

**ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) BILL, 1985**

EXPLANATORY NOTE

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

The Statutory and Other Offices Remuneration (Commissioners of Inquiry) Amendment Bill, 1985, is cognate with this Bill.

The objects of this Bill are to amend the Environmental Planning and Assessment Act, 1979, ("the Act"), so as—

- (a) to enable a consent authority to grant consent to a development application for consent to carry out prohibited development, that is, development the carrying out of which is specified to be prohibited by the provisions (other than the provisions which comprise development standards) of a local environmental plan or a deemed environmental planning instrument, whether or not that development is also specified to be prohibited by those provisions of a local environmental plan or a deemed environmental planning instrument which comprise development standards (Schedule 1);
- (b) to make further provisions with respect to the appointment and functions of Commissioners of Inquiry (Schedule 2);
- (c) to facilitate the preparation of draft local environmental plans (Schedule 3);
- (d) to make further provision with respect to the imposition of conditions of development consents which require the dedication of land or the payment of a monetary contribution towards the provision or improvement of public amenities and public services (Schedule 4);
- (e) to facilitate the application of Part V of the Act relating to environmental assessment (Schedule 5);
- (f) to make provision with respect of the validity of environmental planning instruments, development consents and decisions to which Part V of the Act applies (Schedule 6); and
- (g) to make other miscellaneous amendments to the Act (Schedule 7).

With respect to the granting of consent to a development application for consent to carry out prohibited development, the Bill (Schedule 1 (7)) inserts a new Division 1A into Part IV of the Act which contains the following provisions:—

Proposed section 105A. Interpretation.

Proposed section 105B provides that, except to the extent of any consistency or where a contrary intention appears, the other provisions of the Act apply (in addition to the proposed Division) to development applications for consent to carry out prohibited development in the same way as they apply to other development applications. The proposed section also provides that where prohibited development is prohibited by development standards as well as by other provisions of an environmental planning instrument, State Environmental Planning Policy No. 1—Development Standards will continue to regulate the modification of those development standards.

Proposed section 105C enables the Minister to exclude specified development from the application of the proposed Division.

Proposed section 105D generally enables the carrying out of prohibited development.

Proposed section 105E provides that a development application may be made to a consent authority for consent to carry out prohibited development (“a development application”). The proposed section enables a consent authority to decide, on receipt of a development application, that it will not deal with the application and provides that such a decision is final and not subject to appeal.

Proposed section 105F requires notice of a development application, other than a development application which a consent authority has decided not to deal with under proposed section 105E, to be given in the same manner as that currently required under section 84 of the Act in relation to designated development.

Proposed section 105G specifies the circumstances in which compliance with proposed section 105F may be dispensed with and accords with section 85 of the Act.

Proposed section 105H provides for the inspection by any person of a development application and accords with section 86 of the Act.

Proposed section 105I enables any person to make a submission to a consent authority, or to request that a public hearing be held, in relation to a development application and provides for the making of any such submission and the holding of any such public hearing.

Proposed section 105J specifies the time at which a consent authority may determine a development application.

Proposed section 105K specifies the matters to be taken into consideration by a consent authority in determining a development application.

Proposed section 105L provides that a consent authority shall not grant consent to a development application where—

- (a) the development is prohibited by a State environmental planning policy or a regional environmental plan;

- (b) the development is designated development; or
- (c) the development is excluded from the application of the proposed Division by the Minister under proposed section 105C.

Proposed section 105M requires a consent authority to give notice to each person who made a submission with respect to the development application of—

- (a) its determination of the application; and
- (b) the rights of appeal in respect of that determination.

Proposed section 105N provides that no appeal lies on behalf of the applicant or any other person against a determination of a consent authority refusing consent to the carrying out of prohibited development.

Proposed section 105O enables the making of an appeal to the Land and Environment Court by an applicant who is dissatisfied with a consent or the conditions of a consent granted in relation to a development application and provides for the participation in the appeal, as a party, of a person who made a submission with respect to the development application.

Proposed section 105P enables the making of an appeal to the Land and Environment Court by a person who made a submission with respect to the development application and who is dissatisfied with a consent or the conditions of a consent granted in relation to the development application and provides for the participation in the appeal, as a party, of the applicant and the consent party.

Proposed section 105Q requires the Minister (subject to certain provisions relating to the making of appeals) where the Minister is notified by a consent authority of the granting of a consent to carry out prohibited development, to amend, by notice published in the Government Gazette, the provisions of the environmental planning instrument by virtue of which the development was prohibited development so as to provide (without affecting any right conferred by the consent in relation to which the notice is published) that that development may thereafter be carried out, in accordance with the terms of the consent, on the land to which the development application related, with the consent of the consent authority granted otherwise than in respect of prohibited development.

The Bill also amends section 101 of the Act to specify additional circumstances in which the Minister may give a direction under that section that a development application, whether being a development application for consent to carry out prohibited development or not, shall be referred to the Secretary of the Department of Environment and Planning ("the Secretary") for the determination of the Minister but, more particularly, the Bill amends that section to specify the powers of the Minister to determine development applications for consent to carry out prohibited development (Schedule 1(5)).

With respect to the appointment and functions of Commissioners of Inquiry, the Bill varies the provisions of the Act so as—

- (a) to enable the Governor to appoint a person to be the Chairman of Commissioners of Inquiry and a person to be the Deputy Chairman of Commissioners of Inquiry (Schedule 2 (1) and (2));

- (b) to enable the Governor to appoint a person to be a Commissioner of Inquiry for the purposes only of a particular inquiry directed to be held by the Minister (Schedule 2 (2)); and
- (c) to enable the Minister to make use of the services of a Commissioner in the administration of any other Act administered by the Minister (Schedule 2 (2) and (3) (a)).

With respect to the preparation of draft local environmental plans, the Bill varies the provisions of the Act so as—

- (a) to enable a council to recover certain costs and expenses incurred in the preparation of an environmental study, which is prepared on behalf of a person seeking an amendment to an environmental planning instrument in order to carry out particular development on particular land, from the person (Schedule 3 (1));
- (b) to provide for the concurrent, rather than the sequential, public exhibition of an environmental study and a draft local environmental plan (Schedule 3 (2), (3), (5) and (6));
- (c) to remove the restriction that a council cannot prepare a draft local environmental plan unless it is not substantially inconsistent with any State environmental planning policy, regional environmental plan or relevant direction under section 117 of the Act which applies to the land to which the draft local environmental plan applies (Schedule 3 (3));
- (d) to require that a council shall, in relation to the preparation of an environmental study or a draft local environmental plan, include in its statement to the Secretary under section 64 of the Act, the names of the public authorities, bodies and other persons which it has consulted (Schedule 3 (4)); and
- (e) to make further provision with respect to the power of the Minister to give directions under section 117 of the Act and, in particular, to include—
 - (i) a power to require a draft local environmental plan of provisions which will achieve or give effect to such aims, objectives or policies, not inconsistent with the Act, as may be specified in a direction; and
 - (ii) a power to require the inclusion in a draft local environmental plan of provisions which will give effect to a direction under proposed section 94A, (Schedule 3 (7)).

