

Explanatory note

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

The *Building Professionals Amendment Bill 2008* and the *Strata Management Legislation Amendment Bill 2008* are cognate with this Bill.

Overview of Bill

The object of this Bill is to reform the planning system, and for that purpose to amend the *Environmental Planning and Assessment Act 1979* (the **EPA Act**) and other Acts and instruments.

Environmental planning

The environmental planning reforms in Schedule 1 to the Bill seek to simplify and provide flexibility to the plan-making process, while retaining community and related consultation procedures. In particular, the reforms:

- (a) make provision for a gateway determination at an early stage of the process so that early decisions are made on whether a planning proposal will proceed, on the detailed community and other consultation required, on the time-frames for further stages of the process and on whether the final making of the plan can be delegated to the council, Director-General or other relevant planning authority, and
- (b) require explanations and justifications for planning proposals for gateway determination and consultation purposes, rather than technical legally drafted documents, and
- (c) enable comprehensive and other major plans to be provided with more detailed community and agency consultation than minor plans, and
- (d) enable independent advice to be obtained to deal with planning proposals that have stalled, and
- (e) place on a permanent footing in the EPA Act provisions contained in a regional environmental plan to prevent development consent being granted in Sydney hydrological drinking water catchment unless it has a neutral or beneficial effect on the quality of water, and
- (f) make other amendments to simplify and improve the plan-making process.

Development assessment

The objects of the development assessment reforms in Schedule 2 to the Bill are as follows:

- (a) to establish the Planning Assessment Commission (the **PAC**) and to give the PAC approval and planning functions relating to projects under Part 3A of the EPA Act and other planning, development consent, advisory and review functions,
- (b) to enable the establishment of joint regional planning panels (**regional panels**) and to enable them to be given planning and development consent functions for parts of the State, the planning and other functions of councils whose functions are removed under the EPA Act and other development consent, advisory and review functions,
- (c) to enable councils to appoint independent hearing and assessment panels to advise them about development applications and other planning matters,
- (d) to provide a right for applicants to seek reviews by planning arbitrators of determinations by councils relating to certain development applications and development consents (**planning arbitrator matters**) and to provide for a new third party right to seek a review of development determinations about certain residential and commercial and mixed use developments,
- (e) to restrict appeals to the Land and Environment Court relating to planning arbitrator matters unless they have been reviewed by a planning arbitrator or the council consents to the appeal being made and to generally reduce the period for making an appeal to that Court in a development assessment matter from 12 months to 3 months,

- (f) to re-enact the current limitations on the power of consent authorities to refuse or impose conditions on Crown developments, with certain procedural changes, and confer on regional panels power to determine disputes about council determinations about Crown developments,
- (g) to enable development consents relating to extended hours of operation of certain premises to be subject to later review and change,
- (h) to add to the council functions that may be removed from councils for misconduct reasons and exercised by a planning administrator, planning assessment panel or regional panel,
- (i) to prevent administrative law and other proceedings being taken in respect of the exercise by the Minister of certain functions relating to the appointment of planning administrators or planning assessment panels or conferral on regional panels of certain council functions,
- (j) to require the Director-General of the Department of Planning to consult public authorities on environmental assessment requirements for projects under Part 3A of the EPA Act only if required to do so by applicable guidelines,
- (k) to enable the Independent Commission Against Corruption to recommend the removal from office of members of the PAC or regional panels and planning arbitrators on corruption grounds,
- (l) to apply the provisions of the *Ombudsman Act 1974* to planning arbitrators,
- (m) to make other amendments relating to development assessment, development consents and complying development.

Development contributions

Schedule 3 to the Bill replaces existing provisions of the EPA Act for development contributions with a new Part 5B that provides for community infrastructure contributions, State infrastructure contributions, planning agreements and development contributions for affordable housing.

Significant features of the new provisions are as follows:

- (a) local infrastructure contributions (currently known as section 94 and 94A contributions) will be replaced by community infrastructure contributions,
- (b) local councils will be limited to community infrastructure contributions for **key community infrastructure** (as prescribed by the regulations) and any additional community infrastructure approved for the council by the Minister, with provision for a council seeking such an approval to provide the Minister with a business plan and independent report in support of the application,
- (c) councils, the Minister and other planning authorities will be required to have regard to specified key considerations for development contributions, including affordability, in relation to community infrastructure contributions, State infrastructure contributions and planning agreements,
- (d) the Minister will be able to give directions as to the time within which community infrastructure contributions must be applied,
- (e) the regulations will be able to impose requirements for reporting by planning authorities about the determination, collection, application and use of development contributions and the provision of public infrastructure by them,
- (f) transitional provisions will revoke all existing contributions plans on 31 March 2010, with provision for the Minister to remake existing contributions plans on behalf of councils to cover contributions for infrastructure that is not key community infrastructure when there are binding arrangements in place for the provision of the infrastructure concerned,
- (g) a Community Infrastructure Trust Fund is established under the control of the Treasurer to fund the provision of public infrastructure by public authorities out of community infrastructure contributions levied in the North West and South West Growth Centres of Sydney.

Certification of development

Schedule 4.1 to the Bill amends the EPA Act:

- (a) in relation to the requirements applying to the issue of Part 4A certificates and complying development certificates, and
- (b) in relation to the obligations of certifying authorities and, in particular, the obligations of certifying authorities to give directions with respect to certain matters involving the carrying out of development and to report on those matters, and
- (c) to require design certificates from appropriately accredited persons for certain aspects of development, and
- (d) to strengthen the powers under the EPA Act to prevent or deal with development that contravenes that Act, including enabling the issue of orders to cease building work or subdivision work, enabling authorised persons to ask questions of accredited certifiers and others involved in development and enabling consent authorities to require security to ensure compliance with development consents in the carrying out of building work and subdivision work, and
- (e) to provide for the Minister to take action to suspend a council's certification functions following an adverse report from the Building Professionals Board on the results of an investigation, and
- (f) to make other amendments to improve the certification processes.

Schedule 4.2 to the Bill amends the *Environmental Planning and Assessment Regulation 2000* (the **EPA Regulation**) in relation to applications for, and the issue of, Part 4A certificates and complying development certificates, critical stage inspections and fees for building certificates in certain circumstances.

Schedule 4.3 amends the *Strata Schemes (Freehold Development) Act 1973* in relation to the issue of strata certificates under that Act.

Schedule 4.4 amends the *Strata Schemes (Leasehold Development) Act 1986* in relation to the issue of strata certificates under that Act.

Miscellaneous amendments

Schedule 5 to the Bill contains miscellaneous amendments, including amendments:

- (a) to enact a scheme for the development of paper subdivisions, and
- (b) to omit provisions relating to places of public entertainment that are no longer necessary following the integration of separate licensing provisions under the *Local Government Act 1993* into the planning approvals and control processes of the EPA Act, and
- (c) to remove or modify some requirements for concurrence and referrals in relation to planning matters, and
- (d) to provide for the making of consequential savings and transitional regulations.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Environmental Planning and Assessment Act 1979* and other Acts and instruments set out in Schedules 1–5.

Clause 4 repeals the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979* as a consequence of the remaining operative provisions of that Act ceasing to have any operation following the amendments proposed by Schedule 1.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments relating to environmental planning

Schedule 1.1 Principal amendments to Environmental Planning and Assessment Act 1979

General matters relating to plan-making

Schedule 1.1 [1]–[3] amend section 4 of the EPA Act as a consequence of the changes made to the plan-making process to update the definition of *environmental planning instrument*, omit the definition of *regional environmental plan* and insert a definition of *relevant planning authority*.

Schedule 1.1 [4] amends section 24 of the EPA Act to confirm existing arrangements that State environmental planning policies (*SEPPs*) may be made by the Governor and local environmental plans (*LEPs*) may be made by the Minister (or delegate).

Schedule 1.1 [5] amends section 26 of the EPA Act to allow an environmental planning instrument to make provision for the temporary or limited zoning of land.

Schedule 1.1 [6] amends section 33A of the EPA Act to enable a LEP that adopts the standard instrument to be made without complying with the statutory conditions precedent for making the LEP if it replaces an existing LEP and does not make substantial changes to the general effect of the existing instrument.

Schedule 1.1 [7] substitutes section 34A of the EPA Act to clarify consultation procedures for threatened and other species. Consultation is only required with the Director-General of the Department of Environment and Climate Change before making an environmental planning instrument if, in the opinion of the Director-General of the Department of Planning or the relevant planning authority, there could be an adverse impact on critical habitat or threatened species, populations or ecological communities, or their habitats. The new provision also reduces the period for comments by the Director-General from 40 days to 21 days.

