

1994—No. 232

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT
1979—REGULATION**

(Relating to designated development)

NEW SOUTH WALES



[Published in Gazette No. 80 of 17 June 1994]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Environmental Planning and Assessment Act 1979, has been pleased to make the Regulation set forth hereunder.

Robert Webster
Minister for Planning.

Commencement

1. This Regulation commences on 1 July, 1994.

Amendments

2. The Environmental Planning and Assessment Regulation 1980 is amended:

(a) by inserting after clause 70 (2) the following subclause:

(3) If Schedule 3 is substituted, the Schedule, before its substitution, continues to apply to or in respect of a development application lodged with the consent authority before the substitution takes effect.

(b) by omitting Schedule 3 and by inserting instead the following Schedule:

SCHEDULE 3—DESIGNATED DEVELOPMENT

(Clause 70)

PART 1—WHAT IS DESIGNATED DEVELOPMENT?

Development for the undermentioned purposes or development of the undermentioned types is designated development:

Agricultural produce industries that process agricultural produce (including dairy products, seeds, fruit, vegetables or other plant material) and:

- (1) crush, juice, grind, mill or separate more than 30,000 tonnes of produce per annum; or
- (2) release effluent, sludge or other waste:
 - (a) in or within 100 metres of a natural waterbody or wetlands; or
 - (b) in an area of:
 - (i) high watertable; or
 - (ii) highly permeable soils; or
 - (iii) acid sulphate, sodic or saline soils.

Aircraft facilities (including terminals, buildings for the parking, servicing or maintenance of aircraft, installations or movement areas) for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters, if the facilities:

- (1) in the case of seaplane or aeroplane facilities:
 - (a) cause a significant environmental impact or significantly increase the environmental impacts as a result of:
 - (i) the number of flight movements (including taking-off or landing); or
 - (ii) the maximum take-off weight of aircraft capable of using the facilities; and
 - (b) are located so that the whole or part of a residential zone, a school or hospital is within:
 - (i) the 20 ANEF contour map approved by the Civil Aviation Authority of Australia; or
 - (ii) 5 kilometres of the facilities if no ANEF contour map has been approved; or

(2) in the case of helicopter facilities (other than facilities used exclusively for emergency aeromedical evacuation, retrieval or rescue):

- (a) have an intended use of more than 7 helicopter flight movements per week (including taking-off or landing); and
- (b) are located within 1 kilometre of a dwelling not associated with the facilities; or

(3) in the case of any facilities, are located:

- (a) so as to disturb more than 20 hectares of native vegetation by clearing; or
- (b) within 40 metres of an environmentally sensitive area; or
- (c) within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities).

Aquaculture or mariculture for the commercial production (breeding, hatching, rearing or cultivation) of marine, estuarine or fresh water organisms, including aquatic plants or animals (such as fin fish, crustaceans, molluscs or other aquatic invertebrates), involving:

(1) supplemental feeding in:

- (a) tanks or artificial waterbodies:
 - (i) located in areas of
 - high watertable; or
 - acid sulphate soils; or
 - (ii) with a total water storage area of more than 2 hectares or a total water volume of more than 40 megalitres:
 - located on a floodplain; or
 - that release effluent or sludge into a natural waterbody or wetlands or into groundwater; or
 - (iii) with a total water storage area of more than 10 hectares or a total water volume of more than 400 megalitres; or
- (b) any other waterbody (except for trial projects that operate for a maximum period of 2 years and are approved by the Director of NSW Fisheries); or

- (2) farming of species not indigenous to New South Wales located:
 - (a) in or within 500 metres of a natural waterbody or wetlands; or
 - (b) on a floodplain; or
- (3) establishment of new areas for lease under the Fisheries and Oyster Farms Act 1935 or the Fisheries Management Act 1994:
 - (a) with a total area of more than 10 hectares and that in the opinion of the consent authority, are likely to cause significant impacts:
 - (i) on the habitat value or the scenic value; or
 - (ii) on the amenity of the waterbody by obstructing or restricting navigation, fishing or recreational activities; or
 - (iii) because other leases are within 500 metres; or
 - (b) with a total area of more than 50 hectares.

Artificial waterbodies

- (1) with a maximum surface area of water of more than 0.5 hectares located:
 - (a) in or within 40 metres of a natural waterbody, wetlands or an environmentally sensitive area; or
 - (b) in an area of:
 - (i) high watertable; or
 - (ii) acid sulphate, sodic or saline soils; or
- (2) with a maximum aggregate surface area of water of more than 20 hectares or a maximum total water volume of more than 800 megalitres; or
- (3) if more than 30,000 cubic metres per annum of material is to be removed from the site.

Bitumen pre-mix or hot-mix industries where crushed or ground rock is mixed with bituminous or asphaltic materials and that:

- (1) have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per annum; or
- (2) are located:
 - (a) within 100 metres of a natural waterbody or wetlands; or
 - (b) within 250 metres of a residential zone or dwelling not associated with the development.