With respect to the imposition of conditions of development consents which require the dedication of land or the payment of a monetary contribution towards the provision or improvement of public amenities and public services, the Bill varies the provisions of the Act so as—

- (a) to remove the restriction that such a condition may be imposed only where an environmental planning instrument identifies a likely increased demand for those amenities and services and stipulates that a dedication or contribution may be required as a condition of any such consent (Schedule 4 (1) (a) and (g));

- (b) to enable a council, where it has provided those amenities and services in preparation for or to facilitate the carrying out of development will benefit from the provision of those amenities and services, to impose such a condition in order to require a reasonable contribution towards recoupment of the costs incurred by the council in providing those amenities and services (Schedule 4 (1) (b));
- (c) to enable a council to accept the provision of a material public benefit, instead of the dedication of land or the payment of a monetary contribution, in part or full satisfaction of any such condition (Schedule 4 (1) (b)); and
- (d) to enable the Minister to give directions to a council as to—
 - (i) the public amenities and public services in relation to which any such condition may or may not be imposed;
 - (ii) the means by which any monetary contribution may or may not be calculated and the maximum amount of any such contribution; and
 - (iii) the things which may or may not be accepted as a material public benefit (Schedule 4 (2)—proposed section 94A).

With respect to environmental assessment under Part V of the Act, the Bill varies the provisions of the Act so as—

- (a) to clarify the definition of “activity” and the meaning of the term “approval” for the purposes of that Part (Schedule 5 (1) (a));
- (b) to clarify the duty of a determining authority to consider the environmental impact of matters affecting the environment (Schedule 5 (2)); and
- (c) to provide that where, in respect of a particular development, there is more than one determining authority, the Director of Environment and Planning (“the Director”) may, by order published in the Gazette and in a newspaper circulating throughout the State, nominate a determining authority to be the initial determining authority in respect of the development for the purposes of that Part and to specify the functions of and the procedures which apply in relation to the initial determining authority (Schedule 5 (1) (b), (2) and (3)).

With respect to the validity of environmental planning instruments, development consents and decisions to which Part V of the Act applies, the Bill—

- (a) makes provision with respect to the period of time within which the validity of those instruments, consents and decisions may be questioned in legal proceedings; and
- (b) specifies the circumstances in which a court may declare any such instrument, consent or decision to be invalid,

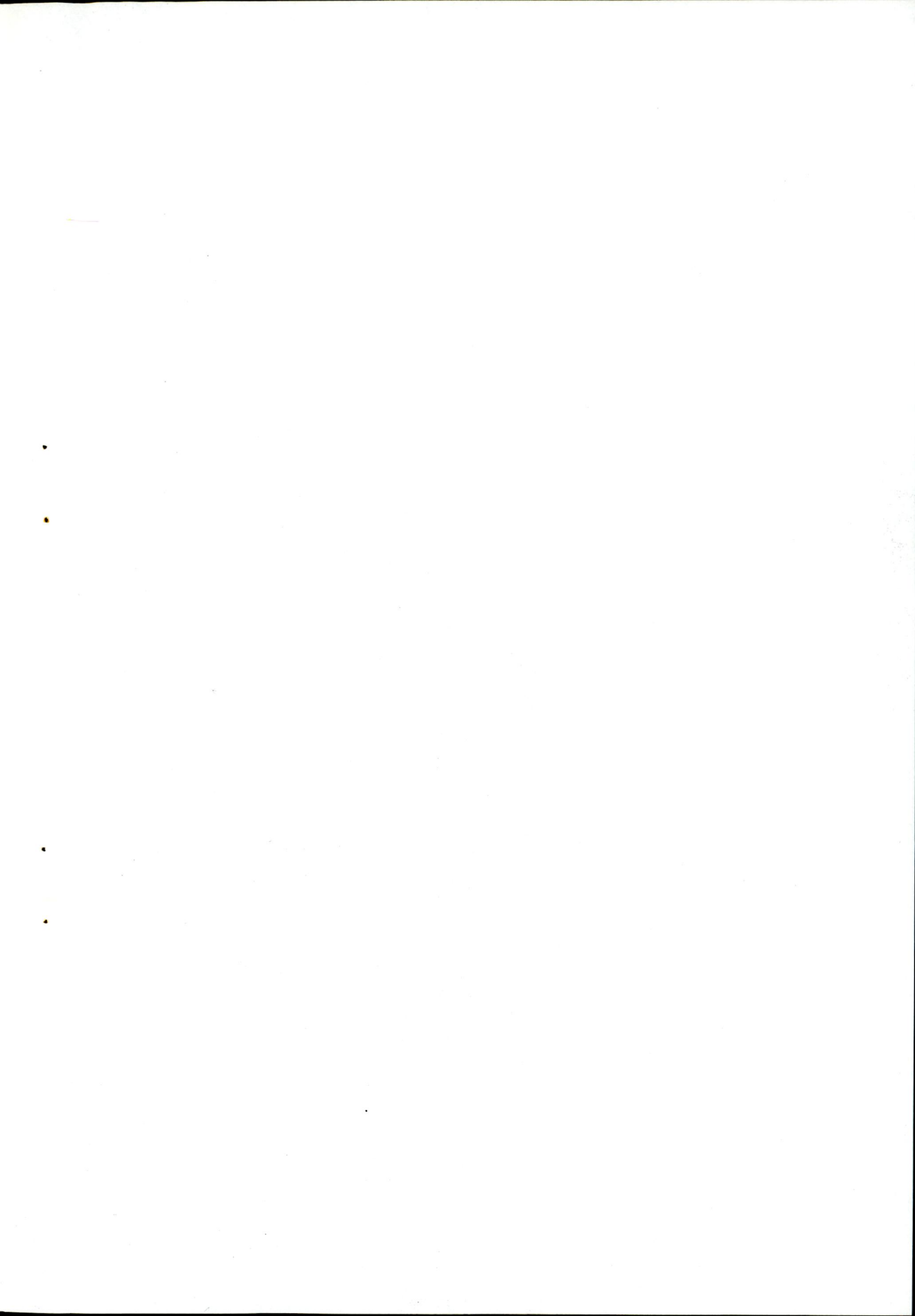
(Schedule 6 (1)—substituted section 35, Schedule 6 (2)—proposed section 104A and Schedule 6 (3)—proposed section 114A).