Schedule 1.1 [8] inserts section 34B into the EPA Act to place on a permanent footing in the Act provisions contained in a regional environmental plan to prevent development consent being granted in the Sydney hydrological drinking water catchment unless it has a neutral or beneficial effect on the quality of water.

Schedule 1.1 [12] extends the operation of section 73A of the EPA Act (which dispenses with compliance with conditions precedent for the making of instruments dealing with certain minor amendments) to instruments that the Minister considers do not have any significant adverse impact on the environment or adjoining land.

Schedule 1.1 [13] amends section 73A of the EPA Act to make it clear that the section applies to the amendment or replacement of maps adopted by an instrument.

Schedule 1.1 [14] amends section 74B of the EPA Act to make a consequential amendment relating to development control plans.

Schedule 1.1 [15] amends section 74C of the EPA Act to remove the ability of a development control plan to provide for notification requirements for complying development.

State environmental planning policies

Schedule 1.1 [9] substitutes Division 2 of Part 3 of the EPA Act relating to the making of State environmental planning policies by the Governor for the purpose of environmental planning by the State. Policies may be made with respect to any matter that is, in the opinion of the Minister, of regional as well as State environmental planning significance. The current requirement for a draft SEPP to be submitted by the Director-General of the Department of Planning to the Minister has been removed.

Regional environmental plans

Schedule 1.1 [10] repeals Division 3 of Part 3 of the EPA Act to remove provisions relating to regional environmental plans. Existing regional environmental plans will be deemed to be SEPPs under Schedule 1.2 and matters of regional environmental planning significance may be the subject of future SEPPs.

Local environmental plans

Schedule 1.1 [11] repeals Divisions 4 and 4A of Part 3 of the EPA Act relating to LEPs and inserts instead a new Division 4. The new Division establishes a new process for making LEPs.

Proposed section 53 enables the Minister (or delegate) to make local environmental plans for environmental planning in local government areas and in such other areas of the State as the Minister determines.

Proposed section 54 identifies the relevant planning authority for proposed LEPs, namely the council, the Director-General or any other person or body prescribed by the regulations. The Director-General or any such other person or body may be designated as the relevant planning authority, instead of the council, in specified circumstances, including where the proposed LEP relates to matters of State or regional environmental planning significance or the council has, in the opinion of the Minister, failed to comply with its obligations with respect to the proposed LEP or has not carried out those obligations in a satisfactory manner.

Proposed section 55 requires a planning proposal to be prepared by the relevant planning authority explaining the intended effect of a proposed environmental planning instrument and the justification for making the instrument. The proposed section also sets out the matters to be included in the planning proposal.

Proposed section 56 enables a planning proposal to be forwarded to the Minister for a gateway determination, that is, a determination as to whether the matter is to proceed or should be resubmitted, as to the community and other consultation requirements before the instrument is made, whether there should be a public hearing by the PAC, the time limits for the stages of the procedure for making the instrument and who is to make the instrument. Regulations may be made setting out community consultation requirements for categories of instruments. The Minister may arrange for a review of a planning proposal to be undertaken by the PAC or a regional panel. Proposed section 57 sets out the community consultation requirements for the making of LEPs.

Proposed section 58 enables a relevant planning authority to vary a planning proposal as a result of community consultation and provides that, if such a change is made, further consultation is not required unless the Minister so directs.

Proposed section 59 provides for the Director-General to make arrangements for the drafting of LEPs and to consult with the relevant planning authority on the terms of draft plans. The proposed section also provides for the making of LEPs and enables matter to be deferred.

Proposed section 60 enables regulations to be made with respect to the making of environmental planning instruments.

Schedule 1.2 Consequential and other amendments to Environmental Planning and Assessment Act 1979

Schedule 1.2 [1]–[5] make consequential amendments to definitions in section 4 of the EPA Act.

Schedule 1.2 [6], [9]–[11], [13]–[16], [19]–[21], [23]–[26] and [28]–[36] amend various sections of the EPA Act as a consequence of the proposed changes to plan-making for LEPs.

Schedule 1.2 [7] and [8] repeal sections 25 and 26 of the EPA Act as a consequence of the changes made to plan-making generally.

Schedule 1.2 [12], [17], [18], [22] and [27] amend and repeal various sections of the EPA Act as a result of the repeal of provisions relating to regional environmental plans.

Schedule 1.2 [37] amends Schedule 6 to the EPA Act to insert savings and transitional provisions consequent on the environmental planning amendments. The provisions save existing environmental planning instruments (including regional environmental plans which are deemed to be SEPPs) and provide for a review of

those existing regional environmental plans.

Schedule 1.3 Amendment of Fisheries Management Act 1994 No 38

Schedule 1.3 makes a consequential amendment on the changes to the public consultation procedures for environmental planning instruments (*EPIs*).

Schedule 1.4 Amendment of Heritage Act 1977 No 136

Schedule 1.4 repeals Part 5 (Environmental planning instruments affecting certain land) of the *Heritage Act 1977*. Appropriate consideration of heritage matters is to be included as part of the proposed gateway determination for proposed LEPs.

Schedule 1.5 Amendment of Sydney Water Catchment Management Act 1998 No 171

Schedule 1.5 [3] and [4] amend sections 48 and 52 of the *Sydney Water Catchment Management Act 1998* to provide that regulations for special areas or controlled areas do not prevail over the provisions of SEPPs.

Schedule 1.5 [5] repeals Division 4 of Part 5 of that Act, which required the preparation of a regional environmental plan for the catchment area (see now proposed section 34B). **Schedule 1.5 [1] and [2]** make consequential amendments.

Schedule 1.6 Amendment of Threatened Species Conservation Act 1995 No 101

Schedule 1.6 makes a consequential amendment on the changes to the public consultation procedures for EPIs.

Schedule 1.7 Amendment of Water Management Act 2000 No 92

Schedule 1.7 amends section 322 of the *Water Management Act 2000* to provide that regulations for special areas do not prevail over the provisions of SEPPs.

Schedule 1.8 Amendment of Drinking Water Catchments Regional Environmental Plan No 1

Schedule 1.8 makes consequential repeals.

Schedule 2 Amendments relating to development assessment

Schedule 2.1 Principal amendments to the Environmental Planning and Assessment Act 1979

New planning bodies—general matters

Schedule 2.1 [1] amends section 4 of the EPA Act to omit definitions as a consequence of the repeal of provisions relating to Commissions of Inquiry. The current functions of Commissioners of Inquiry, and additional functions, are to be undertaken by the PAC.

Schedule 2.1 [2] amends section 4 of the EPA Act to recognise the PAC and regional panels as consent authorities for the purposes of the Act, as a consequence of the conferral of functions on those bodies by the proposed Act.

Schedule 2.1 [3] amends section 4 of the EPA Act to insert definitions relating to the new planning bodies created by the proposed Act.

Schedule 2.1 [4] repeals section 20 of the EPA Act, which establishes the Local Government Liaison Committee.

Schedule 2.1 [5] repeals section 22 of the EPA Act, which enables the establishment of other committees. **Schedule 2.1 [6]** makes a consequential amendment.

Schedule 2.1 [8] amends section 23 of the EPA Act to enable the Minister, the Director-General or the Ministerial corporation to delegate functions under the Act or any other Act to the PAC or a regional panel. **Schedule 2.1 [7] and [11]** make consequential amendments.

Schedule 2.1 [9] amends section 23 of the EPA Act to enable the PAC, with the Minister's approval, to delegate functions to a council. The amendment also enables a regional panel, with the Minister's approval, to delegate its functions. **Schedule 2.1 [10]** makes a consequential amendment.

Schedule 2.1 [12] amends section 23 of the EPA Act to enable the Minister to delegate the function of determining whether to approve a project, or a concept plan,

under Part 3A of the Act, other than approvals of critical infrastructure projects or concept plans for such projects. Currently, the Minister may not delegate these functions.

Schedule 2.1 [13] inserts proposed Part 2A into the EPA Act. Division 6 (proposed sections 23M–23P) contains provisions relating to councils and the new planning bodies. The provisions prohibit the making of decisions by the PAC or a regional panel that may have a significant adverse financial impact on a council unless the council has been consulted, place obligations on councils to provide assistance and not to obstruct planning bodies or planning arbitrators and require general managers of councils to carry out reasonable instructions of the PAC or a regional panel. Councils are also required to pay certain costs of the PAC, regional panels and planning arbitrators and to indemnify planning arbitrators for costs relating to certain appeals.

Schedule 2.1 [53] amends section 158 of the EPA Act to extend protections for personal liability for things done in good faith under the Act to members of the PAC, regional panels and independent hearing and assessment panels and planning arbitrators. **Schedule 2.1 [54]** makes a consequential amendment.

