

Introduced by the Hon Ian Cohen, MLC

First print



New South Wales

Environmental Planning and Assessment Amendment (Public Participation and Environmental Protection) Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to make amendments to the *Environmental Planning and Assessment Act 1979* in relation to environmental planning control so as to modify the effect of the amendments made to that Act by the *Environmental Planning and Assessment Amendment Act 1997*.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1], [3] and [4] relate to exempt development. **Schedule 1 [1]** inserts a definition of *environmentally sensitive area* into the Act. The definition is relevant to the determination of whether development is appropriate to be classified as exempt development. **Schedule 1 [3] and [4]** prevent development from being classified as exempt development if it is proposed to carry out the development on certain environmentally fragile land. **Schedule 1 [1]** also inserts a definition of *principles of ecologically sustainable development* into the Act. The definition is relevant to the objects of the Act and the matters that are required to be taken into consideration in determining a development application.

Schedule 1 [2] amends the objects of the Act so that it is an object "to encourage development in accordance with the principles of ecologically sustainable development" rather than "to encourage ecologically sustainable development".

Schedule 1 [5]–[10] relate to complying development. **Schedule 1 [5]** prevents development consent from being granted by the issue of a complying development certificate. **Schedule 1 [6]** prevents development that requires the concurrence of the Director-General of National Parks and Wildlife from being classified as complying development. **Schedule 1 [7]–[10]** add several categories of environmentally fragile land to the list of land on which it is inappropriate that complying development be permitted.

Schedule 1 [11] relates to State significant development. It prevents the Minister for Urban Affairs and Planning from declaring development to be State significant development.

Schedule 1 [13] extends the classes of persons to whom notice of the making of a development application is to be given to include:

- adjoining owners
- persons who may be detrimentally affected by the proposed development

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- the secretary of any precinct committee
- persons to whom notice is required to be given under a development control plan,

and makes other provisions concerning the giving of notice.

Schedule 1 [12] and **[14]** relate to designated development. **Schedule 1 [12]** requires a development application for designated development to be accompanied by a social impact statement in addition to an environmental impact statement. **Schedule 1 [14]** requires the consent authority to give notice of its decision not to place the amendment, substitution or withdrawal of a development application for designated development on public exhibition not only to the applicant but also to any person who made a submission when the original application was exhibited.

Schedule 1 [15] requires a person who makes a decision with respect to a development consent or concurrence to give the reasons for the decision.

Schedule 1 [16] expands, and specifies with greater particularity, the matters that must be taken into consideration by a consent authority in determining a development application.

Schedule 1 [17] requires the Director-General of the Department of Urban Affairs and Planning, in cases where the Minister has determined a development application for designated development after a Commission of Inquiry has been held, to notify the applicant, the consent authority and each person who made a submission concerning the development of the Minister's determination and the reasons for it.

Schedule 1 [18] enables a condition to be imposed in granting development consent for the protection of any items identified for retention by the consent.

Schedule 1 [19] requires adjoining owners to be given 2 days' notice of an intention to commence the erection of a building.

Schedule 1 [20] requires a council to give notice of a request for the review of a development application for advertised development to be given to each person who made a submission concerning the application and to consider any further submissions made by those persons.

Schedule 1 [21]–[23] relate to complying development certificates. **Schedule 1 [21]** provides that a complying development certificate alone is not sufficient to authorise the use of a building erected in compliance with it. **Schedule 1 [22]** requires an accredited certifier, in dealing with an application for a complying development certificate, to make proper inquiry

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as to the existence of any threatened species on the land to which the application relates. **Schedule 1 [23]** extends, from 7 days to 21 days, the period within which an application for a complying development certificate must be determined.

Schedule 1 [24] requires that notice be given to persons who made submissions in respect of a development application that is referred to the Minister for determination whether or not the Minister directs that a Commission of Inquiry be held.

Schedule 1 [25] clarifies the rights of appeal that apply to the determination of certain development applications for State significant development.

