



New South Wales

Environmental Planning and Assessment Amendment Act 1996 No 44

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New South Wales

Environmental Planning and Assessment Amendment Act 1996 No 44

Act No 44, 1996

An Act to amend the *Environmental Planning and Assessment Act 1979* to facilitate environmental planning and to improve the administration of that Act, and for other purposes. [Assented to 28 June 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Amendment Act 1996*.

2 Commencement

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

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedules 1–11.

Schedule 1 Amendments relating to altering draft environmental planning instruments

(Section 3)

[1] Section 49 Consideration of submissions and amendment of draft plan

Insert “by making changes whether or not of substance and” after “plan” in section 49 (1) (b).

[2] Section 49 (1) (c)

Omit “, if he thinks fit,”. Insert instead “(but need not)”.

[3] Section 51 Making of regional environmental plans by the Minister

Insert after section 51 (1):

(IA) Without limiting subsection (1) (a) (ii), the alterations that may be made by the Minister to the draft regional environmental plan may comprise changes of substance and may arise from submissions or from a finding or recommendation of a Commission of Inquiry or otherwise from the Minister’s consideration of the matters in the draft plan.

[4] Section 70 Making of local environmental plan

Insert after section 70 (1):

(IA) Without limiting subsection (1) (a) (ii), the alterations that may be made by the Minister relating to any matters which in the opinion of the Minister are of significance for State or regional environmental planning may comprise changes of substance to the draft local environmental plan and may arise from submissions or otherwise from the Minister’s consideration of the matters in the draft plan.

[5] Section 70 (3)

Insert “(but need not)” after “may”.

Schedule 2 Amendments relating to preparation and notice of environmental studies and draft regional environmental plans

(Section 3)

[1] Section 41 Preparation of environmental study

Insert “or at any time during the course of its preparation” after “plan” where firstly occurring in section 41 (1).

[2] Section 45

Omit the section. Insert instead:

45 Notification

- (1) In the preparation of an environmental study or a draft regional environmental plan, the Director, to the extent required by this section, is to notify the information specified in subsection (2) to the following:
 - (a) each council whose area or part of whose area is situated in the region or part of the region to which that study or draft plan applies,
 - (b) the Local Government Liaison Committee,
 - (c) such other public authorities, other bodies (including authorities of the Commonwealth or other States) and other persons as the Director determines.
- (2) The information to be notified is the following:
 - (a) the reasons for deciding to prepare the environmental study or the draft regional environmental plan,
 - (b) the general aims and objectives of the study or draft plan,
 - (c) a general description of the land or area to which the study or draft plan is intended to apply,
 - (d) such other matters (if any) as the Director thinks fit.

- (3) Information about an environmental study and information about a draft regional environmental plan may be notified under this section at the same time or at different times.
- (4) A person to whom information is notified under this section may comment to the Director on the preparation of the environmental study or draft regional environmental plan within 28 days after the Director notifies the information.

Schedule 3 Amendments relating to inconsistencies between different kinds of environmental planning instruments

(Section 3)

Section 36

Omit the section. Insert instead:

36 Inconsistency between instruments

- (1) In the event of an inconsistency between environmental planning instruments, then, to the extent of the inconsistency and unless otherwise provided:
 - (a) there is no general presumption that an environmental planning instrument of one kind prevails over an environmental planning instrument of another kind, and
 - (b) the provisions of a later environmental planning instrument prevail over those of an earlier environmental planning instrument, whether of the same or a different kind.
- (2) A State environmental planning policy prevails over a regional environmental plan or a local environmental plan made before or after the policy to the extent of any inconsistency, if the policy expressly so provides.
- (3) A regional environmental plan prevails over a local environmental plan made before or after the regional environmental plan to the extent of any inconsistency, if the regional environmental plan expressly so provides.
- (4) Nothing in this section prevents an environmental planning instrument from being expressly amended by a later environmental planning instrument, of the same or a different kind, to provide for the way in which an inconsistency between them is to be resolved.

Schedule 4 Amendments allowing modification of certain approvals

(Section 3)

[1] Section 115A Requirement for Minister's approval

Insert after section 115A (3):

- (4) When considering whether to modify an approval granted under this Division, the Minister is required to review the decision of the proponent to modify the activity having regard to the assessment of the modification under this Part and the rights and obligations of the proponent.

[2] Section 115B Minister's approval

Omit section 115B (4)–(6).

[3] Sections 115BA and 115BB

Insert after section 115B:

115BA Modification of Minister's approval

- (1) A reference in this section to a *modification of an approval* is a reference to revoking or varying a condition of the approval or imposing an additional condition on the approval.
- (2) A proponent may request the Minister to modify an approval granted under this Division if the proponent intends to modify the approved activity so that it will be inconsistent with the approval.
- (3) A proponent does not need to obtain the Minister's modification of an approval if the activity as modified will be consistent with the approval.
- (4) The proponent must consider in accordance with section 111 the environmental impact of the modification of the activity. For that purpose, a reference in that section to an activity is taken to be a reference to the activity only to the extent that it is proposed to be modified.

