

No. , 1976.

A BILL

To institute a new system of environmental planning
for the State of New South Wales; and to validate certain
matters.

BE

Environmental Planning.

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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Environmental Planning Act, 1976". Short title.

10 2. (1) This Part and section 184 shall commence on the date of assent to this Act. Commence-
ment.

(2) Except as provided by subsections (1), (3) and (4), this Act shall commence on such day (being a day that is later than the day appointed and notified under subsection
15 (4)) as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) For the purpose of the exercise of any function for or with respect to the preparation, the securing of the
20 preparation, or the making, of an environmental planning instrument (including an environmental planning instrument that amends or repeals a former planning instrument, as defined in clause 1 of Schedule 3, but not including an environmental planning instrument that amends or repeals a
25 local environmental plan as defined in paragraph (a) or (b) of the definition of "local environmental plan" in section 4 (1)), this Act shall commence on the date of assent to this Act, but an environmental planning instrument made under this Act before the day appointed and notified under sub-
30 section (2) shall, if published in the Gazette before that day, take effect—

(a) on that day; or

(b)

Environmental Planning.

(b) on the day it would have taken effect had this Act been in force for all purposes when it was so published,

whichever is the later.

5 (4) Part V and so much of section 171 as relates to land the subject of a permanent preservation order 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.

10 (5) Section 37 of the Interpretation Act, 1897, does not apply to the making of an environmental planning instrument.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–6.

15 PART II.—ENVIRONMENTAL PLANNING INSTRUMENTS
—ss. 7–93.

DIVISION 1.—*General*—ss. 7–19.

DIVISION 2.—*State environmental planning policies*—
ss. 20–22.

20 DIVISION 3.—*Regional environmental plans and
interim regional environmental plans*—ss. 23–42.

DIVISION 4.—*Local environmental plans*—ss. 43–67.

DIVISION 5.—*Review and amendment of environ-
mental planning instruments*—ss. 68–93.

25 Subdivision 1.—*General*—ss. 68–73.

Subdivision 2.—*Minor amendments to local
environmental plans*—ss. 74–90.

30 Subdivision 3.—*Amendments to remove inconsis-
tencies between environmental planning
instruments*—ss. 91–93.

PART

Environmental Planning.

PART III.—ENVIRONMENTAL PLANNING CONTROL—
ss. 94–147.

DIVISION 1.—*General*—ss. 94–127.

DIVISION 2.—*Existing development*—ss. 128–137.

5 DIVISION 3.—*Demolition of buildings and works*—
ss. 138–147.

PART IV.—ENVIRONMENTAL PLANNING FOR LAND
OTHER THAN LAND TO WHICH A LOCAL
ENVIRONMENTAL PLAN APPLIES—ss. 148, 149.

10 PART V.—PRESERVATION OF BUILDINGS, WORKS AND
SITES—ss. 150–166.

PART VI.—IMPLEMENTATION AND ENFORCEMENT—
ss. 167–183.

PART VII.—MISCELLANEOUS—ss. 184–192.

15 PART VIII.—AMENDMENTS TO CERTAIN ACTS—s.
193.

SCHEDULES.

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

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

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

“category A development” means development referred
to in section 12 (a);

25 “category B development” means development referred
to in section 12 (b);

“category

Environmental Planning.

“category C development” means development referred to in section 12 (c);

“category D development” means development referred to in section 12 (d);

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

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

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

15 (b) confer on a council, the Minister or a public authority functions with respect to consenting to, permitting, regulating or restricting that development or that other Act, matter or thing, either unconditionally or subject to conditions, or prohibiting that development, or that other act, matter or thing;

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

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

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

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

(c) the use of a building or work, or of land; and

30 (d) the subdivision of that land,

but does not include any development of a prescribed class or description;

“development

Environmental Planning.

5 “development application” means an application for consent under Division 1 of Part III to carry out development and includes an application for the consent of a council made under the local environmental plan that a former planning instrument, as defined in clause 1 of Schedule 3, is deemed by clause 2 of that Schedule to be;

10 “environmental impact statement”, in relation to development, means a document—

- 10 (a) describing the document;
- (b) containing a statement of the objections of the development;
- (c) describing the environment that is likely to be affected by the development;
- 15 (d) describing the measures intended to be taken by the person proposing to carry out the development to protect the environment;
- (e) containing an analysis of the effect that each aspect of the development is likely to have on the environment and of any other practical means of achieving the objectives referred to in paragraph (b); and
- 20 (f) containing an assessment of the beneficial effects, the detrimental effects and the overall effect that the development, if carried out, would have on the environment;
- 25

30 “environmental planning instrument” means a State environmental planning policy, a regional environmental plan, an interim regional environmental plan or a local environmental plan;

“functions” includes powers, authorities and duties;

“interim

Environmental Planning.

“interim regional environmental plan” means—

- (a) an interim regional environmental plan made by the Minister under section 42 (1);
- (b) an order made under section 71 (b); or
- 5 (c) an order made under section 91 amending an interim regional environmental plan;

“local environmental plan” means—

- 10 (a) a draft local environmental plan approved and adopted by a council under section 62 (1);
- (b) a minor amendment plan; or
- (c) an order made under section 92 (1) (a);

15 “major development”, in relation to an environmental planning instrument, means category C development designated as major development in that environmental planning instrument;

“minimum requirements” means those provisions of an environmental planning instrument by or under which requirements are specified in respect of—

- 20 (a) the area or frontage of any land, the dimensions of any land, building or work or the distance of any building or work from any specified point;
- 25 (b) the proportion or percentage of a site which a building or work may occupy or the ratio between the part of a site not occupied by a building or work and the part so occupied;
- 30 (c) the height, cubic content or floor space of a building or the number of persons who may occupy a building;
- (d) the external appearance of a building or work;

(e)

Environmental Planning.

- (e) the space required for the parking, standing or loading of vehicles;
- (f) the road pattern in any subdivision of land;
- (g) the landscaping or treatment of a site; or
- 5 (h) such other matters as may be prescribed;

“minor amendment plan” means a draft minor amendment plan approved and adopted by a council under section 86 (1);

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

“public authority”—

15 (a) except as provided in paragraph (b), means any body, person, Government Department or part of a Government Department whose name is for the time being included in Schedule 1; and

20 (b) where any body, person, Government Department or part of a Government Department is specified in Schedule 1 in relation to a provision of this Act, means, in relation to that provision, that body, person, Government Department or part of a Government Department;

25 “region” means any part of the State that the Minister, under subsection (7), declares to be a region;

“regional environmental plan” means—

- (a) a regional environmental plan made by the Minister under section 37 (1);
- (b) an order made under section 70 (b); or
- 30 (c) an order made under section 91 amending a regional environmental plan;

“regulation”

Environmental Planning.

“regulation” means regulation made under this Act;

“special development” means development, or development of a class or description, that is prescribed as special development and that is carried out or to be carried out by a public authority;

“State environmental planning policy” means—

(a) a State environmental planning policy made by the Minister under section 22 (1); or

(b) an order made under section 69 (b);

“Tribunal” has the meaning ascribed thereto in the Local Government Act, 1919.

(2) A reference in this Act to—

(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;

(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;

(c) a work includes a reference to any activity carried out on land that is specified by a regulation to be a work for the purposes of this Act but does not include any activity that is specified by a regulation not to be a work for the purposes of this Act; and

(d) the subdivision of land is a reference to the subdivision of land within the meaning of the Local Government Act, 1919, any other division of land into two or more parts which, after the division, would be obviously adapted for separate occupation or the

redivision

Environmental Planning.

5 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 but does not include a reference to a subdivision effected under Division 1 of Part II of the Strata Titles Act, 1973.

(3) Where functions are conferred or imposed by or under this Act on a council—

- 10 (a) except as provided in paragraph (b), those functions may be exercised or performed in respect of an area by the council of that area; or
- 15 (b) if the functions are conferred or imposed in respect of part of an area, those functions may be exercised or performed 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.

(5) Subject to section 45, a reference in this Act to the Commission or a council preparing an environmental planning instrument or an environmental study includes a reference to the Commission or a council, as the case may be, causing that environmental planning instrument or environmental study to be prepared on its behalf.

(6) The Governor may by proclamation published in the Gazette amend Schedule 1—

- 30 (a) by including therein the name of any body, person, Government Department or part of a Government Department carrying out functions of a public nature;

(b)

Environmental Planning.

- (b) by omitting therefrom the name of any body, person, Government Department or part of a Government Department carrying out functions of a public nature;
- 5 (c) by amending the name of any body, person, Government Department or part of a Government Department whose name is included therein; or
- 10 (d) by specifying a provision of this Act in relation to which a body, person, Government Department or part of a Government Department specified in that Schedule is so specified.
- (7) The Minister may, by order published in the
15 Gazette, declare any part of the State, whether or not consisting of areas or parts of areas, to be a region for the purposes of this Act.
- (8) A reference in this Act to a direction is a reference to a direction in writing.
- 20 (9) A power, express or implied, to give a direction under this Act includes a power to revoke or amend the direction.
- (10) A reference in this Act to a consent includes, in relation to a local environmental plan which a former plan-
25 ning instrument, as defined in clause 1 of Schedule 3, is by clause 2 of that Schedule deemed to be, a reference to an approval or a permission.
- (11) A reference in this Act to a prescribed form includes a reference to a form that is to the effect of that
30 prescribed form.

Environmental Planning.

5. The objects of this Act are—Objects
of Act.

(a) by environmental planning (including the reservation and zoning of land) and the control of development to ensure—

- 5 (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 to promote the social and economic welfare of the community and a better environment;
- 10 (ii) the conservation of important areas of landscape on the coast and elsewhere in the State;
- 15 (iii) the preservation of historic buildings, works and sites and of areas of special environmental value from an aesthetic, scientific or historical point of view;
- 20 (iv) the protection and provision of essential elements of State, regional and local communication networks and utility networks;
- 25 (v) the provision of land for public and community purposes of a State, regional and local nature;
- (vi) the provision of regional and local community facilities;
- (vii) the preservation and protection of the environment; and
- 30 (viii) the co-ordination of State environmental planning policies, regional environmental plans, interim regional environmental plans and local environmental plans with respect to the protection of the environment;

(b)

Environmental Planning.

(b) to confer on councils greater power relating to local environmental planning; and

(c) to provide greater opportunity for public involvement and participation in regional and local environmental planning.

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

PART II.

ENVIRONMENTAL PLANNING INSTRUMENTS.

DIVISION 1.—*General.*

7. An environmental planning instrument may be made in accordance with this Part.

8. In making an environmental planning instrument—

(a) the Minister in respect of an environmental planning instrument other than a local environmental plan; or

(b) the council in respect of a local environmental plan,

shall have regard to the objects of this Act.

9. (1) An environmental planning instrument shall, to the extent to which—

(a) the Minister in respect of an environmental planning instrument other than a local environmental plan; or

(b)

Environmental Planning.

(b) the council in respect of a local environmental plan, considers it necessary to do so, state the aims, objectives, policies and strategies whereby that environmental planning instrument is designed to achieve any one or more of the
5 objects of this Act.

(2) 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.

10 **10.** An environmental planning instrument may make provision for or with respect to any one or more of the following :—

Contents of
environ-
mental
planning
instruments.

- (a) protecting, improving or utilising, to the best advantage, the environment ;
- 15 (b) controlling development ;
- (c) designating land for use exclusively for the purpose of a public place or public reserve within the meaning of the Local Government Act, 1919, a public cemetery, a public hospital, a public railway,
20 a public school or any other purpose that is prescribed as a public purpose for the purposes of this section ;
- (d) demolishing buildings or works ;
- (e) protecting or preserving trees ;
- 25 (f) controlling any act, matter or thing for or with respect to which provision may be made under paragraph (a) or (e) ; and
- (g) the making of appeals to the Tribunal in respect of any decision made under the environmental plan-
30 ning instrument with respect to any act, matter or thing for or with respect to which provision may be made under paragraph (f).

Environmental Planning.

11. (1) An environmental planning instrument, other than a local environmental plan, may suspend, either generally or in any particular case or class of cases, the operation of any provision of any Act, other than this Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made to the extent to which that provision is inconsistent with any of the provisions of that environmental planning instrument or of any consent given under the provisions of that environmental planning instrument.

Suspension of inconsistent laws, etc., by environmental planning instruments.

(2) On the date on which a local environmental plan takes effect, any proclamation made under section 309 (1) of the Local Government Act, 1919, applying to the land to which that local environmental plan applies shall, to the extent to which that proclamation applies to that land, be revoked.

(3) A local environmental plan may, with the approval of the Minister, suspend the operation of Schedule 7 to the Local Government Act, 1919, to the extent to which that Schedule is inconsistent with any of the provisions of that local environmental plan or of any consent given under the provisions of the local environmental plan.

12. Where an environmental planning instrument makes provision for or with respect to controlling development, that environmental planning instrument may, in the case of an environmental planning instrument other than a local environmental plan, and shall, in the case of a local environmental plan, classify development only according to any one or more of the following categories :—

Classification of development.

30 (a) category A—development, not being category B development, that may be carried out without the prior consent of the council having to be obtained therefor;

(b)

Environmental Planning.

- 5 (b) category B—development that may be carried out without the prior consent of the council having to be obtained therefor and that complies with any minimum requirements of that environmental planning instrument;
- (c) category C—development that may be carried out with the prior consent of the council therefor; and
- (d) category D—development that is prohibited.

13. Where an environmental planning instrument
10 classifies development as category C development—

Category C
development—
major
development.

- 15 (a) that environmental planning instrument may, in the case of an environmental planning instrument other than a local environmental plan, designate all category C development or any class of category C development as major development; and
- (b) that environmental planning instrument, in the case of a local environmental plan—
 - 20 (i) shall adopt any designation of category C development or class of category C development as major development made pursuant to paragraph (a) in any environmental planning instrument applying to the land to which that local environmental plan applies; and
 - 25 (ii) may designate all category C development or any class of category C development other than that category C development referred to in subparagraph (i), if any, as major development.

Environmental Planning.

- 14.** Where an environmental planning instrument classifies development as category C development, that environmental planning instrument may provide that the carrying out of such category C development or class of category C development as is specified in that environmental planning instrument shall not be consented to without the concurrence of the Minister or such public authority as is named in that environmental planning instrument in relation to that development. Category C development—con-
currence.
- 15.** Where an environmental planning instrument designates land for use exclusively for a purpose referred to in section 10 (c), that environmental planning instrument shall make provision for or with respect to the acquisition of that land by a public authority (not being a provision for or with respect to the compulsory acquisition of that land) unless the land is owned by a public authority and is held by that public authority for that purpose. Reservation
of land.
- 16.** 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 any person or body specified in the environmental planning instrument. Authori-
sation of
matters
under
environ-
mental
planning
instruments.
- 17.** (1) Subject to this Act and the regulations, the form and content of an environmental planning instrument shall be determined by— Form of
environ-
mental
planning
instruments.
- 25 (a) the Minister in respect of an environmental planning instrument other than a local environmental plan; and
- (b) the council in respect of a local environmental plan.
- (2) An environmental planning instrument may, by reference, adopt wholly or partially any set of model provisions contained in the regulations.

Environmental Planning.

- 18.** (1) Sections 18, 42 and 43 of the Interpretation Act, 1897, apply to an environmental planning instrument in the same way as they apply to instruments or regulations respectively referred to in those sections. Environ-
mental
planning
instruments—
making,
operation
and
inspection.
- 5 (2) Section 41 of the Interpretation Act, 1897, applies to a State environmental planning policy, a regional environmental plan and an interim regional environmental plan in the same way as it applies to a regulation that is made by the Governor.
- 10 (3) A State environmental planning policy, a regional environmental plan and an interim regional environmental plan shall be available for public inspection at the office of the Commission during ordinary office hours.
- 15 (4) A document purporting to be an environmental planning instrument and to be printed by the Government Printer or by the authority of the Government is admissible in evidence in any legal proceedings and is prima facie evidence of the due making of that instrument and the contents thereof.
- 20 (5) For the purposes of this Act, an environmental planning instrument shall be deemed to have been laid before a House of Parliament or to have been published in the Gazette notwithstanding that any planning map or other instrument referred to in that environmental planning instrument is not so laid or published.
- 25 **19.** For the purpose of any legal proceedings, an environmental planning instrument is not invalid by reason only of any failure to comply with any provision of Division 2, 3, 4 or 5 with respect to its making. Non-
compliance
with
statutory
provisions.

Environmental Planning.

DIVISION 2.—State environmental planning policies.

20. (1) The Commission may resolve to prepare a draft State environmental planning policy with respect to such matters as are, in the opinion of the Commission, of significance for environmental planning for the State and are specified in the resolution.

Decision or direction to prepare draft State environmental planning policy.

(2) The Minister may direct the Commission to prepare a draft State environmental planning policy with respect to any matter specified in the direction, being a matter which is, in the opinion of the Minister, of significance for environmental planning for the State.

(3) Without limiting the powers of the Minister under section 4 (1) (a) of the State Planning Authority Act, 1963, where the Minister, under subsection (2), directs the Commission to prepare a draft State environmental planning policy with respect to any matter relating to the functions of the State Pollution Control Commission, he may, in that direction, require the Commission to consult with, and have regard to any recommendations made by, the State Pollution Control Commission and such other persons as may be specified in the direction.

(4) The Commission shall comply with any direction given to it by the Minister under subsection (2).

21. The Commission may submit a draft State environmental planning policy to the Minister.

Submission of draft State environmental planning policy to the Minister.

Environmental Planning.

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

Making of State environmental planning policies by the Minister.

- 5 (a) in accordance with the draft State environmental planning policy submitted to him; or
- (b) in accordance with that draft with such alterations as he thinks fit.

(2) The Minister shall not make a State environmental planning policy except with respect to such matters as 10 are, in his opinion, of significance for environmental planning for the State.

(3) A State environmental planning policy may apply to the State or such part of the State as is described in that State environmental planning policy.

15 DIVISION 3.—*Regional environmental plans and interim regional environmental plans.*

23. (1) The Commission may resolve to prepare a draft regional environmental plan with respect to such region as is specified in the resolution and with respect to such matters 20 as are, in the opinion of the Commission, of significance for environmental planning for that region.

Decision or direction to prepare draft regional environmental plan.

(2) The Minister may direct the Commission to prepare a draft regional environmental plan with respect to any matter specified in the direction, being a matter which is, 25 in the opinion of the Minister, of significance for environmental planning for such region as is specified in the direction.

(3)

Environmental Planning.

(3) Without limiting the powers of the Minister under section 4 (1) (a) of the State Planning Authority Act, 1963, where the Minister, under subsection (2), directs the Commission to prepare a draft regional environmental plan with respect to any matter relating to the functions of the State Pollution Control Commission, he may, in that direction, require the Commission to consult with, and have regard to any recommendations made by, the State Pollution Control Commission.

10 (4) The Commission shall comply with any direction given to it by the Minister under subsection (2).

(5) A direction given by the Minister under subsection (2) shall, for the purposes of sections 24, 37, 38 and 42, be deemed to be a resolution made by the Commission under subsection (1) to prepare a draft regional environmental plan with respect to the matter referred to in the direction.

24. (1) Where the Commission makes a resolution under section 23 it shall, except as provided in subsection (3), prepare an environmental study of the land to which the draft regional environmental plan is intended to apply.

(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 plan is intended to apply, as the Commission determines.

(3) Where a draft regional environmental plan is intended only to amend a regional environmental plan or to repeal in whole or in part a regional environmental plan, the Commission may dispense with the preparation of an environmental study of the land to which the draft regional environmental plan is intended to apply.

Environmental Planning.

25. When the environmental study referred to in section 24 (1) has been prepared, the Commission shall—

Public
exhibition
of environ-
mental
study.

(a) give public notice, in a form and manner determined by the Commission, of—

5 (i) the terms of the resolution made under section 23; and

10 (ii) the place at which, the dates on which, and the times during which, a copy of that environmental study may be inspected by the public;

(b) publicly exhibit a copy of that environmental study at the place, on the dates and during the times set out in the notice referred to in paragraph (a); and

15 (c) specify, in the notice given under paragraph (a), the period during which submissions may be made to the Commission in accordance with section 26.

26. Any person may, during the period referred to in section 25 (c), make a submission to the Commission with respect to—

Making
of sub-
missions.

20 (a) the aims, objectives, policies and strategies in accordance with which the draft regional environmental plan referred to in the resolution made under section 23 should be prepared;

25 (b) the terms of the resolution made under section 23; or

(c) the environmental study referred to in section 24 (1).

27.

Environmental Planning.

27. Where the Commission has dispensed with the preparation of an environmental study under section 24 (3), such of the provisions of sections 25 and 26 as refer to an environmental study shall, for the purposes of the preparation of the draft regional environmental plan referred to in section 24 (3), be deemed to be omitted therefrom.

Modification of ss. 25, 26 where regional environmental plan is repealed in whole or in part.

28. (1) At any time after the expiration of the period referred to in section 25 (c), the Commission—

Preparation of draft regional environmental plan.

(a) may, pursuant to its resolution under section 23, prepare a draft regional environmental plan with respect only to the matters specified in that resolution; or

(b) if after consideration of the submissions made to it under section 26 it thinks fit to do so, may resolve to prepare a draft regional environmental plan—

(i) with respect only to some of those matters; or

(ii) with respect to all or any of those matters and such other matters as it thinks fit and as are, in the opinion of the Commission, of significance for environmental planning with respect to the region referred to in that resolution.

(2) The preparation of a draft regional environmental plan pursuant to subsection (1) (paragraph (a) excepted) shall not be commenced unless the Commission has first given public notice, in a form determined by the Commission and in the manner in which public notice was given of the terms of the resolution referred to in subsection (1) (a), of the terms of the resolution made by it under subsection (1) (b).

(3)

Environmental Planning.

(3) Where public notice of a resolution made by the Commission under subsection (1) (b) is given in accordance with subsection (2), that resolution shall, for the purposes of sections 37, 38 and 42, be deemed to be a resolution made 5 by the Commission under section 23 to prepare a draft regional environmental plan with respect to the matters in respect of which the Commission resolved under subsection (1) (b) to prepare a draft regional environmental plan.

29. In the exercise of its functions with respect to the Consultation.
10 preparation of a draft regional environmental plan, the Commission shall—

(a) have regard to any submissions made to it under section 26;

(b) where—

15 (i) an advisory council has been constituted under the Regional Organisation Act, 1972, in respect of the whole or any part of the land to which that draft regional environmental plan applies, if directed to do so by
20 the Minister, consult with that advisory council or a committee of that advisory council; or

25 (ii) no advisory council has been constituted under the Regional Organisation Act, 1972, in respect of the whole or any part of the land to which that draft regional environmental plan applies, if directed to do so by the Minister, consult with such councils as are specified in that direction whose areas
30 are affected by that draft regional environmental plan,

concerning the provisions of that draft regional environmental plan; and

(c)

Environmental Planning.

- (c) consult with each council whose area or part of whose area is situated in the region to which that draft regional environmental plan is intended to apply (except where that consultation has occurred pursuant to paragraph (b) (ii)), with such other public authorities as, in the opinion of the Commission, will be affected by that draft regional environmental plan and with such other persons concerning the provisions of that draft regional environmental plan as it determines.

30. To facilitate the preparation of a draft regional environmental plan, a public authority—

Information from public authorities.

- (a) shall, if requested to do so by the Commission, furnish such information and provide such assistance as may reasonably be required by the Commission in the preparation of that draft regional environmental plan; and
- (b) shall notify the Commission of any information or any actual or proposed activity or work that, in its opinion, is relevant to the provisions of that draft regional environmental plan.

31. The Commission shall ensure that a draft regional environmental plan is not inconsistent with any State environmental planning policy applying to the land to which that draft regional environmental plan applies.

Consistency with State environmental planning policies.

32. When a draft regional environmental plan has been prepared by the Commission, it shall—

Public exhibition of draft regional environmental plan.

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

(b)

Environmental Planning.

- (b) publicly exhibit that draft regional environmental plan at the place, on the dates and during the times set out in the notice referred to in paragraph (a); and
- 5 (c) specify, in the notice given under paragraph (a), the period during which submissions may be made to the Commission in accordance with section 33.

33. Any person may, during the period referred to in Submis-
section 32 (c), make submissions to the Commission with sions.
10 respect to a draft regional environmental plan publicly
exhibited under section 32 (b).

34. The Commission shall consider any submissions made Considera-
to it under section 33. tion of
submissions.

35. (1) The Commission—

- 15 (a) may amend a draft regional environmental plan as Amendment
a consequence of its consideration of any of draft
submissions made to it under section 33; regional
environ-
mental
plan.
- (b) may, if it thinks fit, publicly exhibit that amended
draft regional environmental plan at such places, on
20 such dates and during such times as it determines;
and
- (c) where it publicly exhibits that amended draft
regional environmental plan under paragraph (b),
25 shall give public notice, in a form and manner
determined by the Commission, specifying the
period during which submissions may be made to
the Commission in accordance with section 33, as
applied by subsection (2).

(2)

Environmental Planning.

(2) Where the Commission publicly exhibits an amended draft regional environmental plan under subsection (1) (b), sections 33 and 34 and subsection (1) apply to that amended draft regional environmental plan in the same way as they apply in respect of a draft regional environmental plan.

36. (1) The Commission may submit a draft regional environmental plan, whether amended or not, to the Minister.

Submission of draft regional environmental plan to the Minister.

(2) A draft regional environmental plan submitted to the Minister under subsection (1) may be expressed to apply to the whole or any part of a region.

(3) Where a draft regional environmental plan submitted to the Minister under subsection (1) is expressed to apply to part only of a region—

- 15 (a) the Commission may subsequently submit a draft regional environmental plan to the Minister with respect to the remaining part or any part of the remaining part of the region; and
- 20 (b) the provisions of this Division, except sections 33, 34 and 35, do not apply in respect of a draft regional environmental plan referred to in paragraph (a).

(4) A draft regional environmental plan submitted to the Minister under subsection (1) or (3) shall be accompanied by any submission made to the Commission under section 33 by a public authority, a council or an advisory council constituted under the Regional Organisation Act, 1972, or a committee of such an advisory council and by a summary of any other submissions made to the Commission under section 33.

Environmental Planning.

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

Making of regional environmental plans by the Minister.

- 5 (a) in accordance with the draft regional environmental plan submitted to him; or
- (b) in accordance with the draft regional environmental plan with such alterations as he thinks fit.

(2) The Minister shall not make a regional environmental plan except with respect to such matters as are, in his
10 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 that
15 regional environmental plan.

(4) Upon the making of a regional environmental plan setting forth the terms of the resolution for its preparation made under section 23, every interim regional environmental plan made pursuant to that resolution ceases to have any force
20 or effect.

38. (1) Subject to subsection (3), the Commission may, pursuant to a resolution made under section 23 to prepare a draft regional environmental plan with respect to a region and with respect to any matter, prepare a draft interim
25 regional environmental plan with respect to that region and with respect to that matter.

Decision or direction to prepare draft interim regional environmental plan.

(2)

Environmental Planning.

(2) Where the Commission has made a resolution under section 23 to prepare a draft regional environmental plan with respect to any region and with respect to any matter, the Minister may, subject to subsection (3), direct the Commission to prepare a draft interim regional environmental plan pursuant to that resolution with respect to that region or with respect to such part of that region as is specified in that direction and with respect to any such matter as is specified in that direction.

(3) The Commission shall not, pursuant to subsection (1), prepare a draft interim regional environmental plan and the Minister shall not give a direction under subsection (2) for the preparation of a draft interim regional environmental plan unless, in the opinion of the Commission or the Minister, as the case may be, there are special circumstances that warrant the making of an interim regional environmental plan in order to control any development pending the making of a regional environmental plan.

(4) Where the Minister, under subsection (2), directs the Commission to prepare a draft interim regional environmental plan with respect to any matter relating to the pollution of the environment, he may, in that direction, require the Commission to consult with, and have regard to any recommendations made by, the State Pollution Control Commission.

(5) The Commission shall comply with any direction given to it by the Minister under subsection (2).

39. Where the Commission decides to prepare a draft interim regional environmental plan under section 38 (1), it shall—

(a) prepare such environmental study as it thinks fit of the land to which the draft interim regional environmental plan is intended to apply;

(b)

Preparation
of draft
interim
regional
environ-
mental
plan.

Environmental Planning.

- (b) consult with such persons as it thinks fit concerning the provisions of that draft interim regional environmental plan ;
- (c) where directed to do so by the Minister—
 - 5 (i) publicly exhibit that draft interim regional environmental plan at such places, on such dates and during such times as he specifies in the direction ; and
 - 10 (ii) give public notice, in such form and manner as is specified in the direction, of the period during which submissions may be made to the Commission with respect to that draft interim regional environmental plan ; and
 - 15 (d) consider any submissions referred to in paragraph (c) (ii).

40. Sections 30 and 31 apply in respect of a draft interim regional environmental plan in the same way as they apply to a draft regional environmental plan.

Application of ss. 30, 31.

41. The Commission may submit a draft interim regional environmental plan to the Minister.

Submission of draft interim regional environmental plan to the Minister.

42. (1) Subject to subsection (3), the Minister may, on the submission to him by the Commission of a draft interim regional environmental plan, make an interim regional environmental plan—

Making of interim regional environmental plans by the Minister.

- 25 (a) in accordance with the draft interim regional environmental plan submitted to him ; or

(b)

Environmental Planning.

(b) in accordance with the draft interim regional environmental plan with such alterations as he thinks fit.

(2) An interim regional environmental plan shall
5 apply to such region or part of a region as is described in that interim regional environmental plan.

(3) The Minister shall not make an interim regional environmental plan unless, in his opinion, there are special circumstances that warrant its making in order to control any
10 development pending the making of a regional environmental plan.

DIVISION 4.—Local environmental plans.

43. Where two or more councils decide to join in the preparation of a draft local environmental plan under section
15 44 (2), a reference in this Division—

Interpre-
tation:
Pt. II,
Div. 4.

(a) except in section 44, to a council includes a reference to those councils; and

(b) to an area includes a reference to the areas of those councils.

20 **44.** (1) A council may, in respect of the whole or any part of the land within its area to which a regional environmental plan or an interim regional environmental plan applies, resolve to prepare a draft local environmental plan.

Decision
to prepare
draft local
environ-
mental plan.

(2)

Environmental Planning.

(2) Two or more councils may, in respect of the whole or any part of the land within their areas to which a regional environmental plan or an interim regional environmental plan applies, decide, by resolution of each council, to
5 join in the preparation of a draft local environmental plan.

(3) Where two 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
10 purpose of preparing that draft local environmental plan.

45. A council which makes a resolution under section 44 (1) or (2) shall, unless the Commission otherwise approves, appoint or employ a person who has a prescribed environmental planning qualification to assist it in the preparation of
15 or to prepare on its behalf the draft local environmental plan.

46. (1) The Minister may direct a council to prepare a draft local environmental plan or two or more councils to join in the preparation of a draft local environmental plan.
Direction from Minister to prepare a draft local environmental plan.

(2) A direction given under subsection (1) to—

20 (a) a council to prepare a draft local environmental plan shall be deemed to be a resolution made under section 44 (1); and

(b) two or more councils to join in the preparation of a draft local environmental plan shall be deemed to
25 be a resolution made under section 44 (2).

47.

Environmental Planning.

47. (1) Where a council makes a resolution under section 44 (1) or (2), it shall prepare an environmental study of the land to which the draft local environmental plan is intended to apply and shall, where the regulations so provide, do so in accordance with the regulations.

Preparation
of environ-
mental
study.

(2) 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 determines.

48. When the environmental study referred to in section 47 (1) has been prepared, the council shall—

Public
exhibition
of environ-
mental
study.

(a) give public notice, in a form and manner determined by the council, of—

(i) the terms of the resolution made under section 44 (1) or (2); and

(ii) the place at which, the dates on which, and the times during which, a copy of that environmental study may be inspected by the public;

(b) publicly exhibit—

(i) a copy of that environmental study; and

(ii) any regional environmental plan or interim regional environmental plan applying to the land to which the draft local environmental plan referred to in the resolution made under section 44 (1) or (2) is intended to apply,

at the place, on the dates and during the times set out in the notice referred to in paragraph (a); and

Environmental Planning.

- (c) specify, in the notice given under paragraph (a), the period during which submissions may be made to the council in accordance with section 49.
- 49.** Any person may, during the period referred to in section 48 (c), make a submission to the council with respect to— Making of submissions.
- (a) the aims, objectives, policies and strategies in accordance with which the draft local environmental plan referred to in the resolution made under section 44 (1) or (2) should be prepared;
- (b) the terms of the resolution made under section 44 (1) or (2); or
- (c) the environmental study referred to in section 47 (1).
- 50.** At any time after the expiration of the period referred to in section 48 (c), the council may prepare a draft local environmental plan. Preparation of draft local environmental plan.
- 51.** In the exercise of its functions with respect to the preparation of a draft local environmental plan, the council shall— Consultation and compliance with the Minister's directions.
- (a) have regard to any submissions made to it under section 49;
- (b) consult with—
- (i) such public authorities as, in its opinion, will be affected by that draft local environmental plan; and
- (ii)

Environmental Planning.

- (ii) where that draft local environmental plan applies to land adjoining a boundary between the council's area and another area, the council for that other area;
- 5 (c) consult with such other persons concerning the provisions of that draft local environmental plan as it determines; and
- (d) comply with any direction given to it with respect to that draft local environmental plan by the Minister.
- 10 25. A public authority—
- (a) may furnish such information and provide such assistance as it deems proper to assist a council in the preparation of a draft local environmental plan; and
- 15 (b) may notify the council of any information or any actual or proposed activity or work that, in its opinion, is relevant to the provisions of a draft local environmental plan.
- 20 53. The council shall ensure that a draft local environmental plan is not inconsistent with any State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft local environmental plan applies.
- 25 54. When a draft local environmental plan has been prepared, the council shall submit a copy of that draft local environmental plan to the Commission.
- 55.

Information from public authorities.

Consistency with other environmental planning instruments.

Submission of copy of draft local environmental plan to the Commission.

Environmental Planning.

55. Where the Commission receives a copy of a draft local environmental plan from a council under section 54, it may issue to that council a certificate stating that, in the opinion of the Commission, the draft local environmental plan is not inconsistent with any State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft local environmental plan applies.

Certificate
of the
Commission.

56. (1) Where a council receives a certificate from the Commission under section 55 with respect to a draft local environmental plan, it shall—

Public
exhibition
of draft
local
environ-
mental
plan.

(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, that draft local environmental plan may be inspected by the public;

(b) publicly exhibit that draft local environmental plan at the place, on the dates and during the times set out in the notice referred to in paragraph (a); and

(c) specify, in the notice given under paragraph (a), 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 58.

(2) A draft local environmental plan shall be publicly exhibited for the prescribed period.

Environmental Planning.

57. Where a proclamation made under section 309 (1) of the Local Government Act, 1919, applies to any part of the land to which a draft local environmental plan applies, the council shall, on the public exhibition of that draft local environmental plan under section 56 (1) (b)—

Proclama-
tions
under s. 309
(1) of the
Local
Government
Act, 1919.

- (a) exhibit a copy of that proclamation;
- (b) exhibit a plan of the land to which that proclamation applies; and
- (c) state that that proclamation will be revoked as a consequence of the approval and adoption of that draft local environmental plan by the council under section 62 (1).

58. Any person may, during the period referred to in section 56 (1) (c), make submissions in writing to the council with respect to the provisions of a draft local environmental plan publicly exhibited under section 56 (1) (b), other than those provisions of that draft local environmental plan which are necessary to make it consistent with the provisions of a State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft local environmental plan applies.

Making of
submissions.

59. (1) The council shall consider and, where necessary, determine any submissions made to it under section 58, other than any submissions referred to in subsection (2), and shall, where regulations so require, do so in the manner prescribed by those regulations.

Considera-
tion and
determina-
tion of
submissions.

Environmental Planning.

(2) The council shall inform the Minister, as soon as practicable after the time for the making of submissions has expired, of any submissions made to it under section 58—

- (a) by a public authority, other than that council;
- 5 (b) with respect to the functions of a public authority, other than that council; or
- (c) arising from the inclusion of a proposal of a public authority, other than that council, in the draft local environmental plan.

10 (3) The Minister shall consider and, where necessary, determine any submissions referred to in subsection (2).

(4) The Minister shall direct the council as to the manner in which any determinations made by him under subsection (3) shall be given effect to.

15 60. (1) The council—

- (a) may amend a draft local environmental plan following its consideration and determination, in accordance with section 59 (1), of any submissions made to it under section 58;
- 20 (b) shall amend a draft local environmental plan to give effect to any direction made by the Minister under section 59 (3) and to enable the council to execute a certificate under section 61;
- 25 (c) may, if it thinks fit, publicly exhibit that amended draft local environmental plan where it is amended pursuant to paragraph (a) at such places, on and

Amendment
of draft
local
environ-
mental
plan.

(d)

Environmental Planning.

(d) where it publicly exhibits that amended draft local environmental plan under paragraph (c), shall give public notice, in a form and manner determined by the council, specifying the period during which submissions may be made to the council in accordance with section 58, as applied by subsection (2).

(2) Where the council publicly exhibits an amended draft local environmental plan under subsection (1) (c), sections 58 and 59 and subsection (1) apply in respect of that amended draft local environmental plan in the same way as they apply to a draft local environmental plan.

61. Where a council has prepared a draft local environmental plan or an amended draft local environmental plan in accordance with this Division, it shall execute a certificate in the prescribed form certifying that—

(a) the council in the preparation of that draft local environmental plan or that amended draft local environmental plan, as the case may be, has complied with such directions as have been given to it with respect to that draft local environmental plan or that amended draft local environmental plan, as the case may be, by the Minister;

(b) that draft local environmental plan or that amended draft local environmental plan, as the case may be, is not inconsistent with any State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft local environmental plan or that amended draft local environmental plan, as the case may be, applies;

(c)

Environmental Planning.

- (c) that draft local environmental plan or that amended draft local environmental plan, as the case may be, gives effect to the determinations of the council under section 59 (1) ;
- 5 (d) that draft local environmental plan or that amended draft local environmental plan, as the case may be, gives effect to the determinations of which the Minister has informed the council under section 59 (4) ; and
- 10 (e) that draft local environmental plan or that amended draft local environmental plan, as the case may be, has otherwise been prepared in accordance with this Act and the regulations.

15 **62.** (1) A council which has executed a certificate under section 61 may, by resolution, approve and adopt a draft local environmental plan or an amended draft local environmental plan, as the case may be, prepared by it. Approval and adoption of draft local environmental plan.

(2) A resolution made by a council under subsection (1) shall not be capable of alteration or rescission by that
20 council.

63. A council which makes a resolution under section 62 shall— Notice of resolution.

- 25 (a) within 7 days after the making of that resolution, deliver a copy of that resolution, a copy of the certificate executed under section 61 and a copy of the local environmental plan approved and adopted by that resolution to the Commission ; and

(b)

Environmental Planning.

- (b) publish a notice with respect to that resolution in the prescribed form in a daily newspaper circulating throughout the State and a newspaper circulating in the area.