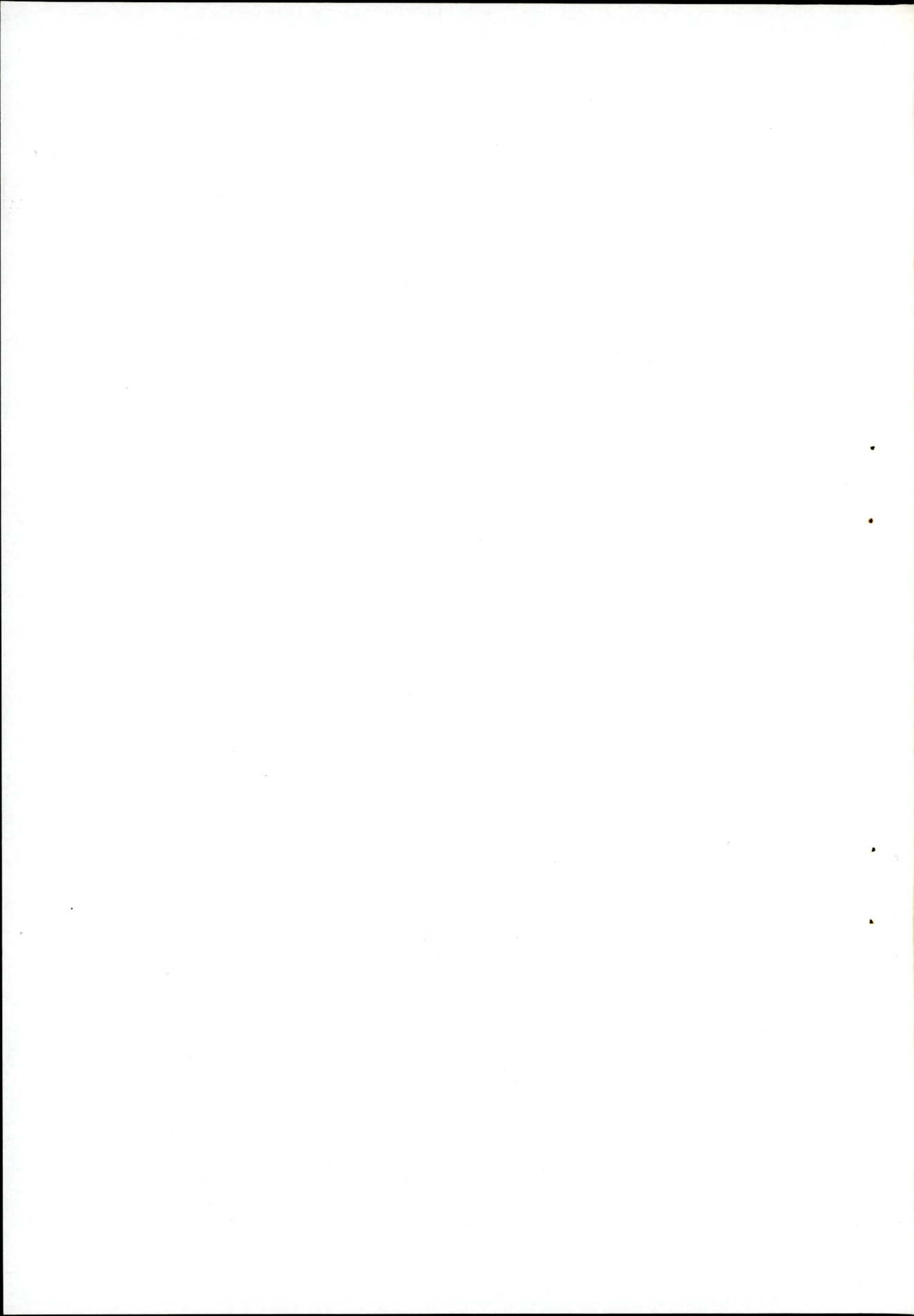
The Bill also amends the Act so as—

- (a) to insert into the Act a definition of “land” which includes the sea, bays, inlets, lakes and other bodies of water and rivers, streams and watercourses (Schedule 7 (2) (a));
- (b) to provide protection from liability of persons who are delegates of the Minister, the corporation constituted by section 8 (1) of the Act or the Director in respect of the bona fide exercise of the functions delegated to those persons (Schedule 7 (3));
- (c) to enable a regional environmental plan to be prepared for part of a region (Schedule 7 (4)–(6));
- (d) to make further provision with respect to the places at which and the period during which development applications for consent to carry out designated development may be inspected (Schedule 7 (7));
- (e) to make further provision with respect to the modification under section 102 of the Act by a consent authority of a development consent granted by it and to provide that no appeal lies against any such modification if made by the Land and Environmental Court or if made by the Minister in respect of a consent granted as a consequence of a direction by the Minister that a development application be referred to the Secretary for determination by the Minister (Schedule 7 (8));
- (f) to provide for a power of entry on land for the purposes of the Act by a person authorised by the Director or a council (Schedule 7 (9)—proposed section 117A);
- (g) to make it an offence to obstruct a person so authorised in the exercise of the person’s functions (Schedule 7 (9)—proposed section 117B); and
- (h) to enable the appointment of an administrator without the necessity for first holding an inquiry (Schedule 7 (10)).

The Bill contains certain savings, transitional and other provisions (Schedule 8).

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





**ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) BILL, 1985**

No. , 1985.

A BILL FOR

An Act to amend the Environmental Planning and Assessment Act, 1979, with respect to the granting of consent to prohibited development, the preparation of draft local environmental plans, the imposition of certain conditions of consent and in certain other respects.

See also Statutory and Other Offices Remuneration (Commissioners of Inquiry) Amendment Bill, 1985.

Environmental Planning and Assessment (Amendment) 1985

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 Short title.

1. This Act may be cited as the "Environmental Planning and Assessment (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall
10 commence on the date of assent to this Act.

(2) Section 5, in its application to a provision of Schedules 1-7, shall commence on the day on which the provision commences.

(3) The several provisions of Schedules 1-7 shall commence on such day
15 or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Environmental Planning and Assessment Act, 1979, is referred to in this Act as the Principal Act.

Schedules.

20 4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED DEVELOPMENT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONS OF INQUIRY.

25 SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PREPARATION OF DRAFT LOCAL ENVIRONMENTAL PLANS.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PROVISION, ETC., OF PUBLIC AMENITIES AND PUBLIC SERVICES.

30 SCHEDULE 5.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ENVIRONMENTAL ASSESSMENT.

SCHEDULE 6.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDITY OF CERTAIN MATTERS.

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SCHEDULE 7.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 8.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 203, 1979.

- 5 5. The Principal Act is amended in the manner set forth in Schedules 1–7.

Savings, transitional and other provisions.

6. Schedule 8 has effect.
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SCHEDULE 1.

10

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED DEVELOPMENT.

(Sec. 5.)

- (1) Section 4 (1), definition of “prohibited development”—

After the definition of “person”, insert:—

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“prohibited development” means development the carrying out of which is specified to be prohibited by the provisions (other than the provisions which comprise development standards) of a local environmental plan or a deemed environmental planning instrument, whether or not that development is also specified to be prohibited by those provisions of a local environmental plan or a deemed environmental planning instrument which comprise development standards;

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- (2) (a) Section 77 (3) (c)—

25

After “development” where firstly occurring, insert “or prohibited development”.

- (b) Section 77 (3) (d)—

Omit “and”.

- (c) Section 77 (3) (d1)—

30

After section 77 (3) (d), insert:—

(d1) where the application is in respect of prohibited development, be accompanied by a statement in the prescribed form prepared by or on behalf of the applicant; and

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

(3) Section 89 (2)—

5 Omit the subsection, insert instead:—

(2) The provisions of section 101 (8), (10) and (11) apply to a determination of the Minister under this section as if it were a determination under section 101 (8).

(4) (a) Section 93 (1) (a)—

10 Omit “in paragraph (b)”, insert instead “by paragraphs (b) and (c)”.

(b) Section 93 (1) (a)—

Omit “or”.

(c) Section 93 (1) (b), (c)—

15 At the end of section 93 (1) (b), insert:—

; or

(c) in the case of prohibited development in respect of which any submission has been made under section 105I—the expiration of 28 days from the date of consent that is endorsed, as prescribed, upon the notice referred to in section 92.

