government Act 1919*” wherever occurring in section 5 (2) (b) and (c).

Insert instead “*Local Government Act 1993*”.



**[2]      Section 12 Suspension and application of certain legislation**

Omit section 12 (1) (a).

**4.24      National Parks and Wildlife Act 1974 No 80**

**[1]      Section 69A Definitions**

Omit section 69A (3) (c). Insert instead:

- (c)    to the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*.

**[2]      Section 90 Destruction etc of relics or Aboriginal places**

Insert “(other than an application for approval in respect of integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979*)” after “an application” in section 90 (7).

**[3]      Section 163A Application of Local Government Act 1919**

Omit the section.

**4.25      Noxious Weeds Act 1993 No 11**

**Dictionary**

Omit the definition of *public reserve*. Insert instead:

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

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#### **4.26 Olympic Co-ordination Authority Act 1995 No 10**

##### **Section 26 Subdivision legislation—subdivision approval by Authority**

Omit “Part 12 of the *Local Government Act 1919*,”.

#### **4.27 Ombudsman Act 1974 No 68**

##### **Section 5 Definitions**

Insert after paragraph (f) of the definition of *public authority* in section 5 (1):

- (f1) any accredited certifier within the meaning of the *Environmental Planning and Assessment Act 1979*,

#### **4.28 Pollution Control Act 1970 No 95**

##### **[1] Section 17BB**

Insert after section 17BA:

##### **17BB Integrated development**

The issue of a licence in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 6 of Part 4 of that Act.

##### **[2] Section 17K Pollution control approvals**

Insert after section 17K (1):

- (1A) The issue of a pollution control approval in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 6 of Part 4 of that Act.

**[3]      Section 17Q**

Insert after section 17P:

**17Q Validity of licences**

A person to whom a licence is granted after the commencement of this section cannot question the validity of the licence on the ground of failure to comply with any relevant provisions of the *Environmental Planning and Assessment Act 1979* in any legal proceedings except those commenced in the Court by the person before the expiration of the period prescribed for the purposes of section 17M (1) after being served with notice of the decision to grant the licence.

**4.29      Private Irrigation Districts Act 1973 No 47**

**Section 29 Construction of, and other work relating to, supply works and conveying works**

Omit “to the *Local Government Act 1919*,” from section 29 (1).

**4.30      Railway Construction (East Hills to Campbelltown) Act 1983 No 111**

**[1]      Section 6 Application of other Acts**

Omit “the *Local Government Act 1919*, of any ordinance made under that Act,”.

Insert instead “the *Local Government Act 1993*, of any regulation made under that Act,”.



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**[2] Section 10 Maintenance of roads and bridges**

Omit "*Local Government Act 1919*" from section 10 (1).

Insert instead "*the Local Government Act 1993*".

**4.31 Railway Construction (Malden to Port Kembla) Act 1983  
No 112**

**[1] Section 6 Application of other Acts**

Omit "the *Local Government Act 1919*, of any ordinance made under that Act,".

Insert instead "the *Local Government Act 1993*, of any regulation made under that Act,".

**[2] Section 10 Maintenance of roads and bridges**

Omit "*Local Government Act 1919*" from section 10 (1).

Insert instead "*the Local Government Act 1993*".

**4.32 Real Property Act 1900 No 25**

**[1] Section 37**

Insert after section 36:

**37 Transactions effecting the subdivision of land**

(1) The Registrar-General:

- (a) may refuse to accept a dealing or instrument for registration in the Register, or
- (b) may refuse to register a dealing or instrument in the Register, or

(c) may reject a dealing or instrument lodged for registration in the Register,

if the dealing or instrument purports to give effect to a transaction that contravenes section 23F of the *Conveyancing Act 1919*.

(2) The Registrar-General may refuse to create a folio of the Register for any land, and may refuse to issue a certificate of title for any land, if the land does not comprise one or more existing lots in a current plan within the meaning of the *Conveyancing Act 1919*.

## **[2]      Section 45B Definitions**

Omit the definition of *current plan* from section 45B (1).