5 **64.** (1) A local environmental plan made in accordance with this Division shall be published in the Gazette and shall take effect on and from the date of publication of that local environmental plan in the Gazette or a later date specified in that local environmental plan.

Publication of local environmental plan made in accordance with this Division in the Gazette.

10 (2) The Commission may, with the approval of the Minister, give a direction to the council not to publish a local environmental plan made in accordance with this Division in the Gazette until such day, being a day that is at least one month after the date of the resolution under section 62 (1)
15 relating to that local environmental plan, as is specified in the direction.

(3) A local environmental plan made in accordance with this Division shall not be published in the Gazette until—

20 (a) the expiration of one month after the date of the resolution under section 62 (1) relating to that local environmental plan; or

(b) the date specified in a direction relating to that local environmental plan given under subsection (2),

25 whichever is the later.

Environmental Planning.

65. A local environmental plan made under this Division to the extent to which it is inconsistent with a regional environmental plan or an interim regional environmental plan is of no force or effect.

Inconsistency between other environmental planning instruments and a local environmental plan made in accordance with this Division.

5 66. Within 14 days after the publication in the Gazette of a local environmental plan made under this Division, the council shall deliver to the Commission a copy of the prescribed notice referred to in section 63 (b) and of that local environmental plan and 3 copies of any planning maps
10 or other instruments referred to in that plan that were not published in the Gazette.

Notice to the Commission.

67. A local environmental plan shall be available for public inspection at the office of the council during ordinary office hours and at the office of the Commission during
15 ordinary office hours.

Public inspection of local environmental plan.

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

Subdivision 1.—General.

68. In this Division, “amended” includes added to,
20 altered or varied.

Interpretation:
Pt. II,
Div. 5.

69.

Environmental Planning.

69. A State environmental planning policy—Amend-
ment,
etc., of
State en-
vironmental
planning
policies.(a) may be amended or repealed in whole or in part
by another State environmental planning policy; or(b) may be repealed in whole or in part by order of
the Minister.**70. A regional environmental plan—**Amend-
ment, etc.,
of regional
environ-
mental
plans.(a) may be amended or repealed in whole or in part
by—

(i) another regional environmental plan; or

(ii) an interim regional environmental plan; or

(b) may be repealed in whole or in part by order of
the Minister.**71. An interim regional environmental plan—**Amend-
ment, etc.,
of interim
regional
environ-
mental
plans.(a) may be amended or repealed in whole or in part
by another interim regional environmental plan; or(b) may be repealed in whole or in part by order of
the Minister.**72. A local environmental plan may be amended or
repealed in whole or in part by—**Amend-
ment, etc.,
of local
environ-
mental
plans.

(a) another local environmental plan; or

(b) an order under section 92 (1) (a) or 92 (2) (a).

73.

Environmental Planning.

73. (1) The Commission shall, for the purpose of determining whether it is desirable that State environmental planning policies in force under this Act should be amended or repealed in whole or in part, periodically, at such intervals as it may determine or as the Minister may direct, examine those State environmental planning policies.

Review of
environ-
mental
planning
instruments.

(2) The Commission shall, for the purpose of determining whether it is desirable that regional environmental plans or interim regional environmental plans in force under this Act should be amended or repealed in whole or in part, periodically, at such intervals as it may determine or as the Minister may direct, examine all those regional environmental plans and interim regional environmental plans.

(3) A council shall, for the purpose of determining whether it is desirable that local environmental plans in force under this Act should be amended or repealed in whole or in part, periodically, at such intervals as it may determine, examine those local environmental plans.

Subdivision 2.—*Minor amendments to local environmental plans.*

74. Where two or more councils decide to join in the preparation of a draft minor amendment plan under section 75 (2), a reference in this Subdivision—

Interpre-
tation:
Pt. II,
Div. 5—
Subdiv. 2.

(a) except in section 75, to a council includes a reference to those councils; and

(b) to an area includes a reference to the areas of those councils.

Environmental Planning.

75. (1) A council may, in respect of the whole or any part of the land within its area to which a local environmental plan applies, resolve to prepare a draft minor amendment plan.

Decision to prepare draft minor amendment plan.

5 (2) Two or more councils may, in respect of the whole or any part of the land within their areas to which a local environmental plan applies, decide, by resolution of each council, to join in the preparation of a draft minor amendment plan.

10 (3) Where two or more councils decide to join in the preparation of a draft minor amendment 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 minor amendment plan.

15 **76.** A draft minor amendment plan may only contain provisions that—

Provisions of draft minor amendment plans.

(a) effect amendments to a local environmental plan that are, in the opinion of the council, of a minor nature;

20 (b) repeal in whole or in part a local environmental plan if, in the opinion of the council, the repeal will not significantly affect the environmental planning of its area; or

(c) give effect to a direction referred to in section 92 (1) (b),

25

but shall not contain provisions relating to any matter that is a prescribed matter for the purposes of this section.

77. Where a council makes a resolution under section 75 (1) or (2), it shall prepare a draft minor amendment plan.

Preparation of draft minor amendment plan.

78.

Environmental Planning.

78. In the exercise of its functions with respect to the preparation of a draft minor amendment plan, the council shall—

Consultation and compliance with the Minister's directions.

- 5 (a) consult with such public authorities as, in its opinion, will be affected by that draft minor amendment plan;
- (b) consult with such other persons concerning the provisions of that draft minor amendment plan as it determines; and
- 10 (c) comply with any direction given to it with respect to that draft minor amendment plan by the Minister.

79. The council shall ensure that a draft minor amendment plan is not inconsistent with any State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft minor amendment plan applies.

Consistency with other environmental planning instruments.

80. (1) When a draft minor amendment plan has been prepared, the council shall—

Procedure where draft minor amendment plan prepared.

- 20 (a) submit a copy of that draft minor amendment plan to the Commission;
- (b) 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, that draft minor amendment plan may be inspected by the public;
- 25 (c) publicly exhibit that draft minor amendment plan at the place, on the dates and during the times set out in the notice referred to in paragraph (b); and

(d)

Environmental Planning.

- (d) specify, in the notice given under paragraph (b), 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 81.

(2) A draft minor amendment plan shall be publicly exhibited for such period, being not less than 14 days, as the council may determine.

81. Any person may, during the period referred to in section 80 (1) (d), make submissions in writing to the council with respect to the provisions of a draft minor amendment plan publicly exhibited under section 80 (1) (c), other than those provisions of that draft minor amendment plan which are necessary to make it consistent with the provisions of a State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft minor amendment plan applies.

82. (1) The council shall consider and, where necessary, determine any submissions made to it under section 81, other than any submissions referred to in subsection (2).

(2) The council shall inform the Minister, as soon as practicable after the time for the making of submissions has expired, of any submissions made to it under section 81—

- (a) by a public authority, other than that council;
- (b) with respect to the functions of a public authority, other than that council; or
- (c) arising from the inclusion of a proposal of a public authority, other than that council, in the draft minor amendment plan.

(3)

Environmental Planning.

(3) The Minister shall consider and, where necessary, determine any submissions referred to in subsection (2).

(4) The Minister shall direct the council as to the manner in which any determinations made by him under subsection (3) shall be given effect to.

83. The council—

- 10 (a) may amend a draft minor amendment plan following its consideration and determination, in accordance with section 82 (1), of any submissions made to it under section 81; and Amendment of draft minor amendment plan.
- (b) shall amend a draft minor amendment plan to give effect to any direction of the Minister under section 82 (4) and to enable the council to execute a certificate under section 84.

15 **84.** Where a council has prepared a draft minor amendment plan or an amended draft minor amendment plan in accordance with this Subdivision, it shall execute a certificate in the prescribed form certifying that— Council's certificate.

- 20 (a) the council in the preparation of that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, has complied with such directions as have been given to it with respect to that draft minor amendment plan or that amended draft minor amendment plan, as the case
- 25 may be, by the Minister;
- (b) that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, is not inconsistent with any State environmental

planning

Environmental Planning.

- 5 planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, applies;
- (c) that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, gives effect to the determinations of the council under section 82 (1);
- 10 (d) that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, gives effect to the determinations of which the Minister has informed the council under section 82 (4); and
- 15 (e) that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, has otherwise been prepared in accordance with this Act and the regulations.
- 20 **85.** The council shall forward a copy of the certificate referred to in section 84 and a copy of the draft minor amendment plan or the amended draft minor amendment plan, as the case may be, to the Commission.
- 86.** (1) After the expiration of 7 days after the council has delivered to the Commission the certificate and a copy of a draft minor amendment plan or an amended draft minor amendment plan, as the case may be, in accordance with section 85, the council may, by resolution, approve and adopt a draft minor amendment plan or an amended draft minor amendment plan, as the case may be, prepared by it.

Forwarding
of copies
of certain
items by
the council
to the
Commission.

Approval
and
adoption of
draft minor
amendment
plan.

Environmental Planning.

(2) A resolution made by a council under subsection (1) shall not be capable of alteration or rescission by that council.

87. A council which makes a resolution under section 86 (1) shall publish a notice with respect to that resolution in the prescribed form in a daily newspaper circulating throughout the State and a newspaper circulating in the area.

Notice of
resolution.

88. (1) A local environmental plan made in accordance with this Subdivision shall be published in the Gazette and shall take effect on and from the date of publication of that local environmental plan in the Gazette or a later date specified in that local environmental plan.

Publication
of local
environ-
mental
plan made
in accord-
ance with
this
Subdivision
in the
Gazette.

(2) The Commission may, with the approval of the Minister, give a direction to the council not to publish a local environmental plan made in accordance with this Subdivision in the Gazette until such day, being a day that is at least 21 days after the date of the resolution under section 86 (1) relating to that local environmental plan, as is specified in the direction.

(3) A local environmental plan made in accordance with this Subdivision shall not be published in the Gazette until—

(a) the expiration of 21 days after the date of the resolution under section 86 (1) relating to that local environmental plan; or

(b) the date specified in a direction relating to that local environmental plan given under subsection (2),

whichever is the later.

Environmental Planning.

89. A local environmental plan made under this Subdivision to the extent to which it is inconsistent with a regional environmental plan or an interim regional environmental plan is of no force or effect.

Inconsistency between other environmental planning instruments and a local environmental plan made under this Subdivision.

90. Within 14 days after the publication in the Gazette of a local environmental plan made under this Subdivision, the council shall deliver to the Commission a copy of the prescribed notice referred to in section 87 and of that local environmental plan.

Notice to the Commission.

Subdivision 3.—Amendments to remove inconsistencies between environmental planning instruments.

91. Where, in the opinion of the Minister, a regional environmental plan or an interim regional environmental plan is inconsistent with or does not conform to the principles of a State environmental planning policy, whenever made, applying to the land to which that regional environmental plan or interim regional environmental plan, as the case may be, applies, the Minister, by order, shall, as soon as practicable, unless he has directed the Commission to prepare a draft regional environmental plan under section 23 (2) or a draft interim regional environmental plan under section 38 (2) to remove the inconsistency with or to achieve conformity with the principles of that State environmental planning policy, as the case may be, amend that regional environmental plan or interim regional environmental plan, as the case may be, to remove the inconsistency with or to achieve conformity with the principles of that State environmental planning policy.

Removal of inconsistencies, etc., between regional environmental planning instruments and State environmental planning policies.

Environmental Planning.

92. (1) Where, in the opinion of the Minister, a local environmental plan is inconsistent with or does not conform to the principles of a State environmental planning policy, a regional environmental plan or an interim regional environmental plan, whenever made, applying to the land to which that local environmental plan applies, the Minister shall, as soon as practicable—

Removal of inconsistencies, etc., between local environmental plans and other environmental planning instruments.

(a) by order, amend that local environmental plan; or

10 (b) direct the council to amend that local environmental plan,

to remove the inconsistency with or to achieve conformity with the principles of that State environmental planning policy, regional environmental plan or interim regional environmental plan, as the case may be.

15 (2) Where, in the opinion of the Minister, a council has not complied with any directions given to it with respect to the preparation of a local environmental plan, the Minister may—

(a) by order, amend that local environmental plan; or

20 (b) direct that council to amend that local environmental plan,

to make that local environmental plan conform to the directions so given to it.

25 (3) Where the Minister gives a direction to a council under subsection (1) (b) or (2) (b), that council shall immediately commence to prepare a draft minor amendment plan in accordance with Subdivision 2 to give effect to that direction.

30 93. An order under section 91, 92 (1) (a) or 92 (2) (a) shall take effect on and from the date of publication of that order in the Gazette or a later date specified in that order.

Effect of notification.

PART

Environmental Planning.

PART III.

ENVIRONMENTAL PLANNING CONTROL.

DIVISION 1.—*General.*

94. In this Part—

Interpreta-
tion:
Part III.

5 “demolition application” means an application for
consent to demolish a building or work;

“objector”, in relation to a development application,
means a person who makes an objection under
section 110.

01

10 95. A person may, on land in relation to which, under
the terms of an environmental planning instrument, develop-
ment is classified as category A development, carry out
development so classified, without the prior consent of the
council having to be obtained therefor under this Act.

Category A
develop-
ment. 21

15 96. A person may, on land in relation to which, under
the terms of an environmental planning instrument, develop-
ment is classified as category B development, carry out
development so classified, without the prior consent of the
council having to be obtained therefor under this Act, in
20 compliance with any minimum requirements specified in
relation to that development in that environmental planning
instrument.

Category B
develop-
ment. 22

25 97. A person shall not, on land in relation to which,
under the terms of an environmental planning instrument,
development is classified as category C development, carry
out development so classified, without the prior consent of the
council therefor under this Act.

Category C
develop-
ment. 23

Environmental Planning.

98. Except as provided in section 241 (1) (c), a person shall not, on land in relation to which, under the terms of an environmental planning instrument, development is classified as category D development, carry out development so
5 classified.

Category D
develop-
ment.

99. (1) A development application may be made by—
(a) the owner of the land to which that development
application relates; or

Making of
development
applica-
tions.

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

(2) Nothing in subsection (1) (b) requires a lawful
occupier of Crown lands within the meaning of the Crown
Lands Consolidation Act, 1913, who makes a development
15 application with respect to the whole or any part of the lands
occupied by him to obtain the consent, in writing or otherwise,
of the Minister for the time being administering that Act.

20 (3) A development application shall be made in the
prescribed form and manner and shall embody such evidence
as the applicant considers appropriate to demonstrate that he
has given appropriate consideration to the impact that the
development to which that development application relates
will have on the environment.

25 (4) A development application shall be accompanied
by such fee as is prescribed or, where no fee is prescribed, by
such fee as is determined by the council.

30 (5) The council may, by notice in writing sent by
post to a person making a development application, require
that person to furnish to the council such further information
(whether or not in the form of an environmental impact
statement) with respect to the development to which that
development application relates and within such time as may
be specified in the notice.

(6)

Environmental Planning.

(6) Where a council under subsection (5) requires a person to furnish further information with respect to development to which a development application relates, the development application shall, for the purposes of section 117, be deemed to have been served on the council only when that further information is furnished.

100. A description of a purpose for which a building, work or land may be used for the purpose of classifying development as category C development in an environmental planning instrument shall not prevent a council from—

Descriptions of purposes in environmental planning instruments.

- (a) requiring a development application to specify a more particular purpose coming within that description; or
- (b) granting a consent under this Division for a more particular purpose coming within that description.

15

101. (1) Where an environmental planning instrument provides that such development as is specified in that environmental planning instrument shall not be consented to without the concurrence of the Minister or such public authority as is named in that environmental planning instrument in relation to that development, the council shall, unless the concurrence of the Minister or that public authority may be assumed under section 104—

Seeking concurrence of Minister or public authority.

- (a) forward a copy of any development application made in respect of that kind of development to the Minister or that public authority; and

25

- (b) notify the applicant of the action taken by it under paragraph (a).

(2)

Environmental Planning.

(2) Where development, being development that may not be carried out except with the consent of the council is of a prescribed class of description or the council is, in relation to any particular development that may not be carried out except with the consent of the council, directed by the State Pollution Control Commission to do so, the council shall, unless the concurrence of the State Pollution Control Commission may be assumed under section 104—

- 10 (a) forward a copy of any development application made in respect of development of that class or description or that particular development, as the case may be, to the State Pollution Control Commission; and
- 15 (b) notify the applicant of the action taken by it under paragraph (a).

102. The Minister or a public authority referred to in section 101 may, with respect to development the subject of a development application a copy of which has been forwarded to him or it under section 101 (1) (a) or (2) (a)—

Granting or refusal of concurrence by Minister or public authority.

- 20 (a) give concurrence, either unconditionally or subject to conditions; or
- (b) refuse concurrence.

103. (1) The Minister or a public authority referred to in section 101 shall inform the council 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 101 (1) (a) or (2) (a)—

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

- 30 (a) except as provided by paragraph (b)—within a period of 40 days after receipt of the copy of that development application; or

(b)

Environmental Planning.

(b) where, within the period referred to in paragraph (a), the Minister or a public authority sends by post to the council and the applicant a notice informing it and him that the Minister or public authority is unable to deal with that development application within that period and specifies in that notice a longer period within which the Minister or public authority will deal with that application—that longer period.

(2) Where the Minister or a public authority referred to in section 101 does not inform the council of his or its decision within the period referred to in subsection (1) (a), or the longer period referred to in subsection (1) (b), as the case may be, the council may determine the development application without the concurrence of the Minister or that public authority, as the case may be.

104. (1) Where under an environmental planning instrument development may not be consented to without the concurrence of the Minister or such public authority as is named in that environmental planning instrument in relation to that development or development is of a class or description, or is the subject of a direction, referred to in section 101 (2), the Minister or the public authority concerned may inform the council, by notification in writing, that the concurrence may be assumed in such circumstances as are specified in the notification.

Circumstances in which concurrence may be assumed.

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

(3)

Environmental Planning.

(3) A consent given by a council which has assumed the concurrence of the Minister or a public authority in accordance with a notification given by him or it under subsection (1) is as valid and effective as if the council had
5 obtained the concurrence of the Minister or that public authority pursuant to sections 101, 102 and 103.

105. (1) Where the carrying out of development is
consented to with the concurrence of the Minister or a public
authority given under section 102 (a), that consent shall be
10 given subject to any conditions subject to which that
concurrence was given. Giving
effect to
concurrence.

(2) Where the carrying out of development is
consented to with the concurrence of the Minister or a public
authority pursuant to a notification given under section 104
15 (1), that consent shall be given subject to any conditions
specified with respect to that kind of development in that
notification.

(3) Nothing in subsection (1) or (2) affects the
right of the council to impose conditions, not inconsistent
20 with the conditions referred to in subsection (1) or (2), under
section 113.

106. Where under an environmental planning instrument
development may not be consented to without the concurrence
of the Minister or such public authority as is named in that
25 environmental planning instrument in relation to that develop-
ment or development is of a class or description, or is the
subject of a direction, referred to in section 101 (2), a consent
(other than a consent given pursuant to a determination
referred to in section 103 (2)) given—

30 (a) without the concurrence of the Minister or the
public authority concerned; or

(b)

Environmental Planning.

(b) not subject to such conditions, if any, as are referred to in section 105 (1) or (2),

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

107. (1) Where a development application is made for consent to carry out major development, the council shall—

Objections
to major
develop-
ment.

10 (a) send, by post, written notice of that development application to such persons as appear to it to own the land adjoining the land to which that development application relates and to such other persons as appear to it to own land the enjoyment of which, in the opinion of the council, may be detrimentally affected if that major development is carried out;
15 and

(b) after doing so, cause notice, in such form as may be prescribed, of that development application to be published in a newspaper circulating in the area of that council.

20 (2) Without limiting the generality of subsection (1) (a), land adjoins other land if it is a lot, within the meaning of the Strata Titles Act, 1973, forming part of a parcel, within the meaning of that Act, which parcel adjoins that other land.

25 (3) A notice referred to in subsection (1) shall contain a statement to the effect that the development application referred to in the notice and any documents accompanying that development application and in the custody of the council may be inspected at the office of the council at
30 any time during ordinary office hours within a period of 21 days after the day on which notice of that development application is published in a newspaper in accordance with subsection (1) (b).

108.

Environmental Planning.

108. (1) Notwithstanding section 107, where—

- 5 (a) a development application referred to in section 107 is amended by a subsequent development application or a subsequent development application is made in substitution for a development application referred to in section 107; and
- (b) the council has with respect to that development application referred to in section 107 complied in all respects with section 107,

Circumstances in which compliance with s. 107 may be dispensed with.

10 the council 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 107 with respect to that subsequent development application, decide to dispense with
15 compliance with section 107.

(2) Section 107 does not apply in respect of a subsequent development application in respect of which a council has made a decision under subsection (1).

109. A council shall, during the period referred to in
20 section 107 (3), permit any person to inspect the development application and documents accompanying the development application and to make extracts or copies therefrom.

Inspection of development application, etc.

110. Any person may, during the period referred to in
25 section 107 (3), make an objection in writing, specifying the grounds of his objection, to the council to the granting of the development application referred to in section 107 (3).

Objectors.

111.

Environmental Planning.

111. A council to which a development application to carry out major development has been made shall not determine that development application until after the expiration of the period during which an objection to the granting of that development application may be made under section 110.

Restriction on determination by council of development application for major development.

112. (1) In determining a development application, a council shall take into consideration such of the following matters as are of relevance to the development the subject of that development application :—

Matters for consideration.

(a) the provisions of—

(i) any environmental planning instrument ;

(ii) any draft regional environmental plan that has been publicly exhibited pursuant to section 32 (b) ;

(iii) any draft local environmental plan in course of preparation in respect of which the Commission has issued a certificate under section 55 ; and

(iv) any draft minor amendment plan a copy of which has been submitted to the Commission under section 80 (1) (a),

applying to the land to which that development application relates ;

(b) the impact of that development on the environment and, where harm to the environment is likely to be caused, the 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 ;

(e)

Environmental Planning.

- 5 (e) the character, scale, density and height of that development in relation to the existing or likely future development on the land adjoining the land to which that development application relates and land in the locality;
- 10 (f) the size and shape of the land to which that development application relates, the siting of that development thereon and the area to be occupied by that development in relation to the size and shape of the land adjoining the land to which that development application relates and the development on that adjoining land;
- 15 (g) 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 and parking of vehicles within that development or on that land;
- 20 (h) whether essential services are available and adequate for that development;
- (i) whether adequate provision has been made for the landscaping of the land to which that development application relates;
- 25 (j) 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;
- (k) any objections made under section 110;
- (l) the circumstances of the case;
- 30 (m) the public interest; and
- (n) any other prescribed matter.

Environmental Planning.

(2) Nothing in subsection (1) authorises a council to take into consideration—

- 5 (a) the emission of air impurities from premises the subject of a development application where those premises are, or would as a result of the carrying out of the development to which the development application relates become, scheduled premises within the meaning of the Clean Air Act, 1961;
- 10 (b) the discharge of pollutants into any waters in accordance with a licence issued under the Clean Waters Act, 1970, or the use or proposed use of any apparatus, equipment or works in relation to which approval is required under section 19 of the Clean Waters Act, 1970; or
- 15 (c) the emission of noise from premises the subject of a development application where those premises are, or would as a result of the carrying out of the development to which the development application relates become, scheduled premises within the
- 20 meaning of the Noise Control Act, 1975.

113. (1) Subject to this Act, a council may determine a development application by granting consent to that development application, either unconditionally or subject to conditions, or by refusing consent. Determination of development application.

25 (2) Without affecting the operation of section 106, a consent granted by a council—

- 30 (a) to a development application in respect of a category C development, being a consent granted otherwise than in accordance with this Act or any environmental planning instrument applying to the land to which that development application relates, is void; or
- (b) to carry out category D development is void,

but nothing in this subsection affects the liability of a council
35 in respect of a consent so granted.

114.

Environmental Planning.

114. (1) Where development the subject of a develop-
ment application is likely to require the provision of or to
increase the demand for amenities or services within the
locality in which that development will, if consent is granted
5 thereto, be carried out, the council shall be entitled to impose
as a condition of its consent a condition that the applicant for
that consent shall pay to such public authority as is specified
in the condition a reasonable amount towards the provision,
extension or improvement of those amenities or services.
- 10 (2) Except where the electricity authority con-
cerned directs the council not to impose a condition under
this subsection, the council shall be entitled to impose as a
condition of its consent to a development application with
15 respect to the subdivision of land for residential purposes a
condition that the applicant for that consent shall pay a
reasonable amount equal to the difference between the cost of
overhead and underground electricity supply mains.
- (3) The council shall in imposing a condition
referred to in subsection (1) take into consideration any land
20 provided for the purpose of providing amenities or services in
the locality by the person, being a public authority, making
the development application and any contribution made by
such a person to any public authority for that purpose.
- (4) A public authority to which any amount is paid
25 pursuant to a condition imposed under subsection (1) should
hold that amount upon trust for the provision of the amenities
or services specified in the condition.
- (5) A council shall not be entitled to impose a
condition under subsection (1) requiring the payment of an
30 amount to a public authority towards the provision, extension
or improvement of amenities or services if that public authority
is, under any Act, entitled to require the payment to it of an
amount in respect of the provision of those amenities or
services.

Environmental Planning.

115. (1) A council shall notify its determination of a development application to the applicant in the prescribed form.

Notification of council's determination to applicant.

(2) The notification referred to in subsection (1) shall, where a council determines a development application by granting consent to that development application subject to conditions or by refusing consent—

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

116. A council to which a development application to carry out major development has been made shall—

Notification of council's determination to objectors.

- (a) where it determines that development application after the expiration of the period during which an objection to the granting of that development application may be made under section 110, give notice, in the prescribed manner, of its determination of that development application; and
- (b) where it does not determine that development application before consent to that development application is deemed by section 117 to have been refused, notify, in writing, any objector of the right of the applicant to have his development application determined on appeal.

117. (1) Where a council has not determined a development application—

Circumstances in which consent is deemed to have been refused.

- (a) in the case of a development application in respect of development other than development referred to in paragraph (b), within a period of 40 days after service of that development application on the council;

Environmental Planning.

(b) in the case of a development application in respect of development referred to in section 101, within a period of 20 days after the expiration of the period referred to in section 103 (1) (a) or the longer period referred to in section 103 (1) (b), as the case may be; or

(c) in the case of a development application in respect of major development, within a period of 60 days after service of that development application on the council,

the council shall, for the purpose only of sections 119 and 123, be deemed to have determined that development application by refusing consent.

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

(3) The determination of a development application pursuant to subsection (2) shall not, where an appeal in respect of that development application has been made under section 119 (2) or 123 (1), prejudice or affect the making, continuance or determination of that appeal.

118. (1) A person being—

(a) a person who would, but for any minimum requirements of a local environmental plan, be entitled to carry out development without the consent of the council; or

(b) an applicant for consent to carry out development who, if his development application could, but for any minimum requirements of a local environmental plan, be granted by the council,

may lodge an objection with the council that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

Modifica-
tion of
minimum
require-
ments
of local
environ-
mental
plans.

(2)

Environmental Planning.

(2) An objection under subsection (1) shall, if the council so agrees, be referred to the Tribunal which, if it is of the opinion that the objection is well founded and that the environmental planning of the land to which the local
5 environmental plan applies would not be detrimentally affected if a direction were to be given under this subsection may, if the council so agrees, direct, by instrument in writing, that—

10 (a) such of the minimum requirements as are specified in the direction—

(i) shall not apply; or

(ii) shall apply with such modifications as are specified in the instrument,

15 in respect of the development to which the objection relates; or

(b) such other requirements as are specified in the direction shall apply in respect of the development to which the objection relates,

or give directions under both paragraphs (a) and (b).

20 (3) A direction given by the Tribunal under subsection (2) in respect of—

(a) an objection made by a person referred to in subsection (1) (a) shall have effect according to its tenor; and

25 (b) an objection made by an applicant referred to in subsection (1) (b) shall, if the development application is granted, have effect according to its tenor and, in the case of a direction referred to in subsection (2) (a) (ii) or (b), be embodied in that
30 consent as a condition of that consent.

(4)

Environmental Planning.

(4) Any act, matter or thing done or carried out in conformity with a direction given under subsection (2) shall not, by reason only of its being so done or carried out, be deemed not to be in conformity with any local environmental plan and a person is not guilty of an offence against a local environmental plan or this Act by reason only of his doing or carrying out any act, matter or thing in conformity with such a direction.

119. (1) This section does not apply with respect to a determination of a council with respect to a development application relating to special development. Appeal by an applicant.

(2) A person who is dissatisfied with the determination of a council with respect to his development application or whose development application is deemed to have been determined under section 117 may appeal to the Tribunal—

- (a) within 12 months after the date on which he received notification of that determination;
- (b) within 12 months after the expiration of the period referred to in section 117 in respect of that development application; or
- (c) within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

(3) On an appeal under subsection (2) relating to a development application for consent to carry out major development, each objector shall be given notice by the council of that appeal and may, within 14 days after the date on which he received that notice and in the prescribed manner, apply to the Tribunal for and may be granted leave to appear and be heard as if he were a party to the appeal.

(4)

Environmental Planning.

(4) An appeal under subsection (2) relating to a development application for consent to carry out major development in respect of which an objection has been made under section 110 shall not be heard by the Tribunal until 5 after—

- (a) the expiration of the time within which an objector may apply for leave to appeal to the Tribunal under section 120; or
- 10 (b) where, before the expiration of the time referred to in paragraph (a), an application is made by an objector for leave to appeal to the Tribunal under section 120, the application made by that objector has been determined.

15 **120.** (1) This section does not apply with respect to a **Appeal by** determination of a council with respect to a development **an objector.** application relating to special development.

(2) An objector who is dissatisfied with the determination of a council with respect to a development application may, within 14 days after the date on which notice 20 of the determination was given under section 116 (a) and in the prescribed manner, apply to the Tribunal for and may be granted leave to appeal to the Tribunal.

(3) Where leave to appeal is granted to an objector under subsection (2), the applicant in respect of 25 whose development application that appeal is made shall, within the prescribed time and in the prescribed manner, be given notice of that appeal by that objector and may appear and be heard on the hearing of that appeal as if he were a party to the appeal.

30 **121.** An appeal under or pursuant to leave granted under **Joint** section 119 and an appeal pursuant to leave granted under **hearing** section 120 made with respect to the same development **of certain** application shall be heard together. **appeals.**

Environmental Planning.

122. On an appeal to the Tribunal under or pursuant to leave granted under section 119 or 120, a person referred to in section 119 (2) may make an objection that compliance with any minimum requirements applying to that development to which that appeal relates is unreasonable or unnecessary in the circumstances of the case and the Tribunal may determine that objection in determining that appeal.

Determina-
tion on
appeal of
objections
to minimum
require-
ments.

123. (1) Where a public authority is dissatisfied with the determination of a council with respect to a development application in relation to special development made by it or such a development application is deemed to have been determined under section 117, it may appeal to the Minister—

Appeal by
a public
authority.

- (a) within 12 months after the date on which it received notification of that determination;
- (b) within 12 months after the expiration of the period referred to in section 117 in respect of that development application; or
- (c) within such longer period as the Minister may in special circumstances allow.

(2) The Minister may appoint a person to hear the appeal and to make a recommendation to him with respect to the determination of the appeal.

(3) The Minister may return any recommendation made pursuant to subsection (2) to the person who made it for further consideration and hearing and, if necessary, further recommendation to the Minister.

(4) The Minister may, after considering any recommendation made to him under subsection (2) or (3), as the case may be, determine the appeal by—

- (a) dismissing the appeal;
- (b) allowing the appeal either unconditionally or subject to conditions; or

(c)

Environmental Planning.

(c) where the appeal is against the imposition of conditions, refuse to grant consent to the development application referred to in the appeal.

(5) A determination of the Minister under subsection (4) shall be final and shall have effect as if it were a determination of the council.

(6) The Minister shall notify the council and the public authority concerned of his determination.

124. (1) A consent granted under this Division shall ^{Duration of} lapse if— _{consent.}

(a) except as provided in paragraphs (b) and (c), where that consent is granted by a council, the development the subject of that consent is not substantially commenced within a period of 2 years (which period is in subsection (3) referred to as "the prescribed period") after the date of final determination of that consent;

(b) except as provided in paragraph (c), where that consent is granted pursuant to an appeal under this Division, the development the subject of that consent is not substantially commenced within a period of 2 years (which period is in subsection (3) referred to as "the prescribed period" after the date of determination of that appeal; or

(c) where, within one year after—

(i) the date of final determination of a consent in respect of a consent granted by a council; or

(ii)

Environmental Planning.

(ii) the date of determination of an appeal under this Division in respect of a consent granted pursuant to such an appeal,
 5 an environmental planning instrument is made which classifies the development the subject of that consent as category D development for the purposes of that environmental planning instrument, that development is not substantially commenced within a period of one year (which period
 10 is in subsection (3) referred to as "the prescribed period") after the date on which that environmental planning instrument takes effect.

(2) Notwithstanding subsection (1), a consent granted under this Division in respect of development by a
 15 public authority shall, where the Minister so approves, lapse on such day (being a day later than the day upon which it would but for this subsection lapse) as the Minister specifies in his approval.

(3) Where, before the expiration of the first year
 20 of the prescribed period referred to in subsection (1) (a) or (b) or the expiration of the prescribed period referred to in subsection (1) (c), as the case may be, a bona fide application for an approval under Part XI or XII of the Local Government Act, 1919, is made with respect to the whole or any
 25 part of development the subject of a consent granted under this Division, that development shall, to the extent to which that application applies with respect to that development, be deemed, for the purposes of subsection (1), to be substantially commenced.

(4) Notwithstanding subsection (3), where an
 30 approval given to an application referred to in subsection (3) becomes void or lapses, the consent granted in respect of the development deemed, in whole or part, to have been substantially commenced under subsection (3) shall lapse.

Environmental Planning.

125. (1) Where the Minister considers it in the public interest proper to do so, he may direct a council to refer to him for determination a development application or such class or description of development applications as is specified in the direction.

Determina-
tion of
development
applications
by the
Minister.

(2) The Minister shall, in determining a development application referred to him under subsection (1), have regard to such of the matters referred to in section 112 as are of relevance to the development the subject of that development application.

(3) The Minister may determine a development application referred to him under subsection (1) by granting consent, either unconditionally or subject to conditions, or by refusing consent.

(4) A determination of the Minister under subsection (3) shall be final and shall have effect as if it were a determination of the council.

(5) The Minister shall notify the council and the applicant of his determination.

126. (1) A council may amend a consent granted under this Division the terms of which have been communicated to the applicant for that consent, with the approval of that applicant.

Amendment
of consents.

(2) Nothing in subsection (1) shall enable a council to amend—

(a) a consent to a development application to which an objection was duly made under section 110 unless the council is of the opinion that the amendment is proper having regard to the grounds of the objection;

(b)

Environmental Planning.

- (b) a condition referred to in section 105 (1) or (2) forming part of a consent granted under this Division;
- 5 (c) a condition referred to in section 118 (3) (b) embodied in a consent granted under this Division;
- (d) a consent granted pursuant to a determination of the Minister under section 125 (3); or
- (e) a consent given on an appeal to the Tribunal.

127. (1) A council shall keep a register of consents Register of consents.
 10 granted by it or the Minister under this Division and of decisions on appeal from any determination made by it under this Division.

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

DIVISION 2.—Existing development.

128. In this Division—

20 “appointed day”, in relation to a building or work or land, means the day on which an environmental planning instrument takes effect, being an environmental planning instrument that—

- (a) is made before or after the date of assent to this Act;
- (b) is in force under this Act;
- 25 (c) applies to that building, work or land; and
- (d) prohibits the use of that building or work or of that land for the purpose for which it was lawfully being used immediately before the appointed day;

Interpre-
tation:
Pt. III,
Div. 2.

“existing

Environmental Planning.

“existing building” means—

- (a) a building lawfully erected before the appointed day; or
- (b) a building the erection of which is substantially commenced within the prescribed period referred to in section 124 (1) (c);

“existing use” means—

- (a) the use of a building or work or of land for the purpose for which it was lawfully used immediately before the appointed day;

(b) in the case of—

- (i) a building the erection of which is substantially commenced within the prescribed period referred to in section 124 (1) (c); or

- (ii) a work the construction or carrying out of which is substantially commenced within the prescribed period referred to in section 124 (1) (c),

the use of that building or work for the purpose for which consent to the erection of that building or the carrying out of that work, as the case may be, was granted; or

- (c) in the case of a building or work or of land the use of which is changed pursuant to a consent referred to in section 135, the use consented to as referred to in that section;

“existing work” means—

- (a) a work lawfully carried out before the appointed day; or

(b)

Environmental Planning.

- (b) a work the construction or carrying out of which is substantially commenced within the prescribed period referred to in section 124 (1) (c).

5 **129.** An existing building or an existing work may be maintained and may be used for its existing use and an exist-
ing use of land may be continued notwithstanding Division 1
or the provisions of any environmental planning instrument
applying with respect to that existing building, existing work
10 or existing use.

Continuance
of existing
develop-
ment.

130. Except as provided by sections 131, 132 and 133,
an existing use of a building or work or of land shall be
limited to such area of that building, work or land as was
actually, physically and lawfully used for the purpose of that
15 existing use immediately before the date of assent to this Act
or the appointed day, whichever is the later.

Area of
existing
uses.

131. (1) An existing building may, with the consent of
the council granted under Division 1, be rebuilt.

Rebuilding
of existing
buildings.

(2) A consent referred to in subsection (1) shall
20 not permit the rebuilding—

- (a) to be for a purpose other than the purpose of
the existing use of the existing building; or
(b) to effect an increase of more than 10 per cent to the
floor space of the existing building as it was at the
25 appointed day.

132. (1) An existing building or an existing work may,
with the consent of the council granted under Division 1, be
altered or extended and new buildings or works ancillary to
that existing building or existing work may, with the consent
30 of the council, be erected, constructed or carried out.

Alteration,
etc., of
existing
buildings
and
existing
works.

(2)

Environmental Planning.

(2) A consent referred to in subsection (1) shall not permit the alteration, extension, erection, construction or carrying out, as the case may be—

- 5 (a) to be for a purpose other than the purpose of the existing use of the existing building or existing work; or
- (b) to effect an increase of more than 10 per cent to the floor space of the existing building or existing work as it was at the appointed day.

10 **133.** (1) An existing use of land may, with the consent of the council granted under Division 1, be extended. Extension of existing use of land.

(2) A consent referred to in subsection (1) shall not permit the extension—

- 15 (a) to be for a purpose other than the purpose of the existing use of the land; or
- (b) to effect an increase of more than 10 per cent to the surface area of the land as it was at the appointed day.

134. Not more than one consent referred to in section 132 or 133 shall be granted in respect of a building or work or of land. Limitation on consents referred to in ss. 132, 133.

135. An existing use of a building or work or of land for a purpose prohibited under an environmental planning instrument applying to that building, work or land may, notwithstanding Division 1, with the consent of the council granted under Division 1, be changed to a use for another purpose prohibited under that environmental planning instrument in relation to that building, work or land where, in the Alteration of purposes of existing uses.

opinion

Environmental Planning.

opinion of the council, the proposed use is for a purpose which is less objectionable and would have less adverse effect on the environment of the area in which the building, work or land is situated.

