



New South Wales

Environmental Planning and Assessment Amendment (Major Projects) Regulation 2020

under the

Environmental Planning and Assessment Act 1979

[*The following enacting formula will be included if this Regulation is made—*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning and Public Spaces

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* for the following and other purposes—

- (a) to introduce new *State Significant Development Guidelines* and *State Significant Infrastructure Guidelines* and require certain applications, responses, requests to modify approvals and environmental impact statements to be prepared having regard to specified guidelines,
- (b) to modify the application process for State significant development,
- (c) to require an application for approval to carry out State significant infrastructure to be accompanied by a scoping report and require the Secretary of the Department of Planning, Industry and Environment to consider the scoping report in preparing environmental assessment requirements for State significant infrastructure,
- (d) to introduce new *Registered Environmental Assessment Practitioner Guidelines* and require environmental impact statements for State significant development or State significant infrastructure to include a certificate by a registered environmental assessment practitioner, prepared having regard to the guidelines.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.12(8) and (9), 4.39, 4.64, 5.10, 5.16(2), 5.29 and 10.13 (the general regulation-making power).

Environmental Planning and Assessment Amendment (Major Projects) Regulation 2020 [NSW]

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Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3(1)—

State Significant Development Guidelines means the *State Significant Development Guidelines* prepared by the Secretary as in force from time to time and available on the website of the Department.

State Significant Infrastructure Guidelines means the *State Significant Infrastructure Guidelines* prepared by the Secretary as in force from time to time and available on the website of the Department.

[2] Clause 50 How must a development application be made?

Insert “, other than an application for State significant development,” after “development application” in clause 50(1).

[3] Clause 50(1AA)

Insert after clause 50(1)—

- (1AA) A development application for State significant development must be—
- (a) in the form approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) accompanied by an environmental impact statement, and
 - (c) lodged on the NSW planning portal.

[4] Clause 51 Rejection of development applications

Omit “referred to in section 4.12(8) of the Act, the application is not accompanied by an environmental impact statement referred to in that subsection” from clause 51(1)(c).

Insert instead “for designated development, the application is not accompanied by an environmental impact statement”.

[5] Clause 51(1)

Insert after clause 51(1)(c)—

- (d) being an application for State significant development, the application is—
- (i) not in the form approved by the Planning Secretary, or
 - (ii) not accompanied by an environmental impact statement, or
 - (iii) considered incomplete for reasons specified in writing to the applicant by the Planning Secretary.

[6] Clause 55, heading

Omit the heading.

Insert instead “**Amendment or variation of a development application except for State significant development**”.

[7] Clause 55(4)

Insert after clause 55(3)—

- (4) This clause does not apply to a development application for State significant development.

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[8] Clause 55B

Insert after clause 55A—

55B Amendment or variation of a development application for State significant development

- (1) A development application for State significant development may, with the agreement of the consent authority, be amended or varied by the applicant at any time before the application is determined.
- (2) An application to amend or vary a development application for State significant development must—
 - (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) include particulars of the nature of the proposed amendments or variations to the development application, and
 - (c) be prepared having regard to the *State Significant Development Guidelines*, and
 - (d) be lodged on the NSW planning portal.

[9] Clause 82 Additional requirements for State significant development

Omit “writing, require the applicant to provide a written response to any issues raised in those submissions as the Planning Secretary considers necessary.” from clause 82(2).

Insert instead—

writing—

- (a) identify the issues raised in the submissions considered by the Planning Secretary to require a response from the applicant, and
- (b) require the applicant to provide a written response to the identified issues, and
- (c) require the applicant’s written response to be prepared having regard to the *State Significant Development Guidelines*.

[10] Clause 115, heading

Insert “**except for State significant development**” after “**development consent**”.

[11] Clause 115(13)

Insert after clause 115(12)—

- (13) This clause does not apply to an application for modification of a development consent for State significant development.

[12] Clause 115AA

Insert after clause 115—

115AA Application for modification of development consent for State significant development

An application for modification of a development consent for State significant development under section 4.55(1), (1A) or (2) or 4.56(1) of the Act must—

- (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and

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- (b) include particulars of the nature of the proposed modification to the development consent, and
- (c) be prepared having regard to the *State Significant Development Guidelines*, and
- (d) be lodged on the NSW planning portal.

[13] Clause 115A Application fee for modification of development consent

Insert “or 115AA” after “clause 115” in clause 115A(1).

[14] Clause 119B

Insert after clause 119A—

119B Rejection of application for modification of development consent

A consent authority may reject an application for modification of a development consent for State significant development within 7 days after receiving the application if the application is—

- (a) not in the form approved by the Planning Secretary, or
- (b) considered incomplete for reasons specified in writing to the applicant by the Planning Secretary.

[15] Clause 192 Applications for approval

Omit clause 192(1). Insert instead—

- (1) An application for approval of the Minister to carry out State significant infrastructure must be—
 - (a) in the form approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) accompanied by a scoping report, and
 - (c) lodged on the NSW planning portal.