This designation of bitumen pre-mix or hot-mix industries does not include bitumen plants located on or adjacent to a construction site exclusively providing material to the development being carried out on that site:

- (a) for a period of less than 12 months; or
- (b) for which the environmental impacts were previously assessed in an environmental impact statement prepared for the development.

Breweries or distilleries that produce alcohol or alcoholic products and:

- (1) have an intended production capacity of more than 30 tonnes per day or 10,000 tonnes per annum; or
- (2) are located within 500 metres of a residential zone and are likely, in the opinion of the consent authority, to significantly affect the amenity of the neighbourhood by reason of odour, traffic or waste; or
- (3) release effluent or sludge:
 - (a) in or within 100 metres of a natural waterbody or wetlands; or
 - (b) in an area of:
 - (i) high watertable; or
 - (ii) highly permeable soils; or
 - (iii) acid sulphate, sodic or saline soils.

Cement works that manufacture portland or other special purpose cement and:

- (1) burn, sinter or heat (until molten) calcareous, argillaceous or other materials; or
- (2) grind clinker or compound cement with an intended processing capacity of more than 150 tonnes per day or 30,000 tonnes per annum; or
- (3) are located:
 - (a) within 100 metres of a natural waterbody or wetlands; or
 - (b) within 250 metres of a residential zone or a dwelling not associated with the development.

Ceramic or glass industries that manufacture through a firing process bricks, tiles, pipes, pottery, ceramics, refractories or glass and:

- (1) have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per annum; or

(2) are located:

- (a) within 40 metres of a natural waterbody or wetlands; or
- (b) within 250 metres of a residential zone or dwelling not associated with the development.

Chemical industries or works for the commercial production of, or research into, chemical substances at:

(1) the following industries or works:

- (a) **agricultural fertiliser industries** that produce more than 20,000 tonnes per annum of inorganic plant fertilizers; or
- (b) **battery industries** that manufacture or reprocess batteries containing acid or alkali and metal plates and use or recover more than 30 tonnes of metal per annum; or
- (c) **explosive or pyrotechnics industries** that manufacture explosives for purposes including industrial, extractive industries and mining uses, ammunition, fireworks or fuel propellents; or
- (d) **paints, paint solvents, pigments, dyes, printing inks, industrial polishes, adhesives or sealants manufacturing industries** that manufacture more than 5,000 tonnes per annum of products; or
- (e) **petrochemical industries** that manufacture more than 2,000 tonnes per annum of petrochemicals and petrochemical products; or
- (f) **pesticides, fungicides, herbicides, rodenticides, nematocides, miticides, fumigants and related products industries** that:
 - (i) manufacture materials classified as poisonous in the Australian Dangerous Goods Code; or
 - (ii) manufacture (excluding simple blending) more than 2,000 tonnes per annum of products; or
- (g) **pharmaceutical or veterinary products industries** that manufacture or use materials classified as poisonous in the Australian Dangerous Goods Code; or
- (h) **plastics industries** that:
 - (i) manufacture more than 2,000 tonnes per annum of synthetic plastic resins; or
 - (ii) reprocess more than 5,000 tonnes of plastics per annum other than by a simple melting and reforming process; or

- (i) **rubber industries or works** that:
 - (i) manufacture more than 2,000 tonnes per annum of synthetic rubber; or
 - (ii) manufacture, retread or recycle more than 5,000 tonnes per annum of rubber products or rubber tyres; or
 - (iii) dump or store (otherwise than in a building) more than 10 tonnes of rubber tyres; or
- (j) **soap or detergent industries** (including domestic, institutional or industrial soaps or detergent industries) that manufacture:
 - (i) more than 100 tonnes per annum of products containing substances classified as poisonous in the Australian Dangerous Goods Code; or
 - (ii) more than 5,000 tonnes per annum of products (excluding simple blending); or
- (2) industries or works:
 - (a) that manufacture, blend, recover or use substances classified as explosive, poisonous or radioactive in the Australian Dangerous Goods Code; or
 - (b) that manufacture or use more than 1,000 tonnes per annum of substances classified (but other than as explosive, poisonous or radioactive) in the Australian Dangerous Goods Code; or
 - (c) that crush, grind or mill more than 10,000 tonnes per annum of chemical substances; or
- (3) industries or works located:
 - (a) within 40 metres of a natural waterbody or wetlands; or
 - (b) in an area of:
 - (i) high watertable; or
 - (ii) highly permeable soil; or
 - (c) in a drinking water catchment; or
 - (d) on a floodplain.

This designation of chemical industries or works does not include:

- (a) chemical industries or works where chemical substances listed in the NSW Dangerous Goods Regulation 1978 are stored in quantities below the licence level set out in that Regulation; or
- (b) development specifically listed elsewhere in this Schedule.

Chemical storage facilities that:

- (1) store or package chemical substances in containers, bulk storage facilities, stockpiles or dumps with a total storage capacity in excess of:
 - (a) 20 tonnes of pressurised gas; or
 - (b) 200 tonnes of liquified gases; or
 - (c) 2,000 tonnes of any chemical substances; or
- (2) are located:
 - (a) within 40 metres of a natural waterbody or wetlands; or
 - (b) in an area of:
 - (i) high watertable; or
 - (ii) highly permeable soil; or
 - (c) in a drinking water catchment; or
 - (d) on a floodplain.