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(d) Section 93 (2), (3)—

Omit “or 98” wherever occurring, insert instead “, 98, 105O or 105P”.

25 (e) Section 93 (3) (a)—

After “section 97”, insert “or 105O”.

(f) Section 93 (3) (b)—

After “section 98”, insert “or 105P”.

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

(5) Section 101—

5 Omit the section, insert instead:—

Determination of development applications by the Minister.

101. (1) Where—

10 (a) the Minister is of the opinion that it is expedient in the public interest to do so, having regard to matters which in the opinion of the Minister are of significance for State or regional environmental planning; or

(b) the Minister is of the opinion that development the subject of a particular development application is of significance for State or regional environmental planning,

15 the Minister 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—

20 (c) in the case of an opinion referred to in paragraph (a)—a particular development application or a development application of a class or description of development applications; or

(d) in the case of an opinion referred to in paragraph (b)—the particular development application referred to in that paragraph.

25 (2) Without limiting the generality of subsection (1), a direction may be given under that subsection in respect of a development application for consent to carry out prohibited development.

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

30 (a) shall not determine in accordance with this Division or, in the case of a development application for consent to carry out prohibited development, in accordance with this Division and Division 1A, any development application to which that direction applies; and

35 (b) shall forthwith after dealing, except as provided by paragraph (a), with the application in accordance with—

(i) in the case of a development application other than a development application for consent to carry out prohibited development—this Division; or

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

- 5 (ii) in the case of a development application for consent
 to carry out prohibited development—section 105F,
 refer the application to the Secretary,
and the provisions of section 96 shall not apply to or in respect of
the development application.
- 10 (4) The consent authority shall inform—
- (a) in the case of a development application, other than a
 development application for consent to carry out prohibited
 development—the applicant and any objector to that
 application; or
- 15 (b) in the case of a development application for consent to carry
 out prohibited development—the applicant and any person
 who did any of the things referred to in section 105I (1),
that the application has been referred to the Secretary for
determination by the Minister.
- 20 (5) The consent authority, the applicant, any objector and any
 person who did any of the things referred to in section 105I (1), as
 the case may be, shall be afforded the opportunity of a hearing if so
 required by any of them before the Minister determines the
 application.
- 25 (6) Where, pursuant to subsection (5), a hearing is required to be
 held, the Minister shall direct that an inquiry be held, in accordance
 with section 119, by a Commission of Inquiry appointed under
 section 119 (2), with respect to the application, and the consent
 authority, the applicant, any objector, and any person who did any
30 of the things referred to in section 105I (1), as the case may be, shall
 be entitled to appear and be heard.
- (7) The Minister shall consider the findings and recommendations
 of the Commission of Inquiry (if any) appointed as referred to in
 subsection (6) before determining the development application in
 respect of which the inquiry was held.
- 35 (8) The Minister may determine the development application—
- (a) by granting consent to that application either unconditionally
 or subject to such conditions as the Minister thinks fit; or

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

(b) by refusing consent to that application,

5 and the provisions of sections 90 and 91, and, in addition, in the
case of a development application for consent to carry out prohibited
development, the provisions of section 105K (a), apply to and in
respect of the determination by the Minister under this section of a
10 development application in the same way as they apply to and in
respect of the determination by a consent authority under those
sections of such an application.

(9) The provisions of section 105L shall not apply to or in respect
of the determination by the Minister under this section of a
15 development application for consent to carry out prohibited
development.

(10) The Minister's determination under subsection (8)—

(a) shall be final and the provisions of sections 97 and 98 or, in
the case of a development application for consent to carry
out prohibited development, the provisions of sections 105O
20 and 105P, shall not apply to or in respect of the
determination; 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
25 notification under subsection (11) to the applicant.

(11) The Secretary shall notify the consent authority, the applicant,
any objector and any person who did any of the things referred to
in section 105I (1) of the Minister's determination under subsection
(8), and, where the determination is made by the granting of consent
30 subject to conditions or by the refusing of consent, the notification
shall indicate the reasons for the imposition of the conditions or the
refusal.

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

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

(6) Section 102 (3)—

5 Omit “(7)”, insert instead “(10)”.

(7) Part IV, Division 1A—

After Division 1, insert:—

DIVISION 1A.—*Prohibited development.*

Interpretation.

10 105A. In this Division, a reference to a development application is a reference to a development application for consent to carry out prohibited development.

Application of other provisions of Act, etc.

15 105B. (1) The other provisions of this Act, including Division 1, except to the extent to which those provisions are inconsistent with the provisions of this Division or a contrary intention appears, shall apply to and in respect of a development application for consent to carry out prohibited development in the same way as they apply to and in respect of any other development application.

20 (2) Where a development application is made for consent to carry out prohibited development, being development which is also specified to be prohibited by those provisions of a local environmental plan or a deemed environmental planning instrument which comprise development standards, except to the extent, if any,
25 to which the regulations otherwise provide, nothing in this Part affects the operation of State Environmental Planning Policy No. 1—Development Standards or any State environmental planning policy made in substitution for that Policy.

Excluded development.

30 105C. (1) The Minister may, at any time, notify a consent authority, in writing, that development, or development of a class or description, specified in the notification is development to which the provisions of this Division shall not apply.

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

5 (2) The Minister may, at any time, revoke, alter or vary a notification under subsection (1) to a consent authority by a further notification, in writing, to the consent authority.

(3) A notification under subsection (1) or (2) shall have effect according to its tenor.

Carrying out of prohibited development.

10 105D. Notwithstanding section 76 (3) or section 91 (2) or (5) or any other provision of this Act or the provisions of an environmental planning instrument—

15 (a) a consent authority may, subject to and in accordance with this Part, grant consent to the carrying out by a person of prohibited development; and

(b) a person may, subject to and in accordance with a consent referred to in paragraph (a), carry out prohibited development.

Making of development applications.

20 105E. (1) A development application may be made to the consent authority for consent to carry out prohibited development.

(2) Where a development application is made to a consent authority, the consent authority may decide not to deal with the application.

25 (3) Where the consent authority is a council, a decision under subsection (2) may only be made by resolution at a meeting of the council.

30 (4) Notice of a decision under subsection (2) shall be given to the applicant in the prescribed form and manner but it shall not be necessary for a consent authority to give reasons for its decision.

(5) A decision under subsection (2) shall be final and no person may appeal against the decision.

SCHEDULE 1—*continued*.AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued*.

5 (6) A council shall not make a decision under subsection (2) in relation to a development application which is subject to a direction under section 101.

10 (7) Notwithstanding the other provisions of this Part, the regulations may make provision for or with respect to the payment and refund of application, advertising and other fees and charges in relation to development applications.

Notice of applications respecting prohibited development.

15 105F. (1) Where a development application is made for consent to carry out prohibited development, the consent authority shall, as soon as practicable after the making of the development application, except where the consent authority has made a decision under section 105E (2) not to deal with the development application—

20 (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 the prohibited development is carried out;

25 (b) cause notice, in such form as may be prescribed, to be exhibited in the prescribed manner on the land to which that development application relates;

(c) cause notice, in such form as may be prescribed, of that development application to be published in a newspaper circulating in the locality; and

30 (d) where the consent authority is a person other than the Minister or the Director, furnish to the Secretary such information as may be prescribed relating to the application.

35 (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.