- 5 **136.** An existing use of a building or work or of land ceases if that use is abandoned, and without limiting the generality of the foregoing provisions of this section, an existing use of a building or work or of land ceases if that building, work or land is not used for the purpose of that
10 existing use for a continuous period of 18 months.

Cessation
of existing
uses.

- 137.** An environmental planning instrument may, with respect to the land to which that environmental planning instrument applies, suspend the operation of such of the provisions of this Division as are specified in that environ-
15 mental planning instrument other than sections 128, 129, 130, 134 and 136 and this section.

Suspension
of certain
provisions
of this
Division
by an
environ-
mental
planning
instrument.

DIVISION 3.—Demolition of buildings and works.

- 138.** (1) This Division does not apply to a building, work or site the subject of an interim preservation order or a
20 permanent preservation order as defined in section 150.

Application
of Division.

(2) Nothing in this Division affects the operation of a provision of an environmental planning instrument referred to in section 10 (d) that is not inconsistent with any provision of this Division.

- 25 **139.** Subject to any environmental planning instrument applying to any land to which Part XI of the Local Government Act, 1919, applies, a person shall not demolish a building or work of a prescribed class or description on any such land without the prior consent of the council.

Demolition
of buildings
and works.

Environmental Planning.

140. (1) A demolition application may be made by— Demolition application.

- (a) the owner of the land on which the building or work the subject of that demolition application is situated; or
- 5 (b) any person with the consent in writing of the owner of the land on which the building or work the subject of that demolition application is situated.

(2) A demolition application shall be made in the
10 prescribed form and manner.

(3) A demolition application shall be accompanied by such fee as is prescribed or, where no fee is prescribed, by such fee as is determined by the council.

141. In determining a demolition application a council
15 shall take into consideration such of the following matters as are of relevance to the demolition the subject of that demolition application:— Matters for consideration.

- 20 (a) the provisions of any environmental planning instrument applying to the land to which that demolition application relates;
- (b) the social, cultural, architectural or historic interest of the building or work to which that demolition application relates;
- 25 (c) the measures required to ensure the safety of persons on and in the vicinity of the land to which that demolition application relates;
- (d) the measures required to ensure the protection from damage of property in the vicinity of the land to which that demolition application relates;
- 30 (e) the amenity of the area and the measures required to prevent the possible interference with that amenity by reason of the emission of noise, vibration, dust or otherwise;

(f)

Environmental Planning.

- (f) the proposed means of demolition;
- (g) the disposal or removal of rubbish;
- (h) the time within which the demolition should be completed;
- 5 (i) the circumstances of the case; and
- (j) any other prescribed matter.

142. A council may determine a demolition application by granting consent to that demolition application, either unconditionally or subject to conditions, or by refusing
10 consent.

Deter-
mination
of demo-
lition
application.

143. In granting consent to a demolition application, a council may impose as a condition of its consent that the applicant enter into a bond in such amount as is determined by the council having regard to the nature and extent of the
15 demolition the subject of that demolition application to ensure satisfactory completion of the demolition.

Bond.

144. (1) A council shall notify its determination of a demolition application to the applicant in the prescribed form.

Notification
of council's
determina-
tion.

(2) The notification referred to in subsection
20 (1) shall, where a council determines a demolition application by granting consent to that demolition application subject to conditions or by refusing consent—

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

145.

Environmental Planning.

145. (1) Where a council has not determined a demolition application within a period of 40 days after service of that demolition application on the council, the council shall, for the purpose only of section 146, be deemed to have determined that demolition application by refusing consent. Circumstances in which consent is deemed to have been refused.

(2) Nothing in subsection (1) prevents a council from determining a demolition application after the expiration of the period referred to in subsection (1).

(3) The determination of a demolition application pursuant to subsection (2) shall not, where an appeal in respect of that demolition application has been made under section 146, prejudice or affect the making, continuance or determination of that appeal.

146. (1) A person who is dissatisfied with the determination of a council with respect to his demolition application or whose demolition application is deemed to have been determined under section 145 (1) may appeal, except where that person is a public authority, to the Tribunal and, where that person is a public authority, to the Minister—

(a) within 12 months after the date on which he received notification of that determination; or

(b) within 12 months after the expiration of the period referred to in section 145 (1).

(2) A determination of the Minister on an appeal under subsection (1) shall be final and shall have effect as if it were a determination of the council.

(3) The Minister shall notify the council and the public authority concerned of his determination on an appeal under subsection (1).

Environmental Planning.

147. Nothing in this Division affects the operation of any provision of any other Act relating to the demolition of a building or work.

Other
Acts not
affected
by this
Division.

PART IV.

5 ENVIRONMENTAL PLANNING FOR LAND OTHER THAN LAND TO WHICH A LOCAL ENVIRONMENTAL PLAN APPLIES.

148. (1) The Governor may make an order for the purposes of this Part conferring or imposing functions for or with respect to any matters referred to in section 10—

Environ-
mental
planning
orders.

- 10** (a) in respect of such land within an area as is specified or described by or under the order, other than land to which a local environmental plan applies—on the council;
- 15** (b) in respect of the Western Division within the meaning of the Crown Lands Consolidation Act, 1913—on such person or body as is appointed by the Minister, with the consent of the Minister for the time being administering the Crown Lands Consolidation Act, 1913.
- 20** (c) in respect of Lord Howe Island—on such person or body as is appointed by the Minister, with the consent of the Minister for the time being administering the Lord Howe Island Act, 1953; or
- (d) in respect of any land other than—
 - 25** (i) land with respect to which an order may be made under paragraph (a);
 - (ii) land to which a local environmental plan applies; or

(iii)

Environmental Planning.

(iii) land referred to in paragraph (b) or (c),
on such person or body as is appointed by the
Minister by the order.

(2) An order made under subsection (1) may
5 adopt wholly or partially or by reference and with or without
modification any of the provisions of Part II or III or may
contain any provisions which relate to any matter to which
Part II or III relates.

(3) An order made under subsection (1) shall be
10 published in the Gazette and take effect upon its publication
in the Gazette or a later date specified in the order.

149. An order made under section 148, to the extent to
which it is inconsistent with a regional environmental plan or
an interim regional environmental plan, is of no force or effect.

Incon-
sistency
between
certain
environ-
mental
planning
instruments
and orders
under
section 148.

15

PART V.**PRESERVATION OF BUILDINGS, WORKS AND SITES.**

150. In this Part—

“Committee” means the Historic Buildings and Sites
Advisory Committee constituted under section 151;

20 “interim preservation order” means an order made under
section 157 (1) that is in force;

“permanent preservation order” means an order made
under section 158 (1) that is in force;

“register”

Interpreta-
tion: Pt. V.

Environmental Planning.

"register" means the register referred to in section 156
(c).

151. (1) For the purposes of this Act, there shall be an
Historic Buildings and Sites Advisory Committee which shall
5 consist of 6 members.

Constitu-
tion of
Historic
Buildings
and Sites
Advisory
Committee.

(2) The members of the Committee shall be
appointed by the Minister and shall consist of—

- (a) a person who shall, in and by the instrument of
his appointment, be appointed as the Chairman of
the Committee;
- (b) a person nominated by the Minister for the time
being administering the Public Works Act, 1912;
- (c) a person nominated by the Minister holding the
prescribed portfolio;
- 15 (d) a person nominated by the Minister for the time
being administering the National Parks and Wild-
life Act, 1974;
- (e) a person appointed from a panel of 3 persons
nominated by the Royal Australian Historical
Society; and
- 20 (f) a person appointed from a panel of 3 persons
nominated by The National Trust of Australia
(New South Wales).

(3) Where any nomination of a member of the
25 Committee or of a panel for the purposes of subsection (2)
(e) or (f) is not made within the time or in the manner
specified by the Minister in a notice in writing given to the
body entitled to make any such nomination, the Minister may
appoint any person to be a member of the Committee instead
30 of the person required to be appointed on that nomination or
from that panel, as the case may be.

(4)

Environmental Planning.

(4) Each member of the Committee is entitled to receive such remuneration (including travelling and subsistence allowances) for attending meetings and transacting business of the Committee as the Minister may from time to time determine in respect of him.

(5) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of any member of the Committee, and any such member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

152. The members of the Committee shall, subject to section 153, hold office for a period of 5 years and shall, if otherwise qualified, be eligible for reappointment.

153. (1) On the occurrence of a vacancy in the office of a member of the Committee otherwise than by the expiration of the term for which he was appointed, the Minister may appoint a person to fill the vacant office so that the Committee is constituted as provided by section 151.

(2) A person appointed under subsection (1) shall, subject to this section, hold office for the balance of his predecessor's term of office.

(3) A member of the Committee shall be deemed to have vacated his office if he—

- (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

(d)

Environmental Planning

(d) is removed from office under subsection (4).

(4) The Governor may remove from office, for any cause which appears to him sufficient, any member of the Committee.

5 **154.** (1) The Minister may at any time appoint a person ^{Alternate} as an alternate member to act during the absence or illness of ^{members.} a member of the Committee.

(2) An alternate member shall have and may exercise and perform, while acting as a member of the Committee, the functions, as such a member, of the person for whom he is the alternate member.

10 **155.** (1) The procedure for the calling of meetings of ^{Meetings} the Committee and for the conduct of business at those ^{of the} meetings shall, subject to the regulations, be as determined ^{Committee.} 15 by the Committee.

(2) The Chairman of the Committee shall preside at all meetings of the Committee at which he is present, and in his absence the members of the Committee present shall appoint one of their number to preside at that meeting during 20 the Chairman's absence.

(3) Four members of the Committee shall form a quorum at any meeting of the Committee and any duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee.

25 (4) Questions arising at a meeting of the Committee shall be determined by a majority of votes of the members present and voting.

156.

Environmental Planning.

156. (1) The functions of the Committee shall be— Functions
of the
Committee.

- 5 (a) to recommend to the Minister the making, or the revocation, of permanent preservation orders in respect of any buildings, works or sites which the Committee considers are of such social, cultural, architectural or historic interest as to warrant the order being made;
- 10 (b) to recommend to the Minister the making, or the revocation, of interim preservation orders in respect of any buildings, works or sites;
- (c) to keep a register of buildings, works and sites the subject of interim preservation orders or permanent preservation orders;
- 15 (d) to recommend to the Minister, for inclusion in environmental planning instruments, provisions for or with respect to the preservation of buildings, works or sites which the Committee considers are of such importance to the environment as to warrant their being subject to those provisions, whether or
- 20 not interim preservation orders or permanent preservation orders are in force in respect of those buildings, works or sites; and
- (e) to exercise and perform such other functions as are conferred or imposed on it by this Part.

25 (2) The register shall, on payment of the prescribed fee, if any, be open to inspection during ordinary office hours by any person at such place as is notified by the Committee in the Gazette as the place at which the register is kept.

30 **157.** (1) Subject to subsection (2), the Minister may make an order, designated in the order as an interim preservation order, in respect of any building, work or site specified or described in the order. Interim
preservation
orders.

Environmental Planning.

(2) The Minister shall, before making an interim preservation order in respect of any building, work or site—

- 5 (a) request the Committee to furnish to him, within such period as is specified in the request, a recommendation with respect to the making of an interim preservation order in respect of the building, work or site; and
- 10 (b) defer making the order until the expiration of the period referred to in paragraph (a) and take into consideration any recommendation received by him pursuant to a request referred to in that paragraph.

(3) An interim preservation order shall take effect upon its being published in the Gazette.

- 15 (4) The Minister shall cause notice of an interim preservation order to be sent by post, as soon as practicable after the making of the order, to the council of the area, if any, in which the building, work or site the subject of the order is situated and to each person who appears to the Minister to be an owner of the land on which that building or work is
- 20 situated or that forms that site.

(5) An interim preservation order in respect of a building, work or site shall remain in force until—

- 25 (a) a permanent preservation order is made in respect of the building, work or site;
- (b) the interim preservation order is revoked by the Minister; or
- 30 (c) the expiration of one year after an objection to the Minister's determination on an application, referred to in section 160 or 161, in respect of the building, work or site to which the order relates is lodged with the Minister under section 162 (3),

whichever first occurs.

Environmental Planning.

158. (1) Subject to subsection (2), the Minister may make an order, designated in the order as a permanent preservation order, in respect of any building, work or site specified in the order.

Permanent
preservation
orders.

5 (2) The Minister shall, before making a permanent preservation order, in respect of any building, work or site—

- 10 (a) cause notice to be sent by post to the council of the area, if any, in which the building, work or site is situated and to each person who appears to the Minister to be an owner of the land on which the building or work is situated or that forms the site, informing the council and any such person that it or he may, within such period as is specified in the notice, make submissions to the Minister with respect to the making of a permanent preservation order in respect of the building, work or site;
- 15 (b) request the Committee to furnish to him, within such period as is specified in the request, a recommendation with respect to the making of a permanent preservation order in respect of the building, work or site; and
- 20 (c) defer making the order until the expiration of whichever of the periods referred to in paragraphs (a) and (b) expires the later and take into consideration any submissions received by him pursuant to paragraph (a) and any recommendation received by him pursuant to a request referred to in paragraph (b).
- 25

30 (3) The only grounds on which a person, other than a council, may make submissions to the Minister pursuant to subsection (2) (a) are that—

- (a) the building, work or site concerned should not be subject to a permanent preservation order by reason that such an order would render the building, work or site incapable of reasonable economic use; or
- 35

(b)

Environmental Planning.

5 (b) that the building, work or site concerned should not be subject to a permanent preservation order by reason that it is not of such social, cultural, architectural or historic interest as to warrant the order being made.

(4) A permanent preservation order shall take effect upon its being published in the Gazette.

10 (5) The Minister shall cause notice of a permanent preservation order to be sent by post, as soon as practicable after the making of the order, to the council of the area, if any, in which the building, work or site the subject of the order is situated and to each person who appears to the Minister to be an owner of the land on which that building or work is situated or that forms that site.

15 (6) A permanent preservation order shall remain in force until it is revoked by the Minister.

159. (1) Where an interim preservation order or a permanent preservation order is in force in respect of a building, work or site, a person shall not—

20 (a) wilfully demolish, damage or despoil the building or work or any part thereof, the land on which the building or work is situated or any part thereof or the site or any part thereof;

25 (b) carry out any development on the land on which the building or work is situated or that forms the site; or

(c) cut down, ringbark, top, lop, remove, wilfully injure or destroy any tree on the land on which the building or work is situated or that forms the site,

30 except with and in accordance with—

(d) the approval of the council of the area, if any, in which the building, work or site concerned is situated; or

(e)

Effect of interim preservation orders and permanent preservation orders.

Environmental Planning.

(e) except as provided in paragraph (a)—the approval of the Minister given under section 161.

Penalty : \$2,000 or imprisonment for 6 months, or both.

(2) Where a person convicted of an offence arising under subsection (1) is a body corporate, every person concerned in the management of that body corporate shall be deemed to have committed and may be convicted of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

10 **160.** (1) Subject to subsection (2), the council in whose area is situated any building, work or site in respect of which an interim preservation order or a permanent preservation order is in force has, notwithstanding any other provision of this Act or the Local Government Act, 1919, or of an environmental planning instrument, no power to deal with an application referred to in section 159 (1). Applications to councils in respect of buildings, works or sites the subject of interim preservation orders or permanent preservation orders.

(2) A council to which an application referred to in section 159 (1) is made shall—

- 20 (a) forthwith refer the application to the Minister and send by post to the applicant notice that it has done so;
- (b) defer any further action on the application until it has received from the Minister a direction referred to in section 162 (1) (a); and
- 25 (c) upon receipt of the direction deal with the application in accordance with the direction.

(3) Forthwith after the receipt by the council of a direction given to it by the Minister under section 162 (1) (a), the council shall embody the direction in a notice which shall be deemed to be the decision of the council on the application and which the council shall send by post to the applicant.

(4)

Environmental Planning.

(4) Sections 317L and 341 of the Local Government Act, 1919, and section 117 do not apply to a decision of the council referred to in subsection (3).

5 **161.** (1) An application for the Minister's approval referred to in section 159 (1) shall be made in writing and, where a form is prescribed, in that form by lodging the application at the office of the Minister.

Applications to Minister in respect of buildings, works or sites the subject of interim preservation orders.

(2) The decision of the Minister on an application referred to in subsection (1) shall be final and shall not be
10 subject to appeal.

162. (1) The Minister may, by instrument in writing—

Minister's powers with respect to applications referred to in section 160 or 161.

(a) in respect of an application referred to in section 160, direct the council—

- 15 (i) to refuse the application;
(ii) to approve the application unconditionally;
or
(iii) to approve the application subject to such conditions as are specified in the instrument; or

20 (b) in respect of an application referred to in section 161—

- (i) refuse the application;
(ii) approve the application unconditionally; or
25 (iii) approve the application subject to such conditions as are specified in the instrument.

(2) Where a building, work or site is subject to a permanent preservation order and an application referred to in section 160 or 161 is made to demolish the building or
30 work, the Minister shall not deal with the application under subsection (1) otherwise than in accordance with subsection (1) (a) (i) or (1) (b) (i), as the case may be.

(3)

Environmental Planning.

(3) The owner of any land on which is situated a building or work, or of land that forms a site, being a building, work or site that is subject to an interim preservation order and in respect of which an application referred to in subsection 5 (1) is dealt with otherwise than as referred to in subsection (1) (a) (ii) or (1) (b) (ii), may, within one year after the Minister's determination under subsection (1) in respect of the application is made, make to the Minister an objection in the prescribed form against the determination by lodging 10 the objection at the office of the Minister.

163. Where the Committee makes a recommendation for the making of a permanent preservation order, it may include in its recommendation—

Committee's recommendations with respect to permanent preservation orders.

15 (a) a recommendation that the building, work or site concerned should be acquired by the Commission pursuant to section 164 (1) (a); or

(b) a recommendation with respect to any one or more of the following matters :—

20 (i) that the building or work or the land on which the building or work is situated or, as the case may be, the land that forms the site should be subject only to provisions of any environmental planning instrument of such nature as may be specified in the recommendation;

25 (ii) that the owner of the land on which the building or work is situated or, as the case may be, of the land that forms the site should be granted financial assistance by way of loans or subsidies for the purpose of assisting him in the maintenance, repair or preservation of the building, work or site or in the use of the site for a purpose specified in the recommendation; or

(iii)

Environmental Planning.

5 (iii) that such special provisions for or with respect to the building or work or the land on which the building or work is situated or, as the case may be, the land that forms the site as are specified in the recommendation should be included in any environmental planning scheme.

164. Where the Committee makes a recommendation—

- 10 (a) referred to in section 163 (a), the Minister may, after making a permanent preservation order in respect of the building, work or site referred to in the recommendation, direct the Commission to acquire, out of money provided by the Minister from money appropriated by Parliament for the purpose, the land on which the building or work is situated or the site pursuant to section 16 of the State Planning Authority Act, 1963;
- 15 (b) referred to in section 163 (b) (ii), the Minister may, out of money appropriated by Parliament for the purpose, pay such amounts by way of financial assistance to the owner of the land to which the recommendation relates for any of the purposes referred to in section 163 (b) (ii) as he thinks fit; or
- 20 (c) referred to in section 163 (b) (iii), the Minister shall not make or amend, or direct the making or amendment of, an environmental planning instrument to give effect to the recommendation unless he has first consulted with—
- 25 (i) the Minister for the time being administering any Act or any Act under which an instrument may be made the suspension of which Act or instrument is proposed by the Minister in order to give effect to the recommendation; and
- 30 (ii)
- 35

Minister's powers to implement Committee's recommendations with respect to permanent preservation orders.

Environmental Planning.

- (ii) where the building, work or site is situated in an area, the council of that area; or

165. The Minister shall before revoking an interim preservation order or a permanent preservation order—

Revocation of interim preservation orders or permanent preservation orders.

- 5 (a) request the Committee to furnish to him, within such period as is specified in the request, a recommendation with respect to the revocation of the order; and
- 10 (b) defer revoking the order until the expiration of the period referred to in paragraph (a) and take into consideration any recommendation received by him pursuant to the request referred to in that paragraph.

166. (1) Where a permanent preservation order is in force—

Modification of certain Acts where permanent preservation order in force.

- 15 (a) the unimproved value or the unimproved capital value, as the case may be, under the Valuation of Land Act, 1916, or Schedule 3 to the Local Government Act, 1919, shall be determined having regard to the effect of this Part in relation to the land on which the building or work the subject of the permanent preservation order is situated or that forms the site the subject of the permanent preservation order, as the case may be; or
- 20 (b) the amount of land tax payable by the owner of the land on which the building or work the subject of the permanent preservation order is situated or that forms the site the subject of the permanent preservation order, as the case may be, shall be the total of the amounts of land tax that would be payable by that owner if those amounts were—
- 25 (i) calculated separately in respect of each parcel of land that is not exempt from taxation; and
- 30

(ii)

Environmental Planning.

- (ii) so calculated in the case of each such parcel as if it were the only land owned by that owner.

(2) The provisions of subsection (1) have effect notwithstanding the provisions of any other Act.

PART VI.

IMPLEMENTATION AND ENFORCEMENT.

167. (1) The Commission or a council may carry the provisions of an environmental planning instrument into effect by any one or more of the following methods :—

Carrying
environ-
mental
planning
instru-
ments
into
effect.

- (a) acquiring land;
- (b) causing an aligned public road to be realigned under the Public Roads Act 1902 in order to widen the road and by applying the realignment method under the Local Government Act, 1919, of acquisition;
- (c) taking such action as may be necessary to enforce the exercise or performance of a function conferred or imposed by or under the environmental planning instrument upon an owner, lessee, public authority or other person;
- (d) enforcing an agreement incorporated in the environmental planning instrument, or made subsequent to the environmental planning instrument, and relating to a matter dealt with in or arising out of the environmental planning instrument;
- (e) any other method specifically provided for in the environmental planning instrument; or

(f)

Environmental Planning.

(f) the exercise or performance of a function conferred or imposed upon it by or under this or any other Act.

(2) A council may, in addition to the functions conferred or imposed upon it under subsection (1), carry the provisions of an environmental planning instrument into effect by exercising, in accordance with the environmental planning instrument, its powers under the Local Government Act, 1919, to regulate the opening of a new road, the subdivision of land, the erection of buildings or any other matter appropriate to that environmental planning instrument.

(3) The Commission shall, for the purposes of subsection (1) (b), have all the powers of a council with respect to the realignment of public roads.

15 **168.** Section 317B (subsection (1) excepted) of the Local Government Act, 1919, applies in respect of a building erected or altered without the consent of a council granted under Division 1 of Part III in the same way as it applies in respect of a building erected or altered without the approval of the council referred to in Part XI of that Act.

Demolition orders.

169. (1) Subject to the provisions of an environmental planning instrument, the Commission or a council may, after giving the prescribed notice—

Enforcement of environmental planning instruments.

25 (a) without limiting section 168, remove, pull down or alter, so as to bring into conformity with the provisions of the environmental planning instrument, a building or work which does not conform to those provisions or in the erection or carrying out of which a provision of that environmental planning instrument has not been complied with or the demolition or alteration of which is necessary for carrying that environmental planning instrument into effect;

Environmental Planning.

- (b) where a building or work or land is being used contrary to this Act or a provision of the environmental planning instrument, prohibit that use of that building or work or of that land; or
- 5 (c) execute any work which it is the duty of any person to execute under the environmental planning instrument in any case where it appears to the Commission or the council that delay in the execution of the work would prejudice the efficient operation of
- 10 the environmental planning instrument.

(2) Where any action by the Commission or a council under subsection (1) is made necessary by the default or wrongful act of a person, the Commission or the council, as the case may be, may recover any expenses thereby
 15 incurred from that person as a debt in a court of competent jurisdiction.

170. (1) In this section, "existing building", "existing use" and "existing work" have the meanings attributed to them respectively in section 128. Compensation for certain damage.

- 20 (2) A person who suffers damage arising from—
- (a) the removal, pulling down or alteration of an existing building or existing work; or
- (b) the prohibition or restriction on the use of a building or work or of land which use was an existing
- 25 use of that building or work or of that land,

by reason of anything done by or on behalf or at the order of a council for the enforcement or carrying into effect of an environmental planning instrument shall, if he is an owner or a lessee of the land on which the building or work is
 30 situated or of the land, as the case may be, be entitled to compensation from the council in respect of that damage.

(d)

(3)

Environmental Planning.

(3) If a dispute or difference arises between a person referred to in subsection (2) and the council, that dispute or difference shall be determined—

- 5 (a) where the amount of compensation claimed does not exceed \$2,000—by a court of petty sessions held before a stipendiary magistrate sitting alone; or
- (b) where the amount of compensation claimed exceeds \$2,000—by the Supreme Court,
- 10 and judgment for the amount so determined shall be given and may be enforced as judgment for a debt.

(4) Proceedings for a determination under subsection (3) shall be commenced within such time and in such manner as may be prescribed.

- 15 **171.** (1) In this section, “planning instrument” means—
- (a) an environmental planning instrument; or
- (b) a prescribed scheme or an interim development order within the meaning of Part XIIA of the Local Government Act, 1919, as in force at any time
- 20 before the day appointed and notified under section 2 (2).

Value of reserved land on acquisition.

- (2) Where—
- (a) land designated under a planning instrument for use exclusively for a purpose referred to in section 10
- 25 (c) is compulsorily acquired; or
- (b) land the subject of a permanent preservation order made under Part V is compulsorily acquired,

pursuant

Environmental Planning.

pursuant to any Act, the value of that land shall, notwithstanding any other Act, be—

- 5 (c) in respect of land referred to in paragraph (a), the market value of that land on the date on which it is so acquired having regard to the restrictions, if any, that applied to that land under a planning instrument immediately before the land was designated by the planning instrument referred to in paragraph (a) or, where the land was so designated by more than one planning instrument, by whichever of those planning instruments first took effect; and
- 10
- 15 (d) in respect of land referred to in paragraph (b), the market value that that land would have had on the date on which it is so acquired if that land were not the subject of a permanent preservation order made under Part V.

172. (1) The Commission may, by notice in writing, require any person to furnish to it such information in connection with any matter relating to its functions as may be specified in the notice. Persons may be required to furnish information.

20

(2) A person shall not neglect or fail to comply with a requirement made under this section.

Penalty : \$1,000.

- 25 (3) Any information furnished pursuant to a requirement made under subsection (1) shall not, if the person furnishing the information objected, at the time of furnishing it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against that
- 30 person for any offence, not being the offence of neglecting or failing to comply with any requirement made under subsection (1).

173.

Environmental Planning.

173. (1) The Minister may direct a public authority having functions conferred or imposed upon it by or under this Act, an environmental planning instrument or an order made by the Governor under section 148 to exercise or perform those functions at such times and in such manner, not inconsistent with any provision made by or under this Act, that environmental planning instrument or that order, as are specified in that direction.

Directions
by the
Minister.

(2) A public authority shall comply with a direction given to it under subsection (1) in accordance with the terms of that direction.

174. (1) If at any time it appears to the Minister that it is expedient that any development for which consent has been granted by a council pursuant to a development application should not be carried out or completed, or should not be carried out or completed to the extent or in the manner allowed by the consent, he may, by instrument in writing sent by post to all persons who, in his opinion, will be thereby affected, revoke or modify the consent.

Revocation
or modifica-
tion of
development
consent.

(2) The Minister, before sending an instrument under subsection (1), shall, by notice in writing sent by post to the council and each person referred to in subsection (1) inform that council and each such person that it or he may appear before and be heard by a person appointed by the Minister for the purpose and shall afford that council and each such person an opportunity of so appearing and being heard.

(3) A person referred to in subsection (1) shall be entitled to recover from the council compensation for expenditure, other than expenditure incurred after the date of service of a notice on him under subsection (2), which is rendered abortive by a revocation or modification made under subsection (1).

(4)

Environmental Planning.

(4) If a dispute or difference arises between a person referred to in subsection (1) and the council, that dispute or difference shall be determined—

- 5 (a) where the amount of compensation claimed does not exceed \$2,000—by a court of petty sessions held before a stipendiary magistrate sitting alone; or
- (b) where the amount of compensation claimed exceeds \$2,000—by the Supreme Court,

and judgment for the amount so determined shall be given and
10 may be enforced as judgment for a debt.

(5) Proceedings for a determination under subsection (4) shall be commenced within such time and in such manner as may be prescribed.

175. (1) Where, in the opinion of the Minister, a council
15 fails to comply with, carry into effect or enforce the provisions of an environmental planning instrument or Part V, the Minister may, by notification published in the Gazette, appoint the Commission to administer all, or such part as is specified in the notification, of the functions conferred or imposed on
20 that council by or under this Act or that Part, as the case may be, and may in like manner at any time revoke that appointment.

Appoint-
ment of
Commission
as environ-
mental
planning
adminis-
trator.

(2) The Commission shall, in respect of anything done or omitted to be done during the period of its appoint-
25 ment under subsection (1), have the functions of the council specified in the notification of its appointment and shall, in the exercise or performance of those functions, be deemed to be the council.

(3) The Commission shall, during the period of its
30 appointment under subsection (1), be paid out of the general fund of the council such remuneration and such costs and expenses as the Minister may determine.

Environmental Planning.

176. (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 Commission, a council or any other person is authorised by or under this Act, other than by or under 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 prohibition shall be guilty of an offence against this Act.

Offences
against
this Act
and the
regulations.

(2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where the Minister, the Commission, a council or any other person is authorised by 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 prohibition shall be guilty of an offence against the regulations.

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

177. (1) A person guilty of an offence against this Act shall, where no other penalty is expressly provided, be liable to a penalty not exceeding \$10,000.

Penalties.

(2) A person guilty of an offence against the regulations shall be liable to a penalty not exceeding \$500.

178. (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 Supreme Court in its summary jurisdiction.

Proceed-
ings for
offences.

(2)

Environmental Planning.

(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) Proceedings for an offence against this Act shall not be instituted in the Supreme Court in its summary jurisdiction without the written consent of the Minister or of such member or officer of the Commission as may be authorised by the Minister for the purposes of this subsection.

(4) 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 provision of this Act, \$2,000 or the maximum penalty provided by this Act in respect of the offence, whichever is the lesser.

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

(6) Proceedings in the Supreme 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.

179. In any case in which the Attorney-General might take proceedings on the relation or on behalf or for the benefit of the Commission or the council for or with respect to enforcing or securing the observance of any provision made by or under this Act, the Commission or the council, as the case may be, shall be deemed to represent sufficiently the interests of the public and may take the proceedings in its own name.

Environmental Planning.

180. Nothing in this Part, except section 175, authorises the Commission to take proceedings by or under this Act for or with respect to enforcing or securing the observance of any provisions made by or under a local environmental plan.

Enforce-
ment,
etc., of
local
environ-
mental
plans.

181. Where an offence against this Act or the regulations is committed with respect to the protection or preservation of trees, a council may, notwithstanding any other provisions made by or under this Act, direct the person guilty of that offence to make such contribution or to carry out such measures towards the planting of new trees as it considers reasonable in all the circumstances of the case.

Restric-
tion in
respect
of trees.

182. (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 shall be admissible in evidence if—

Evidence.

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

(b) it purports to be certified—

(i) where the original document, map or plan is in the custody of the Commission—under the hand of the Chief Administrative Officer or other prescribed officer of the Commission; or

(ii) where the original document, map or plan is in the custody of a council—under the hand of the proper servant, as defined in section 4 of the Local Government Act, 1919, of that council.

Environmental Planning.

(2) Where the original document, map or plan is in the custody of—

- 5 (a) the Commission—the Commission shall furnish the certified copy or extract to the person applying for it upon payment of such fee as is determined by the Commission; or
- 10 (b) a council—that council shall furnish the certified copy or extract to the person applying for it upon payment of such fee as is determined by that council.

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

183. (1) The Governor may make regulations, not Regulations.
15 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.

(2) Regulations may be made so as to apply
20 differently according to such factors as may be specified in the regulations.

(3) A regulation may be made so as to authorise
any matter or thing to be from time to time determined,
applied or regulated by any person or body specified in the
25 regulation.

Environmental Planning.

PART VII.

MISCELLANEOUS.

- 184.** The power under the Local Government Act, 1919, Validation of certain provisions of prescribed schemes and interim development orders under Part XIII A of the Local Government Act, 1919.
- 5 to prepare and to prescribe a scheme or to make an interim development order within the meaning of Part XIII A of that Act shall be deemed always to have extended to authorising the preparing and prescribing of a scheme or the making of an interim development order containing provisions—
- 10 (a) empowering a responsible authority or a council under the scheme or interim development order to make orders for or with respect to the protection or preservation of trees and, subject to section 576 (4) of that Act, imposing a penalty for a breach of any such order;
- 15 (b) empowering any matter to be determined by any Minister specified or referred to in the provisions; and
- 20 (c) specifying the circumstances in which the concurrence of any person or body, who under any such provision may give a concurrence to any act, matter or thing, may be assumed to have been given.

- 185.** (1) Subject to Subdivision 1 of Division 5 of Part II, a local environmental plan shall continue to apply to the land to which it applied on the date on which it took effect
- 25 notwithstanding that that land may be transferred to another area or amalgamated with land of another area.
- Transfer or amalgamation of land to which a local environmental plan applies.

- (2) Where land is transferred from one area to another area or is amalgamated with land of another area, the council of the area to which that land is transferred or
- 30 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 took effect.

186.

Environmental Planning.

186. (1) Section 9A (subsection (6) excepted) of the State Planning Authority Act, 1963, applies in respect of a council in the same way as it applies in respect of the Commission.

Use of
information
obtained
through
association
with a
council for
personal
advantage
prohibited.

5 (2) For the purposes of section 9A of the State Planning Authority Act, 1963, as applied by subsection (1), a person is associated with a council—

- (a) if he is a member or servant of the Commission;
- (b) if he is an officer or servant of that council;
- 10 (c) if he acts or has acted as banker, solicitor, auditor or professional adviser or in any other capacity for the Commission or that council; or
- (d) where the person, so associated by virtue of paragraph (c), is a corporation, if he is a director,
- 15 manager or secretary of that corporation.

01

21

187. (1) The Minister may appoint a person or persons to hold a public inquiry and to report to him with respect to any matter relating to the carrying out of the provisions of this Act or any environmental planning instrument.

Public
inquiries.

05

20 (2) A person appointed under subsection (1) or, where two or more persons are appointed under subsection (1) and one of those persons is appointed as chairman of the public inquiry, the person appointed as chairman, shall, for the purposes of the public inquiry, have the powers, authori-
25 ties, protections and immunities conferred by the Royal Commissions Act, 1923, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act, and that Act, section 13 and Division 2 of Part II excepted, shall apply to any witness summoned by
30 or appearing before that person or persons, as the case may be, in the same way as it applies to any witness summoned by or appearing before a commission.

188.

Environmental Planning.

188. (1) Where a dispute arises between the Commission, a council or any other public authority with respect to— Settlement of disputes.

- 5 (a) the carrying out of any provision made by or under this Act, the regulations or an environmental planning instrument; or
- (b) the exercise or performance of any functions conferred or imposed upon the Commission, a council or any other public authority,

10 a party to the dispute may submit that dispute to the Minister.

(2) On the submission of a dispute to the Minister under subsection (1), the 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
15 dispute.

(3) After the completion of an inquiry held under subsection (2) and, where a report is made to the Minister under that subsection, after consideration by him of that report, the Minister may make such order, having regard to
20 the public interest and to the circumstances of the case, as he thinks fit.

(4) An order made by the Minister under subsection (3) may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.

25 (5) An order made by the Minister under subsection (3) may, upon the application of the Minister or a party to the dispute, by leave of the Supreme Court, be enforced in the same manner as a judgment or order of the Supreme Court to the same effect.

30 **189.** (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 that council. Certificates.

(2)

Environmental Planning.

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

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

(4) For the purpose of any proceedings for an offence against this Act or the regulations taken against a
10 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.

190. (1) A council may, by resolution, delegate to any Delegation, officer, servant or person, or to a committee consisting either
15 wholly or in part of officers, servants or persons, the exercise or performance of such of the functions, other than—

- (a) this power of delegation;
- (b) the making of a resolution under section 44, 62, 75 or 86; or
- 20 (c) the execution of a certificate under section 61 or 84, conferred or imposed upon it by or under this Act or the regulations as may be specified in the resolution and may, by resolution, revoke any such delegation either wholly or in part.

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

(3) A delegation under this section may be made
30 subject to such conditions or such limitations as to the exercise or performance of any of the functions delegated, or as to time or circumstances, as may be specified in the resolution delegating the exercise or performance of those functions.

(4)

Environmental Planning.

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

(5) Any act or thing done or suffered by a delegate while acting in the exercise or performance of a function delegated under this section shall have the same force or effect as if the act or thing done or suffered had been done or suffered by the council and shall be deemed to have been done or suffered by the council.

10 **191.** (1) The Minister may, with the approval of the Treasurer, from money provided by Parliament for the purpose, or from money made available to the State of New South Wales by the Parliament of the Commonwealth upon terms which are not inconsistent with the application of that money for the purpose, make advances to the Commission or a council for or in connection with the exercise or performance of its functions under or in pursuance of this Act. Advances—
generally.

(2) In any case where the Minister so requires, the Commission or a council shall enter into an agreement securing the repayment of an advance made to it under subsection (1) by yearly or half-yearly instalments with interest at such rate as the Minister, with the approval of the Treasurer, may determine.

(3) If an instalment referred to in subsection (2) is not paid on the due date, there shall be added to it a sum equal to 10 per cent of that instalment and that instalment together with that sum may be recovered by the Minister as a debt.

(4) Nothing in subsection (3) shall prevent the Minister, with the approval of the Treasurer, on cause being shown, from remitting the payment of an instalment or a sum referred to in that subsection in whole or in part.

Environmental Planning.

192. (1) The Minister may, with the approval of the ^{Advances to meet liabilities.} Treasurer, enter into an agreement with the Commission or a council to pay to the Commission or that council, as the case may be, in each year during such period as may be specified in the agreement, the sum or sums ascertained from time to time upon such basis or upon such considerations as the Minister may determine, for or towards meeting the liability of the Commission or that council, as the case may be, in respect of any borrowing for any purpose of this Act or in respect of any loan or loans raised by the Commission or that council, as the case may be, for the purpose of repaying or renewing the whole or any part of the original loan or of any renewal loan made in respect of the original loan.

(2) An agreement made under subsection (1) may include such terms, conditions or provisions not inconsistent with this Act as the Minister may determine and may, if the Minister so determines, provide for the repayment, in instalments or otherwise, of the sums paid to the Commission or the council, as the case may be, under that agreement.

(3) The sums which, from time to time, become due and payable by the Minister under any agreement made under subsection (1) shall be paid from money provided by Parliament for the purpose or from money made available to the State of New South Wales by the Parliament of the Commonwealth upon terms which are not inconsistent with the application of that money for the purpose.

Environmental Planning.

PART VIII.

AMENDMENTS TO CERTAIN ACTS.

193. (1) Each Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2. Amend-
ments to
certain
Acts.