Schedule 1 [26]–[33] relate to integrated development. **Schedule 1 [26]** expands the list of integrated development to include authorisations, permits and consents under sections 86, 87 and 90 of the *National Parks and Wildlife Act 1974*. **Schedule 1 [27]** clarifies the circumstances in which development that may involve a relic is, or is not, integrated development. **Schedule 1 [28]** and **[30]** limit and regulate the circumstances in which a consent authority, in the absence of a response from an approval body, may determine a development application in respect of integrated development that requires an authorisation, permit or consent under section 86, 87 or 90 of the *National Parks and Wildlife Act 1974*. **Schedule 1 [29]** requires the Premier, in settling a dispute between the Minister and an approval body concerning State significant development that is integrated development, to give reasons for the decision. **Schedule 1 [31]** inserts proposed sections 92B and 92C into the Act. Proposed section 92B imposes additional requirements relating to the public exhibition of, and the making and consideration of submissions concerning, integrated development. Proposed section 92C specifies the period within which an approval body must notify the consent authority of its decision concerning an application for integrated development. **Schedule 1 [32]** and **[33]** enable an approval body to give an approval that is inconsistent with a development consent for integrated development in specified circumstances.

Schedule 1 [34] requires a draft contributions plan to be publicly exhibited for a period of not less than 28 days.

Schedule 1 [35]–[37] relate to the modification of development consents. **Schedule 1 [35]** requires a consent authority to be satisfied, in addition to the other specified matters, that no prejudice will be caused to any person who objected to the development application before it modifies a development consent. **Schedule 1 [36]** requires notice to be given to persons who made

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submissions before a consent can be modified. **Schedule 1 [37]** requires the consent authority to take into consideration the cumulative impacts of previous modifications before further modifying a consent.

Schedule 1 [38] requires a council to enter in the register of particulars concerning applications for development consent details of submissions made concerning the application and modifications of consent applications and determinations.

Schedule 1 [39] and **[40]** limit the scope of a compliance certificate.

Schedule 1 [41] permits the replacement of one accredited certifier with another only if the first accredited certifier dies or becomes a mentally incapacitated person or bankrupt.

Schedule 1 [42] requires an accredited certifier to lodge a bond with a council if the accredited certifier issues a notice to a person requiring the person to carry out work.

Schedule 1 [43] clarifies the circumstances in which an authorisation by the Minister of a professional association as an accreditation body remains in force and may be renewed.

Schedule 1 [44] and **[45]** relate to the accreditation of accredited certifiers. **Schedule 1 [44]** extends the grounds on which an accreditation body may refuse to accredit a person as an accredited certifier. **Schedule 1 [45]** clarifies the circumstances in which the accreditation of a person remains in force and may be renewed.

Schedule 1 [46] and **[47]** relate to the auditing of accredited certifiers. **Schedule 1 [46]** removes the discretion of the Director-General of the Department of Local Government, in circumstances where the Director-General has been given a report that an accredited certifier is or may be guilty of unsatisfactory professional conduct or professional misconduct, to give a copy of the report to the relevant accreditation body and to apply to the Administrative Decisions Tribunal for a disciplinary finding. **Schedule 1 [47]** requires the Director-General to carry out a minimum of 50 audits each year.

Schedule 1 [48] and **[49]** relate to the action to be taken by an accreditation body after an investigation into a complaint against an accredited certifier has been completed. **Schedule 1 [48]** enables the complainant to apply to the Tribunal for a disciplinary finding. **Schedule 1 [49]** removes the requirement that the consent of the accredited certifier must be obtained before disciplinary action may be taken against the accredited certifier where an

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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.

Schedule 1 [50]–[52] and [57] increase penalties for various offences by accredited certifiers.

Schedule 1 [53] and [54] prevent the exclusion from the definition of *activity* for the purposes of Part 5 of the Act of exempt development or development that is prescribed by the regulations.

Schedule 1 [55] and [56] extend the list of items of the environmental heritage in respect of which the impact of a proposed order under Division 2A of Part 6 of the Act must be considered before the order can be given to include items listed in the Register of the National Estate kept in pursuance of the *Australian Heritage Commission Act 1975* of the Commonwealth.

Schedule 1 [58] enables the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act.

