

ENVIRONMENTAL PLANNING AND ASSESSMENT BILL, 1979

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill :—

- Land and Environment Court Bill, 1979;
- Miscellaneous Acts (Planning) Repeal and Amendment Bill, 1979;
- Heritage (Amendment) Bill, 1979;
- Height of Buildings (Amendment) Bill, 1979.

THE object of this Bill is to institute a new system of environmental planning and assessment for the State of New South Wales.

The Bill contains the following provisions :—

PART I.—PRELIMINARY.

- Clause 1. Short title.
- Clause 2. Commencement.
- Clause 3. Arrangement of the proposed Act.
- Clause 4. Interpretation.
- Clause 5 specifies the objects of the proposed Act.
- Clause 6 provides that the proposed Act binds the Crown.

PART II.—ADMINISTRATION.

Clause 7 charges the Minister with the responsibility of promoting and co-ordinating environmental planning and assessment, and set out certain of the functions of the Minister.

Clauses 8–12 constitute the Minister as a corporation sole (“the corporation”) and authorise the corporation to acquire and dispose of land, and in particular to sell land subject to conditions relating to the erection of buildings.

Clauses 13–15 enable the Governor-in-Council to appoint a Director of Environment and Planning (“the Director”), to be the permanent head of the Department of Environment and Planning. The Director is to be subject to the control and direction of the Minister, and is not to be subject to the Public Service Act, 1902. Certain of the functions of the Director are specified in clause 15, and include functions respecting the management of land vested in the corporation.

Clause 16 establishes a Department of Environment and Planning (“the Department”).

Clauses 17 and 18 provide for the staff of the Department and the use of staff of other bodies.

Clauses 19–22 set up an Advisory Co-ordinating Committee, a Local Government Liaison Committee and an Environment and Planning Committee, and enable the setting up of other committees.

Clause 23 confers a power of delegation on the Minister, the corporation and the Director.

PART III.—ENVIRONMENTAL PLANNING INSTRUMENTS.

This Part provides for the making of the following kinds of environmental planning instruments:—

- (1) State environmental planning policies (clauses 37–39).
- (2) Regional environmental plans (clauses 40–52).
- (3) Local environmental plans (clauses 53–72).

Clauses 24–36 contain a number of general provisions, including provisions—

- (a) requiring an environmental planning instrument to state its aims, objectives, policies and strategies (clause 25);
- (b) setting out the matters that may be dealt with in an instrument, including the protection and improvement of the environment, the control of development, the designating of land for public purposes, the control of demolition and the protection of trees and vegetation (clause 26);
- (c) enabling (subject to the prior approval of the Governor-in-Council) an instrument to specify laws and instruments that are not to apply to development specified in the instrument;
- (d) enabling an instrument to permit development without consent, or to permit development with consent, or to prohibit development, and enabling the instrument, where consent is required, to require the concurrence of a third party before an application is determined (clauses 30 and 31);
- (e) providing for the making and adoption of model provisions (clause 33);
- (f) providing that an instrument may only be challenged, for a formal failure to comply with the Part, in proceedings commenced within 6 weeks after publication of the instrument in the Gazette (clause 35); and

- (g) stating that there is no general presumption that a State instrument prevails over a regional or local instrument, or that a regional instrument prevails over a local instrument (clause 36).

Clauses 37–39 deal with the making by the Minister, by gazettal, of State environmental planning policies. Such a policy is to deal with matters of significance for environmental planning for the State.

Clauses 40–52 deal with the making by the Minister, by gazettal, of regional environmental plans. Such a plan is to deal with matters of significance for environmental planning for a region. Before such a plan is made, certain steps have to be taken, including the following, namely: an environmental study has to be prepared and publicly exhibited, submissions relating to the study and aims of the plan have to be considered, various bodies have to be consulted, the draft plan has to be publicly exhibited and submissions relating to the draft have to be considered.

Clauses 53–72 deal with the making by the Minister, by gazettal, of local environmental plans. Before such a plan is made, certain steps have to be taken, including the following, namely: the council involved has to appoint a qualified person to prepare or assist in preparing the draft plan, an environmental study has to be prepared and publicly exhibited, submissions relating to the study and the aims of the plan have to be considered, various bodies have to be consulted, the Department has to issue a certificate as to the consistency of the instrument with State or regional instruments, the draft instrument has to be publicly exhibited and submissions relating to the draft have to be considered. Local plans may also be made jointly by 2 or more councils. Clause 72 authorises a council to make a development control plan, which provides more detailed provisions than are contained in the local environmental plan.

Clauses 73 and 74 make provision for the review and amendment of environmental planning instruments, and empower the Minister, in connection with an amendment, to require an environmental study to be prepared.

PART IV.—ENVIRONMENTAL PLANNING CONTROL.

Clauses 75–105 secure compliance with the requirements of an environmental planning instrument, and set out the manner of making development applications where such an instrument requires the consent of an authority. The provisions also prevent the determination of an application for consent where the concurrence of a third party to development is required, until the third party has decided whether or not to grant concurrence or unless concurrence may be assumed.

The Part imposes special requirements on the manner of dealing with development applications for significant development (“designated development”), including the requirement that an environmental impact statement be submitted. Where the Minister directs that a Commission of Inquiry conduct an inquiry into the environmental aspects of designated development, it is the responsibility of the Minister to determine the application after considering the findings of the Commission of Inquiry.

Clause 90 specifies the matters to be taken into consideration in determining a development application, including the provisions of any environmental planning instrument, the impact of the development on the environment, its effect on the landscape, its social and economic effects, its nature, its relationship with nearby development, the means of access, traffic problems, landscaping, the amenity of the neighbourhood, and the public interest.

Clauses 97 and 98 empower a dissatisfied applicant or objector to appeal to the proposed Land and Environment Court in connection with the determination made on a development application.

Clause 101 enables the Director to direct that a consent authority refer for determination by the Minister a particular development application or class thereof.

Clauses 106–109 specify the circumstances in which an existing use of a building, work or land may be continued after an environmental planning instrument takes effect.

PART V.—ENVIRONMENTAL ASSESSMENT.

Clauses 110–115 institute a system of environmental assessment.

Clause 111 imposes a general duty on a public authority carrying out or consenting to activity of certain types to examine fully and take into consideration all matters likely to affect the environment by reason of the activity.

Clauses 112–114 require the preparation of environmental impact statements in certain cases, and also require certain decisions to be delayed pending the consideration and publicising of the findings of a Commission of Inquiry as to the environmental aspects of the development in question.

PART VI.—IMPLEMENTATION AND ENFORCEMENT.

Clause 116 specifies the value, on resumption, of land designated, by an environmental planning instrument, for a specific purpose, so that the value is determined disregarding the designation and so that additional compensation may be awarded in connection with the relocation of the former owner's residence.

Clause 117 empowers the Minister to direct a public authority to exercise its functions under the proposed Act or an environmental planning instrument in accordance with the principles set out in the direction.

Clause 118 enables the appointment by the Minister of an officer of the Department to administer any of the functions of a council under the proposed Act.

Clauses 119–121 provide machinery for public inquiries to be held by Commissions of Inquiry.

Clauses 122–124 enable the bringing of proceedings in the proposed Land and Environment Court to remedy or restrain breaches of the proposed Act, whether or not any right of the person bringing the proceedings has been infringed.

Clause 125 specifies the circumstances in which an offence is committed against the proposed Act or the regulations.

Clause 126 imposes a maximum penalty of \$20,000 (and a maximum daily penalty of \$1,000) for an offence against the proposed Act where no other penalty is expressly provided, and a maximum penalty of \$2,000 for an offence against the regulations.

Clause 127 authorises proceedings for offences to be brought in a court of petty sessions or in the proposed Land and Environment Court.

PART VII.—FINANCE.

Clauses 128–131 relate to the funds and accounts under the proposed Act.

Clauses 132–135 set up development areas.

Clauses 136–139 are concerned with charges and fees payable to the Department, Director or corporation.

Clauses 144 and 145 require accounts and records to be kept and audited.

PART VIII.—MISCELLANEOUS.

Clauses 146 and 147 require the submission to Parliament of an annual report on the Department.

Clause 148 prohibits the divulging of information obtained in the administration of the proposed Act.

Clause 149 authorises a council to issue certificates relating to the application of an environmental planning instrument to any land, and as to other matters.

Clause 150 deals with evidentiary matters.

Clause 151 confers a power of delegation on councils as to their functions under the proposed Act or the regulations.

Clause 152 provides that, where a person has a right to be heard, he may be heard in person or by counsel, solicitor or agent.

Clause 153 deals with service of documents by post.

Clause 154 provides for the operation of an environmental planning instrument in the event of the transfer or amalgamation of local government areas.

Clause 156 provides for the repeal of section 16 of the proposed Act in the event that the Department is abolished or its name is changed.

Clauses 157 and 158 confer regulation-making powers.

SCHEDULES 1-7.

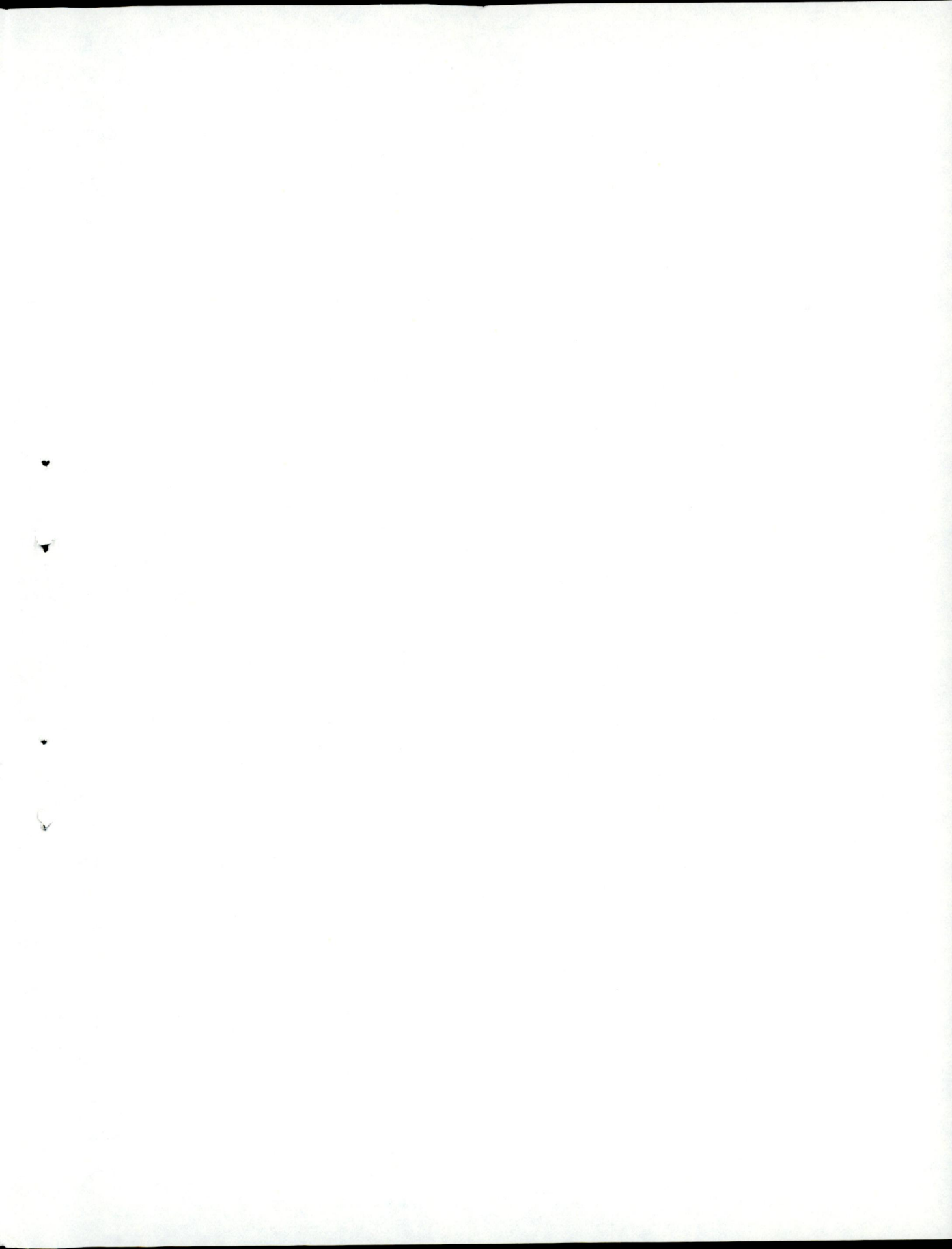
Schedule 1. Provisions respecting the Director.

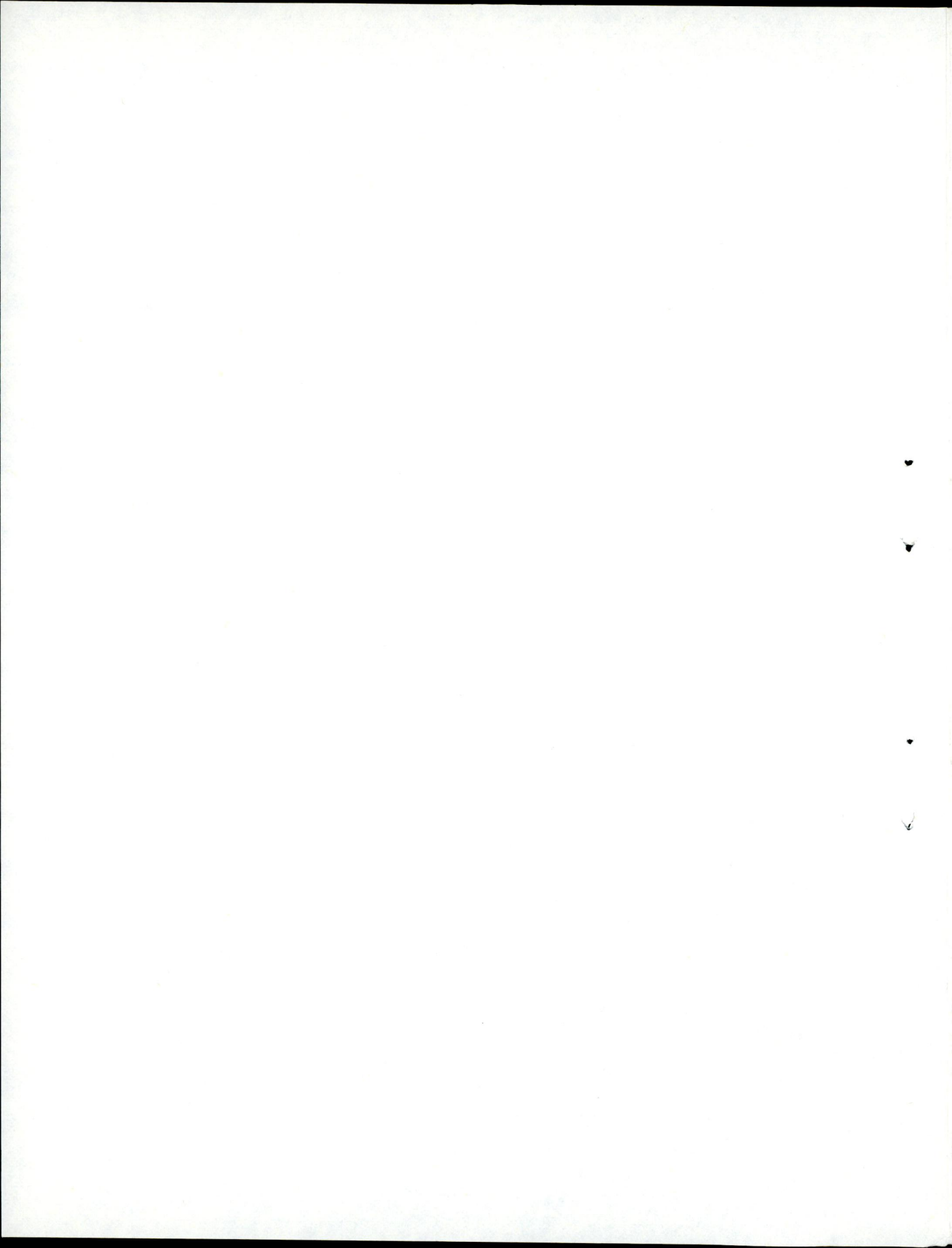
Schedules 2-5 deal with various committees under the proposed Act.

Schedule 6 contains provisions relating to loans by the corporation.

Schedule 7 sets out certain modifications to the Public Works Act, 1912, that are applicable where land is resumed for the purposes of the proposed Act.

The Bill also contains other provisions of a minor, consequential or ancillary nature.





**ENVIRONMENTAL PLANNING AND ASSESSMENT
BILL, 1979**

No. , 1979.

A BILL FOR

An Act to institute a system of environmental planning and
assessment for the State of New South Wales.

[MR HAIGH—17 *April*, 1979.]

See also Land and Environment Court Bill, 1979; Miscellaneous Acts (Planning) Repeal and Amendment Bill, 1979; Heritage (Amendment) Bill, 1979; and Height of Buildings (Amendment) Bill, 1979.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament Assembled, and by the authority of the same, as follows :—

5

PART I.

PRELIMINARY.

1. This Act may be cited as the "Environmental Planning and Assessment Act, 1979". Short title.

2. (1) This section and sections 1 and 155 shall commence Commence-
10 on the date of assent to this Act. ment.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 3. This Act is divided as follows :—

Arrange-
ment.

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ADMINISTRATION—*ss.* 7–23.

DIVISION 1.—*The Minister*—*ss.* 7–12.

DIVISION 2.—*The Director*—*ss.* 13–15.

20 DIVISION 3.—*The Department*—*ss.* 16–18.

DIVISION 4.—*Committees*—*ss.* 19–22.

DIVISION 5.—*Delegation*—*s.* 23.

PART III.—ENVIRONMENTAL PLANNING INSTRUMENTS—*ss.*
24–74.

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DIVISION 1.—*General*—ss. 24–36.

DIVISION 2.—*State environmental planning policies*—ss. 37–39.

DIVISION 3.—*Regional environmental plans*—ss. 40–52.

5 DIVISION 4.—*Local environmental plans*—ss. 53–72.

DIVISION 5.—*Review and amendment of environmental planning instruments*—ss. 73, 74.

PART IV.—ENVIRONMENTAL PLANNING CONTROL—ss. 75–109.

10 DIVISION 1.—*General*—ss. 75–105.

DIVISION 2.—*Existing use*—ss. 106–109.

PART V.—ENVIRONMENTAL ASSESSMENT—ss. 110–115.

PART VI.—IMPLEMENTATION AND ENFORCEMENT—ss. 116–127.

15 DIVISION 1.—*General*—ss. 116–118.

DIVISION 2.—*Public inquiries and settlement of disputes*—ss. 119–121.

DIVISION 3.—*Orders of the Court*—ss. 122–124.

DIVISION 4.—*Offences*—ss. 125–127.

20 PART VII.—FINANCE—ss. 128–145.

DIVISION 1.—*Funds*—ss. 128–135.

DIVISION 2.—*Charges and fees*—ss. 136–139.

DIVISION 3.—*Loans*—ss. 140–143.

DIVISION 4.—*General*—ss. 144, 145.

25 PART VIII.—MISCELLANEOUS—ss. 146–158.

SCHEDULE 1.—THE DIRECTOR.

SCHEDULE 2.—ADVISORY CO-ORDINATING COMMITTEE.

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SCHEDULE 3.—LOCAL GOVERNMENT LIAISON COMMITTEE.

SCHEDULE 4.—ENVIRONMENT AND PLANNING ADVISORY COMMITTEE.

SCHEDULE 5.—COMMITTEE PROCEDURES.

5 SCHEDULE 6.—LOANS.

SCHEDULE 7.—MODIFICATION OF THE PUBLIC WORKS ACT, 1912.