(2) A reference in an Act other than this Act or in an instrument made under an Act other than this Act—

(a) to Part XIIA of the Local Government Act, 1919, shall be construed as a reference to this Act;

10 (b) to any provision of that Part shall be construed as a reference to the corresponding provision, if any, of this Act;

15 (c) to a specified prescribed scheme or an interim development order made under that Part shall be construed as a reference to the local environmental plan that that prescribed scheme or interim development order is deemed by clause 2 of Schedule 3 to be;

20 (d) to a prescribed scheme or an interim development order made under that Part, that is not identified by the reference, shall be construed as a reference to an environmental planning instrument;

25 (e) except as provided in paragraph (d), to a planning scheme prepared under that Part shall be construed as a reference to a draft local environmental plan in respect of which the Commission has issued a certificate under section 55; or

Environmental Planning.

(f) to prescribed qualifications with respect to town or country planning shall be construed as a reference to qualifications in environmental planning prescribed under this Act,

5 except in so far as the context otherwise indicates or requires.

(3) The provisions of Schedule 3 have effect for the purposes of this Act.

SCHEDULE 1.

Sec. 4 (1).

The Department of Agriculture (New South Wales).

10 The Department of Education (New South Wales).

The Department of Lands (New South Wales).

The Department of Main Roads (New South Wales).

The Department of Mines (New South Wales).

The Department of Public Works (New South Wales).

15 The Department of Technical and Further Education (New South Wales).

The Department of Youth, Ethnic and Community Affairs (New South Wales).

The Department of Motor Transport (New South Wales).

20 The Police Department (Traffic Branch) New South Wales.

The Department of Decentralisation and Development (New South Wales).

The Department of Tourism (New South Wales).

The Public Transport Commission of New South Wales.

25 The Traffic Authority of New South Wales.

The Electricity Authority of New South Wales.

SCHEDULE

Environmental Planning.

SCHEDULE 1—*continued.*

- The Electricity Commission of New South Wales.
- The Forestry Commission of New South Wales.
- The Health Commission of New South Wales.
- 5 The Housing Commission of New South Wales.
- The Metropolitan Waste Disposal Authority (New South Wales).
- The National Parks and Wildlife Service (New South Wales).
- The Metropolitan Water Sewerage and Drainage Board (New South Wales).
- 10 The Hunter District Water Board (New South Wales).
- The Broken Hill Water Board (New South Wales).
- The Maritime Services Board of New South Wales.
- The Sport and Recreation Service of New South Wales.
- The Water Conservation and Irrigation Commission (New South Wales).
- 15 The Soil Conservation Service (New South Wales).
- The State Pollution Control Commission (New South Wales).
- The New South Wales Planning and Environment Commission.
- The Department of Transport (Commonwealth).
- 20 The Department of Environment, Housing and Community Development (Commonwealth).
- The Department of Administrative Services (Commonwealth).
- The Australian Telecommunications Commission (Commonwealth).
- county councils within the meaning of Part XXIX of the Local Government Act, 1919.
- 25 councils.
- The Australian Gas Light Company.

Environmental Planning.

SCHEDULE 2.

Sec. 193

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	15	20
1915, No. 29..	City and Suburban Electric Railways Act, 1915.	Section 5D— Omit "Local Government Act, 1919, as amended by subsequent Acts, or of any other Act, or of any Ordinance under the Local Government Act, 1919, as so amended," insert instead "Local Government Act, 1919, or of an ordinance made under the Local Government Act, 1919, or of the Environmental Planning Act, 1976, or of an environmental planning instrument within the meaning of the Environmental Planning Act, 1976, or of any other Act,".
1919, No. 41..	Local Government Act, 1919.	Section 3— Omit the matter relating to Parts XII and XIII, insert instead:— PART XII.—SUBDIVISION CONTROL— ss. 320-342. Section 4, definition of "Environmental planning instrument"— After the definition of "Electoral offence", insert:— "Environmental planning instrument" means an environmental planning instrument within the meaning of the Environmental Planning Act, 1976. Section 132 (1) (k)— Omit "a scheme prescribed under Part XIIA of this Act where such land has been acquired by a responsible authority in accordance with the provisions of the scheme for the purposes of the scheme", insert instead "an environmental planning instrument where the land has been acquired in accordance with that instrument for a purpose authorised by that instrument". Section 160c (1)— Omit "planning scheme prepared under Part XIIA," insert instead "environmental planning instrument,". Section 270JA (1)— Omit "any town or country planning scheme within the meaning of Part XIIA", insert instead "the Environmental Planning Act, 1976,".

SCHEDULE

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	Amendment.	
1919, No. 41— <i>continued.</i>	Local Govern- ment Act, 1919— <i>continued.</i>	Section 309 (1)— Omit “The Governor”, insert instead “Subject to subsection (5), the Governor”. Section 309 (5)— After section 309 (4), insert:— (5) A proclamation under subsection (1) has no force or effect in respect of any land to which a local environmental plan within the meaning of the Environmental Planning Act, 1976, applies. Section 314 (1), paragraph (b) of the proviso— After “ordinances”, insert “and the Environmental Planning Act, 1976, and any environmental planning in- strument”. Section 314 (4)— After section 314 (3), insert:— (4) An application under this Division shall, so far as it relates to development that may only be carried out with the consent of the council under the Environ- mental Planning Act, 1976, not be approved or approved subject to conditions unless that consent has been granted either unconditionally or subject to conditions. Section 314A— Omit the section. Section 317A (1)— After “council” where secondly occurring, insert “and the Environmental Planning Act, 1976, and any environ- mental planning instrument made thereunder”. Section 317A (1)— After “specifications” where secondly occurring, insert “or any contravention of the Environmental Planning Act, 1976, or any environmental planning instrument made thereunder”. Section 317A (3)— After “council” where secondly occurring, insert “and the Environmental Planning Act, 1976, and any environ- mental planning instrument made thereunder”.

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
5		Amendment.
10	1919, No. 41— <i>continued.</i>	Local Govern- ment Act, 1919— <i>continued.</i>
15		Section 317A (3)— After “specifications” where secondly occurring, insert “or any contravention of the Environmental Planning Act, 1976, or any environmental planning instrument made thereunder”.
20		Section 317A (4)— After “ordinances”, insert “and the En- vironmental Planning Act, 1976, and any environmental planning instrument made thereunder”.
25		Section 317B (5) (b)— After “ordinances”, insert “, the En- vironmental Planning Act, 1976, and any environmental planning instrument made thereunder”.
30		Part XII, heading— Omit the heading, insert instead:— PART XII. SUBDIVISION CONTROL.
35		Section 327A (2)— Omit “any town or country planning scheme prescribed or in course of preparation under Part XIIA or with the requirements of an interim de- velopment order made under Division 7 of that Part or of a council imposed under such an order—”, insert instead “an environmental planning instru- ment (including a draft environmental planning instrument) or of a council imposed under the Environmental Planning Act, 1976—”.
40		Section 331 (6)— After section 331 (5), insert:— (6) An application under this Division shall, so far as it relates to development that may only be carried out with the consent of the council under the Environ- mental Planning Act, 1976, not be approved or approved subject to conditions unless that consent has been granted either un- conditionally or subject to conditions.
45		Section 332 (k)— Omit “town planning or country planning scheme.” insert instead “environ- mental planning instrument.”.
50		

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.	
5	Year and number of Act.	Short title of Act.	Amendment.
10	1919, No. 41— <i>continued.</i>	Local Govern- ment Act, 1919— <i>continued.</i>	Section 333 (1) (j)— Omit “town planning or country planning scheme”, insert instead “environmental planning instrument”. Section 333 (3)— After section 333 (2), insert:— (3) Where the council has under section 114 (1) of the Environmental Planning Act, 1976, imposed as a condition of its consent to a development application a condition that the applicant pay an amount towards the provision, extension or improvement of a public reserve, the council shall not be entitled to impose as a condition of its approval of an application under this Division a condition that the applicant shall provide a portion of the land proposed to be subdivided as a public reserve or a condition referred to in subsection (2). Part XIIA— Omit the Part. Section 342BF (6)— Omit “or responsible authority” where firstly occurring, insert instead “or another person”. Section 342BF (6)— Omit “or responsible authority” where secondly occurring, insert instead “or other person”. Section 342BF (6)— After “Minister”, insert “or the State Pollution Control Commission”. Section 342BGA (2)— Omit the subsection, insert instead:— (2) A reference in subsection (1)— (a) to an appeal includes a reference to an application made under the Environmental Planning Act, 1976, for leave to appeal; and (b) to a party to an appeal includes a reference to an applicant under the Environmental Planning Act, 1976, for leave to appeal. Section 342BI (3)— Omit “this Act or an ordinance,”, insert instead “the Act or any instrument in respect of which the appeal arose,”.

SCHEDULE

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1919, No. 41— <i>continued.</i>	Local Govern- ment Act, 1919— <i>continued.</i>
15		Section 519A (1)— Omit "subsection (2) of section 342L," insert instead "section 342L (2) im- mediately before the day appointed and notified under section 2 (2) of the Environmental Planning Act, 1976,".
20		Section 519A (1)— Omit "and has been transferred to a council pursuant to that Ordinance or any such local scheme," insert instead "and to land designated for use ex- clusively for the purpose of a park, a recreation area or open space under an environmental planning instrument and transferred to, or acquired by, as the case may be, a council pursuant to that Ordinance, any such local scheme or any other environmental planning instrument."
25		Section 519A (3)— Omit "or any such local scheme," insert instead "any such local scheme or any other environmental planning instrument,".
30		Section 519A (8)— Omit "town or country planning scheme under Part XIIA," insert instead "other environmental planning instru- ment,".
35		Section 532 (2) (c)— Omit "prescribed scheme under Part XIIA," insert instead "environmental planning instrument".
40		Section 532 (2) (c)— Omit "such prescribed scheme," insert instead "such instrument."
45	1924, No. 50. .	Metropolitan Water, Sewer- age, and Drainage Act, 1924.
50		Section 100b (1)— Omit "planning scheme prepared under Part XIIA of the Local Government Act, 1919," insert instead "environ- mental planning instrument within the meaning of the Environmental Plan- ning Act, 1976,".
55		Section 100b (1)— Omit "that Act", insert instead "the Local Government Act, 1919". Section 125 (3)— After "Act," insert "or an environmental planning instrument within the mean- ing of the Environmental Planning Act, 1976,".

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10		Amendment.
15	1938, No. 11..	Hunter District Water, Sewerage and Drainage Act, 1938.
20		Section 104B (1)— Omit “planning scheme prepared under Part XIIA of the Local Government Act, 1919,” insert instead “environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
25		Section 104B (1)— Omit “that Act”, insert instead “the Local Government Act, 1919”.
30		Section 128 (3)— After “Act”, insert “or an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
35	1954, No. 34..	Australian Oil Refining Limited Agreement Ratification Act, 1954.
40		Section 10— Omit “planning scheme prepared under Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts,” insert instead “environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
45	1955, No. 50..	Local Government (Regulation of Flats) Act, 1955.
50		Section 7 (b) (ii), (iii)— Omit the subparagraphs, insert instead:— (ii) the Environmental Planning Act, 1976; or (iii) an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,
	1956, No. 10..	Hunter Valley Flood Mitigation Act, 1956.
		Section 6— Omit “Notwithstanding anything contained in Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts, no restriction imposed by or under that Part and no provision or restriction contained in any town or country planning scheme prescribed by ordinance pursuant to the provisions of the said Part or imposed under the authority of any such scheme”, insert instead “No provision or restriction contained in the Environmental Planning Act, 1976, or in an environmental planning instrument within the meaning of that Act,”.

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
		Amendment.
10	1959, No.15 ..	Sydney Sports Ground and Sydney Cricket Ground Amalgamation (Amendment) Act, 1959.
15	1961, No.22 ..	Mine Subsidence Compensation Act, 1961.
20		Section 2 (2)— Omit "Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts.", insert instead "the Environmental Planning Act, 1976."
25		Section 15 (6)— Omit "a responsible authority under a town or country planning scheme within the meaning of Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts.", insert instead "any person under the Environmental Planning Act, 1976,".
30	1961, No.69 ..	Clean Air Act, 1961.
35	1962, No.16 ..	Australian Lubricating Oil Refinery Limited Agreement Ratification Act, 1962.
40		Section 15 (6)— Omit "that responsible authority", insert instead "that person".
45	1963, No. 59 ..	State Planning Authority Act, 1963.
50		Section 16 (3) (c)— After "Local Government Act, 1919," insert "the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
55		Section 7— Omit "planning scheme prepared under Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts.", insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
		Section 12— Omit "the Authority shall be charged with the responsibility of promoting and co-ordinating town and country planning", insert instead "and the Environmental Planning Act, 1976, the New South Wales Planning and Environment Commission is charged with the responsibility of promoting and co-ordinating environmental planning".
		Section 12 (a), (b), (c)— Omit "town and country planning" wherever occurring, insert instead "environmental planning".

SCHEDULE

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	Amendment.	
1963, No. 59— <i>continued.</i>	State Planning Authority Act, 1963— <i>continued.</i>	Section 12 (d)— Omit “town and country planning and the implementation thereof in local planning schemes;”, insert instead “environmental planning and the implementation thereof in local environmental plans within the meaning of the Environmental Planning Act, 1976;”. Section 12 (e)— Omit “or as are related to or incidental or consequential to powers, authorities, duties and functions conferred or imposed on a member or servant of the Authority by or under the Height of Buildings (Metropolitan Police District) Act, 1912, or the Local Government Act, 1919”. Section 12, proviso— Omit the proviso. Section 14 (1)— Omit “Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts.”, insert instead “the Environmental Planning Act, 1976.”. Section 15 (1b)— Omit the subsection. Section 16 (1)— Omit “Local Government Act, 1919, as amended by subsequent Acts, or by any ordinance made under Part XIIA of that Act, as so amended.”, insert instead “Environmental Planning Act, 1976, or any environmental planning instrument within the meaning of that Act,”. Section 16 (2) (a)— Omit “a prescribed scheme or an interim development order”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1963, No. 59— <i>continued.</i>	State Planning Authority Act, 1963— <i>continued.</i>
15		Section 16 (2) (a1)— After section 16 (2) (a), insert:— (a1) any land on which is situated, or that forms the site of, a building, work or site in respect of which a permanent preservation order made under Part V of the Environmental Planning Act, 1976, is in force;
20		Section 19 (a)— Omit “interim development order, or prescribed scheme, made under Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts, and applying”, insert instead “environmental planning instrument within the meaning of the Environmental Planning Act, 1976, that applies”.
25		Section 32 (1) (a1)— After section 32 (1) (a), insert:— (a1) all advances made to the New South Wales Planning and Environment Commission for or in connection with the exercise or discharge by the Commission of the powers, authorities, duties or functions conferred or imposed on it by or under this Act or the Environmental Planning Act, 1976, within or in respect of the development area;
30		Section 8 (2) (a)— Omit “town and country planning scheme referred to in Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts,”, insert instead “environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
35		Section 40 (a), (b)— Omit the paragraphs, insert instead:— (a) section 171 of the Local Government Act, 1919, do not apply to or in respect of a pipeline; and
40	1967, No. 90..	Pipelines Act, 1967.
45		
50		

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	1967, No. 90— <i>continued.</i>	Pipelines Act, 1967— <i>continued.</i>
15	1968, No. 11..	Sydney Farm Produce Market Authority Act, 1968.
20		(b) Part XI of the Local Government Act, 1919, and the Environmental Planning Act, 1976, do not apply to the construction or operation of a pipeline (not including apparatus or works),
25		Section 15 (4) (a)— Omit the paragraph, insert instead:— (a) the question as to whether the land proposed as the site for the proposed public market is affected or controlled by the provisions of any environmental planning instrument within the meaning of the Environmental Planning Act, 1976, and, if any such land is so affected, the question as to whether use thereof for the purposes of a public market is permissible under the instrument concerned;
30		Section 15 (5)— Omit "town and country planning scheme, planning scheme or interim development order made, prescribed or issued by or under any Act", insert instead "environmental planning instrument referred to in subsection (4) (a)".
35	1968, No. 56..	Sydney Cove Redevelopment Authority Act, 1968.
40		Section 18 (2)— Omit the subsection, insert instead:— (2) In the application of the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act, to and in respect of the development area— (a) a reference in that Act or in any such instrument to the responsible authority or a council shall be deemed to be a reference to the Authority;
45		(b) in so far as that Act provides for an appeal against a decision on a development application, it shall be deemed to provide only for an appeal to the Minister; and
50		(c) any such instrument shall, to the extent that it is inconsistent with the approved scheme, not have any effect.
55		

SCHEDULE

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	15	Amendment.
1970, No. 97..	Waste Disposal Act, 1970.	Section 18— Omit “and the provisions of Part XIIA of the Local Government Act, 1919, and any ordinance or interim development order made under that Part,” insert instead “, the Environmental Planning Act, 1976, and any environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
1973, No. 42..	Mining Act, 1973.	Section 115 (1)— Omit “a scheme (as defined in section 116),”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
		Section 115 (4) (b)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purposes of that Part,” insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”.
		Section 115 (4) (b)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”.
		Section 116 (1)— Omit “a scheme”, insert instead “the Environmental Planning Act, 1976,”.
		Section 116 (4)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purposes of that Part,” insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”.
		Section 116 (4)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”.
		Section 116 (9), definition of “scheme”— Omit the definition.

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.	
5	Year and number of Act.	Short title of Act.	Amendment.
10	1973, No. 68..	Strata Titles Act, 1973.	Section 36— After “Conveyancing Act, 1919,” insert “the Environmental Planning Act, 1976.”
15			Section 37 (1) (b) (i), (ii)— Omit the subparagraphs, insert instead:— (i) separate occupation of the proposed lots illustrated by that plan will not contravene the provisions of the Environmental Planning Act, 1976, or of any environmental planning instrument within the meaning of that Act;
20			(ii) any consent or approval required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan;
25	1973, No. 81..	Coal Mining Act, 1973.	Section 89 (1)— Omit “a scheme (as defined in section 90),”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976.”
30			Section 89 (3)— Omit “a scheme (as defined in section 90),”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976.”
35			Section 89 (6) (b)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purpose of that Part,” insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act.”
40			Section 89 (6) (b)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”.
45			Section 90, definition of “scheme”— Omit the definition.
50			Section 91 (1)— Omit “a scheme”, insert instead “the Environmental Planning Act, 1976.”

*Environmental Planning*SCHEDULE 2—*continued.*

Column 1.		Column 2.	
5	Year and number of Act.	Short title of Act.	Amendment.
10	1973, No. 81— <i>continued.</i>	Coal Mining Act, 1973— <i>continued.</i>	Section 91 (4)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purposes of that Part,”, insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”.
15			Section 91 (4)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”.
20			Section 92 (1)— Omit “a scheme,”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
25			Section 92 (4)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purpose of that Part,”, insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”.
30			Section 92 (4)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”.
35			Section 92 (7)— Omit “a scheme”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
40	1974, No. 1 ..	Growth Centres (Land Acquisition) Act, 1974.	Section 7 (6)— After “thereunder,”, insert “or pursuant to the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”.
45			

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	1974, No. 43..	New South Wales Planning and Environment Commission Act, 1974.
15		Section 5 (2) (c)— After "Minister" where firstly occurring, insert "and except in relation to the proposals to be included in a draft environmental planning instrument prepared by the Commission under the Environmental Planning Act, 1976,".
20		Section 6 (3)— Omit "qualifications in town and country planning prescribed under the Local Government Act, 1919," insert instead "prescribed environmental planning qualifications prescribed under the Environmental Planning Act, 1976,".
25	1974, No. 47..	Section 6 (3)— Omit "town and country" where secondly occurring, insert instead "environmental".
30		Section 2, matter relating to Schedule 4— Omit "LOCAL GOVERNMENT ACT, 1919," insert instead "ENVIRONMENTAL PLANNING ACT, 1976,".
35		Section 4, definition of "interim development order"— Omit the definition.
40		Section 4, definition of "planning scheme"— Omit the definition.
45		Section 9 (2) (i)— Omit "interim development order or planning scheme", insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
50		Section 14 (2) (b)— Omit "planning scheme or interim development order", insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
55		Section 23 (1)— Omit "Part XIIA of the Local Government Act, 1919," insert instead "the Environmental Planning Act, 1976,".
		Section 23 (1). Omit "that Part", insert instead "that Act".
		Section 23 (1) (b)— Omit "local government area," insert instead "local government area.".

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	Amendment.	
10	1974, No. 47— <i>continued.</i>	Albury-Wodonga Development Act, 1974— <i>continued.</i>
15		Section 23 (1)— Omit "but a reference in section 342G (5) (a), 342L (2) (b) (iii) or 342v (1A) of that Act to a council does not include a reference to the Development Corporation."
20		Section 23 (2)— Omit "Part XIIA of the Local Government Act, 1919," insert instead "the Environmental Planning Act, 1976,".
25		Section 23 (3)— Omit the subsection.
30		Section 23 (4)— Omit the subsection, insert instead:— (4) Where an environmental planning instrument within the meaning of the Environmental Planning Act, 1976, provides that such development in respect of land as is specified in that environmental planning instrument shall not be consented to without the concurrence of the Development Corporation and a difference arises between the council of the area in which that land is situated and the Development Corporation in relation to the granting of consent, that council shall not grant consent until the difference is determined.
35		Section 23 (5)— Omit the subsection.
40		Section 23 (6), (7)— Omit "or (5)" wherever occurring.
45		Section 35— Omit the section.
		Schedule 4— Omit the Schedule, insert instead:— Sec. 23. SCHEDULE 4. MODIFICATION OF THE ENVIRONMENTAL PLANNING ACT, 1976. The Environmental Planning Act, 1976, shall, for the purposes referred to in section 23 (2), be deemed to be amended— (a) by omitting section 45;

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1974, No. 47— <i>continued.</i>	(b) by omitting from section 119 (2) the words “appeal to the Tribunal” and by inserting instead the words “appeal in the case where the person whose decision is subject to an appeal is required by the environmental planning instrument to consult with the Development Corporation before giving the approval, consent or permission, to the Minister and in any other case, to the Tribunal”;
15		(c) by inserting after section 119 (4) the following subsections:—
20		(5) Where an appeal has been made to the Minister under this section, he may—
25		(a) dismiss the appeal;
30		(b) allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose; or
35		(c) where the appeal is against the imposition of conditions, refuse to approve the application referred to in the appeal.
40	1974, No. 49.. Growth Centres (Development Corporations) Act, 1974.	(6) The decision of the Minister under subsection (5) shall be final and shall have effect as if it were a decision of the council.
45		(d) by omitting sections 191 and 192.
		Section 2— Omit the matter relating to Schedules 4 and 5, insert instead:— SCHEDULE 4.—PROVISIONS RELATING TO LOANS. SCHEDULE 5.—MODIFICATION OF THE ENVIRONMENTAL PLANNING ACT, 1976.
		Section 3 (1), definition of “interim development order”— Omit the definition.

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1974, No. 49— <i>continued.</i>	Section 3 (1), definition of “planning scheme”— Omit the definition.
15	Growth Centres (Development Corporations Act, 1974— <i>continued.</i>	Section 8 (1) (j)— Omit “interim development order or planning scheme”, insert instead “environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
20		Section 13 (2) (b)— Omit “planning scheme or interim development order”, insert instead “environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
25		Section 23 (1A)— After section 23 (1), insert:— (1A) The Minister administering the Environmental Planning Act, 1976, may, by order published in the Gazette, transfer to a corporation specified in the order such of the powers, authorities, duties and functions conferred or imposed on a council by or under that Act as are specified or described in the order.
30		Section 23 (3)— After “Local Government Act, 1919,”, insert “and the Environmental Planning Act, 1976,”.
35		Section 31 (1)— Omit “Part XIIA of the Local Government Act, 1919,”, insert instead “the Environmental Planning Act, 1976,”.
40		Section 31 (2)— Omit the subsection, insert instead:— (2) Where an environmental planning instrument within the meaning of the Environmental Planning Act, 1976, provides that such development in respect of land
45		

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1974, No. 49— <i>continued.</i>	as is specified in that environmental planning instrument shall not be consented to without the concurrence of the corporation and a difference arises between the council of the area in which that land is situated and the corporation in relation to the granting of consent, that council shall not grant consent until the difference is determined.
15	Growth Centres (Development Corporations) Act, 1974— <i>continued.</i>	Section 31 (3)— Omit the subsection.
20		Section 31 (4), (5)— Omit “or (3)” wherever occurring.
25		Schedule 5— Omit the Schedule, insert instead:— Sec. 31. SCHEDULE 5. MODIFICATION OF THE ENVIRONMENTAL PLANNING ACT, 1976. The Environmental Planning Act, 1976, shall, for the purposes referred to in section 31, be deemed to be amended—
30		(a) by omitting from section 119 (2) the words “appeal to the Tribunal” and by inserting instead the words “appeal in the case where the person whose decision is subject to an appeal is required by the environmental planning instrument to consult with a corporation before giving the approval, consent or permission, to the Minister and in any other case, to the Tribunal”;
35		(b) by inserting after section 119 (4) the following subsections:—
40		(5) Where an appeal has been made to the Minister under this section, he may—
45		(a) dismiss the appeal; (b) allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose; or

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	Amendment.	
10	1974, No. 49— <i>continued.</i>	Growth Centres (Development Corporations) Act, 1974— <i>continued.</i>
15	1975, No. 35..	Noise Control Act, 1975.
20	1975, No. 51..	Whittingham to Mount Thorley Railway Act, 1975.
25		

(c) where the appeal is against the imposition of conditions, refuse to approve the application referred to in the appeal.

(6) The decision of the Minister under subsection (5) shall be final and shall have effect as if it were a decision of the council.

Section 27 (14)—
After “Local Government Act, 1919,” insert “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.

Section 6—
After “under that Act”, insert “, of the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.

Environmental Planning.

SCHEDULE 3.

Sec. 193
(3).

TRANSITIONAL AND SAVING PROVISIONS.

1. In this Schedule—

Interpre-
tation:
Sched. 3.

5 “appointed day” means the day appointed and notified under section 2 (2);

“former planning instrument” means a prescribed scheme or an interim development order;

“interim development order” means an interim development order within the meaning of Part XIIA of the former Act;

10 “prescribed scheme” means a prescribed scheme within the meaning of Part XIIA of the former Act;

“the former Act” means the local Government Act, 1919, as in force at any time before the appointed day.

2. (1) In this clause “previous scheme” means—

Former
planning
instru-
ments
deemed to
be local
environ-
mental
plans.

15 (a) the County of Cumberland Planning Scheme Ordinance as in force immediately before the appointed day;

(b) the Northumberland County District Planning Scheme Ordinance made under the former Act and as so in force; or

20 (c) any prescribed scheme made under the former Act pursuant to a direction given under section 342GA (1) of the former Act, being a scheme that immediately before the appointed day applied to land situated in two or more areas.

25 (2) A former planning instrument (being a previous scheme) shall, on and from the appointed day, be deemed, so far as it applied to any land in an area immediately before the appointed day, to be a local environmental plan made in accordance with this Act by the council of that area.

30 2(3) A former planning instrument (not being a previous scheme or an interim development order), as in force immediately before the appointed day, shall—

35 (a) where it was prepared pursuant to a resolution passed by a council under section 342c (1) (a) of the former Act, be deemed to be a local environmental plan made pursuant to a resolution, referred to in section 44 (1), of that council; or

SCHEDULE

Environmental Planning.

SCHEDULE 3—*continued.*

5 (b) where it was prepared pursuant to resolutions passed by councils under section 342c (1) (b) of the former Act, be deemed to be a local environmental plan made pursuant to resolutions referred to in section 44 (2), of those councils.

10 (4) A former planning instrument (being an interim development order, other than Interim Development Order No. 1—Albury and Hume Designated Area, published in Gazette No. 79 of 6th June, 1975), as in force immediately before the appointed day, shall be deemed to be a local environmental plan made pursuant to a resolution referred to in section 44 (1).

15 (5) Interim Development Order No. 1—Albury and Hume Designated Area, published in Gazette No. 79 of 6th June, 1975, as in force immediately before the appointed day, shall be deemed to be a local environmental plan prepared pursuant to the powers conferred on the Development Corporation by section 23 (1) of the Albury-Wodonga Development Act, 1974.

20 (6) Sections 12 and 15 do not apply to a local environmental plan referred to in this clause.

3. (1) A provision of a former planning instrument has, notwithstanding any other provision of this Act, full force and effect according to its tenor.

Invalidity of certain provisions of former planning instruments.

25 (2) For the purposes of subclause (1), a reference in a former planning instrument, being an interim development order, to interim development is a reference to interim development within the meaning of section 342r of the former Act.

(3) Where, in the opinion of the Minister, a former planning instrument—

30 (a) is inconsistent with, or contains provisions that deal with the same matter as are dealt with by, any provision of this Act; or

(b) contains provisions the inclusion of which in a local environmental plan is not authorised by this Act,

35 the Minister may, by order published in the Gazette, amend that former planning instrument in such manner as, in his opinion, will remove the inconsistency or the provisions that deal with that same matter or that may not be so included, as the case may be.

SCHEDULE

*Environmental Planning.*SCHEDULE 3—*continued.*

4. A resolution passed by a council, or resolutions passed by two or more councils, under section 342c of the former Act shall be deemed to be a resolution of that council, or to be resolutions of those councils, made under section 44 (1) or (2), as the case may be, unless the scheme to which the resolution relates or the resolutions relate has been prescribed under the former Act. Resolutions to prepare certain former planning instruments.
5. A direction given under section 342b (1) of the former Act shall be deemed to be a direction given under section 46 unless the scheme to which the direction relates has been prescribed under the former Act. Directions to prepare certain former planning instruments.
6. (1) Where, before the appointed day—
- (a) a council or councils concerned has or have commenced to prepare a scheme; or
- 15 (b) the Commission has commenced to prepare a scheme, under Part XIIIa of the former Act and the scheme has not, at that day, been prescribed under that Act, the Minister may, by order published in the Gazette, direct that the preparation of the scheme may be continued and completed in accordance with such of the provisions of Division 4 of Part II as are specified in the direction and as if—
- (c) where the scheme was being prepared by the council or councils concerned, that council or those councils were preparing it as a draft local environmental plan; or
- 25 (d) where the scheme was being prepared by the Commission, the Commission were the council of the area in which the land to which the scheme relates is situated and were preparing the scheme as a draft local environmental plan,
- and as if, subject to clause 7, the preparation of the scheme had progressed to such stage under this Act as is specified in the direction. Certain former planning instruments in course of preparation.
- 30 (2) A scheme the preparation of which is completed in accordance with subclause (1) may, whether prepared by the council or councils concerned or by the Commission, be approved and adopted under section 62 (1) by the council or councils concerned without the execution of the certificate referred to in that section as if the scheme were a draft local environmental plan or an amended draft local environmental plan referred to in that section.

Environmental Planning.

SCHEDULE 3—continued.

(3) Section 88 applies to and in respect of a scheme approved and adopted as referred to in subclause (2) in the same way as it applies to a local environmental plan referred to in that section.

- 5 (4) A reference in section 19 to any provision of Division 2, 3, 4 or 5 of Part II or to a direction with respect to the making of an environmental planning instrument includes a reference to any provision of this Schedule or to a direction referred to in subclause (1), as the case may be.

- 10 7. For the purposes of section 112, a scheme in course of preparation under the former Act in respect of which the Minister has given a certificate referred to in section 342F (2) of the former Act shall be deemed to be a draft local environment plan in respect of which the Commission has issued a certificate under section 55.

Effect of certain former planning instruments that have been submitted to the Minister.

- 15 8. (1) An application for a consent, approval or permission under a former planning instrument shall be deemed to be an application for a consent under this Act.

Applications under certain former planning instruments.

- (2) Any period referred to in section 117 (1) shall, in respect of any application referred to in subclause (1), be deemed to have commenced on the day on which the application referred to in subclause (1) was made to the responsible authority under the relevant former planning instrument.
- 20

9. (1) Any consent, approval or permission given under a former planning instrument and in force immediately before the appointed day shall be deemed to be a consent given in the same terms under this Act.
- 25

Consents, etc., under former planning instruments.

- (2) In relation to any consent, approval or permission deemed by subclause (1) to be a consent given under this Act a reference in section 124 to the date of final determination of a consent is a reference to the day on which that firstmentioned consent, approval or permission was finally given under the relevant former planning instrument.
- 30

SCHEDULE

Environmental Planning.

SCHEDULE 3—*continued.*

(3) A consent given under a former planning instrument to a change of the use of a building or work or of land from a use that was, under that former planning instrument, an existing use, shall, 5 for the purpose of paragraph (c) of the definition of "existing use" in section 108, be deemed to be a consent referred to in section 135.

10. Where a prescribed notice under section 342P of the former Notices Act has been given by a responsible authority before the appointed under day, that responsible authority may, notwithstanding the repeal of section 342P of Part XIIA of the former Act by this Act, exercise the powers conferred on it by that section as if that Part had not been repealed. Act.

11. (1) Any proceedings commenced under section 342N, 342NA, Continuation of 342v(s) or 342VA of the former Act before, and not completed at, the appointed day may be continued and completed, and the decision certain proceedings on those proceedings shall be given effect to, as if those proceedings under the 15 had been commenced under section 119 or 118, as the case may be, former Act. and as if all the provisions of this Act necessary to be complied with in order to found those proceedings under section 119 or 118, as the case may be, had been complied with.

20 (2) An objector referred to in section 342ZA (7) of the former Act in relation to any proceedings referred to in subclause (1) shall be deemed to be an objector referred to in section 119 (3).

(3) Any proceedings for the payment of compensation under section 342AC of the former Act that were commenced before, and 25 not completed at, the appointed day may be continued and completed in all respects as if this Act had not been enacted.

12. A certificate issued under section 342AS of the former Act shall Certificates continue to have the same force and effect as it would have had if under section 193 had not been enacted. section 342AS of the former Act.

Q21

January 17, 1930

Dear Mr. [illegible]

I have your letter of January 16, 1930.

I am sorry that I cannot give you a more definite answer.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

I am sure that you will understand my position.

ENVIRONMENTAL PLANNING BILL, 1976

EXPLANATORY NOTE

THE objects of this Bill are to institute a new system of environmental planning for the State of New South Wales.

The Bill contains the following provisions:—

1. Clause 1. Short title.
2. Clause 2. Commencement.
3. Clause 3. Division of Act into Parts.
4. Clause 4. Interpretation.
5. Clause 5 specifies the objects of the proposed Act.
6. Clause 6 provides that the Act binds the Crown.
7. Part II contains clauses 7–93 and deals with the making of environmental planning instruments.

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

State environmental planning policies; regional environmental plans; interim regional environmental plans and local environmental plans. State environmental planning policies, regional environmental plans and interim regional environmental plans are made by the Minister. State environmental plans may be made with respect to matters of significance for environmental planning for the State; regional environmental plans and interim regional environmental plans may be made with respect to matters of significance for environmental planning for the region to which they are to apply. Provision is made for consultation with interested bodies before regional environmental plans or interim regional environmental plans are made and for public participation in the preparation of those plans. An interim regional environmental plan may be made only if a regional environmental plan is in course of preparation.

Local environmental plans may be made by a council in respect of its area or by two or more councils jointly in respect of their areas. Provision is made in relation to the preparation of local environmental plans for consultation with interested bodies and for full public participation in the making of the plans. Minor amendments to local environmental plans may be made by a less complex procedure than is necessary for the making of local environmental plans.

The Minister is to be empowered to amend regional environmental planning instruments to remove inconsistencies between them and State environmental planning policies and to amend local environmental plans to remove inconsistencies with either State environmental policies or regional environmental planning instruments.

8. Part III contains clauses 94–147 and deals with environmental planning control. Division 1 deals generally with the procedure for controlling environmental planning. Clauses 95, 96, 97 and 98 specify—in relation to four different categories of development, viz., category A development, category B development, category C development and category D development—the circumstances in which development in each category may or may not be carried out. Category A development may be carried out without the prior consent of the council. Category B development may be carried out without the prior consent of the council provided that minimum requirements are complied with. Category C development may be carried out only if the prior consent of the council is obtained and Category D development is prohibited development.

Clause 101 enables an environmental planning instrument to require the concurrence of the Minister or a public authority to be obtained before development requiring the consent of the council is carried out.

Clause 107 makes special provision with respect to development that is classified as major development and requires a council, in respect of a development application in relation to major development, to serve notices on persons that appear to it to be likely to be affected by the major development and to advertise the development application relating to the major development.

Clause 110 enables any person to object to major development.

9. Clause 112 specifies the matters which a council must take into consideration in determining a development application.

10. Clause 114 enables a council to impose as a condition of its consent to a development application, a condition that the applicant for the consent shall pay a reasonable amount towards the provision, extension or improvement of amenities or services, the demand for which is likely to be increased by the development the subject of the application, and also empowers the council, on a development application with respect to the subdivision of land, to require the applicant to pay a reasonable amount equal to the difference between the cost of overhead and underground electricity supply mains.

11. Clause 118 enables the Local Government Appeals Tribunal to dispense with minimum requirements which would otherwise preclude a development application from being granted.

12. Clause 119 provides for appeals to the Local Government Appeals Tribunal against a determination of a council with respect to a development application other than a development application made by a public authority.

13. Clause 120 permits an objector who is dissatisfied with the determination of a council with respect to a development application relating to major development to apply for and be granted leave to appeal to the Local Government Appeals Tribunal.

14. Clause 123 provides for appeals to the Minister by a public authority against a determination of a council with respect to a development application in relation to development proposed to be carried out by it.

15. Clause 124 specifies the times when a consent to a development application lapses.

16. Clause 125 empowers the Minister to direct a council to refer to him for determination specific development applications or development applications of a specified class or description.

17. Clauses 128–137 relate to the preservation of existing development, which is development lawfully carried out before the day upon which an environmental planning instrument applies to the land on which the development is situated.

18. Clauses 138–147 deal with the demolition of buildings and works and prohibit the demolition of a building or work without the prior consent of the council. Clause 141 specifies the matters which a council must take into consideration in dealing with a demolition application; clause 143 empowers the council to require an applicant for approval to demolish a building or work to lodge a bond before undertaking the demolition, and clause 146 provides for appeals against the council's decision on a demolition application.

19. Part IV contains clauses 148 and 149. Clause 148 empowers the Governor to make an order in the nature of a local environmental plan relating to any land which is not subject to a local environmental plan, including the Western Division and Lord Howe Island.

20. Part V contains clauses 150–166. Clause 151 constitutes an Historic Buildings and Sites Advisory Committee whose functions are specified in clause 156. Clause 157 empowers the Minister to make an interim preservation order in respect of any building, work or site and clause 158 empowers the Minister to make a permanent preservation order in respect of any building, work or site after his considering, in the case of an interim preservation order, any recommendation made to him by that Advisory Committee or, in the case of a permanent preservation order, after opportunity has been given to the council of the area in which the building, work or site is situated and any owner of the land on which the building, work or site is situated, to make submissions to the Minister and a recommendation is received by the Minister from that Advisory Committee. An interim preservation order prohibits a person from wilfully demolishing, damaging or despoiling a building or site, the subject of the order, and an interim preservation order and a permanent preservation order prohibit a person from carrying out development on the land on which the building or site is situated, without the approval of the relevant council given in accordance with the Minister's direction or where the land on which the building or site is situated is not in the area of the council, the approval of the Minister, and prohibit the destruction or damaging of any tree on the land on which the building or site is situated.

