



New South Wales

Environmental Planning and Assessment Amendment (Schools) Regulation 2017

under the

Environmental Planning and Assessment Act 1979

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

ANTHONY ROBERTS, MP
Minister for Planning

Explanatory note

The objects of this Regulation are as follows:

- (a) to prescribe a proprietor of a registered non-government school as a public authority:
 - (i) to enable the proprietor to carry out certain exempt development and development permitted without consent in connection with an existing school under *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (the **Policy**), and
 - (ii) to allow the proprietor to be a determining authority for the latter class of development under Part 5 of the *Environmental Planning and Assessment Act 1979* (the **Act**),
- (b) to prescribe specified universities as public authorities to allow them to be determining authorities for certain development that a university may carry out without consent under the Policy,
- (c) to prescribe the Regulatory Authority for New South Wales under the *Children (Education and Care Services) National Law (NSW)* as a public authority to enable the Authority to exercise certain concurrence functions under the Policy,
- (d) to enable the Minister for Planning to approve a code (an **approved Code**) that regulates a proprietor of a registered non-government school in the exercise of its environmental impact assessment functions as a prescribed determining authority under Part 5 of the Act in respect of development referred to in paragraph (a) (ii),
- (e) to make it an offence for a proprietor of a registered non-government school not to comply with certain mandatory obligations in a specified approved Code, in respect of development referred to in paragraph (a) (ii), and to make the offence of not complying with the mandatory obligations in the approved Code relating to record keeping a penalty notice offence,
- (f) to require certain complying development in connection with existing schools and school-based child care to apply specified design principles before a complying development certificate may be issued,
- (g) to require development that is identified in the Policy as complying development and that requires certain consents or approvals under the *Roads Act 1993* or the *Mine Subsidence Compensation Act 1961*, to have those consents and approvals before a complying development certificate may be issued,

- (h) to specify additional documents that must accompany an application for certain complying development in connection with existing schools,
- (i) to provide for certain matters in relation to a site compatibility certificate issued under the Policy (a *certificate*), including to prescribe the maximum fee for an application for a certificate, to include a certificate in the definition of *site compatibility certificate* for the purposes of the principal Regulation and to require a planning certificate to specify whether a certificate applies to proposed development,
- (j) to insert definitions as a consequence of the amendments referred to above.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including paragraph (g) of the definition of *public authority* in section 4 (1), and sections 85 (5) (a), 85A (1) and (6), 111A (2) and (3), 125 (2), 127A, 137, 149 (2) and 157 (the general regulation-making power).

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Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Schools) Regulation 2017*.

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):

proprietor, in relation to a registered non-government school, has the same meaning as in the *Education Act 1990*.

registered non-government school means a registered non-government school within the meaning of the *Education Act 1990*, other than one to which a current certificate of exemption applies under that Act.

site compatibility certificate (schools or TAFE establishments) means a certificate issued under clause 15 (5) of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

[2] Clause 3 (1), definition of “site compatibility certificate”

Insert at the end of the definition:

- (d) site compatibility certificate (schools or TAFE establishments).

[3] Clauses 129AA and 129AB

Insert after clause 129A:

129AA Restriction on issue of complying development certificate for certain development for the purpose of schools or school-based child care

A certifying authority must not issue a complying development certificate for proposed development for a purpose specified in clause 39 (1) (Existing schools—complying development) or 40 (2) (e) (School-based child care—complying development) of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* that involves:

- (a) the construction of a new building with a building height (within the meaning of the Standard Instrument) of more than 12 metres, or
- (b) an alteration or addition to an existing building that will result in its building height being more than 12 metres,

unless the certifying authority has been provided with a written statement by a qualified designer that verifies that the development applies the design quality principles set out in Schedule 4 to that Policy.

129AB Restriction on issue of complying development certificate for certain development related to educational establishments

A certifying authority must not issue a complying development certificate for proposed development that is identified as complying development under *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* unless:

- (a) the relevant roads authority has given its written consent, if required by the *Roads Act 1993*:
 - (i) for each opening of a public road required by the development, and
 - (ii) to operate or store machinery, materials or waste required by the development on a road or footpath reserve, and
- (b) if the development involves the alteration or erection of improvements on land in a mine subsidence district within the meaning of the *Mine*

Subsidence Compensation Act 1961, the Mines Subsidence Board has approved of the development in writing.

Note. Information about mine subsidence is information that is a prescribed matter for the purpose of a planning certificate under section 149 (2) of the Act.

[4] Clause 136I Traffic generating development

Insert “(j1) or” after “clause 4 (1)”.

[5] Part 14, Division 10

Insert after clause 244L:

Division 10 Special provisions relating to proprietors of registered non-government schools

244M Definitions

In this Division:

activities for the purposes of an existing school means activities (within the meaning of Part 5 of the Act) for the purpose of development that is permitted without consent under clause 36 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

approved Code means a Code approved by the Minister under this Division.