Planning Assessment Commission

Schedule 2.1 [13] inserts proposed Part 2A into the EPA Act. Division 2 (proposed sections 23B–23F) establishes the PAC as a statutory body representing the Crown, the affairs of which are to be managed by its chairperson. The functions of the PAC are to determine Part 3A projects and concept plan approvals (if delegated by the Minister) and, if requested by the Minister, to advise the Minister as to matters relating to planning and environmental planning instruments and administration, to review aspects of projects or concept plans under Part 3A, to review environmental aspects of proposed development and to review other matters that may currently be the subject of inquiries by a Commission of Inquiry. The PAC may also, at the Minister's request, exercise the functions of a panel under the Act, including a regional panel (if there is no regional panel for an area). Regulations may be made for or with respect to matters relating to the procedures of the PAC. There will be no appeal or review under the Act from a decision of the PAC if the decision is made after a public hearing.

Schedule 2.1 [55] inserts proposed Schedule 3 into the EPA Act, which contains provisions relating to the members of the PAC. The PAC is to have not less than 3 members and not more than 8 members, and a chairperson (either part-time or full-time). Members other than the chairperson are to be part-time members. Members are to have expertise in at least 1 of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

Joint regional planning panels

Schedule 2.1 [13] inserts proposed Part 2A into the EPA Act. Division 3 (proposed sections 23G and 23H) enables the Minister, by order published in the Gazette, to establish a regional panel for a particular part of the State. The area covered by a regional panel will generally consist of 2 or more council areas. The functions of a regional panel are to act as a consent authority if it is required to do so by an environmental planning instrument, to exercise planning functions removed from councils under Part 6 of the Act and to advise the Minister as to matters relating to planning and environmental planning instruments. Regulations may be made for or with respect to matters relating to the procedures of regional panels and the provision of reports and information by regional panels.

Schedule 2.1 [38] amends section 118 of the EPA Act to enable the Minister to appoint a regional panel to exercise the planning and plan-making functions of a council in circumstances where the Minister may currently appoint a planning assessment panel or a planning administrator to do so. **Schedule 2.1 [39], [40], [42],**

[43] and [45]–[49] make consequential amendments.

Schedule 2.1 [41] amends section 118 of the EPA Act to add the functions of a council relating to classification of council land (as either operational or community land) under the *Local Government Act 1993* to the functions that a planning administrator, planning assessment panel or regional panel may exercise under section 118 of the EPA Act.

Schedule 2.1 [44] amends section 118 of the EPA Act to provide for functions to be conferred on regional panels under that section by order of the Minister published in the Gazette. The amendment also requires the Minister to notify a council of a proposed conferral of functions under the section and to give it 21 days to show cause why the action should not be taken. The Minister must consider any submissions made within that period.

Schedule 2.1 [55] inserts proposed Schedule 4 into the EPA Act, which contains provisions relating to the members of regional panels. A regional panel is to have 5 members, of whom 3 are to be appointed by the Minister and 2 are to be nominees of councils of areas for which the panel is constituted. One of the members appointed by the Minister is to be chairperson. The members appointed by the Minister and at least 1 council nominee are required to have expertise in similar fields as are required for PAC members.

Independent hearing and assessment panels

Schedule 2.1 [13] inserts proposed Part 2A into the EPA Act. Division 4 (proposed sections 23I and 23J) enables councils to constitute panels of experts to assess aspects of development applications or other planning matters. Members are to be selected from a list of persons approved by the Director-General for the purposes of the proposed section. Regulations may be made for or with respect to matters relating to the procedures of the panels.

Planning arbitrators

Schedule 2.1 [13] inserts proposed Part 2A into the EPA Act. Division 5 (proposed sections 23K and 23L) provides for a register of planning arbitrators to be kept by the Director-General. Planning arbitrators must have expertise in planning, architecture, heritage, urban design, law or engineering. Regulations may be made for or with respect to planning arbitrators, including as to their registration, appointment and removal and conduct and complaints about them. The main function of planning arbitrators is to conduct reviews of development application determinations by councils under proposed Division 7A of Part 4 (see Schedule 2.1 [35]).

Complying development

Schedule 2.1 [15] amends section 76A of the EPA Act to clarify that an environmental planning instrument may specify classes of development as complying development.

Schedule 2.1 [16] amends section 76A of the EPA Act to remove the limitations on the kind of development that may be specified as complying development by an environmental planning instrument. Such limitations may still be specified in environmental planning instruments.

Schedule 2.1 [23] amends section 85A of the EPA Act to remove the ability of development control plans to specify notification requirements for applications for complying development.

Schedule 2.1 [24] amends section 85A of the EPA Act to remove the current requirement that an application for a complying development certificate be determined by a council or an accredited certifier within 7 days and to replace it with a requirement that a determination be made within the period prescribed by the regulations.

Schedule 2.1 [25] amends section 85A of the EPA Act to insert an additional requirement that the determination of an application for a complying development certificate be notified to any person prescribed by the regulations.

Schedule 2.1 [26] amends section 86A of the EPA Act to enable regulations to be made specifying the circumstances when development is or is not taken to be physically commenced. Under that section a complying development certificate lapses if development is not physically commenced within 5 years of the date of the certificate.

Appeals and reviews

Schedule 2.1 [18] inserts proposed section 79AA into the EPA Act, to provide for public notification of development in respect of which new third party applications for review may be made.

Schedule 2.1 [19] amends section 79C of the EPA Act to enable a consent authority to reject a submission by an objector to a development application in respect of which new third party applications for review may be made, if the consent authority considers the objection has been made primarily to secure or maintain a direct or indirect commercial advantage. The effect of rejection is that the objection is taken not to have been made, so that notification and review rights under the Act will not apply.

Schedule 2.1 [35] inserts proposed Division 7A of Part 4 (proposed sections 96B–96L) into the EPA Act. The proposed Division establishes a right for applicants for development consent to make review applications for review by a planning arbitrator of determinations by councils relating to development applications and consents, being determinations of a class to be prescribed by the regulations (proposed section 96C). It also re-enacts the existing right for a review by a council of its own determination under section 82A of the EPA Act (proposed section 96D), other than for planning arbitrator matters. There will also be a right for objectors to certain classes of development prescribed by regulations to apply for reviews by planning arbitrators (in the case of development applications determined by a council) or by the PAC (in the case of development applications determined by regional panels) (proposed section 96E). Currently, the only right of appeal of an objector is in respect of designated development under section 98 of the EPA Act. A planning arbitrator will also have the function of reviewing whether a council should have rejected a development application and may require a council to consider such an application (proposed section 96I). The proposed Division contains provisions relating to procedures of reviewing bodies and reviews, including provision for notification of applications, periods of review, the extent to which an amended development application may be considered, notice of review determinations and the effect of a review determination. A reviewing body is to have all the functions of the original consent authority and may consider additional matters. The proposed Division also provides for the circumstances in which a planning arbitrator will be taken to have refused an application (so that an appeal to the Land and Environment Court may be made) if a planning arbitrator fails to determine a matter or is not appointed (proposed section 96K). It will be an offence for a planning arbitrator not to act impartially or to seek or offer a benefit on his or her own behalf or on behalf of another person, or for another person to give or offer such a benefit, on an understanding that the planning arbitrator will act less than impartially (proposed section 96L). **Schedule 2.1 [20] and [32]–[34]** make consequential amendments. **Schedule 2.1 [36]** inserts proposed sections 97–97B into the EPA Act. Proposed section 97 re-enacts the existing right of an applicant for a development application to appeal to the Land and Environment Court against a decision of a consent authority and other rights to appeal relating to development consents. The proposed section also prohibits an applicant who has a right to apply for a review by a planning arbitrator from appealing unless the applicant has the consent of the consent authority or is appealing against the planning arbitrator's decision. Provisions relating to rights to appeal against decisions relating to modification of consents have also been put into this section, rather than the section relating to modification. Proposed section

97A now contains the provisions relating to notices of appeals. Proposed section 97B is a new provision that requires the Land and Environment Court to order an applicant to pay the costs incurred by a consent authority in respect of an original application and proceedings relating to that application, if the Court permits the filing of an amended development application. Proposed section 97 also reduces the period within which appeals against decisions may be made from 12 months to 3 months.

Schedule 2.1 [37] amends section 99 of the EPA Act to provide for the Land and Environment Court to deal with a review application by an objector to development jointly with an appeal made to the Court by the applicant for consent.