Where the Historic Buildings and Sites Advisory Committee makes a recommendation that a permanent preservation order be made, it is to be empowered to recommend that the building, work or site be acquired, or that—

- (a) any environmental planning instrument applying to the building, work or site should be modified;
- (b) that the owner of the land on which the building, work or site is situated should be granted financial assistance; or
- (c) that special provisions with respect to the building, site or land should be included in an environmental planning instrument,

and the Minister is empowered to give effect to any such recommendation.

Certain provisions of the Valuation of Land Act, 1916, Schedule 3 to the Local Government Act, 1919, the Land Tax Management Act, 1956, or the Land Tax Act, 1956, are modified in relation to their application to land on which a building or work the subject of a permanent preservation order or that forms a site the subject of such an order.

21. Part VI contains clauses 167–183 and contains provisions with respect to the implementation and enforcement of environmental planning instruments.

Clause 170 provides for the payment of compensation if a person's right in respect of an existing building, an existing use of a building, work or land or an existing work are interfered with.

Clause 171 provides that the value of land acquired pursuant to an environmental planning instrument or the value of land, the subject of a permanent preservation order, that is acquired, shall be the market value of the land on the date on which it is purchased or taken, disregarding any environmental planning instrument or the permanent preservation order applying to the land.

Clause 172 empowers the Commission to require information to be furnished to it in connection with any matter relating to its functions.

Clause 173 empowers the Minister to direct a public authority to exercise, perform or discharge its functions under an environmental planning instrument.

Clause 174 permits the revocation or modification of a consent to a development application subject to the payment of compensation.

Clause 175 empowers the Minister to appoint an environmental planning administrator to exercise and perform the functions of a council conferred or imposed by or under the proposed Act where he is of the opinion that the council is not properly performing or discharging those functions.

Clause 176 specifies the circumstances in which an offence is committed against the proposed Act or regulations made under it.

Clause 177 imposes a maximum penalty of \$10,000 for an offence against the Act where no other penalty is expressly provided and a penalty not exceeding \$500 for an offence against the regulations.

Clause 179 empowers the Commission or a council to take proceedings with respect to enforcing or securing the observance of any provision made by or under the proposed Act in circumstances in which the Attorney General might take relator proceedings.

Clause 182 contains evidentiary provisions.

22. Part VII contains clauses 184–192.

Clause 184 validates certain provisions contained in planning instruments made under Part XIIA of the Local Government Act, 1919.

Clause 185 provides that a local environmental plan runs with the land to which it applies where that land is transferred to another local government area or is amalgamated with land of another local government area.

Clause 186 prohibits the use of information obtained by any person in connection with his functions under the proposed Act.

Clause 187 empowers the Minister to appoint a person to hold a public inquiry with respect to any matter arising under the proposed Act or an environmental planning instrument.

Clause 188 provides for the settlement of disputes between the New South Wales Planning and Environment Commission, a council or any other public authority.

Clause 189 provides for the issue of certificates by a council with respect to the manner in which land is affected by an environmental planning instrument.

Clause 190 empowers a council to delegate certain of its functions under the proposed Act.

Clause 191 empowers the Minister, out of moneys appropriated by Parliament or made available by the Commonwealth, to make advances to the Commission or a council for or in connection with the exercise or performance of its functions under or in pursuance of the proposed Act.

Clause 192 deals with financial arrangements between the Minister and the Commission.

23. Part VIII makes a number of consequential amendments to various Acts, the most important of which is to repeal part XIIA of the Local Government Act, 1919.

24. Schedule 1 contains a list of persons or bodies who or which are public authorities for the purposes of the proposed Act.

25. Schedule 2 specifies the amendments to be made to various Acts as a consequence of the enactment of the proposed Act.

26. Schedule 3 contains transitional and savings provisions.

27. The Bill also contains provisions of a minor, consequential or ancillary character.

PROOF

No. , 1976.

A BILL

To institute a new system of environmental planning
for the State of New South Wales; and to validate certain
matters.

BE

Environmental Planning.

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
5 follows:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Environmental Planning Short title.
Act, 1976".

10 2. (1) This Part and section 184 shall commence on the Commence-
date of assent to this Act. ment.

(2) Except as provided by subsections (1), (3) and
(4), this Act shall commence on such day (being a day that
is later than the day appointed and notified under subsection
15 (4)) as may be appointed by the Governor in respect thereof
and as may be notified by proclamation published in the
Gazette.

(3) For the purpose of the exercise of any function
for or with respect to the preparation, the securing of the
20 preparation, or the making, of an environmental planning
instrument (including an environmental planning instrument
that amends or repeals a former planning instrument, as
defined in clause 1 of Schedule 3, but not including an
environmental planning instrument that amends or repeals a
25 local environmental plan as defined in paragraph (a) or (b)
of the definition of "local environmental plan" in section 4
(1)), this Act shall commence on the date of assent to this
Act, but an environmental planning instrument made under
this Act before the day appointed and notified under sub-
30 section (2) shall, if published in the Gazette before that day,
take effect—

(a) on that day; or

(b)

Environmental Planning.

(b) on the day it would have taken effect had this Act been in force for all purposes when it was so published,

whichever is the later.

(4) Part V and so much of section 171 as relates to land the subject of a permanent preservation order 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.

(5) Section 37 of the Interpretation Act, 1897, does not apply to the making of an environmental planning instrument.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–6.

PART II.—ENVIRONMENTAL PLANNING INSTRUMENTS
—ss. 7–93.

DIVISION 1.—*General*—ss. 7–19.

DIVISION 2.—*State environmental planning policies*—
ss. 20–22.

DIVISION 3.—*Regional environmental plans and interim regional environmental plans*—ss. 23–42.

DIVISION 4.—*Local environmental plans*—ss. 43–67.

DIVISION 5.—*Review and amendment of environmental planning instruments*—ss. 68–93.

Subdivision 1.—*General*—ss. 68–73.

Subdivision 2.—*Minor amendments to local environmental plans*—ss. 74–90.

Subdivision 3.—*Amendments to remove inconsistencies between environmental planning instruments*—ss. 91–93.

PART

Environmental Planning.

PART III.—ENVIRONMENTAL PLANNING CONTROL—
ss. 94–147.

DIVISION 1.—*General*—ss. 94–127.

DIVISION 2.—*Existing development*—ss. 128–137.

5 DIVISION 3.—*Demolition of buildings and works*—
ss. 138–147.

PART IV.—ENVIRONMENTAL PLANNING FOR LAND
OTHER THAN LAND TO WHICH A LOCAL
ENVIRONMENTAL PLAN APPLIES—ss. 148, 149.

10 PART V.—PRESERVATION OF BUILDINGS, WORKS AND
SITES—ss. 150–166.

PART VI.—IMPLEMENTATION AND ENFORCEMENT—
ss. 167–183.

PART VII.—MISCELLANEOUS—ss. 184–192.

15 PART VIII.—AMENDMENTS TO CERTAIN ACTS—s.
193.

SCHEDULES.

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

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

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

“category A development” means development referred
to in section 12 (a);

25 “category B development” means development referred
to in section 12 (b);

“category

Environmental Planning.

“category C development” means development referred to in section 12 (c);

“category D development” means development referred to in section 12 (d);

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

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

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

15 (b) confer on a council, the Minister or a public authority functions with respect to consenting to, permitting, regulating or restricting that development or that other Act, matter or thing, either unconditionally or subject to conditions, or prohibiting that development, or that other act, matter or thing;

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

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

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

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

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

(d) the subdivision of that land,

but does not include any development of a prescribed class or description;

“development

Environmental Planning.

5 “development application” means an application for consent under Division 1 of Part III to carry out development and includes an application for the consent of a council made under the local environmental plan that a former planning instrument, as defined in clause 1 of Schedule 3, is deemed by clause 2 of that Schedule to be;

 “environmental impact statement”, in relation to development, means a document—

- 10 (a) describing the document;
- (b) containing a statement of the objections of the development;
- (c) describing the environment that is likely to be affected by the development;
- 15 (d) describing the measures intended to be taken by the person proposing to carry out the development to protect the environment;
- 20 (e) containing an analysis of the effect that each aspect of the development is likely to have on the environment and of any other practical means of achieving the objectives referred to in paragraph (b); and
- 25 (f) containing an assessment of the beneficial effects, the detrimental effects and the overall effect that the development, if carried out, would have on the environment;

30 “environmental planning instrument” means a State environmental planning policy, a regional environmental plan, an interim regional environmental plan or a local environmental plan;

 “functions” includes powers, authorities and duties;

 “interim

Environmental Planning.

“interim regional environmental plan” means—

- (a) an interim regional environmental plan made by the Minister under section 42 (1);
- (b) an order made under section 71 (b); or
- 5 (c) an order made under section 91 amending an interim regional environmental plan;

“local environmental plan” means—

- (a) a draft local environmental plan approved and adopted by a council under section 62 (1);
- 10 (b) a minor amendment plan; or
- (c) an order made under section 92 (1) (a);

15 “major development”, in relation to an environmental planning instrument, means category C development designated as major development in that environmental planning instrument;

“minimum requirements” means those provisions of an environmental planning instrument by or under which requirements are specified in respect of—

- 20 (a) the area or frontage of any land, the dimensions of any land, building or work or the distance of any building or work from any specified point;
- (b) the proportion or percentage of a site which a building or work may occupy or the ratio between the part of a site not occupied by a building or work and the part so occupied;
- 25 (c) the height, cubic content or floor space of a building or the number of persons who may occupy a building;
- 30 (d) the external appearance of a building or work;

(e)

Environmental Planning.

(e) the space required for the parking, standing or loading of vehicles;

(f) the road pattern in any subdivision of land;

(g) the landscaping or treatment of a site; or

5 (h) such other matters as may be prescribed;

“minor amendment plan” means a draft minor amendment plan approved and adopted by a council under section 86 (1);

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

“public authority”—

15 (a) except as provided in paragraph (b), means any body, person, Government Department or part of a Government Department whose name is for the time being included in Schedule 1; and

20 (b) where any body, person, Government Department or part of a Government Department is specified in Schedule 1 in relation to a provision of this Act, means, in relation to that provision, that body, person, Government Department or part of a Government Department;

25 “region” means any part of the State that the Minister, under subsection (7), declares to be a region;

“regional environmental plan” means—

(a) a regional environmental plan made by the Minister under section 37 (1);

(b) an order made under section 70 (b); or

30 (c) an order made under section 91 amending a regional environmental plan;

“regulation”

Environmental Planning.

“regulation” means regulation made under this Act;

“special development” means development, or development of a class or description, that is prescribed as special development and that is carried out or to be carried out by a public authority;

“State environmental planning policy” means—

(a) a State environmental planning policy made by the Minister under section 22 (1); or

(b) an order made under section 69 (b);

“Tribunal” has the meaning ascribed thereto in the Local Government Act, 1919.

(2) A reference in this Act to—

(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;

(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;

(c) a work includes a reference to any activity carried out on land that is specified by a regulation to be a work for the purposes of this Act but does not include any activity that is specified by a regulation not to be a work for the purposes of this Act; and

(d) the subdivision of land is a reference to the subdivision of land within the meaning of the Local Government Act, 1919, any other division of land into two or more parts which, after the division, would be obviously adapted for separate occupation or the

redivision

Environmental Planning.

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 but does not include a reference to a subdivision effected under Division 1 of Part II of the Strata Titles Act, 1973.

(3) Where functions are conferred or imposed by or under this Act on a council—

- 10 (a) except as provided in paragraph (b), those functions may be exercised or performed in respect of an area by the council of that area; or
- 15 (b) if the functions are conferred or imposed in respect of part of an area, those functions may be exercised or performed 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.

(5) Subject to section 45, a reference in this Act to the Commission or a council preparing an environmental planning instrument or an environmental study includes a reference to the Commission or a council, as the case may be, causing that environmental planning instrument or environmental study to be prepared on its behalf.

(6) The Governor may by proclamation published in the Gazette amend Schedule 1—

- 30 (a) by including therein the name of any body, person, Government Department or part of a Government Department carrying out functions of a public nature;

(b)

Environmental Planning.

- (b) by omitting therefrom the name of any body, person, Government Department or part of a Government Department carrying out functions of a public nature;
- 5 (c) by amending the name of any body, person, Government Department or part of a Government Department whose name is included therein; or
- 10 (d) by specifying a provision of this Act in relation to which a body, person, Government Department or part of a Government Department specified in that Schedule is so specified.

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

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

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

(10) A reference in this Act to a consent includes, in relation to a local environmental plan which a former plan-
25 ning instrument, as defined in clause 1 of Schedule 3, is by clause 2 of that Schedule deemed to be, a reference to an approval or a permission.

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

Environmental Planning.

5. The objects of this Act are—Objects
of Act.

(a) by environmental planning (including the reservation and zoning of land) and the control of development to ensure—

- 5 (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 to promote the social and economic welfare of the community and a better environment;
- 10 (ii) the conservation of important areas of landscape on the coast and elsewhere in the State;
- 15 (iii) the preservation of historic buildings, works and sites and of areas of special environmental value from an aesthetic, scientific or historical point of view;
- 20 (iv) the protection and provision of essential elements of State, regional and local communication networks and utility networks;
- 25 (v) the provision of land for public and community purposes of a State, regional and local nature;
- (vi) the provision of regional and local community facilities;
- (vii) the preservation and protection of the environment; and
- 30 (viii) the co-ordination of State environmental planning policies, regional environmental plans, interim regional environmental plans and local environmental plans with respect to the protection of the environment;

(b)

Environmental Planning.

- (b) to confer on councils greater power relating to local environmental planning; and
- (c) to provide greater opportunity for public involvement and participation in regional and local environmental planning.

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

PART II.

ENVIRONMENTAL PLANNING INSTRUMENTS.

DIVISION 1.—*General.*

7. An environmental planning instrument may be made in accordance with this Part.
8. In making an environmental planning instrument—
- (a) the Minister in respect of an environmental planning instrument other than a local environmental plan; or
- (b) the council in respect of a local environmental plan,
- shall have regard to the objects of this Act.
9. (1) An environmental planning instrument shall, to the extent to which—
- (a) the Minister in respect of an environmental planning instrument other than a local environmental plan; or

Making of environmental planning instruments.

Application of objects to making of environmental planning instruments.

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

(b)

Environmental Planning.

(b) the council in respect of a local environmental plan, considers it necessary to do so, state the aims, objectives, policies and strategies whereby that environmental planning instrument is designed to achieve any one or more of the 5 objects of this Act.

(2) 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.

10 **10.** An environmental planning instrument may make provision for or with respect to any one or more of the following :—

Contents of environmental planning instruments.

- (a) protecting, improving or utilising, to the best advantage, the environment;
- 15 (b) controlling development;
- (c) designating land for use exclusively for the purpose of a public place or public reserve within the meaning of the Local Government Act, 1919, a public cemetery, a public hospital, a public railway, 20 a public school or any other purpose that is prescribed as a public purpose for the purposes of this section;
- (d) demolishing buildings or works;
- (e) protecting or preserving trees;
- 25 (f) controlling any act, matter or thing for or with respect to which provision may be made under paragraph (a) or (e) ; and
- (g) the making of appeals to the Tribunal in respect of any decision made under the environmental planning instrument with respect to any act, matter or 30 thing for or with respect to which provision may be made under paragraph (f).

Environmental Planning.

11. (1) An environmental planning instrument, other than a local environmental plan, may suspend, either generally or in any particular case or class of cases, the operation of any provision of any Act, other than this Act, or of any rule, regulation, by-law, ordinance, proclamation, agreement, covenant or instrument by or under whatever authority made to the extent to which that provision is inconsistent with any of the provisions of that environmental planning instrument or of any consent given under the provisions of that environmental planning instrument.

Suspension of inconsistent laws, etc., by environmental planning instruments.

(2) On the date on which a local environmental plan takes effect, any proclamation made under section 309 (1) of the Local Government Act, 1919, applying to the land to which that local environmental plan applies shall, to the extent to which that proclamation applies to that land, be revoked.

(3) A local environmental plan may, with the approval of the Minister, suspend the operation of Schedule 7 to the Local Government Act, 1919, to the extent to which that Schedule is inconsistent with any of the provisions of that local environmental plan or of any consent given under the provisions of the local environmental plan.

12. Where an environmental planning instrument makes provision for or with respect to controlling development, that environmental planning instrument may, in the case of an environmental planning instrument other than a local environmental plan, and shall, in the case of a local environmental plan, classify development only according to any one or more of the following categories :—

Classification of development.

(a) category A—development, not being category B development, that may be carried out without the prior consent of the council having to be obtained therefor;

(b)

Environmental Planning.

- 5 (b) category B—development that may be carried out without the prior consent of the council having to be obtained therefor and that complies with any minimum requirements of that environmental planning instrument;
- (c) category C—development that may be carried out with the prior consent of the council therefor; and
- (d) category D—development that is prohibited.

10 **13.** Where an environmental planning instrument classifies development as category C development—

Category C
development—
major
development.

- 15 (a) that environmental planning instrument may, in the case of an environmental planning instrument other than a local environmental plan, designate all category C development or any class of category C development as major development; and
- 20 (b) that environmental planning instrument, in the case of a local environmental plan—
- (i) shall adopt any designation of category C development or class of category C development as major development made pursuant to paragraph (a) in any environmental planning instrument applying to the land to which that local environmental plan applies; and
- 25 (ii) may designate all category C development or any class of category C development other than that category C development referred to in subparagraph (i), if any, as major development.

14.

Environmental Planning.

14. Where an environmental planning instrument classifies development as category C development, that environmental planning instrument may provide that the carrying out of such category C development or class of category C development as is specified in that environmental planning instrument shall not be consented to without the concurrence of the Minister or such public authority as is named in that environmental planning instrument in relation to that development.

Category C
develop-
ment—
con-
currence.

15. Where an environmental planning instrument designates land for use exclusively for a purpose referred to in section 10 (c), that environmental planning instrument shall make provision for or with respect to the acquisition of that land by a public authority (not being a provision for or with respect to the compulsory acquisition of that land) unless the land is owned by a public authority and is held by that public authority for that purpose.

Reservation
of land.

16. 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 any person or body specified in the environmental planning instrument.

Authori-
sation of
matters
under
environ-
mental
planning
instruments.

17. (1) Subject to this Act and the regulations, the form and content of an environmental planning instrument shall be determined by—

Form of
environ-
mental
planning
instruments.

(a) the Minister in respect of an environmental planning instrument other than a local environmental plan; and

(b) the council in respect of a local environmental plan.

(2) An environmental planning instrument may, by reference, adopt wholly or partially any set of model provisions contained in the regulations.

Environmental Planning.

18. (1) Sections 18, 42 and 43 of the Interpretation Act, 1897, apply to an environmental planning instrument in the same way as they apply to instruments or regulations respectively referred to in those sections.

Environ-
mental
planning
instruments—
making,
operation
and
inspection.

5 (2) Section 41 of the Interpretation Act, 1897, applies to a State environmental planning policy, a regional environmental plan and an interim regional environmental plan in the same way as it applies to a regulation that is made by the Governor.

10 (3) A State environmental planning policy, a regional environmental plan and an interim regional environmental plan shall be available for public inspection at the office of the Commission during ordinary office hours.

(4) A document purporting to be an environmental
15 planning instrument and to be printed by the Government Printer or by the authority of the Government is admissible in evidence in any legal proceedings and is prima facie evidence of the due making of that instrument and the contents thereof.

20 (5) For the purposes of this Act, an environmental planning instrument shall be deemed to have been laid before a House of Parliament or to have been published in the Gazette notwithstanding that any planning map or other
25 instrument referred to in that environmental planning instrument is not so laid or published.

19. For the purpose of any legal proceedings, an environ- Non-
mental planning instrument is not invalid by reason only of compliance
any failure to comply with any provision of Division 2, 3, 4 with
or 5 with respect to its making. statutory
provisions.

Environmental Planning.

DIVISION 2.—State environmental planning policies.

20. (1) The Commission may resolve to prepare a draft State environmental planning policy with respect to such matters as are, in the opinion of the Commission, of significance for environmental planning for the State and are specified in the resolution.

Decision or direction to prepare draft State environmental planning policy.

(2) The Minister may direct the Commission to prepare a draft State environmental planning policy with respect to any matter specified in the direction, being a matter which is, in the opinion of the Minister, of significance for environmental planning for the State.

(3) Without limiting the powers of the Minister under section 4 (1) (a) of the State Planning Authority Act, 1963, where the Minister, under subsection (2), directs the Commission to prepare a draft State environmental planning policy with respect to any matter relating to the functions of the State Pollution Control Commission, he may, in that direction, require the Commission to consult with, and have regard to any recommendations made by, the State Pollution Control Commission and such other persons as may be specified in the direction.

(4) The Commission shall comply with any direction given to it by the Minister under subsection (2).

21. The Commission may submit a draft State environmental planning policy to the Minister.

Submission of draft State environmental planning policy to the Minister.

Environmental Planning.

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

Making of State environmental planning policies by the Minister.

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

(b) in accordance with that draft with such alterations as he thinks fit.

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

(3) A State environmental planning policy may apply to the State or such part of the State as is described in that State environmental planning policy.

15 DIVISION 3.—*Regional environmental plans and interim regional environmental plans.*

23. (1) The Commission may resolve to prepare a draft regional environmental plan with respect to such region as is specified in the resolution and with respect to such matters
20 as are, in the opinion of the Commission, of significance for environmental planning for that region.

Decision or direction to prepare draft regional environmental plan.

(2) The Minister may direct the Commission to
10 prepare a draft regional environmental plan with respect to any matter specified in the direction, being a matter which is,
25 in the opinion of the Minister, of significance for environmental planning for such region as is specified in the direction.

(3)

Environmental Planning.

(3) Without limiting the powers of the Minister under section 4 (1) (a) of the State Planning Authority Act, 1963, where the Minister, under subsection (2), directs the Commission to prepare a draft regional environmental plan with respect to any matter relating to the functions of the State Pollution Control Commission, he may, in that direction, require the Commission to consult with, and have regard to any recommendations made by, the State Pollution Control Commission.

10 (4) The Commission shall comply with any direction given to it by the Minister under subsection (2).

(5) A direction given by the Minister under subsection (2) shall, for the purposes of sections 24, 37, 38 and 42, be deemed to be a resolution made by the Commission under subsection (1) to prepare a draft regional environmental plan with respect to the matter referred to in the direction.

24. (1) Where the Commission makes a resolution under Preparation section 23 it shall, except as provided in subsection (3), of environ-
prepare an environmental study of the land to which the mental
20 draft regional environmental plan is intended to apply. 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 plan is intended to apply, as the
25 Commission determines.

(3) Where a draft regional environmental plan is intended only to amend a regional environmental plan or to repeal in whole or in part a regional environmental plan, the Commission may dispense with the preparation of an
30 environmental study of the land to which the draft regional environmental plan is intended to apply.

Environmental Planning.

25. When the environmental study referred to in section 24 (1) has been prepared, the Commission shall—

Public
exhibition
of environ-
mental
study.

(a) give public notice, in a form and manner determined by the Commission, of—

5 (i) the terms of the resolution made under section 23; and

10 (ii) the place at which, the dates on which, and the times during which, a copy of that environmental study may be inspected by the public;

(b) publicly exhibit a copy of that environmental study at the place, on the dates and during the times set out in the notice referred to in paragraph (a); and

15 (c) specify, in the notice given under paragraph (a), the period during which submissions may be made to the Commission in accordance with section 26.

26. Any person may, during the period referred to in section 25 (c), make a submission to the Commission with respect to—

Making
of sub-
missions.

20 (a) the aims, objectives, policies and strategies in accordance with which the draft regional environmental plan referred to in the resolution made under section 23 should be prepared;

25 (b) the terms of the resolution made under section 23; or

(c) the environmental study referred to in section 24 (1).

27.

Environmental Planning.

27. Where the Commission has dispensed with the preparation of an environmental study under section 24 (3), such of the provisions of sections 25 and 26 as refer to an environmental study shall, for the purposes of the preparation of the draft regional environmental plan referred to in section 24 (3), be deemed to be omitted therefrom.

Modification of ss. 25, 26 where regional environmental plan is repealed in whole or in part.

28. (1) At any time after the expiration of the period referred to in section 25 (c), the Commission—

Preparation of draft regional environmental plan.

(a) may, pursuant to its resolution under section 23, prepare a draft regional environmental plan with respect only to the matters specified in that resolution; or

(b) if after consideration of the submissions made to it under section 26 it thinks fit to do so, may resolve to prepare a draft regional environmental plan—

(i) with respect only to some of those matters; or

(ii) with respect to all or any of those matters and such other matters as it thinks fit and as are, in the opinion of the Commission, of significance for environmental planning with respect to the region referred to in that resolution.

(2) The preparation of a draft regional environmental plan pursuant to subsection (1) (paragraph (a) excepted) shall not be commenced unless the Commission has first given public notice, in a form determined by the Commission and in the manner in which public notice was given of the terms of the resolution referred to in subsection (1) (a), of the terms of the resolution made by it under subsection (1) (b).

(3)

Environmental Planning.

(3) Where public notice of a resolution made by the Commission under subsection (1) (b) is given in accordance with subsection (2), that resolution shall, for the purposes of sections 37, 38 and 42, be deemed to be a resolution made
5 by the Commission under section 23 to prepare a draft regional environmental plan with respect to the matters in respect of which the Commission resolved under subsection (1) (b) to prepare a draft regional environmental plan.

29. In the exercise of its functions with respect to the Consultation.
10 preparation of a draft regional environmental plan, the Commission shall—

(a) have regard to any submissions made to it under section 26;

(b) where—

15 (i) an advisory council has been constituted under the Regional Organisation Act, 1972, in respect of the whole or any part of the land to which that draft regional environmental plan applies, if directed to do so by
20 the Minister, consult with that advisory council or a committee of that advisory council; or

25 (ii) no advisory council has been constituted under the Regional Organisation Act, 1972, in respect of the whole or any part of the land to which that draft regional environmental plan applies, if directed to do so by the Minister, consult with such councils as
30 are specified in that direction whose areas are affected by that draft regional environmental plan,

concerning the provisions of that draft regional environmental plan; and

(c)

Environmental Planning.

- 5 (c) consult with each council whose area or part of
whose area is situated in the region to which that
draft regional environmental plan is intended to
apply (except where that consultation has occurred
pursuant to paragraph (b) (ii)), with such other
public authorities as, in the opinion of the
Commission, will be affected by that draft regional
environmental plan and with such other persons
concerning the provisions of that draft regional
10 environmental plan as it determines.

30. To facilitate the preparation of a draft regional
environmental plan, a public authority—

Information
from public
authorities.

- 15 (a) shall, if requested to do so by the Commission,
furnish such information and provide such
assistance as may reasonably be required by the
Commission in the preparation of that draft regional
environmental plan; and
- 20 (b) shall notify the Commission of any information or
any actual or proposed activity or work that, in its
opinion, is relevant to the provisions of that draft
regional environmental plan.

31. The Commission shall ensure that a draft regional
environmental plan is not inconsistent with any State environ-
mental planning policy applying to the land to which that
25 draft regional environmental plan applies.

Con-
sistency
with State
environ-
mental
planning
policies.

32. When a draft regional environmental plan has been
prepared by the Commission, it shall—

Public
exhibition
of draft
regional
environ-
mental
plan.

- 30 (a) give public notice, in a form and manner determined
by the Commission, of the place at which, the dates
on which, and the times during which, that draft
regional environmental plan may be inspected by
the public;

(b)

Environmental Planning.

- (b) publicly exhibit that draft regional environmental plan at the place, on the dates and during the times set out in the notice referred to in paragraph (a); and
- 5 (c) specify, in the notice given under paragraph (a), the period during which submissions may be made to the Commission in accordance with section 33.

33. Any person may, during the period referred to in Submis-
 section 32 (c), make submissions to the Commission with sions.
 10 respect to a draft regional environmental plan publicly
 exhibited under section 32 (b).

34. The Commission shall consider any submissions made Considera-
 to it under section 33. tion of
 submissions.

35. (1) The Commission—
- 15 (a) may amend a draft regional environmental plan as Amendment
 a consequence of its consideration of any of draft
 submissions made to it under section 33; regional
 environ-
 mental
 plan.
 - (b) may, if it thinks fit, publicly exhibit that amended
 draft regional environmental plan at such places, on
 20 such dates and during such times as it determines;
 and
 - (c) where it publicly exhibits that amended draft
 regional environmental plan under paragraph (b),
 shall give public notice, in a form and manner
 25 determined by the Commission, specifying the
 period during which submissions may be made to
 the Commission in accordance with section 33, as
 applied by subsection (2).

(2)

Environmental Planning.

(2) Where the Commission publicly exhibits an amended draft regional environmental plan under subsection (1) (b), sections 33 and 34 and subsection (1) apply to that amended draft regional environmental plan in the same way as they apply in respect of a draft regional environmental plan.

36. (1) The Commission may submit a draft regional environmental plan, whether amended or not, to the Minister.

Submission
of draft
regional
environ-
mental
plan to
the
Minister.

(2) A draft regional environmental plan submitted to the Minister under subsection (1) may be expressed to apply to the whole or any part of a region.

(3) Where a draft regional environmental plan submitted to the Minister under subsection (1) is expressed to apply to part only of a region—

- 15 (a) the Commission may subsequently submit a draft regional environmental plan to the Minister with respect to the remaining part or any part of the remaining part of the region; and
- 20 (b) the provisions of this Division, except sections 33, 34 and 35, do not apply in respect of a draft regional environmental plan referred to in paragraph (a).

(4) A draft regional environmental plan submitted to the Minister under subsection (1) or (3) shall be accompanied by any submission made to the Commission under section 33 by a public authority, a council or an advisory council constituted under the Regional Organisation Act, 1972, or a committee of such an advisory council and by a summary of any other submissions made to the Commission under section 33.

Environmental Planning.

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

Making of regional environmental plans by the Minister.

- 5 (a) in accordance with the draft regional environmental plan submitted to him; or
- (b) in accordance with the draft regional environmental plan with such alterations as he thinks fit.

(2) The Minister shall 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 that regional environmental plan.

(4) Upon the making of a regional environmental plan setting forth the terms of the resolution for its preparation made under section 23, every interim regional environmental plan made pursuant to that resolution ceases to have any force or effect.

38. (1) Subject to subsection (3), the Commission may, pursuant to a resolution made under section 23 to prepare a draft regional environmental plan with respect to a region and with respect to any matter, prepare a draft interim regional environmental plan with respect to that region and with respect to that matter.

Decision or direction to prepare draft interim regional environmental plan.

Environmental Planning.

(2) Where the Commission has made a resolution under section 23 to prepare a draft regional environmental plan with respect to any region and with respect to any matter, the Minister may, subject to subsection (3), direct the Commission to prepare a draft interim regional environmental plan pursuant to that resolution with respect to that region or with respect to such part of that region as is specified in that direction and with respect to any such matter as is specified in that direction.

10 (3) The Commission shall not, pursuant to subsection (1), prepare a draft interim regional environmental plan and the Minister shall not give a direction under subsection (2) for the preparation of a draft interim regional environmental plan unless, in the opinion of the Commission or the Minister,
15 as the case may be, there are special circumstances that warrant the making of an interim regional environmental plan in order to control any development pending the making of a regional environmental plan.

(4) Where the Minister, under subsection (2),
20 directs the Commission to prepare a draft interim regional environmental plan with respect to any matter relating to the pollution of the environment, he may, in that direction, require the Commission to consult with, and have regard to any recommendations made by, the State Pollution Control
25 Commission.

(5) The Commission shall comply with any direction given to it by the Minister under subsection (2).

39. Where the Commission decides to prepare a draft interim regional environmental plan under section 38 (1),
30 it shall—

(a) prepare such environmental study as it thinks fit of the land to which the draft interim regional environmental plan is intended to apply;

(b)

Preparation
of draft
interim
regional
environ-
mental
plan.

Environmental Planning.

- (b) consult with such persons as it thinks fit concerning the provisions of that draft interim regional environmental plan;
- (c) where directed to do so by the Minister—
 - 5 (i) publicly exhibit that draft interim regional environmental plan at such places, on such dates and during such times as he specifies in the direction; and
 - 10 (ii) give public notice, in such form and manner as is specified in the direction, of the period during which submissions may be made to the Commission with respect to that draft interim regional environmental plan; and
 - 15 (d) consider any submissions referred to in paragraph (c) (ii).

40. Sections 30 and 31 apply in respect of a draft interim regional environmental plan in the same way as they apply to a draft regional environmental plan.

Application of ss. 30, 31.

41. The Commission may submit a draft interim regional environmental plan to the Minister.

Submission of draft interim regional environmental plan to the Minister.

42. (1) Subject to subsection (3), the Minister may, on the submission to him by the Commission of a draft interim regional environmental plan, make an interim regional environmental plan—

Making of interim regional environmental plans by the Minister.

- 25 (a) in accordance with the draft interim regional environmental plan submitted to him; or

(b)

Environmental Planning.

(b) in accordance with the draft interim regional environmental plan with such alterations as he thinks fit.

(2) An interim regional environmental plan shall
5 apply to such region or part of a region as is described in that interim regional environmental plan.

(3) The Minister shall not make an interim regional environmental plan unless, in his opinion, there are special circumstances that warrant its making in order to control any
10 development pending the making of a regional environmental plan.

DIVISION 4.—Local environmental plans.

43. Where two or more councils decide to join in the preparation of a draft local environmental plan under section
15 44 (2), a reference in this Division—

Interpre-
tation:
Pt. II,
Div. 4.

(a) except in section 44, to a council includes a reference to those councils; and

(b) to an area includes a reference to the areas of those councils.

44. (1) A council may, in respect of the whole or any
20 part of the land within its area to which a regional environmental plan or an interim regional environmental plan applies, resolve to prepare a draft local environmental plan.

Decision
to prepare
draft local
environ-
mental plan.

(2)

Environmental Planning.

(2) Two or more councils may, in respect of the whole or any part of the land within their areas to which a regional environmental plan or an interim regional environmental plan applies, decide, by resolution of each council, to
5 join in the preparation of a draft local environmental plan.

(3) Where two 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
10 purpose of preparing that draft local environmental plan.

45. A council which makes a resolution under section 44 (1) or (2) shall, unless the Commission otherwise approves, appoint or employ a person who has a prescribed environmental planning qualification to assist it in the preparation of
15 or to prepare on its behalf the draft local environmental plan.

46. (1) The Minister may direct a council to prepare a draft local environmental plan or two or more councils to join in the preparation of a draft local environmental plan.
Direction from Minister to prepare a draft local environmental plan.

(2) A direction given under subsection (1) to—

20 (a) a council to prepare a draft local environmental plan shall be deemed to be a resolution made under section 44 (1); and

(b) two or more councils to join in the preparation of a draft local environmental plan shall be deemed to
25 be a resolution made under section 44 (2).

47.

Environmental Planning.

47. (1) Where a council makes a resolution under section 44 (1) or (2), it shall prepare an environmental study of the land to which the draft local environmental plan is intended to apply and shall, where the regulations so provide, do so in accordance with the regulations.

Preparation
of environ-
mental
study.

(2) 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 determines.

48. When the environmental study referred to in section 47 (1) has been prepared, the council shall—

Public
exhibition
of environ-
mental
study.

(a) give public notice, in a form and manner determined by the council, of—

- 15 (i) the terms of the resolution made under section 44 (1) or (2); and
- (ii) the place at which, the dates on which, and the times during which, a copy of that environmental study may be inspected by the public;
- 20

(b) publicly exhibit—

- (i) a copy of that environmental study; and
- (ii) any regional environmental plan or interim regional environmental plan applying to the land to which the draft local environmental plan referred to in the resolution made under section 44 (1) or (2) is intended to apply,
- 25

30 at the place, on the dates and during the times set out in the notice referred to in paragraph (a); and

Environmental Planning.

- (c) specify, in the notice given under paragraph (a), the period during which submissions may be made to the council in accordance with section 49.

5 **49.** Any person may, during the period referred to in section 48 (c), make a submission to the council with respect to— Making of submissions.

- 10 (a) the aims, objectives, policies and strategies in accordance with which the draft local environmental plan referred to in the resolution made under section 44 (1) or (2) should be prepared;

- (b) the terms of the resolution made under section 44 (1) or (2); or

- (c) the environmental study referred to in section 47 (1).

15 **50.** At any time after the expiration of the period referred to in section 48 (c), the council may prepare a draft local environmental plan. Preparation of draft local environmental plan.

20 **51.** In the exercise of its functions with respect to the preparation of a draft local environmental plan, the council shall— Consultation and compliance with the Minister's directions.

- (a) have regard to any submissions made to it under section 49;

- (b) consult with—

- 25 (i) such public authorities as, in its opinion, will be affected by that draft local environmental plan; and

- (ii)

Environmental Planning.

- (ii) where that draft local environmental plan applies to land adjoining a boundary between the council's area and another area, the council for that other area;
- 5 (c) consult with such other persons concerning the provisions of that draft local environmental plan as it determines; and
- (d) comply with any direction given to it with respect to that draft local environmental plan by the Minister.
- 10 25. A public authority—
- (a) may furnish such information and provide such assistance as it deems proper to assist a council in the preparation of a draft local environmental plan; and
- 15 (b) may notify the council of any information or any actual or proposed activity or work that, in its opinion, is relevant to the provisions of a draft local environmental plan.
- 20 53. The council shall ensure that a draft local environmental plan is not inconsistent with any State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft local environmental plan applies.
- 25 54. When a draft local environmental plan has been prepared, the council shall submit a copy of that draft local environmental plan to the Commission.
- 55.

Information from public authorities.

Consistency with other environmental planning instruments.

Submission of copy of draft local environmental plan to the Commission.

Environmental Planning.

55. Where the Commission receives a copy of a draft local environmental plan from a council under section 54, it may issue to that council a certificate stating that, in the opinion of the Commission, the draft local environmental plan is not inconsistent with any State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft local environmental plan applies.

Certificate
of the
Commission.

56. (1) Where a council receives a certificate from the Commission under section 55 with respect to a draft local environmental plan, it shall—

Public
exhibition
of draft
local
environ-
mental
plan.

(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, that draft local environmental plan may be inspected by the public;

(b) publicly exhibit that draft local environmental plan at the place, on the dates and during the times set out in the notice referred to in paragraph (a); and

(c) specify, in the notice given under paragraph (a), 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 58.

(2) A draft local environmental plan shall be publicly exhibited for the prescribed period.

Environmental Planning.

57. Where a proclamation made under section 309 (1) of the Local Government Act, 1919, applies to any part of the land to which a draft local environmental plan applies, the council shall, on the public exhibition of that draft local environmental plan under section 56 (1) (b)—

Proclama-
tions
under s. 309
(1) of the
Local
Government
Act, 1919.