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

5 (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).

(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 accompanying that application and
10 in the custody of the consent authority may be inspected at—

(a) the office of the council and—

(i) where the Minister or the Director is the consent
authority, at the office of the Department; or

15 (ii) where a person other than the council, the Minister
or the Director is the consent authority, at the office
of the person.

at any time during ordinary office hours; and

(b) such other premises operated or controlled by them
respectively and at such times as may be prescribed,

20 within the period prescribed for the purposes of this subsection
commencing on the day after the day on which notice of that
development application is first published in a newspaper in
accordance with subsection (1) (c).

25 **Circumstances in which compliance with section 105F may be
dispensed with.**

105G. (1) Notwithstanding section 105F, where—

30 (a) a development application referred to in section 105F 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

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

5 (b) the consent authority has with respect to that development
application referred to in section 105F complied in all
respects with that section,

10 the consent authority may, if it is of the opinion that there is no
necessity, by reason that the amended or subsequent development
application differs only in minor respects from the former
development application, to comply with section 105F with respect
to the amended or 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
15 former development application shall be deemed to be compliance
in relation to the amended or subsequent development application.

(2) The consent authority shall notify the applicant of its decision
under subsection (1) at or before the time notice of the
determination of the development application is given under section
92.

20 **Inspection of development applications, etc.**

105H. At the places and during the period prescribed for the
purposes of section 105F (4), any person may inspect the
development application and documents accompanying that
application and may make extracts from or copies thereof.

25 **Submissions in respect of development applications.**

105I. (1) During the period prescribed for the purpose of section
105F (4), any person may do any one or more of the following:—

- 30 (a) make a submission, in writing, to the consent authority in
relation to the development application;
- (b) indicate, in writing, to the consent authority that the person
wishes, in relation to the development application, to make
an oral submission to the consent authority;
- (c) request, in writing, that a public hearing be held in relation
to the development application.

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

5 (2) Where a person indicates, pursuant to subsection (1) (b), that the person wishes to make an oral submission to the consent authority, the consent authority—

10 (a) in the event that no person requests, pursuant to subsection (1) (c), that a public hearing be held in relation to the development application—shall make arrangements with the person to enable the submission to be made to the consent authority; or

15 (b) in the event that a person requests, pursuant to subsection (1) (c), that a public hearing be held in relation to the development application—shall inform the person that the person may make a submission at the public hearing,

and the person shall be entitled to make a submission accordingly.

(3) Where the consent authority is a council, a submission made in the circumstances referred to in subsection (2) (a) shall be made at a meeting of the council.

20 (4) In the event that a person requests, pursuant to subsection (1) (c), that a public hearing be held in relation to a development application, the consent authority shall, subject to and in accordance with the regulations, arrange for the public hearing to be held.

(5) The regulations may make provision for or with respect to—

25 (a) the qualifications and appointment of persons before whom public hearings under this section shall be held;

(b) the functions of those persons;

(c) the conduct of and the procedure to be observed at public hearings under this section;

30 (d) the times at which and the periods during which those hearings shall be held;

(e) the determination of those hearings;

(f) the findings and the making of recommendations and reports in respect of those hearings; and

35 (g) any other related matters.

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

5 **Restrictions on determination by consent authority of development
application.**

105J. (1) A consent authority shall not determine a development application otherwise than in accordance with this section.

(2) A consent authority may determine a development application—

10 (a) whether or not a submission has been made under section
105I, but where no indication has been given under that
section by a person that the person wishes to make an oral
submission and no request has been made under that section
15 that a public hearing be held in relation to the application—
at any time after the expiration of the period prescribed for
the purposes of section 105F (4);

(b) where an indication has been given under section 105I by a
person that the person wishes to make an oral submission
and no request has been made under that section that a
20 public hearing be held in relation to the application—at any
time after the date on which, in accordance with such
reasonable arrangements as were made with the person by the
consent authority, the submission was entitled to be made;
or

25 (c) where a request has been made under section 105I that a
public hearing be held in relation to the application—at any
time after the report of the hearing has been furnished to the
consent authority.

Matters for consideration.

30 105K. In determining a development application for consent to
carry out prohibited development, a consent authority, pursuant to
section 90—

(a) shall not take into consideration the provisions of a local
35 environmental plan or deemed environmental planning
instrument to the extent to which those provisions prohibit
the carrying out of the development; and

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED DEVELOPMENT—*continued.*

- 5 (b) shall take into consideration any submission made under section 105I and the report made as a consequence of any public hearing held under section 105I (4) in respect of the application.

Restrictions on granting of development consent.

10 105L. A consent authority shall not grant consent to a development application where—

- (a) the development is prohibited in whole or in part by a State environmental planning policy or a regional environmental plan;
- (b) the development is designated development; or
- 15 (c) the development is development, or development of a class or description, to which, pursuant to a notification of the Minister under section 105C (1), the provisions of this Division do not apply.

20 **Notice of consent authority's determination to persons who have made submissions.**

105M. A consent authority shall give notice, in the prescribed form, time and manner, to each person who did any of the things referred to in section 105I (1) in respect of a development application, of—

- 25 (a) its determination of the application; and
- (b) the rights under this Act of the applicant and each such person to appeal in respect of that determination.

Circumstances in which no appeal lies.

30 105N. No person may appeal against a determination of a consent authority refusing consent to the carrying out of prohibited development.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.***Appeal by an applicant.**

5 105O. (1) An applicant who is dissatisfied with a consent or the conditions of a consent granted in respect of the development application may appeal to the Court within 12 months after the date on which the applicant received notice under section 92 in respect of that application.

10 (2) Each person who did any of the things referred to in section 105I (1) in respect of the development application shall be given notice by the consent authority of the appeal and shall, 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 the person were a party to the appeal.

15 (3) An appeal under subsection (1) shall not be heard by the Court until after the expiration of the time within which a person who did any of the things referred to in section 105I (1) may appeal to the Court under section 105P.

Appeal by a person who has made a submission.

20 105P. (1) A person who did any of the things referred to in section 105I (1) in respect of a development application and who is dissatisfied with a consent or the conditions of a consent granted by a consent authority in respect of the application may, within 28 days after the date on which notice was given to the person under section 105M, and in accordance with rules of court, appeal to the Court.

25 (2) Where an appeal has been made under subsection (1), the person who made the development application and the consent 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.

Amendment of environmental planning instruments.

30 105Q. (1) Where—

- 35 (a) a consent authority grants consent under section 91 to the carrying out of prohibited development; or
- (b) an order of the Court on an appeal against the determination of a consent authority is made by which consent is granted to the carrying out of prohibited development,

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

5 the consent authority shall forthwith notify the Minister of particulars of the consent and of the land to which the consent applies, including, in relation to a consent granted by a consent authority, the date on which notice was given to any person who did any of the things referred to in section 105I (1) in respect of the development application concerned.

10 (2) Where—

(a) the Minister is notified of particulars under subsection (1) of a consent to carry out prohibited development on certain land; or

15 (b) the Minister grants consent under section 101 to the carrying out of prohibited development on certain land,

20 the Minister shall, except as provided by subsections (3) and (4), by notice published in the Gazette, make such amendments to the environmental planning instrument by virtue of the provisions of which the development was prohibited development as may be necessary to provide that the development of the land in accordance with the terms of the consent shall cease to be prohibited development and may thereafter be carried out on the land with the consent of the consent authority, being a consent granted otherwise that in respect of prohibited development.