Crown development

Schedule 2.1 [27] inserts proposed Division 4 of Part 4 into the EPA Act (proposed sections 88–89C). The proposed Division prohibits a consent authority from refusing development consent to, or imposing a condition on, a development application made by or on behalf of the Crown except with the approval of the Minister or the applicant (in the case of a condition). A Crown development application may be referred to a regional panel for determination if a council fails to determine it within the period prescribed by the regulations. If the regional panel fails to determine it, the application is to be referred to the Minister. In the case of a consent authority other than a council, a Crown development application may be referred directly to the Minister if the consent authority fails to determine it. The Minister may direct the relevant consent authority as to how to determine the application. The proposed Division also applies to applications to modify a Crown development consent.

Miscellaneous matters

Schedule 2.1 [14] amends section 75F of the EPA Act to require the Director-General to consult public authorities on environmental assessment requirements for a project under Part 3A of the EPA Act only if guidelines in respect of the project require them to be consulted.

Schedule 2.1 [17] amends section 78A of the EPA Act to require a development application to be accompanied by a statement of environmental effects, if it is not required to be accompanied by an environmental impact statement or a species impact statement.

Schedule 2.1 [21] amends section 80A of the EPA Act to enable a development consent that imposes conditions enabling specified hours of operation and extended hours of operation, or increases the limit on the number of persons permitted in a building when used for specified purposes, to be reviewed by a consent authority at intervals specified in the consent. On a review, the condition as to extended hours and additional persons may be changed.

Schedule 2.1 [22] omits a note.

Schedule 2.1 [28] amends section 95 of the EPA Act to provide that development consent for the erection of a building, the subdivision of land or the carrying out of work will lapse, even if it has physically commenced before it would usually lapse, if work is not substantially commenced within 2 years after the date on which it would usually lapse.

Schedule 2.1 [29] amends section 95 of the EPA Act to enable regulations to be made specifying the circumstances when development is or is not taken to be substantially or physically commenced. Under that section a development consent lapses if development is not physically commenced within 5 years of the date of the consent (or within such other period as the consent may specify).

Schedule 2.1 [30] amends section 95A of the EPA Act to enable a development consent that is subject to a deferred commencement condition to be extended for 1 year on application made before the original period within which it will lapse expires, if the original period is less than 5 years. **Schedule 2.1 [31]** makes a consequential amendment.

Schedule 2.1 [50] amends section 118 of the EPA Act to enable planning and

plan-making and other functions of a council to be conferred under that section on a planning administrator, planning assessment panel or regional panel if the council fails to comply with a gateway determination relating to the making of an environmental planning instrument or fails to provide staff and facilities to the PAC, a regional panel or a planning arbitrator in accordance with the Act.

Schedule 2.1 [51] amends section 118AD of the EPA Act to make it an offence for a general manager not to carry out any reasonable direction of a planning administrator or planning assessment panel when they are exercising functions of the council.

Schedule 2.1 [52] inserts proposed section 118AG into the EPA Act. The proposed section prevents administrative law and other proceedings being taken in respect of the exercise by the Minister of a function relating to the appointment of a planning administrator or planning assessment panel, or conferral of functions on a regional panel, under Division 1AA of Part 6 of the EPA Act.

Schedule 2.2 Consequential amendments to Environmental Planning and Assessment Act 1979

Schedule 2.2 [1] omits Division 4 of Part 2 of the EPA Act, which contains provisions relating to Commissioners of Inquiry.

Schedule 2.2 [2] omits a provision relating to independent hearing and assessment panels, as a consequence of the enactment of proposed Division 4 of Part 2A and the conferral of functions relating to projects under Part 3A of the EPA Act on the PAC.

Schedule 2.2 [7] makes a consequential amendment.

Schedule 2.2 [3] amends section 75I of the EPA Act as a consequence of the conferral on the PAC of the function of reviewing matters relating to proposed projects under Part 3A of the Act. **Schedule 2.2 [4]–[6]** make similar consequential amendments.

Schedule 2.2 [8] amends section 75O of the EPA Act as a consequence of the conferral on the PAC of the function of reviewing matters relating to proposed concept plans for projects under Part 3A of the EPA Act. **Schedule 2.2 [9] and [11]** make similar consequential amendments.

Schedule 2.2 [10], [19], [33], [39], [46], [55], [56] and [57] amend various provisions of the EPA Act as a consequence of amendments made by the proposed Act relating to Crown developments.

Schedule 2.2 [12]–[16], [27], [47]–[54], [69] and [72] amend various provisions of the EPA Act as a consequence of the conferral of functions on the PAC of reviewing matters relating to proposed development and activities and other matters and the repeal of provisions relating to Commissioners of Inquiry.

Schedule 2.2 [17] and [18] amend section 81 of the EPA Act to provide for the notification of development application determinations to objectors who make a review application under proposed section 96E.

Schedule 2.2 [20]–[23] amend section 82 of the EPA Act as a consequence of the insertion of provisions relating to review applications.

Schedule 2.2 [24] omits section 82A of the EPA Act, the current provision enabling review by councils of development application, which is being replaced by proposed section 96E.

Schedule 2.2 [25], [26] and [28]–[32], [34]–[38] and [43]–[45] amend various provisions of the EPA Act as a consequence of the insertion of provisions relating to review applications.

Schedule 2.2 [40]–[42] amend section 109J of the EPA Act to extend requirements restricting the issue of subdivision certificates until the period for objections has passed to matters for which review applications may be made by objectors under proposed section 96E.

Schedule 2.2 [58] renumbers provisions relating to the certification of Crown building work and Crown development for public entertainment so as to relocate the

provisions at the end of Part 4A of the EPA Act.

Schedule 2.2 [59]–[68] amend various provisions of the EPA Act as a consequence of the conferral of functions on regional panels under Division 1AA of Part 6 of the EPA Act.

Schedule 2.2 [70] repeals provisions of the EPA Act relating to the holding of inquiries by Commissioners of Inquiry. Such functions are conferred on the PAC.

Schedule 2.2 [71] amends section 121 of the EPA Act to enable a member of the PAC to be appointed to hold an inquiry and report on a dispute between the Department of Planning or the Director-General of that Department and a public authority (including a council), or between public authorities, with respect to a matter relating to functions under or the operation of the EPA Act, the regulations or an environmental planning instrument. These functions are currently exercised by Commissioners of Inquiry.

Schedule 2.2 [73] amends section 152 of the EPA Act to remove the unlimited right of a person to be represented where there is a right to be heard under the EPA Act, as a consequence of the insertion of powers to make regulations prohibiting or limiting the rights of persons under the EPA Act to be represented at reviews by the PAC or before certain other planning bodies.

Schedule 2.2 [74] amends Schedule 5B to the EPA Act to omit provisions relating to procedures of planning assessment panels, as a consequence of the insertion of provisions relating to procedures of planning bodies in regulations under the EPA Act.

Schedule 2.2 [75] inserts savings and transitional provisions consequent on the enactment of Schedule 2 to the proposed Act.

Schedule 2.3 Amendment of Heritage Act 1977 No 136

Schedule 2.3 amends the *Heritage Act 1977* to replace references in that Act to Commissioners of Inquiry and Commissions of Inquiry under the EPA Act with references to the PAC and to make other consequential amendments.

Schedule 2.4 Amendment of Independent Commission Against Corruption Act 1988 No 35

Schedule 2.4 amends section 74C of the *Independent Commission Against Corruption Act 1988* to enable the Independent Commission Against Corruption to recommend in a report that consideration be given to the removal from office of a member of the PAC or of a regional panel or a planning administrator, because of corrupt conduct. Under the amendments made to the EPA Act by the proposed Act, this will be a ground for removal from office.

Schedule 2.5 Amendment of Ombudsman Act 1974 No 68

Schedule 2.5 amends section 5 of the *Ombudsman Act 1974* to make planning arbitrators public authorities for the purposes of that Act, and thus subject to that Act's provisions.

Schedule 2.6 Amendment of Public Sector Employment and Management Act 2002 No 43

Schedule 2.6 amends the *Public Sector Employment and Management Act 2002* to remove references to Commissioners of Inquiry under the EPA Act.

Schedule 2.7 Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 2.7 amends the *Statutory and Other Offices Remuneration Act 1975* to remove references to Commissioners of Inquiry under the EPA Act.

Schedule 2.8 Amendment of Water Act 1912 No 44

Schedule 2.8 amends the *Water Act 1912* to replace references in that Act to Commissioners of Inquiry, Commissions of Inquiry and inquiries under the EPA Act with references to the PAC and reviews by the PAC.

Schedule 2.9 Amendment of Water Management Act 2000 No 92

Schedule 2.9 amends the *Water Management Act 2000* to replace references in that

Act to Commissioners of Inquiry, Commissions of Inquiry and inquiries under the EPA Act with references to the PAC and reviews by the PAC.

Schedule 2.10 Amendment of Environmental Planning and Assessment Regulation 2000

Schedule 2.10 [1] amends clause 51 of the EPA Regulation to extend from 7 days to 14 days the period within which a consent authority may refuse to accept a development application.