Coal mines that mine, process or handle coal and are:

- (1) underground mines; or
- (2) open cut mines that:
 - (a) produce or process more than 500 tonnes of coal or carbonaceous material per day; or
 - (b) disturb or will disturb a total surface area of more than 4 hectares of land (associated with a mining lease or mineral claim or subject to a section 8 notice under the Mining Act 1992) by:
 - (i) clearing or excavating; or
 - (ii) constructing dams, ponds, drains, roads, railways or conveyors; or
 - (iii) storing or depositing overburden, coal or carbonaceous material or tailings; or
- (3) located:
 - (a) in or within 40 metres of a natural waterbody, wetlands, a drinking water catchment or an environmentally sensitive area; or
 - (b) within 200 metres of a coastline; or
 - (c) on land that slopes at more than 18 degrees to the horizontal; or
 - (d) if involving blasting, within:
 - (i) 1,000 metres of a residential zone; or
 - (ii) 500 metres of a dwelling not associated with the mine.

This designation of coal mines does not include continued coal mines within the meaning of State Environmental Planning Policy No. 37—Continued Mines and Extractive Industries in respect of which an application for development consent has been made before the end of the moratorium period prescribed under that Policy.

Coal works that store and handle coal or carbonaceous material (including any coal loader, conveyor, washery or reject dump) at an existing coal mine or on a separate coal industry site, and:

- (1) handle more than 500 tonnes per day of coal or carbonaceous material; or
- (2) store more than 5,000 tonnes of coal, except where the storage is within a closed container or a closed building; or
- (3) store or deposit more than 5,000 tonnes of carbonaceous reject material; or
- (4) are located in or within 40 metres of a natural waterbody, wetlands, a drinking water catchment or an environmentally sensitive area.

Concrete works that produce pre-mixed concrete or concrete products and:

- (1) have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per annum of concrete or concrete products; or
- (2) are located:
 - (a) within 100 metres of a natural waterbody or wetlands; or
 - (b) within 250 metres of a residential zone or dwelling not associated with the development.

This designation of concrete works does not include concrete works located on or adjacent to a construction site exclusively providing material to the development carried out on that site:

- (a) for a period of less than 12 months; or
- (b) for which the environmental impacts were previously assessed in an environmental impact statement prepared for that development.

Contaminated soil treatment works for on-site or off-site treatment (including, in either case, incineration or storage of contaminated soil) that:

- (1) handle soil contaminated by substances classified as poisonous in the Australian Dangerous Goods Code and are located:

- (a) within 100 metres of a natural waterbody or wetlands; or
- (b) in an area of:
 - (i) high watertable; or
 - (ii) highly permeable soils; or
- (c) within a drinking water catchment; or
- (d) on land that slopes at more than 6 degrees to the horizontal; or
- (e) on a floodplain; or
- (f) within 250 metres of a dwelling not associated with the development; or
- (2) handle more than 1,000 cubic metres per annum of contaminated soil not originating from the site on which the development is located; or
- (3) handle contaminated soil originating exclusively from the site on which the development is located and:
 - (a) incinerate more than 1,000 cubic metres per annum of contaminated soil; or
 - (b) treat (other than by incineration) or store more than 30,000 cubic metres of contaminated soil; or
 - (c) disturb more than an aggregate area of 3 hectares of contaminated soil.

Crushing, grinding or separating works that process materials including sand, gravel, rock, minerals or materials for recycling or reuse, including slag, road base or demolition material (such as concrete, bricks, tiles, asphaltic material, metal or timber) by crushing, grinding or separating into different sizes, and that:

- (1) have an intended processing capacity of more than 150 tonnes per day or 30,000 tonnes per annum; or
- (2) are located:
 - (a) within 40 metres of a natural waterbody or wetlands; or
 - (b) within 250 metres of a residential zone or dwelling not associated with the development.

This designation of crushing, grinding or separating works does not include development specifically listed elsewhere in this Schedule.

Drum or container reconditioning works that recondition, recycle or store:

- (1) packaging containers (including metal, plastic or glass drums, bottles or cylinders) previously used for the transport or storage of substances classified as poisonous or radioactive in the Australian Dangerous Goods Code; or

- (2) more than 100 metal drums per day, unless the works (including associated drum storage) are wholly contained within a building.

Electricity generating stations, including associated water storage, ash or waste management facilities, that supply or are capable of supplying:

- (1) electrical power where:
 - (a) the associated water storage facilities inundate land identified as wilderness under the Wilderness Act 1987; or
 - (b) the temperature of the water released from the generating station into a natural waterbody is more than 2 degrees centigrade from the ambient temperature of the receiving water; or
- (2) more than 1 megawatt of hydroelectric power requiring a new dam, weir or inter-valley transfer of water; or
- (3) more than 30 megawatts of electrical power from other energy sources (including coal, gas, bio-material or solar powered generators, hydroelectric stations on existing dams or co-generation).