- (5) A modification of an approval may be sought:
 - (a) if a further environmental impact statement is required under this Part because of the proposed modification of the activity, only after the proponent has complied with section 112 (1) (a)–(c) in respect of the proposed modified activity, or
 - (b) if a further environmental impact statement is not so required, only after particulars of the proposed modification of the activity have been publicly exhibited in accordance with the regulations.
- (6) If a proponent requests modification of an approval under this Division, the Minister is required to modify the approval (with or without conditions or revising the requested modification) or disapprove of the modification. The Minister is to notify the proponent of the decision and indicate the reasons for any conditions or revision of the requested modification or any disapproval of the modification of the approval.
- (7) The Minister, when modifying an approval, must consider in accordance with section 111 the environmental impact of the modification of the activity. For that purpose, a reference in that section to an activity is taken to be a reference to the activity only to the extent that it is proposed to be modified.
- (8) If the Minister has directed that an inquiry be held in accordance with section 119 with respect to the proposed modification of the approval, the Minister is to defer a decision on the modification until the proponent advises the Minister whether it proposes to proceed with or revise the requested modification following its consideration of the findings and recommendations of the Commission of Inquiry and any advice of the Minister.
- (9) The Minister's decision on a modification of an approval is to be made within 21 days after:
 - (a) the Minister receives the Director's report under section 115C, or

- (b) the proponent advises the Minister that it proposes to proceed with or revise the requested modification, if subsection (8) applies.

The proponent may agree to an extension of the period.

- (10) If the Minister's decision is not made within the period required by subsection (9), the Minister is taken to have modified the approval as requested by the proponent. This subsection does not affect any obligation of the proponent under the other Divisions of this Part.

115BB Reports and consultation

- (1) Before deciding whether to grant or modify an approval under this Division, the Minister is to obtain a report from the Director under section 115C. A report is not required if the Minister has directed that an inquiry be held in accordance with section 119.
- (2) If the proponent is not a Minister, the Minister is to consult the Minister responsible for the proponent before making a decision under this Division.
- (3) When making a decision under this Division, the Minister is to take into account any report of the Director under section 115C, any findings or recommendations of a Commission of Inquiry and (if the proponent is not a Minister) any submission from the Minister responsible for the proponent.

[4] Section 115C Director's report

Insert after section 115C (1):

- (1A) The Director is also to report to the Minister on the assessment of a proposed modification of an activity for which the Minister's approval is required under this Division, whether or not a further environmental impact statement is required under this Part.

[5] Section 115C (2)

Insert "relating to the granting of an approval under this Division or the modification of such an approval (if an environmental impact statement is required)" after "report".

[6] Section 115C (2A)

Insert after section 115C (2):

- (2A) When preparing a report relating to the modification of an approval granted under this Division (if an environmental impact statement is not required), the Director is to examine the representations made in response to the public exhibition of the proposal, any submissions from the proponent and any other thing the Director considers relevant.

[7] Section 115C (4)

Insert “or within 30 days after the proponent seeks the Minister’s modification of such an approval” after “activity”.

[8] Section 115C (5)

Insert “, or the Minister’s modification of such an approval,” after “Division”.

[9] Section 115E Miscellaneous provisions

Omit section 115E (2) and (3). Insert instead:

- (2) The following are to be made public:
- (a) a decision of the Minister to approve (with or without conditions or modification) or to disapprove of an activity under this Division (together with any report of the Director under section 115C),
 - (b) a decision of the Minister to modify (with or without conditions) an approval of an activity under this Division or to refuse to modify such an approval (together with any report of the Director under section 115C),

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Amendment removing requirement for Minister's consent for certain proceedings for offences Schedule 5

Schedule 5 Amendment removing requirement for Minister's consent for certain proceedings for offences

(Section 3)

Section 127 Proceedings for offences

Omit section 127 (6).

Schedule 6 Amendments providing for joint exhibition of development application and draft amendment of environmental planning instrument

(Section 3)

Part 3 Division 4B

Insert after Division 4A of Part 3:

Division 4B Instrument amendments and development applications

72I Application of Division

This Division applies if a development application is made to a consent authority for consent to carry out development that may only be carried out if an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended.

72J Making and consideration of certain development applications

Nothing in this Act prevents:

- (a) the making of a development application to a consent authority for consent to carry out development that may only be carried out if an environmental planning instrument applying to the land on which the development is proposed to be carried out is appropriately amended, or
- (b) the consideration by a consent authority of such a development application,

subject to this Division.

72K Joint exhibition of instrument and advertising of application

- (1) Public notice that is required to be given under this Act in connection with the preparation and making of a draft environmental planning instrument and notice that is

required to be given under this Act of a development application in circumstances where this Division applies are to be given by the same notice.

- (2) The period during which the public may inspect the draft environmental planning instrument and the development application, if those periods are different, is to be the longer of them.
- (3) If the draft environmental planning instrument proposes to make the development the subject of the development application designated development, the period for public inspection of the development application that is to be relevant in determining the period for public inspection under subsection (2) is the period relevant to the inspection of a development application for designated development.

72L Commission of Inquiry

Nothing in this Act prevents the Minister from directing that a single inquiry be held, in accordance with section 119, by a Commission of Inquiry into both a draft environmental planning instrument and a development application that are being dealt with under this Division.