Schedule 2.10 [3]–[8] amend various provisions of the EPA Regulation to provide for the giving of public notice of, and procedures for objections to, development in respect of which an objector may seek a review under proposed Division 7A of Part 4 of the EPA Act. The procedures are to be the same as those for other advertised development, except that notice is to be given to persons owning or occupying land up to 1km of the land subject to the proposed development. **Schedule 2.10 [2]** makes a consequential amendment.

Schedule 2.10 [9] omits clause 113A of the EPA Regulation as a consequence of the proposed repeal of section 82A of the EPA Act.

Schedule 2.10 [10] inserts proposed Division 14 of Part 6 of the EPA Regulation (proposed clauses 124A–124D). The proposed Division prescribes development for the purposes of entertainment facilities, function centres, nightclubs, pubs and registered clubs as development for which a condition enabling review of a development consent permitting extended hours of operation or increasing the maximum numbers of persons permitted in a building may be imposed and the matters that must be included in such a consent. It also provides for review procedures, including notice of a review and the right to make submissions.

Schedule 2.10 [11] amends clause 264 of the EPA Regulation to require a council to include details of the outcome of any review of a review condition in its register of development applications and consents.

Schedule 2.10 [12] inserts proposed Part 16B (proposed clauses 268C–268K) into the Regulation. The proposed Part contains provisions relating to procedures of planning bodies, that is, the PAC, regional panels and planning arbitrators. It also specifies that a planning arbitrator may remain on the register of planning arbitrators for 3 years and sets out circumstances in which a planning arbitrator may be removed from the register.

Schedule 2.10 [13] inserts proposed clause 285 into the EPA Regulation, setting out the categories of development for which objectors may make a review application under the EPA Act. The categories are residential development exceeding 2 storeys, or containing more than 5 dwellings on a site exceeding 2,000m², that exceeds an applicable floor space ratio or height development standard by more than 25% or commercial or mixed use development that exceeds 9m in height, on a site exceeding 2,000m², that exceeds an applicable floor space ratio or height development standard by more than 25%.

Schedule 3 Amendments relating to development contributions

Schedule 3.1 Amendment of Environmental Planning and Assessment Act 1979

Schedule 3.1 [4] omits Divisions 6 and 6A of Part 4 of the EPA Act.

Schedule 3.1 [6] inserts proposed Part 5B into the EPA Act containing the operative provisions for development contributions.

Division 1 contains provisions of general operation throughout Part 5B. Local councils may require development contributions for community infrastructure under **Division 2**. The State may require development contributions for the provision of public infrastructure under **Division 3**. Planning authorities can enter into voluntary planning agreements for the provision of public infrastructure and other public benefits under **Division 4**. Local councils may require development contributions for

affordable housing under **Division 5**. The State Infrastructure Fund is established by **Division 6**.

Division 1 Preliminary

Division 1 is preliminary. It contains definitions used in the Part and other interpretative provisions relating to community infrastructure and public infrastructure. It sets out the key considerations for development contributions and the accountability requirements of planning authorities for development contributions. Finally, the Division sets out how development contributions are to be used.

Proposed section 116A is an interpretative provision [cf **section 93C** of EPA Act]. Local contributions will now be community infrastructure contributions. Special infrastructure contributions will be renamed State infrastructure contributions and special contributions areas will be renamed State contributions areas.

Proposed section 116B provides that the Part applies to development that requires development consent. The proposed section also provides for the application of the Part to projects under Part 3A.

Proposed section 116C defines community infrastructure, public infrastructure, and the provision of public infrastructure. Unlike the current provisions of the EPA Act, these terms are used consistently throughout the Part.

Public amenities and public services, but not including water supply and sewerage services, are now defined as community infrastructure [cf **section 93C** of the EPA Act].

Public infrastructure includes public amenities and public services, affordable housing and transport infrastructure but does not include water supply and sewerage services. The new definition of **public infrastructure** extends the meaning of public infrastructure [cf **section 93F (2) and section 94ED (1)** of the EPA Act].

Proposed section 116D sets out the key considerations for planning authorities in making a contributions plan, a State infrastructure determination, entering into a voluntary planning agreement or making a determination in relation to additional community infrastructure.

Proposed section 116E is a regulation making power to provide for the collection and publication of information by planning authorities about the determination, collection, application and use of development contributions under the Part.

Proposed section 116F sets out how development contributions are to be used [cf **section 93E** of the EPA Act].

Division 2 Community infrastructure contributions

Division 2 provides for community infrastructure contributions by local councils [cf **sections 94–94B and 94E** of the EPA Act].

Proposed section 116G provides that a consent authority can require community infrastructure contributions by way of a direct contribution (the current **section 94**) or by way of an indirect contribution (the current **section 94A**) but not both [cf **section 94A (2)** of the EPA Act]. The proposed section also provides that once a direct contribution has been required in respect of the subdivision of land, no further community infrastructure contribution can be required in respect of further development on the land except to the extent of any increased demand for public infrastructure attributable to the further development.

Proposed section 116H requires council to have a contributions plan before it can require either kind of contribution [cf **sections 94 and 94A** of the EPA Act]. If there is no contributions plan or the contributions plan is inadequate the Minister may authorise a council to require a contribution [cf **section 94E** of the EPA Act]. Both the council and Minister are to have regard to the key considerations for development contributions when approving a contributions plan or giving a direction.

Proposed section 116I provides that a contributions plan can require contributions only for key community infrastructure (as defined in the regulations) or for additional

community infrastructure approved by the Minister. The provision also enables the Minister to waive the requirement for approval in certain circumstances. It also contains a provision for regulations to set out the information that councils are to supply in order to seek approval for additional community infrastructure.

Proposed section 116J sets out the nexus requirements for direct contributions [cf **section 94 (1) and (2)** of the EPA Act]. It also provides for the recoupment of the cost of existing infrastructure [cf **section 94 (3)** of the EPA Act] and that a direct contribution cannot be required if a contribution is sought for the same infrastructure under **Division 3**.

Proposed section 116K provides that no nexus is required for indirect contributions [cf **section 94A (4)** of the EPA Act]. It also provides that a condition cannot be imposed in a State contributions area without prior ministerial (or a delegate's) approval [cf **section 94A (2A)** of the EPA Act], and contains a regulation making power for estimating cost and imposing a maximum percentage [cf **section 94A (5)** of the EPA Act]. Further, a new power is introduced allowing the Minister to vary the maximum percentage by direction and provide for public notification.

Proposed section 116L sets out the Minister's direction powers about community infrastructure contributions [cf **section 94E** of the EPA Act]. This includes a direction as to what constitutes a reasonable time for the application of contributions and a direction as to the maximum amount of an indirect contribution.

Proposed section 116M provides that an EPI can no longer contain "satisfactory arrangements" clauses that require a community infrastructure contribution to be made [cf **section 93D** of the EPA Act]. The provision will not apply to EPIs made before the clause commences, or for State infrastructure contributions.

The provision will not prevent an EPI including provision requiring consent authorities to consider whether public infrastructure will be available to support the proposed development.

The provision means that councils will not be able to obtain development contributions except under Divisions 2, 4 and 5 of proposed Part 5B.

Proposed section 116N provides that the procedural matters applying to community infrastructure contributions are set out in **Part 1 of Schedule 1** to the EPA Act.

Division 3 State infrastructure contributions

Division 3 provides for State infrastructure contributions [cf **sections 94ED–94EH** of the EPA Act].

Proposed section 116O enables the Minister to determine State infrastructure contributions within a State contributions area [cf **section 94ED** of the EPA Act]. The Minister is to have regard to the key considerations for development contributions when doing so.

Proposed section 116P sets out the threshold requirements for determination of a State infrastructure contribution, including Treasury concurrence [cf **section 94EE** of the EPA Act].

Proposed section 116Q makes it clear that a State infrastructure contribution is in addition to a community infrastructure contribution [cf **section 94EF (4)** of the EPA Act].

Proposed section 116R provides that an EPI can require development contributions but only if a State infrastructure contribution is required. This provision recognises the continuation of the "satisfactory arrangements" clauses in various EPIs requiring development contributions for State infrastructure [cf **section 93D** of the EPA Act]. The Minister is to have regard to the key considerations for development contributions when making such a clause.

Proposed section 116S provides that the procedural matters applying to State infrastructure contributions are set out in **Part 2 of Schedule 1** to the EPA Act.

Division 4 Voluntary planning agreements

Division 4 sets out the non-procedural provisions relating to voluntary planning

agreements, which together with proposed **Part 3 of Schedule 1** to the EPA Act, will be substantially the same as the existing provisions of **sections 93F–93L** of the EPA Act except for proposed sections 116U and 116V.