244N Approved Code must be complied with

- (1) An approved Code may make provision for or with respect to the exercise by a proprietor of a registered non-government school of its functions under section 111 of the Act in respect of activities for the purposes of an existing school.
- (2) An approved Code is not to apply to activities for the purposes of an existing school for which the proprietor is required under Part 5 of the Act to furnish or obtain an environmental impact statement.
- (3) Without limitation, an approved Code may include provision for or with respect to any of the matters listed in section 111A (2) of the Act.
- (4) An approved Code may specify the period for which the approved Code is in force.
- (5) The Minister may, by notice in writing to a proprietor of a registered non-government school, exempt a specified activity from the operation of an approved Code. An exemption may be made subject to conditions and may be revoked or varied at any time by notice in writing to the proprietor.

244O Procedure for approval of Code

- (1) The Minister may approve a Code for the purposes of this Division and may vary or revoke an approved Code.
- (2) An approval of a Code, or a variation or revocation of an approved Code, takes effect when notice of it is published in the Gazette or on such later date as is specified in the approval, variation or revocation.

244P Offences against specified approved Code

- (1) A proprietor of a registered non-government school must comply with the following requirements of the *NSW Code of Practice for Part 5 Activities for registered non-government schools* in respect of activities for the purposes of

an existing school (other than an activity that is the subject of an exemption in relation to the proprietor under clause 244N (5)):

- (a) the mandatory requirements for consultation in clause 3.3.3 of the Code,
- (b) the mandatory requirements relating to assessment documentation in clause 3.4.1 of the Code,
- (c) the mandatory requirements relating to determination documentation in clause 3.5.1 of the Code,
- (d) the mandatory requirements relating to record keeping in clause 5.1 of the Code,
- (e) the mandatory requirements relating to public access to records in clause 5.2 of the Code,
- (f) the mandatory requirements relating to self-reporting of breaches of the Code in clause 6.2 of the Code,
- (g) the mandatory requirements relating to audits in clause 6.3.1 of the Code.

(2) In this clause:

NSW Code of Practice for Part 5 Activities for registered non-government schools means the approved Code of that name, notice of the making of which was published in the Gazette on 1 September 2017.

[6] Clause 262A Fee for site compatibility certificate

Insert “or a site compatibility certificate (schools or TAFE establishments)” after “(infrastructure)” in clause 262A (2).

[7] Clause 277 Public authorities

Insert “or *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*” after “*State Environmental Planning Policy (Infrastructure) 2007*” in clause 277 (4).

[8] Clause 277 (6)–(10)

Insert after clause 277 (5):

- (6) For the purpose of the definition of *public authority* in section 4 (1) of the Act, the proprietor of a registered non-government school is prescribed as a public authority (subject to subclause (7)), but only so as:
 - (a) to enable the proprietor to be treated as a public authority in relation to development in connection with the school that is exempt development under clause 18 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, and
 - (b) to allow the proprietor to be a determining authority within the meaning of Part 5 of the Act for development that is permitted without consent under clause 36 of that Policy on land in a prescribed zone (within the meaning of clause 33 of that Policy).
- (7) Subclause (6) does not apply to a proprietor of a registered non-government school that the Secretary determines is a school to which that subclause does not apply.
- (8) The Secretary may vary or revoke a determination under subclause (7).
- (9) A determination under subclause (7), or a variation or revocation of a determination, takes effect when notice of it is published in the Gazette or on such later date as is specified in the determination, variation or revocation.

- (10) For the purpose of the definition of **public authority** in section 4 (1) of the Act, the Regulatory Authority for New South Wales under the *Children (Education and Care Services) National Law (NSW)* (as declared by section 9 of the *Children (Education and Care Services National Law Application) Act 2010*) is prescribed as a public authority, but only for the purposes of section 30 (2) of the Act.

Note. Section 30 (2) of the Act allows an environmental planning instrument to provide that a development application must not be determined by the granting of consent except with the concurrence of a Minister or public authority specified in the instrument.

[9] Clause 284 Penalty notice offences

Omit “the persons referred to in subclause (3) (a) and (b) only” from clause 284 (4).

Insert instead “only the persons referred to in subclause (3) (a) and (b)”.

[10] Clause 284 (4) (b)

Omit “or 227A (2)”. Insert instead “, 227A (2) or 244P (1) (d)”.

[11] Schedule 1 Forms

Insert after clause 4 (1) (j):

(j1) if the development:

(i) is for a purpose specified in clause 39 (1) (Existing schools—complying development) of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, and

(ii) will result in the school being able to accommodate 50 or more additional students,

a certificate issued by Roads and Maritime Services certifying that any impacts on the surrounding road network as a result of the development are acceptable or will be acceptable if specified requirements are met,

[12] Schedule 4 Planning certificates

Insert “or site compatibility certificate (schools or TAFE establishments)” after “(infrastructure)” in clause 16.

[13] Schedule 5 Penalty notice offences

Insert in appropriate order under the heading “**Section 125 (2) of the Act in relation to contravention of the following provisions of this Regulation**”:

clause 244P (1) (d)

3,000

6,000

[14] Schedule 7 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provision consequent on making of Environmental Planning and Assessment Amendment (Schools) Regulation 2017

General savings

This Regulation, as in force immediately before its amendment by the *Environmental Planning and Assessment Amendment (Schools) Regulation*

2017, continues to apply to the determination of all applications for complying development certificates made, but not finally determined, before the commencement of the amending Regulation.