4. (1) In this Act, except in so far as the context or Interpretation subject-matter otherwise indicates or requires—

10 “area” has the meaning ascribed thereto in the Local Government Act, 1919;

“Authority” means the State Planning Authority of New South Wales as constituted under the State Planning Authority Act, 1963;

15 “building” includes a structure or a part of a structure;

“Commission” means the New South Wales Planning and Environment Commission as constituted under the New South Wales Planning and Environment Commission Act, 1974;

20 “consent authority”, in relation to a development application, means—

(a) the council; or

(b) where an environmental planning instrument specifies a different person as the consent authority —that person,

25 having the function to determine the application;

“control”, in relation to development or any other act, matter or thing, means—

30 (a) consent to, permit, regulate, restrict or prohibit that development or that other act, matter or thing, either unconditionally or subject to conditions; or

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5 (b) confer or impose on a consent authority functions with respect to consenting to, permitting, regulating, restricting or prohibiting that development or that other act, matter or thing, either unconditionally or subject to conditions;

“corporation” means the corporation constituted by section 8 (1);

“council” has the meaning ascribed thereto in the Local Government Act, 1919;

10 “Court” means the Land and Environment Court;

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

“Department” means the Department of Environment and Planning;

“Director” means the person appointed and holding office under section 13;

20 “designated development” means any class or description of development that is designated pursuant to section 29 or 158 to be development that, if carried out, would be likely to have a significant impact on the amenity of the locality;

25 “development”, in relation to land, means—

(a) the erection of a building on that land;

(b) the carrying out of a work in, on, over or under that land;

30 (c) the use of that land or of a building or work on that land; and

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(d) the subdivision of that land,
but does not include any development of a prescribed
class or description;

5 “development application” means an application for consent
under Division 1 of Part IV to carry out development;

“development area” means land constituted as a development
area in accordance with Division 1 of Part VII;

10 “development standards” means provisions of an environ-
mental planning instrument in relation to the carrying
out of development, being provisions by or under which
requirements are specified or standards are fixed in
respect of any aspect of that development, including, but
without limiting the generality of the foregoing,
requirements or standards in respect of—

15 (a) the area, shape or frontage of any land, the
dimensions of any land, buildings or works, or
the distance of any land, building or work from
any specified point;

20 (b) the proportion or percentage of the area of a site
which a building or work may occupy;

(c) the location, siting, bulk, scale, shape, size, height,
design or external appearance of a building or
work;

(d) the cubic content or floor space of a building;

25 (e) the intensity or density of the use of any land,
building or work;

30 (f) the provision of public access, open space, land-
scaped space, tree planting or other treatment for
the conservation, protection or enhancement of
the environment;

(g) the provision of facilities for the standing,
movement, parking, servicing, manoeuvring,
loading or unloading of vehicles;

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- (h) the volume, nature and type of traffic generated by the development;
- (i) road patterns;
- (j) drainage;
- 5 (k) the carrying out of earthworks;
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows;
- (m) the provision of services, facilities and amenities demanded by development;
- 10 (n) the emission of pollution and means for its prevention or control or mitigation; and
- (o) such other matters as may be prescribed;

15 “environment” includes all aspects of the surroundings of man, whether affecting him as an individual or in his social groupings;

20 “environmental planning instrument” means a State environmental planning policy, a regional environmental plan, or a local environmental plan, and except where otherwise expressly provided by this Act, includes a deemed environmental planning instrument;

“functions” includes powers, authorities and duties;

“local environmental plan” means a plan made by the Minister under section 70 that is in force;

25 “objector”, in relation to a development application, means a person who makes a submission by way of objection under section 87;

“occupier” includes a tenant or other lawful occupant of premises, not being the owner;

30 “officer of the Department” means an officer or employee of the Department, and includes the Director;

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“owner” has the meaning ascribed thereto in the Local Government Act, 1919;

“person” includes an unincorporated group of persons or a person authorised to represent that group;

5 “public authority” means a public or local authority constituted by or under any Act, a government Department or a statutory body representing the Crown, and includes a person exercising functions on behalf of that authority, Department or body;

10 “region” means any land that the Minister, under subsection (6), declares to be a region;

“regional environmental plan” means a plan made by the Minister under section 51 that is in force;

“regulation” means a regulation made under this Act;

15 “Secretary” means the person for the time being holding or acting in—

(a) a prescribed office in the establishment of the Department; and

20 (b) if no office is for the time being prescribed—the office of Secretary to the Department;

“State environmental planning policy” means a policy made by the Minister under section 39 that is in force.

(2) A reference in this Act to—

25 (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, the enlargement or extension of a building or the placing or relocating of a building on land;

30 (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, or the enlargement or extension of a work;

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- 5 (c) a work includes a reference to any physical activity in relation to land that is specified by a regulation to be a work for the purposes of this Act but does not include a reference to any activity that is specified by a regulation not to be work for the purposes of this Act; and
- (d) the subdivision of land is a reference to—
- 10 (i) the subdivision of land within the meaning of the Local Government Act, 1919;
- (ii) any other division of land into 2 or more parts which, after the division, would be obviously adapted for separate occupation, use or disposition; or
- 15 (iii) the redivision of land, by such a subdivision or by any other division, into different parts which, after the redivision, would be obviously adapted for separate occupation, use or disposition,
- and includes a reference to a subdivision effected under Division 1 of Part II of the Strata Titles Act, 1973.
- 20 (3) Where functions are conferred or imposed by or under this Act on a council—
- (a) except as provided in paragraph (b), those functions may be exercised in respect of an area by the council of that area; or
- 25 (b) if the functions are conferred or imposed in respect of part of an area, those functions may be exercised in respect of that part by the council of that area.
- (4) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.
- 30 (5) Subject to section 56, a reference in this Act to the Director or a council preparing an environmental planning instrument or an environmental study includes a reference to the Director

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or a council, as the case may be, causing that environmental planning instrument or environmental study to be prepared on his or its behalf.

(6) The Minister may, by order published in the Gazette, 5 declare any land, whether or not consisting of areas or parts of areas, to be a region for the purposes of this Act.

(7) A reference in this Act to a direction is a reference to a direction in writing.

(8) A power, express or implied, to give a direction under 10 this Act includes a power to revoke or amend the direction.

(9) A reference in this Act to a prescribed form includes a reference to a form that is to the effect of that prescribed form.

(10) A reference in this Act to any act, matter or thing as specified in an environmental planning instrument includes a 15 reference to any act, matter or thing that is of a class or description as specified in such an instrument.

5. The objects of this Act are—

Objects.

(a) to encourage—

- 20 (i) the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- 25 (ii) the promotion and co-ordination of the orderly and economic use and development of land;
- (iii) the conservation of important areas of landscape;
- 30 (iv) the protection, provision and co-ordination of communication and utility services;

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- (v) the provision of land for public and community purposes;
 - (vi) the provision and co-ordination of community services and facilities; and
 - 5 (vii) the protection of the environment; and
- (b) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

6. This Act binds the Crown, not only in right of New South Act to
10 Wales but also, so far as the legislative power of Parliament bind
permits, the Crown in all its other capacities. Crown.

PART II.

ADMINISTRATION.

DIVISION 1.—*The Minister.*

15 7. Without affecting the functions that the Minister has apart Responsi-
from this section, the Minister is charged with the responsibility bility of
of promoting and co-ordinating environmental planning and assess- the
ment for the purpose of carrying out the objects of this Act and, Minister.
in discharging that responsibility, shall have and may exercise
20 the following functions :—

- (a) to carry out research into problems of environmental planning and assessment and prepare and disseminate information including the issue of memoranda, reports, bulletins, maps or plans relating to environmental planning and assessment;
- 25

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- (b) to advise councils upon all matters concerning the principles of environmental planning and assessment and the implementation thereof in local environmental plans;
- 5 (c) to promote the co-ordination of the provision of public utility and community services and facilities within the State;
- (d) to promote planning of the distribution of population and economic activity within the State;
- 10 (e) to investigate the social aspects of economic activity and population distribution in relation to the distribution of utility services and facilities; and
- (f) to monitor progress and performance in environmental planning and assessment, and to make recommendations for the taking of remedial action where necessary.

15 **8.** (1) The Minister is, for the purpose of exercising those functions expressed to be conferred or imposed on the corporation under this Act, hereby incorporated as a corporation sole with the corporate name "Minister administering the Environmental Planning and Assessment Act, 1979". Minister to be corporation sole for certain purposes.

20 (2) The corporation—

- (a) has perpetual succession;
- (b) shall have an official seal;
- (c) may take proceedings, and be proceeded against, in its corporate name;
- 25 (d) may do and suffer all other things that a body corporate generally may, by law, do and suffer and that are necessary for or incidental to the purposes for which the corporation is constituted; and
- 30 (e) is, for the purpose of any Act, a statutory body representing the Crown.

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(3) The seal of the corporation shall not be affixed to any instrument or document except in the presence of the Minister, or an officer of the Department for the time being authorised by him for the purpose, who shall attest by his signature the fact and
5 date of the affixing of the seal.

(4) All courts and persons acting judicially—

(a) shall take judicial notice of the seal of the corporation that has been affixed to any instrument or document; and

10 (b) shall, until the contrary is proved, presume that the seal was properly affixed.

(5) For the purposes of section 81 of the Public Works Act, 1912, the corporation shall be deemed to be a Constructing Authority.

9. (1) The corporation may, for the purposes of this Act or
15 pursuant to any function conferred or imposed on the Minister or the Director by any environmental planning instrument, acquire land, including land previously appropriated or resumed for any purpose, by lease or purchase or by resumption or appropriation in accordance with the provisions of this Part. Power to acquire land.

20 (2) Without limiting the generality of subsection (1), the corporation may acquire in any manner authorised by that subsection—

25 (a) any land to which an environmental planning instrument applies and which the Minister considers should be made available in the public interest for any purpose;

(b) any land of which that proposed to be acquired under this Part forms part; or

(c) any land adjoining or in the vicinity of any land proposed to be acquired under this Part.

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10 **10.** (1) A resumption or appropriation for the purposes of this Act shall be effected by the Governor under the Public Works Act, 1912, and, without affecting the generality of the foregoing, appropriation under that Act may be effected in respect of any
5 land vested in Her Majesty or any person in trust for Her Majesty.

Resump-
tion.

(2) Such a resumption or appropriation shall be deemed to be for an authorised work and the corporation shall be deemed to be the Constructing Authority.

10 (3) Notwithstanding subsection (1), sections 34, 35, 36 and 37 of the Public Works Act, 1912, do not apply in respect of the expenditure on any works constructed in pursuance of this Act, but section 38 of that Act applies in respect of that expenditure.

(4) For the purposes of this section and not otherwise, Schedule 7 has effect.

15 **11.** (1) For the purposes of this Act, the corporation may, in such manner and subject to such terms and conditions as it thinks fit, sell, lease, exchange or otherwise dispose of or deal with land vested in the corporation and grant easements or rights-of-way over that land or any part thereof.

Power of
disposition.

20 (2) Without affecting the generality of subsection (1), the corporation may, in any contract for the sale of land vested in it, include conditions for or with respect to—

- (a) the erection of any building on that land by the purchaser within a specified period;
- 25 (b) conferring on the corporation an option or right to repurchase that land if the purchaser has failed to comply with a condition referred to in paragraph (a);
- (c) conferring on the corporation an option or right to repurchase that land if the purchaser wishes to sell or
30 otherwise dispose of that land before the expiration of a specified period or requiring the purchaser to pay to

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the corporation a sum determined in a specified manner where the corporation does not exercise that option or right; or

- 5 (d) the determination of the repurchase price payable by the corporation pursuant to a condition referred to in paragraph (b) or (c).

(3) A condition included in a contract of sale pursuant to subsection (2) does not merge in the transfer of title to the land, the subject of the contract of sale, on completion of the sale.

10 **12.** (1) The Registrar-General shall, at the request of the corporation made in a manner approved by the Registrar-General and on payment of the fee prescribed under the Real Property Act, 1900, make, in the register kept under that Act, a recording appropriate to signify—

Notifica-
tion of
interests.

- 15 (a) that land specified in the request is held subject to a condition authorised under section 11 (2); or
- (b) that a recording made pursuant to paragraph (a) has ceased to have effect.

20 (2) The corporation shall not make a request pursuant to subsection (1) (a) except for the purpose of ensuring compliance with the conditions in the contract of sale under which the land was sold, but the Registrar-General shall not be concerned to inquire whether any such request has been made for that purpose.

25 (3) Where a recording pursuant to subsection (1) (a) has been made in respect of any land, the Registrar-General shall not register under the Real Property Act, 1900, a transfer of that land to or by a person other than the corporation unless it would be so registrable if this Part had not been enacted and unless—

- 30 (a) a recording pursuant to subsection (1) (b) has been made in respect of the land; or
- (b) the consent of the Director to the transfer has been endorsed thereon.

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DIVISION 2.—*The Director.*

- 13.** (1) The Governor may appoint a Director of Environment and Planning. Director of Environment and Planning.
- (2) Schedule 1 has effect in respect of the Director.
- 5 (3) The Director shall, in respect of the officers and employees of the Department appointed and employed under and subject to the Public Service Act, 1902, be deemed, for the purposes of that Act, to be the permanent head of the Department.
- 14.** The Director shall, in the exercise of any function conferred upon him by or under this Act, be subject to the control and direction of the Minister. Director to be subject to control and direction of Minister.
- 15.** (1) Subject to this Act, the Director may, for the purposes of this Act— Powers of the Director.
- 15 (a) submit to the Minister such proposals with respect to environmental planning assessment as the Director considers necessary or appropriate, including proposals for the development and use of land in conjunction with the provision of utility services and public transport facilities;
- 20 (b) consider and furnish reports to and advise and make recommendations to the Minister upon any matter or proposal relating to the development and use of land or to environmental planning and assessment which may be referred to him by the Minister;
- 25 (c) manage land vested in the corporation;
- (d) cause surveys to be made and plans of surveys to be prepared in relation to land vested in the corporation or in relation to any land proposed to be acquired by the corporation;

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- 5 (e) by notification published in the Gazette, with the approval of the Minister, close or realign any public road or part thereof within or adjoining or in the vicinity or for the purposes of the development of land vested in the corporation;
- (f) demolish, or cause to be demolished, any building on land vested in the corporation of which it has exclusive possession;
- 10 (g) provide, or arrange, on such terms and conditions as may be agreed upon for the location or relocation of utility services within or adjoining or in the vicinity of land vested in the corporation;
- (h) set apart land as sites for buildings or works or for religious, charitable or municipal purposes;
- 15 (i) subdivide and re-subdivide land and consolidate subdivided or re-subdivided land vested in the corporation;
- (j) set out and construct roads on land vested in the corporation or on land of which the corporation has exclusive possession, or on any other land with the consent of the person in whom it is vested;
- 20 (k) erect, alter, repair and renovate buildings on and make other improvements to or otherwise develop land vested in the corporation or on any other land, with the consent of a person in whom it is vested;
- 25 (l) cause any work to be done on or in relation to any land vested in the corporation or any other land, with the consent of the person in whom it is vested for the purpose of rendering it fit to be used for any purpose for which it may be used under any environmental planning instrument which applies to the land;
- 30 (m) by notification published in the Gazette, dedicate any reserve for public recreation or other public purposes and fence, plant and improve any such reserve; and
- 35 (n) by notification published in the Gazette, vest any such reserve in the council of the area in which it is situated or in trustees.

Environmental Planning and Assessment.

(2) Notwithstanding anything in any Act, upon the publication, pursuant to subsection (1) (e), of a notification closing a public road or part thereof, the estate or interest therein of any person or public authority shall vest in the corporation freed 5 and discharged from any trusts affecting it immediately before that publication and freed and discharged from any rights of the public or any person thereto as a public road or highway.

(3) Where under subsection (1) (n) any reserve is vested in trustees other than a council, the provisions of Part 10 III B of the Crown Lands Consolidation Act, 1913, shall be deemed to extend to the reserve.

(4) In the exercise of any function under subsection (1) (e) or (j), consultations shall be held with the Traffic Authority of New South Wales and such other persons as the Director 15 determines.

DIVISION 3.—The Department.

16. (1) There is hereby established a Department of the Government, with the name "Department of Environment and Planning", to be under the control and management of the Minister. Establishment of Department.

20 (2) The persons who are officers and employees referred to in—

(a) section 17; and

(b) clause 18 of Schedule 3 to the Miscellaneous Acts (Planning) Repeal and Amendment Act, 1979,

25 constitute the Department of Environment and Planning.

(3) Nothing in this section affects any power to abolish, or change the title of, the Department.

17. Such officers and employees as may be necessary to enable the Minister, corporation and Director to exercise their functions 30 under this Act shall be appointed and employed under and subject to the Public Service Act, 1902. Officers and employees of the Department

Environmental Planning and Assessment.

18. For the purpose of exercising any functions of the Minister, corporation, Department or Director under this Act, the Director may, with the approval of the Minister and of the public authority concerned and on such terms as may be arranged, make use of the services of any officers, employees or servants of any public authority.

Use of services of public authorities.

DIVISION 4.—Committees.

19. (1) An Advisory Co-ordinating Committee is hereby established.

Advisory Co-ordinating Committee.

- 10 (2) The functions of the Committee shall be—
- (a) to advise the Minister on means to ensure effective co-ordination of the activities and programmes of public authorities in the achievement of the objects of this Act;
 - 15 (b) to review progress and performance in the achievement of the objects of this Act;
 - (c) to advise the Minister on the priorities to be established for the achievement of the objects of this Act;
 - 20 (d) to advise the Minister on matters which should be taken into consideration in the preparation of environmental planning instruments; and
 - (e) to advise the Minister on such matters as may be referred to it by the Minister or the Director.

25 (3) The Director shall have power to co-opt or invite representatives of other departments and authorities, Commonwealth Government departments and authorities and private utility undertakings to participate in the Committee.

(4) Schedules 2 and 5 apply in relation to the Committee.

Environmental Planning and Assessment.

20. (1) A Local Government Liaison Committee is hereby established.

Local
Government
Liaison
Committee.

(2) The functions of the Committee shall be to advise the Minister on the following matters :—

- 5 (a) the means to ensure effective co-ordination of the activities and programmes of public authorities and councils in the achievement of the objects of this Act;
- (b) policies and procedures relating to the functions of councils under this Act;
- 10 (c) the needs of councils in connection with their responsibilities under this Act for information, advice and procedures relating to environmental planning and assessment;
- (d) local environmental planning policies and procedures;
- 15 and
- (e) such other matters as may be referred to the Committee by the Minister or the Director.

(3) Schedules 3 and 5 apply in relation to the Committee.

21. (1) An Environment and Planning Advisory Committee is hereby established.

Environment and
Planning
Advisory
Committee.

(2) The functions of the Committee shall be to advise the Minister on the following matters :—

- (a) policies and procedures relating to the administration of this Act; and
- 25 (b) such other matters as may be referred to the Committee by the Minister or the Director.

(3) Schedules 4 and 5 apply in relation to the Committee.

22. (1) The Director may establish committees, in addition to those established by this Act.

Establish-
ment of
other
committees.

Environmental Planning and Assessment.

(2) The function of a committee established under subsection (1) shall be to advise the Minister on such matters as may be referred to it by the Minister or the Director.

(3) The Director may appoint one of the members of a committee established under subsection (1) as Chairman of the committee.

(4) Schedule 5 applies in relation to a committee established under subsection (1).

DIVISION 5.—Delegation.

10 23. (1) The Minister, corporation or Director may, by ^{Delegation.} instrument in writing, under seal (in the case of the corporation), delegate any of his or its functions (other than this power of delegation) under this Act as are specified in the instrument to—

(a) any officer of the Department;

15 (b) any officer, employee or servant of whose services the Director makes use in pursuance of this or any other Act;

(c) any committee or sub-committee constituted under this Act; or

(d) a council,

20 and may, by such an instrument, revoke wholly or in part any such delegation.

(2) A function, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the
25 delegation.

(3) A delegation under this section may be made subject to conditions or limitations as to the exercise of any of the functions delegated, or as to time or circumstance.

Environmental Planning and Assessment.

(4) Notwithstanding any delegation under this section, the Minister, corporation or Director, as the case may be, may continue to exercise all or any of the functions delegated.

(5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing had been done or suffered by the Minister, corporation or Director, as the case may be, and shall be deemed to have been done or suffered by the Minister, corporation or Director, as the case may be.

(6) An instrument purporting to be signed by a delegate of the Minister, corporation or Director, in his capacity as such a delegate, shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Minister, corporation or Director, as the case may be, under seal (in the case of the corporation), and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Minister, corporation or Director, as the case may be, under this section.

PART III.

ENVIRONMENTAL PLANNING INSTRUMENTS.

DIVISION 1.—General.

24. Without affecting the generality of any other provisions of this Act, an environmental planning instrument may be made in accordance with this Part for the purposes of achieving any of the objects of this Act.