Proposed section 116T sets out who can enter into a voluntary planning agreement [cf **section 93F (1)** of the EPA Act].

Proposed section 116U provides that planning authorities must have regard to the key considerations for development contributions before entering into a planning agreement.

Proposed section 116V provides a council can enter into a voluntary planning agreement for key community infrastructure as defined in the regulations without ministerial approval, but that contributions cannot be required for additional community infrastructure as defined in the regulations without prior ministerial approval. The provision also enables the Minister to waive the requirement for approval in certain circumstances. It also contains a provision for regulations to set out the information that councils are to supply in order to seek approval for additional community infrastructure.

Proposed section 116W sets out how voluntary planning agreements can limit other types of development contributions [cf **section 93F (3A), (5)–(5A) and (6)** of the EPA Act].

Proposed section 116X provides that the procedural matters applying to voluntary planning agreements are set out in **Part 3 of Schedule 1** to the EPA Act.

Division 5 Development contributions for affordable housing

Division 5 sets out how consent authorities can obtain a development contribution for affordable housing [cf **sections 94F–94G** of the EPA Act]. The provisions are substantially the same as current **Part 4 Division 6A** of the EPA Act.

Proposed section 116Y sets out the scheme and requirements for imposing a development contribution for affordable housing [cf **section 94F (1)–(3) and (6)** of the EPA Act].

Proposed section 116Z requires consent authorities to take into account any other contribution for affordable housing when imposing a contribution [cf **section 94F (4)** of the EPA Act].

Proposed section 116ZA provides that a consent authority can impose other conditions about the provision, maintenance and retention of affordable housing [cf **section 94F (5)** of the EPA Act].

Proposed section 116ZB sets out how affordable housing contributions may be used [cf **section 94G** of the EPA Act]. It contains directions powers. The Minister will now be able to direct a consent authority as to what constitutes a reasonable time for transferring land to be made available for affordable housing.

Division 6 State Infrastructure Fund

Division 6 establishes the State Infrastructure Fund (*the Fund*). The Division is substantially the same as **sections 94EI–94EM** of the current Act relating to the Special Contributions Areas Infrastructure Fund except administration of the fund will be the responsibility of the Secretary of the Treasury, in consultation with the Director-General.

Proposed sections 116ZC–116ZG provide for the establishment of the Fund and its administration, payments into and out of the Fund and investment powers.

Schedule 3.1 [7] enacts Schedule 1 to the EPA Act. **Schedule 1** contains the procedural provisions similar to those in **Division 6 of Part 4** of the current Act.

Part 1 Community infrastructure contributions

Part 1 of Schedule 1 [clauses 1–13] contains provisions relating to community infrastructure contributions.

Proposed clause 1 requires community infrastructure contributions to be imposed by a condition of consent [cf **sections 94 (1) and 94A (1)** of the EPA Act].

Proposed clause 2 sets out the limitations on appeals for direct contributions [cf

section 94B (3) of the EPA Act], and indirect contributions [cf **section 94B (4)** of the EPA Act]. It also sets out that there can be no appeal, including any action under **section 123** of the EPA Act where the Minister has approved or directed the amendment of a contributions plan [cf **section 94EAA (4)** of the EPA Act].

Proposed clause 3 sets out the provisions for the dedication of land or the accepting of a material public benefit for direct contributions [cf **section 94 (5)** of the EPA Act].

Proposed clause 4 provides for other contributions to be taken into account when requiring direct and indirect contributions [cf **section 94 (6)** of the EPA Act].

Proposed clause 5 provides that a community infrastructure contribution can satisfy a requirement imposed by another public authority under another Act [cf **section 94 (7)** of the EPA Act].

Proposed clause 6 sets out how a contributions plan is made [cf **section 94EA** of the EPA Act].

Proposed clause 7 sets out the Minister's direction powers for contribution plans [cf **section 94EAA (1)–(3)** of the EPA Act].

Proposed clause 8 provides that consent authorities that are not a council only have to have regard to contributions plans [cf **section 94B (2)** of the EPA Act].

Proposed clause 9 provides for judicial notice to be taken of contribution plans and for a limitation on legal proceedings [cf **section 94EB** of the EPA Act].

Proposed clause 10 provides for contributions plans and complying development [cf **section 94EC** of the EPA Act]. It also provides that a consent authority can impose a condition on a development consent for a contribution if the accredited certifier failed to do so.

Proposed clause 11 enables contributions plans to be made across local government area boundaries [cf **section 94C** of the EPA Act].

Proposed clause 12 sets out the circumstances where public infrastructure can be provided outside New South Wales [cf **section 94CA** of the EPA Act].

Proposed clause 13 sets out special provisions applying to the Minister or Director-General when imposing community infrastructure contributions [cf **section 94D** of the EPA Act].

Part 2 State infrastructure contributions

Part 2 of Schedule 1 [clauses 14–20] contains provisions relating to State infrastructure contributions.

Proposed clause 14 provides that the Minister may direct a consent authority to impose State infrastructure contributions [cf **section 94EF (1) and (3)** of the EPA Act].

Proposed clause 15 sets out how the Minister is to consult in determining the level and nature of State infrastructure contributions [cf **section 94EE (4)–(5)** of the EPA Act].

Proposed clause 16 sets out the restrictions on appeals against determinations and conditions and for modification of conditions [cf **sections 94EE (6) and 94EF (6)–(7)** of the EPA Act].

Proposed clause 17 provides for the dedication of land and the acceptance of a material public benefit for State infrastructure contributions [cf **section 94EF (5)** of the EPA Act].

Proposed clause 18 sets out special provisions for community and certain other infrastructure where that is included in a state infrastructure determination [cf **section 94EE (3A)–(3B)** of the EPA Act].

Proposed clause 19 provides that the Minister can direct the consent authority to sell or transfer any land it receives from a State infrastructure contribution [cf **section 94EH** of the EPA Act].

Proposed clause 20 sets out how the Minister makes State contributions areas [cf **section 94EG** of the EPA Act].

Part 3 Planning agreements

Part 3 of Schedule 1 [clauses 21–28] contains provisions relating to voluntary planning agreements.

Proposed clause 21 sets out who can be additional parties to a planning agreement [cf **section 93F (7)–(8)** of the EPA Act].

Proposed clause 22 establishes certain limitations for planning agreements [cf **section 93F (9)–(10)** of the EPA Act].

Proposed clause 23 sets out what planning agreements must contain [cf **section 93F (3)–(4)** of the EPA Act].

Proposed clause 24 provides that planning agreements can run with the land when registered [cf **section 93H** of the EPA Act].

Proposed clause 25 sets out when a planning agreement can or cannot be required to be made [cf **section 93I** of the EPA Act].

Proposed clause 26 sets out when appeals can be made about planning agreements [cf **section 93J** of the EPA Act].

Proposed clause 27 sets out the determinations and directions the Minister can make about planning agreements [cf **section 93K** of the EPA Act].

Proposed clause 28 provides a regulation making power to set out the requirements for the form, subject matter, making, amendment and revocation and giving of public notice of planning agreements [cf **sections 93G (1)–(2) and 93L** of the EPA Act].

Schedule 3.1 [9] inserts new savings and transitional provisions consequent on the enactment of Schedule 3 to the proposed Act.

The provisions relate to existing contributions, agreements and actions and the State Infrastructure Fund, and to regulations. They also provide a regime for the repeal of existing contributions plans on 31 March 2010.

Schedule 3.1 [1]–[3] make consequential amendments to Part 3A of the EPA Act.

Schedule 3.1 [5] effects a consequential renumbering of existing provisions.

Schedule 3.1 [8] makes a consequential amendment to the heading to Schedule 5A to the EPA Act.

Schedule 3.2 Amendment of Growth Centres (Development Corporations) Act 1974 No 49

Schedule 3.2 amends the *Growth Centres (Development Corporations) Act 1974 (the GC Act)*.

Schedule 3.2 [1] inserts proposed **sections 25 and 26** into the GC Act.

Proposed section 25 establishes the Community Infrastructure Trust Fund (*the Trust Fund*) to be administered by the Secretary of the Treasury who may delegate to the chief executive officer of the relevant growth centre. It provides for the payments into and out of the Trust Fund, and investment powers. The provision requires all community infrastructure contributions paid within a Community Infrastructure Trust Fund area to be paid into the Trust Fund. The provision stipulates that only land within a growth centre can be made to a Community Infrastructure Trust Fund area.

Proposed section 26 provides that the Minister may make, amend or repeal a community infrastructure trust fund area provided it is within a growth centre.

Schedule 3.2 [2] inserts proposed **Schedule 3** into the GC Act which sets out the proposed Community Infrastructure Trust Fund area. This is land within the North West and South West Growth Centres of Sydney.