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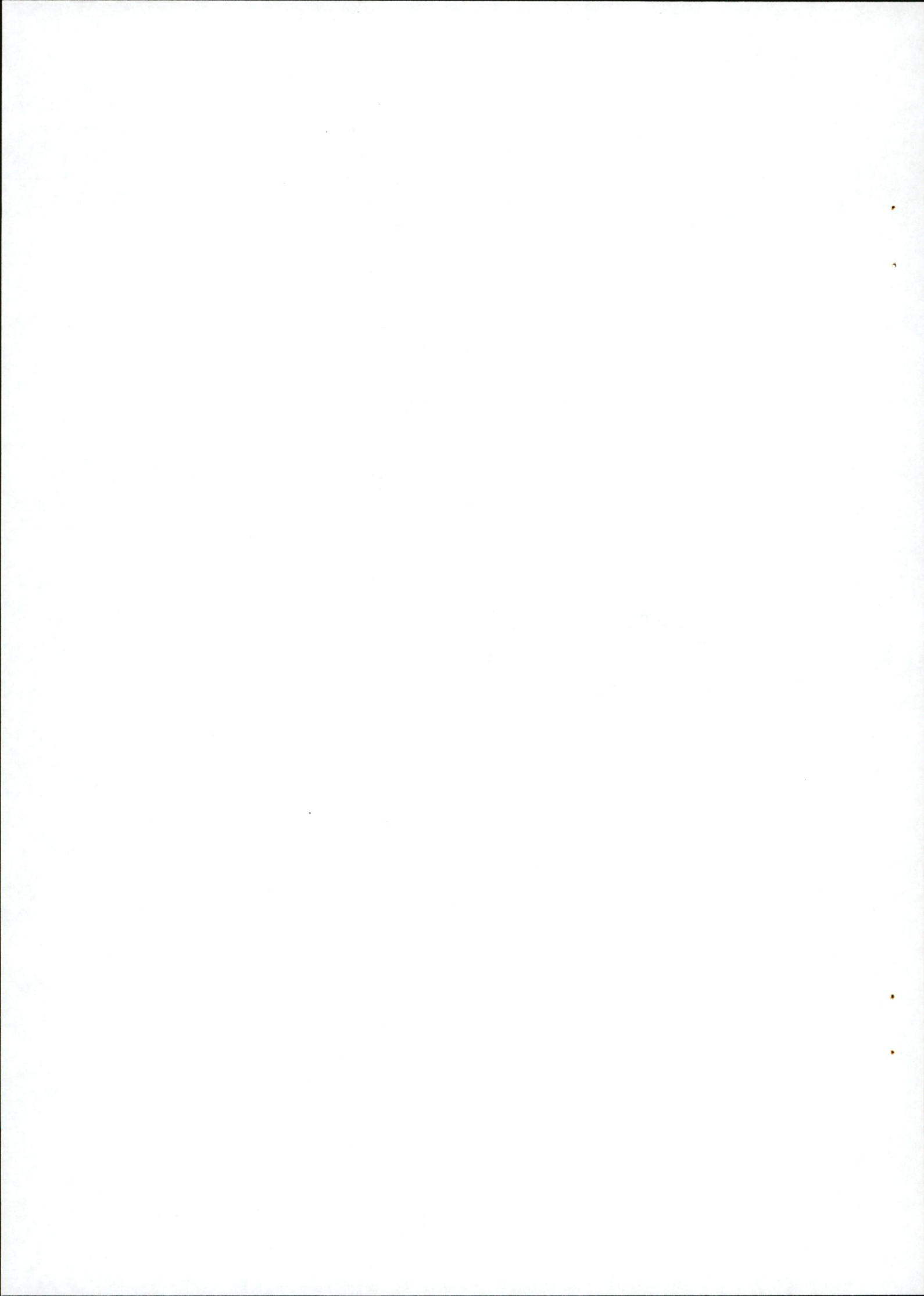


New South Wales

Environmental Planning and Assessment Amendment (Public Participation and Environmental Protection) Bill 1998

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New South Wales

Environmental Planning and Assessment Amendment (Public Participation and Environmental Protection) Bill 1998

No , 1998

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* in relation to environmental planning and assessment, to increase public participation rights and environmental protection measures in the development assessment process, and to ensure the principles of ecologically sustainable development are applied during the process.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Amendment (Public Participation and Environmental Protection) Act 1998*.

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2 Commencement

This Act commences on the date of assent.

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.

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Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

- environmentally sensitive area*** means: 5
- (a) land that is identified in an environmental planning instrument as an environment protection zone such as for the protection or preservation of habitats, plant communities, escarpments, wetlands or foreshores, or 10
 - (b) land that is protected or preserved under *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests*, or
 - (c) land that is reserved or dedicated as a national park or a historic site, or is dedicated as a nature reserve or declared as a wilderness area, under the *National Parks and Wildlife Act 1974*, or 15
 - (d) an area that is declared to be a marine park under the *Marine Parks Act 1997*, or 20
 - (e) an area that is declared as an aquatic reserve under the *Fisheries Management Act 1994*, or
 - (f) land that is reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or other environmental protection purposes, or for Aboriginal cultural heritage protection, or 25
 - (g) a place declared under section 84 of the *National Parks and Wildlife Act 1974* to be an Aboriginal place for the purposes of that Act, or 30
 - (h) land on which there is a relic within the meaning of the *National Parks and Wildlife Act 1974*, or