Making of environmental planning instruments and the application of objects thereto.

25. (1) An environmental planning instrument shall state the aims, objectives, policies and strategies whereby that environmental planning instrument is designed to achieve any of the objects of this Act.

Statement of aims, etc., in environmental planning instruments.

Environmental Planning and Assessment.

(2) Subject to subsection (3), a statement referred to in subsection (1) does not affect the construction or effect of any other provision of the environmental planning instrument in which the statement is made.

5 (3) Where a provision of an environmental planning instrument is genuinely capable of different interpretations, that interpretation which best meets the aims, objectives, policies and strategies stated in that instrument, shall be preferred.

10 (4) A failure to comply in any respect with subsection (1) does not affect the validity, construction or effect of an environmental planning instrument.

26. An environmental planning instrument may make provision for or with respect to any of the following :—

Contents of
environmental
planning
instruments.

- 15 (a) protecting, improving or utilising, to the best advantage, the environment;
- (b) controlling (whether by the imposing of development standards or otherwise) development;
- 20 (c) designating land for use for the purposes of open space, a public place or public reserve within the meaning of the Local Government Act, 1919, a public cemetery, a public hospital, a public railway, a public school or any other purpose that is prescribed as a public purpose for the purposes of this section;
- (d) controlling the demolition of buildings or works;
- 25 (e) protecting or preserving trees or vegetation;
- (f) controlling any act, matter or thing for or with respect to which provision may be made under paragraph (a) or (e);
- 30 (g) controlling advertisements within the meaning of section 510 of the Local Government Act, 1919; and
- (h) such other matters as are authorised or required to be included in the environmental planning instrument by this or any other Act.

Environmental Planning and Assessment.

27. (1) Where an environmental planning instrument Designation of land for public purposes.
designates land for use exclusively for a purpose referred to in section 26 (c), that environmental planning instrument shall make provision for or with respect to the acquisition of that land by a
5 public authority unless the land is owned by a public authority and is held by that public authority for that purpose.
- (2) Nothing in this section shall be construed as authorising or requiring an environmental planning instrument to contain a provision empowering or purporting to empower the
10 compulsory acquisition of land.
28. (1) In this section, "regulatory instrument" means any Act (other than this Act), rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under
whatever authority made. Suspension of laws, etc., by environmental planning instruments.
- 15 (2) For the purpose of enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent granted under this Act, an environmental planning instrument may provide that, to the extent
20 necessary to serve that purpose, a regulatory instrument specified in that environmental planning instrument shall not apply to any such development or shall apply subject to the modifications specified in that environmental planning instrument.
- (3) A provision referred to in subsection (2) shall have effect according to its tenor, but only if the Governor has, before
25 the making of the environmental planning instrument, approved of the provision.
- (4) Where a Minister is responsible for the administration of a regulatory instrument referred to in subsection (2), the approval of the Governor for the purposes of subsection (3) shall
30 not be recommended except with the prior concurrence in writing of that Minister.
- (5) A declaration in the environmental planning instrument as to the approval of the Governor as referred to in subsection (3) or the concurrence of a Minister as referred to in
35 subsection (4) shall be prima facie evidence of the approval or concurrence.

Environmental Planning and Assessment.

29. An environmental planning instrument may contain provisions designating any class or description of development (whether by reference to the type, purpose or location of development or otherwise) to be development that if carried out, would be likely to have a significant impact on the amenity of the locality.

Designated development: declaration by environmental planning instruments.

30. (1) Without limiting the generality of section 26 (b), an environmental planning instrument may provide that development specified therein—

Consents and concurrences.

- 10 (a) may be carried out without the necessity for consent under this Act being obtained therefor; or
 (b) may not be carried out except with consent under this Act being obtained therefor.

15 (2) Where provision is made in accordance with subsection (1) (b), the instrument may provide that a development application in respect of development specified in the instrument shall not be determined under this Act, except with the concurrence of such Minister or public authority as is specified in that instrument to the carrying out of the development.

20 (3) An environmental planning instrument which makes provision in accordance with subsection (2) shall state the matters which shall be taken into consideration in deciding whether concurrence should be granted.

31. Without limiting the generality of section 26 (b), an environmental planning instrument may provide that development specified therein is prohibited.

Prohibitions.

32. An environmental planning instrument may be made so as to authorise any matter or thing to be from time to time determined, applied or regulated by such Minister or public authority as is specified in the environmental planning instrument.

Authorisation of matters under environmental planning instruments.

33. (1) An environmental planning instrument may, by reference, adopt wholly or partially any set of model provisions made by the Minister by order published in the Gazette.

Model provisions.

Environmental Planning and Assessment.

(2) Where model provisions have been adopted in accordance with subsection (1) and those provisions are subsequently—

5 (a) amended—the provisions in their amended form shall apply; or

(b) revoked—the provisions shall cease to apply, except to the extent that those provisions or the environmental planning instrument otherwise provide.

10 **34.** (1) Expressions used in an environmental planning instrument shall, unless the contrary intention appears, have the same meanings respectively as they have in this Act.

Environ-
mental
planning
instruments
—making,
operation
and in-
spection.

(2) Judicial notice shall be taken of an environmental planning instrument and of the date of its publication.

15 (3) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of an environmental planning instrument have been complied with and performed.

(4) The amendment or the alteration, variation or repeal, whether in whole or in part, of any environmental planning
20 instrument does not affect—

(a) the previous operation of the instrument or anything duly suffered, done or commenced under the instrument;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the instrument; or

25 (c) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation or liability,

and any such investigation, legal proceedings or remedy may be instituted, continued and enforced as if the amendment, alteration, variation or repeal had not occurred.

Environmental Planning and Assessment.

(5) An environmental planning instrument shall—

- (a) be published in the Gazette; and
- (b) take effect on and from the date of publication or a later date specified in the instrument.

5 (6) A copy of every environmental planning instrument shall be available for public inspection, without charge, at the office of the Department during ordinary office hours.

(7) A copy of each environmental planning instrument that has been furnished to a council by the Department shall be
10 available for public inspection, without charge, at the office of the council during ordinary office hours.

(8) An environmental planning instrument shall be deemed to have been published in the Gazette notwithstanding that any planning map or other instrument or material referred to,
15 embodied or incorporated in the environmental planning instrument is not so published.

35. The validity of an environmental planning instrument in relation only to any failure to comply with the provisions of this Part (including the regulations in force in connection therewith)
20 with respect to its making shall not be questioned in any legal proceedings except those commenced in the Court by any person within 6 weeks of the date of its publication in the Gazette. Non-compliance with statutory provisions.

36. In the event of an inconsistency between environmental planning instruments, then, to the extent of the inconsistency and
25 unless otherwise provided— Inconsistency between instruments.

(a) there is no general presumption that—

- (i) a State environmental planning policy prevails over a regional environmental plan or a local environmental plan; or
- 30 (ii) a regional environmental plan prevails over a local environmental plan; and

Environmental Planning and Assessment.

- (b) the principles applicable in the case of inconsistent Acts shall apply for the purpose of resolving the inconsistency.

DIVISION 2.—*State environmental planning policies.*

37. (1) The Director may, after consultation with such public authorities as he determines, prepare a draft State environmental planning policy with respect to such matters as are, in the opinion of the Director, of significance for environmental planning for the State, and may submit it to the Minister.

Decision or direction to prepare draft State environmental planning policy.

(2) The Minister may, after consultation with such Ministers as he determines, cause to be prepared by the Director for submission to the Minister a draft State environmental planning policy with respect to any matter specified by the Minister, being a matter which is, in the opinion of the Minister, of significance for environmental planning for the State.

38. Subject to this Act and the regulations, the format, structure and subject-matter of a State environmental planning policy or draft State environmental planning policy shall be as determined by the Minister.

Format of State environmental planning policies.

39. (1) The Minister may, on the submission to him by the Director of a draft State environmental planning policy, make a State environmental planning policy—

Making of State environmental planning policies by the Minister.

(a) in accordance with that draft State environmental planning policy submitted to him; or

(b) in accordance with that draft State environmental planning policy with such alterations as he thinks fit,

or he may decide not to make the policy.

(2) The Minister may take such steps as he considers appropriate or necessary to publicise a draft State environmental planning policy and to seek and consider submissions from the public before he decides to make or alter and make the policy.

Environmental Planning and Assessment.

(3) The Minister may not make a State environmental planning policy except with respect to such matters as are, in his opinion, of significance for environmental planning for the State.

(4) A State environmental planning policy shall apply to 5 the State or such part of the State as is described in the policy.

DIVISION 3.—*Regional environmental plans.*

40. (1) The Director may prepare a draft regional environmental plan in respect of a region and with respect to such matters as are, in the opinion of the Director, of significance for 10 environmental planning for the region to which that plan is intended to apply.

Decision or direction to prepare draft regional environmental plan.

(2) The Minister may cause to be prepared by the Director for submission to the Minister a draft regional environmental plan with respect to any matter specified by the Minister, 15 being a matter which is, in the opinion of the Minister, of significance for environmental planning for the region to which that plan is intended to apply.

41. (1) The Director shall, before commencing to prepare a draft regional environmental plan, prepare an environmental study 20 of the land to which the draft regional environmental plan is intended to apply.

Preparation of environmental study.

(2) The environmental study referred to in subsection (1) shall have regard to such matters, relating to environmental planning within the region to which the draft regional environmental 25 mental plan is intended to apply, as the Director determines.

Environmental Planning and Assessment.

42. When the environmental study referred to in section 41 (1) has been prepared, the Director shall—

Public exhibition of environmental study.

- (a) give public notice, in a form and manner determined by the Director, of—
- 5 (i) his intention to prepare a draft regional environmental plan; and
- (ii) the places at which, the dates on which, and the times during which, copies of the environmental study may be inspected by the public;
- 10 (b) publicly exhibit copies of the environmental study at the places, on the dates and during the times set out in the notice; and
- 15 (c) specify, in the notice, the period during which submissions may be made to the Secretary in accordance with section 43.

43. Any person may, during the period referred to in section 42 (c), make a submission in writing to the Secretary as to—

Making of submissions.

- (a) the aims, objectives, policies and strategies which the draft regional environmental plan should adopt; and
- 20 (b) the environmental study referred to in section 41 (1).

44. In the preparation of a draft regional environmental plan, the Director shall, within such time as the Minister may determine, after the expiration of the period referred to in section 42 (c)—

Preparation of draft regional environmental plan.

- 25 (a) cause any State environmental planning policy to be considered so far as it may affect or be affected by the subject-matter of the draft regional environmental plan;
- 30 (b) cause any submissions in relation to the environmental study to be considered and decide whether the study needs to be modified or supplemented before the preparation of the plan is commenced;

Environmental Planning and Assessment.

- (c) cause any submissions in relation to the aims, objectives, policies and strategies applicable to the plan to be considered, and in the light of the submissions and the environmental study, determine the aims, objectives, policies and strategies to be adopted in the plan; and
- (d) prepare the draft regional environmental plan, having regard to the environmental study, so as to achieve the aims, objectives, policies and strategies to be so adopted.
- 45.** In the preparation of an environmental study or a draft regional environmental plan, consultations shall be held with—
- (a) each council whose area or part of whose area is situated in the region to which that draft regional environmental plan applies;
- (b) the Advisory Co-ordinating Committee;
- (c) the Local Government Liaison Committee;
- (d) such other public authorities or bodies (including authorities of the Commonwealth or other States) as, in the opinion of the Director, will or may be affected by that draft regional environmental plan; and
- (e) such other persons as the Director determines.
- 46.** To facilitate the preparation of an environmental study or a draft regional environmental plan, a public authority—
- (a) shall, if requested in writing to do so by the Director, furnish such information and provide such assistance as may reasonably be required by the Director in the preparation of the study or plan; and
- (b) shall notify the Director of any information or any actual or proposed activity or work that, in its opinion, is relevant to the study or plan,
- and a public authority is hereby empowered to the extent necessary to comply with the provisions of this section.

Consultation.

Information from public authorities.

Environmental Planning and Assessment.

47. When a draft regional environmental plan has been prepared, the Director shall—

Public exhibition of draft regional environmental plan.

- 5 (a) give public notice, in a form and manner determined by the Director, of the places at which, the dates on which, and the times during which, the draft regional environmental plan may be inspected by the public;
- (b) publicly exhibit that draft regional environmental plan at the places, on the dates and during the times set out in the notice;
- 10 (c) publicly exhibit such other matters as he considers appropriate or necessary to better enable the draft plan and its implications to be understood; and
- 15 (d) specify, in the notice, the period during which submissions may be made to the Secretary in accordance with section 48.

48. Any person may, during the period referred to in section 47 (d), make submissions in writing to the Secretary with respect to the draft regional environmental plan publicly exhibited under section 47 (b).

Submissions.

20 **49.** (1) The Director shall cause any submissions made under section 48 to be considered and—

Consideration of submissions.

- (a) may, if he thinks fit, arrange for a public inquiry into any matter relating to the draft regional environmental plan whether or not arising from any submission;
- 25 (b) may amend the draft regional environmental plan whether or not as a consequence of the consideration of any such submissions;
- 30 (c) may, if he thinks fit, publicly exhibit that amended draft regional environmental plan together with a written explanation of the reasons for the amendments, at such places, on such dates and during such times as he determines; and

Environmental Planning and Assessment.

5 (d) where an amended draft regional environmental plan is exhibited under paragraph (c), shall cause public notice to be given in a form and manner determined by the Director, specifying the period during which submissions may be made to the Secretary in accordance with section 48 as applied by subsection (2).

10 (2) Where the Director causes an amended draft regional environmental plan to be publicly exhibited in accordance with subsection (1) (c), section 48 and subsection (1) apply to and in respect of that amended draft regional environmental plan in the same way as they apply to and in respect of a draft regional environmental plan.

15 50. (1) Subject to subsection (2), the Director shall submit to the Minister the draft regional environmental plan, with any amendments made in accordance with section 49.

Submission of draft regional environmental plan to the Minister.

20 (2) In submitting the draft regional environmental plan, the Director may exclude certain provisions thereof or exclude from the application thereof part of the region to which that draft plan applied (in this section referred to as "the deferred matter") which, in his opinion, require or requires further consideration but which should not prejudice the consideration by the Minister of the draft plan as submitted.

25 (3) A draft regional environmental plan submitted under subsection (1) shall be accompanied by any submission made to the Secretary under section 48 by a public authority, a council, an authority of the Commonwealth or another State, and by a summary of any other submissions made to the Secretary under section 48.

30 (4) The Director may subsequently take action under section 49 and this section in respect of the deferred matter which for the purposes of those sections shall be deemed to be the draft regional environmental plan.

Environmental Planning and Assessment.

51. (1) The Minister may, on the submission to him by the Director of a draft regional environmental plan—

Making of regional environmental plans by the Minister.

(a) make a regional environmental plan—

(i) in accordance with the draft regional environmental plan submitted to him; or

(ii) in accordance with the draft regional environmental plan with such alterations as he thinks fit;

(b) direct that action be taken in accordance with subsection (4); or

(c) decide not to proceed with the draft regional environmental plan.

(2) The Minister may not make a regional environmental plan except with respect to such matters as are, in his opinion, of significance for environmental planning for the region or part of the region to which that regional environmental plan applies.

(3) A regional environmental plan shall apply to such region or part of the region as is described in the plan.

(4) The Minister may direct the Director to publicly exhibit a draft regional environmental plan with such alterations as he specifies, and the provisions of this section and sections 47, 48, 49 and 50 shall, with any necessary adaptations, apply to that plan.

52. Subject to this Act and the regulations, the format, structure and subject-matter of a regional environmental plan or draft regional environmental plan shall be as determined by the Minister.

Format of regional environmental plan or draft plan.

Environmental Planning and Assessment.

DIVISION 4.—*Local environmental plans.*

53. Where 2 or more councils decide to join in the preparation of a draft local environmental plan under section 54 (2), a reference in this Division— Interpretation.

- 5 (a) except in section 54, to a council includes a reference to those councils; and
- (b) to an area includes a reference to the areas of those councils.

54. (1) A council may decide to prepare a draft local environmental plan in respect of the whole or any part of the land within its area. Decision to prepare draft local environmental plan.

(2) Two or more councils may decide to join in the preparation of a draft local environmental plan in respect of the whole or any part of the land within their areas.

15 (3) Where 2 or more councils decide to join in the preparation of a draft local environmental plan under subsection (2), they shall enter into an agreement under section 521 of the Local Government Act, 1919, for the purpose of preparing that draft local environmental plan.

20 (4) A council or councils, as the case may be, shall inform the Secretary of the decision to prepare a draft local environmental plan and the land to which it is intended to apply, within 14 days of making the decision.

25 55. (1) The Minister may direct a council, or 2 or more councils jointly, to perform any function conferred or imposed on it under section 54 or any other provision of this Division within such time or period as is specified in the direction, and the direction shall be complied with. Directions from Minister for the preparation of local environmental plan.

Environmental Planning and Assessment.

(2) Where a direction is given under subsection (1), no function performed after the expiration of any time or period specified in the direction shall thereby be rendered void or otherwise ineffective.

5 (3) Nothing in this section affects the operation of section 117.

10 **56.** A council that decides to prepare a draft local environmental plan or is directed to do so by the Minister under section 55 shall, unless the Director otherwise approves, appoint or employ a person who has a prescribed environmental planning qualification to assist it in the preparation of or to prepare on its behalf a draft local environmental plan. Appointment of qualified person.

15 **57.** (1) Where a council decides to prepare a draft local environmental plan or is directed to do so by the Minister under section 55, it shall prepare an environmental study of the land to which the draft local environmental plan is intended to apply. Preparation of environmental study.

(2) The Director may, by order published in the Gazette, make specifications relating to form, content and preparation of the environmental study.

20 (3) A council shall prepare an environmental study in accordance with the specifications, if any, that apply at the time.

(4) The environmental study referred to in subsection (1) shall have regard to such matters relating to environmental planning within the area to which the draft local environmental plan is intended to apply, as the council, subject to the specifications, determines. 25

Environmental Planning and Assessment.

58. When the environmental study referred to in section 57 (1) has been prepared, the council, subject to the regulations, shall—

Public exhibition of environmental study.

- 5 (a) give public notice, in a form and manner determined by the council, of—
- (i) its intention to prepare a draft local environmental plan; and
- 10 (ii) the place at which, the dates on which, and the times during which, a copy of the environmental study may be inspected by the public;
- (b) publicly exhibit at the place, on the dates and during the times set out in the notice—
- (i) a copy of that environmental study;
- 15 (ii) a copy of any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft local environmental plan is intended to apply; and
- 20 (iii) if such a policy, plan or direction does so apply—a statement to the effect that the matter referred to in subparagraph (ii) substantially governs the content and operation of the proposed local environmental plan and that any submission made pursuant to section 59 should
- 25 be made having regard thereto; and
- (c) specify, in the notice, the period during which submissions may be made to the council in accordance with section 59.

59. Any person may, during the period referred to in section 58 (c), make a submission in writing to the council as to—

Making of submissions.

- (a) the aims, objectives, policies and strategies which the draft local environmental plan should adopt; and
- (b) the environmental study referred to in section 57 (1).

Environmental Planning and Assessment.

60. After the expiration of the period referred to in section 58 (c), the council may prepare a draft local environmental plan.

Preparation of draft local environmental plan.

61. In the preparation of a draft local environmental plan, the council shall—

Council's responsibilities in preparing draft local environmental plan.

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- (a) consider any submissions in relation to the environmental study and decide whether the study needs to be modified or supplemented before the preparation of the plan is commenced;
- (b) consider any submissions in relation to the aims, objectives, policies and strategies applicable to the plan and in the light of the submissions and the environmental study determine the aims, objectives, policies and strategies to be adopted in the plan;
- (c) prepare the draft local environmental plan having regard to the environmental study, so as to achieve the aims, objectives, policies and strategies to be so adopted; and
- (d) ensure that the draft local environmental plan, and its aims, objectives, policies and strategies, are not substantially inconsistent with any State environmental planning policy, regional environmental plan, or relevant direction under section 117, which applies to the land to which the draft local environmental plan applies, and give effect to the aims, objectives, policies and strategies of any such policies or plans.

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62. In the preparation of an environmental study or a draft local environmental plan, the council shall consult with—

Consultation.