This designation of electricity generating stations does not include power generation facilities used exclusively for stand-by power purposes for less than 4 hours per week averaged over any continuous 3-month period.

Extractive industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating and:

- (1) obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per annum; or
- (2) disturb or will disturb a total surface area of more than 2 hectares of land by:
 - (a) clearing or excavating; or
 - (b) constructing dams, ponds, drains, roads or conveyors; or
 - (c) storing or depositing overburden, extractive material or tailings; or
- (3) are located:
 - (a) in or within 40 metres of a natural waterbody, wetlands or an environmentally sensitive area; or
 - (b) within 200 metres of a coastline; or

- (c) in an area of:
 - (i) contaminated soil; or
 - (ii) acid sulphate soil; or
- (d) on land that slopes at more than 18 degrees to the horizontal; or
- (e) if involving blasting, within:
 - (i) 1,000 metres of a residential zone; or
 - (ii) 500 metres of a dwelling not associated with the development; or
- (f) within 500 metres of the site of another extractive industry that has operated during the last 5 years.

This designation of extractive industries does not include:

- (a) extractive industries on land to which the following environmental planning instruments apply:
 - (i) Sydney Regional Environmental Plan No. 11—Penrith Lakes Scheme;
 - (ii) Western Division Regional Environmental Plan No. 1—Extractive Industries; or
- (b) maintenance dredging involving the removal of less than 1,000 cubic metres of alluvial material from oyster leases, sediment ponds or dams, artificial wetlands or deltas formed at stormwater outlets, drains or the junction of creeks with rivers provided that:
 - (i) the extracted material does not include contaminated soil or acid sulphate soil; or
 - (ii) any dredging operations do not remove any seagrass or native vegetation; or
 - (iii) there has been no other dredging within 500 metres during the past 5 years; or
- (c) extractive industries undertaken in accordance with a plan of management (such as river, estuary, land or water management plans) provided that:
 - (i) the plan is:
 - prepared in accordance with guidelines approved by the Director of Planning and includes consideration of cumulative impacts, bank and channel stability, flooding, ecology and hydrology of the area to which the plan applies; and

- approved by a public authority and adopted by the consent authority; and
- reviewed every 5 years; and

(ii) less than 1,000 cubic metres of extractive material is removed from any potential extraction site that is specifically described in the plan; or

(d) continued operations within the meaning of State Environmental Planning Policy No. 37—Continued Mines and Extractive Industries in respect of which an application for development consent has been made before the end of the moratorium period prescribed under that Policy; or

(e) artificial waterbodies, contaminated soil treatment works, turf farms, or waste management facilities or works, specifically listed elsewhere in this Schedule.

Limestone mines or works that mine, process or handle limestone or limestone products, being:

(1) **limestone mines** that mine or process limestone from the mine and:

(a) disturb or will disturb a total surface area of more than 2 hectares of land (associated with a mining lease or mineral claim or subject to a section 8 notice under the Mining Act 1992) by:

- (i) clearing or excavating; or
- (ii) constructing dams, ponds, drains, roads, railways or conveyors; or
- (iii) storing or depositing overburden, limestone or its products or tailings; or

(b) are located:

- (i) in or within 40 metres of a natural waterbody, wetlands, a drinking water catchment or an environmentally sensitive area; or
- (ii) if involving blasting, within:
 - 1,000 metres of a residential zone; or
 - 500 metres of a dwelling not associated with the mine; or
- (iii) within 500 metres of another mining site that has operated within the past 5 years.

(2) **lime works** (not associated with a mine) that:

- crush, screen, burn or hydrate more than 150 tonnes per day, or 30,000 tonnes per annum, of material; or
- are located:
 - within 100 metres of a natural, waterbody or wetlands; or
 - within 250 metres of a residential zone or a dwelling not associated with the development.

This designation of limestone mines or works does not include continued mines within the meaning of State Environmental Planning Policy No. 37—Continued Mines and Extractive Industries in respect of which an application for development consent has been made before the end of the moratorium period prescribed under that Policy.

Livestock intensive industries, being:

- feedlots** that accommodate in a confinement area and rear or fatten (wholly or substantially) on prepared or manufactured feed, more than 1,000 head of cattle, 4,000 sheep or 400 horses (excluding facilities for drought or similar emergency relief); or
- piggeries** that:
 - accommodate more than 200 pigs or 20 breeding sows and are located:
 - within 100 metres of a natural waterbody or wetlands; or
 - in an area of:
 - high watertable; or
 - highly permeable soils; or
 - acid sulphate, sodic or saline soils; or
 - on land that slopes at more than 6 degrees to the horizontal; or
 - within a drinking water catchment; or
 - on a floodplain; or
 - within 5 kilometres of a residential zone and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, traffic or waste; or
 - accommodate more than 2,000 pigs or 200 breeding sows; or

(3) **poultry farms** for the commercial production of birds (such as domestic fowls, turkeys, ducks, geese, game birds or emus), whether as meat birds, layers or breeders and whether as free range or shedded birds, that are located:

- (a) within 100 metres of a natural waterbody or wetlands; or
- (b) within a drinking water catchment; or
- (c) within 500 metres of an another poultry farm; or
- (d) within 500 metres of a residential zone or 150 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