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- (i) land that is subject to, or land on which there is a significant Aboriginal object that is the subject of, a declaration under Division 1 or 2 of Part II of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* of the Commonwealth. 5

principles of ecologically sustainable development means the following statements of principle:

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs: 10

- (a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. 15
- (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations. 20
- (c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration. 25
- (d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as: 30
- (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement.
- (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste, 35

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- (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems. 5
- [2] Section 5 Objects**
- Insert “development in accordance with the principles of” before “ecologically” in section 5 (a) (vii). 10
- [3] Section 76 Development that does not need consent**
- Insert after section 76 (2):
- (2A) A provision under subsection (2) cannot be made in respect of: 15
- (a) land to which any of the following environmental planning instruments apply:
- State Environmental Planning Policy No 14—Coastal Wetlands*
- State Environmental Planning Policy No 26—Littoral Rainforests* 20
- State Environmental Planning Policy No 44—Koala Habitat Protection*
- (b) development for which the consent of the Minister for Land and Water Conservation is required under the *Native Vegetation Conservation Act 1997*. 25
- [4] Section 76 (3) and (4)**
- Omit section 76 (3). Insert instead:
- (3) If development is exempt development, 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: 30

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- (a) the land is critical habitat or is, or is likely to be, the habitat of threatened species, or is subject to a recovery plan, or
 - (b) the land is, or is part of, a wilderness area (within the meaning of the *Wilderness Act 1987*), or 5
 - (c) the concurrence of the Director-General of National Parks and Wildlife would be required if the development was development that could be carried out only with development consent, or
 - (d) the land comprises, or is land on which there is, an item of the environmental heritage: 10
 - (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 15
 - (e) the land is identified as an environmentally sensitive area in the environmental planning instrument that makes provision for the exempt development. 20
- A provision made under subsection (2) ceases to have effect in relation to land if the land becomes land to which this subsection applies. 20
- (4) At least once in every 2 years after an environmental planning instrument is made that provides that development is exempt development, the instrument must be reviewed: 25
 - (a) by the council, in the case of a local environmental plan, and
 - (b) by the Minister, in the case of a State environmental planning policy or a regional environmental plan. 30

[5] Section 76A Development that needs consent

Omit section 76A (2). Insert instead:

- (2) For the purposes of subsection (1), a development consent may be obtained by the making of a determination by a consent authority to grant development consent. 35

[6] Section 76A (6) (c)

Omit the paragraph. Insert instead:

- (c) if the development is development for which development consent cannot be granted except with the concurrence of a person other than the consent authority, or

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[7] Section 76A (6) (d)

Insert "or is, or is likely to be, the habitat of threatened species, or is subject to a recovery plan" after "habitat".

[8] Section 76A (6) (f1)

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Insert after section 76A (6) (f):

(f1) so as to apply to:

- (i) land declared under section 84 of the *National Parks and Wildlife Act 1974* to be an Aboriginal place for the purposes of that Act, or

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- (ii) land on which there is a relic within the meaning of the *National Parks and Wildlife Act 1974*, or

- (iii) land that is subject to, or land on which there is a significant Aboriginal object that is the subject of, a declaration under Division 1 or 2 of Part II of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* of the Commonwealth, or

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[9] Section 76A (6) (g)

Omit "the environmental planning instrument that makes provision for the complying development".

Insert instead "an environmental planning instrument that applies to the land".

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[10] Section 76A (6A) and (6B)

Insert after section 76A (6):

- (6A) A provision under subsection (5) cannot be made in respect of:
- (a) land to which any of the following environmental planning instruments apply: 5
 - State Environmental Planning Policy No 14—Coastal Wetlands*
 - State Environmental Planning Policy No 26—Littoral Rainforests* 10
 - State Environmental Planning Policy No 44—Koala Habitat Protection*
 - (b) development for which the consent of the Minister for Land and Water Conservation is required under the *Native Vegetation Conservation Act 1997*. 15
- (6B) At least once in every 2 years after an environmental planning instrument is made that provides that development is complying development, the instrument must be reviewed:
- (a) by the council, in the case of a local environmental plan, and 20
 - (b) by the Minister, in the case of a State environmental planning policy or a regional environmental plan.

[11] Section 76A (7) (b) 25

Omit the paragraph.