- (a) exhibit a copy of that proclamation;
- (b) exhibit a plan of the land to which that proclamation applies; and
- (c) state that that proclamation will be revoked as a consequence of the approval and adoption of that draft local environmental plan by the council under section 62 (1).

58. Any person may, during the period referred to in section 56 (1) (c), make submissions in writing to the council with respect to the provisions of a draft local environmental plan publicly exhibited under section 56 (1) (b), other than those provisions of that draft local environmental plan which are necessary to make it consistent with the provisions of a State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft local environmental plan applies.

Making of
submissions.

59. (1) The council shall consider and, where necessary, determine any submissions made to it under section 58, other than any submissions referred to in subsection (2), and shall, where regulations so require, do so in the manner prescribed by those regulations.

Considera-
tion and
determina-
tion of
submissions.

Environmental Planning.

(2) The council shall inform the Minister, as soon as practicable after the time for the making of submissions has expired, of any submissions made to it under section 58—

- (a) by a public authority, other than that council;
- 5 (b) with respect to the functions of a public authority, other than that council; or
- (c) arising from the inclusion of a proposal of a public authority, other than that council, in the draft local environmental plan.

10 (3) The Minister shall consider and, where necessary, determine any submissions referred to in subsection (2).

(4) The Minister shall direct the council as to the manner in which any determinations made by him under subsection (3) shall be given effect to.

15 60. (1) The council—

- (a) may amend a draft local environmental plan following its consideration and determination, in accordance with section 59 (1), of any submissions made to it under section 58;
- 20 (b) shall amend a draft local environmental plan to give effect to any direction made by the Minister under section 59 (3) and to enable the council to execute a certificate under section 61;
- 25 (c) may, if it thinks fit, publicly exhibit that amended draft local environmental plan where it is amended pursuant to paragraph (a) at such places, on and

Amendment
of draft
local
environ-
mental
plan.

(d)

Environmental Planning.

(d) where it publicly exhibits that amended draft local environmental plan under paragraph (c), shall give public notice, in a form and manner determined by the council, specifying the period during which submissions may be made to the council in accordance with section 58, as applied by subsection (2).

(2) Where the council publicly exhibits an amended draft local environmental plan under subsection (1) (c), sections 58 and 59 and subsection (1) apply in respect of that amended draft local environmental plan in the same way as they apply to a draft local environmental plan.

61. Where a council has prepared a draft local environmental plan or an amended draft local environmental plan in accordance with this Division, it shall execute a certificate in the prescribed form certifying that—

(a) the council in the preparation of that draft local environmental plan or that amended draft local environmental plan, as the case may be, has complied with such directions as have been given to it with respect to that draft local environmental plan or that amended draft local environmental plan, as the case may be, by the Minister;

(b) that draft local environmental plan or that amended draft local environmental plan, as the case may be, is not inconsistent with any State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft local environmental plan or that amended draft local environmental plan, as the case may be, applies;

(c)

Environmental Planning.

- (c) that draft local environmental plan or that amended draft local environmental plan, as the case may be, gives effect to the determinations of the council under section 59 (1) ;
- 5 (d) that draft local environmental plan or that amended draft local environmental plan, as the case may be, gives effect to the determinations of which the Minister has informed the council under section 59 (4) ; and
- 10 (e) that draft local environmental plan or that amended draft local environmental plan, as the case may be, has otherwise been prepared in accordance with this Act and the regulations.

62. (1) A council which has executed a certificate under
15 section 61 may, by resolution, approve and adopt a draft local environmental plan or an amended draft local environmental plan, as the case may be, prepared by it.

Approval
and
adoption of
draft local
environ-
mental plan.

(2) A resolution made by a council under subsection
(1) shall not be capable of alteration or rescission by that
20 council.

63. A council which makes a resolution under section 62
shall—

Notice of
resolution.

- 25 (a) within 7 days after the making of that resolution, deliver a copy of that resolution, a copy of the certificate executed under section 61 and a copy of the local environmental plan approved and adopted by that resolution to the Commission; and

(b)

Environmental Planning.

- (b) publish a notice with respect to that resolution in the prescribed form in a daily newspaper circulating throughout the State and a newspaper circulating in the area.

5 **64.** (1) A local environmental plan made in accordance with this Division shall be published in the Gazette and shall take effect on and from the date of publication of that local environmental plan in the Gazette or a later date specified in that local environmental plan.

Publication
of local
environ-
mental plan
made in
accordance
with this
Division
in the
Gazette.

10 (2) The Commission may, with the approval of the Minister, give a direction to the council not to publish a local environmental plan made in accordance with this Division in the Gazette until such day, being a day that is at least one month after the date of the resolution under section 62 (1)
15 relating to that local environmental plan, as is specified in the direction.

(3) A local environmental plan made in accordance with this Division shall not be published in the Gazette until—

20 (a) the expiration of one month after the date of the resolution under section 62 (1) relating to that local environmental plan; or

(b) the date specified in a direction relating to that local environmental plan given under subsection (2),

25 whichever is the later.

Environmental Planning.

65. A local environmental plan made under this Division to the extent to which it is inconsistent with a regional environmental plan or an interim regional environmental plan is of no force or effect.

Inconsistency between other environmental planning instruments and a local environmental plan made in accordance with this Division.

5 66. Within 14 days after the publication in the Gazette of a local environmental plan made under this Division, the council shall deliver to the Commission a copy of the prescribed notice referred to in section 63 (b) and of that local environmental plan and 3 copies of any planning maps
10 or other instruments referred to in that plan that were not published in the Gazette.

Notice to the Commission.

67. A local environmental plan shall be available for public inspection at the office of the council during ordinary office hours and at the office of the Commission during
15 ordinary office hours.

Public inspection of local environmental plan.

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

Subdivision 1.—General.

68. In this Division, “amended” includes added to,
20 altered or varied.

Interpretation: Pt. II, Div. 5.

69.

Environmental Planning.

69. A State environmental planning policy—Amend-
ment,
etc., of
State en-
vironmental
planning
policies.(a) may be amended or repealed in whole or in part
by another State environmental planning policy; or(b) may be repealed in whole or in part by order of
the Minister.**70.** A regional environmental plan—Amend-
ment, etc.,
of regional
environ-
mental
plans.(a) may be amended or repealed in whole or in part
by—

(i) another regional environmental plan; or

(ii) an interim regional environmental plan; or

(b) may be repealed in whole or in part by order of
the Minister.**71.** An interim regional environmental plan—Amend-
ment, etc.,
of interim
regional
environ-
mental
plans.(a) may be amended or repealed in whole or in part
by another interim regional environmental plan; or(b) may be repealed in whole or in part by order of
the Minister.**72.** A local environmental plan may be amended or
repealed in whole or in part by—Amend-
ment, etc.,
of local
environ-
mental
plans.

(a) another local environmental plan; or

(b) an order under section 92 (1) (a) or 92 (2) (a).

73.

Environmental Planning.

73. (1) The Commission shall, for the purpose of determining whether it is desirable that State environmental planning policies in force under this Act should be amended or repealed in whole or in part, periodically, at such intervals as it may determine or as the Minister may direct, examine those State environmental planning policies.

Review of
environ-
mental
planning
instruments.

(2) The Commission shall, for the purpose of determining whether it is desirable that regional environmental plans or interim regional environmental plans in force under this Act should be amended or repealed in whole or in part, periodically, at such intervals as it may determine or as the Minister may direct, examine all those regional environmental plans and interim regional environmental plans.

(3) A council shall, for the purpose of determining whether it is desirable that local environmental plans in force under this Act should be amended or repealed in whole or in part, periodically, at such intervals as it may determine, examine those local environmental plans.

Subdivision 2.—Minor amendments to local environmental plans.

74. Where two or more councils decide to join in the preparation of a draft minor amendment plan under section 75 (2), a reference in this Subdivision—

Interpre-
tation:
Pt. II,
Div. 5—
Subdiv. 2.

(a) except in section 75, to a council includes a reference to those councils; and

(b) to an area includes a reference to the areas of those councils.

Environmental Planning.

75. (1) A council may, in respect of the whole or any part of the land within its area to which a local environmental plan applies, resolve to prepare a draft minor amendment plan.

Decision to prepare draft minor amendment plan.

5 (2) Two or more councils may, in respect of the whole or any part of the land within their areas to which a local environmental plan applies, decide, by resolution of each council, to join in the preparation of a draft minor amendment plan.

10 (3) Where two or more councils decide to join in the preparation of a draft minor amendment 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 minor amendment plan.

15 76. A draft minor amendment plan may only contain provisions that—

Provisions of draft minor amendment plans.

(a) effect amendments to a local environmental plan that are, in the opinion of the council, of a minor nature;

20 (b) repeal in whole or in part a local environmental plan if, in the opinion of the council, the repeal will not significantly affect the environmental planning of its area; or

25 (c) give effect to a direction referred to in section 92 (1) (b),

but shall not contain provisions relating to any matter that is a prescribed matter for the purposes of this section.

77. Where a council makes a resolution under section 75 (1) or (2), it shall prepare a draft minor amendment plan.

Preparation of draft minor amendment plan.

78.

Environmental Planning.

78. In the exercise of its functions with respect to the preparation of a draft minor amendment plan, the council shall—

Consultation and compliance with the Minister's directions.

- 5 (a) consult with such public authorities as, in its opinion, will be affected by that draft minor amendment plan;
- (b) consult with such other persons concerning the provisions of that draft minor amendment plan as it determines; and
- 10 (c) comply with any direction given to it with respect to that draft minor amendment plan by the Minister.

79. The council shall ensure that a draft minor amendment plan is not inconsistent with any State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft minor amendment plan applies.

Consistency with other environmental planning instruments.

80. (1) When a draft minor amendment plan has been prepared, the council shall—

Procedure where draft minor amendment plan prepared.

- 20 (a) submit a copy of that draft minor amendment plan to the Commission;
- (b) 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, that draft minor amendment plan may be inspected by the public;
- 25 (c) publicly exhibit that draft minor amendment plan at the place, on the dates and during the times set out in the notice referred to in paragraph (b); and

(d)

Environmental Planning.

- (d) specify, in the notice given under paragraph (b), 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 81.

(2) A draft minor amendment plan shall be publicly exhibited for such period, being not less than 14 days, as the council may determine.

81. Any person may, during the period referred to in section 80 (1) (d), make submissions in writing to the council with respect to the provisions of a draft minor amendment plan publicly exhibited under section 80 (1) (c), other than those provisions of that draft minor amendment plan which are necessary to make it consistent with the provisions of a State environmental planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft minor amendment plan applies.

82. (1) The council shall consider and, where necessary, determine any submissions made to it under section 81, other than any submissions referred to in subsection (2).

Making of submissions.

Consideration and determination of submissions.

(2) The council shall inform the Minister, as soon as practicable after the time for the making of submissions has expired, of any submissions made to it under section 81—

- (a) by a public authority, other than that council;
- (b) with respect to the functions of a public authority, other than that council; or
- (c) arising from the inclusion of a proposal of a public authority, other than that council, in the draft minor amendment plan.

(3)

Environmental Planning.

(3) The Minister shall consider and, where necessary, determine any submissions referred to in subsection (2).

(4) The Minister shall direct the council as to the manner in which any determinations made by him under subsection (3) shall be given effect to.

83. The council—

- 10 (a) may amend a draft minor amendment plan following its consideration and determination, in accordance with section 82 (1), of any submissions made to it under section 81; and Amendment of draft minor amendment plan.
- (b) shall amend a draft minor amendment plan to give effect to any direction of the Minister under section 82 (4) and to enable the council to execute a certificate under section 84.

15 **84.** Where a council has prepared a draft minor amendment plan or an amended draft minor amendment plan in accordance with this Subdivision, it shall execute a certificate in the prescribed form certifying that— Council's certificate.

- 20 (a) the council in the preparation of that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, has complied with such directions as have been given to it with respect to that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, by the Minister;
- 25 (b) that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, is not inconsistent with any State environmental

planning

Environmental Planning.

- 5 planning policy, regional environmental plan or interim regional environmental plan applying to the land to which that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, applies;
- (c) that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, gives effect to the determinations of the council under section 82 (1);
- 10 (d) that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, gives effect to the determinations of which the Minister has informed the council under section 82 (4); and
- 15 (e) that draft minor amendment plan or that amended draft minor amendment plan, as the case may be, has otherwise been prepared in accordance with this Act and the regulations.
- 20 **85.** The council shall forward a copy of the certificate referred to in section 84 and a copy of the draft minor amendment plan or the amended draft minor amendment plan, as the case may be, to the Commission.
- Forwarding of copies of certain items by the council to the Commission.
- 25 **86.** (1) After the expiration of 7 days after the council has delivered to the Commission the certificate and a copy of a draft minor amendment plan or an amended draft minor amendment plan, as the case may be, in accordance with section 85, the council may, by resolution, approve and adopt a draft minor amendment plan or an amended draft minor amendment plan, as the case may be, prepared by it.
- Approval and adoption of draft minor amendment plan.

Environmental Planning.

(2) A resolution made by a council under subsection (1) shall not be capable of alteration or rescission by that council.

87. A council which makes a resolution under section 86 (1) shall publish a notice with respect to that resolution in the prescribed form in a daily newspaper circulating throughout the State and a newspaper circulating in the area.

Notice of resolution.

88. (1) A local environmental plan made in accordance with this Subdivision shall be published in the Gazette and shall take effect on and from the date of publication of that local environmental plan in the Gazette or a later date specified in that local environmental plan.

Publication of local environmental plan made in accordance with this Subdivision in the Gazette.

(2) The Commission may, with the approval of the Minister, give a direction to the council not to publish a local environmental plan made in accordance with this Subdivision in the Gazette until such day, being a day that is at least 21 days after the date of the resolution under section 86 (1) relating to that local environmental plan, as is specified in the direction.

(3) A local environmental plan made in accordance with this Subdivision shall not be published in the Gazette until—

(a) the expiration of 21 days after the date of the resolution under section 86 (1) relating to that local environmental plan; or

(b) the date specified in a direction relating to that local environmental plan given under subsection (2),

whichever is the later.

Environmental Planning.

89. A local environmental plan made under this Sub-division to the extent to which it is inconsistent with a regional environmental plan or an interim regional environmental plan is of no force or effect.

Inconsistency between other environmental planning instruments and a local environmental plan made under this Subdivision.

90. Within 14 days after the publication in the Gazette of a local environmental plan made under this Subdivision, the council shall deliver to the Commission a copy of the prescribed notice referred to in section 87 and of that local environmental plan.

Notice to the Commission.

Subdivision 3.—Amendments to remove inconsistencies between environmental planning instruments.

91. Where, in the opinion of the Minister, a regional environmental plan or an interim regional environmental plan is inconsistent with or does not conform to the principles of a State environmental planning policy, whenever made, applying to the land to which that regional environmental plan or interim regional environmental plan, as the case may be, applies, the Minister, by order, shall, as soon as practicable, unless he has directed the Commission to prepare a draft regional environmental plan under section 23 (2) or a draft interim regional environmental plan under section 38 (2) to remove the inconsistency with or to achieve conformity with the principles of that State environmental planning policy, as the case may be, amend that regional environmental plan or interim regional environmental plan, as the case may be, to remove the inconsistency with or to achieve conformity with the principles of that State environmental planning policy.

Removal of inconsistencies, etc., between regional environmental planning instruments and State environmental planning policies.

Environmental Planning.

92. (1) Where, in the opinion of the Minister, a local environmental plan is inconsistent with or does not conform to the principles of a State environmental planning policy, a regional environmental plan or an interim regional environmental plan, whenever made, applying to the land to which that local environmental plan applies, the Minister shall, as soon as practicable—

Removal of inconsistencies, etc., between local environmental plans and other environmental planning instruments.

(a) by order, amend that local environmental plan; or

(b) direct the council to amend that local environmental plan,

to remove the inconsistency with or to achieve conformity with the principles of that State environmental planning policy, regional environmental plan or interim regional environmental plan, as the case may be.

15 (2) Where, in the opinion of the Minister, a council has not complied with any directions given to it with respect to the preparation of a local environmental plan, the Minister may—

(a) by order, amend that local environmental plan; or

20 (b) direct that council to amend that local environmental plan,

to make that local environmental plan conform to the directions so given to it.

25 (3) Where the Minister gives a direction to a council under subsection (1) (b) or (2) (b), that council shall immediately commence to prepare a draft minor amendment plan in accordance with Subdivision 2 to give effect to that direction.

30 **93.** An order under section 91, 92 (1) (a) or 92 (2) (a) shall take effect on and from the date of publication of that order in the Gazette or a later date specified in that order.

Effect of notification.

Environmental Planning.

PART III.

ENVIRONMENTAL PLANNING CONTROL.

DIVISION 1.—*General.*

94. In this Part—

Interpreta-
tion:
Part III.

5 “demolition application” means an application for
consent to demolish a building or work;

“objector”, in relation to a development application,
means a person who makes an objection under
section 110.

10 95. A person may, on land in relation to which, under Category A
the terms of an environmental planning instrument, develop-
ment is classified as category A development, carry out develop-
development so classified, without the prior consent of the ment. 61
council having to be obtained therefor under this Act.

15 96. A person may, on land in relation to which, under Category B
the terms of an environmental planning instrument, develop-
ment is classified as category B development, carry out develop-
development so classified, without the prior consent of the ment. 66
council having to be obtained therefor under this Act, in
20 compliance with any minimum requirements specified in 22
relation to that development in that environmental planning
instrument.

25 97. A person shall not, on land in relation to which, Category C
under the terms of an environmental planning instrument, develop-
development is classified as category C development, carry out develop-
out development so classified, without the prior consent of the ment. 68
council therefor under this Act.

98.

Environmental Planning.

98. Except as provided in section 241 (1) (c), a person shall not, on land in relation to which, under the terms of an environmental planning instrument, development is classified as category D development, carry out development so
5 classified.

99. (1) A development application may be made by—
(a) the owner of the land to which that development application relates; or
10 (b) any person with the consent in writing of the owner of the land to which that development application relates.

(2) Nothing in subsection (1) (b) requires a lawful occupier of Crown lands within the meaning of the Crown Lands Consolidation Act, 1913, who makes a development
15 application with respect to the whole or any part of the lands occupied by him to obtain the consent, in writing or otherwise, of the Minister for the time being administering that Act.

(3) A development application shall be made in the prescribed form and manner and shall embody such evidence
20 as the applicant considers appropriate to demonstrate that he has given appropriate consideration to the impact that the development to which that development application relates will have on the environment.

(4) A development application shall be accompanied
25 by such fee as is prescribed or, where no fee is prescribed, by such fee as is determined by the council.

(5) The council may, by notice in writing sent by post to a person making a development application, require that person to furnish to the council such further information
30 (whether or not in the form of an environmental impact statement) with respect to the development to which that development application relates and within such time as may be specified in the notice.

(6)

Environmental Planning.

(6) Where a council under subsection (5) requires a person to furnish further information with respect to development to which a development application relates, the development application shall, for the purposes of section 117, be deemed to have been served on the council only when that further information is furnished.

100. A description of a purpose for which a building, work or land may be used for the purpose of classifying development as category C development in an environmental planning instrument shall not prevent a council from—

Descriptions of purposes in environmental planning instruments.

- (a) requiring a development application to specify a more particular purpose coming within that description; or
- (b) granting a consent under this Division for a more particular purpose coming within that description.

101. (1) Where an environmental planning instrument provides that such development as is specified in that environmental planning instrument shall not be consented to without the concurrence of the Minister or such public authority as is named in that environmental planning instrument in relation to that development, the council shall, unless the concurrence of the Minister or that public authority may be assumed under section 104—

Seeking concurrence of Minister or public authority.

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

(2)

Environmental Planning.

(2) Where development, being development that may not be carried out except with the consent of the council is of a prescribed class of description or the council is, in relation to any particular development that may not be carried out except with the consent of the council, directed by the State Pollution Control Commission to do so, the council shall, unless the concurrence of the State Pollution Control Commission may be assumed under section 104—

- 10 (a) forward a copy of any development application made in respect of development of that class or description or that particular development, as the case may be, to the State Pollution Control Commission; and
- 15 (b) notify the applicant of the action taken by it under paragraph (a).

102. The Minister or a public authority referred to in section 101 may, with respect to development the subject of a development application a copy of which has been forwarded to him or it under section 101 (1) (a) or (2) (a)—

Granting or refusal of concurrence by Minister or public authority.

- 20 (a) give concurrence, either unconditionally or subject to conditions; or
- (b) refuse concurrence.

103. (1) The Minister or a public authority referred to in section 101 shall inform the council 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 101 (1) (a) or (2) (a)—

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

- 30 (a) except as provided by paragraph (b)—within a period of 40 days after receipt of the copy of that development application; or

(b)

Environmental Planning.

(b) where, within the period referred to in paragraph (a), the Minister or a public authority sends by post to the council and the applicant a notice informing it and him that the Minister or public authority is unable to deal with that development application within that period and specifies in that notice a longer period within which the Minister or public authority will deal with that application—that longer period.

(2) Where the Minister or a public authority referred to in section 101 does not inform the council of his or its decision within the period referred to in subsection (1) (a), or the longer period referred to in subsection (1) (b), as the case may be, the council may determine the development application without the concurrence of the Minister or that public authority, as the case may be.

104. (1) Where under an environmental planning instrument development may not be consented to without the concurrence of the Minister or such public authority as is named in that environmental planning instrument in relation to that development or development is of a class or description, or is the subject of a direction, referred to in section 101 (2), the Minister or the public authority concerned may inform the council, by notification in writing, that the concurrence may be assumed in such circumstances as are specified in the notification.

Circumstances in which concurrence may be assumed.

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

(3)

Environmental Planning.

(3) A consent given by a council which has assumed the concurrence of the Minister or a public authority in accordance with a notification given by him or it under subsection (1) is as valid and effective as if the council had
5 obtained the concurrence of the Minister or that public authority pursuant to sections 101, 102 and 103.

105. (1) Where the carrying out of development is
consented to with the concurrence of the Minister or a public
authority given under section 102 (a), that consent shall be
10 given subject to any conditions subject to which that
concurrence was given. Giving
effect to
concurrence.

(2) Where the carrying out of development is
consented to with the concurrence of the Minister or a public
authority pursuant to a notification given under section 104
15 (1), that consent shall be given subject to any conditions
specified with respect to that kind of development in that
notification.

(3) Nothing in subsection (1) or (2) affects the
right of the council to impose conditions, not inconsistent
20 with the conditions referred to in subsection (1) or (2), under
section 113.

106. Where under an environmental planning instrument
development may not be consented to without the concurrence
of the Minister or such public authority as is named in that
25 environmental planning instrument in relation to that develop-
ment or development is of a class or description, or is the
subject of a direction, referred to in section 101 (2), a consent
(other than a consent given pursuant to a determination
referred to in section 103 (2)) given—

30 (a) without the concurrence of the Minister or the
public authority concerned; or

(b)

Environmental Planning.

(b) not subject to such conditions, if any, as are referred to in section 105 (1) or (2),

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

107. (1) Where a development application is made for consent to carry out major development, the council shall—

Objections to major development.

(a) send, by post, written notice of that development application to such persons as appear to it to own the land adjoining the land to which that development application relates and to such other persons as appear to it to own land the enjoyment of which, in the opinion of the council, may be detrimentally affected if that major development is carried out; and

(b) after doing so, cause notice, in such form as may be prescribed, of that development application to be published in a newspaper circulating in the area of that council.

(2) Without limiting the generality of subsection (1) (a), land adjoins other land if it is a lot, within the meaning of the Strata Titles Act, 1973, forming part of a parcel, within the meaning of that Act, which parcel adjoins that other land.

(3) A notice referred to in subsection (1) shall contain a statement to the effect that the development application referred to in the notice and any documents accompanying that development application and in the custody of the council may be inspected at the office of the council at any time during ordinary office hours within a period of 21 days after the day on which notice of that development application is published in a newspaper in accordance with subsection (1) (b).

Environmental Planning.

108. (1) Notwithstanding section 107, where—

Circumstances in which compliance with s. 107 may be dispensed with.

(a) a development application referred to in section 107 is amended by a subsequent development application or a subsequent development application is made in substitution for a development application referred to in section 107; and

(b) the council has with respect to that development application referred to in section 107 complied in all respects with section 107,

the council 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 107 with respect to that subsequent development application, decide to dispense with compliance with section 107.

(2) Section 107 does not apply in respect of a subsequent development application in respect of which a council has made a decision under subsection (1).

109. A council shall, during the period referred to in section 107 (3), permit any person to inspect the development application and documents accompanying the development application and to make extracts or copies therefrom.

Inspection of development application, etc.

110. Any person may, during the period referred to in section 107 (3), make an objection in writing, specifying the grounds of his objection, to the council to the granting of the development application referred to in section 107 (3).

Objectors.

111.

Environmental Planning.

111. A council to which a development application to carry out major development has been made shall not determine that development application until after the expiration of the period during which an objection to the granting of that development application may be made under section 110.

Restriction on determination by council of development application for major development.

112. (1) In determining a development application, a council shall take into consideration such of the following matters as are of relevance to the development the subject of that development application :—

Matters for consideration.

(a) the provisions of—

- (i) any environmental planning instrument;
- (ii) any draft regional environmental plan that has been publicly exhibited pursuant to section 32 (b);
- (iii) any draft local environmental plan in course of preparation in respect of which the Commission has issued a certificate under section 55; and
- (iv) any draft minor amendment plan a copy of which has been submitted to the Commission under section 80 (1) (a), applying to the land to which that development application relates;
- (b) the impact of that development on the environment and, where harm to the environment is likely to be caused, the 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;

(e)

Environmental Planning.

- 5 (e) the character, scale, density and height of that development in relation to the existing or likely future development on the land adjoining the land to which that development application relates and land in the locality;
- 10 (f) the size and shape of the land to which that development application relates, the siting of that development thereon and the area to be occupied by that development in relation to the size and shape of the land adjoining the land to which that development application relates and the development on that adjoining land;
- 15 (g) 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 and parking of vehicles within that development or on that land;
- 20 (h) whether essential services are available and adequate for that development;
- 25 (i) whether adequate provision has been made for the landscaping of the land to which that development application relates;
- (j) 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;
- (k) any objections made under section 110;
- (l) the circumstances of the case;
- 30 (m) the public interest; and
- (n) any other prescribed matter.

Environmental Planning.

(2) Nothing in subsection (1) authorises a council to take into consideration—

- 5 (a) the emission of air impurities from premises the subject of a development application where those premises are, or would as a result of the carrying out of the development to which the development application relates become, scheduled premises within the meaning of the Clean Air Act, 1961;
- 10 (b) the discharge of pollutants into any waters in accordance with a licence issued under the Clean Waters Act, 1970, or the use or proposed use of any apparatus, equipment or works in relation to which approval is required under section 19 of the Clean Waters Act, 1970; or
- 15 (c) the emission of noise from premises the subject of a development application where those premises are, or would as a result of the carrying out of the development to which the development application relates become, scheduled premises within the meaning of the Noise Control Act, 1975.
- 20

113. (1) Subject to this Act, a council may determine a development application by granting consent to that development application, either unconditionally or subject to conditions, or by refusing consent. Determination of development application.

25 (2) Without affecting the operation of section 106, a consent granted by a council—

- 30 (a) to a development application in respect of a category C development, being a consent granted otherwise than in accordance with this Act or any environmental planning instrument applying to the land to which that development application relates, is void; or

(b) to carry out category D development is void,

but nothing in this subsection affects the liability of a council
35 in respect of a consent so granted.

114.

Environmental Planning.

114. (1) Where development the subject of a develop-
ment application is likely to require the provision of or to
increase the demand for amenities or services within the
locality in which that development will, if consent is granted
5 thereto, be carried out, the council shall be entitled to impose
as a condition of its consent a condition that the applicant for
that consent shall pay to such public authority as is specified
in the condition a reasonable amount towards the provision,
extension or improvement of those amenities or services.
- 10 (2) Except where the electricity authority con-
cerned directs the council not to impose a condition under
this subsection, the council shall be entitled to impose as a
condition of its consent to a development application with
respect to the subdivision of land for residential purposes a
15 condition that the applicant for that consent shall pay a
reasonable amount equal to the difference between the cost of
overhead and underground electricity supply mains.
- (3) The council shall in imposing a condition
referred to in subsection (1) take into consideration any land
20 provided for the purpose of providing amenities or services in
the locality by the person, being a public authority, making
the development application and any contribution made by
such a person to any public authority for that purpose.
- (4) A public authority to which any amount is paid
25 pursuant to a condition imposed under subsection (1) should
hold that amount upon trust for the provision of the amenities
or services specified in the condition.
- (5) A council shall not be entitled to impose a
condition under subsection (1) requiring the payment of an
30 amount to a public authority towards the provision, extension
or improvement of amenities or services if that public authority
is, under any Act, entitled to require the payment to it of an
amount in respect of the provision of those amenities or
services.

Environmental Planning.

115. (1) A council shall notify its determination of a development application to the applicant in the prescribed form.

Notification of council's determination to applicant.

(2) The notification referred to in subsection (1) shall, where a council determines a development application by granting consent to that development application subject to conditions or by refusing consent—

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

116. A council to which a development application to carry out major development has been made shall—

Notification of council's determination to objectors.

- (a) where it determines that development application after the expiration of the period during which an objection to the granting of that development application may be made under section 110, give notice, in the prescribed manner, of its determination of that development application; and
- (b) where it does not determine that development application before consent to that development application is deemed by section 117 to have been refused, notify, in writing, any objector of the right of the applicant to have his development application determined on appeal.

117. (1) Where a council has not determined a development application—

Circumstances in which consent is deemed to have been refused.

- (a) in the case of a development application in respect of development other than development referred to in paragraph (b), within a period of 40 days after service of that development application on the council;

Environmental Planning.

(b) in the case of a development application in respect of development referred to in section 101, within a period of 20 days after the expiration of the period referred to in section 103 (1) (a) or the longer period referred to in section 103 (1) (b), as the case may be; or

(c) in the case of a development application in respect of major development, within a period of 60 days after service of that development application on the council,

the council shall, for the purpose only of sections 119 and 123, be deemed to have determined that development application by refusing consent.

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

(3) The determination of a development application pursuant to subsection (2) shall not, where an appeal in respect of that development application has been made under section 119 (2) or 123 (1), prejudice or affect the making, continuance or determination of that appeal.

118. (1) A person being—

(a) a person who would, but for any minimum requirements of a local environmental plan, be entitled to carry out development without the consent of the council; or

(b) an applicant for consent to carry out development who, if his development application could, but for any minimum requirements of a local environmental plan, be granted by the council,

may lodge an objection with the council that compliance with those minimum requirements is unreasonable or unnecessary in the circumstances of the case.

Modifica-
tion of
minimum
require-
ments
of local
environ-
mental
plans.

(2)

Environmental Planning.

(2) An objection under subsection (1) shall, if the council so agrees, be referred to the Tribunal which, if it is of the opinion that the objection is well founded and that the environmental planning of the land to which the local
5 environmental plan applies would not be detrimentally affected if a direction were to be given under this subsection may, if the council so agrees, direct, by instrument in writing, that—

10 (a) such of the minimum requirements as are specified in the direction—

(i) shall not apply; or

(ii) shall apply with such modifications as are specified in the instrument,

15 in respect of the development to which the objection relates; or

(b) such other requirements as are specified in the direction shall apply in respect of the development to which the objection relates,

or give directions under both paragraphs (a) and (b).

20 (3) A direction given by the Tribunal under subsection (2) in respect of—

(a) an objection made by a person referred to in subsection (1) (a) shall have effect according to its tenor; and

25 (b) an objection made by an applicant referred to in subsection (1) (b) shall, if the development application is granted, have effect according to its tenor and, in the case of a direction referred to in subsection (2) (a) (ii) or (b), be embodied in that
30 consent as a condition of that consent.

(4)

Environmental Planning.

(4) Any act, matter or thing done or carried out in conformity with a direction given under subsection (2) shall not, by reason only of its being so done or carried out, be deemed not to be in conformity with any local environmental plan and a person is not guilty of an offence against a local environmental plan or this Act by reason only of his doing or carrying out any act, matter or thing in conformity with such a direction.

119. (1) This section does not apply with respect to a determination of a council with respect to a development application relating to special development. Appeal by an applicant.

(2) A person who is dissatisfied with the determination of a council with respect to his development application or whose development application is deemed to have been determined under section 117 may appeal to the Tribunal—

- (a) within 12 months after the date on which he received notification of that determination;
- (b) within 12 months after the expiration of the period referred to in section 117 in respect of that development application; or
- (c) within such longer period as the senior chairman of the Tribunal may in special circumstances allow.

(3) On an appeal under subsection (2) relating to a development application for consent to carry out major development, each objector shall be given notice by the council of that appeal and may, within 14 days after the date on which he received that notice and in the prescribed manner, apply to the Tribunal for and may be granted leave to appear and be heard as if he were a party to the appeal.

(4)

Environmental Planning.

(4) An appeal under subsection (2) relating to a development application for consent to carry out major development in respect of which an objection has been made under section 110 shall not be heard by the Tribunal until 5 after—

- (a) the expiration of the time within which an objector may apply for leave to appeal to the Tribunal under section 120; or
- (b) where, before the expiration of the time referred to in paragraph (a), an application is made by an objector for leave to appeal to the Tribunal under section 120, the application made by that objector has been determined.

120. (1) This section does not apply with respect to a **Appeal by** determination of a council with respect to a development **an objector.** application relating to special development.

(2) An objector who is dissatisfied with the determination of a council with respect to a development application may, within 14 days after the date on which notice of the determination was given under section 116 (a) and in the prescribed manner, apply to the Tribunal for and may be granted leave to appeal to the Tribunal.

(3) Where leave to appeal is granted to an objector under subsection (2), the applicant in respect of whose development application that appeal is made shall, within the prescribed time and in the prescribed manner, be given notice of that appeal by that objector and may appear and be heard on the hearing of that appeal as if he were a party to the appeal.

121. An appeal under or pursuant to leave granted under section 119 and an appeal pursuant to leave granted under section 120 made with respect to the same development application shall be heard together. **Joint hearing of certain appeals.**

Environmental Planning.

122. On an appeal to the Tribunal under or pursuant to leave granted under section 119 or 120, a person referred to in section 119 (2) may make an objection that compliance with any minimum requirements applying to that development to which that appeal relates is unreasonable or unnecessary in the circumstances of the case and the Tribunal may determine that objection in determining that appeal.

Determina-
tion on
appeal of
objections
to minimum
require-
ments.

123. (1) Where a public authority is dissatisfied with the determination of a council with respect to a development application in relation to special development made by it or such a development application is deemed to have been determined under section 117, it may appeal to the Minister—

Appeal by
a public
authority.

- (a) within 12 months after the date on which it received notification of that determination;
- (b) within 12 months after the expiration of the period referred to in section 117 in respect of that development application; or
- (c) within such longer period as the Minister may in special circumstances allow.

(2) The Minister may appoint a person to hear the appeal and to make a recommendation to him with respect to the determination of the appeal.

(3) The Minister may return any recommendation made pursuant to subsection (2) to the person who made it for further consideration and hearing and, if necessary, further recommendation to the Minister.

(4) The Minister may, after considering any recommendation made to him under subsection (2) or (3), as the case may be, determine the appeal by—

- (a) dismissing the appeal;
- (b) allowing the appeal either unconditionally or subject to conditions; or

(c)

Environmental Planning.

(c) where the appeal is against the imposition of conditions, refuse to grant consent to the development application referred to in the appeal.

(5) A determination of the Minister under subsection (4) shall be final and shall have effect as if it were a determination of the council.

(6) The Minister shall notify the council and the public authority concerned of his determination.

124. (1) A consent granted under this Division shall ^{Duration of consent.} lapse if—

(a) except as provided in paragraphs (b) and (c), where that consent is granted by a council, the development the subject of that consent is not substantially commenced within a period of 2 years (which period is in subsection (3) referred to as “the prescribed period”) after the date of final determination of that consent;

(b) except as provided in paragraph (c), where that consent is granted pursuant to an appeal under this Division, the development the subject of that consent is not substantially commenced within a period of 2 years (which period is in subsection (3) referred to as “the prescribed period” after the date of determination of that appeal; or

(c) where, within one year after—

(i) the date of final determination of a consent in respect of a consent granted by a council; or

(ii)

Environmental Planning.

(ii) the date of determination of an appeal under this Division in respect of a consent granted pursuant to such an appeal,
 5 an environmental planning instrument is made which classifies the development the subject of that consent as category D development for the purposes of that environmental planning instrument, that development is not substantially commenced within a period of one year (which period
 10 is in subsection (3) referred to as "the prescribed period") after the date on which that environmental planning instrument takes effect.

(2) Notwithstanding subsection (1), a consent granted under this Division in respect of development by a
 15 public authority shall, where the Minister so approves, lapse on such day (being a day later than the day upon which it would but for this subsection lapse) as the Minister specifies in his approval.

(3) Where, before the expiration of the first year
 20 of the prescribed period referred to in subsection (1) (a) or (b) or the expiration of the prescribed period referred to in subsection (1) (c), as the case may be, a bona fide application for an approval under Part XI or XII of the Local Government Act, 1919, is made with respect to the whole or any
 25 part of development the subject of a consent granted under this Division, that development shall, to the extent to which that application applies with respect to that development, be deemed, for the purposes of subsection (1), to be substantially commenced.

(4) Notwithstanding subsection (3), where an
 30 approval given to an application referred to in subsection (3) becomes void or lapses, the consent granted in respect of the development deemed, in whole or part, to have been substantially commenced under subsection (3) shall lapse.

Environmental Planning.

125. (1) Where the Minister considers it in the public interest proper to do so, he may direct a council to refer to him for determination a development application or such class or description of development applications as is specified in the direction.

Determina-
tion of
development
applications
by the
Minister.

(2) The Minister shall, in determining a development application referred to him under subsection (1), have regard to such of the matters referred to in section 112 as are of relevance to the development the subject of that development application.

(3) The Minister may determine a development application referred to him under subsection (1) by granting consent, either unconditionally or subject to conditions, or by refusing consent.

(4) A determination of the Minister under subsection (3) shall be final and shall have effect as if it were a determination of the council.

(5) The Minister shall notify the council and the applicant of his determination.

126. (1) A council may amend a consent granted under this Division the terms of which have been communicated to the applicant for that consent, with the approval of that applicant.

Amendment
of consents.

(2) Nothing in subsection (1) shall enable a council to amend—

(a) a consent to a development application to which an objection was duly made under section 110 unless the council is of the opinion that the amendment is proper having regard to the grounds of the objection;

(b)

Environmental Planning.

- (b) a condition referred to in section 105 (1) or (2) forming part of a consent granted under this Division;
- 5 (c) a condition referred to in section 118 (3) (b) embodied in a consent granted under this Division;
- (d) a consent granted pursuant to a determination of the Minister under section 125 (3); or
- (e) a consent given on an appeal to the Tribunal.

10 **127.** (1) A council shall keep a register of consents granted by it or the Minister under this Division and of decisions on appeal from any determination made by it 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
15 the council during ordinary office hours.