Insert instead:

*current plan* has the same meaning as it has in the *Conveyancing Act 1919*.

## **[3]      Section 56A Postponement of mortgages**

Omit “section 327AA of the *Local Government Act 1919*” from section 56A (1A).

Insert instead “section 23F of the *Conveyancing Act 1919*”.

## **4.33      Rivers and Foreshores Improvement Act 1948 No 20**

### **Section 22C Grant etc of permit**

Insert after section 22C (3):

(3A) The issue of a permit in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 6 of Part 4 of that Act.

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**4.34 Roads Act 1993 No 33**

**[1] Section 9 Public road created by registration of plan**

Omit section 9 (3).

**[2] Section 15 Public road may not be opened by private persons except with consent**

Omit the section.

**[3] Section 139 Nature of consent**

Insert after section 139 (1) (c):

(c1) in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979*, is subject to Division 6 of Part 4 of that Act, and

**4.35 Royal Agricultural Society Act 1911 No 1**

**Section 6 Exemption from rates**

Omit "*Local Government Act 1919*" wherever occurring.

Insert instead "*Local Government Act 1993*".

**4.36 Soil Conservation Act 1938 No 10**

**Section 21D Authority to destroy timber on protected land**

Insert after section 21D (1):

(1A) The issue of an authority in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 6 of Part 4 of that Act.



**4.37 State Environmental Planning Policy No 1—  
Development Standards**

**Clause 4A**

Insert after clause 4:

**4A Policy does not apply to complying development**

This Policy does not apply to complying development.

**4.38 Strata Titles (Freehold Development) Act 1973 No 68**

**[1] Section 5 Definitions**

Omit “section 327AA (1) of the *Local Government Act 1919*” from the definition of **current plan** in section 5 (1).

Insert instead “section 7 (1) of the *Conveyancing Act 1919*”.

**[2] Section 5 (1)**

Omit the definition of **public place**.

Insert instead in alphabetical order:

**certificate of compliance**, in relation to a water supply authority, means a certificate of compliance issued by the water supply authority in accordance with the Act under which the water supply authority is constituted.

**public place** means land that is dedicated as a public reserve or set aside as a drainage reserve, under section 49 of the *Local Government Act 1993*.

**water supply authority** means:

- (a) the Sydney Water Corporation Limited, the Hunter Water Corporation Limited or a water supply authority constituted under the *Water Supply Authorities Act 1987*, or
- (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

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**[3] Section 7 Subdivision**

Omit “a lot or portion referred to in section 327AA (2) of the *Local Government Act 1919*” from the definition of ***current plan lot*** in section 7 (1).

Insert instead “an existing lot within the meaning of the *Conveyancing Act 1919*”.

**[4] Section 7 (1) (b)**

Omit the paragraph from the definition of ***land***. Insert instead:

- (b) land the subject of a transaction referred to in section 23G of the *Conveyancing Act 1919*, being land of which every part is contiguous with another part, or

**[5] Section 7 (2A) (b)**

Omit the paragraph. Insert instead:

- (b) land the subject of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or

**[6] Section 27 Dedication of common property**

Omit the definition of ***drainage reserve*** from section 27 (1).

Insert instead:

***drainage reserve*** means land that is set aside as a drainage reserve, under section 49 of the *Local Government Act 1993*.

**[7] Section 36 Other Acts not to apply to subdivisions under Division 1**

Omit “the *Local Government Act 1919*,” from section 36 (1).

**[8]      Section 37 Approval of proposed strata plans, certain subdivisions and conversions of lots into common property**

Omit “rectified;” from section 37 (1) (a) (i).  
Insert instead “rectified, and”.

**[9]      Section 37 (1) (a) (iii)**

Omit “council, or”. Insert instead “council, and”.

**[10]     Section 37 (1) (a) (iv)**

Insert after section 37 (1) (a) (iii):

- (iv) if the land proposed to be subdivided is situated within a water supply authority’s area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, or

**[11]     Section 37 (1) (b) (v)**

Omit “order.”. Insert instead “order, and”.