- (a) such public authorities or bodies (including authorities of the Commonwealth or other States) as, in its opinion, will or may be affected by that draft local environmental plan;
- (b) where the draft local environmental plan applies to land adjoining a boundary between the council's area and another area—the council of that other area; and

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(c) such other persons as the council determines.

63. To facilitate the preparation of an environmental study or a draft local environmental plan, a public authority—

Information from public authorities.

5 (a) shall, if requested in writing to do so by the council, furnish such information and provide such assistance as it deems proper to assist the council in the preparation of the study or plan; and

10 (b) shall notify the council of any information or any actual or proposed activity or work that, in its opinion, is relevant to the study or plan,

and a public authority is hereby empowered to the extent necessary to comply with the provisions of this section.

64. When a draft local environmental plan has been prepared, the council shall submit a copy of that draft local environmental plan to the Secretary.

Submission of copy of draft local environmental plan to Department.

65. (1) Where—

Certificate of Director.

(a) the Secretary receives a copy of a draft local environmental plan from a council under section 64; and

20 (b) the Director is satisfied, from information received from the council, that the provisions of this Division relating to public involvement in the preparation of the draft plan have been complied with,

25 the Director may cause to be issued to the council a certificate certifying that the draft plan is not inconsistent with any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft plan applies.

(2) Where the Director is of the opinion that the draft local environmental plan referred to in subsection (1) is

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inconsistent with a State environmental planning policy, regional environmental plan, or relevant direction under section 117, but that the inconsistency is authorised by the Director, he may cause to be issued to the council a certificate to that effect.

5 (3) Where a certificate is not issued under this section, the Director shall return the draft plan to the council, giving the reasons why the certificate was not issued, and directing the council to amend the draft plan in such a manner as to enable a certificate to be issued, or to take such other action as is appropriate.

10 (4) The council shall comply with a direction given under subsection (3).

66. (1) Where a council receives a certificate under section 65 with respect to a draft local environmental plan, it shall, subject to the regulations—

Public exhibition of draft local environmental plan.

15 (a) give public notice, in a form and manner determined by the council, of the place at which, the dates on which, and the times during which, the draft local environmental plan may be inspected by the public;

20 (b) publicly exhibit at the place, on the dates and during the times set out in the notice—

(i) a copy of that draft local environmental plan;

(ii) a copy of any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft local environmental plan is intended to apply; and

25

(iii) if such a policy, plan or direction does so apply—a statement to the effect that the matter referred to in subparagraph (ii) substantially governs the content and operation of the draft local environmental plan and that any submission made pursuant to section 67 should be made having regard thereto;

30

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- (c) specify, in the notice, the period (being a period which is or includes the period referred to in subsection (2)) during which submissions may be made to the council in accordance with section 67; and
- 5 (d) publicly exhibit such other matter as it considers appropriate or necessary to better enable the draft plan and its implications to be understood.

(2) A draft local environmental plan shall be publicly exhibited for a period being not less than the prescribed period.

- 10 (3) Where, for the purposes of informing the public generally, a council decides to publicly exhibit a draft local environmental plan otherwise than in accordance with subsection (1), or to publicly exhibit any other matter which could be construed or represented as having a similar purpose to a draft
- 15 local environmental plan, it shall at the same time publicly exhibit a statement to the effect that the exhibition is not to be regarded as an exhibition for the purposes of this Act.

67. Any person may, during the period referred to in section 66 (1) (d), make submissions in writing to the council with respect to the provisions of a draft local environmental plan publicly exhibited under section 66 (1) (b).

Making of
submissions.

68. (1) Where—

- (a) a person making a submission so requests; and
- (b) the council considers that the issues raised in a submission are of such significance that they should be the subject of a hearing before the council decides whether and, if so, what recommendations should be made,

25 the council shall, in the prescribed manner, arrange a public hearing in respect of the submission.

Consideration of
submissions.

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(2) A report of the public hearing shall be furnished to the council and shall be made publicly available.

(3) The council shall consider the submission and the report furnished pursuant to subsection (2) and shall make recommendations for any amendments it considers are necessary to the draft local environmental plan whether or not arising from its consideration of submissions or matters raised at any public hearing.

(4) The council shall, in the prescribed form and manner (if any), submit to the Secretary—

- (a) details of all submissions;
- (b) the report of any public hearing; and
- (c) the draft local environmental plan and its recommendations for any amendments it considers necessary to that plan together with reasons therefor.

(5) More than one public hearing may be held in respect of any submissions, and one hearing may be held in respect of more than one submission.

69. The Director shall furnish a report to the Minister in respect of the matter submitted under section 68 (4) and of the proposed local environmental plan. Report by Director.

70. (1) After considering the Director's report made under section 69, the Minister may— Making of local environmental plan.

- (a) make a local environmental plan—
 - (i) in accordance with the draft local environmental plan as submitted by the council under section 68 (4); or
 - (ii) in accordance with that draft plan with such alterations as he thinks fit;

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(b) direct that action be taken in accordance with subsection (3); or

(c) decide not to proceed with the draft local environmental plan.

5 (2) A local environmental plan shall apply to such area or part of such area as is specified in that plan.

(3) The Minister may direct the council to publicly exhibit a draft local environmental plan with such alterations as he specifies, and the provisions of this section and sections 66, 67, 68
10 and 69 shall, with any necessary adaptations, apply to that plan.

(4) Where the Minister decides to make a plan in accordance with subsection (1) (a) (ii) he may exclude certain provisions thereof or exclude from the application thereof part of the land to which that plan applied (in this section referred to as
15 "the deferred matter") which, in his opinion, require or requires further consideration but which should not prejudice the making of the local environmental plan.

(5) The Minister may subsequently take action in accordance with this section in respect of the deferred matter as if
20 it were a draft local environmental plan submitted under section 68 (4).

(6) Where the Minister decides not to proceed with a draft local environmental plan under subsection (1) (c), he shall give such directions to the council as he considers necessary in
25 relation to that decision.

(7) The Minister shall inform the council of his decision under subsection (1), and may at the same time give directions to the council as to the procedure to be followed in connection with making his decision known to the public.

30 **71.** Subject to this Act and the regulations, the format, structure and subject-matter of a local environmental plan or draft local environmental plan shall be as determined by the Minister and communicated to the council concerned.

Format of local environmental plan or draft plan.

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72. (1) Where a council considers it necessary or desirable to provide more detailed provisions than are contained in a local environmental plan in respect of a part or parts of the land to which that plan applies, it may prepare or cause to be prepared a development control plan.

(2) The format, structure, subject-matter and procedures for the preparation, approval, amendment and repeal of a development control plan shall be as prescribed.

(3) A development control plan shall generally conform to the provisions of the local environmental plan which applies to the land to which the development control plan applies.

(4) A development control plan prepared in accordance with this section shall be available for public inspection, without charge, at the office of the council during ordinary office hours.

15 DIVISION 5.—*Review and amendment of environmental planning instruments.*

73. The Director shall keep State environmental planning policies and regional environmental plans, and councils shall keep their local environmental plans, under regular and periodic review.

20 74. (1) An environmental planning instrument may be amended in whole or in part by a subsequent environmental planning instrument whether of the same or a different type.

(2) A subsequent environmental planning instrument shall be made in accordance with the provisions of this Part except that, unless the Minister directs to the contrary, the provisions of this Part relating to the preparation and exhibition of an environmental study shall not apply.

(3) In this section, "amended" includes altered, varied or repealed.

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PART IV.

ENVIRONMENTAL PLANNING CONTROL.

DIVISION 1.—*General.*

75. In this Part, a reference to development includes a ^{Interpreta-}
5 reference to any other act, matter or thing referred to in section ^{tion.}
26 which is controlled by an environmental planning instrument.

76. (1) Subject to this Act, where an environmental planning ^{Restriction}
instrument provides that development specified therein may be ^{on develop-}
carried out without the necessity for consent under this Act being ^{ment.}
10 obtained therefor, a person shall not carry out that development on
land to which that provision applies except in accordance with the
provisions of that instrument.

(2) Subject to this Act, where an environmental planning
instrument provides that development specified therein may not be
15 carried out except with consent under this Act being obtained
therefor, a person shall not carry out that development on land to
which that provision applies unless—

- (a) that consent has been obtained and is in force under
this Act; and
- 20 (b) the development is carried out in accordance with the
provisions of any conditions subject to which that consent
was granted and of that instrument.

(3) Subject to this Act, where an environmental planning
instrument provides that development specified therein is prohibited,
25 a person shall not carry out that development on land to which
that provision applies.

77. (1) A development application may be made only by— ^{Making of}
^{develop-}
(a) the owner of the land to which that development ^{ment appli-}
application relates; or ^{cations.}

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- (b) any person, with the consent in writing of the owner of the land to which that development application relates.

(2) Notwithstanding subsection (1) (b), a development application may be made by a lawful occupier of Crown lands within the meaning of the Crown Lands Consolidation Act, 1913, who makes a development application with respect to the whole or any part of the land occupied by him, without the consent in writing or otherwise of—

- 10 (a) where the lands are not within an irrigation area within the meaning of that Act—the Minister for Lands; or
- (b) where the lands are within such an irrigation area—the Minister for the time being administering the Irrigation Act, 1912.

(3) A development application shall—

- 15 (a) be made to the consent authority;
- (b) be made in the prescribed form and manner;
- (c) where the application is not in respect of designated development—
- 20 (i) embody such information as the applicant considers suitable to demonstrate that he has given appropriate consideration to the impact that the development to which that application relates will have on the environment; and
- 25 (ii) set out the steps that he proposes to take to mitigate any likely adverse impact;
- (d) where the application is in respect of designated development, be accompanied by an environmental impact statement in the prescribed form prepared by or on behalf of the applicant; and
- 30 (e) be accompanied by such fee as is prescribed or, where no fee is prescribed, by such fee as is determined by the consent authority (not exceeding the maximum prescribed fee, if any).

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(4) The consent authority shall forward to the Secretary (where the Minister or Director is not the consent authority) and to the council (where the council is not the consent authority) a copy of the environmental impact statement referred to in subsection (3) (d), together with a copy of the application to which it relates.

(5) A development application shall be rejected by the consent authority if in the opinion of the authority it contains substantive defects but details of the defects shall be given.

10 (6) A development application may be rejected by the consent authority if in the opinion of the authority it contains formal defects but reasons therefor shall be given.

(7) The regulations may make provision for or with respect to the amendment or variation of development applications.

15 (8) A development application may be withdrawn at any time prior to its determination by the consent authority by service on the consent authority of a notice to that effect in writing signed by the person who, at the time of service, would be entitled to make application under subsection (1).

20 (9) An application withdrawn under subsection (8) shall, without prejudice to the question whether the fee paid under subsection (3) should be refunded (which matter shall be at the absolute discretion of the consent authority), be deemed for the purposes of this Act (section 85 excepted) never to have been
25 made.

(10) Upon an application being made under this section the applicant, not being entitled to copyright, shall be deemed to have indemnified all persons using the application and documents in accordance with this Act, against any claim or action
30 in respect of breach of copyright.

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78. (1) Where an environmental planning instrument provides that a development application shall not be determined without the concurrence of a Minister or public authority to development specified in the instrument, the consent authority shall, unless the concurrence of that Minister or public authority may be assumed under section 81—

Seeking concurrence of Minister or public authority.

- (a) forward forthwith a copy of the development application to that Minister or public authority; and
- (b) notify by post the applicant of the action taken by it under paragraph (a).

(2) Where development referred to in subsection (1) is designated development, the consent authority shall comply with the provisions of sections 84 and 86 and with the provisions of subsection (1) concurrently.

79. (1) A Minister or public authority referred to in section 78 may, with respect to development the subject of a development application, a copy of which has been forwarded to him or it under section 78 (1) (a)—

Granting or refusal of concurrence by Minister or public authority.

- (a) grant concurrence to that development either unconditionally or subject to conditions; or
- (b) refuse concurrence to that development.

(2) In deciding whether concurrence should be granted under subsection (1), a Minister or public authority referred to in section 78 shall take into consideration the matters stated pursuant to section 30 (3) and applicable in relation to the development application (and those matters only).

(3) Subsection (2) does not apply in the case of a deemed environmental planning instrument.

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5 **80.** (1) A Minister or public authority referred to in section 78 shall notify the consent authority of his or its decision with respect to development the subject of a development application a copy of which has been forwarded to him or it under section 78

Notification of Minister's or public authority's decision.

- (a) except as provided by paragraph (b)—within a period of 40 days after receipt of the copy of that development application; or
- 10 (b) where, within the period referred to in paragraph (a), that Minister or public authority sends by post to the consent authority and the applicant a notice informing it and him that that Minister or public authority is unable to deal with that development application within
- 15 that period and specifies in that notice a longer period within which that Minister or public authority will notify his or its decision—within the longer period.

(2) Where a Minister or public authority referred to in section 78 does not inform the consent authority of his or its decision within the period referred to in subsection (1) (a), or the

20 longer period referred to in subsection (1) (b), as the case may be, the consent authority may determine the development application by granting consent thereto without the concurrence of that Minister or public authority.

25 (3) Where a public authority issues a notice under subsection (1) (b), it shall forward a copy of that notice to the Secretary.

30 **81.** (1) Where under an environmental planning instrument a development application may not be determined without the concurrence of a Minister or public authority to development specified in the instrument, that Minister or public authority may inform the consent authority, by notification in writing, that the concurrence may be assumed with such qualifications or conditions as are specified in the notification.

Circumstances in which concurrence may be assumed.

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(2) A Minister or public authority referred to in subsection (1) may, by notification in writing given to the consent authority, amend or revoke a notification given by him or it under subsection (1).

5 (3) A consent granted by a consent authority which has assumed the concurrence of a Minister or public authority in accordance with a notification in force under this section is as valid and effective as if the consent authority had obtained the
10 concurrence of that Minister or public authority pursuant to sections 78 and 79.

82. (1) Where the concurrence of a Minister or public authority is given pursuant to section 79 or may be assumed pursuant to section 81, the consent authority shall, in granting consent to the carrying out of the development to which the
15 concurrence relates, notwithstanding section 81, grant the consent subject to any conditions specified in the notification referred to in section 80 or 81, as the case may be.

(2) Nothing in subsection (1) affects the right of the consent authority to impose conditions under section 91 not
20 inconsistent with the conditions referred to in subsection (1) or to refuse consent to the development.

83. Where under an environmental planning instrument a development application may not be determined without the concurrence of a Minister or public authority to that development,
25 a consent (other than a consent granted as referred to in section 80 (2) or 81 (3)) granted—

- (a) without the concurrence of that Minister or public authority; or
- (b) not subject to such conditions, if any, as are referred to
30 in a notification under section 80 or 81,

shall be void, but nothing in this section affects any liability of a consent authority in respect of a consent granted as referred to in paragraph (a) or (b).

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84. (1) Where a development application is made for consent to carry out designated development, the consent authority shall—

Notice of applications respecting designated development.

5 (a) give written notice of that development application to such persons as appear to it to own or occupy the land adjoining the land to which the development application relates and where practicable to such other persons as appear to it to own or occupy land the use and enjoyment of which, in the opinion of the consent authority, may be detrimentally affected if that designated development is carried out; and

10 (b) cause notice, in such form as may be prescribed, of that development application to be published in a newspaper circulating in the locality.

15 (2) Where land is a lot within the meaning of the Strata Titles Act, 1973, a written notice to the body corporate shall be deemed to be a written notice under subsection (1) (a) to the owner or occupier of each lot within the strata scheme.

20 (3) Where land is owned or occupied by more than one person, a written notice to one owner or one occupier shall be deemed to satisfy the requirements of subsection (1) (a).

25 (4) Each notice referred to in subsection (1) shall contain a statement to the effect that the development application referred to in the notice and the documents (including the environmental impact statement) accompanying that application and in the custody of the consent authority may be inspected at the office of the consent authority, the Department (where the Minister or Director is not the consent authority) and the council (where the council is not the consent authority), at any time during ordinary office hours within a specified period (not exceeding the prescribed period, if any) of not less than 30 days after the day on which notice of that development application is published in a newspaper in accordance with subsection (1) (b).

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(5) Where a notice given under subsection (1) refers to a period exceeding 30 days, the consent authority shall notify the applicant of the period specified in the notice and the effect of that period on the operation of section 96.

5 **85.** Notwithstanding section 84, where—

Circumstances in which compliance with section 84 may be dispensed with.

10 (a) a development application referred to in section 84 which has not been determined by the consent authority is amended or substituted by a subsequent development application or the development application so referred to is withdrawn and a subsequent development application is made with respect to substantially the same development; and

15 (b) the consent authority has with respect to that development application referred to in section 84 complied in all respects with that section,

20 the consent authority may, if it is of the opinion that there is no necessity, by reason that the subsequent development application differs only in a minor respect from the former development application, to comply with section 84 with respect to the subsequent development application, decide to dispense with further compliance with that section in relation to that application, and compliance with that section in relation to the former development application shall be deemed to be compliance in relation to the subsequent development application.

25 **86.** At the places and during the period referred to in section 84 (4) any person may inspect the development application and documents accompanying that application and may make extracts from or copies thereof.

Inspection of development applications, etc.

30 **87.** (1) Any person may, during the period referred to in section 84 (4), make a submission in writing to the consent authority, and where a submission by way of objection is made, the grounds of objection to the development application referred to in section 84 (4) shall be specified in that submission.

Submissions in respect of development applications for designated development.

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(2) Where the application referred to in subsection (1) is an application to which section 78 applies, the consent authority shall, immediately after the expiration of the period referred to in section 84 (4), forward copies of any objections to a Minister or public authority, as the case may be, referred to in section 78, if—

- (a) that Minister or public authority, as the case may be, so requires; or
- (b) the consent authority considers that that Minister or public authority, as the case may be, would be assisted in his or its consideration of the application by having regard to the objections.

(3) A consent authority shall, as soon as practicable after the expiration of the period referred to in section 84 (4), forward to the Secretary copies of objections made under subsection (1).

88. (1) A consent authority shall not determine a development application to carry out designated development otherwise than in accordance with this section.

Restrictions on determination by consent authority of development application for designated development.

(2) Subject to subsection (3), a consent authority may determine the application—

- (a) where no objection has been made under section 87 (1)—at any time after the expiration of the period referred to in section 84 (4); or
- (b) where objection has been made under section 87 (1)—at any time after the expiration of the period of 21 days following the date upon which a copy of that objection is forwarded to the Secretary in accordance with section 87 (3).

(3) A consent authority shall not determine the development application where it receives notice from the Secretary that the Minister has directed that an inquiry be held, in accordance with section 119, with respect to the environmental aspects of the proposed development the subject of the application.

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89. (1) Where the Minister has, as referred to in section 88 (3), directed that an inquiry be held in relation to any designated development the subject of a development application, he shall determine the application, after—

Determina-
tion of
certain
develop-
ment appli-
cations
after in-
quiry by
Commission
of Inquiry.

- 5 (a) the inquiry has been held; and
- (b) he has considered the findings and recommendations of the Commission of Inquiry appointed in respect of the inquiry.

10 (2) The provisions of section 101 (6), (7) and (8) apply to a determination of the Minister under this section as if it were a determination under section 101 (6).

90. (1) In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that develop-
15 ment application :—

Matters for
considera-
tion.

(a) the provisions of—

- (i) any environmental planning instrument;
- 20 (ii) any draft environmental planning instrument that is or has been placed on exhibition pursuant to section 47 (b) or 66 (1) (b);
- (iii) any draft State environmental planning policy which has been submitted to the Minister in accordance with section 37 and is available to the consent authority; and
- 25 (iv) any development control plan in force under section 72,

applying to the land to which the development application relates;

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- 5 (b) the impact of that development on the environment (whether or not the subject of an environmental impact statement) and, where harm to the environment is likely to be caused, any means that may be employed to protect the environment or to mitigate that harm;
- (c) the effect of that development on the landscape or scenic quality of the locality;
- (d) the social and economic effect of that development in the locality;
- 10 (e) the character, scale, density and height of that development;
- (f) the size and shape of the land to which that development application relates, the siting of any building or works thereon and the area to be occupied by that development;
- 15 (g) the relationship of that development to development on adjoining land or on other land in the locality;
- (h) whether the proposed means of entrance to and exit from that development and the land to which that development application relates are adequate and whether adequate provision has been made for the loading, unloading, manoeuvring and parking of vehicles within that development or on that land;
- 20 (i) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect of that traffic on the movement of traffic on that road system;
- 25 (j) whether public transport services are necessary and, if so, whether they are available and adequate for that development;
- 30 (k) whether utility services are available and adequate for that development;

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- (l) whether adequate provision has been made for the landscaping of the land to which that development application relates and whether any trees or other vegetation on the land should be preserved;
- 5 (m) any representations made by a public authority in relation to that development application, or to the development of the area, and the rights and powers of that public authority;
- (n) the amenity of the neighbourhood;
- 10 (o) any submission made under section 87;
- (p) the circumstances of the case;
- (q) the public interest; and
- (r) any other prescribed matter.