DIVISION 2.—Existing development.

128. In this Division—

20 “appointed day”, in relation to a building or work or land, means the day on which an environmental planning instrument takes effect, being an environmental planning instrument that—

- (a) is made before or after the date of assent to this Act;
- (b) is in force under this Act;
- 25 (c) applies to that building, work or land; and
- (d) prohibits the use of that building or work or of that land for the purpose for which it was lawfully being used immediately before the appointed day;

Interpre-
tation:
Pt. III,
Div. 2.

“existing

Environmental Planning.

“existing building” means—

- (a) a building lawfully erected before the appointed day; or
- 5 (b) a building the erection of which is substantially commenced within the prescribed period referred to in section 124 (1) (c);

“existing use” means—

- 10 (a) the use of a building or work or of land for the purpose for which it was lawfully used immediately before the appointed day;
- (b) in the case of—
 - 15 (i) a building the erection of which is substantially commenced within the prescribed period referred to in section 124 (1) (c); or
 - (ii) a work the construction or carrying out of which is substantially commenced within the prescribed period referred to in section 124 (1) (c),
20 the use of that building or work for the purpose for which consent to the erection of that building or the carrying out of that work, as the case may be, was granted; or
- 25 (c) in the case of a building or work or of land the use of which is changed pursuant to a consent referred to in section 135, the use consented to as referred to in that section;

30 “existing work” means—

- (a) a work lawfully carried out before the appointed day; or

(b)

Environmental Planning.

- (b) a work the construction or carrying out of which is substantially commenced within the prescribed period referred to in section 124 (1) (c).

5 **129.** An existing building or an existing work may be maintained and may be used for its existing use and an exist-
ing use of land may be continued notwithstanding Division 1
or the provisions of any environmental planning instrument
applying with respect to that existing building, existing work
10 or existing use.

Continuance
of existing
develop-
ment.

130. Except as provided by sections 131, 132 and 133,
an existing use of a building or work or of land shall be
limited to such area of that building, work or land as was
actually, physically and lawfully used for the purpose of that
15 existing use immediately before the date of assent to this Act
or the appointed day, whichever is the later.

Area of
existing
uses.

131. (1) An existing building may, with the consent of
the council granted under Division 1, be rebuilt.

Rebuilding
of existing
buildings.

(2) A consent referred to in subsection (1) shall
20 not permit the rebuilding—

- (a) to be for a purpose other than the purpose of
the existing use of the existing building; or
(b) to effect an increase of more than 10 per cent to the
floor space of the existing building as it was at the
25 appointed day.

132. (1) An existing building or an existing work may,
with the consent of the council granted under Division 1, be
altered or extended and new buildings or works ancillary to
that existing building or existing work may, with the consent
30 of the council, be erected, constructed or carried out.

Alteration,
etc., of
existing
buildings
and
existing
works.

(2)

Environmental Planning.

(2) A consent referred to in subsection (1) shall not permit the alteration, extension, erection, construction or carrying out, as the case may be—

- 5 (a) to be for a purpose other than the purpose of the existing use of the existing building or existing work; or
- (b) to effect an increase of more than 10 per cent to the floor space of the existing building or existing work as it was at the appointed day.

10 **133.** (1) An existing use of land may, with the consent of the council granted under Division 1, be extended. Extension
of existing
use of land.

(2) A consent referred to in subsection (1) shall not permit the extension—

- 15 (a) to be for a purpose other than the purpose of the existing use of the land; or
- (b) to effect an increase of more than 10 per cent to the surface area of the land as it was at the appointed day.

134. Not more than one consent referred to in section 132 or 133 shall be granted in respect of a building or work or of land. Limitation
on consents
referred to
in ss. 132,
133.

135. An existing use of a building or work or of land for a purpose prohibited under an environmental planning instrument applying to that building, work or land may, notwithstanding Division 1, with the consent of the council granted under Division 1, be changed to a use for another purpose prohibited under that environmental planning instrument in relation to that building, work or land where, in the Alteration
of purposes
of existing
uses.

opinion

Environmental Planning.

opinion of the council, the proposed use is for a purpose which is less objectionable and would have less adverse effect on the environment of the area in which the building, work or land is situated.

- 5 **136.** An existing use of a building or work or of land ceases if that use is abandoned, and without limiting the generality of the foregoing provisions of this section, an existing use of a building or work or of land ceases if that building, work or land is not used for the purpose of that
10 existing use for a continuous period of 18 months.

Cessation
of existing
uses.

- 137.** An environmental planning instrument may, with respect to the land to which that environmental planning instrument applies, suspend the operation of such of the provisions of this Division as are specified in that environ-
15 mental planning instrument other than sections 128, 129, 130, 134 and 136 and this section.

Suspension
of certain
provisions
of this
Division
by an
environ-
mental
planning
instrument.

DIVISION 3.—Demolition of buildings and works.

- 138.** (1) This Division does not apply to a building, work or site the subject of an interim preservation order or a
20 permanent preservation order as defined in section 150.

Application
of Division.

(2) Nothing in this Division affects the operation of a provision of an environmental planning instrument referred to in section 10 (d) that is not inconsistent with any provision of this Division.

- 25 **139.** Subject to any environmental planning instrument applying to any land to which Part XI of the Local Govern-
ment Act, 1919, applies, a person shall not demolish a building or work of a prescribed class or description on any such land without the prior consent of the council.

Demolition
of buildings
and works.

Environmental Planning.

140. (1) A demolition application may be made by— **Demolition application.**

- (a) the owner of the land on which the building or work the subject of that demolition application is situated; or
- 5 (b) any person with the consent in writing of the owner of the land on which the building or work the subject of that demolition application is situated.

(2) A demolition application shall be made in the
10 prescribed form and manner.

(3) A demolition application shall be accompanied by such fee as is prescribed or, where no fee is prescribed, by such fee as is determined by the council.

141. In determining a demolition application a council
15 shall take into consideration such of the following matters as are of relevance to the demolition the subject of that demolition application:— **Matters for consideration.**

- (a) the provisions of any environmental planning instrument applying to the land to which that demolition application relates;
20
- (b) the social, cultural, architectural or historic interest of the building or work to which that demolition application relates;
- (c) the measures required to ensure the safety of persons on and in the vicinity of the land to which that demolition application relates;
25
- (d) the measures required to ensure the protection from damage of property in the vicinity of the land to which that demolition application relates;
- 30 (e) the amenity of the area and the measures required to prevent the possible interference with that amenity by reason of the emission of noise, vibration, dust or otherwise;

(f)

Environmental Planning.

- (f) the proposed means of demolition;
- (g) the disposal or removal of rubbish;
- (h) the time within which the demolition should be completed;
- 5 (i) the circumstances of the case; and
- (j) any other prescribed matter.

142. A council may determine a demolition application by granting consent to that demolition application, either unconditionally or subject to conditions, or by refusing
 10 consent.

Deter-
mination
of demo-
lition
application.

143. In granting consent to a demolition application, a council may impose as a condition of its consent that the applicant enter into a bond in such amount as is determined by the council having regard to the nature and extent of the
 15 demolition the subject of that demolition application to ensure satisfactory completion of the demolition.

Bond.

144. (1) A council shall notify its determination of a demolition application to the applicant in the prescribed form.

Notification
of council's
determina-
tion.

(2) The notification referred to in subsection
 20 (1) shall, where a council determines a demolition application by granting consent to that demolition application subject to conditions or by refusing consent—

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

145.

Environmental Planning.

145. (1) Where a council has not determined a demolition application within a period of 40 days after service of that demolition application on the council, the council shall, for the purpose only of section 146, be deemed to have determined that demolition application by refusing consent. Circumstances in which consent is deemed to have been refused.

(2) Nothing in subsection (1) prevents a council from determining a demolition application after the expiration of the period referred to in subsection (1).

(3) The determination of a demolition application pursuant to subsection (2) shall not, where an appeal in respect of that demolition application has been made under section 146, prejudice or affect the making, continuance or determination of that appeal.

146. (1) A person who is dissatisfied with the determination of a council with respect to his demolition application or whose demolition application is deemed to have been determined under section 145 (1) may appeal, except where that person is a public authority, to the Tribunal and, where that person is a public authority, to the Minister—

- (a) within 12 months after the date on which he received notification of that determination; or
- (b) within 12 months after the expiration of the period referred to in section 145 (1).

(2) A determination of the Minister on an appeal under subsection (1) shall be final and shall have effect as if it were a determination of the council.

(3) The Minister shall notify the council and the public authority concerned of his determination on an appeal under subsection (1).

Environmental Planning.

147. Nothing in this Division affects the operation of any provision of any other Act relating to the demolition of a building or work. Other Acts not affected by this Division.

PART IV.

5 ENVIRONMENTAL PLANNING FOR LAND OTHER THAN LAND TO WHICH A LOCAL ENVIRONMENTAL PLAN APPLIES.

148. (1) The Governor may make an order for the purposes of this Part conferring or imposing functions for or with respect to any matters referred to in section 10— Environmental planning orders.

- 10** (a) in respect of such land within an area as is specified or described by or under the order, other than land to which a local environmental plan applies—on the council;
- 15** (b) in respect of the Western Division within the meaning of the Crown Lands Consolidation Act, 1913—on such person or body as is appointed by the Minister, with the consent of the Minister for the time being administering the Crown Lands Consolidation Act, 1913.
- 20** (c) in respect of Lord Howe Island—on such person or body as is appointed by the Minister, with the consent of the Minister for the time being administering the Lord Howe Island Act, 1953; or
- (d) in respect of any land other than—
 - 25** (i) land with respect to which an order may be made under paragraph (a);
 - (ii) land to which a local environmental plan applies; or

(iii)

Environmental Planning.

(iii) land referred to in paragraph (b) or (c),
on such person or body as is appointed by the
Minister by the order.

(2) An order made under subsection (1) may
5 adopt wholly or partially or by reference and with or without
modification any of the provisions of Part II or III or may
contain any provisions which relate to any matter to which
Part II or III relates.

(3) An order made under subsection (1) shall be
10 published in the Gazette and take effect upon its publication
in the Gazette or a later date specified in the order.

149. An order made under section 148, to the extent to
which it is inconsistent with a regional environmental plan or
an interim regional environmental plan, is of no force or effect.

Incon-
sistency
between
certain
environ-
mental
planning
instruments
and orders
under
section 148.

15

PART V.

PRESERVATION OF BUILDINGS, WORKS AND SITES.

150. In this Part—

“Committee” means the Historic Buildings and Sites
Advisory Committee constituted under section 151;

20 “interim preservation order” means an order made under
section 157 (1) that is in force;

“permanent preservation order” means an order made
under section 158 (1) that is in force;

“register”

Interpreta-
tion: Pt. V.

Environmental Planning.

"register" means the register referred to in section 156
(c).

151. (1) For the purposes of this Act, there shall be an Historic Buildings and Sites Advisory Committee which shall consist of 6 members.

Constitu-
tion of
Historic
Buildings
and Sites
Advisory
Committee.

(2) The members of the Committee shall be appointed by the Minister and shall consist of—

- (a) a person who shall, in and by the instrument of his appointment, be appointed as the Chairman of the Committee;
- (b) a person nominated by the Minister for the time being administering the Public Works Act, 1912;
- (c) a person nominated by the Minister holding the prescribed portfolio;
- (d) a person nominated by the Minister for the time being administering the National Parks and Wildlife Act, 1974;
- (e) a person appointed from a panel of 3 persons nominated by the Royal Australian Historical Society; and
- (f) a person appointed from a panel of 3 persons nominated by The National Trust of Australia (New South Wales).

(3) Where any nomination of a member of the Committee or of a panel for the purposes of subsection (2) (e) or (f) is not made within the time or in the manner specified by the Minister in a notice in writing given to the body entitled to make any such nomination, the Minister may appoint any person to be a member of the Committee instead of the person required to be appointed on that nomination or from that panel, as the case may be.

(4)

Environmental Planning.

(4) Each member of the Committee is entitled to receive such remuneration (including travelling and subsistence allowances) for attending meetings and transacting business of the Committee as the Minister may from time to time determine in respect of him.

(5) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment of any member of the Committee, and any such member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

152. The members of the Committee shall, subject to Term of section 153, hold office for a period of 5 years and shall, if office. otherwise qualified, be eligible for reappointment.

153. (1) On the occurrence of a vacancy in the office of Vacancies. a member of the Committee otherwise than by the expiration of the term for which he was appointed, the Minister may appoint a person to fill the vacant office so that the Committee is constituted as provided by section 151.

(2) A person appointed under subsection (1) shall, subject to this section, hold office for the balance of his predecessor's term of office.

(3) A member of the Committee shall be deemed to have vacated his office if he—

- (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

(d)

Environmental Planning

(d) is removed from office under subsection (4).

(4) The Governor may remove from office, for any cause which appears to him sufficient, any member of the Committee.

5 **154.** (1) The Minister may at any time appoint a person ^{Alternate} as an alternate member to act during the absence or illness of ^{members.} a member of the Committee.

(2) An alternate member shall have and may exercise and perform, while acting as a member of the Committee, the functions, as such a member, of the person for whom he is the alternate member.

155. (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings shall, subject to the regulations, be as determined ^{Meetings of the Committee.} by the Committee.

(2) The Chairman of the Committee shall preside at all meetings of the Committee at which he is present, and in his absence the members of the Committee present shall appoint one of their number to preside at that meeting during the Chairman's absence.

(3) Four members of the Committee shall form a quorum at any meeting of the Committee and any duly convened meeting of the Committee at which a quorum is present shall be competent to transact any business of the Committee.

25 (4) Questions arising at a meeting of the Committee shall be determined by a majority of votes of the members present and voting.

156.

Environmental Planning.

156. (1) The functions of the Committee shall be—

Functions
of the
Committee.

- 5 (a) to recommend to the Minister the making, or the revocation, of permanent preservation orders in respect of any buildings, works or sites which the Committee considers are of such social, cultural, architectural or historic interest as to warrant the order being made;
- 10 (b) to recommend to the Minister the making, or the revocation, of interim preservation orders in respect of any buildings, works or sites;
- (c) to keep a register of buildings, works and sites the subject of interim preservation orders or permanent preservation orders;
- 15 (d) to recommend to the Minister, for inclusion in environmental planning instruments, provisions for or with respect to the preservation of buildings, works or sites which the Committee considers are of such importance to the environment as to warrant their being subject to those provisions, whether or not interim preservation orders or permanent preservation orders are in force in respect of those buildings, works or sites; and
- 20 (e) to exercise and perform such other functions as are conferred or imposed on it by this Part.

25 (2) The register shall, on payment of the prescribed fee, if any, be open to inspection during ordinary office hours by any person at such place as is notified by the Committee in the Gazette as the place at which the register is kept.

30 **157.** (1) Subject to subsection (2), the Minister may make an order, designated in the order as an interim preservation order, in respect of any building, work or site specified or described in the order.

Interim
preservation
orders.

(2)

Environmental Planning.

(2) The Minister shall, before making an interim preservation order in respect of any building, work or site—

- 5 (a) request the Committee to furnish to him, within such period as is specified in the request, a recommendation with respect to the making of an interim preservation order in respect of the building, work or site; and
- 10 (b) defer making the order until the expiration of the period referred to in paragraph (a) and take into consideration any recommendation received by him pursuant to a request referred to in that paragraph.

(3) An interim preservation order shall take effect upon its being published in the Gazette.

- 15 (4) The Minister shall cause notice of an interim preservation order to be sent by post, as soon as practicable after the making of the order, to the council of the area, if any, in which the building, work or site the subject of the order is situated and to each person who appears to the Minister to be an owner of the land on which that building or work is
- 20 situated or that forms that site.

(5) An interim preservation order in respect of a building, work or site shall remain in force until—

- (a) a permanent preservation order is made in respect of the building, work or site;
- 25 (b) the interim preservation order is revoked by the Minister; or
- (c) the expiration of one year after an objection to the Minister's determination on an application, referred to in section 160 or 161, in respect of the building,
- 30 work or site to which the order relates is lodged with the Minister under section 162 (3),

whichever first occurs.

Environmental Planning.

158. (1) Subject to subsection (2), the Minister may make an order, designated in the order as a permanent preservation order, in respect of any building, work or site specified in the order. Permanent preservation orders.

5 (2) The Minister shall, before making a permanent preservation order, in respect of any building, work or site—

- 10 (a) cause notice to be sent by post to the council of the area, if any, in which the building, work or site is situated and to each person who appears to the Minister to be an owner of the land on which the building or work is situated or that forms the site, informing the council and any such person that it or he may, within such period as is specified in the notice, make submissions to the Minister with respect to the making of a permanent preservation order in respect of the building, work or site;
- 15 (b) request the Committee to furnish to him, within such period as is specified in the request, a recommendation with respect to the making of a permanent preservation order in respect of the building, work or site; and
- 20 (c) defer making the order until the expiration of whichever of the periods referred to in paragraphs (a) and (b) expires the later and take into consideration any submissions received by him pursuant to paragraph (a) and any recommendation received by him pursuant to a request referred to in paragraph (b).
- 25

30 (3) The only grounds on which a person, other than a council, may make submissions to the Minister pursuant to subsection (2) (a) are that—

- 35 (a) the building, work or site concerned should not be subject to a permanent preservation order by reason that such an order would render the building, work or site incapable of reasonable economic use; or

(b)

Environmental Planning.

5 (b) that the building, work or site concerned should not be subject to a permanent preservation order by reason that it is not of such social, cultural, architectural or historic interest as to warrant the order being made.

(4) A permanent preservation order shall take effect upon its being published in the Gazette.

10 (5) The Minister shall cause notice of a permanent preservation order to be sent by post, as soon as practicable after the making of the order, to the council of the area, if any, in which the building, work or site the subject of the order is situated and to each person who appears to the Minister to be an owner of the land on which that building or work is situated or that forms that site.

15 (6) A permanent preservation order shall remain in force until it is revoked by the Minister.

159. (1) Where an interim preservation order or a permanent preservation order is in force in respect of a building, work or site, a person shall not—

Effect of
interim
preservation
orders and
permanent
preservation
orders.

20 (a) wilfully demolish, damage or despoil the building or work or any part thereof, the land on which the building or work is situated or any part thereof or the site or any part thereof;

25 (b) carry out any development on the land on which the building or work is situated or that forms the site; or

(c) cut down, ringbark, top, lop, remove, wilfully injure or destroy any tree on the land on which the building or work is situated or that forms the site,

30 except with and in accordance with—

(d) the approval of the council of the area, if any, in which the building, work or site concerned is situated; or

(e)

Environmental Planning.

(e) except as provided in paragraph (a)—the approval of the Minister given under section 161.

Penalty : \$2,000 or imprisonment for 6 months, or both.

(2) Where a person convicted of an offence arising under subsection (1) is a body corporate, every person concerned in the management of that body corporate shall be deemed to have committed and may be convicted of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

10 **160.** (1) Subject to subsection (2), the council in whose area is situated any building, work or site in respect of which an interim preservation order or a permanent preservation order is in force has, notwithstanding any other provision of this Act or the Local Government Act, 1919, or of an environmental planning instrument, no power to deal with an application referred to in section 159 (1).

Applications to councils in respect of buildings, works or sites the subject of interim preservation orders or permanent preservation orders.

(2) A council to which an application referred to in section 159 (1) is made shall—

- 20 (a) forthwith refer the application to the Minister and send by post to the applicant notice that it has done so;
- (b) defer any further action on the application until it has received from the Minister a direction referred to in section 162 (1) (a); and
- 25 (c) upon receipt of the direction deal with the application in accordance with the direction.

(3) Forthwith after the receipt by the council of a direction given to it by the Minister under section 162 (1) (a), the council shall embody the direction in a notice which shall be deemed to be the decision of the council on the application and which the council shall send by post to the applicant.

(4)

Environmental Planning.

(4) Sections 317L and 341 of the Local Government Act, 1919, and section 117 do not apply to a decision of the council referred to in subsection (3).

161. (1) An application for the Minister's approval referred to in section 159 (1) shall be made in writing and, where a form is prescribed, in that form by lodging the application at the office of the Minister.

Applications to Minister in respect of buildings, works or sites the subject of interim preservation orders.

(2) The decision of the Minister on an application referred to in subsection (1) shall be final and shall not be subject to appeal.

162. (1) The Minister may, by instrument in writing—

Minister's powers with respect to applications referred to in section 160 or 161.

(a) in respect of an application referred to in section 160, direct the council—

- (i) to refuse the application;
- (ii) to approve the application unconditionally; or
- (iii) to approve the application subject to such conditions as are specified in the instrument; or

(b) in respect of an application referred to in section 161—

- (i) refuse the application;
- (ii) approve the application unconditionally; or
- (iii) approve the application subject to such conditions as are specified in the instrument.

(2) Where a building, work or site is subject to a permanent preservation order and an application referred to in section 160 or 161 is made to demolish the building or work, the Minister shall not deal with the application under subsection (1) otherwise than in accordance with subsection (1) (a) (i) or (1) (b) (i), as the case may be.

(3)

Environmental Planning.

(3) The owner of any land on which is situated a building or work, or of land that forms a site, being a building, work or site that is subject to an interim preservation order and in respect of which an application referred to in subsection 5 (1) is dealt with otherwise than as referred to in subsection (1) (a) (ii) or (1) (b) (ii), may, within one year after the Minister's determination under subsection (1) in respect of the application is made, make to the Minister an objection in the prescribed form against the determination by lodging 10 the objection at the office of the Minister.

163. Where the Committee makes a recommendation for the making of a permanent preservation order, it may include in its recommendation—

Committee's recommendations with respect to permanent preservation orders.

15 (a) a recommendation that the building, work or site concerned should be acquired by the Commission pursuant to section 164 (1) (a); or

(b) a recommendation with respect to any one or more of the following matters :—

20 (i) that the building or work or the land on which the building or work is situated or, as the case may be, the land that forms the site should be subject only to provisions of any environmental planning instrument of such nature as may be specified in the 25 recommendation;

30 (ii) that the owner of the land on which the building or work is situated or, as the case may be, of the land that forms the site should be granted financial assistance by way of loans or subsidies for the purpose of assisting him in the maintenance, repair or preservation of the building, work or site or in the use of the site for a purpose specified in the recommendation; or

(iii)

Environmental Planning.

- 5 (iii) that such special provisions for or with respect to the building or work or the land on which the building or work is situated or, as the case may be, the land that forms the site as are specified in the recommendation should be included in any environmental planning scheme.

164. Where the Committee makes a recommendation—

- 10 (a) referred to in section 163 (a), the Minister may, after making a permanent preservation order in respect of the building, work or site referred to in the recommendation, direct the Commission to acquire, out of money provided by the Minister from money appropriated by Parliament for the purpose, the land on which the building or work is situated or the site pursuant to section 16 of the State Planning Authority Act, 1963;
- 15 (b) referred to in section 163 (b) (ii), the Minister may, out of money appropriated by Parliament for the purpose, pay such amounts by way of financial assistance to the owner of the land to which the recommendation relates for any of the purposes referred to in section 163 (b) (ii) as he thinks fit; or
- 20 (c) referred to in section 163 (b) (iii), the Minister shall not make or amend, or direct the making or amendment of, an environmental planning instrument to give effect to the recommendation unless he has first consulted with—
- 25 (i) the Minister for the time being administering any Act or any Act under which an instrument may be made the suspension of which Act or instrument is proposed by the Minister in order to give effect to the recommendation; and
- 30 (ii)
- 35

Minister's powers to implement Committee's recommendations with respect to permanent preservation orders.

Environmental Planning.

- (ii) where the building, work or site is situated in an area, the council of that area; or

165. The Minister shall before revoking an interim preservation order or a permanent preservation order—

Revocation of interim preservation orders or permanent preservation orders.

- 5 (a) request the Committee to furnish to him, within such period as is specified in the request, a recommendation with respect to the revocation of the order; and
- 10 (b) defer revoking the order until the expiration of the period referred to in paragraph (a) and take into consideration any recommendation received by him pursuant to the request referred to in that paragraph.

166. (1) Where a permanent preservation order is in force—

Modification of certain Acts where permanent preservation order in force.

- 15 (a) the unimproved value or the unimproved capital value, as the case may be, under the Valuation of Land Act, 1916, or Schedule 3 to the Local Government Act, 1919, shall be determined having regard to the effect of this Part in relation to the land on which the building or work the subject of the permanent preservation order is situated or that forms the site the subject of the permanent preservation order, as the case may be; or
- 20 (b) the amount of land tax payable by the owner of the land on which the building or work the subject of the permanent preservation order is situated or that forms the site the subject of the permanent preservation order, as the case may be, shall be the total of the amounts of land tax that would be payable by that owner if those amounts were—
- 25 (i) calculated separately in respect of each parcel of land that is not exempt from taxation; and
- 30

(ii)

Environmental Planning.

- (ii) so calculated in the case of each such parcel as if it were the only land owned by that owner.

(2) The provisions of subsection (1) have effect notwithstanding the provisions of any other Act.

PART VI.

IMPLEMENTATION AND ENFORCEMENT.

167. (1) The Commission or a council may carry the provisions of an environmental planning instrument into effect by any one or more of the following methods :—

Carrying
environ-
mental
planning
instru-
ments
into
effect.

- (a) acquiring land;
- (b) causing an aligned public road to be realigned under the Public Roads Act 1902 in order to widen the road and by applying the realignment method under the Local Government Act, 1919, of acquisition;
- (c) taking such action as may be necessary to enforce the exercise or performance of a function conferred or imposed by or under the environmental planning instrument upon an owner, lessee, public authority or other person;
- (d) enforcing an agreement incorporated in the environmental planning instrument, or made subsequent to the environmental planning instrument, and relating to a matter dealt with in or arising out of the environmental planning instrument;
- (e) any other method specifically provided for in the environmental planning instrument; or

(f)

Environmental Planning.

(f) the exercise or performance of a function conferred or imposed upon it by or under this or any other Act.

(2) A council may, in addition to the functions conferred or imposed upon it under subsection (1), carry the provisions of an environmental planning instrument into effect by exercising, in accordance with the environmental planning instrument, its powers under the Local Government Act, 1919, to regulate the opening of a new road, the subdivision of land, the erection of buildings or any other matter appropriate to that environmental planning instrument.

(3) The Commission shall, for the purposes of subsection (1) (b), have all the powers of a council with respect to the realignment of public roads.

168. Section 317B (subsection (1) excepted) of the Local Government Act, 1919, applies in respect of a building erected or altered without the consent of a council granted under Division 1 of Part III in the same way as it applies in respect of a building erected or altered without the approval of the council referred to in Part XI of that Act.

169. (1) Subject to the provisions of an environmental planning instrument, the Commission or a council may, after giving the prescribed notice—

(a) without limiting section 168, remove, pull down or alter, so as to bring into conformity with the provisions of the environmental planning instrument, a building or work which does not conform to those provisions or in the erection or carrying out of which a provision of that environmental planning instrument has not been complied with or the demolition or alteration of which is necessary for carrying that environmental planning instrument into effect;

Demolition orders.

Enforcement of environmental planning instruments.

Environmental Planning.

- (b) where a building or work or land is being used contrary to this Act or a provision of the environmental planning instrument, prohibit that use of that building or work or of that land; or
- 5 (c) execute any work which it is the duty of any person to execute under the environmental planning instrument in any case where it appears to the Commission or the council that delay in the execution of the work would prejudice the efficient operation of
- 10 the environmental planning instrument.

(2) Where any action by the Commission or a council under subsection (1) is made necessary by the default or wrongful act of a person, the Commission or the council, as the case may be, may recover any expenses thereby

15 incurred from that person as a debt in a court of competent jurisdiction.

170. (1) In this section, "existing building", "existing use" and "existing work" have the meanings attributed to them respectively in section 128.

Compensation for certain damage.

- 20 (2) A person who suffers damage arising from—
- (a) the removal, pulling down or alteration of an existing building or existing work; or
- (b) the prohibition or restriction on the use of a building or work or of land which use was an existing
- 25 use of that building or work or of that land,

by reason of anything done by or on behalf or at the order of a council for the enforcement or carrying into effect of an environmental planning instrument shall, if he is an owner or a lessee of the land on which the building or work is

30 situated or of the land, as the case may be, be entitled to compensation from the council in respect of that damage.

(3)

Environmental Planning.

(3) If a dispute or difference arises between a person referred to in subsection (2) and the council, that dispute or difference shall be determined—

5 (a) where the amount of compensation claimed does not exceed \$2,000—by a court of petty sessions held before a stipendiary magistrate sitting alone; or

(b) where the amount of compensation claimed exceeds \$2,000—by the Supreme Court,

10 and judgment for the amount so determined shall be given and may be enforced as judgment for a debt.

(4) Proceedings for a determination under subsection (3) shall be commenced within such time and in such manner as may be prescribed.

15 **171.** (1) In this section, “planning instrument” means—
 (a) an environmental planning instrument; or
 (b) a prescribed scheme or an interim development order within the meaning of Part XIIA of the Local Government Act, 1919, as in force at any time
 20 before the day appointed and notified under section 2 (2).

Value of reserved land on acquisition.

(2) Where—

25 (a) land designated under a planning instrument for use exclusively for a purpose referred to in section 10 (c) is compulsorily acquired; or

(b) land the subject of a permanent preservation order made under Part V is compulsorily acquired,

pursuant

Environmental Planning.

pursuant to any Act, the value of that land shall, notwithstanding any other Act, be—

- 5 (c) in respect of land referred to in paragraph (a), the market value of that land on the date on which it is so acquired having regard to the restrictions, if any, that applied to that land under a planning instrument immediately before the land was designated by the planning instrument referred to in paragraph (a) or, where the land was so designated by more than one planning instrument, by whichever of those planning instruments first took effect; and
- 10
- 15 (d) in respect of land referred to in paragraph (b), the market value that that land would have had on the date on which it is so acquired if that land were not the subject of a permanent preservation order made under Part V.

172. (1) The Commission may, by notice in writing, require any person to furnish to it such information in connection with any matter relating to its functions as may be specified in the notice. Persons may be required to furnish information.

20

(2) A person shall not neglect or fail to comply with a requirement made under this section.

Penalty : \$1,000.

25 (3) Any information furnished pursuant to a requirement made under subsection (1) shall not, if the person furnishing the information objected, at the time of furnishing it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against that

30 person for any offence, not being the offence of neglecting or failing to comply with any requirement made under subsection (1).

173.

Environmental Planning.

173. (1) The Minister may direct a public authority having functions conferred or imposed upon it by or under this Act, an environmental planning instrument or an order made by the Governor under section 148 to exercise or perform those functions at such times and in such manner, not inconsistent with any provision made by or under this Act, that environmental planning instrument or that order, as are specified in that direction.

Directions
by the
Minister.

(2) A public authority shall comply with a direction given to it under subsection (1) in accordance with the terms of that direction.

174. (1) If at any time it appears to the Minister that it is expedient that any development for which consent has been granted by a council pursuant to a development application should not be carried out or completed, or should not be carried out or completed to the extent or in the manner allowed by the consent, he may, by instrument in writing sent by post to all persons who, in his opinion, will be thereby affected, revoke or modify the consent.

Revocation
or modifica-
tion of
development
consent.

(2) The Minister, before sending an instrument under subsection (1), shall, by notice in writing sent by post to the council and each person referred to in subsection (1) inform that council and each such person that it or he may appear before and be heard by a person appointed by the Minister for the purpose and shall afford that council and each such person an opportunity of so appearing and being heard.

(3) A person referred to in subsection (1) shall be entitled to recover from the council compensation for expenditure, other than expenditure incurred after the date of service of a notice on him under subsection (2), which is rendered abortive by a revocation or modification made under subsection (1).

(4)

Environmental Planning.

(4) If a dispute or difference arises between a person referred to in subsection (1) and the council, that dispute or difference shall be determined—

- 5 (a) where the amount of compensation claimed does not exceed \$2,000—by a court of petty sessions held before a stipendiary magistrate sitting alone; or
- (b) where the amount of compensation claimed exceeds \$2,000—by the Supreme Court,

and judgment for the amount so determined shall be given and
10 may be enforced as judgment for a debt.

(5) Proceedings for a determination under subsection (4) shall be commenced within such time and in such manner as may be prescribed.

175. (1) Where, in the opinion of the Minister, a council
15 fails to comply with, carry into effect or enforce the provisions of an environmental planning instrument or Part V, the Minister may, by notification published in the Gazette, appoint the Commission to administer all, or such part as is specified in the notification, of the functions conferred or imposed on
20 that council by or under this Act or that Part, as the case may be, and may in like manner at any time revoke that appointment.

Appointment of Commission as environmental planning administrator.

(2) The Commission shall, in respect of anything done or omitted to be done during the period of its appointment under subsection (1), have the functions of the council specified in the notification of its appointment and shall, in the exercise or performance of those functions, be deemed to be the council.

(3) The Commission shall, during the period of its
30 appointment under subsection (1), be paid out of the general fund of the council such remuneration and such costs and expenses as the Minister may determine.

Environmental Planning.

176. (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 Commission, a council or any other person is authorised by or under this Act, other than by or under 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 prohibition shall be guilty of an offence against this Act.

Offences
against
this Act
and the
regulations.

(2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where the Minister, the Commission, a council or any other person is authorised by 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 prohibition shall be guilty of an offence against the regulations.

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

177. (1) A person guilty of an offence against this Act shall, where no other penalty is expressly provided, be liable to a penalty not exceeding \$10,000.

Penalties.

(2) A person guilty of an offence against the regulations shall be liable to a penalty not exceeding \$500.

178. (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 Supreme Court in its summary jurisdiction.

Proceed-
ings for
offences.

(2)

Environmental Planning.

(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) Proceedings for an offence against this Act shall
5 not be instituted in the Supreme Court in its summary jurisdiction without the written consent of the Minister or of such member or officer of the Commission as may be authorised by the Minister for the purposes of this subsection.

(4) If proceedings in respect of an offence against
10 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 provision of this Act, \$2,000 or the maximum penalty provided by this Act in respect of the offence, whichever is
15 the lesser.

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

(6) Proceedings in the Supreme 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.

25 **179.** In any case in which the Attorney-General might take proceedings on the relation or on behalf or for the benefit of the Commission or the council for or with respect to enforcing or securing the observance of any provision made by or under this Act, the Commission or the council, as the
30 case may be, shall be deemed to represent sufficiently the interests of the public and may take the proceedings in its own name.

Environmental Planning.

180. Nothing in this Part, except section 175, authorises the Commission to take proceedings by or under this Act for or with respect to enforcing or securing the observance of any provisions made by or under a local environmental plan.

Enforcement,
etc., of
local
environ-
mental
plans.

181. Where an offence against this Act or the regulations is committed with respect to the protection or preservation of trees, a council may, notwithstanding any other provisions made by or under this Act, direct the person guilty of that offence to make such contribution or to carry out such measures towards the planting of new trees as it considers reasonable in all the circumstances of the case.

Restriction in
respect
of trees.

182. (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 shall be admissible in evidence if—

Evidence.

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

(b) it purports to be certified—

(i) where the original document, map or plan is in the custody of the Commission—under the hand of the Chief Administrative Officer or other prescribed officer of the Commission; or

(ii) where the original document, map or plan is in the custody of a council—under the hand of the proper servant, as defined in section 4 of the Local Government Act, 1919, of that council.

Environmental Planning.

(2) Where the original document, map or plan is in the custody of—

- 5 (a) the Commission—the Commission shall furnish the certified copy or extract to the person applying for it upon payment of such fee as is determined by the Commission; or
- 10 (b) a council—that council shall furnish the certified copy or extract to the person applying for it upon payment of such fee as is determined by that council.

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

183. (1) The Governor may make regulations, not Regulations.
15 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.

(2) Regulations may be made so as to apply
20 differently according to such factors as may be specified in the regulations.

(3) A regulation may be made so as to authorise
any matter or thing to be from time to time determined,
applied or regulated by any person or body specified in the
25 regulation.

Environmental Planning.

PART VII.

MISCELLANEOUS.

184. The power under the Local Government Act, 1919, Validation of certain provisions of prescribed schemes and interim development orders under Part XIIA of the Local Government Act, 1919.
to prepare and to prescribe a scheme or to make an interim
5 development order within the meaning of Part XIIA of that
Act shall be deemed always to have extended to authorising
the preparing and prescribing of a scheme or the making of
an interim development order containing provisions—

- 10 (a) empowering a responsible authority or a council
under the scheme or interim development order to
make orders for or with respect to the protection
or preservation of trees and, subject to section 576
(4) of that Act, imposing a penalty for a breach
of any such order;
- 15 (b) empowering any matter to be determined by any
Minister specified or referred to in the provisions;
and
- 20 (c) specifying the circumstances in which the concur-
rence of any person or body, who under any such
provision may give a concurrence to any act, matter
or thing, may be assumed to have been given.

185. (1) Subject to Subdivision 1 of Division 5 of Part II, a local environmental plan shall continue to apply to the
land to which it applied on the date on which it took effect
25 notwithstanding that that land may be transferred to another
area or amalgamated with land of another area. Transfer or amalga-
mation of land to which a
local environ-
mental
plan applies.

(2) Where land is transferred from one area to
another area or is amalgamated with land of another area,
the council of the area to which that land is transferred or
30 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 took effect.

186.

Environmental Planning.

- 186.** (1) Section 9A (subsection (6) excepted) of the State Planning Authority Act, 1963, applies in respect of a council in the same way as it applies in respect of the Commission. Use of information obtained through association with a council for personal advantage prohibited.
- 5 (2) For the purposes of section 9A of the State Planning Authority Act, 1963, as applied by subsection (1), a person is associated with a council—
- (a) if he is a member or servant of the Commission;
 - (b) if he is an officer or servant of that council;
 - 10 (c) if he acts or has acted as banker, solicitor, auditor or professional adviser or in any other capacity for the Commission or that council; or
 - (d) where the person, so associated by virtue of paragraph (c), is a corporation, if he is a director,
15 manager or secretary of that corporation. 21
- 187.** (1) The Minister may appoint a person or persons to hold a public inquiry and to report to him with respect to any matter relating to the carrying out of the provisions of this Act or any environmental planning instrument. Public inquiries. 02
- 20 (2) A person appointed under subsection (1) or, where two or more persons are appointed under subsection (1) and one of those persons is appointed as chairman of the public inquiry, the person appointed as chairman, shall, for the purposes of the public inquiry, have the powers, authorities, protections and immunities conferred by the Royal Commissions Act, 1923, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act, and that Act, section 13 and Division 2 of Part II excepted, shall apply to any witness summoned by
25 or appearing before that person or persons, as the case may be, in the same way as it applies to any witness summoned by
30 or appearing before a commission.

Environmental Planning.

188. (1) Where a dispute arises between the Commission, a council or any other public authority with respect to— Settlement
of disputes.

- 5 (a) the carrying out of any provision made by or under this Act, the regulations or an environmental planning instrument; or
- (b) the exercise or performance of any functions conferred or imposed upon the Commission, a council or any other public authority,

10 a party to the dispute may submit that dispute to the Minister.

 (2) On the submission of a dispute to the Minister under subsection (1), the 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

15 dispute.