25 (3) The publication of a notice under subsection (2) or the making of any amendment as a consequence of the publication of the notice shall not derogate from or otherwise affect any right conferred by the consent in relation to which the notice is published.

30 (4) Where, in relation to a development application for consent to carry out prohibited development, a person did any of the things referred to in section 105I (1), the Minister shall not publish a notice under subsection (2) until—

35 (a) 28 days after the date on which notice of the determination of the application was given to the person under section 105M; or

(b) where an appeal is made under section 105P in relation to the consent, the appeal is finally determined,

whichever is the later.

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PROHIBITED
DEVELOPMENT—*continued.*

5 (5) Where an appeal referred to in subsection (4) (b) has the effect of refusing consent to carry out prohibited development, the Minister shall not publish a notice under subsection (2) in relation to the consent in respect of which the appeal was made.

10 (6) Where, in relation to a consent to carry out prohibited development, an appeal is made by the applicant under section 105O, the making of the appeal shall not affect the duty of the Minister under subsection (2).

(7) For the purposes of sections 34, 36, 73 and 74, a notice under subsection (2) shall be deemed to be an environmental planning instrument.

15 (8) Section 119 (2)—

Omit “(5)”, insert instead “(6)”.

(9) Section 151 (8)—

After section 151 (7), insert:—

20 (8) Nothing in this section authorises the delegation of any function of a council under section 91, 105I (3) or 105E (2) in respect of a development application for consent to carry out prohibited development.

SCHEDULE 2.

(Sec. 5.)

25 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONS OF
INQUIRY.

(1) Section 4 (1), definition of “Commissioner of Inquiry”—

30 After “section 18”, insert “and includes the Chairman of Commissioners of Inquiry and the Deputy Chairman of Commissioners of Inquiry”.

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONS OF
INQUIRY—*continued.*

(2) Section 18—

5 Omit the section, insert instead:—

Commissioners of Inquiry.

10 18. (1) The Governor may appoint a person to be the Chairman of Commissioners of Inquiry, a person to be the Deputy Chairman of Commissioners of Inquiry and persons to be Commissioners of Inquiry.

(2) Subject to this section, Schedule 1 has effect in respect of the Chairman of Commissioners of Inquiry, the Deputy Chairman of Commissioners of Inquiry and each Commissioner of Inquiry in the same way as it has effect in respect of the Director.

15 (3) The Governor may appoint a person under subsection (1) to be a Commissioner of Inquiry for the purposes only of a particular inquiry directed to be held by the Minister.

(4) Where a person is appointed as referred to in subsection (3)—

20 (a) the person shall be paid such remuneration and allowances as may be determined in respect of the person by the Minister; and

(b) clauses 9, 10 and 11 of Schedule 1 shall not apply to or in respect of the person.

25 (5) Without affecting the functions of Commissioners of Inquiry under section 119, the Minister may make use of the services of any Commissioner in the administration of this Act or any other Act administered by the Minister.

(3) (a) Section 119 (1) (a)—

30 After “instrument”, insert “or relating to the administration and implementation of the provisions of any other Act administered by the Minister”.

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO COMMISSIONS OF
INQUIRY—*continued.*

(b) Section 119 (3A), (3B)—

5 After section 119 (3), insert:—

(3A) Where the Chairman of Commissioners of Inquiry is appointed with one or more Commissioners of Inquiry to constitute a Commission of Inquiry, the Chairman shall preside at the proceedings of the Commission.

10 (3B) Except as provided by subsection (3A), where the Deputy Chairman of Commissioners of Inquiry is appointed with one or more Commissioners of Inquiry to constitute a Commission of Inquiry, the Deputy Chairman shall preside at the proceedings of the Commission.

15 (c) Section 119 (4)—

Before “the Minister”, insert “neither or none of whom is the Chairman of Commissioners of Inquiry or the Deputy Chairman of Commissioners of Inquiry,”.

SCHEDULE 3.

20 (Sec. 5.)
AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PREPARATION OF
DRAFT LOCAL ENVIRONMENTAL PLANS.

(1) Section 57 (5)—

After section 57 (4), insert:—

25 (5) Where, in relation to a request or submission made by or on behalf of a person to a council, an environmental study referred to in subsection (1) of particular land is prepared by the council for the purposes of a draft local environmental plan to enable the carrying out of development on the land, the council may, subject to and in accordance with the regulations, recover the costs and expenses, determined in accordance with the regulations, incurred in the
30 preparation of the environmental study, from the person.

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PREPARATION OF
DRAFT LOCAL ENVIRONMENTAL PLANS—*continued.*

- (2) Sections 58–60—
5 Omit the sections.
- (3) Section 61—
Omit the section, insert instead:—
Council's responsibilities in preparing draft local environmental plan.
10 61. In the preparation of a draft local environmental plan, the council shall—
(a) in the light of the environmental study prepared by the council under section 57, determine the aims, objectives, policies and strategies to be adopted in the plan; and
(b) prepare the plan having regard to the environmental study.
- 15 (4) Section 64—
Omit the section, insert instead:—
Submission of copy of draft local environmental plan to Department.
64. When a draft local environmental plan has been prepared, the council shall submit a copy of the draft plan to the Secretary,
20 together with a statement specifying the names of the public authorities, bodies and other persons the council has consulted with pursuant to section 62.
- (5) Section 65 (1)—
Omit the subsection, insert instead:—
25 (2) Where the Secretary receives a copy of a draft local environmental plan from a council under section 64, 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
30 section 117, applying to the land to which the draft plan applies.
- (6) (a) Section 66 (1) (a)—
After "which," where thirdly occurring, insert "the environmental study prepared by the council under section 57 of the land to which the draft local environmental plan applies and".
35

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PREPARATION OF
DRAFT LOCAL ENVIRONMENTAL PLANS—*continued.*

(b) Section 66 (1) (b) (i)—

5 After “that”, insert “environmental study and”.

(7) Section 117 (2)—

Omit the subsection, insert instead:—

(2) In addition to any direction which may be given under subsection (1), the Minister may direct a council—

10 (a) to exercise its functions under Division 4 or 5 of Part III in relation to the preparation of a draft local environmental plan in accordance with such principles, not inconsistent with this Act, as are specified in the direction; and

15 (b) without limiting paragraph (a), to include in a draft local environmental plan prepared by the council—

(i) provisions which will achieve or give effect to such principles or such aims, objectives or policies, not inconsistent with this Act, as are specified in the direction; and

20 (ii) provisions which will give effect to any matter the subject of a direction under section 94A applying to the land to which the draft local environmental plan is intended to apply and which is specified in the direction under this subsection.

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PROVISION, ETC.,
OF PUBLIC AMENITIES AND PUBLIC SERVICES.

5 (1) (a) Section 94 (2) (a)—

Omit the paragraph.

(b) Section 94 (2A)–(2C)—

After section 94 (2), insert:—

(2A) Subject to subsection (2B), where—

10 (a) a council has, at any time after the date of commencement of this subsection, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area; and

15 (b) the council, being the consent authority, is satisfied that a development, the subject of a development application, will benefit from the provision of those public amenities or public services,

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

25 (2B) A condition referred to in subsection (2A) shall be imposed only to require a reasonable contribution towards recoupment of the cost referred to in that subsection.