(2) Where a draft instrument referred to in subsection 15 (1) (a) (ii) or (iii) contains a provision which, if in force under this Act, would prohibit the carrying out of the development referred to in the development application, any consent granted under this Part to that application shall, notwithstanding any other provision of this Act, have no force or effect unless within 20 months from the date upon which that consent was granted that provision is not in force under this Act.

(3) Where a consent takes effect in accordance with subsection (2), that consent shall be deemed for the purposes of section 93 (1) to be effective and operate from the expiration 25 of that period of 12 months and any notice given under section 92 (1) shall inform the applicant to that effect.

91. (1) A development application shall be determined by—

- (a) the granting of consent to that application, either unconditionally or subject to appropriate conditions; or
- 30 (b) the refusing of consent to that application.

Determina-
tion of
development
application.

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(2) Notwithstanding subsection (1), the consent authority shall refuse an application where the development referred to therein would if carried out create a contravention of an environmental planning instrument or of this Act in relation to 5 the land the subject of the application or land adjacent to or adjoining that land.

(3) A condition is appropriate for the purposes of subsection (1) if it—

- 10 (a) relates to any matter referred to in section 90 (1) of relevance to the development the subject of the consent;
- (b) requires the modification or surrender of a consent granted under this Act or a right conferred by Division 2 in relation to the land to which the development application relates;
- 15 (c) requires the modification or cessation of development (including the removal of buildings and works used in connection with that development) carried out by the applicant on land (whether or not being land to which the development application relates);
- 20 (d) limits the period during which development may be carried out in accordance with the consent so granted;
- (e) requires the removal of buildings and works (or any part thereof) at the expiration of the period referred to in paragraph (d);
- 25 (f) requires the applicant to carry out or cause to be carried out, works (either on the land to which the application relates or on land likely to be affected by the development) relating to any matter referred to in section 90 (1) applicable to the development the subject of the consent;
- 30 (g) modifies details of the development the subject of the development application; or
- (h) is authorised to be imposed under section 94.

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(4) A consent to a development application for the carrying out of development, being the erection of a building, shall be sufficient to authorise the use of the building when erected for the purpose for which it was erected where that purpose is specified in the development application.

(5) A consent granted by a consent authority, otherwise than in accordance with the provisions of this Act or of any environmental planning instrument applying to the land to which that development application relates, is void, but nothing in this subsection affects any liability of the consent authority.

(6) Where in respect of a development application referred to in subsection (1), the consent authority is not the council, the consent authority shall inform the council of its determination under this section.

(7) Where a consent authority imposes under this section a condition requiring the modification or surrender of a consent granted under this Act or a right conferred by Division 2, the consent or right may be modified or surrendered subject to and in accordance with the regulations.

92. (1) Notice of a determination under section 91 shall be given to the applicant in the prescribed form and manner.

Notice to applicant of determination of development application.

(2) Where the determination is made by the granting of consent subject to conditions or by the refusing of consent, the notice referred to in subsection (1) shall—

- (a) indicate the reasons for the determination; and
- (b) notify the applicant that he has a right of appeal under this Act against the determination.

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93. (1) Subject to subsections (2) and (3), where a determination under section 91 is made by the granting of consent or the granting of consent subject to conditions, the consent shall become effective and operate from— Date from which consent operates.

- 5 (a) except in the case of designated development—the date of consent that is endorsed, as prescribed, upon the notice referred to in section 92; or
- (b) in the case of designated development—the expiration of 28 days from the date of consent that is endorsed,
- 10 as prescribed, upon the notice referred to in section 92.

(2) Subject to subsection (3), where a determination under section 91 is made by the granting of consent or the granting of consent subject to conditions, and an appeal has been made under section 97 or 98, the consent—

- 15 (a) shall cease to be, or shall not become, effective pursuant to subsection (1); and
- (b) shall become effective and operate from the date of the decision on that appeal, except where that decision is to refuse development consent.

20 (3) A consent referred to in subsection (1) or (2) is void and shall, except for the purposes of section 97 or 98, be deemed never to have been granted where—

- (a) an appeal under section 98 is upheld, with the effect that development consent is refused; or
- 25 (b) an appeal under section 97 is dismissed and development consent is refused.

(4) Where a determination under section 91 is made by refusing consent or where an application is deemed by section 96 to have been so determined, and the decision on the appeal made pursuant to section 97 in respect of that determination has the effect of granting consent, the decision shall be deemed to be a consent granted under this Division and that consent shall be

30 effective and operate from the date of that decision.

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94. (1) Subject to subsection (2), where a council, being the consent authority, is satisfied that a development the subject of a development application, will or is likely to require the provision of or increase the demand for amenities and services within the area, the council may grant consent to that application subject to a condition requiring—

Payment towards provision or improvement of amenities or services.

- (a) the dedication of land;
- (b) the payment of a monetary contribution; or
- 10 (c) the dedication of land and the payment of a monetary contribution.

(2) A condition referred to in subsection (1) shall only be imposed—

- 15 (a) where an environmental planning instrument identifies a likely increased demand for amenities and services as a consequence of the carrying out of development in accordance with that instrument and stipulates that dedication or a contribution under subsection (1) or both may be required as a condition of any consent to that development; and
- 20 (b) to require a reasonable dedication or contribution for the provision, extension or augmentation of the amenities and services mentioned in that subsection.

(3) The council shall hold any monetary contribution in trust for the purpose for which the payment was required and apply 25 the money towards providing amenities or services or both within a reasonable time and in such location as will meet the demands of the area generally.

(4) Land dedicated in accordance with a condition imposed under subsection (1) shall be made available by the 30 council for the purpose of providing amenities or services or both within a reasonable time to meet the demands of the area generally.

(5) Where a council proposes to impose a condition in accordance with subsection (1) in respect of development to be carried out by or on behalf of a public authority, the council shall

Environmental Planning and Assessment.

take into consideration any land or other sum of money that the public authority has elsewhere dedicated within the area or previously paid to the council other than as a condition of the grant of development consent.

5 (6) Notwithstanding any other Act, where a condition imposed under subsection (1) has been complied with, the applicant for the development consent shall not be liable to make any further dedication of land or payment of a sum of money, which would be substantially to the same effect.

10 (7) Subsection (2) (a) does not apply in the case of a deemed environmental planning instrument.

(8) Where a Minister or public authority (not being a council) is the consent authority in respect of a development application, this section applies to a determination by that consent
15 authority as if a reference to—

- (a) the council were a reference to that Minister or public authority, as the case may be; or
- (b) the area were a reference to the locality.

20 **95.** A consent authority shall notify, in the prescribed form, time and manner, each objector in respect of a development application of its determination of that application and the rights under this Act of the applicant and each objector to appeal in respect of that determination. Notification of consent authority's determination of objections.

25 **96.** (1) Where a consent authority has not determined a development application— Circumstances in which consent is deemed to have been refused.

- (a) in respect of development other than development referred to in paragraph (b) or (c)—within a period of 40 days after lodgment of that development application with the consent authority;

Environmental Planning and Assessment.

- (b) in respect of development referred to in section 78 other than development referred to in paragraph (c)—within a period of 60 days after lodgment of that application with the consent authority; or
- 5 (c) in respect of designated development (whether or not being development referred to in section 78)—
- (i) except as provided in subparagraph (ii)—within 60 days after lodgment of that development application with the consent authority; or
- 10 (ii) where that development application is available for inspection in accordance with section 84 (4) for a period exceeding 30 days—within such period exceeding 60 days from the date of lodgment of that development application with the consent authority as the firstmentioned period
- 15 exceeds 30 days,

that consent authority shall, for the purpose only of section 97, be deemed to have determined that application by refusing consent on the date upon which that period expires.

- 20 (2) Nothing in subsection (1) prevents a consent authority from determining a development application after the expiration of the period referred to in that subsection in relation to that development application.

- (3) A determination pursuant to subsection (2) shall not, 25 subject to subsections (4) and (5), prejudice or affect the continuance or determination of an appeal made under section 97 in respect of a determination that is deemed by subsection (1) to have been made.

Environmental Planning and Assessment.

(4) Where a determination pursuant to subsection (2) is made by granting consent, the consent authority shall be entitled, with the consent of the applicant and without prejudice to costs, to have an appeal made under section 97 in respect of a determination that is deemed by subsection (1) to have been made, withdrawn—

(a) except as provided in paragraph (b)—at any time prior to the determination of that appeal; or

10 (b) where the appeal relates to designated development—at the expiration of the period referred to in section 97 (2).

(5) Where an appeal is withdrawn pursuant to subsection (4) (b), an application by an objector under section 97 (2) in relation to that appeal shall be deemed to be an appeal under section 98.

15 **97.** (1) An applicant who is dissatisfied with the determination of a consent authority with respect to his development application may appeal to the Court within 3 months after the date on which he received notice under section 92 in respect of that application or the date upon which that application is deemed
20 to have been determined under section 96 (1). **Appeal by an applicant.**

(2) Where an appeal has been made under subsection (1) relating to a development application for consent to carry out designated development, each objector to that application shall be given notice by the consent authority of that appeal and shall,
25 on application made to the Court in accordance with rules of court within 28 days after the date of the notice, be entitled to be heard at the hearing of the appeal as if he were a party to the appeal.

Environmental Planning and Assessment.

(3) An appeal under subsection (1) relating to a development application for consent to carry out designated development in respect of which an objection has been made under section 87 shall not be heard by the Court until after the expiration of the 5 time within which an objector may appeal to the Court under section 98.

98. (1) An objector who is dissatisfied with the determination of a consent authority to grant consent to a development application either unconditionally or subject to conditions may, within 10 28 days after the date on which notice of the determination was given under section 95, and in accordance with rules of court, appeal to the Court. Appeal by
an objector.

(2) Where an appeal is made under subsection (1), the person who made the development application and the consent 15 authority referred to in that subsection shall be given notice of that appeal, in accordance with rules of court, and shall be entitled to be heard at the hearing of the appeal as parties thereto.

99. (1) A consent granted under this Division to a development application shall lapse— Lapsing of
consent.

20 (a) unless the development the subject of that consent is commenced—

(i) except as provided in subparagraph (ii)—
within 2 years of the date upon which that consent becomes effective in accordance with section 93 (in this section referred to as “the prescribed date”); or
25

Environmental Planning and Assessment.

- 5 (ii) where within one year of the prescribed date a provision of an environmental planning instrument is made having the effect of prohibiting the development—within one year of the date upon which that provision comes into force; and
- (b) where a notice referred to in subsection (3) is in force under subsection (6)—unless the development the subject of that consent is completed within the time specified in that notice.
- 10 (2) Development is commenced for the purposes of subsection (1) (a)—
- 15 (a) where that development comprises the erection of a building or the carrying out of a work or the subdivision of land (including, where applicable, the subsequent use of that building when erected, that work when carried out, or that land when subdivided)—when building, engineering or construction work relating to that building, work or subdivision is physically commenced on the land to which the consent applies; or
- 20 (b) where that development comprises the use of any land, building or work (not being a use referred to in paragraph (a))—when the use of that land, building or work is physically commenced.
- 25 (3) Where development is commenced within the period specified in subsection (1) but is not completed within that period, the consent authority, at any time after the expiration of that period, may, subject to this section, issue a notice requiring completion of the development within such time (not being less than 12 months from the date of service of the notice) as the consent
- 30 authority considers reasonable, having regard to all relevant circumstances including the nature of the development.

Environmental Planning and Assessment.

(4) A notice shall not be issued under subsection (3) unless the Director approves by instrument in writing of its issue.

(5) Before approving the issue of a notice the Director shall afford the consent authority and any person who, in the opinion of the Director, is likely to be disadvantaged by the issue of the notice in the terms proposed, the opportunity of appearing and being heard by the Director or a person appointed by him for that purpose.

(6) Subject to subsections (8), (9) and (10), a notice issued under subsection (3) shall—

- (a) be in the prescribed form;
- (b) take effect from the date when the notice is sent by post addressed to the owner of the land to which the consent applies; and
- (c) operate according to its tenor.

(7) The consent authority shall, on or as soon as practicable after the day on which the notice is sent to the owner referred to in subsection (6), send a copy of the notice to such persons (if any) as the Director specifies in the instrument referred to in subsection (4), being persons who, in the opinion of the Director, are likely to be disadvantaged by the issue of the notice.

(8) Within 3 months of the date upon which the notice takes effect, any person aggrieved by the notice may appeal to the Court claiming that the time for completion stipulated in the notice is unreasonable.

(9) The Court shall determine the appeal by—

- (a) affirming the notice;
- (b) varying the notice by substituting a different time stipulation; or
- (c) cancelling the notice.

Environmental Planning and Assessment.

(10) Where the Court varies the notice, subsection (6) shall apply to the notice as if it had, at the time of its issue, specified the time stipulation determined by the Court.

100. (1) If an appeal is made under section 97 with respect to a development application, the appeal shall, as far as practicable, be heard together with any appeals under section 98 made with respect to the application. Joint hearing of certain appeals.

(2) Without affecting subsection (1), if 2 or more appeals are made under section 98 with respect to the same development application, the appeals shall, as far as practicable, be heard together.

(3) If 2 or more appeals are made under section 99 with respect to the same notice referred to in that section, the appeals shall, as far as practicable, be heard together.

101. (1) Where the Director considers it expedient in the public interest to so do, he may give a direction in writing to a consent authority to refer to the Secretary for determination by the Minister in accordance with this section a particular development application or a development application of a class or description of development applications. Determination of development applications by the Minister.

(2) Where a direction is given under subsection (1), a consent authority—

(a) shall not determine in accordance with this Division any development application to which that direction applies; and

(b) shall after dealing with the application in accordance with this Division except as provided by paragraph (a) refer the application to the Secretary,

and the provisions of section 96 shall not apply to the development application.

Environmental Planning and Assessment.

(3) The consent authority shall inform the applicant and any objector to that application that the application has been referred to the Secretary for determination by the Minister.

(4) The persons referred to in subsection (3) shall be afforded the opportunity of a hearing if so required by any of them before the Minister determines the application.

(5) Where a hearing is so required to be held, the Minister shall appoint a person to conduct the hearing before which the applicant, consent authority and any objector shall be entitled to appear and be heard.

(6) The Minister after consideration of a report and recommendation made by the person conducting the hearing may determine the development application—

- (a) by granting consent to that application either unconditionally or subject to such conditions as he thinks fit; or
- (b) by refusing consent to that application.

(7) The Minister's determination under subsection (6)—

- (a) shall be final and the provisions of sections 97 and 98 shall not apply thereto; and
- (b) where the determination has the effect of granting consent to the development application, shall be deemed to be a consent granted under this Division and take effect from the date of notification under subsection (8) to the applicant.

(8) The Secretary shall notify the applicant, consent authority and any objector of the Minister's determination under subsection (6).

(9) Where the Director has given a direction under subsection (1), he may require the consent authority to furnish such information concerning development applications as the Director considers expedient for the purpose of enabling the Minister to exercise his functions under this section.

Environmental Planning and Assessment.

102. (1) Upon application being made in the prescribed form a consent authority which has granted development consent under this Division may modify details of the consent where— Amendment
of consents.

- 5 (a) after giving public notice of the application it is satisfied that no prejudice will be caused to any person who objected to the development application the subject of that consent; and
- 10 (b) it has consulted with the public authority in respect of a condition referred to in section 82 (1) and that authority has not objected to the modification of that consent.

(2) Where the development consent referred to subsection (1) is a consent referred to in section 93 (4) or 101 (7) (b), the Court or the Minister, as the case may be, shall be deemed for the purposes of this section to be the consent authority.

- 15 (3) Modification of a development consent in accordance with this section shall not be construed as the granting of development consent under this Division but a reference in this or any other Act to a development consent shall be a reference to the development consent so modified.

20 **103.** (1) If at any time it appears to the Minister that any development for which consent under this Division is in force in relation to a development application should not be carried out or completed, or should not be carried out or completed except with modifications, he may, by instrument in writing, revoke or modify Revocation
or modifica-
tion of
development
consent.

25 that consent and shall at the same time notify all persons who, in his opinion, will be affected by the revocation or modification.

- (2) Before revoking or modifying a consent as provided by subsection (1), the Minister shall by notice in writing inform each person who in his opinion will be adversely affected by the revocation or modification of the consent of his intention to revoke or modify that consent and afford that person the opportunity of appearing before the Minister or a person appointed by him to show cause why the revocation or modification should not be effected.
- 30

Environmental Planning and Assessment.

(3) Where a development consent is revoked or modified under this section, any person aggrieved by the revocation or modification shall be entitled to recover from the consent authority which granted that consent compensation for expenditure incurred pursuant to that consent during the period between the date of that consent and the date of service of the notice under subsection (2) which expenditure is rendered abortive by the revocation or modification of that consent.

(4) Where the consent referred to in subsection (1) is a consent referred to in section 93 (4), the Government of New South Wales shall be deemed to be the consent authority for the purposes of subsection (3).

(5) The revocation or modification of a development consent shall take effect from the date upon which the instrument referred to in subsection (1) is served upon the owner of the land to which that consent applies.

(6) The Minister shall, on or as soon as practicable after the date upon which the instrument referred to in subsection (1) is served upon the owner of the land referred to in subsection (5), cause a copy of the instrument to be sent to each person who in his opinion will be adversely affected by the revocation or modification of the consent.

104. (1) A council shall, in the prescribed form and manner (if any), keep a register of consents granted under this Division and of decisions on appeal from any determination made under this Division. **Register of consents.**

(2) The register referred to in subsection (1) shall be available for public inspection without fee at the office of the council during ordinary office hours.

Environmental Planning and Assessment.

- 105.** The regulations may make provision for or with respect to—
- (a) the furnishing of environmental impact statements for the purposes of this Part; and
- 5** (b) any matters relating to environmental impact statements under this Part, being matters for or with respect to which regulations relating to environmental impact statements referred to in Part V may be made.
- Regulations respecting environmental impact statements under this Part.

DIVISION 2.—*Existing use.*

- 10** **106.** In this Division, “existing use” means—
- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument having the effect of prohibiting that use or requiring consent thereto; and
- 15** (b) in the case of a building, work or land the subject of a consent referred to in section 99 (1) (a) (ii)—the use of the building, work or land for the purpose for which the consent was granted.
- Interpretation.
- 20** **107.** Except where expressly provided, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.
- Continuance of existing use.
- 108.** (1) Nothing in section 107 authorises—
- (a) any alteration or extension to or rebuilding of a building or work;
- 25** (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned;
- Limitations on existing use.

Environmental Planning and Assessment.

- (c) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 91 (3) (b); or
- (d) the continuance of the use therein mentioned where that use is abandoned.

(2) Without limiting the generality of subsection (1) (d), a use shall be presumed conclusively to be abandoned if it ceases to be so used for a continuous period of 12 months.

109. The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—

Regulations
respecting
existing
use.

- (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use; and
- (b) the change of an existing use to another use.

PART V.

ENVIRONMENTAL ASSESSMENT.

110. In this Part—

Interpre-
tation.

“activity” means—

- (a) the formulation of a proposal, or the making of a recommendation or decision, for the carrying out of a development, work or project by a determining authority or a development, work or project for which the approval of a determining authority is required;

Environmental Planning and Assessment.

5 (b) the incurring of expenditure by or on behalf of a determining authority in respect of the carrying out of a development, work or project by the determining authority or the incurring of expenditure by or on behalf of any other person in respect of a development, work or project for which the approval of a determining authority is required; or

10 (c) the carrying out of a development, work or project by a determining authority or a development, work or project for which the approval of a determining authority is required,

15 but does not include the preparation or making of an environmental planning instrument under Part III or an activity as defined in paragraph (a), (b) or (c) that requires a consent under Part IV;

20 “determining authority” means a public authority and, in relation to any activity, means the public authority by or on whose behalf the activity is or is to be carried out or whose approval to the carrying out of the activity is required;

“proponent”, in relation to an activity, means the person proposing to undertake the activity.