 (3) After the completion of an inquiry held under subsection (2) and, where a report is made to the Minister under that subsection, after consideration by him of that report, the Minister may make such order, having regard to

20 the public interest and to the circumstances of the case, as he thinks fit.

 (4) An order made by the Minister under subsection (3) may direct the payment of any costs or expenses of or incidental to the holding of the inquiry.

25 (5) An order made by the Minister under subsection (3) may, upon the application of the Minister or a party to the dispute, by leave of the Supreme Court, be enforced in the same manner as a judgment or order of the Supreme Court to the same effect.

30 **189.** (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 that council. Cer-
tificates.

(2)

Environmental Planning.

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

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

(4) For the purpose of any proceedings for an offence against this Act or the regulations taken against a
10 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.

190. (1) A council may, by resolution, delegate to any Delegation officer, servant or person, or to a committee consisting either
15 wholly or in part of officers, servants or persons, the exercise or performance of such of the functions, other than—

(a) this power of delegation;

(b) the making of a resolution under section 44, 62, 75 or 86; or

20 (c) the execution of a certificate under section 61 or 84, conferred or imposed upon it by or under this Act or the regulations as may be specified in the resolution and may, by resolution, revoke any such delegation either wholly or in part.

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

(3) A delegation under this section may be made
30 subject to such conditions or such limitations as to the exercise or performance of any of the functions delegated, or as to time or circumstances, as may be specified in the resolution delegating the exercise or performance of those functions.

(4)

Environmental Planning.

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

(5) Any act or thing done or suffered by a delegate while acting in the exercise or performance of a function delegated under this section shall have the same force or effect as if the act or thing done or suffered had been done or suffered by the council and shall be deemed to have been done or suffered by the council.

10 **191.** (1) The Minister may, with the approval of the Treasurer, from money provided by Parliament for the purpose, or from money made available to the State of New South Wales by the Parliament of the Commonwealth upon terms which are not inconsistent with the application of that money for the purpose, make advances to the Commission or a council for or in connection with the exercise or performance of its functions under or in pursuance of this Act. <sup>Advances—
generally.</sup>

(2) In any case where the Minister so requires, the Commission or a council shall enter into an agreement securing the repayment of an advance made to it under subsection (1) by yearly or half-yearly instalments with interest at such rate as the Minister, with the approval of the Treasurer, may determine.

(3) If an instalment referred to in subsection (2) is not paid on the due date, there shall be added to it a sum equal to 10 per cent of that instalment and that instalment together with that sum may be recovered by the Minister as a debt.

(4) Nothing in subsection (3) shall prevent the Minister, with the approval of the Treasurer, on cause being shown, from remitting the payment of an instalment or a sum referred to in that subsection in whole or in part.

Environmental Planning.

192. (1) The Minister may, with the approval of the Treasurer, enter into an agreement with the Commission or a council to pay to the Commission or that council, as the case may be, in each year during such period as may be specified in the agreement, the sum or sums ascertained from time to time upon such basis or upon such considerations as the Minister may determine, for or towards meeting the liability of the Commission or that council, as the case may be, in respect of any borrowing for any purpose of this Act or in respect of any loan or loans raised by the Commission or that council, as the case may be, for the purpose of repaying or renewing the whole or any part of the original loan or of any renewal loan made in respect of the original loan.

Advances
to meet
liabilities.

(2) An agreement made under subsection (1) may include such terms, conditions or provisions not inconsistent with this Act as the Minister may determine and may, if the Minister so determines, provide for the repayment, in instalments or otherwise, of the sums paid to the Commission or the council, as the case may be, under that agreement.

(3) The sums which, from time to time, become due and payable by the Minister under any agreement made under subsection (1) shall be paid from money provided by Parliament for the purpose or from money made available to the State of New South Wales by the Parliament of the Commonwealth upon terms which are not inconsistent with the application of that money for the purpose.

Environmental Planning.

PART VIII.

AMENDMENTS TO CERTAIN ACTS.

193. (1) Each Act specified in Column 1 of Schedule 2 is amended in the manner set forth opposite that Act in Column 2 of Schedule 2. Amend-
ments to
certain
Acts.

(2) A reference in an Act other than this Act or in an instrument made under an Act other than this Act—

- (a) to Part XIIA of the Local Government Act, 1919, shall be construed as a reference to this Act;
- 10 (b) to any provision of that Part shall be construed as a reference to the corresponding provision, if any, of this Act;
- 15 (c) to a specified prescribed scheme or an interim development order made under that Part shall be construed as a reference to the local environmental plan that that prescribed scheme or interim development order is deemed by clause 2 of Schedule 3 to be;
- 20 (d) to a prescribed scheme or an interim development order made under that Part, that is not identified by the reference, shall be construed as a reference to an environmental planning instrument;
- 25 (e) except as provided in paragraph (d), to a planning scheme prepared under that Part shall be construed as a reference to a draft local environmental plan in respect of which the Commission has issued a certificate under section 55; or

Environmental Planning.

(f) to prescribed qualifications with respect to town or country planning shall be construed as a reference to qualifications in environmental planning prescribed under this Act,

5 except in so far as the context otherwise indicates or requires.

(3) The provisions of Schedule 3 have effect for the purposes of this Act.

SCHEDULE 1.

Sec. 4 (1)

The Department of Agriculture (New South Wales).

10 The Department of Education (New South Wales).

The Department of Lands (New South Wales).

The Department of Main Roads (New South Wales).

The Department of Mines (New South Wales).

The Department of Public Works (New South Wales).

15 The Department of Technical and Further Education (New South Wales).

The Department of Youth, Ethnic and Community Affairs (New South Wales).

The Department of Motor Transport (New South Wales).

20 The Police Department (Traffic Branch) New South Wales.

The Department of Decentralisation and Development (New South Wales).

The Department of Tourism (New South Wales).

The Public Transport Commission of New South Wales.

25 The Traffic Authority of New South Wales.

The Electricity Authority of New South Wales.

SCHEDULE

Environmental Planning.

SCHEDULE 1—*continued.*

- The Electricity Commission of New South Wales.
- The Forestry Commission of New South Wales.
- The Health Commission of New South Wales.
- 5 The Housing Commission of New South Wales.
- The Metropolitan Waste Disposal Authority (New South Wales).
- The National Parks and Wildlife Service (New South Wales).
- The Metropolitan Water Sewerage and Drainage Board (New South Wales).
- 10 The Hunter District Water Board (New South Wales).
- The Broken Hill Water Board (New South Wales).
- The Maritime Services Board of New South Wales.
- The Sport and Recreation Service of New South Wales.
- The Water Conservation and Irrigation Commission (New South Wales).
- 15 The Soil Conservation Service (New South Wales).
- The State Pollution Control Commission (New South Wales).
- The New South Wales Planning and Environment Commission.
- The Department of Transport (Commonwealth).
- 20 The Department of Environment, Housing and Community Development (Commonwealth).
- The Department of Administrative Services (Commonwealth).
- The Australian Telecommunications Commission (Commonwealth).
- county councils within the meaning of Part XXIX of the Local Government Act, 1919.
- 25 councils.
- The Australian Gas Light Company.

Environmental Planning.

SCHEDULE 2.

Sec. 193

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1915, No. 29.. City and Suburban Electric Railways Act, 1915.	Section 5D— Omit "Local Government Act, 1919, as amended by subsequent Acts, or of any other Act, or of any Ordinance under the Local Government Act, 1919, as so amended," insert instead "Local Government Act, 1919, or of an ordinance made under the Local Government Act, 1919, or of the Environmental Planning Act, 1976, or of an environmental planning instrument within the meaning of the Environmental Planning Act, 1976, or of any other Act,".
15		
20	1919, No. 41.. Local Govern- ment Act, 1919.	Section 3— Omit the matter relating to Parts XII and XIII, insert instead:— PART XII.—SUBDIVISION CONTROL— ss. 320-342.
25		Section 4, definition of "Environmental planning instrument"— After the definition of "Electoral offence", insert:— "Environmental planning instrument" means an environmental planning instrument within the meaning of the Environmental Planning Act, 1976.
30		Section 132 (1) (k)— Omit "a scheme prescribed under Part XIIA of this Act where such land has been acquired by a responsible authority in accordance with the provisions of the scheme for the purposes of the scheme", insert instead "an environmental planning instrument where the land has been acquired in accordance with that instrument for a purpose authorised by that instrument".
35		Section 160c (1)— Omit "planning scheme prepared under Part XIIA," insert instead "environ- mental planning instrument,".
40		Section 270JA (1)— Omit "any town or country planning scheme within the meaning of Part XIIA", insert instead "the Environ- mental Planning Act, 1976,".
45		
50		
55		

SCHEDULE

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1919, No. 41— <i>continued.</i>	Local Govern- ment Act, 1919— <i>continued.</i>
15		Section 309 (1)— Omit "The Governor", insert instead "Subject to subsection (5), the Governor".
20		Section 309 (5)— After section 309 (4), insert:— (5) A proclamation under subsection (1) has no force or effect in respect of any land to which a local environmental plan within the meaning of the Environmental Planning Act, 1976, applies.
25		Section 314 (1), paragraph (b) of the proviso— After "ordinances", insert "and the Environmental Planning Act, 1976, and any environmental planning in- strument".
30		Section 314 (4)— After section 314 (3), insert:— (4) An application under this Division shall, so far as it relates to development that may only be carried out with the consent of the council under the Environ- mental Planning Act, 1976, not be approved or approved subject to conditions unless that consent has been granted either unconditionally or subject to conditions.
35		Section 314A— Omit the section.
40		Section 317A (1)— After "council" where secondly occurring, insert "and the Environmental Planning Act, 1976, and any environ- mental planning instrument made thereunder".
45		Section 317A (1)— After "specifications" where secondly occurring, insert "or any contravention of the Environmental Planning Act, 1976, or any environmental planning instrument made thereunder".
50		Section 317A (3)— After "council" where secondly occurring, insert "and the Environmental Planning Act, 1976, and any environ- mental planning instrument made thereunder".

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1919, No. 41— <i>continued.</i>	Local Govern- ment Act, 1919— <i>continued.</i>
15		Section 317A (3)— After “specifications” where secondly occurring, insert “or any contravention of the Environmental Planning Act, 1976, or any environmental planning instrument made thereunder”.
20		Section 317A (4)— After “ordinances”, insert “and the En- vironmental Planning Act, 1976, and any environmental planning instrument made thereunder”.
25		Section 317B (5) (b)— After “ordinances”, insert “, the En- vironmental Planning Act, 1976, and any environmental planning instrument made thereunder”.
30		Part XII, heading— Omit the heading, insert instead:— PART XII. SUBDIVISION CONTROL.
35		Section 327A (2)— Omit “any town or country planning scheme prescribed or in course of preparation under Part XIIA or with the requirements of an interim de- velopment order made under Division 7 of that Part or of a council imposed under such an order—”, insert instead “an environmental planning instru- ment (including a draft environmental planning instrument) or of a council imposed under the Environmental Planning Act, 1976—”.
40		Section 331 (6)— After section 331 (5), insert:— (6) An application under this Division shall, so far as it relates to development that may only be carried out with the consent of the council under the Environ- mental Planning Act, 1976, not be approved or approved subject to conditions unless that consent has been granted either un- conditionally or subject to conditions.
45		Section 332 (k)— Omit “town planning or country planning scheme.” insert instead “environ- mental planning instrument.”.
50		

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1919, No. 41— <i>continued.</i>	Local Govern- ment Act, 1919— <i>continued.</i>
15		Section 333 (1) (j)— Omit “town planning or country planning scheme”, insert instead “environmental planning instrument”.
20		Section 333 (3)— After section 333 (2), insert:— (3) Where the council has under section 114 (1) of the Environmental Planning Act, 1976, imposed as a condition of its consent to a development application a condition that the applicant pay an amount towards the provision, extension or improvement of a public reserve, the council shall not be entitled to impose as a condition of its approval of an application under this Division a condition that the applicant shall provide a portion of the land proposed to be subdivided as a public reserve or a condition referred to in subsection (2).
25		Part XIIA— Omit the Part.
30		Section 342BF (6)— Omit “or responsible authority” where firstly occurring, insert instead “or another person”.
35		Section 342BF (6)— Omit “or responsible authority” where secondly occurring, insert instead “or other person”.
40		Section 342BF (6)— After “Minister”, insert “or the State Pollution Control Commission”.
45		Section 342BGA (2)— Omit the subsection, insert instead:— (2) A reference in subsection (1)— (a) to an appeal includes a reference to an application made under the Environmental Planning Act, 1976, for leave to appeal; and (b) to a party to an appeal includes a reference to an applicant under the Environmental Planning Act, 1976, for leave to appeal.
50		Section 342BI (3)— Omit “this Act or an ordinance,” insert instead “the Act or any instrument in respect of which the appeal arose”.

SCHEDULE

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Amendment.
10	1919, No. 41— <i>continued.</i>	Local Govern- ment Act, 1919— <i>continued.</i>
15		Section 519A (1)— Omit "subsection (2) of section 342L," insert instead "section 342L (2) im- mediately before the day appointed and notified under section 2 (2) of the Environmental Planning Act, 1976,".
20		Section 519A (1)— Omit "and has been transferred to a council pursuant to that Ordinance or any such local scheme," insert instead "and to land designated for use ex- clusively for the purpose of a park, a recreation area or open space under an environmental planning instrument and transferred to, or acquired by, as the case may be, a council pursuant to that Ordinance, any such local scheme or any other environmental planning instrument."
25		Section 519A (3)— Omit "or any such local scheme," insert instead "any such local scheme or any other environmental planning instrument,".
30		Section 519A (8)— Omit "town or country planning scheme under Part XIIA," insert instead "other environmental planning instru- ment,".
35		Section 532 (2) (c)— Omit "prescribed scheme under Part XIIA," insert instead "environmental planning instrument".
40		Section 532 (2) (c)— Omit "such prescribed scheme," insert instead "such instrument."
45	1924, No. 50..	Metropolitan Water, Sewer- age, and Drainage Act, 1924.
50		Section 100B (1)— Omit "planning scheme prepared under Part XIIA of the Local Government Act, 1919," insert instead "environ- mental planning instrument within the meaning of the Environmental Plan- ning Act, 1976,".
55		Section 100B (1)— Omit "that Act", insert instead "the Local Government Act, 1919". Section 125 (3)— After "Act," insert "or an environmental planning instrument within the mean- ing of the Environmental Planning Act, 1976,".

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10		Amendment.
15	1938, No. 11..	Hunter District Water, Sewerage and Drainage Act, 1938.
20		Section 104B (1)— Omit "planning scheme prepared under Part XIIA of the Local Government Act, 1919," insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
25		Section 104B (1)— Omit "that Act", insert instead "the Local Government Act, 1919".
30		Section 128 (3)— After "Act", insert "or an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
35	1954, No. 34..	Australian Oil Refining Limited Agreement Ratification Act, 1954.
40		Section 10— Omit "planning scheme prepared under Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts," insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
45	1955, No. 50..	Local Government (Regulation of Flats) Act, 1955.
50		Section 7 (b) (ii), (iii)— Omit the subparagraphs, insert instead:— (ii) the Environmental Planning Act, 1976; or (iii) an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,
	1956, No. 10..	Hunter Valley Flood Mitigation Act, 1956.
		Section 6— Omit "Notwithstanding anything contained in Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts, no restriction imposed by or under that Part and no provision or restriction contained in any town or country planning scheme prescribed by ordinance pursuant to the provisions of the said Part or imposed under the authority of any such scheme", insert instead "No provision or restriction contained in the Environmental Planning Act, 1976, or in an environmental planning instrument within the meaning of that Act,".

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	15	Amendment.
1959, No.15 ..	Sydney Sports Ground and Sydney Cricket Ground Amalgamation (Amendment) Act, 1959.	Section 2 (2)— Omit "Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts.", insert instead "the Environmental Planning Act, 1976."
1961, No.22 ..	Mine Subsidence Compensation Act, 1961.	Section 15 (6)— Omit "a responsible authority under a town or country planning scheme within the meaning of Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts.", insert instead "any person under the Environmental Planning Act, 1976,".
1961, No.69 ..	Clean Air Act, 1961.	Section 15 (6)— Omit "that responsible authority", insert instead "that person". Section 16 (3) (c)— After "Local Government Act, 1919," insert "the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
1962, No.16 ..	Australian Lubricating Oil Refinery Limited Agreement Ratification Act, 1962.	Section 7— Omit "planning scheme prepared under Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts.", insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
1963, No. 59 ..	State Planning Authority Act, 1963.	Section 12— Omit "the Authority shall be charged with the responsibility of promoting and co-ordinating town and country planning", insert instead "and the Environmental Planning Act, 1976, the New South Wales Planning and Environment Commission is charged with the responsibility of promoting and co-ordinating environmental planning". Section 12 (a), (b), (c)— Omit "town and country planning" wherever occurring, insert instead "environmental planning".

SCHEDULE

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	Amendment.	
1963, No. 59— <i>continued.</i>	State Planning Authority Act, 1963— <i>continued.</i>	Section 12 (d)— Omit “town and country planning and the implementation thereof in local planning schemes;”, insert instead “environmental planning and the implementation thereof in local environmental plans within the meaning of the Environmental Planning Act, 1976;”. Section 12 (e)— Omit “or as are related to or incidental or consequential to powers, authorities, duties and functions conferred or imposed on a member or servant of the Authority by or under the Height of Buildings (Metropolitan Police District) Act, 1912, or the Local Government Act, 1919”. Section 12, proviso— Omit the proviso. Section 14 (1)— Omit “Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts.”, insert instead “the Environmental Planning Act, 1976.”. Section 15 (1b)— Omit the subsection. Section 16 (1)— Omit “Local Government Act, 1919, as amended by subsequent Acts, or by any ordinance made under Part XIIA of that Act, as so amended,”, insert instead “Environmental Planning Act, 1976, or any environmental planning instrument within the meaning of that Act,”. Section 16 (2) (a)— Omit “a prescribed scheme or an interim development order”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
5	Year and number of Act.	Amendment.
10	1963, No. 59— <i>continued.</i>	State Planning Authority Act, 1963— <i>continued.</i>
15		Section 16 (2) (a1)— After section 16 (2) (a), insert:— (a1) any land on which is situated, or that forms the site of, a building, work or site in respect of which a permanent preservation order made under Part V of the Environmental Planning Act, 1976, is in force;
20		Section 19 (a)— Omit "interim development order, or prescribed scheme, made under Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts, and applying", insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976, that applies".
25		Section 32 (1) (a1)— After section 32 (1) (a), insert:— (a1) all advances made to the New South Wales Planning and Environment Commission for or in connection with the exercise or discharge by the Commission of the powers, authorities, duties or functions conferred or imposed on it by or under this Act or the Environmental Planning Act, 1976, within or in respect of the development area;
30		Section 8 (2) (a)— Omit "town and country planning scheme referred to in Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts," insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
35		Section 40 (a), (b)— Omit the paragraphs, insert instead:— (a) section 171 of the Local Government Act, 1919, do not apply to or in respect of a pipeline; and
40	1967, No. 90..	Pipelines Act, 1967.
45		
50		

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10		Amendment.
1967, No. 90— <i>continued.</i>	Pipelines Act, 1967— <i>continued.</i>	(b) Part XI of the Local Government Act, 1919, and the Environmental Planning Act, 1976, do not apply to the construction or operation of a pipeline (not including apparatus or works),
1968, No. 11..	Sydney Farm Produce Market Authority Act, 1968.	Section 15 (4) (a)— Omit the paragraph, insert instead:— (a) the question as to whether the land proposed as the site for the proposed public market is affected or controlled by the provisions of any environmental planning instrument within the meaning of the Environmental Planning Act, 1976, and, if any such land is so affected, the question as to whether use thereof for the purposes of a public market is permissible under the instrument concerned;
30		Section 15 (5)— Omit "town and country planning scheme, planning scheme or interim development order made, prescribed or issued by or under any Act", insert instead "environmental planning instrument referred to in subsection (4) (a)".
1968, No. 56..	Sydney Cove Redevelopment Authority Act, 1968.	Section 18 (2)— Omit the subsection, insert instead:— (2) In the application of the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act, to and in respect of the development area— (a) a reference in that Act or in any such instrument to the responsible authority or a council shall be deemed to be a reference to the Authority; (b) in so far as that Act provides for an appeal against a decision on a development application, it shall be deemed to provide only for an appeal to the Minister; and (c) any such instrument shall, to the extent that it is inconsistent with the approved scheme, not have any effect.

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.	
5	Year and number of Act.	Short title of Act.	Amendment.
10	1970, No. 97..	Waste Disposal Act, 1970.	Section 18— Omit “and the provisions of Part XIIA of the Local Government Act, 1919, and any ordinance or interim development order made under that Part,” insert instead “the Environmental Planning Act, 1976, and any environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.
15			
20	1973, No. 42..	Mining Act, 1973.	Section 115 (1)— Omit “a scheme (as defined in section 116).”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976.”.
25			Section 115 (4) (b)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purposes of that Part,” insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”.
30			Section 115 (4) (b)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”.
35			Section 116 (1)— Omit “a scheme”, insert instead “the Environmental Planning Act, 1976,”.
40			Section 116 (4)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purposes of that Part,” insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”.
45			Section 116 (4)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”.
50			Section 116 (9), definition of “scheme”— Omit the definition.

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.	
5	Year and number of Act.	Short title of Act.	Amendment.
10	1973, No. 68..	Strata Titles Act, 1973.	Section 36— After “Conveyancing Act, 1919,”, insert “the Environmental Planning Act, 1976.”.
15			Section 37 (1) (b) (i), (ii)— Omit the subparagraphs, insert instead:— (i) separate occupation of the proposed lots illustrated by that plan will not contravene the provisions of the Environmental Planning Act, 1976, or of any environmental planning instrument within the meaning of that Act;
20			(ii) any consent or approval required under that Act or instrument has been given in relation to the separate occupation of the proposed lots illustrated by that plan;
25	1973, No. 81..	Coal Mining Act, 1973.	Section 89 (1)— Omit “a scheme (as defined in section 90),”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976.”.
30			Section 89 (3)— Omit “a scheme (as defined in section 90),”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976.”.
35			Section 89 (6) (b)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purpose of that Part.”, insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act.”.
40			Section 89 (6) (b)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”.
45			Section 90, definition of “scheme”— Omit the definition.
50			Section 91 (1)— Omit “a scheme”, insert instead “the Environmental Planning Act, 1976.”.

Environmental Planning

SCHEDULE 2—continued.

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	15	20
25	30	35
40	45	
1973, No. 81— <i>continued.</i>	Coal Mining Act, 1973— <i>continued.</i>	Section 91 (4)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purposes of that Part,” insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”. Section 91 (4)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”. Section 92 (1)— Omit “a scheme,” insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”. Section 92 (4)— Omit “Part XIIA of the Local Government Act, 1919, or an ordinance, order or proclamation made for the purpose of that Part,” insert instead “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”. Section 92 (4)— Omit “Part or such an ordinance, order or proclamation”, insert instead “Act or any such instrument”. Section 92 (7)— Omit “a scheme”, insert instead “an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”. Section 7 (6)— After “thereunder,” insert “or pursuant to the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of that Act,”.
	1974, No. 1 .. Growth Centres (Land Acquisition) Act, 1974.	

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act. Amendment.
10	1974, No. 43..	New South Wales Planning and Environment Commission Act, 1974.
15		Section 5 (2) (c)— After "Minister" where firstly occurring, insert "and except in relation to the proposals to be included in a draft environmental planning instrument prepared by the Commission under the Environmental Planning Act, 1976,".
20		Section 6 (3)— Omit "qualifications in town and country planning prescribed under the Local Government Act, 1919," insert instead "prescribed environmental planning qualifications prescribed under the Environmental Planning Act, 1976,".
25		Section 6 (3)— Omit "town and country" where secondly occurring, insert instead "environmental".
30	1974, No. 47..	Albury-Wodonga Development Act, 1974.
35		Section 2, matter relating to Schedule 4— Omit "LOCAL GOVERNMENT ACT, 1919," insert instead "ENVIRONMENTAL PLANNING ACT, 1976,".
40		Section 4, definition of "interim development order"— Omit the definition.
45		Section 4, definition of "planning scheme"— Omit the definition.
50		Section 9 (2) (i)— Omit "interim development order or planning scheme", insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
55		Section 14 (2) (b)— Omit "planning scheme or interim development order", insert instead "environmental planning instrument within the meaning of the Environmental Planning Act, 1976,".
		Section 23 (1)— Omit "Part XIIA of the Local Government Act, 1919," insert instead "the Environmental Planning Act, 1976,".
		Section 23 (1). Omit "that Part", insert instead "that Act".
		Section 23 (1) (b)— Omit "local government area," insert instead "local government area.".

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	1974, No. 47— <i>continued.</i>	Albury-Wodonga Development Act, 1974— <i>continued.</i>
15		Section 23 (1)— Omit “but a reference in section 342G (5) (a), 342L (2) (b) (iii) or 342v (1A) of that Act to a council does not include a reference to the Development Corporation.”.
20		Section 23 (2)— Omit “Part XIIA of the Local Government Act, 1919,” insert instead “the Environmental Planning Act, 1976.”.
25		Section 23 (3)— Omit the subsection.
30		Section 23 (4)— Omit the subsection, insert instead:— (4) Where an environmental planning instrument within the meaning of the Environmental Planning Act, 1976, provides that such development in respect of land as is specified in that environmental planning instrument shall not be consented to without the concurrence of the Development Corporation and a difference arises between the council of the area in which that land is situated and the Development Corporation in relation to the granting of consent, that council shall not grant consent until the difference is determined.
35		Section 23 (5)— Omit the subsection.
40		Section 23 (6), (7)— Omit “or (5)” wherever occurring.
45		Section 35— Omit the section.
		Schedule 4— Omit the Schedule, insert instead:— Sec. 23. SCHEDULE 4. MODIFICATION OF THE ENVIRONMENTAL PLANNING ACT, 1976. The Environmental Planning Act, 1976, shall, for the purposes referred to in section 23 (2), be deemed to be amended— (a) by omitting section 45;

Environmental Planning.

SCHEDULE 2—continued.

Column 1.		Column 2.	
5	Year and number of Act.	Short title of Act.	Amendment.
10	1974, No. 47— <i>continued.</i>	Albury - Wodonga Development Act, 1974— <i>continued.</i>	(b) by omitting from section 119 (2) the words "appeal to the Tribunal" and by inserting instead the words "appeal in the case where the person whose decision is subject to an appeal is required by the environmental planning instrument to consult with the Development Corporation before giving the approval, consent or permission, to the Minister and in any other case, to the Tribunal"; (c) by inserting after section 119 (4) the following subsections:— (5) Where an appeal has been made to the Minister under this section, he may— (a) dismiss the appeal; (b) allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose; or (c) where the appeal is against the imposition of conditions, refuse to approve the application referred to in the appeal. (6) The decision of the Minister under subsection (5) shall be final and shall have effect as if it were a decision of the council. (d) by omitting sections 191 and 192.
40	1974, No. 49..	Growth Centres (Development Corporations) Act, 1974.	Section 2— Omit the matter relating to Schedules 4 and 5, insert instead:— SCHEDULE 4.—PROVISIONS RELATING TO LOANS. SCHEDULE 5.—MODIFICATION OF THE ENVIRONMENTAL PLANNING ACT, 1976.
45			Section 3 (1), definition of "interim development order"— Omit the definition.

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	Amendment.	
1974, No. 49— <i>continued.</i>	Growth Centres (Development Corporations Act, 1974— <i>continued.</i>	Section 3 (1), definition of “planning scheme”— Omit the definition. Section 8 (1) (j)— Omit “interim development order or planning scheme”, insert instead “environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”. Section 13 (2) (b)— Omit “planning scheme or interim development order”, insert instead “environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”. Section 23 (1A)— After section 23 (1), insert:— (1A) The Minister administering the Environmental Planning Act, 1976, may, by order published in the Gazette, transfer to a corporation specified in the order such of the powers, authorities, duties and functions conferred or imposed on a council by or under that Act as are specified or described in the order. Section 23 (3)— After “Local Government Act, 1919,”, insert “and the Environmental Planning Act, 1976,”. Section 31 (1)— Omit “Part XIIA of the Local Government Act, 1919,”, insert instead “the Environmental Planning Act, 1976,”. Section 31 (2)— Omit the subsection, insert instead:— (2) Where an environmental planning instrument within the meaning of the Environmental Planning Act, 1976, provides that such development in respect of land

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	15	Amendment.
1974, No. 49— <i>continued.</i>	Growth Centres (Development Corporations) Act, 1974— <i>continued.</i>	as is specified in that environmental planning instrument shall not be consented to without the concurrence of the corporation and a difference arises between the council of the area in which that land is situated and the corporation in relation to the granting of consent, that council shall not grant consent until the difference is determined. Section 31 (3)— Omit the subsection. Section 31 (4), (5)— Omit “or (3)” wherever occurring. Schedule 5— Omit the Schedule, insert instead:— Sec. 31. SCHEDULE 5. MODIFICATION OF THE ENVIRONMENTAL PLANNING ACT, 1976. The Environmental Planning Act, 1976, shall, for the purposes referred to in section 31, be deemed to be amended— (a) by omitting from section 119 (2) the words “appeal to the Tribunal” and by inserting instead the words “appeal in the case where the person whose decision is subject to an appeal is required by the environmental planning instrument to consult with a corporation before giving the approval, consent or permission, to the Minister and in any other case, to the Tribunal”; (b) by inserting after section 119 (4) the following subsections:— (5) Where an appeal has been made to the Minister under this section, he may— (a) dismiss the appeal; (b) allow the appeal either unconditionally or subject to such conditions as he thinks proper to impose; or

SCHEDULE

*Environmental Planning.*SCHEDULE 2—*continued.*

Column 1.		Column 2.
5	Year and number of Act.	Short title of Act.
10	Amendment.	
10	1974, No. 49— <i>continued.</i>	Growth Centres (Development Corporations) Act, 1974— <i>continued.</i>
15	1975, No. 35..	Noise Control Act, 1975.
20	1975, No. 51..	Whittingham to Mount Thorley Railway Act, 1975.
25		

(c) where the appeal is against the imposition of conditions, refuse to approve the application referred to in the appeal.

(6) The decision of the Minister under subsection (5) shall be final and shall have effect as if it were a decision of the council.

Section 27 (14)—
After “Local Government Act, 1919,” insert “the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.

Section 6—
After “under that Act”, insert “, of the Environmental Planning Act, 1976, or an environmental planning instrument within the meaning of the Environmental Planning Act, 1976,”.

Environmental Planning.

SCHEDULE 3.

Sec. 193
(3).

TRANSITIONAL AND SAVING PROVISIONS.

1. In this Schedule—

Interpre-
tation:
Sched. 3.

5 “appointed day” means the day appointed and notified under section 2 (2);

“former planning instrument” means a prescribed scheme or an interim development order;

“interim development order” means an interim development order within the meaning of Part XIII A of the former Act;

10 “prescribed scheme” means a prescribed scheme within the meaning of Part XIII A of the former Act;

“the former Act” means the local Government Act, 1919, as in force at any time before the appointed day.

2. (1) In this clause “previous scheme” means—

Former
planning
instru-
ments
deemed to
be local
environ-
mental
plans.

15 (a) the County of Cumberland Planning Scheme Ordinance as in force immediately before the appointed day;

(b) the Northumberland County District Planning Scheme Ordinance made under the former Act and as so in force; or

20 (c) any prescribed scheme made under the former Act pursuant to a direction given under section 342GA (1) of the former Act, being a scheme that immediately before the appointed day applied to land situated in two or more areas.

25 (2) A former planning instrument (being a previous scheme) shall, on and from the appointed day, be deemed, so far as it applied to any land in an area immediately before the appointed day, to be a local environmental plan made in accordance with this Act by the council of that area.

30 2(3) A former planning instrument (not being a previous scheme or an interim development order), as in force immediately before the appointed day, shall—

35 (a) where it was prepared pursuant to a resolution passed by a council under section 342c (1) (a) of the former Act, be deemed to be a local environmental plan made pursuant to a resolution, referred to in section 44 (1), of that council; or

SCHEDULE

Environmental Planning.

SCHEDULE 3—*continued.*

(b) where it was prepared pursuant to resolutions passed by councils under section 342c (1) (b) of the former Act, be deemed to be a local environmental plan made pursuant to resolutions referred to in section 44 (2), of those councils.

(4) A former planning instrument (being an interim development order, other than Interim Development Order No. 1—Albury and Hume Designated Area, published in Gazette No. 79 of 6th June, 1975), as in force immediately before the appointed day, shall be deemed to be a local environmental plan made pursuant to a resolution referred to in section 44 (1).

(5) Interim Development Order No. 1—Albury and Hume Designated Area, published in Gazette No. 79 of 6th June, 1975, as in force immediately before the appointed day, shall be deemed to be a local environmental plan prepared pursuant to the powers conferred on the Development Corporation by section 23 (1) of the Albury-Wodonga Development Act, 1974.

(6) Sections 12 and 15 do not apply to a local environmental plan referred to in this clause.

3. (1) A provision of a former planning instrument has, notwithstanding any other provision of this Act, full force and effect according to its tenor.

Invalidity of certain provisions of former planning instruments.

(2) For the purposes of subclause (1), a reference in a former planning instrument, being an interim development order, to interim development is a reference to interim development within the meaning of section 342r of the former Act.

(3) Where, in the opinion of the Minister, a former planning instrument—

(a) is inconsistent with, or contains provisions that deal with the same matter as are dealt with by, any provision of this Act; or

(b) contains provisions the inclusion of which in a local environmental plan is not authorised by this Act,

the Minister may, by order published in the Gazette, amend that former planning instrument in such manner as, in his opinion, will remove the inconsistency or the provisions that deal with that same matter or that may not be so included, as the case may be.

SCHEDULE

*Environmental Planning.*SCHEDULE 3—*continued.*

4. A resolution passed by a council, or resolutions passed by two or more councils, under section 342c of the former Act shall be deemed to be a resolution of that council, or to be resolutions of those councils, made under section 44 (1) or (2), as the case may be, unless the scheme to which the resolution relates or the resolutions relate has been prescribed under the former Act. Resolutions to prepare certain former planning instruments.
5. A direction given under section 342d (1) of the former Act shall be deemed to be a direction given under section 46 unless the scheme to which the direction relates has been prescribed under the former Act. Directions to prepare certain former planning instruments.
6. (1) Where, before the appointed day—
- (a) a council or councils concerned has or have commenced to prepare a scheme; or
- 15 (b) the Commission has commenced to prepare a scheme, under Part XIIA of the former Act and the scheme has not, at that day, been prescribed under that Act, the Minister may, by order published in the Gazette, direct that the preparation of the scheme may be continued and completed in accordance with such of the provisions of Division 4 of Part II as are specified in the direction and as if—
- (c) where the scheme was being prepared by the council or councils concerned, that council or those councils were preparing it as a draft local environmental plan; or
- 25 (d) where the scheme was being prepared by the Commission, the Commission were the council of the area in which the land to which the scheme relates is situated and were preparing the scheme as a draft local environmental plan,
- and as if, subject to clause 7, the preparation of the scheme had progressed to such stage under this Act as is specified in the direction. Certain former planning instruments in course of preparation.
- 30 (2) A scheme the preparation of which is completed in accordance with subclause (1) may, whether prepared by the council or councils concerned or by the Commission, be approved and adopted under section 62 (1) by the council or councils concerned without the execution of the certificate referred to in that section as if the scheme were a draft local environmental plan or an amended draft local environmental plan referred to in that section.

Environmental Planning.

SCHEDULE 3—continued.

(3) Section 88 applies to and in respect of a scheme approved and adopted as referred to in subclause (2) in the same way as it applies to a local environmental plan referred to in that section.

- 5 (4) A reference in section 19 to any provision of Division 2, 3, 4 or 5 of Part II or to a direction with respect to the making of an environmental planning instrument includes a reference to any provision of this Schedule or to a direction referred to in subclause (1), as the case may be.

- 10 7. For the purposes of section 112, a scheme in course of preparation under the former Act in respect of which the Minister has given a certificate referred to in section 342F (2) of the former Act shall be deemed to be a draft local environment plan in respect of which the Commission has issued a certificate under section 55.

Effect of certain former planning instruments that have been submitted to the Minister.

- 15 8. (1) An application for a consent, approval or permission under a former planning instrument shall be deemed to be an application for a consent under this Act.

Applications under certain former planning instruments.

- (2) Any period referred to in section 117 (1) shall, in respect of any application referred to in subclause (1), be deemed to have commenced on the day on which the application referred to in subclause (1) was made to the responsible authority under the relevant former planning instrument.
- 20

9. (1) Any consent, approval or permission given under a former planning instrument and in force immediately before the appointed day shall be deemed to be a consent given in the same terms under this Act.
- 25

Consents, etc., under former planning instruments.

- (2) In relation to any consent, approval or permission deemed by subclause (1) to be a consent given under this Act a reference in section 124 to the date of final determination of a consent is a reference to the day on which that firstmentioned consent, approval or permission was finally given under the relevant former planning instrument.
- 30

SCHEDULE

Environmental Planning.

SCHEDULE 3—*continued.*

(3) A consent given under a former planning instrument to a change of the use of a building or work or of land from a use that was, under that former planning instrument, an existing use, shall, for the purpose of paragraph (c) of the definition of "existing use" in section 108, be deemed to be a consent referred to in section 135.

10. Where a prescribed notice under section 342P of the former Act has been given by a responsible authority before the appointed day, that responsible authority may, notwithstanding the repeal of Part XIIA of the former Act by this Act, exercise the powers conferred on it by that section as if that Part had not been repealed.

11. (1) Any proceedings commenced under section 342N, 342NA, 342V(s) or 342VA of the former Act before, and not completed at, the appointed day may be continued and completed, and the decision on those proceedings shall be given effect to, as if those proceedings had been commenced under section 119 or 118, as the case may be, and as if all the provisions of this Act necessary to be complied with in order to found those proceedings under section 119 or 118, as the case may be, had been complied with.

20 (2) An objector referred to in section 342ZA (7) of the former Act in relation to any proceedings referred to in subclause (1) shall be deemed to be an objector referred to in section 119 (3).

25 (3) Any proceedings for the payment of compensation under section 342AC of the former Act that were commenced before, and not completed at, the appointed day may be continued and completed in all respects as if this Act had not been enacted.

12. A certificate issued under section 342AS of the former Act shall continue to have the same force and effect as it would have had if section 193 had not been enacted.

Certificates
under
section
342AS of
the former
Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976

REVENUE - 1914

and the same amount of money was paid to the same person for the same purpose.

The same amount of money was paid to the same person for the same purpose.

10

The same amount of money was paid to the same person for the same purpose. The same amount of money was paid to the same person for the same purpose. The same amount of money was paid to the same person for the same purpose.

11

The same amount of money was paid to the same person for the same purpose. The same amount of money was paid to the same person for the same purpose.

12

The same amount of money was paid to the same person for the same purpose. The same amount of money was paid to the same person for the same purpose. The same amount of money was paid to the same person for the same purpose.

13