[12] Section 78A Application

Omit section 78A (8) (a). Insert instead:

- (a) if the development application is in respect of designated development: 30
 - (i) an environmental impact statement, and
 - (ii) a social impact statement,prepared by or on behalf of the applicant in the form prescribed by the regulations, or

[13] Section 78B

Insert after section 78A:

78B Notice of development applications generally

- (1) The consent authority must give notice of a development application to the persons who appear to the consent authority to own the land adjoining the land to which the application applies. 5
- (2) The consent authority must give notice of a development application to any persons who may be detrimentally affected by the proposed development if it is carried out. 10
- (3) In forming its opinion, the consent authority must take into consideration:
 - (a) the likely effect the proposed development would have, including the social, environmental and economic effect, and 15
 - (b) the public interest, and
 - (c) the principles of ecologically sustainable development.
- (4) The consent authority must give notice of a development application to the secretary of the precinct committee (if any) where the development is proposed to be carried out. 20
- (5) The consent authority must also give notice of the making of a development application to any persons to whom notice is required to be given under a development control plan. 25
- (6) For the purposes of this section, land adjoins other land if and only if it abuts that other land or is separated from it only by a pathway, driveway or similar thoroughfare.
- (7) The notice must be given as soon as practicable after the development application is made to the consent authority and at least 10 days before the consent authority determines the development application. 30

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- (8) A notice to an association for a community, precinct or neighbourhood parcel within the meaning of the *Community Land Development Act 1989* or to a body corporate for a parcel within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986* is taken to be a notice under this section to the owner of each lot within the parcel concerned. 5
- (9) If a parcel of adjoining land is owned by more than one person, a notice to one owner is taken to satisfy the requirements of this section. 10
- (10) A notice in respect of a development application involving the erection of a building must be in the form prescribed by the regulations and must include or be accompanied by a plan in the form prescribed by the regulations showing the height and external configuration of the building in relation to the site on which it is proposed to be erected. 15
- [14] Section 79 Public participation—designated development**
- Insert “and any person who made a submission under subsection (5)” after “applicant” in section 79 (7). 20
- [15] Section 79B Consultation and concurrence**
- Insert after section 79B (8):
- (8A) A decision with respect to a development consent or concurrence referred to in this section, by whoever made, must include the reasons for which it was made. 25
- [16] Section 79C Evaluation**
- Omit section 79C (1). Insert instead:
- (1) **Matters for consideration—general**
- In determining a development application, a consent authority must take into consideration any of the following matters that are relevant to the development the subject of the development application: 30

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- (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 5
 - (iii) any development control plan, and
 - (iv) any matters prescribed by the regulations, that apply to the land to which the development application relates, 10
- (b) any submissions received in relation to the development that the consent authority is required to consider by this Act or the regulations,
- (c) the principles of ecologically sustainable development, 15
- (d) the effects of the development on the environment, including the following:
- (i) the effects of the development on biodiversity,
 - (ii) the effects of the development on native vegetation, 20
 - (iii) the effects of the development on natural, cultural and built heritage,
 - (iv) the effects of the development on the land, air and water environments, 25
 - (v) the noise likely to be generated by the development,
 - (vi) the waste likely to be generated by the development,
 - (vii) the traffic likely to be generated by the development, 30
 - (viii) the effects of the development on the existing and likely future amenity of the neighbourhood,
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Schedule 1 Amendments

- (ix) the effects of the development on adjoining land and on other land in the locality,
- (x) the cumulative environmental impacts of previous development in the locality,
- (e) if the development is likely to cause harm to the environment, ways of protecting the environment or mitigating the harm, 5
- (f) the social and economic effects of the development,
- (g) the suitability of the site for the development, including the following: 10
 - (i) whether the land to which the development application relates is subject to flooding, tidal inundation, subsidence, slip or bushfire, 15
 - (ii) whether adequate utility services are available,
 - (iii) whether public transport services are necessary and, if so, whether they are available and adequate, 20
 - (iv) the character, location, siting, scale, density, design and external appearance of the development, and its relationship with the land on which it is sited,
- (h) in the case of integrated development, the general terms provided by any approval body (within the meaning of section 90A) to the consent authority, 25
- (i) the provisions of any other law in force on the day on which the development application is lodged with the consent authority that are relevant to the development application, 30
- (j) any representations made by a public authority in relation to the development application, or to the development of the area, and the rights and powers of that public authority, 35
- (k) the public interest,
- (l) any other consideration.