Livestock processing industries, being industries for the commercial production of products derived from the slaughter of animals or the processing of skins or wool of animals that:

- (1) slaughter animals (including poultry) with an intended processing capacity of more than 3,000 kilograms live weight per day; or
- (2) manufacture products derived from the slaughter of animals, including:
 - (a) tanneries or fellmongeries; or
 - (b) rendering or fat extraction plants with an intended production capacity of more than 200 tonnes per annum of tallow, fat or their derivatives or proteinaceous matter; or
 - (c) plants with an intended production capacity of more than 5,000 tonnes per annum of products (including hides, adhesives, pet feed, gelatine, fertilizer or meat products); or
- (3) scour, top or carbonise greasy wool or fleeces with an intended production capacity of more than 200 tonnes per annum; or
- (4) are located:
 - (a) within 100 metres of a natural waterbody or wetlands; or
 - (b) in an area of
 - (i) high watertable; or
 - (ii) highly permeable soils; or
 - (iii) acid sulphate, sodic or saline soils; or

- (c) on land that slopes at more than 6 degrees to the horizontal; or
- (d) within a drinking water catchment; or
- (e) on a floodplain; or
- (f) within 5 kilometres of a residential zone and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

Marinas or other related land or water shoreline facilities that:

- (1) moor, park or store vessels (excluding rowing boats, dinghies or other small craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles on hardstand areas:
 - (a) with an intended capacity of 30 or more vessels and:
 - (i) are located:
 - in non-tidal waters; or
 - within 100 metres of wetlands or an aquatic reserve; or
 - (ii) require the construction of a groyne or annual maintenance dredging; or
 - (iii) the ratio of car park spaces to vessels is less than 0.5:1; or
 - (b) with an intended capacity of 80 or more vessels; or
- (2) repair or maintain vessels out of the water (including slipways, hoists or other facilities) with an intended capacity of:
 - (a) one or more vessel 25 metres or longer; or
 - (b) 5 or more vessels at any one time.

Mineral processing or metallurgical works for the commercial production or extraction of ores (using methods including chemical, electrical, magnetic, gravity or physico-chemical) or the refinement, processing or reprocessing of metals involving smelting, casting, metal coating or metal products recovery that:

- (1) process into ore concentrates more than 150 tonnes per day of material; or
- (2) smelt, process, coat, reprocess or recover more than 10,000 tonnes per annum of ferrous or non-ferrous metals, alloys or ore concentrates; or

(3) crush, grind, shred, sort or store:

- (a) more than 150 tonnes per day, or 30,000 tonnes per annum, of scrap metal and are not wholly contained within a building; or
- (b) more than 50,000 tonnes per annum and are wholly contained within a building; or

(4) are located:

- (a) within 40 metres of a natural waterbody or wetlands; or
- (b) in an area of high watertable; or
- (c) within 500 metres of a residential zone and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, smoke, soot, dust, traffic or waste; or
- (d) so that, in the opinion of the consent authority, having regard to topography and local meteorological conditions, the works are likely to significantly affect the environment because of the use or production of substances classified as poisonous in the Australian Dangerous Goods Code.

Mines that mine, process or handle minerals (being minerals within the meaning of the Mining Act 1992 other than coal or limestone) and:

(1) disturb or will disturb a total surface area of more than 4 hectares of land (associated with a mining lease or mineral claim or subject to a Section 8 notice under the Mining Act 1992) by:

- (a) clearing or excavating; or
- (b) constructing dams, ponds, drains, roads, railways or conveyors;
- (c) storing or depositing overburden, ore or its products or tailings; or

(2) are located:

- (a) in or within 40 metres of a natural waterbody, wetlands, a drinking water catchment or an environmentally sensitive area; or
- (b) within 200 metres of a coastline; or

- (c) if involving blasting, within:
 - (i) 1,000 metres of a residential zone; or
 - (ii) 500 metres of a dwelling not associated with the mine; or
- (d) within 500 metres of another mining site that has operated during the past 5 years; or
- (e) so that, in the opinion of the consent authority, having regard to topography and local meteorological conditions, the mine is likely to significantly affect the environment because of the use or production of substances classified as poisonous in the Australian Dangerous Goods Code.

This designation of mines does not include continued mines within the meaning of State Environmental Planning Policy No. 37—Continued Mines and Extractive Industries in respect of which an application for development consent has been made before the end of the moratorium period prescribed under that Policy.

Paper, pulp or pulp products industries that manufacture paper, paper pulp or pulp products and:

- (1) have an intended production capacity of more than:
 - (a) 30,000 tonnes per annum; or
 - (b) 70,000 tonnes per annum if recycled material is used exclusively as raw material and no bleaching or de-inking is undertaken; or
- (2) release effluent or sludge:
 - (a) in or within 100 metres of a natural waterbody or wetlands; or
 - (b) in an area of
 - (i) high watertable; or
 - (ii) highly permeable soils; or
 - (c) in a drinking water catchment.

