

Environmental Planning And Assessment Model Provisions 1980

(Clause 10)

Section 5

Consideration of certain applications

5 (1) The consent authority shall, in respect of an application under the Act for its consent or approval to the development of land within view of any waterway or adjacent to any main or arterial road, railway, public reserve or land zoned as open space, take into consideration the probable aesthetic appearance of the proposed building or work or that land when used for the proposed purpose and viewed from that waterway, main or arterial road, railway, public reserve or land zoned for open space.

(2) The consent authority shall, in respect of an application under the Act for its consent or approval to development for the purposes of commercial premises, shop, residential flat building, hotel, motel, service station, car repair station, place of assembly, industrial premises or caravan park or to the carrying out of any other development likely to cause increased vehicular traffic on any road in the vicinity of that development, take into consideration:

- (a) whether adequate vehicular exits from and entrances to the sites have been provided so that vehicles using those exits and entrances will not endanger persons and vehicles using those roads;
- (b) the provision of space on the site or on land adjoining the site, other than a public road, for the parking or standing of such number of vehicles as the council may determine;
- (c) whether any representations made by the Roads and Traffic Authority have been met; and
- (d) whether adequate space has been provided within the site of the building or development for the loading, unloading and fuelling of vehicles and for the picking up and setting down of passengers.

(3) The consent authority shall, in respect of an application under the Act for its consent or approval to development for the purpose of a transport terminal, consult with the Roads and Traffic Authority and shall take into consideration:

- (a) any representations made to it by the Roads and Traffic Authority;
- (b) the standard of the roads in the locality in relation to the size and the weight of the vehicles likely to use the transport terminal;
- (c) traffic conditions and facilities generally in the vicinity of the approaches to the transport terminal;
- (d) the means of ingress and egress;
- (e) the provision on land (other than a public road) of space for the parking or standing of vehicles; and
- (f) the layout of buildings on the site in relation to:
 - (i) the provision of space for the parking and standing of vehicles;
 - (ii) the provision of space for the loading, unloading or fuelling of vehicles; and
 - (iii) the traffic facilities within the site.

(4) The consent authority shall, in respect of an application under the Act for its consent or approval to development for the purpose of an extractive industry or mine, take into consideration the advisability of imposing conditions to secure the reinstatement of the land, to facilitate the removal of waste material or refuse, to secure public safety in the neighbourhood and to protect the amenity of the neighbourhood.

(5)

- (a) The consent authority shall, in respect of an application under the Act for its consent or approval to development for the purpose of a mineral sands mine or mines, consult with the Department and shall not grant or refuse consent nor attach conditions to a consent unless the Department gives its concurrence.
- (b) The Department referred to in subclause (5) (a) shall take into consideration in deciding whether concurrence should be granted,

the impact of the development on the environment and any implications therefrom.

Section 7

Foreshore building line

7. (1) The council may, by resolution, fix a line (in this clause called a "foreshore building line") in respect of any land fronting any bay, river, creek, lake, lagoon, harbour or ocean.

(2) A foreshore building line shall, when fixed in accordance with subclause (1), be marked upon a plan or clearly described in the resolution and the plan or resolution shall be available for inspection by the public during the office hours of the council.

(3) The council may alter or abolish any foreshore building line, where the levels, depth or other exceptional features of the site make it necessary or expedient to do so.

(4) A building shall not be erected between a foreshore building line and a bay, river, creek, lake or lagoon in respect of which the line is fixed.

Section 8

Preservation of trees

8. (1) Where it appears to the council that it is expedient for the purpose of securing amenity or of preserving existing amenity, it may, for that purpose and by resolution, make an order (hereinafter referred to as a "tree preservation order") and may, by like resolution, rescind or vary any such order.

(2) A tree preservation order may prohibit the ring-barking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree or trees specified in the order except with the consent of the council and any such consent may be given subject to such conditions as the council thinks fit.

(3) A tree preservation order may relate to any tree or trees or to any specified class, type or description of trees on land described particularly or generally by reference to the Local Government area or any divisions thereof.

(4) The council shall forthwith upon the making of a tree preservation order cause notice of the making of the order to be published in the Gazette and in

a newspaper circulating in the area in which the land described in the order is situated.

(5) A person who contravenes or causes or permits to be contravened a tree preservation order shall be guilty of an offence.