(2C) The council may accept—

(a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (2A);
or

30 (b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (2A).

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PROVISION, ETC.,
OF PUBLIC AMENITIES AND PUBLIC SERVICES—*continued.*

(c) Section 94 (3)—

- 5 After “contribution”, insert “paid in accordance with a condition referred to in subsection (1)”.

(d) Section 94 (3A)—

After section 94 (3), insert:—

- 10 (3A) The council shall apply any monetary contribution paid in accordance with a condition referred to in subsection (2A), where the whole or any part of the cost incurred in providing the public amenities or public services with respect to which the contribution is paid remains unpaid, towards repayment of that cost.

15 (e) Section 94 (4)—

After “subsection (1)”, insert “or in part or full satisfaction of a condition imposed under subsection (2A)”.

(f) Section 94 (5), (6)—

After “subsection (1)” wherever occurring, insert “or (2A)”.

20 (g) Section 94 (7)—

Omit the subsection.

(2) Section 94A—

After section 94, insert:—

Directions by the Minister.

- 25 94A. (1) The Minister may, generally or in any particular case or class of cases, direct a council as to—

- (a) the public amenities and public services in relation to which a condition referred to in section 94 may or may not be imposed;

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PROVISION, ETC.,
OF PUBLIC AMENITIES AND PUBLIC SERVICES—*continued.*

- 5 (b) in the case of a condition referred to in that section requiring
the payment of a monetary contribution—
- (i) the means by which or the factors in relation to which
the amount of the contribution may or may not be
calculated or determined; and
- (ii) the maximum amount of any such contribution; and
- 10 (c) the things which may or may not be accepted as a material
public benefit pursuant to section 94 (2C).
- (2) A council to which a direction is given under subsection (1)
shall comply, and is hereby empowered to comply, with the direction
in accordance with the terms of the direction.
- 15 (3) Notwithstanding section 94, a council shall not, in granting
consent to a development application in relation to which a direction
under subsection (1) applies, impose a condition which is not in
accordance with the terms of the direction.

SCHEDULE 5.

20

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ENVIRONMENTAL
ASSESSMENT.

- (1) (a) Section 110, definitions of “activity”, “approval”—
Omit the definition of “activity”, insert instead:—
- 25 “activity” means—
- (a) a project; or
- (b) work, including the carrying out of development,
but does not include—
- (c) the preparation or making of an environmental
30 planning instrument; or

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ENVIRONMENTAL
ASSESSMENT—*continued.*

- 5 (d) the carrying out of development for which
development consent is required or has been
granted or which is prohibited development;

“approval” includes consent, licence, permission and any
other form of authorisation;

- (b) Section 110, definition of “initial determining authority”—

- 10 After the definition of “determining authority”, insert:—

“initial determining authority”, in relation to an activity,
means the determining authority nominated by the
Director in accordance with section 110A in relation to
the activity;

- 15 (2) Sections 110A–112—

Omit sections 111 and 112, insert instead:—

Nomination of initial determining authority.

- 20 110A. Where more than one determining authority is required to
make a final decision in relation to an activity, the Director may, by
order published in the Gazette and in a newspaper circulating
throughout the State, nominate a determining authority to be the
initial determining authority in relation to the activity for the
purposes of this Part.

Duty to consider environmental impact.

- 25 111. (1) For the purposes of attaining the objects of this Act
relating to the protection and enhancement of the environment, and
notwithstanding any other provisions of this Act or the provisions
of any other Act or of any instrument made under this or any other
30 Act, a determining authority shall, in respect of any act, matter or
thing done or proposed to be done by the determining authority or
by any other person with the approval of the determining authority,

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ENVIRONMENTAL ASSESSMENT—*continued.*

- 5 examine and take into account, to the greatest extent reasonably practicable, all matters that affect or are likely to affect the environment in relation to or arising out of any one or more of the following:—
- 10 (a) the formulation of proposals;
- (b) the evaluation of proposals, including the making of a choice between proposals;
- 15 (c) the negotiation, contents and operation of agreements and arrangements;
- (d) the acquisition of any land or of any interest in or right over land;
- (e) the incurring of expenditure;
- (f) the making or the participation in the making of decisions and recommendations;
- (g) the carrying out of any development, work or project and the doing of any act matter or thing in relation thereto.
- 20 (2) Nothing in subsection (1) applies to or in respect of the preparation or making of an environmental planning instrument.

Decision of determining authority in relation to certain activities.

- 25 112. (1) A determining authority shall not make a final decision to undertake, or to approve the undertaking of, an activity that is a prescribed activity of a prescribed kind or an activity that is likely to significantly affect the environment unless—
- (a) the determining authority has obtained or been furnished with and has examined and considered an environmental impact statement in respect of the activity—
- 30 (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;

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 5—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ENVIRONMENTAL
ASSESSMENT—*continued.*

- 5 (b) notice referred to in section 113 (1) has been duly given by
the determining authority or, where an initial determining
authority has been nominated in relation to the activity, by
the initial determining authority, the period specified in the
notice has expired and the determining authority or initial
10 determining authority, as the case may require, has examined
and considered any representations made to it in accordance
with section 113 (2);
- (c) the determining authority or initial determining authority, as
the case may require, has complied with section 113 (3);
- 15 (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
20 section 114; and
- (e) where it receives notice from the Secretary that the Director
has decided that an examination be undertaken in accordance
with section 113 (5), that examination has been carried out
and the determining authority has considered the report
25 furnished to it in accordance with that subsection.
- (2) The determining authority shall, as soon as practicable after
an environmental impact statement is obtained by or furnished to
it, as referred to in subsection (1), but before giving notice under
section 113 (1), furnish to the Secretary a copy of the statement.
- 30 (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 the activity will detrimentally affect the
environment—
- (a) may, except where it is the proponent of the activity—
- 35 (i) impose such conditions or require such modifications
as will in its opinion eliminate or reduce the
detrimental effect of the activity on the environment;
or
(ii) disapprove of the activity; or

Environmental Planning and Assessment (Amendment) 1985

SCHEDULE 5—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ENVIRONMENTAL
ASSESSMENT—*continued.*

(b) may, where it is the proponent of the activity—

5 (i) modify the proposed activity so as to eliminate or
reduce the detrimental effect of the activity on the
environment; or

(ii) refrain from undertaking the activity.

10 (4) Where a determining authority, not being the proponent of an
activity, imposes conditions as referred to in subsection (3) (a) (i) or
disapproves of an activity as referred to in subsection (3) (a) (ii), the
determining authority shall, by notice in writing to the proponent,
indicate the reasons for the imposition of the conditions or for
disapproving of the activity.

15 (5) 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 those or any other Act.

20 (6) Where an initial determining authority has been nominated in
relation to an activity, no other determining authority which may
make a final decision in relation to the activity shall be concerned
to inquire whether or not the initial determining authority has
complied with this section or section 113.

(3) Section 113 (1)—

25 After “determining authority” where firstly occurring, insert “(being,
where an initial determining authority has been nominated in
relation to the activity in respect of which the environmental impact
statement has been prepared, the initial determining authority)”.