Petroleum works that:

- (1) produce crude petroleum or shale oil; or
- (2) produce more than 5 petajoules per annum of natural gas or methane; or
- (3) refine crude petroleum, shale oil or natural gas; or

- (4) manufacture more than 100 tonnes per annum of petroleum products (including aviation fuel, petrol, kerosene, mineral turpentine, fuel oils, lubricants, wax, asphalt, liquified gas and the precursors to petrochemicals, such as acetylene, ethylene, toluene and xylene); or
- (5) store petroleum and natural gas products with an intended storage capacity in excess of
 - (a) 200 tonnes for liquified gases; or
 - (b) 2,000 tonnes of any petroleum products; or
- (6) dispose of oil or petroleum waste or process or recover more than 20 tonnes of waste per annum; or
- (7) are located:
 - (a) within 40 metres of a natural waterbody or wetlands; or
 - (b) in an area of:
 - (i) high watertable; or
 - (ii) highly permeable soils; or
 - (c) within a drinking water catchment; or
 - (d) on a floodplain.

Sewerage systems or works that:

- (1) treat sewage and:
 - (a) have an intended processing capacity of more than 2,500 persons equivalent capacity or 750 kilolitres per day; or
 - (b) have an intended processing capacity of more than 20 persons equivalent capacity or 6 kilolitres per day and are located:
 - (i) on a floodplain; or
 - (ii) within a coastal dune field; or
- (2) incinerate sewage or sewage products; or
- (3) temporarily or permanently store sewage, sludge or effluent:
 - (a) with a capacity of more than 1,000 tonnes of material; or
 - (b) at a location:
 - (i) within 100 metres of a natural waterbody or wetlands; or
 - (ii) in an area of:
 - high watertable; or
 - highly permeable soils; or
 - (iii) within a drinking water catchment; or

- (iv) on a floodplain; or
- (v) within 250 metres of a dwelling not associated with the development; or

(4) release or reuse more than 20 persons equivalent capacity or 6 kilolitres per day of sewage, effluent or sludge at a location:

- (a) in or within 100 metres of a natural waterbody, wetlands, coastal dune fields or an environmentally sensitive area; or
- (b) in an area of
 - (i) high watertable; or
 - (ii) highly permeable soils; or
 - (iii) acid sulphate, sodic or saline soils; or
- (c) on land that slopes at more than 6 degrees to the horizontal; or
- (d) within a drinking water catchment; or
- (e) within a catchment of an estuary where the entrance to the sea is intermittently open; or
- (f) on a floodplain; or
- (g) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development.

This designation of sewerage systems or works does not include development for the pumping out of sewage from recreational vessels.

Shipping facilities, being wharves or wharf-side facilities at which cargo is loaded onto vessels, or unloaded from vessels, or temporarily stored, at a rate of more than:

- (1) 150 tonnes per day, or 5,000 tonnes per annum, for facilities handling goods classified in the Australian Dangerous Goods Code; or
- (2) 500 tonnes per day or 50,000 tonnes per annum.

Turf farms that, in the opinion of the consent authority, are likely to significantly affect the environment because of their location:

- (1) within 100 metres of a natural waterbody or wetlands; or
- (2) in an area of
 - (i) high watertable; or
 - (ii) acid sulphate, sodic or saline soils; or
- (3) within a drinking water catchment; or
- (4) within 250 metres of another turf farm.

Waste management facilities or works that store, treat, purify or dispose of waste or sort, process, recycle, recover, use or reuse material from waste and that:

- (1) dispose (by landfilling, incinerating, storing, placing or other means) of solid or liquid waste:
 - (a) that includes any substance classified in the Australian Dangerous Goods Code or medical, cytotoxic or quarantine waste; or
 - (b) that comprises more than 100,000 tonnes of 'clean fill' (such as soil, sand, gravel, bricks or other excavated or hard material) in a manner that, in the opinion of the consent authority, is likely to cause significant impacts on drainage or flooding; or
 - (c) that comprises more than 1,000 tonnes per annum of sludge or effluent; or
 - (d) that comprises more than 200 tonnes per annum of other waste material; or
- (2) sort, consolidate or temporarily store waste at transfer stations or materials recycling facilities for transfer to another site for final disposal, permanent storage, reprocessing, recycling, use or reuse and:
 - (a) handle substances classified in the Australian Dangerous Goods Code or medical, cytotoxic or quarantine waste; or
 - (b) have an intended handling capacity of more than 10,000 tonnes per annum of waste containing food or livestock, agricultural or food processing industries waste or similar substances; or
 - (c) have an intended handling capacity of more than 30,000 tonnes per annum of waste such as glass, plastic, paper, wood, metal, rubber or building demolition material; or
- (3) purify, recover, reprocess or process (including by mulching or composting) more than 5,000 tonnes per annum of solid or liquid waste organic materials, including food waste, oil, sludge, pulp, garden refuse, sawdust or wood chips; or
- (4) are located:
 - (a) in or within 100 metres of a natural waterbody, wetlands, coastal dune fields or an environmentally sensitive area; or
 - (b) in an area of high watertable, highly permeable soils, acid sulphate, sodic or saline soils; or

- (c) within a drinking water catchment; or
- (d) within a catchment of an estuary where the entrance to the sea is intermittently open; or
- (e) on a floodplain; or
- (f) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, visual impacts, air pollution (including odour, smoke, fumes or dust), vermin or traffic.