**[12]     Section 37 (1) (b) (vi)**

Insert after section 37 (1) (b) (v):

- (vi) if the land proposed to be subdivided is situated within a water supply authority’s area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision.



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#### 4.39 Strata Titles (Leasehold Development) Act 1986 No 219

##### [1] Section 4 Definitions

Omit "section 327AA (1) of the *Local Government Act 1919*" from the definition of **current plan** in section 4 (1).

Insert instead "section 7 (1) of the *Conveyancing Act 1919*".

##### [2] Section 4 (1)

Omit the definition of **public place**.

Insert instead in alphabetical order:

**certificate of compliance**, in relation to a water supply authority, means a certificate of compliance issued by the water supply authority in accordance with the Act under which the water supply authority is constituted.

**public place** means land that is dedicated as a public reserve or set aside as a drainage reserve, under section 49 of the *Local Government Act 1993*.

**water supply authority** means:

- (a) the Sydney Water Corporation Limited, the Hunter Water Corporation Limited or a water supply authority constituted under the *Water Supply Authorities Act 1987*, or
- (b) a council or county council exercising water supply, sewerage or drainage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

##### [3] Section 6 Subdivision (1973 Act, s 7)

Omit "a lot or portion referred to in section 327AA (2) of the *Local Government Act 1919*" from the definition of **current plan lot** in section 6 (1).

Insert instead "an existing lot within the meaning of the *Conveyancing Act 1919*".

**[4]      Section 6 (1) (b)**

Omit the paragraph from the definition of *land*. Insert instead:

- (b) land the subject of a transaction referred to in section 23G of the *Conveyancing Act 1919*, being land of which every part is contiguous with another part, or

**[5]      Section 6 (3) (b)**

Omit the paragraph. Insert instead:

- (b) land the subject of a transaction referred to in section 23G of the *Conveyancing Act 1919*, or

**[6]      Section 31 Dedication of common property (1973 Act, s 27)**

Omit the definition of *drainage reserve* from section 31 (1).  
Insert instead:

*drainage reserve* means land that is set aside as a drainage reserve, under section 49 of the *Local Government Act 1993*.

**[7]      Section 65 Other Acts not to apply to subdivisions under Division 1 (1973 Act, s 36)**

Omit “the *Local Government Act 1919*,” from section 65 (1).

**[8]      Section 66 Approval of proposed strata plans, certain subdivisions and conversions of lots into common property (1973 Act, s 37)**

Omit “rectified;” from section 66 (1) (a) (i).  
Insert instead “rectified, and”.

**[9] Section 66 (1) (a) (iii)**

Omit “council,”. Insert instead “council, and”.

**[10] Section 66 (1) (a) (iv)**

Insert after section 66 (1) (a) (iii):

- (iv) if the land proposed to be subdivided is situated within a water supply authority’s area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision,

**[11] Section 66 (1) (b) (v)**

Omit “order, or”. Insert instead “order, and”.

**[12] Section 66 (1) (b) (vi)**

Insert after section 66 (1) (b) (v):

- (vi) if the land proposed to be subdivided is situated within a water supply authority’s area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision, or

**[13] Section 66 (1) (c) (v)**

Omit “order.”. Insert instead “order, and”.

**[14] Section 66 (1) (c) (vi)**

Insert after section 66 (1) (c) (v):

- (vi) if the land proposed to be subdivided is situated within a water supply authority’s area of operations—the water supply authority has issued a certificate of compliance for the proposed subdivision.

#### **4.40    Sydney Cove Redevelopment Authority Act 1968 No 56**

##### **[1]    Section 25 Development consent and building approval**

Omit section 25 (1A) (d). Insert instead:

- (d)    the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*, and

##### **[2]    Section 25 (2) and (2A)**

Omit “Part 11 of the *Local Government Act 1919*” wherever occurring.

Insert instead “Part 1 of Chapter 7 of the *Local Government Act 1993*”.

#### **4.41    Sydney Cricket and Sports Ground Act 1978 No 72**

##### **[1]    Section 4 Definitions**

Omit section 4 (2) (c). Insert instead:

- (c)    a reference to the dedication of land as a public road within the meaning of the *Roads Act 1993*.