SCHEDULE 6.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
VALIDITY OF CERTAIN MATTERS.

5 (1) Section 35—

Omit the section, insert instead:—

Validity of instruments.

10 35. (1) The validity of an environmental planning instrument shall not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date of its publication in the Gazette.

15 (2) Nothing in subsection (1) prevents the questioning of the validity of an environmental planning instrument at any time in any legal proceedings on the ground that the instrument makes or contains provisions other than those which, by or under this or any other Act, it may make or contain.

20 (3) A court shall not declare an environmental planning instrument or any provision of an environmental planning instrument invalid unless the court is of the opinion that the failure of the instrument or provision to comply with this or any other Act or the regulations made under this or any other Act is substantial.

(2) Section 104A—

After section 104, insert:—

Validity of development consents.

25 104A. (1) The validity of a development consent shall not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date on which the granting of the consent has been publicly notified in accordance with the regulations.

30 (2) Nothing in subsection (1) prevents the questioning of the validity of a development consent at any time in any legal proceedings on the ground that the consent was granted after the taking into consideration of matters other than those which, by or under this or any other Act, it was proper to consider or after the failure to take into consideration matters which, by or under this or
35 any other Act, it was proper to consider.

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDITY OF
CERTAIN MATTERS—*continued.*

5 (3) A court shall not declare a development consent invalid unless the court is of the opinion that the failure of the development consent to comply with this or any other Act or the regulations is substantial.

(3) Section 114A—

After section 114, insert:—

10 **Validity of certain decisions.**

15 114A. (1) The validity of a final decision of a determining authority in relation to an activity referred to in section 112 (1) shall not be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date on which the making of the decision has been publicly notified in accordance with the regulations.

20 (2) Nothing in subsection (1) prevents the questioning of the validity a final decision referred to in subsection (1) at any time in any legal proceedings on the ground that the decision was made after the taking into consideration of matters other than those which were relevant or proper to be considered or after the failure to take into consideration matters which were relevant or proper to be considered.

25 (3) A court shall not declare a final decision referred to in subsection (1) invalid unless the court is of the opinion that the failure of the decision to comply with any requirement relating to the making of the decision is substantial.

 SCHEDULE 7.

(Sec. 5.)

30 MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 3—

Omit the section.

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 7—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) (a) Section 4 (1), definition of “land”—

After the definition of “functions”, insert:—

5 “land” includes—

(a) the sea or an arm of the sea;

(b) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or non-tidal; and

10 (c) a river, stream or watercourse, whether tidal or non-tidal;

(b) Section 4 (4)—

After “a duty,” insert “a reference to”.

(3) Section 23 (9)—

15 After section 23 (8), insert:—

(9) Any matter or thing done and any contract entered into by a person acting in accordance with a delegation under this section shall not, if the matter or thing was done or the contract was entered into bona fide for the purpose of exercising the function delegated, subject
20 the person to any action, liability, claim or demand.

(4) Section 40 (1)—

After “region” where firstly occurring, insert “or part of a region”.

(5) Sections 40 (1), (2), 41 (2)—

After “to which” wherever occurring, insert “, or to part of which,”.

25 (6) Section 45 (a)—

After “region”, insert “or part of the region”.

(7) (a) Section 84 (4) (a)—

Omit the paragraph, insert instead:—

(a) the office of the council and—

30 (i) where the Minister or the Director is the consent authority, at the office of the Department; or

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 7—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (ii) where a person other than the council, the Minister or the Director is the consent authority, at the office of the person,

at any time during ordinary office hours; and

- (b) Section 84 (4)—

Before “published”, insert “first”.

- (8) (a) Section 102 (1) (a)—

10 After “development;”, insert “and”.

- (b) Section 102 (1) (b)—

Omit the paragraph.

- (c) Section 102 (5)—

15 After “may” where firstly occurring, insert “, except as provided by subsection (5A),”.

- (d) Section 102 (5A)—

After section 102 (5), insert:—

20 (5A) Nothing in subsection (5) enables an appeal to be made against the determination of, or the failure to determine, an application to modify a development consent, being a development consent granted—

(a) by the Court; or

(b) by the Minister under section 101.

- (9) Sections 117A, 117B—

25 After section 117, insert:—

Power of entry.

117A. (1) The Director or a council may authorise a person, in writing, to carry out inspections for the purposes of this Act, the regulations and any environmental planning instrument.

SCHEDULE 7—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (2) A person authorised under subsection (1) may enter any land or any place on any land and may thereon or therein carry out such inspections and surveys and take such measurements and such photographs as the person considers necessary in connection with the administration of this Act, the regulations and any environmental planning instrument.

10 (3) Subsection (2) does not authorise a person to enter that part of any premises being used for residential purposes without the consent of the occupier of that part of the premises.

15 (4) A person authorised under subsection (1), in exercising a function conferred by subsection (2) in relation to any land or any place on any land, shall, if so required by a person apparently in charge of that land or place, produce the instrument of his or her authority to that person.

Obstruction of authorised person.

20 117B. A person shall not obstruct, hinder or interfere with a person authorised under section 117A (1) in the exercise of the person's functions under section 117A.

(10) (a) Section 118 (1)–(4)—

Omit the subsections, insert instead:—

25 (1) Where, as a consequence of a failure, in the opinion of the Minister, of a council to comply with, carry into effect or enforce the provisions of this Act, an environmental planning instrument, a direction under section 94A or a direction under section 117, the Minister considers it proper to do so, the Minister may, after consultation with the 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 the council by or under this Act.

30

*Environmental Planning and Assessment (Amendment) 1985*SCHEDULE 7—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 118 (5)–(7)—

- 5 Omit “subsection (4)” wherever occurring, insert instead
“subsection (1)”.

SCHEDULE 8.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Validity of certain environmental planning instruments.

- 10 1. (1) Except as provided by subclause (2), section 35 of the Principal Act, as amended
by this Act, applies to and in respect of an environmental planning instrument, whether
the instrument was made before, on or after the day on which Schedule 6 commenced.
- (2) Section 35 of the Principal Act, as amended by this Act, does not apply to or in
15 respect of an environmental planning instrument in relation to the validity of which legal
proceedings have been commenced before the day on which Schedule 6 commenced.

Validity of certain development consents.

2. (1) Except as provided by subclause (2), section 104A of the Principal Act, as
amended by this Act, applies to and in respect of a development consent, whether the
consent was granted before, on or after the day on which Schedule 6 commenced.
- 20 (2) Section 104A of the Principal Act, as amended by this Act, does not apply to or
in respect of a development consent in relation to the validity of which legal proceedings
have been commenced before the day on which Schedule 6 commenced.

Validity of certain decisions.

- 25 3. (1) Except as provided by subclause (2), section 114A of the Principal Act, as
amended by this Act, applies to and in respect of a final decision of a determining
authority in relation to an activity referred to in section 112 (1) of the Principal Act,
whether the decision was made before, on or after the day on which Schedule 6
commenced.
- 30 (2) Section 114A of the Principal Act, as amended by this Act, does not apply to or
in respect of a final decision referred to in subclause (1) in relation to the validity of
which legal proceedings have been commenced before the day on which Schedule 6
commenced.

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SCHEDULE 8—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Regulations.**

5 4. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later day.

10 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or

15 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding any of the foregoing provisions of this Schedule.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985