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- (1A) A consent authority must consider each of the matters it is required to take into account under subsection (1) in a comprehensive, thorough manner.
- [17] Section 80 Determination**
- Insert after section 80 (7): 5
- (7A) The Director must notify the applicant, the consent authority and each person who made a submission in relation to the development application of the Minister's determination and, if the determination is made by the granting of consent subject to conditions or by the refusing of consent, the notification must indicate the reasons for the imposition of the conditions or the refusal. 10
- [18] Section 80A Imposition of conditions**
- Insert after section 80A (6) (c): 15
- (d) protecting against and making good damage caused to any items identified for retention by the development consent.
- [19] Section 81A Effects of development consents and commencement of development** 20
- Insert "and all adjoining owners" after "council" in section 81A (2) (c).
- [20] Section 82A Review of determination**
- Insert after section 82A (6):
- (6A) If a request for a review relates to a development application for advertised development, the council: 25
- (a) must give notification of the request to each person who made a submission to the council concerning the development application, and
- (b) must consider any further submissions made to it by any such person within 14 days after the date on which the person was notified of the request. 30

[21] Section 85 What is a “complying development certificate”?

Omit section 85 (3) and (4) and the notes to those subsections.
Insert instead:

(3) Erection of buildings

A complying development certificate that enables the erection of a building is not sufficient to authorise the use of the building when erected for the purpose stated in the application unless an occupational certificate has been issued. 5

[22] Section 85A Process for obtaining complying development certificates 10

Insert after section 85A (1):

(1A) Threatened species

An accredited certifier, before dealing with the application, must make proper inquiry as to the existence or potential existence of any threatened species, populations and ecological communities on the land to which the application applies. 15

(1B) An accredited certifier must notify the council within 2 working days after receiving an application and the council must inform the accredited certifier whether or not it is aware of the existence or potential existence of any threatened species, populations or ecological communities on the land to which the application applies. 20
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(1C) If, at any time before an accredited certifier determines the application, the accredited certifier becomes aware that there is or may be any threatened species, populations or ecological communities on the land to which the application applies, the accredited certifier must refer the application to the council for a decision as to whether or not the concurrence of the Director-General of National Parks and Wildlife is required. 30

[23] Section 85A (8)

Omit "7". Insert instead "21".

[24] Section 88A Development applications directed to be referred to the Minister for determination

Omit "in the event that the Minister directs, under subsection (5), that a Commission of Inquiry be held" from section 88A (4).
 Insert instead "either in the event that the Minister directs, under subsection (5), that a Commission of Inquiry be held, or in the event that the Minister does not direct that a Commission of Inquiry be held".

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[25] Section 89A Application of sections 82, 97 and 98 to State significant development

Insert ", but those sections do apply in any other case" after "Inquiry" in section 89A (2).

[26] Section 91 What is "integrated development"?

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Omit the matter relating to the *National Parks and Wildlife Act 1974* in section 91 (1).

Insert instead:

<i>National Parks and Wildlife Act 1974</i>	s 86	authorisation of the Director-General of National Parks and Wildlife to do anything referred to in section 86 (a), (b), (c), (d) or (e) of that Act	20
	s 87	permit to do any act or thing referred to in section 86 (a), (b), (c), (d) or (e) of that Act	25
	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	30

Schedule 1 Amendments

- [27] Section 91 (2) (a)**
Omit "is known, immediately before the development application is made."
Insert instead "is, immediately before the development application is made, known by the applicant, the consent authority or a public authority". 5
- [28] Section 91A Local development that is integrated development**
Insert after section 91A (5):
(5A) Subsection (5) does not apply if the approval concerned is an authorisation, permit or consent under section 86, 87 or 90 of the *National Parks and Wildlife Act 1974*. 10
- [29] Section 92 State significant development that is integrated development**
Insert after section 92 (5):
(5A) The Premier must give the reasons for any decision made by the Premier in settling the dispute. 15
- [30] Section 92 (6A)–(6F)**
Insert after section 92 (6):
(6A) Subsection (6) does not apply if the approval concerned is an authorisation, permit or consent under section 86, 87 or 90 of the *National Parks and Wildlife Act 1974*. 20
(6B) If a dispute arises under this section between the consent authority and any other person and a resolution of the dispute cannot be agreed between the parties within 7 days, or such longer period as the parties may agree, the dispute may be referred for mediation by any party. 25
(6C) The Director may compile a list or lists of persons considered to be suitable to be mediators for the purposes of this section. Different lists may be compiled for different types of matters or to take account of any other factors. 30