Schedule 3.3 Amendment of Environmental Planning and Assessment Regulation 2000

Schedule 3.3 amends the EPA Regulation.

Schedule 3.3 [1] replaces **clause 25D** of the EPA Regulation. It provides that public notice of planning agreements is to be given by making the explanatory note for the agreement publicly available for 28 days before the planning authority enters into the agreement. The clause sets out how that public notice is to be given in various

circumstances.

Schedule 3.3 [2] is a consequential amendment.

Schedule 3.3 [3] inserts proposed **clause 25EA** into the EPA Regulation setting out the requirements for planning authorities to provide copies of planning agreements to relevant public authorities and to report on compliance on agreements that remain in force in their annual reports [cf **section 93G (3)–(5)** of the EPA Act].

Schedule 3.3 [4] inserts proposed **clauses 31A and 31B** into the EPA Regulation.

Proposed clause 31A sets out the infrastructure that is key community infrastructure and the infrastructure that cannot be additional community infrastructure.

Key community infrastructure is:

- (a) local roads,
- (b) local bus facilities,
- (c) local parks,
- (d) local sporting, recreational and cultural facilities and local social facilities,
- (e) local car parking facilities,
- (f) drainage and stormwater management works,
- (g) land for any community infrastructure, except land for riparian corridors,
- (h) district infrastructure of the kind referred to in paragraphs (a)–(e) but only if there is a direct connection with the development to which the contribution relates.

All other community infrastructure can be approved as additional community infrastructure except land for riparian corridors.

Proposed clause 31B sets out the requirements that a council must comply with when seeking ministerial approval to obtain a contribution for additional community infrastructure.

Schedule 3.4 Amendment of City of Sydney Act 1988 No 48

Schedule 3.4 amends the *City of Sydney Act 1988 (the CS Act)*.

Schedule 3.4 [1]–[4] amend **section 61** of the CS Act to remove references to the existing **section 94A** and **Division 6 of Part 4** of the EPA Act and replace them with appropriate references to the proposed Part 5B.

Schedule 4 Amendments relating to certification of development

Schedule 4.1 Amendment of Environmental Planning and Assessment Act 1979 No 203

Amendments relating to certifying authorities

Schedule 4.1 [6] amends section 81A of the EPA Act to require a person having the benefit of a development consent to notify the principal certifying authority at least 2 days before commencing to erect a building or to carry out subdivision work.

Schedule 4.1 [7] amends section 81A to increase the penalties for contravening that section from 300 penalty units to 1,000 penalty units.

Schedule 4.1 [8] amends section 85A of the EPA Act to ensure that any applicable long service leave levy payments have been made before a council or certifying authority can forward a complying development certificate to an applicant.

Schedule 4.1 [9] amends section 86 of the EPA Act to require a person having the benefit of a complying development certificate to notify the principal certifying authority at least 2 days before commencing to erect a building or to carry out subdivision work.

Schedule 4.1 [12] amends section 109D of the EPA Act to enable an environmental planning instrument, when authorising an accredited certifier to be a certifying authority in respect of subdivision, to place restrictions on the issue of subdivision certificates by accredited certifiers.

Schedule 4.1 [13] amends section 109E of the EPA Act to require the person who has the benefit of a development consent or complying development certificate for development to appoint a certifying authority in respect of building work involved in

the development and a certifying authority in respect of subdivision work involved in the development. The amendments enable different certifying authorities to be appointed in respect of building work and subdivision work. **Schedule 4.1 [14]** amends section 109E consequentially.

Schedule 4.1 [15] amends section 109EA of the EPA Act to enable the current principal certifying authority for development, the proposed principal certifying authority for development and a person who is eligible to appoint a principal certifying authority for the development to agree on a change of principal certifying authority. At present, the person who appointed the original principal certifying authority has to agree and the Building Professionals Board, the relevant council and the consent authority have to be notified in order for the change in principal certifying authority to take effect.

Schedule 4.1 [16] inserts proposed section 109EB into the EPA Act to require certifying authorities for development to issue notices identifying failures of the development to comply with certain conditions of development consent and other requirements of the EPA Act and to direct the taking of action to remedy the failures. A certifying authority must notify the consent authority if any such direction is not complied with. Proposed section 109EB replaces the provisions enabling the issuing of notices under section 109L of the EPA Act which is omitted by **Schedule 4.1 [18]**.

Schedule 4.1 [19] inserts proposed section 109PA into the EPA Act which provides that before issuing a construction certificate for building work or subdivision work, or a final occupation certificate, a certifying authority may seek advice from the consent authority as to whether the consent authority considers that the design and construction of any building or work is consistent with the relevant development consent or complying development certificate.

Schedule 4.1 [23] inserts proposed section 117B into the EPA Act to enable action to be taken after the investigation under the *Building Professionals Act 2005* of the activities of a council as a certifying authority. The Building Professionals Board will be able to recommend to the Director-General of the Department of Local Government that certain measures should be taken or may recommend to the Minister that an order be made under the proposed section. On such a recommendation from the Building Professionals Board and after consultation with the Minister for Local Government, the Minister may, by order, suspend a council's authority to exercise some or all of the functions of a certifying authority until appropriate measures are taken by the council.

Design certificates

Schedule 4.1 [17] inserts proposed section 109IA into the EPA Act which provides that a design certificate is to be obtained from a person appropriately accredited under the *Building Professionals Act 2005* before a Part 4A certificate can be issued in relation to an aspect of development, but only if the regulations so require.

Schedule 4.1 [1] and [2] make consequential amendments to section 4 of the EPA Act.

Security to ensure compliance with development consent

Schedule 4.1 [3] amends section 80A of the EPA Act to enable a consent authority to impose a condition on development consent, or to enter into an agreement with an applicant for development consent, requiring the applicant to provide security to ensure compliance with the terms of the consent during the carrying out of any building work or subdivision work.

Schedule 4.1 [4] amends section 80A of the EPA Act to enable regulations to be made setting maximum amounts that may be required as security under the amendments.

Schedule 4.1 [5] amends section 80A of the EPA Act to provide for the way in which such security may be handled by the consent authority concerned and when the person who provided the security can request its return.

Schedule 4.1 [10] and [11] amend section 98A of the EPA Act to provide for an appeal in relation to a consent authority's failure to return security provided by a person.

Powers of investigation and enforcement in relation to development

Schedule 4.1 [25] inserts proposed section 118BA into the EPA Act which sets out a procedure by which persons authorised by a council under Division 1A of Part 6 of the EPA Act may require accredited certifiers and other persons involved in the carrying out of development to attend a specified place and answer questions to assist the council in carrying out its functions under the EPA Act. **Schedule 4.1 [24]** makes a consequential amendment.

Schedule 4.1 [26] substitutes section 118N of the EPA Act (which currently contains an offence of obstructing an authorised person in carrying out functions under Division 1A of Part 6) to extend the offence to refusing to answer questions asked under proposed section 118BA or providing false information in response to such questions.

Schedule 4.1 [27] amends section 121B of the EPA Act to enable the Minister, a council and specified other persons to issue an order under that section to the owner of land or a person apparently engaged in carrying out building work or subdivision work to cease carrying out the work if the EPA Act is being contravened or the work affects the support of adjoining premises. **Schedule 4.1 [29]** amends section 121D of the EPA Act to exclude a person making the new section 121B order from the need to comply with specified procedures.

Schedule 4.1 [28] inserts proposed section 121CA into the EPA Act to enable a person who gives an order under section 121B of the EPA Act to serve a compliance cost notice on the person to whom the order was given requiring the payment of an amount to cover the reasonable costs associated with monitoring and ensuring compliance with the order.

Schedule 4.1 [30] inserts proposed section 121ZKA into the EPA Act to provide a right of appeal against a compliance cost notice.

Other amendments relating to certification matters and building work

Schedule 4.1 [20] and [21] amend section 109Q of the EPA Act to enable the regulations to prescribe documents to be provided and matters to be notified to consent authorities, councils or certifying authorities for the purposes of Part 4A of the EPA Act. The amendments also enable regulations to be made with respect to applications for, and the form and content of, Part 4A certificates and the manner in which complaints in respect of development are to be dealt with by certifying authorities.

Schedule 4.1 [22] amends section 109ZK of the EPA Act to ensure that the period during which an action for loss or damage may be brought in relation to defective building work is consistent with the period for which accredited certifiers are required to be covered by insurance under the *Building Professionals Act 2005*.

Schedule 4.1 [31] amends section 157 of the EPA Act to enable the regulations to prescribe documents to be provided and matters to be notified to consent authorities, councils or certifying authorities under the EPA Act.