(6) It is a sufficient defence to proceedings under this clause relating to the ring-barking, cutting down, topping, lopping, removal, injury or wilful destruction of a tree to prove:

- (a) that the tree was dying or dead or had become dangerous; or
- (b) that taking the action was reasonably necessary to protect human life, buildings or other property from imminent danger from a bush fire burning in the vicinity of the land on which the tree was situated; or
- (c) that written notice about the proposed action was given to the council of the area in which the tree was situated and the council, before the action was taken, confirmed in writing:
 - (i) that the tree was in a fuel free zone within the meaning of the document entitled "Planning for Bush Fire Protection" published by the Department of Bush Fire Services; and
 - (ii) that, if the council has classified species of trees as being likely to present a significant fire hazard, the tree was of such a species; or
- (d) that written notice about the proposed action was given to that council, a period of not less than 14 days occurred after the notice was given (and before the action was taken) and the council did not advise the person during that period that it opposed the action being taken. In this subclause, "notice" means a notice that includes the name and address of the person who gives it and that explains that a tree of a named species situated in a specified position on land described in the notice is intended to be ring-barked, cut down, topped, lopped, removed, injured or wilfully destroyed for the purpose of bush fire hazard reduction.

(7) The powers conferred on the council in pursuance of this clause shall not apply to trees in a State forest or on land reserved as a timber reserve within the meaning of the Forestry Act 1916, or to trees required to be trimmed or removed under section 48 of the Electricity Supply Act 1995. Part 5 Special Provisions Division 1 Roads

Section 9

Relocation of major roads

9. The consent authority shall not, without the approval of the Department cause to be aligned or realigned any main road or any other roads which the Roads and Traffic Authority has notified as a proposed main road.

Section 10

Opening of public road

10. (1) A road or other means of access which forms a junction or intersection with a main road shall not be opened without the consent of the consent authority.

(2) In respect of any application for consent to open a public road or other means of access forming a junction or intersection with a main road, the consent authority shall consult with the Roads and Traffic Authority and shall take into consideration:

- (a) the treatment of the junction or the intersection and its location having regard to town and country planning principles and to the safety and convenience of the public;
- (b) the effect of opening the road or other means of access on the development of the locality; and
- (c) any representations by the Roads and Traffic Authority.

Section 11

Subdivision new roads

11. Where the land is zoned for the purpose of a proposed new road, the consent authority shall not consent to a subdivision of land of which the proposed road forms part unless the subdivision makes provision for the opening of a road in reasonable conformity with the proposed road.

Section 12

Land used for commercial or industrial purposes

12. (1) This clause shall apply to all land having a frontage to a main or arterial road used or to be used for commercial or industrial purposes, whether or not it forms the site of a building.

(2) If:

- (a) there is no building on the land or the only building thereon is of a minor character the land; or
- (b) the land forms the site of a building other than one of a minor character the land between the road frontage and the buildings, shall not be used for the storage, sale or display of goods or for advertising purposes without the consent of the consent authority.

Section 14

Development on public road

14. (1) A person shall not carry out development on a public road shown uncoloured on the map or part of such road lawfully closed without the consent of the consent authority.

(2) The consent authority shall only grant its consent under subclause (1) for a purpose which may be carried out either with or without the consent of the consent authority on land adjoining that road.

Division 2 Residential Development

Section 24

Railway sidings

24. Nothing in the local environmental plan shall operate to prohibit the construction and use of any railway siding designed to serve lands in an industrial zone.

Section 33

Advertising structures

33. (1) A person shall not use an advertising structure on land within a residential zone for the purpose of displaying any advertisement, other than an advertisement:

- (a) which relates to that land, or to premises situated on that land or adjacent land; and
- (b) which specifies one or more of the following particulars:
 - (i) the purpose for which the land or premises is or are used;
 - (ii) the identification of a person residing or carrying on an occupation or business on the land or premises;
 - (iii) a description of an occupation or business referred to in subparagraph (ii);
 - (iv) particulars of the goods or services dealt with or provided on the land or premises.

(2) A person shall not use an advertising structure on land within a rural zone for the purpose of displaying any advertisement, other than:

- (a) an advertisement of the kind permitted by subclause (1); or
- (b) a notice directing the travelling public to tourist facilities or activities or to places of scientific, historical or scenic interest.

Section 35

Savings

35. Nothing in the local environmental plan shall be construed as restricting or prohibiting or enabling the consent authority to restrict or prohibit:

- (a) the carrying out of development of any description specified in Schedule 1;
- (b) the use of existing buildings of the Crown by the Crown; or (c) home occupations carried on in dwelling-houses.

Schedule 1

(Clause 35)

1. The carrying out by persons carrying on railway undertakings on land comprised in their undertakings of:
 - (a) any development required in connection with the movement of traffic by rail, including the construction, reconstruction, alteration, maintenance and repair of ways, works and plant; and
 - (b) the erection within the limits of a railway station of buildings for any purpose, but excluding:
 - (c) the construction of new railways, railway stations and bridges over roads;
 - (d) the erection, reconstruction and alteration of buildings for purposes other than railway undertaking purposes outside the limits of a railway station and the reconstruction or alteration so as materially to affect the design thereof of railway stations or bridges;
 - (e) the formation or alteration of any means of access to a road; and
 - (f) the erection, reconstruction and alteration of buildings for purposes other than railway purposes where such buildings have direct access to a public place.