This designation of waste management facilities or works does not include:

- (a) development comprising or involving any use of sludge or effluent if:
 - (i) the dominant purpose is not waste disposal; and
 - (ii) the development is carried out in a location other than one listed in paragraph (4) above; or
- (b) development comprising or involving waste management facilities or works specifically listed elsewhere in this Schedule.

Wood or timber milling or processing works (other than a joinery, builders supply yard or home improvement centre) that saw, machine, mill, chip, pulp or compress timber or wood and:

- (1) have an intended production capacity of more than 4,000 cubic metres per annum of sawn timber or timber products and:
 - (a) are located within 500 metres of a dwelling not associated with the milling works; or
 - (b) are located within 40 metres of a natural waterbody or wetlands; or
 - (c) burn waste (other than as a source of fuel); or
- (2) have an intended production capacity of more than 30,000 cubic metres per annum of sawn timber or timber products.

Wood preservation works that treat or preserve timber using chemical substances (containing copper, chromium, arsenic, creosote or any substance classified in the Australian Dangerous Goods Code) and:

- (1) process more than 10,000 cubic metres per annum of timber; or
- (2) are located:
 - (a) within 250 metres of a natural waterbody, wetlands or an environmentally sensitive area; or
 - (b) in an area of:
 - (i) high watertable; or
 - (ii) highly permeable soils; or
 - (c) on land that slopes at more than 6 degrees to the horizontal; or
 - (d) within a drinking water catchment; or
 - (e) within 250 metres of a dwelling not associated with the development.

PART 2—ARE ALTERATIONS OR ADDITIONS DESIGNATED DEVELOPMENT?

Is there a significant increase in the environmental impacts of the total development?

1. Development involving alterations or additions to development (whether existing or approved) is not designated development if, in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development (that is the development together with the additions or alterations) compared with the existing or approved development.

Factors to be taken into consideration

- 2. In forming its opinion, a consent authority is to consider:
 - (a) the impact of the existing development having regard to factors including:
 - (i) previous environmental management performance, including compliance with:
 - conditions of any consents, licences, leases or authorisations by a public authority; and
 - any relevant codes of practice; and
 - (ii) rehabilitation or restoration of any disturbed land; and
 - (iii) the number and nature of all past changes and their cumulative effects; and

- (b) the likely impact of the proposed alterations or additions having regard to factors including:
 - (i) the scale, character or nature of the proposal in relation to the development; and
 - (ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality; and
 - (iii) the degree to which the potential environmental impacts can be predicted with adequate certainty; and
 - (iv) the capacity of the receiving environment to accommodate changes in environmental impacts; and
- (c) any proposals:
 - (i) to mitigate the environmental impacts and manage any residual risk; and
 - (ii) to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department of Planning or other public authorities.

PART 3—WHAT DO TERMS USED IN THIS SCHEDULE MEAN?

In this Schedule:

acid sulphate soil means acid sulphate soil, potential acid sulphate soil, sulphidic clay or sulphidic sand with soil profiles or layers (within the material to be disturbed or impacted by the development) with more than 0.1 percent sulphide and a net acid generation potential of more than zero.

ANEF means Australian Noise Exposure Forecast as defined in Australian Standard AS2021-1985 Acoustics-Aircraft Noise Intrusion.

Australian Dangerous Goods Code means the most recent edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the Federal Office of Road Safety, Department of Transport and Communications.

coastal dune field means any system of wind blown sand deposits extending landwards of the coastline, whether active or stable.

coastline means Ocean beaches, headlands or other coastal landforms, excluding bays, estuaries or inlets.

contaminated soil means soil that contains a concentration of chemical substances (including substances listed in the Australian Dangerous Goods Code) that are likely to pose an immediate or long term hazard to human health or the environment. Soil is considered to be a hazard if it is:

- (a) unsafe or unfit for habitation or occupation by people or animals; or
- (b) degraded in its capacity to support plant life; or
- (c) otherwise environmentally degraded.

drinking water catchment means the restricted areas prescribed by the controlling water authority or within 100 metres of a potable groundwater supply bore.