##### **[2]    Section 16B Application of certain laws to designated land**

Omit section 16B (b).

#### **4.42    Treasury Corporation Act 1983 No 75**

##### **[1]    Section 3 Definitions**

Omit “the *Local Government Act 1919*” from the definition of *council* in section 3 (1).

Insert instead “the *Local Government Act 1993*”.



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**[2] Section 9A Provision of financial accommodation to councils**

Omit section 9A (4).

**[3] Section 9A (6)**

Omit "the *Local Government Act 1919*".

Insert instead "the *Local Government Act 1993*".

**4.43 Waste Minimisation and Management Act 1995 No 102**

**[1] Section 49 Determination of applications for licences**

Insert after section 49 (1):

(1A) The granting of a licence in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 6 of Part 4 of that Act.

**[2] Section 52A**

Insert after section 52:

**52A Validity of licences**

A person to whom a licence is granted after the commencement of this section cannot question the validity of the licence on the ground of failure to comply with any relevant provisions of the *Environmental Planning and Assessment Act 1979* in any legal proceedings except those commenced in the Court by the person within 21 days after the date the EPA gave notice of its decision to grant the licence to the person.

#### **4.44    Water Act 1912 No 44**

**[1]    Part 1, Division 1, heading**

Insert after the heading to Part 1:

**Division 1      General**

**[2]    Part 1, Division 2 (secs 4I–4M)**

Insert after section 4H:

**Division 2      Relationship with Environmental Planning  
and Assessment Act 1979—integrated  
development**

**4I    Application of Division 2**

This Division prevails to the extent of any inconsistency between this Division and any other provision of this Act.

**4J    Definition**

In this Division:

*consent authority* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

*development consent* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

*integrated development* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**4K    Notice of applications**

- (1) This section applies to the advertising or giving of notice of an application under section 11 (1) (and that subsection as applied by section 13A (3)), section 18G, section 20A (1) (and that subsection as applied by section 20CA (2) or section 20K (2)), section 113 (2) or section 169.

- (2) The advertising or giving of notice under a provision to which this section applies is not to be given of an application in respect of integrated development of which public notice has been given under the *Environmental Planning and Assessment Act 1979*.

#### **4L Objectors rights of appeal**

- (1) This section applies if, in relation to integrated development:
- (a) a consent authority has obtained the general terms of:
    - (i) a licence proposed to be issued under section 10 in relation to the development, or
    - (ii) a licence proposed to be issued under section 13A in relation to the development, or
    - (iii) a permit proposed to be granted under section 18F in relation to the development, or
    - (iv) an authority proposed to be issued under section 20B in relation to the development, or
    - (v) an authority proposed to be issued under section 20CA in relation to the development, or
    - (vi) a group licence proposed to be issued under section 20L in relation to the development, or
    - (vii) a licence proposed to be granted under section 116 in relation to the development, or
    - (viii) an approval proposed to be granted under Part 8 in relation to the development, or

- (b) the Ministerial Corporation fails to inform a consent authority, in accordance with the regulations under the *Environmental Planning and Assessment Act 1979*, whether or not it will grant or issue a licence, permit, authority, group licence or approval referred to in paragraph (a) or of the general terms of such a licence, permit, authority, group licence or approval,

and the consent authority, after obtaining those general terms or after the failure to be informed, has granted development consent to the integrated development.

- (2) If this section applies:

- (a) a person has no right to make or lodge an objection under section 11 (2) or (2A) (or those subsections as applied by section 13A (3)), section 20A (1A) or (1B) (or those subsections as applied by section 20CA (2) or section 20K (2)) or section 170 (1), and
- (b) a public inquiry must not be directed to be held, or held or caused to be held, under section 11 (5), section 13A (4), section 20A (2), section 20CA (4), section 114, section 172 (2) or section 173 (2) or (3), and
- (c) a person has no right of appeal to the Land and Environment Court under section 11 (6), section 13A (4), section 20CA (4) or section 174 (4) (b) or (5),

in respect of any matter relating to the licence, permit, authority, group licence or approval concerned.

