

# **State Development and Public Works Organisation and Other Legislation Amendment Bill 2005**

## **Amendments agreed to during Consideration**

### **1 Clause 19—**

At page 11, after line 15—

*insert—*

*‘imposed condition*, for the undertaking of a project, see section 54B(2).

*nominated entity*, for an imposed condition for the undertaking of a project, means an entity nominated for the condition, under section 54B(3).

*relevant local government*, for a project, means the local government for the local government area in which the project is, or is to be, undertaken.’.’.

### **2 Clause 20—**

At page 12, line 11, ‘carrying out’—

*omit, insert—*

‘undertaking’.

### **3 Clause 20—**

At page 12, line 15, ‘carrying out’—

*omit, insert—*

‘undertaking’.

**4 Clause 26—**

At page 14, after line 28—

*insert—*

‘(2) Section 35(4)—

*insert—*

‘(d) if division 8 applies to the project—impose, under that division, conditions for the undertaking of the project.’.’.

**5 Clause 27—**

At page 15, after line 24—

*insert—*

‘ ‘(3) Also, the report does not lapse if—

(a) division 8 applies to the project; and

(b) there are imposed conditions for the undertaking of the project; and

(c) the undertaking of the project substantially starts within 4 years after the report is prepared under section 35(3).’.’.

**6 Clause 28—**

At page 16, line 2, after ‘project’—

*insert—*

‘or a condition of the project’

**7 Clause 28—**

At page 18, after line 13—

*insert—*

‘(d) if division 8 applies to the project—impose, under that division, conditions for the undertaking of the project.’.

**8 After clause 39—**

At page 25, after line 2—

*insert—*

**‘39A Insertion of new pt 4, div 8**

‘After section 54—

*insert—*

**‘ ‘Division 8                      Application of  
Coordinator-General’s report if no  
relevant approval**

**‘54A Application of div 8**

‘This division applies to the extent that—

- (a) the project does not involve a material change of use that, under the Integrated Planning Act, is impact assessable; and
- (b) division 4, subdivision 2 and divisions 5, 6, 6A and 7 do not apply to the project.

**‘54B Report may impose conditions**

- ‘(1) Subject to section 54C, the Coordinator-General’s report for the EIS for the project may impose conditions for the undertaking of the project, and state when they take effect.
- ‘(2) A condition imposed in the report is an *imposed condition* for the undertaking of the project.
- ‘(3) If there are imposed conditions for the undertaking of the project, the Coordinator-General may, for any imposed condition for the undertaking of the project, nominate an entity that is to have jurisdiction for the condition.<sup>1</sup>
- ‘(4) An entity may be nominated for 1 or more of the conditions.
- ‘(5) A nomination under subsection (3) may be in the report or by public notification.<sup>2</sup>

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<sup>1</sup> See section 54D (Effect of imposed conditions).

- ‘(6) The public notification may be made at any time.
- ‘(7) The Coordinator-General must give a copy of the report to each nominated entity for an imposed condition for the undertaking of the project.
- ‘(8) Also, if a nomination under subsection (3) is by public notification, the Coordinator-General must give each of the following a copy of the notification—
  - (a) the nominated entity under the nomination;
  - (b) the proponent for the project;
  - (c) the department in which the Environmental Protection Act is administered;
  - (d) the relevant local government for the project.

#### **‘54C Provision for what conditions may be imposed**

‘The Integrated Planning Act, 3.5.30(1) and 3.5.31(1)<sup>3</sup> apply for imposed conditions for the undertaking of the project as if the conditions were, under that Act, conditions of a development approval being decided by an assessment manager for a development application.

#### **‘54D Effect of imposed conditions**

- ‘(1) This section applies if there are imposed conditions for the undertaking of the project.
- ‘(2) The Integrated Planning Act, section 4.3.3<sup>4</sup> applies to the undertaking of the project as if—
  - (a) the project were development under that Act; and
  - (b) the imposed conditions were a development approval for the development.

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2 See also section 171 (Publication of document or information by Coordinator-General).

3 Integrated Planning Act, sections 3.5.30 (Conditions must be relevant or reasonable) and 3.5.31 (Conditions generally)

4 Integrated Planning Act, section 4.3.3 (Compliance with development approval)

- ‘(3) The Environmental Protection Act, sections 435 and 436 to 440 apply to the undertaking of the project as if the imposed conditions were development conditions under that Act for a development approval for the project.
- ‘(4) To remove any doubt, it is declared that the provisions mentioned in subsections (2) and (3) apply to anyone who undertakes the project, including, for example—
- (a) the proponent; and
  - (b) any of the following who undertake the project—
    - (i) an agent, contractor or subcontractor, executive officer or licensee of the proponent;
    - (ii) an agent, contractor or subcontractor, executive officer or licensee of a person mentioned in subparagraph (i).