Schedule 4.1 [32] inserts savings and transitional provisions consequent on the enactment of Schedule 4 to the proposed Act.

Schedule 4.2 Amendment of Environmental Planning and Assessment Regulation 2000

Schedule 4.2 [1] inserts clause 129B into the EPA Regulation to prevent a certifying authority issuing a complying development certificate unless a council or an accredited certifier has carried out a site inspection.

Schedule 4.2 [2] amends clause 139 of the EPA Regulation to provide that an application for a construction certificate may only be made by a person who is eligible to appoint a principal certifying authority for the development. **Schedule 4.2**

[13] makes a consequential amendment.

Schedule 4.2 [3] inserts proposed clause 143B into the EPA Regulation to prevent a certifying authority issuing a construction certificate where there is an existing building on the site unless a council, a consent authority or an accredited certifier has carried out an inspection of the building.

Schedule 4.2 [4] amends clause 145 of the EPA Regulation to provide that a certifying authority must not issue a construction certificate for building work unless the design and construction of the building is consistent with the development consent. At present, clause 145 provides that the design and construction must not be inconsistent with the development consent.

Schedule 4.2 [5] amends clause 149 of the EPA Regulation to provide that an application for an occupation certificate may only be made by a person who is eligible to appoint a principal certifying authority for the development.

Schedule 4.2 [6] inserts proposed clause 154D into the EPA Regulation to require a certifying authority to record any inconsistencies in the design and construction of a building with the relevant development consent or complying development certificate when issuing an interim occupation certificate for the building. The proposed clause also provides that a final occupation certificate may not be issued unless the design and construction of the building concerned is consistent with the relevant development consent or complying development certificate.

Schedule 4.2 [7] amends clause 157 of the EPA Regulation to provide that an application for a subdivision certificate may only be made by the owner of the land concerned or another person who has the consent of the owner.

Schedule 4.2 [8]–[10] amend clause 162A of the EPA Regulation to require certain additional inspections during the course of carrying out building work. The amendments also remove the requirement for inspections to be undertaken at the commencement of certain building work.

Schedule 4.2 [11] amends clause 162C of the EPA Regulation to remove the requirement that principal certifying authorities are to send copies of records made in relation to missed inspections to the Building Professionals Board.

Schedule 4.2 [12] amends clause 260 of the EPA Regulation to increase the fees for an application for a building certificate for a building under section 149A of the EPA Act if the application is made by the person who erected the building or on whose behalf the building was erected and the building was erected in specified circumstances involving a contravention of the Act.

Schedule 4.3 Amendment of Strata Schemes (Freehold Development)

Act 1973 No 68

Schedule 4.3 [1] inserts proposed section 36A into the *Strata Schemes (Freehold Development) Act 1973* to specify who may make an application for a strata certificate under that Act.

Schedule 4.3 [2] inserts proposed section 37AA into the *Strata Schemes (Freehold Development) Act 1973* to require a council or an accredited certifier to be satisfied that any inspections prescribed by the regulations have been carried out before issuing a strata certificate under that Act.

Schedule 4.3 [3] amends section 37E of the *Strata Schemes (Freehold Development) Act 1973* to ensure that all relevant provisions of the *Building Professionals Act 2005* apply to accredited certifiers issuing strata certificates.

Schedule 4.4 Amendment of Strata Schemes (Leasehold Development)

Act 1986 No 219

Schedule 4.4 [1] inserts proposed section 65A into the *Strata Schemes (Leasehold Development) Act 1986* to specify who may make an application for a strata certificate under that Act.

Schedule 4.4 [2] inserts proposed section 66AA into the *Strata Schemes (Leasehold Development) Act 1986* to require a council or accredited certifier to be satisfied that

any inspections prescribed by the regulations have been carried out before issuing a strata certificate under that Act.

Schedule 4.4 [3] amends section 66E of the *Strata Schemes (Leasehold Development) Act 1986* to ensure that all relevant provisions of the *Building Professionals Act 2005* apply to accredited certifiers issuing strata certificates.

Schedule 5 Miscellaneous Amendments

Places of public entertainment

Schedule 5.1 [1], [3]–[6] and [8] omit provisions relating to places of public entertainment that are no longer necessary following the integration of separate licensing provisions under the *Local Government Act 1993* into the planning approvals and control processes under the EPA Act. **Schedule 5.7** makes a consequential amendment to the standard local environmental plan under the *Standard Instrument (Local Environmental Plans) Order 2006*.

Paper subdivisions

Schedule 5.1 [7] inserts proposed section 155 into the EPA Act, which gives effect to proposed Schedule 5 which contains a scheme relating to certain subdivisions that have not been developed.

Schedule 5.1 [9] inserts proposed Schedule 5 (Paper subdivisions) into the EPA Act. The proposed Schedule contains a scheme enabling the development of existing subdivisions that exist on paper but, because of the size or location of the lots or other factors, have never been able to be developed as subdivisions. The scheme is commenced by the making of a subdivision order by the Minister specifying an authority as the relevant subdivision authority, the planning purpose of the order, the functions under the proposed Schedule of the authority and the subdivision land. It will also specify the subdivision works (if any) to be undertaken by the subdivision authority. The Minister must be of the opinion that the order is desirable to promote and co-ordinate the orderly and economic use of the land concerned before making the order. An order may not be made unless there is or will be a development plan for the land and at least 60% of the owners of the land, and the owners of at least 60% of the land, have consented to the development plan. There must also be an environmental planning instrument or planning proposal to facilitate the proposed planning purpose. The relevant authority is required to give effect to the planning purpose and must prepare the development plan. The development plan is to contain a proposed plan of subdivision and details of subdivision works and costs and how those costs are to be borne by owners of the land. A development plan may also contain details of any scheme for land trading or for compulsory acquisition of land for payment of subdivision costs and rules as to the form of, and calculation of, compensation if land is acquired by the relevant authority. The operation of the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* relating to valuation of land for compensation purposes may be disapplied or modified by a development plan. The proposed Schedule sets out powers that may be conferred on a relevant authority, including land acquisition powers, contribution powers, powers to carry out subdivision works, road powers and other ancillary powers. The proposed Schedule also provides for voluntary contributions agreements between owners of subdivision land and the relevant authority and for the registration of such agreements, so that the terms of the agreement bind successive land owners. It will be an offence to obstruct, hinder or interfere with an authorised person carrying out functions under the proposed Schedule.

Concurrence and referral requirements

Schedule 5.1 [2] will enable the consent authority under the EPA Act to consent to the carrying out of development on bush fire prone land if the council is provided with a certificate by a person recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms with the relevant requirements set out in the RFS's Planning for Bushfire

Protection guidelines. As a consequence of the amendment, the consent authority will not need to consult with the RFS before it can grant consent to the carrying out of development on bush fire prone land.

Schedules 5.2 [1] and 5.3 remove the requirement for the concurrence of the Minister for Climate Change and the Environment when carrying out development in the coastal zone, but only if it is development that requires development consent under the EPA Act, is exempt development under that Act or is carried out in accordance with a coastal zone management plan under Part 4A of the *Coastal Protection Act 1979*. In those cases where the concurrence of the Minister is still required for development in the coastal zone, **Schedule 5.2 [2] and [3]** provide that the period for consideration of the proposal or application by the Minister will be reduced from 40 to 21 days.

Schedule 5.4 [1] removes the requirement for local council approval under the *Local Government Act 1993* to operate a public car park. **Schedule 5.5** makes a consequential amendment to the *Local Government (General) Regulation 2005*.

Schedule 5.4 [2] and [3] provides that any concurrence that is required in relation to a local council approval under the *Local Government Act 1993* is to be assumed to have been obtained if at least 21 days (instead of 40 days as is presently the case) has passed since the concurrence was sought and the concurrence has not been expressly refused during that 21-day period.

Schedule 5.4 [4]–[7] provide for the limitation of a local council's liability for any advice it gives, or anything it does, in relation to land that is subject to the risk of bush fire. As a consequence of these amendments, a local council will be able to rely on the principles contained in a manual, notified by the Minister for Planning in the Gazette, relating to the management of land subject to the risk of bush fire.

Schedule 5.6 [1] provides that road widening orders under the *Roads Act 1993* must be reviewed by the Minister every 10 years after the date on which they are made.

Schedule 5.6 [2] removes the requirement for the concurrence of the RTA in relation to the granting of an approval by a local council to use the footway of a classified road for the purposes of a restaurant.

Savings and transitional provisions

Schedule 5.1 [10] amends Schedule 6 to the EPA Act to enable regulations containing provisions of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 5.1 [11] and [12] amend Schedule 6 to the EPA Act to insert savings and transitional provisions resulting from the enactment of Schedule 5 to the proposed Act.