2. The carrying out by persons carrying on public utility undertakings, being water, sewerage, drainage, electricity or gas undertakings, of any of the following development, being development required for the purpose of their undertakings, that is to say:
 - (a) development of any description at or below the surface of the ground;
 - (b) the installation of any plant inside a building or the installation or erection within the premises of a generating station or substation established before the appointed day of any plant or other structures or erections required in connection with the station or substation;
 - (c) the installation or erection of any plant or other structures or erections by way of addition to or replacement or extension of plant or structures or erections already installed or erected, including the

installation in an electrical transmission line of substations, feeder-pillars or transformer housing, but not including the erection of overhead lines for the supply of electricity or pipes above the surface of the ground for the supply of water, or the installation of substations, feeder-pillars or transformer housings of stone, concrete or brickworks;

- (d) the provision of overhead service lines in pursuance of any statutory power to provide a supply of electricity;
- (e) the erection of service reservoirs on land acquired or in process of being acquired for the purposes thereof before the appointed day, provided reasonable notice of the proposed erection is given to the council; or
- (f) any other development except:
 - (i) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or alteration, so as materially to affect the design or external appearance thereof, of buildings; or
 - (ii) the formation or alteration of any means of access to a road.

3. The carrying out by persons carrying on public utility undertakings, being water transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by water, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, wharves, works and plant required for that purpose, except:

- (a) the erection of buildings and the reconstruction or alteration of buildings so as materially to affect the design or external appearance thereof; or
- (b) the formation or alteration of any means of access to a road.

4. The carrying out by persons carrying on public utility undertakings, being wharf or river undertakings, on land comprised in their undertakings, of any development required for the purposes of shipping or in connection with the embarking, loading, discharging or transport of passengers, livestock or goods at a wharf or the movement of traffic by a railway forming part of the undertaking, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, works and plant for those purposes, except:

- (a) the construction of bridges, the erection of any other buildings, and the reconstruction or alteration of bridges or of buildings so as materially to affect the design or external appearance thereof; or
- (b) the formation or alteration of any means of access to a road.

5. The carrying out by persons carrying on public utility undertakings, being air transport undertakings, on land comprised in their undertakings within the boundaries of any aerodrome, of any development required in connection with the movement of traffic by air, including the construction, reconstruction, alterations, maintenance and repair of ways, buildings, wharves, works and plant required for that purpose, except:

- (a) the erection of buildings and the reconstruction or alteration of buildings so as materially to affect the design or external appearance thereof; or
- (b) the formation or alteration of any means of access to a road.

6. The carrying out by persons carrying on public utility undertakings, being road transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by road, including the construction, reconstruction, alteration, maintenance and repair of buildings, works and plant required for that purpose, except:

- (a) the erection of buildings and the reconstruction or alteration of buildings so as materially to affect the design or external appearance thereof; or
- (b) the formation or alteration of any means of access to a road.

7. The carrying out by the owner or lessee of a mine (other than a mineral sands mine), on the mine, of any development required for the purposes of a mine, except:

- (a) the erection of buildings (not being plant or other structures or erections required for the mining, working, treatment or disposal of minerals) and the reconstruction, alteration or extension of buildings, so as materially to affect the design or external appearance thereof; or
- (b) the formation or alteration of any means of access to a road.

8. The carrying out of any development required in connection with the construction, reconstruction, improvement, maintenance or repair of any road, except the widening, realignment or relocation of such road.

9. The carrying out of any forestry work by the Forestry Commission, School Forest Trust or Community Forest Authorities empowered under relevant Acts to undertake afforestation, roading, protection, cutting and marketing of timber, and other forestry purposes under such Acts or upon any Crown land temporarily reserved from sale as a timber reserve under the Forestry Act 1916.

10. The carrying out by a rural lands protection board of any development required for the improvement and maintenance of travelling stock and water reserves, except:

- (i) the erection of buildings and the reconstruction or alteration of buildings so as materially to affect the design or purposes thereof;
- (ii) any development designed to change the use or purpose of any such reserve.

11. The carrying out or causing to be carried out by a council engaged in flood mitigation works or by the Department of Land and Water Conservation of any work for the purposes of soil conservation, irrigation, afforestation, reforestation, flood mitigation, water conservation or river improvement in pursuance of the provisions of the Water Act 1912, the Irrigation Act 1912, the Farm Water Supplies Act 1946 or the Rivers and Foreshores Improvement Act 1948, except:

- (i) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or alteration of buildings so as materially to affect the design or external appearance thereof;
- (ii) the formation or alteration of any means of access to a road.