**‘54E Imposed conditions override conditions of other approvals**

‘If an imposed condition for the undertaking of the project is inconsistent with a condition of an approval that applies to the undertaking of the project, the imposed condition prevails to the extent of the inconsistency.

**‘54F Provision about enforcement orders under the Integrated Planning Act**

- ‘(1) This section applies if—
- (a) a proceeding is proposed to be started in the Planning and Environment Court under—
    - (i) the Integrated Planning Act, chapter 4, part 3, division 5;<sup>5</sup> or
    - (ii) the Environmental Protection Act, section 505;<sup>6</sup> and

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<sup>5</sup> Integrated Planning Act, chapter 4, part 3, division 5 (Enforcement orders of court)

<sup>6</sup> Environmental Protection Act, section 505 (Restraint of contraventions of Act etc.)

- (b) the relief or remedy proposed to be sought in the proceeding relates to an offence, or threatened or anticipated offence, against a provision of those Acts as applied under section 54D; and
  - (c) the offence or threatened or anticipated offence relates to the project.
- ‘(2) Despite the provisions mentioned in subsection (1)(a), only the following persons may bring the proceeding—
- (a) the Coordinator-General;
  - (b) the nominated entity for a relevant imposed condition for the undertaking of the project;
  - (c) the relevant local government for the project;
  - (d) the proponent;
  - (e) someone else whose interests are significantly adversely affected by the subject matter of the proceeding.

#### **‘54G Declaration-making powers**

- ‘(1) A proceeding mentioned in the Integrated Planning Act, section 4.1.21<sup>7</sup> can not be started in relation to the project.
- ‘(2) However, a person mentioned in section 54F(2) may bring a proceeding in the Planning and Environment Court for a declaration about whether there has been substantial compliance with an imposed condition for the undertaking of the project.
- ‘(3) The court has jurisdiction to hear and decide the proceeding.
- ‘(4) The Integrated Planning Act, sections 4.1.22 and 4.1.23<sup>8</sup> apply to the proceeding as if as it were a proceeding under section 4.1.21 of that Act.
- ‘(5) The court may, in deciding what orders it is to make in the proceeding, have regard to 1 or more of the following—

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7 Integrated Planning Act, section 4.1.21 (Court may make declarations)

8 Integrated Planning Act, sections 4.1.22 (Court may make orders about declarations) and 4.1.23 (Costs)

- (a) the laws and policies applying when the condition was imposed;
- (b) the EIS for the project;
- (c) the Coordinator-General's report for the EIS and any Coordinator-General's change report for the project;
- (d) the financial implications of—
  - (i) the imposed conditions for the undertaking of the project; or
  - (ii) any proposed orders;
- (e) the public interest;
- (f) any environmental management plan required under the condition;
- (g) any other matter the court considers relevant.'.'.

**9 Clause 63—**

At page 34, after line 15—

**‘ ‘178 Conditions for north-south bypass tunnel project**

- ‘(1) This section applies for the significant project called the ‘north-south bypass tunnel project’.
- ‘(2) Sections 35(4)(d) and part 4, division 8<sup>9</sup> are taken to apply to the project.
- ‘(3) The conditions stated in appendix 1, schedule 3 of the Coordinator-General’s report dated 25 August 2005 evaluating the EIS for the project are taken to be imposed conditions for the undertaking of the project.’.’.

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9 Section 35 (Coordinator-General evaluates EIS, submissions, other material and prepares report) and part 4, division 8 (Application of Coordinator-General’s report if no relevant approval)



**'67 Insertion of new pt 11**

'After part 10—

*insert—*

**'Part 11 Transitional provision for State  
Development and Public Works  
Organisation and Other  
Legislation Amendment Act  
2005**

**'123 Application of amendment of definition *department***

'Section 47A<sup>10</sup>, as amended by the *State Development and Public Works Organisation and Other Legislation Amendment Act 2005*, applies in relation to an application under this Act for access to a document, or for the review of a decision under this Act about access to a document, whether the application was made before or after the commencement of this section, as if the amendment of section 47A had effect on and from the commencement of the *Administrative Arrangements Order (No. 2) 2005*.<sup>11</sup>'.

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10 Section 47A (Matter relating to investment incentive scheme)

11 The *Administrative Arrangements Order (No. 2) 2005* commenced on 28 July 2005.