[16] Clause 192(2A)

Insert after clause 192(2)—

- (2A) An application to amend or vary an application for approval of the Minister to carry out State significant infrastructure must—
 - (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) include particulars of the nature of the proposed amendments or variations to the application for approval, and
 - (c) be prepared having regard to the *State Significant Infrastructure Guidelines*, and
 - (d) be lodged on the NSW planning portal.

[17] Clause 192(3)

Omit clause 192(3). Insert instead—

- (3) In this clause, *scoping report* means a report—
 - (a) prepared by the proponent, and
 - (b) prepared having regard to the *State Significant Infrastructure Guidelines*, and

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- (c) that identifies matters likely to require detailed assessment in an environmental impact statement.

[18] Clause 194

Insert after clause 193—

194 Environmental assessment requirements and environmental impact statement

- (1) In preparing the environmental assessment requirements for State significant infrastructure under section 5.16 of the Act, the Planning Secretary—
 - (a) must consider the scoping report required under clause 192(1)(b), and
 - (b) may impose environmental assessment requirements by reference to specified publications.
- (2) The proponent of State significant infrastructure must ensure the environmental impact statement required under the environmental assessment requirements—
 - (a) complies with—
 - (i) the environmental assessment requirements, and
 - (ii) Schedule 2, Part 3, and
 - (b) is prepared having regard to the *State Significant Infrastructure Guidelines*.
- (3) If, within the relevant period, an environmental impact statement is not submitted to the Planning Secretary, the environmental assessment requirements expire.
- (4) If the proponent, before expiry of the environmental assessment requirements, makes a written request for an extension, the Planning Secretary may extend the expiry date by 3 months.
- (5) In this clause, *relevant period* means the period of 2 years after the Planning Secretary last gave notice to the proponent of the environmental assessment requirements under section 5.16(4) of the Act.

[19] Clause 196A

Insert after clause 196—

196A Request for modification of approval for State significant infrastructure

A request to modify the Minister's approval for State significant infrastructure under section 5.25(2) of the Act must—

- (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
- (b) include particulars of the nature of the proposed modification to the development consent, and
- (c) be prepared having regard to the *State Significant Infrastructure Guidelines*, and
- (d) be lodged on the NSW planning portal.

[20] Schedule 2, Environmental impact statements

Omit clause 3(2). Insert instead—

- (2) The application must—

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- (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
- (b) include particulars of the location, nature and scale of the development or activity, and
- (c) for state significant development—be prepared having regard to the *State Significant Development Guidelines*.

[21] Schedule 2, clause 3(4)

Omit the subclause. Insert instead—

- (4) The Planning Secretary must consult relevant public authorities and have regard to the need for the environmental assessment requirements to address any key issues raised by the public authorities when preparing the requirements for an application for State significant development that—
 - (a) would be designated development but for section 4.10(2) of the Act, or
 - (b) is partly prohibited by an environmental planning instrument, or
 - (c) is wholly prohibited by an environmental planning instrument, to the extent permitted by section 4.38(5) of the Act, or
 - (d) is a concept development application for State significant development.

[22] Schedule 2, clause 3(7)

Omit “subclause (5), the responsible person must consult further with the Planning Secretary in relation to the preparation of the statement”.

Insert instead—

subclause (5)—

- (a) for State significant development—the environmental assessment requirements expire, or
- (b) for other development or activity—the responsible person must consult further with the Planning Secretary in relation to the preparation of the statement

[23] Schedule 2, clause 3(7A)

Insert after clause 3(7)—

- (7A) If the responsible person, before expiry of the environmental assessment requirements, makes a written request for an extension, the Planning Secretary may extend the expiry date by 3 months.

[24] Schedule 2, clause 6(f) and (g)

Omit clause 6(f). Insert instead—

- (f) for State significant development or State significant infrastructure, a certificate, prepared having regard to the *Registered Environmental Assessment Practitioner Guidelines*, by a registered environmental assessment practitioner,
- (g) for development that is not State significant development or State significant infrastructure, a declaration by the person by whom the statement is prepared to the effect that—
 - (i) the statement has been prepared in accordance with this Schedule, and

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- (ii) the statement contains all available information relevant to the environmental assessment of the development or activity to which the statement relates, and
- (iii) the information contained in the statement is neither false nor misleading.

[25] Schedule 2, clause 6(2) and (3)

Insert at the end of clause 6—

- (2) The person preparing an environmental impact statement for State significant development must have regard to the *State Significant Development Guidelines*.
- (3) In this clause—
registered environmental assessment practitioner means a person who is a member of—
 - (a) [], or
 - (b) []

Note.

Details will be inserted above before the regulation is made, once schemes are accredited.

Registered Environmental Assessment Practitioner Guidelines means the Registered Environmental Assessment Practitioner Guidelines prepared by the Secretary as in force from time to time and available on the website of the Department.

[26] Schedule 2, clause 7(1)(c)

Omit “carrying out”. Insert instead “proposed manner of carrying out”.

[27] Schedule 2, clause 7(1)(f)

Omit the paragraph. Insert instead—

- (f) an evaluation of the development, activity or infrastructure, which is—
 - (i) based on the matters in paragraphs (a)–(e), or
 - (ii) prepared having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development set out in subclause (4).

[28] Schedule 2, Part 4

Omit the Part.