

**ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) ACT 1994 No. 29**

NEW SOUTH WALES



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**ENVIRONMENTAL PLANNING AND ASSESSMENT
(AMENDMENT) ACT 1994 No. 29**

NEW SOUTH WALES



Act No. 29, 1994

An Act to amend the Environmental Planning and Assessment Act 1979 to make further provision concerning the consideration and determination of development applications; and for other purposes. [Assented to 30 May 1994]

Environmental Planning and Assessment (Amendment) Act 1994 No. 29

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Environmental Planning and Assessment (Amendment) Act 1994.

Commencement.

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Environmental Planning and Assessment Act 1979 No. 203

3. The Environmental Planning and Assessment Act 1999 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 45 (**Consultation**):

(a) Omit “ensure that consultations are held”, insert instead “consult, to the extent required by this section,”.

(b) At the end of section 45, insert:

(2) For the purposes of the consultation, the Director must provide the following information to them:

(a) the reasons for deciding to prepare the environmental study or the draft regional environmental plan;

(b) the proposed aims, objectives, policies and strategies whereby the draft plan is designed to achieve any of the objects of this Act;

(c) a description of the land to which the study or draft plan is intended to apply;

(d) the types of matters to be dealt with in the study or draft plan.

(3) For the purposes of the consultation, the Director may provide any other information that, in the Director’s opinion, would assist in understanding the environmental study or the draft regional environmental plan.

SCHEDULE 1—AMENDMENTS—*continued*

(4) A person to whom information is provided under this section may comment to the Director on the preparation of the environmental study or draft regional environmental plan within 40 days after the Director provides the information required to be provided under subsection (2).

(5) The consultation required by this section is completed when the Director has considered any comments so made.

(2) Section 91 (**Determination of development application**):

After section 91 (3A), insert:

(3B) A consent may be granted subject to a condition expressed in a manner that identifies both of the following:

- (a) one or more express outcomes or objectives that the development or a specified part or aspect of the development must achieve;
- (b) clear criteria against which achievement of the outcome or objective must be assessed.

The condition may specify the means by which the outcome or objective may be achieved.

(3) Section 91A:

Omit the section, insert instead:

Determination of Crown development applications

91A. (1) A consent authority, in respect of a development application made by or on behalf of the Crown or a prescribed person, must not:

- (a) refuse its consent to the application, except with the written approval of the Minister; or
- (b) impose a condition of its consent, except with the written approval of the Minister or the applicant.

(2) If the development application has not been determined by the consent authority within the period after which, under section 96, it is deemed to have been determined by refusing consent, or within a period of 60 days after lodgment of that development application with the consent authority, whichever is the longer period, the applicant or the consent authority may refer the application to the Minister.

SCHEDULE 1—AMENDMENTS—*continued*

(3) The party who refers the application to the Minister must notify the other party in writing that the application has been referred.

(4) When an application is referred to the Minister by either party, the consent authority must, as soon as practicable after the application is referred, submit to the Minister:

- (a) a copy of the development application; and
- (b) details of its proposed determination of the development application; and
- (c) the reasons for the proposed determination; and
- (d) any relevant reports of another public authority.

(5) The Minister is required to notify the Director in writing that the application has been referred.

(6) On being so notified, the Director must convene a meeting between the consent authority and the applicant for the purpose of negotiating, as far as possible, a determination of the development application that is acceptable to them and that is in accordance with this Act,

(7) If agreement is reached between the applicant and the consent authority that development consent be granted, unconditionally or subject to conditions, the Director must prepare a report of the agreement. The report:

- (a) may include any recommendations that may be necessary or desirable to ensure the implementation of the agreement; and
- (b) must specify the date by which consent is to be granted.

The Director must give a copy of the report to the consent authority and the applicant.

(8) After receiving the Director's report, the consent authority must determine the application by granting consent in accordance with the report and recommendations and on or before the date specified for the purpose in the report. Such a consent is taken to have been granted in accordance with the written approval of the Minister.

SCHEDULE 1—AMENDMENTS—*continued*

(9) If agreement is not reached between the applicant and the consent authority that development consent be granted, unconditionally or subject to conditions, the Minister must notify the consent authority and the applicant in writing of:

- (a) the Minister's approval to the refusal of consent; or
- (b) the Minister's approval to the imposition of the consent authority's proposed conditions and the date on or before which the development application must be determined; or
- (c) the Minister's intention not to agree with the consent authority's proposed refusal and that the consent authority may submit any conditions it wishes to impose as conditions of consent to the Minister within 40 days after the date of the Minister's notification; or
- (d) the Minister's refusal to agree with the consent authority's proposed conditions, any conditions that may be imposed with the Minister's approval and the date on or before which the development application must be determined.

(10) At the end of the 40-day period specified in subsection (9) (c), the Minister must notify the consent authority and the applicant in writing:

- (a) whether the Minister approves of the imposition of any of the conditions submitted by the consent authority during that period and, if so, which conditions; or
- (b) of the conditions that may be imposed with the Minister's approval,

or both, and that the consent authority must determine the application in accordance with the Minister's notification on or before the date notified by the Minister for the purpose.

(11) The Minister must notify the consent authority and the applicant in writing of the reasons for a decision under subsection (9) or (10).

(12) If the consent authority does not determine the application on or before the date specified in the Director's report under subsection (7), or on or before the date notified for the purpose by the Minister under subsection (9) (b) or

SCHEDULE 1—AMENDMENTS—*continued*

(d) or subsection (10), the consent authority is taken, on the date so specified or notified, to have determined the application:

- (a) in the case of a report under subsection (7)—by granting consent in accordance with the report and recommendations; or
- (b) in the case of a notification under subsection (9) (b) or (d)—by granting consent subject to the conditions that may be imposed with the Minister's approval; or
- (c) in the case of a notification under subsection (10)—in accordance with the Minister's approval as notified to it.

(13) This section applies to an application by or on behalf of the Crown or a prescribed person under section 102 (modification of consents) in the same way as it applies to an application for development consent.

(14) This section does not affect the right of an applicant to appeal under section 97 or 102 (5).

(4) Section 159:

After section 158, insert:

Savings, transitional and other provisions
159. Schedule 6 has effect.

(5) Schedule 6:

After Schedule 5, insert:

**SCHEDULE 6—SAVINGS TRANSITIONAL AND
OTHER PROVISIONS**

(Sec. 159)

Part 1—Preliminary

Savings and transitional regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Environmental Planning and Assessment (Part 5)
Amendment Act 1993*

SCHEDULE 1—AMENDMENTS—*continued*Environmental Planning and Assessment (Amendment)
Act 1994

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2—Environmental Planning and Assessment
(Amendment) Act 1994****Performance-based conditions of consent**

2. Section 91 (3B) extends to a condition imposed in the determination of a development application before the commencement of that subsection.

Determination of Crown development applications

3. Section 91A, as substituted by the Environmental Planning and Assessment (Amendment) Act 1994, applies to a development application made but not determined as at the date of commencement of Schedule 1 (3) to that Act.

*[Minister's second reading speech made in—
Legislative Council on 21 April 1994
Legislative Assembly on 5 May 1994]*