- (3) Subsection (2) (c) does not affect a right of appeal to which an objector may be entitled under section 98 of the *Environmental Planning and Assessment Act 1979*.

- (4) In this section:

**person** includes an applicant, occupier of land, local occupier, owner of land, Board of Management, authority, statutory authority and Ministerial Corporation.



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## 4M Regulations

The Governor may make regulations not inconsistent with this Division prescribing all matters that by this Division are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying this Division into effect.

### 4.45 Water Board (Corporatisation) Act 1994 No 88

#### Section 69 Definitions

Omit paragraph (b) of the definition of *approval*.

### 4.46 Water Supply Authorities Act 1987 No 140

#### [1] Section 3 Definitions

Omit the definition of *development* from section 3 (1).

Insert instead in alphabetical order:

*development* and *carry out development* have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

*works* includes the following:

- (a) water mains and water headworks,
- (b) sewer mains and sewage treatment works,
- (c) drainage channels,
- (d) any works ancillary to works referred to in paragraph (a), (b) or (c).

**[2]      Section 3 (2)**

Omit the subsection.

**[3]      Part 3, Division 2**

Omit the Division. Insert instead:

**Division 2      Developer contributions to the construction  
of works**

**24 Application for certificate of compliance**

- (1)      A person may apply to an Authority for a certificate of compliance for development carried out, or proposed to be carried out, within the Authority's area.
- (2)      An application must be accompanied by such information as the regulations may prescribe.

**25 Authority may impose certain requirements before  
granting certificate of compliance**

- (1)      This section applies to such kinds of development as are prescribed by the regulations for the purposes of this section.
- (2)      As a precondition to granting a certificate of compliance for development, an Authority may, by notice in writing served on the applicant, require the applicant to do either or both of the following:
  - (a)      to pay a specified amount to the Authority by way of contribution towards the cost of such works as are specified in the notice, being existing works or projected works, or both,
  - (b)      to construct works to serve the development.
- (3)      In calculating an amount for the purposes of subsection (2) (a):
  - (a)      the value of existing works and the estimated cost of projected works may be taken into consideration, and

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- (b) the amount of any government subsidy or similar payment is not to be deducted from the relevant value or cost of the works, and
    - (c) consideration is to be given to any guidelines issued for the time being for the purposes of this section by the Minister for Public Works.
  - (4) If an Authority imposes a requirement under this section on the Crown, the Crown may request the Minister for Planning to determine whether such a requirement should be imposed and, if so, in what terms.
  - (5) The determination made by the Minister for Planning in response to such a request is final and is taken to be the determination of the Authority.
  - (6) Any works constructed in compliance with a requirement under this section are the property of the Authority.

## **26 Granting of certificates of compliance**

- (1) An Authority must grant a certificate of compliance for development:
  - (a) within 60 days after an application for the granting of such a certificate is made, or
  - (b) if, within that period, the Authority imposes a requirement on the applicant under section 25, as soon as it is satisfied that the requirement has been complied with.
- (2) An Authority may be satisfied that a requirement under section 25 has been complied with if the applicant lodges with the Authority such security for compliance with the requirement as the Authority may approve.
- (3) If an Authority fails or refuses to give a compliance certificate within the period of 60 days after an application is duly made in that regard, the applicant may appeal to the Land and Environment Court, within 12 months after the expiration of that period, against the failure or refusal.

#### **4.47    Wilderness Act 1987 No 196**

##### **Section 2 Definitions**

Omit section 2 (2) (c). Insert instead:

- (c)    to the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*.

#### **4.48    Wills, Probate and Administration Act 1898 No 13**

##### **Fourth Schedule Rights of surviving spouse of intestate with respect to acquisition of the matrimonial home**

Omit "*Local Government Act 1919*" from clause 3 (1) (d) (i).

Insert instead "*Environmental Planning and Assessment Act 1979*".

[Minister's second reading speech made in—  
Legislative Assembly on 15 October 1997  
Legislative Council on 5 December 1997]

BY AUTHORITY