25 **111.** For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent 30 possible all matters affecting or likely to affect the environment by reason of that activity.

Duty to consider environmental impact.

Environmental Planning and Assessment.

112. (1) A determining authority shall not make a final decision to undertake, or to approve of the undertaking of, an activity that is either a prescribed activity, an activity of a prescribed kind or an activity that is likely to significantly affect the environment unless—

Decision
of deter-
mining
authority
in relation
to certain
activities.

- 5
- (a) the determining authority has obtained and considered an environmental impact statement in respect of that activity—
- 10 (i) prepared in the prescribed form and manner by or on behalf of the proponent; and
- (ii) except where the proponent is the determining authority, submitted to the determining authority in the prescribed manner;
- 15 (b) notice referred to in section 113 (1) has been duly given, the period specified in the notice has expired and the determining authority has considered any representations made to it in accordance with section 113 (2);
- 20 (c) the determining authority has complied with section 113 (3); and
- 25 (d) where it receives notice from the Secretary that the Minister has directed that an inquiry be held, in accordance with section 119, with respect to the activity, the inquiry has been held and the determining authority has considered the findings and recommendations of the Commission of Inquiry and any advice given to it by the Minister in accordance with section 114.

(2) The determining authority shall, as soon as practicable after an environmental impact statement is prepared by or submitted to it, as referred to in subsection (1), furnish to the Secretary a copy of the statement.

30

Environmental Planning and Assessment.

(3) In making its final decision in relation to an activity referred to in subsection (1), a determining authority which is satisfied that the undertaking of that activity will detrimentally affect the environment—

- 5 (a) may, except where it is the proponent—
- (i) impose such conditions or require such modifications as will in its opinion eliminate or reduce the detrimental effect on the environment of the activity; or
 - 10 (ii) disapprove of the activity; or
- (b) may, where it is the proponent of the activity—
- (i) modify the proposed activity so as to eliminate or reduce the detrimental effect on the environment of the activity; or
 - 15 (ii) refrain from undertaking the activity.

(4) The provisions of subsection (3) have effect notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act.

- 20 **113.** (1) A determining authority shall give notice in the prescribed form and manner that a copy of an environmental impact statement prepared by or submitted to it, as referred to in section 112 (1), may be inspected during ordinary office hours at the office of the determining authority and of the Department
25 for such period, being not less than 30 days after the day on which the notice is given, as may be specified in the notice.

Publicity
of environ-
mental
impact
statement.

- (2) Any person may, during the period specified in the notice, inspect the environmental impact statement (except any part thereof the publication of which would, in the opinion of the
30 determining authority, be contrary to the public interest by reason of its confidential nature or for any other reason) and may within that period make representations in writing to the determining authority with respect to the activity to which the environmental impact statement relates.

Environmental Planning and Assessment.

(3) A determining authority shall, as soon as practicable and not less than 21 days before a final decision referred to in section 112 (1) is made with respect to an activity, furnish to the Secretary a copy of any representations made to it under subsection (2) with respect to the activity.

(4) A proponent not entitled to copyright in an environmental impact statement referred to in section 112 (1) shall be deemed to have indemnified all persons using the environmental impact statement for the purposes of this Part against any claim or action in respect of a breach of copyright in the statement.

114. Where the Minister has directed that an inquiry be held, in accordance with section 119, with respect to any activity referred to in section 112 (1)—

15 (a) the Minister shall consider the findings and recommendations of the Commission of Inquiry and forward to the relevant determining authority a copy of the findings and recommendations and may give advice to the authority as to whether, in his opinion—

20 (i) there are no environmental grounds which would preclude the carrying out of the activity to which the findings and recommendations relate in accordance with the proponent's proposal;

25 (ii) there are no environmental grounds which would preclude the carrying out of the activity subject to its being modified in the manner specified in the advice;

30 (iii) there are no environmental grounds which would preclude the carrying out of the activity subject to the observance of conditions specified in the advice; or

(iv) there are environmental grounds which would preclude the carrying out of the activity; and

35 (b) any public authority or body to which an appeal may be made by or under any Act in relation to the activity shall, in deciding the appeal, consider and take into

Consideration of findings and recommendations of Commission of Inquiry.

Environmental Planning and Assessment.

account the findings and recommendations of the Commission of Inquiry and any such advice given by the Minister.

5 to— **115.** The regulations may make provision for or with respect **Regulations.**

- (a) the factors to be taken into account when consideration is being given to the likely impact of an activity on the environment;
- 10 (b) the preparation, contents, form and submission of environmental impact statements;
- (c) the making of environmental impact statements available for public comment; or
- (d) the methods of examination of environmental impact statements.

15

PART VI.

IMPLEMENTATION AND ENFORCEMENT.

DIVISION 1.—*General.*

20 **116.** Where land designated by an environmental planning instrument pursuant to section 26 (c) is resumed or appropriated— **Value of designated land on compulsory acquisition.**

- (a) the value of that land shall be determined as if it had not been so designated; and
- 25 (b) where that land was at the date of resumption or appropriation used by the claimant as his place of residence—in ascertaining compensation payable in

Environmental Planning and Assessment.

consequence of the resumption or appropriation, the Court shall award additional compensation in respect of—

- 5 (i) the amount (if any) by which the cost to the claimant of relocating his residence in other accommodation would exceed the value of the land referred to in paragraph (a), on the assumption that the other accommodation is equivalent to or comparable with the
10 accommodation on the land so referred to; and
- (ii) solatium for the necessity to relocate his residence.

117. (1) The Minister may, after consultation with the responsible Minister concerned, direct a public authority or person
15 having functions under this Act or an environmental planning instrument to exercise those functions, at such times and in such manner and in accordance with such principles, not inconsistent with this Act or that instrument, as are specified in the direction.

Directions
by the
Minister.

(2) A public authority or person to whom a direction
20 is given under subsection (1) shall comply, and is hereby empowered to comply, with the direction in accordance with the terms of the direction.

118. (1) Where, in the opinion of the Minister, a council has failed to comply with, carry into effect or enforce the provisions
25 of this Act, an environmental planning instrument or a direction given under section 117, he may, in consultation with the Minister for Local Government, by notice call upon the council to show cause why the Minister should not exercise the powers conferred upon him by this section.

Appointment
of officer
of Department
as
environ-
mental
adminis-
trator.

30 (2) A council that has received a notice under subsection (1) shall, if it so desires, be entitled to appear before the Minister or a person appointed by him, for the purpose of showing cause.

Environmental Planning and Assessment.

(3) Where the Minister, after giving notice under subsection (1) and after considering the matters raised by the council at any hearing required to be held by subsection (2), considers it proper to do so, he may, in consultation with the
5 Minister for Local Government, by order published in the Gazette, appoint an officer of the Department to administer all, or such part as is specified in the order, of the functions conferred or imposed on that council by or under this Act.

(4) Notwithstanding subsection (3), the officer shall
10 not enter into contracts in the exercise of his powers except with the consent of the Minister.

(5) The officer shall, during the period of his appointment under subsection (3), be deemed to be and have the functions of the council specified in the order of his appointment.

15 (6) The officer shall, during the period of his appointment under subsection (3), be paid out of the general fund of the council such remuneration and such costs and expenses as the Minister determines.

(7) The regulations may make provision for or with
20 respect to the functions of the officer in connection with his appointment and, in particular, for or with respect to—

(a) the accommodation, if any, to be provided at the offices of the council for the officer and any other officers of the Department assisting him in the exercise of those
25 functions; and

(b) requiring officers and servants of the council to render all necessary assistance to the officer in the exercise of his functions in accordance with his appointment and any such officers and servants not to obstruct the officer
30 in the exercise of his functions.

Environmental Planning and Assessment.

DIVISION 2.—*Public inquiries and settlement of disputes.*

119. (1) The Minister may at any time direct that an inquiry ^{Public} be held, in accordance with this section, by a Commission of ^{inquiry.} Inquiry appointed under subsection (2) with respect to—

- 5 (a) any matter relating to the administration and implementation of the provisions of this Act or any environmental planning instrument;
- (b) the environmental aspects of any proposed designated development the subject of a development application;
- 10 or
- (c) the environmental aspects of any activity referred to in section 112 (1).

(2) The Minister may appoint one or more persons as a Commissioner or Commissioners to constitute a Commission of
15 Inquiry to hold an inquiry under this section and may appoint one or more persons to assist such a Commission.

(3) A Commissioner and any person appointed under subsection (2) to assist a Commission of Inquiry shall be paid such remuneration and allowances as may be determined in respect of
20 him by the Minister.

(4) Where there is more than one Commissioner constituting a Commission of Inquiry, the Minister shall appoint one of the Commissioners to preside at the proceedings of the Commission.

25 (5) Except as provided in subsection (1), a Commission of Inquiry is not subject to directions by the Minister or any other person in relation to the contents of its report, findings or recommendations.

Environmental Planning and Assessment.

(6) A Commission of Inquiry constituted under this section shall hold an inquiry in accordance with the Minister's direction given under subsection (1), shall report its findings and recommendations to the Minister and shall, after so reporting, but
5 subject to subsection (7), make public those findings and recommendations.

(7) A Commission of Inquiry shall not make public any evidence or matters in respect of which directions have been given under section 120 (5) (b) or matters the publication of which is
10 excepted from section 120 (8).

120. (1) Subject to this section, an inquiry by a Commission of Inquiry constituted under section 119 (1) shall be held in public and evidence in the inquiry shall be taken in public on oath or affirmation. Procedure at inquiries.

15 (2) Before a Commission of Inquiry commences to hold an inquiry, it shall give reasonable notice, by advertisement published in the Gazette and in such newspapers as it thinks necessary, of its intention to hold the inquiry, of the subject of the inquiry and of the time and place at which the inquiry is to be commenced.

20 (3) A Commissioner may, by writing signed by him, summon a person to appear before the Commission of Inquiry at a time and place specified in the summons to give evidence and to produce such books and documents (if any) as are referred to in the summons.

25 (4) A person served with a summons to appear as a witness at an inquiry by a Commission of Inquiry shall not, without reasonable excuse—

(a) fail to attend as required by the summons; or

Environmental Planning and Assessment.

- (b) fail to appear and report himself from day to day unless excused or released from further attendance by or on behalf of the Commission.

Penalty : \$1,000.

5 (5) Where a Commission of Inquiry is satisfied that it is desirable to do so in the public interest by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may—

- 10 (a) direct that an inquiry or a part of an inquiry shall take place in private and give directions as to the persons who may be present; or
- (b) give directions prohibiting or restricting the publication of evidence given before the Commission or of matters contained in documents lodged with the Commission,

15 or do both of those things.

(6) A Commission of Inquiry may, if it thinks fit, permit a person appearing as a witness before the Commission to give evidence by tendering, and verifying by oath or affirmation, a written statement.

20 (7) Where a Commission of Inquiry considers that the attendance of a person as a witness before the Commission would cause serious hardship to the person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified **in** such manner as the Commission

25 allows.

(8) Where evidence is given to a Commission of Inquiry by a written statement in accordance with subsection (6) or (7), the Commission shall make available to the public in such manner as the Commission thinks fit the contents of the statement

30 other than any matter the publication of which, in the opinion of the Commission, would be contrary to the public interest by reason of its confidential nature or for any other reason.

Environmental Planning and Assessment.

(9) Subject to this section and the regulations—

- (a) the procedure to be followed at an inquiry by a Commission of Inquiry shall be determined by the Commission; and
- 5 (b) a Commission of Inquiry is not bound by the rules of evidence.

(10) An oath or an affirmation may be administered for the purposes of this section by a Commissioner or by any person authorised by the Oaths Act, 1900, to administer a judicial oath.

- 10 (11) Nothing in this section derogates from any law relating to Crown privilege.

121. (1) Where a dispute arises between the Department or an officer of the Department and a public authority, other than a council, with respect to— Settlement of disputes.

- 15 (a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument; or
- (b) the exercise of any function conferred or imposed upon an officer of the Department or upon the public authority by or under this Act, the regulations or an
- 20 environmental planning instrument,

a party to the dispute may submit that dispute to the Premier for settlement in accordance with this section.

- (2) Where a dispute arises between a public authority (including the Department and an officer of the Department) and a council with respect to—
- 25

- (a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument; or

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(b) the exercise of any function conferred or imposed upon the public authority or council by or under this Act, the regulations or an environmental planning instrument,

a party to the dispute may submit that dispute to the Minister for settlement in accordance with this section.

(3) On the submission of a dispute to the Premier or the Minister under subsection (1) or (2), the Premier or Minister may appoint a person to hold an inquiry and make a report to him with respect to that dispute or may himself hold an inquiry with respect to that dispute.

(4) After the completion of an inquiry held under subsection (3) and, where a report is made to the Premier or the Minister under that subsection, after consideration by him of that report, the Premier or the Minister may make such order, having regard to the public interest and to the circumstances of the case, as he thinks fit.

(5) An order made by the Premier or the Minister under subsection (4) may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.

(6) The Department, an officer of the Department, a council or other public authority, as the case may be, shall comply with an order given to it or him under subsection (4), and shall, notwithstanding the provisions of any other Act, be empowered to comply with any such order.

DIVISION 3.—*Orders of the Court.*

122. In this Division—

Interpre-
tation.

(a) a reference to a breach of this Act is a reference to—

(i) a contravention of or failure to comply with this Act; and

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(ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act; and

(b) a reference to this Act includes a reference to—

- 5
- (i) an environmental planning instrument;
 - (ii) a consent granted under this Act; and
 - (iii) a condition subject to which a consent referred to in subparagraph (ii) was granted.

123. (1) Any person may bring proceedings in the Court for **Restraint,**
10 an order to remedy or restrain a breach of this Act, whether or not **etc., of**
any right of that person has been infringed by or as a consequence **breaches of**
of that breach. **this Act.**

(2) Proceedings under this section may be brought by a person on his own behalf or on behalf of himself and on behalf of
15 other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(3) Any person on whose behalf proceedings are
20 brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

124. (1) Where the Court is satisfied that a breach of this **Order of**
Act has been committed or that a breach of this Act will, unless **the Court.**
25 restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.

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(2) Without limiting the powers of the Court under subsection (1), an order made under that subsection may—

- (a) where the breach of this Act comprises a use of any building, work or land—restrain that use;
- 5 (b) where the breach of this Act comprises the erection of a building or the carrying out of a work—require the demolition or removal of that building or work; or
- 10 (c) where the breach of this Act has the effect of altering the condition or state of any building, work or land—require the reinstatement, so far as is practicable, of that building, work or land to the condition or state the building, work or land was in immediately before the breach was committed.

(3) Where a breach of this Act would not have been 15 committed but for the failure to obtain a consent under Part IV, the Court, upon application being made by the defendant, may—

- (a) adjourn the proceedings to enable a development application to be made under Part IV to obtain that consent; and
- 20 (b) in its discretion, by interlocutory order, restrain the continuance of the commission of the breach while the proceedings are adjourned.

(4) The functions of the Court under this Division are in addition to and not in derogation from any other functions of 25 the Court.

DIVISION 4.—*Offences.*

125. (1) Where any matter or thing is by or under this Act, other than by or under the regulations, directed or forbidden to be done, or where the Minister, the Director, a council or any other 30 person is authorised by or under this Act, other than by or under against this Offences Act and the regulations.

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the regulations, to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or 5 prohibition shall be guilty of an offence against this Act.

(2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where the Minister, the Director, a council or any other person is authorised by the regulations to direct any matter or thing to be done, or to forbid 10 any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against the regulations.

(3) Nothing in subsection (1) or (2) applies in respect 15 of a direction given under this Act by the Minister to a public authority.

126. (1) A person guilty of an offence against this Act shall, ^{Penalties.} for every such offence, be liable to the penalty expressly imposed and if no penalty is so imposed to a penalty not exceeding \$20,000 20 and to a further daily penalty not exceeding \$1,000.

(2) A person guilty of an offence against the regulations is liable to a penalty not exceeding \$2,000.

(3) Where a person is guilty of an offence involving the destruction of or damage to a tree, the court dealing with the 25 offence may, in addition to or in substitution for any pecuniary penalty imposed or liable to be imposed, direct that person—

(a) to plant new trees and maintain those trees to a mature growth; and

(b) to provide security for the performance of any obligation 30 imposed under paragraph (a).

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127. (1) Proceedings for an offence against this Act may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone or before the Court in its summary jurisdiction. Proceedings for offences.

5 (2) Proceedings for an offence against the regulations may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone.

(3) If proceedings in respect of an offence against this Act are brought in a court of petty sessions held before a stipendiary magistrate, the maximum penalty that the court may impose in respect of the offence is, notwithstanding any other provisions of this Act, \$2,000 or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.

15 (4) If proceedings in respect of an offence against this Act are brought in the Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.

(5) Proceedings in the Court in its summary jurisdiction in respect of an offence against this Act may be commenced not later than 6 months after the offence was committed.

(6) Proceedings for an offence against this Act shall not be instituted in the Court in its summary jurisdiction without the written consent of the Minister or of such prescribed person or person of a class or description of persons prescribed for the purposes of this section.

(7) A person shall not be convicted of an offence against this Act where the matter constituting the offence is, at the date upon which the conviction would, but for this subsection, be made—

30 (a) the subject of proceedings under section 123, which proceedings have not been concluded; or

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(b) the subject of an order made under section 124.

(8) Nothing in subsection (7) precludes a conviction being made where the proceedings referred to in paragraph (a) of that subsection are concluded otherwise than by the making of an order under section 124.

PART VII.

FINANCE.

DIVISION 1.—*Funds.*

128. The Account which has been established in the Special Department of Environment and Planning Account. Deposits Account in the Treasury pursuant to section 30 (1) of the State Planning Authority Act, 1963, shall be continued under a name determined by the Treasurer.

129. (1) In connection with the Account referred to in section 128, there shall be created in the books of the Department ^{Funds generally.} the following funds :—

(a) a Development Fund in respect of each development area (each of which funds is referred to in this Part as a "Development Fund"); and

(b) the Trust Fund (which is referred to in this Part as "the Trust Fund").

(2) The funds shall be separate and distinct.

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130. (1) The Development Fund in respect of each development area shall consist of— **Development Funds.**

- 5 (a) all money borrowed for the purpose of the acquisition or development of land within the development area and for the purpose of repaying or renewing a loan obtained for that purpose and the proceeds of any levy or assessment made by the corporation for the purpose of repaying money so borrowed or renewing such a loan;
- 10 (b) the proceeds of the sale or lease by the corporation of any land situated within the development area;
- (c) all money and land directed by or under this Act to be allocated to the Development Fund;
- (d) all money received as a result of the investment of the Development Fund as authorised by this Act; and
- 15 (e) such other money as the Treasurer authorises to be paid into the Development Fund.

(2) All land vested in the corporation situated within a development area shall form part of the assets of the Development Fund in respect of that development area.

20 (3) The Development Fund in respect of each development area may be applied to any of the following purposes :—

- (a) the acquisition or development of any land within the development area;
- 25 (b) the payment of rates and charges due and payable by the corporation in respect of land within the development area;
- 30 (c) transfers to any reserve for loan repayment in respect of money borrowed in respect of the development area or in respect of any loan transferred to the corporation in pursuance of Schedule 3 to the Miscellaneous Acts (Planning) Repeal and Amendment Act, 1979;
- 35 (d) payment of principal, interest and expenses in respect of money borrowed in respect of the development area or in respect of any loan transferred to the corporation in pursuance of that Schedule;

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- (e) any purpose authorised by or under this Act for the application of the Development Fund;
- (f) the creation of assets and incurring and discharging liabilities not inconsistent with the purposes of the Development Fund;
- (g) payment of principal, interest and expenses in respect of money borrowed which is not chargeable to any fund other than the Development Fund, or in respect of a loan or asset transferred from another fund;
- (h) the investment of money for the creation of reserves for any purposes not inconsistent with the purposes of the Development Fund;
- (i) any costs incurred in the administration of the Development Fund.
- 15 **131.** (1) The Trust Fund shall consist of the following Trust Fund assets :—
- (a) all money and land held by the corporation by way of deposit or in trust for any person;
- (b) all money and land assigned, conveyed, bequeathed or devised to the corporation in trust for the purpose of any function which the corporation is by or under this Act empowered to exercise;
- (c) all money received as a result of the investment of the Trust Fund as authorised by this Act.
- 25 (2) The Trust Fund shall be applied as follows :—
- (a) where the money or land is held by way of deposit or in trust for any person, the money may be paid or the land may be assured to or on behalf of the person entitled thereto, but if the money has remained in the Trust Fund for 10 years, the corporation may transfer
- 30

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it to such Development Fund as it may deem proper, subject to repaying it from that fund to any person entitled thereto;

- 5 (b) except as otherwise provided in this section, for the purposes and according to the trusts upon which the money or land is held by the corporation;
- (c) by investment in securities authorised under the Trustee Act, 1925, or for the purposes and according to the trusts referred to in paragraph (b).
- 10 **132.** (1) Development areas may be constituted in accordance with this section. Constitution of development areas.
- (2) The Director may, by notice published in the Gazette, notify a proposal to constitute as a development area any area or areas or parts of areas specified in the notice.
- 15 (3) In determining which areas or parts of areas should be included in the development area, the Director shall have regard to any environmental planning instruments relating to those areas or parts, environmental planning principles and such other matters as the Director thinks fit.
- 20 (4) Within the prescribed time after the publication in the Gazette of the notice referred to in subsection (2), the Director shall, in the prescribed manner, notify the councils of the areas or parts of areas proposed to be included in the development area of the proposal.
- 25 (5) Any council so notified, other than a council in whose area the corporation has acquired any land pursuant to section 9 may, by notice in writing, lodge with the Director, within one month after its being so notified, representations in relation to its inclusion in the development area.