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

effluent includes treated or partially treated wastewater from processes such as sewage treatment plants or from treatment plants associated with intensive livestock industries, aquaculture or agricultural, livestock, wood, paper or food processing industries.

environmentally sensitive area means:

- (a) land identified in an environmental planning instrument as an environment protection zone such as for the protection or preservation of habitat, plant communities, escarpments, wetlands or foreshore or land protected or preserved under State Environmental Planning Policy No. 14—Coastal Wetlands or State Environmental Planning Policy No. 26—Littoral Rainforests; or
- (b) land reserved as national parks or historic sites or dedicated as nature reserves or declared as wilderness under the National Parks and Wildlife Act 1974; or
- (c) land reserved as an aquatic reserve under the Fisheries and Oyster Farms Act 1935; or
- (d) land reserved or dedicated within the meaning of the Crown Lands Act 1989 for the preservation of flora, fauna, geological formations or for other environmental protection purposes; or
- (e) land declared as wilderness under the Wilderness Act 1987.

extractive material means sand, soil, stone, gravel, rock, sandstone or similar substances that are not prescribed minerals within the meaning of the Mining Act 1992.

floodplain means the floodplain level nominated in a local environmental plan or those areas inundated as a result of a 1 in 100 flood event if no level has been nominated.

high watertable means those areas where the groundwater depth is less than 3 metres below the surface at its highest seasonal level.

highly permeable soil means soil profiles or layers (within the upper 2 metres of the material to be disturbed or impacted by the development) with a saturated hydraulic conductivity of more than 50 millimetres per hour.

incinerate includes any method of burning or thermally oxidising solids, liquids or gases.

poisonous means substances classified as poisonous in the Australian Dangerous Goods Code, including poisonous gases (Class 2.3) or poisonous (toxic), infectious and genetically modified substances (Class 6).

residential zone means land identified in an environmental planning instrument as being predominantly for residential use, including urban, village or living area zones, but excluding rural residential zones.

saline soil means soil profiles or layers (within the upper 2 metres of soil) with an electrical conductivity of saturated extracts (ECe) value of more than 4 decisiemens per metre (dS/m).

sludge includes waste particulate matter (mainly organic) from processes such as sewage treatment plants, intensive livestock industries or agricultural, livestock, wood, paper or food processing industries.

sodic soil means soil profiles or layers (within the upper 2 metres of soil) with an exchangeable sodium percentage (ESP) of more than 5 percent.

waste includes any matter or thing whether solid, gaseous or liquid or a combination of any solids, gases or liquids that is discarded or is refuse from processes or uses (such as domestic, medical, industrial, mining, agricultural or commercial processes or uses).

waterbody means:

(a) a **natural waterbody**, including:

- (i) a lake or lagoon either naturally formed or artificially modified; or
- (ii) a river or stream, whether perennial or intermittent, flowing in a natural channel with an established bed or in an artificially modified channel which has changed the course of the stream; or
- (iii) tidal waters including any bay, estuary or inlet; or

(b) **an artificial waterbody**, including any waterway, canal, inlet, bay, channel, dam, pond or lake constructed and permanently or intermittently inundated with water.

wetlands means:

(a) **natural wetlands** including marshes, mangroves, backwaters, billabongs, swamps, sedgelands, wet meadows or wet heathlands that form a shallow waterbody (up to 2 metres in depth) when inundated cyclically, intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities; or

(b) **artificial wetlands**, including marshes, swamps, wet meadows, sedgelands or wet heathlands that form a shallow water body (up to 2 metres in depth) when inundated cyclically, intermittently or permanently with water, and are constructed and vegetated with wetland plant communities.

PART 4—HOW ARE DISTANCES MEASURED FOR THE PURPOSES OF THIS SCHEDULE?

aquaculture or mariculture:

The distance between leases is to be measured as the shortest distance between the boundary of any existing lease area and the boundary of the area to which the development application applies.

coastline:

The distance from a coastline is to be measured as the shortest distance between the mean high water mark and the boundary of the land to which the development application applies (excluding access roads).

dwelling:

The distance from a dwelling is to be measured as the shortest distance between the edge of the dwelling and the boundary of any development or works to which the development application applies.

environmentally sensitive area:

The distance from an environmentally sensitive area is to be measured as the shortest distance between the boundary of the area and the boundary of the land to which the development application applies.

extractive industries and mines (including coal and limestone):

The distance between extractive industries or mine sites is to be measured as the shortest distance between any area of disturbance by a mine or extractive industry that has operated within the past 5 years and the boundary of the land to which the development application applies (excluding access roads).

poultry farms:

The distance between poultry farms is to be measured as the shortest distance between the edge of any facilities or works associated with an existing poultry farm and the facilities or works to which the development application applies (excluding access roads).

residential zone:

The distance from a residential zone is to be measured as the shortest distance between the boundary of the residential zone and the facilities or works to which the development application applies (excluding access roads).

turf farm:

The distance between turf farms is to be measured as the shortest distance between the edge of an area which is growing or has previously grown turf sod within the last 5 years and the edge of the area for growing turf sod to which the development application applies.

waterbody:

The distance from a waterbody is to be measured as the shortest distance between:

- (a) the top of the high bank, if present; or
- (b) if no high bank is present, then:
 - (i) the mean high water mark in tidal waters; or
 - (ii) the mean water level in non-tidal waters,

and the boundary of the land to which the development application applies.

wetlands:

The distance from a wetland is to be measured as the shortest distance between:

- (a) the top of the high bank, if present; or
- (b) if no high bank is present, then the edge of vegetation communities dominated by wetland species,

and the boundary of the land to which the development application applies.

EXPLANATORY NOTE

The object of this Regulation is to redefine designated development for the purposes of the Environmental Planning and Assessment Act 1979.

The Regulation is made under sections 157 and 158 of that Act.