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- (6D) The mediator may, but need not be, a person whose name is on a list compiled by the Director. If the mediator is a person whose name is not on a list compiled by the Director, the parties to the dispute must agree as to who the mediator is to be. 5
- (6E) The costs of mediation, including the fees and expenses of the mediator, are to be paid by the parties to the dispute in such proportions as they may agree or, failing agreement, in equal shares.
- (6F) In this section: 10
- mediation* means a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve a resolution of the dispute.
- mediator* means a person to whom a matter is referred for mediation under this section. 15

[31] Sections 92B and 92C

Insert after section 92A:

92B Consideration of submissions and additional information

- (1) If a development application for integrated development is required to be placed on public exhibition, the consent authority must place the development application on public exhibition within 2 days after it is lodged with the consent authority. 20
- (2) The consent authority must forward copies of submissions received in response to the public notification of a development application for integrated development to each relevant approval body within 2 days after the close of the relevant period of public exhibition. 25
- (3) An approval body must take any submissions forwarded under subsection (2) into consideration before informing the consent authority of the general terms of any approval proposed to be granted by it. 30

Schedule 1 Amendments

- (4) An approval body the general terms of whose approval have been sought may request the consent authority or any other appropriate person to give it any additional information about the proposed development that is essential to its proper consideration of its general terms of approval. 5
- (5) Immediately after receiving a request for additional information from an approval body, a consent authority must in writing request the applicant or any other person in possession of the information to provide the information sought within a reasonable period specified by the consent authority. 10
- (6) If a request (or more than one request) to provide the additional information is made by the approval body within 45 days after the date of lodgment of the development application with the consent authority, the period of time that elapses between the date on which the consent authority receives the approval body's request under subsection (4) and the date on which:
- (a) the information is provided by the consent authority or other appropriate person from whom the information is requested, or 20
- (b) the applicant or other person from whom the information has been requested notifies the consent authority that the information will not be provided, 25
- whichever is the sooner, is not to be taken into consideration in calculating the period prescribed by the regulations for the purposes of section 82.
- (7) Immediately after the consent authority receives the requested information from the applicant or other person, it must forward that information to the approval body. 30
- (8) Nothing in this section affects the approval body's duty to notify the consent authority of the general terms of its approval. 35

92C Notification of general terms of approval

- (1) An approval body that has received a development application from a consent authority must give written notice to the consent authority of its decision on the development application: 5
- (a) within 40 days after receipt of the copy of the application, except as provided by paragraph (b), and
 - (b) if the integrated development has been publicly notified under section 79 or 79A, within 21 days after: 10
 - (i) receipt by the approval body of copies of submissions made to the consent authority as a result of the public notification of the application, or 15
 - (ii) receipt of advice from the consent authority that no submissions were received.
- (2) If written notice by an approval body is not given within the period determined in accordance with subsection (1) (a) or (b), the approval body is taken, for the purposes of section 91A (5) or 92 (6), to have failed to inform the consent authority whether or not it will grant the approval. 20
- (3) If the consent authority determines a development application by refusing to grant consent before the expiration of the period determined in accordance with subsection (1) (a) or (b): 25
- (a) the consent authority must notify the approval body as soon as possible after the determination, and 30
 - (b) this section ceases to apply to the development application.

[32] Section 93 Granting and modification of approval by approval body

Insert after section 93 (2):

- (2A) Subsection (2) does not prevent an approval body from granting an approval in terms that are inconsistent with the development consent if: 5
- (a) the development consent varies the development application (for example, because of conflicting general terms from another approval body), or
- (b) the development consent reflects the general terms of the approval, but is no longer relevant, accurate or appropriate to the proposal (for example, because of a change in the receiving environment, or because the development consent required additional studies or plans which, now completed, have changed the scope or configuration of the proposal). 10 15

[33] Section 93 (6)

Insert after section 93 (5):

- (6) This section does not apply to an approval of the Director-General of National Parks and Wildlife concerning a relic that was not, immediately before the relevant development application was made, known by the applicant, the consent authority or a public authority to exist on the land to which the development application applies. 20 25

[34] Section 94B Contributions plans—making

Insert after section 94B (1):

- (1A) A draft contributions plan must be publicly exhibited for a period of not less than 28 days. 30

[35] Section 96 Modification of consents

Insert after section 96 (2) (a):

- (a1) it is satisfied that no prejudice will be caused to any person who objected to the development application the subject of the consent, and

5

[36] Section 96 (2A)

Insert after section 96 (2):

- (2A) A development consent must not be modified under this section if it relates to designated development or development that is required to be notified as if it were designated development unless notice has been given, in accordance with the regulations, to the persons (if any) who made submissions under section 79 in relation to the development application, and the consent authority must consider any further submissions made by any of those persons within the period prescribed by the regulations.