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(6) Where representations have been lodged under subsection (5), the Director shall refer the matter to the Minister who shall, after such inquiry as he deems fit, either—

- (a) confirm the proposal; or
- 5 (b) alter the proposal by excluding, from the proposed development area, any area other than an area in which the corporation has acquired land pursuant to section 9.

(7) If no representations are lodged under subsection (5), the proposal shall be deemed to be confirmed immediately
10 on the expiry of the period allowed for the lodgment of representations.

(8) The areas or parts of areas specified in the proposal as confirmed or altered shall, upon publication in the Gazette of a notice constituting them as a development area, be constituted
15 as a development area under the name specified in the notice.

133. The Director may, by notice published in the Gazette, notify a proposal to alter a development area constituted under this Division by including therein any land or by excluding therefrom any land and the provisions of this Division shall apply to
20 the notice as they apply to a notice referred to in section 132 (2).

Alteration of development area.

134. Land shall not be included in more than one development area.

Land to be in one development area only.

135. (1) The constitution of a development area in accordance with this Division shall be disallowed if a resolution to that
25 effect is carried by either House of Parliament if notice of the resolution is given within 15 sitting days after publication in the Gazette of the notice constituting the development area.

Disallowance of constitution of development area.

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(2) For the purposes of subsection (1), sitting days shall be counted, whether or not they occur during the same session.

DIVISION 2.—*Charges and fees.*

5 **136.** For the purpose of this Act, the Director may demand, levy and recover the prescribed charges and fees in accordance with this Division. Right to charges and fees.

137. (1) Where under the provisions of any Act, ordinance, regulation or environmental planning instrument the Department, Director or corporation— Charges and fees fixed by regulation.

- (a) supplies any service;
- (b) makes any registration;
- (c) gives any permission;
- (d) furnishes any information; or

15 (e) receives any application for its approval,
the charge or fee shall be as prescribed by the regulations.

(2) In any such regulation, provision may be made requiring a deposit or prepayment in respect of any such charge or fee.

20 (3) Nothing in this section authorises any charge or fee contrary to the provisions of any Act, ordinance, regulation or environmental planning instrument.

138. The charge or fee shall be paid to the Department, Director or corporation by the person to whom or at whose request the service, permission or information is supplied, given or furnished, or at whose request the registration is made or from whom the application is received, as the case may be. Liability for charge or fee.

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139. Any charge, fee or money due to the Department, Director or corporation under the provisions of this Act may be recovered as a debt or liquidated demand in a court of competent jurisdiction. Recovery of charges, etc.

5

DIVISION 3.—*Loans.*

140. (1) For the temporary accommodation of the corporation, it may obtain advances by overdraft of current account in any bank or banks upon the credit of the corporation's funds to such extent as may from time to time be approved by the Governor. Temporary accommodation.

10 (2) The Treasurer may advance such money to the corporation, upon such terms and conditions as to repayment and interest, as may be agreed upon.

141. (1) Without affecting section 140, the corporation may enter into arrangements to borrow money from, or obtain advances from, or obtain other financial accommodation from, an approved person or body, whether in New South Wales or elsewhere, to such extent and secured and arranged in such manner and for such period as may be approved. Other financial accommodation.

20 (2) The due payment of any amounts payable by the corporation pursuant to any arrangements entered into under this section, and any interest or other charges in relation thereto, is hereby guaranteed by the Government, and any liability arising from the guarantee shall be payable out of money provided by Parliament.

25 (3) Where the approval of the Governor in relation to any arrangements is expressed to be given under this section, section 142 and Schedule 6 do not apply to or in respect of the

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arrangements, but this subsection does not prevent the borrowing of money under section 142 (1) for the discharge or partial discharge of any indebtedness to any person or body referred to in subsection (1).

5 (4) In this section—

“approved” means approved from time to time by the Governor on the recommendation of the Minister and the Treasurer;

10 “financial accommodation” includes financial accommodation by way of credit arrangements, including arrangements for the deferred payment by the corporation of amounts payable by it under any contract or agreement entered into by it, but not including any arrangements that
15 provide for the payment of instalments where the extension of credit to the corporation is not involved, and includes financial accommodation involving the use of bills of exchange.

20 **142.** (1) The corporation may from time to time, with the Borrowing. concurrence of the Treasurer and the approval of the Governor, borrow money for—

- (a) the purpose of exercising any of its functions;
- (b) the renewal of loans;
- (c) the discharge or partial discharge of any loan or any
25 indebtedness to the Treasurer or to any bank or to any person or body referred to in section 141 (1); or
- (d) any other purpose of this Act.

(2) Schedule 6 has effect.

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143. (1) The corporation may, in respect of each year ending on 31st December, assess the amount required in any such year for the payment of interest on, or repayment of principal of, any loan upon the councils whose areas or parts of areas are included in the development area to which the loan relates.

Assessment
of loan
commit-
ments.

(2) Where the corporation decides to make an assessment upon the councils under subsection (1), it shall, not later than 1st October in the year preceding that in which the assessment is to be paid, notify the councils as to its intention and require each such council to furnish to the corporation a certified statement of the unimproved capital value of all ratable land within the council's area, or within such part of the council's area, included in the development area, as the case may be, as at 1st January in the firstmentioned year.

(3) The council shall furnish such a certified statement within one month after being required to do so.

(4) The assessment to be made upon a council shall be made in accordance with the following formula :—

$$C = E \times \frac{U_1}{U_2}$$

where—

C is the amount to be contributed by the council;

E is the total assessment for the development area, as referred to in subsection (1);

U₁ is the unimproved capital value shown in the last statement furnished by the council to the corporation in accordance with subsection (3) in respect of ratable land in the area or part of the area, as the case may be, of the council; and

U₂ is the total of the unimproved capital value shown in the last statements furnished by all councils in the development area to the corporation in accordance with subsection (3), of all the ratable land in the areas or parts of areas, as the case may be, of all such councils.

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(5) The assessment shall be served by the corporation upon the council concerned on or before 1st December in the year preceding that in which the assessment is to be paid.

(6) A council so assessed shall pay the amount of the
5 assessment from its general fund.

(7) The corporation may recover as a debt or liquidated demand in any court of competent jurisdiction any amount assessed upon any council and not paid on or before 30th June in the year in which the assessment is to be paid.

10

DIVISION 4.—*General.*

144. (1) The corporation shall cause to be kept proper **Accounts.** accounts and records in relation to all of its operations.

(2) The corporation shall, as soon as practicable, but within 6 months, after the end of each financial year of the corpora-
15 tion, prepare for presentation to Parliament a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.

(3) The statement of accounts shall be in a form approved by the Auditor-General, and shall include such informa-
20 tion as is requested by him, and shall exhibit a true and fair view of the financial position and transactions of the corporation.

(4) The corporation shall, as soon as practicable, but within 4 months, after the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-
25 General for verification and certification.

(5) The Auditor-General's certificate shall state that he has audited the accounts of the corporation relating to the relevant financial year, and shall indicate whether the statement of accounts complies with subsection (3), and shall set forth any qualifications
30 subject to which the certificate is given.

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(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by him and before its presentation to Parliament.

5 (7) The Minister shall lay the statement of accounts, or cause it to be laid, together with the Auditor-General's certificate, before both Houses of Parliament as soon as practicable after the receipt by him of the certificate.

(8) The financial year of the corporation shall be the 10 year ending on 30th June.

145. (1) The accounts and records of financial transactions **Audit.** of the corporation, and the records relating to assets of or in the custody of the corporation, shall be inspected and audited by the Auditor-General.

15 (2) For the purposes of any such inspection and audit, the Auditor-General or a person authorised by him is entitled at all reasonable times to full and free access to the accounts, records, documents and papers of the corporation and may make copies thereof or take extracts therefrom.

20 (3) The Auditor-General or a person authorised by him may require a person, being an officer of the Department, to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorised person considers necessary for the purposes of the 25 functions of the Auditor-General under this Act, and the person shall comply with the requirement.

Penalty : \$200.

(4) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records 30 referred to in subsection (1).

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(5) The Auditor-General shall report to the Minister on the result of any such inspection and audit, and as to such irregularities or other matters as in his judgment call for special notice.

- 5 (6) Towards defraying the costs and expenses of any such inspection and audit, the corporation shall pay to the Consolidated Revenue Fund such amounts, at such times, as the Treasurer decides.

PART VIII.

10

MISCELLANEOUS.

146. As soon as practicable after 30th June in each year, the Director shall cause to be prepared and furnish to the Minister ^{Annual report.} a report upon the operations and activities of the Department during the year ending on that date.

- 15 147. The Minister shall lay the report furnished under section 146, or cause it to be laid, before both Houses of Parliament as soon as practicable after receipt by him of the report. ^{Tabling of annual report.}

- 20 148. (1) A person who is acting or at any time has acted in the administration of this Act shall not, either directly or indirectly, ^{Divulging of information prohibited.} except for the purposes of the administration of this Act, make a record of or divulge or communicate to any person any information acquired by him in respect of the affairs of any other person disclosed or obtained under the provisions of this Act.

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(2) A person acting in the administration of this Act shall not be required to produce in any court or divulge or communicate to any court any matter or thing coming under his notice in the course of his duties in connection with the administration
5 of this Act, except when it is necessary to do so for the purposes of carrying into effect the provisions of this Act or in answer to a summons of any court.

(3) Any person appointed or employed in the administration of this Act shall, if and when required by the Director to
10 do so, make an oath or declaration in the manner and form prescribed, to maintain secrecy in conformity with the provisions of this section.

(4) A person acting in the administration of this Act includes a person consulted in accordance with section 45 or 62.

15 **149.** (1) A person may, on payment of the prescribed fee, apply to a council for a certificate under this section with respect
to any land within the area of the council. **Certificates.**

(2) The council may issue a certificate that on the date specified in the certificate any land within its area is land to which
20 an environmental planning instrument applies in such manner as is specified in the certificate or is not land to which an environmental planning instrument applies.

(3) A certificate issued under subsection (2) shall specify such other matters as may be prescribed.

25 (4) A council may, in a certificate under subsection (2), include advice on such other relevant matters affecting the land of which it may be aware.

(5) A council shall not incur any liability in respect of any advice provided in good faith pursuant to subsection (4).

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(6) For the purpose of any proceedings for an offence against this Act or the regulations which may be taken against a person who has obtained a certificate under this section, that certificate shall, in favour of that person, be conclusively presumed to be true and correct.

150. (1) A document that purports to be a copy or extract of any document, map or plan embodied, incorporated or referred to in an environmental planning instrument is admissible in evidence if—

10 (a) it purports to be printed by the Government Printer or by the authority of the Government; or

(b) it purports to be certified—

15 (i) where the original documents, maps or plans are held in the office of the Department—under the hand of such officer of the Department as is prescribed; or

20 (ii) where the original documents, maps or plans are held in the offices of a council—under the hand of the proper servant, as defined in section 4 of the Local Government Act, 1919, of the council.

(2) Where the original documents, maps or plans are held in the office of—

25 (a) the Department—the Secretary shall furnish a certified copy or extract to the person applying for it on payment of the prescribed fee; or

(b) a council—that council shall furnish a certified copy or extract to the person applying for it on payment of the prescribed fee.

30 (3) For the purposes of this section, a copy or extract of a map or plan may be to the same scale as an original or may be an enlarged or reduced copy.

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151. (1) A council may, by resolution, authorise an officer, servant or person or a committee consisting either in whole or in part of officers, servants or persons to exercise such of the functions (other than this power of delegation) imposed upon it by or
5 under this Act or the regulations as may be specified in the resolution.

Delegation
by councils.

(2) Any such delegation may, if the council so resolves, be unlimited as to the period during which it may be exercised or limited as may be specified in the resolution.

10 (3) The exercise of any such delegation shall be subject to such limitations and conditions as may be specified by the council in the resolution or as may be prescribed.

(4) Any officer, servant or person or committee, when acting in the exercise of any such delegation and within its scope,
15 shall be deemed to be the council.

(5) The council may, by resolution, revoke any such delegation either in whole or in part.

(6) No act of an officer, servant, person or committee done within the scope of any such delegation during the period
20 in which such delegation remains in force shall be invalidated by reason of the revocation of the delegation.

(7) Notwithstanding any delegation made under this section, the council may continue to exercise all or any of the functions delegated.

25 **152.** Where this Act confers a right on a person to be heard, that person shall be entitled to be heard personally or by counsel, solicitor or agent.

Right to be
heard.

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153. Service of a notice or notification required under this Act Service.
to be served may be effected by post addressed to the person at the
last known place of business or abode of that person and shall be
deemed to have been effected at the time it would, in the ordinary
5 course of post, be delivered.

154. (1) Subject to subsection (2), an environmental Transfer or
planning instrument shall continue to apply to the land to which it amalgama-
applied on the date on which it took effect notwithstanding that tion
of land to
part of that land has been transferred to another area or that that which an
environ-
10 land has been amalgamated with land of another area, whether or mental
planning
not pursuant to the Local Government Act, 1919, and so applies instrument
applies.
as in force at the date of the transfer or amalgamation.

(2) Where land is transferred from one area to another
area or is amalgamated with land of another area, the council of
15 the area to which that land is transferred or with which that land
is amalgamated shall have the functions conferred or imposed on
a council by or under this Act or any environmental planning
instrument applying to the land so transferred or amalgamated
immediately before the date on which the transfer or amalgamation
20 took effect.

(3) An environmental planning instrument referred to in
subsection (1), to the extent that it applies to land so referred to,
so applies subject to any subsequent environmental planning
instrument applying to that land.

25 155. Without limiting the generality of section 37 of the Application
Interpretation Act, 1897, a reference in that section to an of section
instrument includes a reference to an environmental planning 37 of the
instrument. Interpretation Act,
1897.

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156. (1) On a day to be appointed by the Governor for the purposes of this section and notified by proclamation published in the Gazette, section 16 is repealed. Statute law
revision
(sec. 16).

(2) A day shall not be appointed for the purposes of subsection (1) unless the Minister certifies to the Governor that the Department established by section 16 has been abolished or its title has been changed.

157. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to— Regulations.

(a) any function conferred by this Act on any person;

(b) requiring information, particulars, returns and statistics to be furnished to the Secretary by councils and the time and mode of furnishing and the manner of verifying them; and

(c) the form, time, manner and mode of giving notices under this Act.

(2) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

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158. The regulations may contain provisions designating any class or description of development (whether by reference to the type, purpose or location of development or otherwise) to be development that, if carried out, would be likely to have a significant impact on the amenity of the locality.

Designated development: declaration by regulation.

SCHEDULE 1.

Sec. 13.

THE DIRECTOR.

1. The appointment of the Director shall be on the nomination of the Minister of a person who in his opinion has special knowledge or experience in the following :—

Nominated by the Minister.

- (a) the practice of;
- (b) the administration of; or
- (c) the law relating to,

town planning, environmental planning or environmental assessment.

2. (1) The Director shall, subject to this Schedule, hold office for such term, not exceeding 7 years, as may be specified in the instrument of his appointment, and shall be, if otherwise qualified, eligible for re-appointment from time to time for such further terms or periods as the Governor may appoint.

Term of office.

(2) The Director shall devote the whole of his time to the duties of his office.

3. The Director is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975.

Salary.

4. The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of the Director, and the Director shall not, in his capacity as such, be subject to those provisions during his term of office.

Application of Public Service Act, 1902.

*Environmental Planning and Assessment.*SCHEDULE 1—*continued.*THE DIRECTOR—*continued.*

5. A person who is of or above the age of 65 years is not eligible for appointment as Director. **Ineligibility by reason of age.**
- 5 6. The Director shall cease to hold office on the day on which he attains the age of 65 years. **Director attaining 65 years of age.**
7. The Governor may for any cause which to him seems sufficient remove the Director from office. **Removal from office.**
8. The Director shall be deemed to have vacated his office if he— **Vacation of office.**
- 10 (a) dies;
- (b) resigns his office by writing under his hand addressed to the Minister;
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act; or
- 15 (d) is removed from office by the Governor.
9. (1) In this clause, "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act. **Preservation of Director if previously public servant, etc.**
- 20 (2) Subject to subclause (3) of this clause and to the terms of his appointment, where the Director was, immediately before his appointment as Director—
- (a) an officer of the Public Service;
- 25 (b) a contributor to a superannuation scheme;
- (c) an officer employed by any public authority; or

Environmental Planning and Assessment.

SCHEDULE 1—*continued.*THE DIRECTOR—*continued.*

- 5 (d) a person in respect of whom provision was made by an Act that he retain any rights accrued or accruing to him as an officer or employee,
he—
- (e) shall retain any rights accrued or accruing to him as such an officer, contributor or person;
- 10 (f) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as Director; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,
as if he had continued to be such an officer, contributor or person during
15 his service as Director, and—
- (h) his service as Director shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- 20 (i) he shall be deemed to be an officer or employee, and the Government of New South Wales shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this subclause.
- (3) Where the Director would, but for this subclause, be entitled under
25 subclause (2) of this clause to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as Director or at any later time while he holds office as Director) a contributor to any other superannuation scheme, and the provisions of
30 subclause (2) (i) of this clause cease to apply to or in respect of him and the Government of New South Wales in any case where he becomes a contributor to such another superannuation scheme.
- (4) Subclause (3) of this clause does not prevent the payment to the
35 Director upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

*Environmental Planning and Assessment.*SCHEDULE 1—*continued.*THE DIRECTOR—*continued.*

(5) The Director shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

- 5 10. (1) In this clause, "retiring age" means—
- (a) in relation to a person who was, immediately before his appointment as Director, an officer of the Public Service—the age of 60 years; and
- 10 (b) in relation to a person who was, immediately before his appointment as Director, an officer or employee of a public authority and except as provided in paragraph (a)—the age at which officers or employees (being officers or employees of the class to which that person belonged immediately before his appointment as Director), as the case may be, of that public authority
- 15 are entitled to retire.
- (2) Where a person ceases to be Director, otherwise than pursuant to clause 8 (paragraph (b) excepted), he shall, if he has not attained the retiring age, be entitled to be appointed, where, immediately before his appointment as Director, he was—
- 20 (a) an officer of the Public Service—to some office in the Public Service; or
- (b) an officer or employee of a public authority, except as provided in paragraph (a)—to some office in the service of that public authority,
- 25 not lower in classification and salary than that which he held immediately before his appointment as Director.

Director entitled to re-appointment in former employment in certain cases.

Environmental Planning and Assessment.

SCHEDULE 2.

Sec. 19.

ADVISORY CO-ORDINATING COMMITTEE.