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[37] Section 96 (3)

Insert "and the cumulative impacts of any previous modifications of the consent" after "the application".

[38] Section 100 Register of consents and certificates

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Insert at the end of section 100 (1) (d):

, and

- (e) any submissions (with the consent of the persons making the submissions) made regarding the development application and any application for modification of the consent, and
- (f) any modifications of consent applications and determinations.

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- [39] Section 109C Part 4A certificates**
Omit "or" where secondly occurring in section 109C (1) (a) (iii).
- [40] Section 109C (1) (a) (iv)**
Omit the subparagraph.
- [41] Section 109E Principal certifying authorities** 5
Omit "except with the approval of the relevant accreditation body" from section 109E (3).
Insert instead "unless the accredited certifier so appointed dies, becomes a mentally incapacitated person or becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit". 10
- [42] Section 109L Accredited certifiers may issue notices requiring work to be carried out**
Insert after section 109L (3): 15
(4) Within 2 working days after the date on which an accredited certifier serves a notice under this section, the accredited certifier must lodge a bond with the council in or for an amount determined by the council. The bond is refundable if it is determined, under section 121K, not to give an order. 20
- [43] Section 109S Authorisation of accreditation bodies**
Insert after section 109S (1):
(1A) An authorisation of a professional association remains in force for a maximum period of one year but may be renewed on the application of the professional association. 25

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- (1B) In making an application for the renewal of its authorisation, a professional association must provide the Minister with an annual report that contains details of:
- (a) a list of the persons accredited by the professional association, and 5
 - (b) a record of any complaints made about those persons, and
 - (c) the results of those complaints.
- The Minister must lay the annual report, or cause it to be laid, before both Houses of Parliament as soon as practicable after it is provided to the Minister. 10
- [44] Section 109T Accreditation of accredited certifiers**
- Insert after section 109T (2) (a):
- (a1) if it is satisfied that the person does not have high standards of integrity and objectivity, or 15
- [45] Section 109T (3A)**
- Insert after section 109T (3):
- (3A) An accreditation of a person remains in force for a maximum period of one year but may be renewed on the application of the person. 20
- [46] Section 109U Auditing of accredited certifiers**
- Omit "may" from section 109U (4) (b) and (c) wherever occurring. Insert instead "must".
- [47] Section 109U (5)**
- Insert after section 109U (4): 25
- (5) The Director-General must ensure that at least 50 audits each year are carried out under this section.
- [48] Section 109Z Decision after investigation of complaint**
- Insert "or the complainant" after "body" in section 109Z (2).
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Schedule 1 Amendments

- [49] Section 109Z (4) (a)**
Omit "with the consent of the accredited certifier".
- [50] Section 109ZG Conflicts of interest**
Omit "200 penalty units" from section 109ZG (1).
Insert instead "1,000 penalty units". 5
- [51] Section 109ZH False representations**
Omit "300 penalty units" from section 109ZH (1) and (2) wherever occurring.
Insert instead "1,000 penalty units".
- [52] Section 109ZN Accredited certifiers** 10
Omit "100 penalty units" from section 109ZN (1).
Insert instead "1,000 penalty units".
- [53] Section 110 Definitions**
Omit paragraph (i) of the definition of *activity* in section 110 (1).
- [54] Section 110 (1)** 15
Omit paragraph (k) of the definition of *activity* in section 110 (1).
- [55] Section 121S Orders affecting heritage items**
Insert after section 121S (1) (a):
(a1) which is listed in the Register of the National Estate kept in pursuance of the *Australian Heritage Commission Act 1975* of the Commonwealth, or 20
- [56] Section 121S (3)**
Insert "or the Australian Heritage Commission" after "Heritage Council" wherever occurring. 25

[57] Section 126 Penalties

Insert “or, in the case of an offence by an accredited certifier, a penalty not exceeding 300 penalty units” after “units” in section 126 (2).

[58] Schedule 6 Savings, transitional and other provisions

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Insert at the end of clause 1 (1):

*Environmental Planning and Assessment Amendment
(Public Participation and Environmental Protection) Act
1998*