1. The Committee shall consist of—

- 5 (a) the Director (or an officer of the Department for the time being nominated for the purpose by him) as Chairman; and
- (b) the permanent head, president, chairman or other principal officer (or a member, officer, employee or servant for the time being nominated for the time being by him) of each of the following public authorities:—
- 10 The Treasury.
The Department of Public Works.
The Maritime Services Board of New South Wales.
The Metropolitan Water Sewerage and Drainage Board.
The Ministry of Transport.
- 15 The Electricity Authority of New South Wales.
The Department of Mineral Resources and Development.
The Energy Authority of New South Wales.
The State Pollution Control Commission.
The Department of Decentralisation.
- 20 The Department of Agriculture.
The Department of Education.
The Department of Local Government.
The Metropolitan Waste Disposal Authority.
The Department of Lands.
- 25 The National Parks and Wildlife Service.
The Valuer-General's Department.
The Health Commission of New South Wales.
The Housing Commission of New South Wales.
The Land Commission of New South Wales.
- 30 The Sport and Recreation Service of New South Wales.
The Department of Tourism.
The Water Resources Commission.
The Department of Youth and Community Services.

*Environmental Planning and Assessment.*SCHEDULE 2—*continued.*ADVISORY CO-ORDINATING COMMITTEE—*continued.*

The New South Wales State Fisheries.

The Soil Conservation Service.

5 The Electricity Commission of New South Wales.

The Forestry Commission of New South Wales.

The Department of Main Roads.

The Department of Technical and Further Education.

2. The Governor may, by regulation, amend clause 1 (b)—

10 (a) by omitting therefrom the name of any public authority; or

(b) by inserting therein the name of any public authority.

SCHEDULE 3.

Sec. 20.

LOCAL GOVERNMENT LIAISON COMMITTEE.

1. The Committee shall consist of—

15 (a) the Director (or an officer of the Department for the time being nominated for the purpose by him) as Chairman; and

(b) the following persons appointed by the Minister :—

(i) a person nominated by the Commissioner for Main Roads;

20 (ii) a person nominated by the Under Secretary of the Department of Local Government;

(iii) a person nominated by the State Pollution Control Commission;

(iv) 2 persons included in a panel of 6 persons nominated by the Local Government Association of New South Wales;

25 (v) 2 persons included in a panel of 6 persons nominated by the Shires Association of New South Wales;

(vi) a person nominated by the Local Government Planners' Association; and

30 (vii) a person nominated by the Local Government Clerks' Association.

Environmental Planning and Assessment.

SCHEDULE 3—*continued.*LOCAL GOVERNMENT LIAISON COMMITTEE—*continued.*

2. Where, for the purposes of clause 1, a nomination of a person for appointment as a member or a panel of persons is not made within
5 the time or in the manner specified by the Minister in a notice in writing given to the body or person entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination or from that panel, as the case may be.
3. The Governor may, by regulation, amend clause 1 (b)—
- 10 (a) by omitting therefrom a subparagraph; or
- (b) by inserting therein a subparagraph containing a reference to one or more persons to be persons, or to be included in a panel of persons, nominated by a specified person or body.

SCHEDULE 4.

Sec. 21.

15 ENVIRONMENT AND PLANNING ADVISORY COMMITTEE.

1. The Committee shall comprise—

- (a) the Director (or an officer of the Department for the time being nominated for the purpose by him) as Chairman; and
- (b) the following persons appointed by the Minister:—
- 20 (i) 2 persons included in a panel of 6 persons nominated by the Nature Conservation Council of New South Wales;
- (ii) 2 persons included in a panel of 6 persons nominated by the Land and Housing Consultative Council;
- 25 (iii) 2 persons included in a panel of 6 persons nominated by the Labor Council of New South Wales;
- (iv) 2 persons having such professional or technical qualifications as the Minister considers appropriate; and
- (v) 2 persons engaged in teaching or research in respect of matters related to environmental planning.

Environmental Planning and Assessment.

SCHEDULE 4—*continued.*

ENVIRONMENT AND PLANNING ADVISORY COMMITTEE—*continued.*

2. Where, for the purposes of clause 1, a nomination of a person for appointment as a member or a panel of persons is not made within
5 the time or in the manner specified by the Minister in a notice in writing given to the body or person entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination or from that panel, as the case may be.

3. The Governor may, by regulation, amend clause 1 (b)—

- 10 (a) by omitting therefrom a subparagraph; or
- (b) by inserting therein a subparagraph containing a reference to—
- (i) one or more persons to be persons, or to be included in a panel of persons, nominated by a specified person or body; or
- 15 (ii) one or more specified persons or persons of a specified class or description.

SCHEDULE 5.

Secs. 19-22.

COMMITTEE PROCEDURES.

1. Questions arising at a meeting of the committee shall be determined
20 by a majority of votes of the members present and voting.

2. In the absence of the Chairman at any meeting of the committee, the members present shall appoint one of their number to preside at that meeting.

3. The Chairman or member presiding at a meeting of a committee shall
25 have a deliberative vote and in the event of an equality of votes, shall have a second or casting vote.

4. A majority of members of a committee shall form a quorum and any
duly convened meeting at which a quorum is present shall be competent to
transact any business of the committee and shall have and may exercise all
30 the functions of that committee.

Environmental Planning and Assessment.

SCHEDULE 5—*continued.*

COMMITTEE PROCEDURES—*continued.*

- 5 5. The frequency of meetings of a committee and the procedures for the conduct of business at those meetings shall, subject to any directions by the Minister, be as determined by the committee.
6. The Chairman of a committee shall cause minutes of the proceedings and decisions at each meeting of the committee to be kept and shall furnish the Minister and the Director with a copy of those minutes as soon as practicable after each meeting.
- 10 7. Each member of a committee is entitled to receive such remuneration (including travelling and subsistence allowances) for attending meetings and transacting business of that committee as the Minister may from time to time determine in respect of him.
8. The committee or the Minister may establish subcommittees (whether or not consisting of members of the committee) for the purposes of advising the committee upon such matters within the scope of the committee's functions as may be referred to the subcommittees by the committee or the Minister.
- 20 9. The provisions of this Schedule apply to a subcommittee as if it were a committee.

SCHEDULE 6.

Sec. 142.

LOANS.

1. (1) The corporation shall establish a reserve for loan repayment fund in respect of each loan or renewal loan raised by the corporation. **Reserves for repayments.**
- 25 (2) There shall, during each year, be transferred from each Development Fund to each fund referred to in subclause (1) of this clause a sum not less than the sum that the corporation, in its application for approval of the loan, specified that it proposed to transfer to that fund.

Environmental Planning and Assessment.

SCHEDULE 6—*continued.*LOANS—*continued.*

(3) Where any land or property of any kind which has been provided out of loan money is sold before the loan has been wholly repaid, the net proceeds of the sale shall be added to the reserve for loan repayment in the appropriate fund or paid directly to the lender.

(4) Money held as a reserve for loan repayment may be invested as a common fund in Government securities of the Commonwealth or the State of New South Wales or in debentures, bonds, inscribed stock or other prescribed securities, in any loan of the corporation or in any securities guaranteed by the Government of that State or in such other securities as the Governor may approve or as may be prescribed, in each case at their current market price.

(5) Any interest or profits realised on any such investments shall be added to and form part of the reserve for loan repayment fund from which the investments were made.

(6) All money paid into the reserve for loan repayment fund in respect of any loan or renewal loan may be applied in or towards repayment of any other loan or renewal loan but may not be applied for any other purpose until the loan or renewal loan in respect of which the fund has been established has been repaid.

(7) Where the corporation decides to cancel debentures, bonds, inscribed stock or other prescribed securities purchased from the reserve for repayment of the loan for which they were issued, the corporation shall, in addition to the sum otherwise payable to the reserve for repayment of that loan and subject to any agreement to which it is a party whereby it undertakes to pay interest at a higher rate to that reserve, pay to that reserve interest at the rate of 4.5 per cent per annum on the face value of the cancelled securities from the date of their cancellation until the maturity of the loan.

(8) If, after a loan has been repaid, there remains in the reserve for repayment of that loan any balance, that balance shall be paid to the Consolidated Revenue Fund.

(9) A reserve for loan repayment fund shall not be subject to seizure in satisfaction of any debt other than the loan in respect of which the reserve was created.

(10) This clause shall not apply to any loan to be repaid by instalments at intervals of one year or less.

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SCHEDULE 6—*continued.*LOANS—*continued.*

2. (1) For securing repayment of the principal and interest on any Debentures, money borrowed, the corporation may, as provided by the regulations, etc.
5 issue debentures, bonds, inscribed stock or other prescribed securities.

(2) Every such debenture or bond and every coupon originally annexed to the debenture or bond, and whether separated therefrom or not, may be transferred by simple delivery.

(3) Inscribed stock shall be transferable in the books of the corpora-
10 tion in accordance with the regulations.

(4) Debentures, bonds, inscribed stock or prescribed securities issued under this Act shall, as regards both the issue and transfer thereof for full consideration for money or money's worth, be deemed to be included in the general exemptions from stamp duty under Part III of the Stamp Duties
15 Act, 1920, contained in the Second Schedule to that Act.

(5) The regulations may provide for the exemption from stamp duty of any other prescribed security.

3. (1) The holder of a coupon originally annexed to a debenture or bond, and whether separated therefrom or not, shall be entitled to receive
20 payment from the corporation of the interest specified in the coupon on its presentation on or after the date when, and at the place where, the interest is payable. Payment of debentures and coupons.

(2) The due repayment of any loan in respect of which debentures, bonds, stock or any other prescribed securities have been issued by the
25 corporation and the interest thereon, shall be a charge upon the income and revenue of the corporation from whatever source arising and is hereby guaranteed by the Government.

(3) Any liability arising under the guarantee given by subclause (2) of this clause shall be discharged out of money provided by Parliament.

30 (4) The charge created by subclause (2) of this clause shall not prejudice or affect any power of the corporation to sell, convey, lease or otherwise deal with, free of the charge, any property vested in it.

Environmental Planning and Assessment.

SCHEDULE 6—*continued.*LOANS—*continued.*

4. (1) Notwithstanding any other provision of this Act, any money which the corporation is authorised to borrow may be borrowed by a loan raised, wholly or in part, in such places outside New South Wales as the Governor on the recommendation of the Treasurer may approve, and may be negotiated and raised in any currency. Raising loans in any country.
- (2) Any such loan may be raised wholly or in part by the issue of debentures, bonds, stock or other securities in any form and contain any term, condition or provision permitted under the law of the place where the loan is raised and the corporation may establish and conduct in that place registries relating to the securities issued in respect of that loan.
- (3) The corporation may, in respect of any such loan, agree that a sinking fund shall be established and controlled at such place and in such manner as may be found necessary or expedient in the circumstances of the case and, where any sinking fund is so established, the provisions of clause 1 shall apply with regard to that loan only in respect of the amount, if any, the repayment of which is not provided for by the sinking fund established under the agreement.
- (4) In connection with the raising of any loan under this clause, the corporation may enter into such agreements as it thinks fit with respect to the form of the debentures, bonds, stock or other securities referred to in subclause (2) of this clause, or for the sale of those debentures, bonds, stock or other securities, or the granting of an option to purchase those debentures, bonds, stock or other securities, or for services to be performed by any person in Australia or in any other part of the world in connection with that loan or with the issue, management and redemption of or otherwise with respect to those debentures, bonds, stock or other securities, and any such agreement may be upon such terms and conditions and may contain such provisions for the giving or receipt of consideration as the corporation thinks fit.
- (5) The Minister shall lay, or cause to be laid, before both Houses of Parliament as soon as possible after the loan is raised, copies of any agreement referred to in subclause (4) of this clause.
- (6) The Governor may, upon the recommendation of the corporation, by notification published in the Gazette, appoint 2 or more persons to enter into for and on behalf of the corporation all such agreements as the corporation is by this clause authorised to enter into and to sign, execute or otherwise perfect all such agreements, debentures, bonds, stock or other

Environmental Planning and Assessment.

SCHEDULE 6—*continued.*LOANS—*continued.*

5 securities as are by this clause provided for and to do all such things as may be necessary or convenient to be done for the purpose of raising any loan under this Act and may, upon the like recommendation and by a like notification, revoke or vary any such appointment and make any fresh appointment.

10 (7) The production of a copy of the Gazette containing a notification of any appointment referred to in subclause (6) of this clause or the revocation thereof shall, in favour of a lender or of any holder of a security, be conclusive evidence of the appointment or revocation.

15 (8) All debentures, bonds, stock or other securities, bearing the signatures of the persons so appointed in that behalf, shall be deemed to be securities lawfully issued under the seal of the corporation and the principal money and interest secured thereby shall be a charge upon the income and revenue of the corporation from whatever source arising, and the due repayment of that principal money and that interest is hereby guaranteed by the Government, and all agreements and any instruments purporting to be made or issued under the authority of this clause and bearing the 20 signatures of those persons shall be deemed to have been lawfully made or issued by the corporation and, if they purport to have been sealed by those persons, to have been lawfully executed by the corporation under seal.

25 (9) A holder of any such debenture, bond, stock or other security shall not be bound to inquire whether the issue of the debenture, bond, stock or security was, in fact, duly authorised.

30 (10) Subject to this clause and the law in force in the place where any loan is raised under this clause and applicable to that loan and the securities issued in connection therewith, the provisions of this Schedule, other than clauses 2 (1), 6 (3) and 6 (4), shall apply to and in respect of that loan and those securities in the same way as they apply to and in respect of any other loan and any other securities.

35 5. (1) Any trustee, unless expressly forbidden by any instrument creating the trust, may invest any trust money in his hands in stock inscribed by the corporation or in any debentures, bonds or other securities issued in accordance with this Act, and the investment shall be deemed to be an investment authorised by the Trustee Act, 1925. Trustees.

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SCHEDULE 6—*continued.*LOANS—*continued.*

(2) Any debenture or bond issued, stock inscribed, or other security issued, in pursuance of this Act, shall be a lawful investment for any money
5 which any company, council or body corporate, incorporated by any Act, is authorised or directed to invest in addition to any other investment authorised for the investment of that money.

(3) No notice of any express, implied or constructive trust shall be received by the corporation or by any officer of the Department in relation
10 to any debenture or coupon issued or stock inscribed by the corporation.

6. (1) If any debenture or bond issued by the corporation is lost, **Lost** destroyed or defaced before it has been redeemed the corporation may, **debentures.** subject to the provisions of this clause, issue a new debenture or bond in its place.

15 (2) A new debenture or bond, issued under subclause (1) of this clause with interest coupon annexed, shall bear the same date, number, principal sum and rate of interest as the lost, destroyed or defaced debenture or bond.

(3) Where a debenture or bond is lost or destroyed, a new debenture
20 or bond shall not be issued unless—

- (a) it has been established to the satisfaction of the Supreme Court that the debenture or bond has been lost or destroyed before redemption;
- (b) such advertisements as the Court may direct have been published;
- 25 (c) 6 months have elapsed since the publication of the last of those advertisements; and
- (d) sufficient security has been given to the corporation to indemnify it against any double payment if the missing debenture or bond is at any time thereafter presented for redemption.

30 (4) Where a debenture or bond is defaced, a new debenture or bond shall not be issued unless and until the defaced debenture or bond is lodged with the corporation for cancellation.

(5) The provisions of this clause shall apply to and in respect of a lost, destroyed or defaced coupon in the same way as they apply to and in
35 respect of a lost, destroyed or defaced debenture or bond.

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SCHEDULE 6—*continued.*

LOANS—*continued.*

(6) Notwithstanding any other provision of this clause, in the case of loss, theft, destruction, mutilation or defacement of any debenture or bond issued under clause 4, a duplicate or new debenture or bond may be issued upon proof to the satisfaction of the corporation of the loss, theft or destruction, or upon surrender of the mutilated or defaced debenture or bond, as the case may be, and upon the corporation receiving security or indemnity satisfactory to it against double payment if the missing debenture or bond is at any time thereafter presented for payment.

7. (1) A person advancing money to the corporation shall not be bound to inquire into the application of the money advanced or be in any way responsible for its non-application or misapplication. **Protection of investors.**

(2) A notification in the Gazette of the approval of the Governor having been given to a borrowing by the corporation shall, in favour of a lender and of any holder of any security given by the corporation, be conclusive evidence that all conditions precedent to the borrowing have been complied with and, where the approval notified is to a borrowing by the corporation in a place outside New South Wales and in a particular currency, shall also be conclusive evidence in favour of those persons of the approval of the Governor to the borrowing in the place and in the currency specified in the notification.

8. All debentures, bonds, stock or other securities which are secured upon the income and revenue of the corporation shall rank **Securities rank** pari passu without **rank** any preference one above another by reason of priority of date or otherwise. **equally.**

9. Each loan raised by or transferred to the corporation shall be secured **Security** upon the income of the Development Fund of the development area to **for loans.** which the loan relates.

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SCHEDULE 7.

Sec. 10.

MODIFICATION OF THE PUBLIC WORKS ACT, 1912.

The Public Works Act, 1912, shall, for the purposes referred to in section 10, be deemed to be amended—

- 5 (a) (i) by omitting from section 53 the words “so seized, possessed or entitled as aforesaid”;
- (ii) by omitting from section 53 the words “as in the preceding section mentioned” and by inserting instead the words “and may claim compensation in respect of the land resumed and
- 10 agree to, settle and determine with the Constructing Authority the amount of such compensation”;
- (iii) by inserting in section 53 (3) after the word “release” the words “and to claim, agree to, settle and determine with the Constructing Authority the amount of compensation”;
- 15 (iv) by omitting section 53 (5);
- (b) (i) by inserting in section 102 after the word “time” where secondly occurring the words “as the Constructing Authority allows or, in default of any such allowance of further time, within such time”;
- 20 (ii) by omitting from section 102 the words “and upon the Crown Solicitor”;
- (iii) by inserting at the end of section 102 the following subsection:—
- 25 (2) Upon receipt of such notice of claim, the Constructing Authority shall obtain a report from a solicitor as to the title of the land in respect of which the claim has been served upon it by the claimant.
- (c) by omitting from section 103 the words “Crown Solicitor he shall forward the same together with his report thereon to the Constructing Authority, who” and by inserting instead the words
- 30 “Constructing Authority it”;

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SCHEDULE 7—*continued.*MODIFICATION OF THE PUBLIC WORKS ACT, 1912—*continued.*

- (d) by omitting section 124 and by inserting instead the following section :—

5 124. (1) For the purpose of ascertaining the compensation to
be paid, regard shall in every case be had by the Court not only
to the value of the land taken but also to the damage (if any)
caused by the severing of the lands taken from other lands or by
10 the exercise of any statutory powers of the Constructing Authority
otherwise injuriously affecting such other lands and the Court
shall assess the compensation according to what it finds to have
been the value of such lands, estate or interest at the time the
notification was published in the Gazette and without being bound
15 in any way by the amount of the valuation notified to such
claimant and without reference to any alteration in such value
arising from the construction of any works upon the land taken.

 (2) Notwithstanding subsection (1), the Court, in ascer-
taining such compensation, shall take into consideration and give
effect to, by way of set-off or abatement, any enhancement in
20 the value of the interest of any such owner in any land adjoining
the land taken or severed therefrom by the construction of any
works on the land taken, but in no case does this subsection
operate so as to require any payment to be made by such owner
to the Constructing Authority in consideration of such enhance-
25 ment in value as aforesaid.

 (3) Notwithstanding subsection (1), in the case of land
under the surface taken or acquired by notification in the Gazette
for the purpose of constructing a subterranean tunnel, no com-
pensation shall be allowed or awarded unless—

- 30 (a) the surface of the overlying soil is disturbed;
- (b) the support of such surface is destroyed or injuriously
affected by the construction of such tunnel; or
- (c) any mines or underground working in or adjacent to
35 such land are thereby rendered unworkable or are so
affected as aforesaid.

Environmental Planning and Assessment.

SCHEDULE 7—*continued.*

MODIFICATION OF THE PUBLIC WORKS ACT, 1912—*continued.*

- (e) by omitting section 126 (3);
- 5 (f) (i) by omitting from section 135 (1) the words “such conveyances” and by inserting instead the words “conveyances or assurances of lands taken”;
- (ii) by omitting from section 135 (2) the words “incurred on the part as well of the vendor as of the purchaser,”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1979

[\$2.48]

Repeal of Existing Laws

SECTION 7—continued

Monitors on the Public Works Act, 1912—continued

- (a) by omitting section 126 (3);
- (b) by omitting from section 125 (1) the words "such con-
veyance, and by inserting instead the words "conveyance or
conveyance of lands taken";
- (c) by omitting from section 125 (2) the words "landed on
the site as well as the lands of the purchase";

BY AUTHORITY

D. WEST, GOVERNOR, NEW SOUTH WALES