Schedule 7 Amendment allowing non-discretionary development standards for development

(Section 3)

Section 90A

Insert after section 90:

90A Compliance with non-discretionary development standards

- (1) In this section, *non-discretionary development standards* means development standards that are identified in an environmental planning instrument as non-discretionary development standards.
- (2) If an environmental planning instrument contains non-discretionary development standards and development the subject of a development application complies with those standards, the consent authority:
 - (a) is not entitled to take those standards into further consideration in determining the development application, and
 - (b) must not refuse the application on the ground that the development does not comply with those standards, and
 - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under sections 90 and 91 is limited accordingly.

- (3) If an environmental planning instrument contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

- (a) subsection (2) does not apply and the discretion of the consent authority under sections 90 and 91 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Schedule 8 Amendments allowing Commissions of Inquiry of specified scope

(Section 3)

[1] Section 86A Effect of inquiry by Commission of Inquiry on determination of development application

Omit “the environmental aspects of proposed development” from section 86A (1).

Insert instead “proposed development, or part of any such proposed development.”.

[2] Section 96 Circumstances in which consent is taken to have been refused

Omit “into the environmental aspects of which” from section 96 (1) (d).

Insert instead “, or part of development, about which”.

[3] Section 119 Public inquiry

Omit section 119 (1) (b) and (c). Insert instead:

(b) all or any of the environmental aspects of proposed development the subject of a development application (whether or not it is designated development), or of a part of any such proposed development, or

(c) all or any of the environmental aspects of an activity referred to in section 112 (1), or of a part of any such activity, or

[4] Section 119 (8)

Omit “into the environmental aspects of proposed development (other than designated development)”.

Insert instead “with respect to proposed development (other than designated development), or part of any such proposed development.”.

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Amendment allowing regulations to apply, adopt or incorporate publications as in force from time to time Schedule 9

**Schedule 9 Amendment allowing regulations to
apply, adopt or incorporate
publications as in force from time to
time**

(Section 3)

Section 157 Regulations

Insert after section 157 (2):

- (3) A regulation may apply, adopt or incorporate any publication as in force from time to time.

Schedule 10 Amendments for the purpose of statute law revision

(Section 3)

[1] Section 4 Definitions

Insert after section 4 (11):

- (12) Without affecting the generality of section 8 (b) of the *Interpretation Act 1987*, a reference in this Act to the owner or lessee of land includes a reference to joint or multiple owners or lessees of land.

[2] Section 26 Contents of environmental planning instruments

Omit section 26 (g). Insert instead:

- (g) controlling advertising,

[3] Section 91A Determination of Crown development applications

Omit section 91A (2). Insert instead:

- (2) The applicant or the consent authority may refer the development application to the Minister if it has not been determined by the consent authority within 60 days after being lodged with the consent authority.

[4] Section 92 Notice to applicant of determination of development application

Omit “of the determination” from section 92 (2).

Insert instead “on which the application was determined”.

[5] Section 93 Date from which consent operates

Omit “of consent” from section 93 (1) (a) and (b) wherever occurring.

Insert instead “from which the consent operates”.

[6] Section 106 Definition of “existing use”

Omit section 106 (b). Insert instead:

- (b) the use of a building, work or land:
 - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and
 - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

Schedule 11 Savings and transitional amendments

(Section 3)

[1] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1) in Part 1:

Environmental Planning and Assessment Amendment Act 1996

[2] Schedule 6, Part 3

Insert after Part 2:

Part 3 Environmental Planning and Assessment Amendment Act 1996

4 References to joint and multiple owners and lessees of land

Section 4 (12), as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, is taken to have commenced on 1 September 1980.

5 Instruments controlling advertising

Section 26 (g), as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, extends to environmental planning instruments made, or in the course of preparation, before it was so inserted.

6 Relationship between instruments

Section 36, as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, extends to environmental planning instruments that took effect before that section was so inserted.

7 Amendment of draft instruments

Part 3, as amended by an item of Schedule 1 to the *Environmental Planning and Assessment Amendment Act 1996*, extends to environmental planning instruments in the course of preparation before that item commenced.

8 Preparation of draft regional environmental plans

Sections 41 and 45, as amended by an item of Schedule 2 to the *Environmental Planning and Assessment Amendment Act 1996*, apply only to environmental studies and draft regional environmental plans if their preparation commences after that item commences.

9 Joint exhibition of development application and draft environmental planning instrument

Division 4B of Part 3 extends to a development application made to a consent authority but not finally determined before the commencement of that Division.

10 Compliance with non-discretionary development standards

Section 90A extends to a development application made to a consent authority but not finally determined before the commencement of that section.

11 Date from which development consent operates

A date endorsed pursuant to section 92 on a notice and described on the notice as the “date of consent” is taken to be the date from which the consent becomes effective and operates, if the date was so endorsed before sections 92 (2) and 93 (1) were amended by the *Environmental Planning and Assessment Amendment Act 1996*.

12 Existing uses

Section 106 (b), as inserted by the *Environmental Planning and Assessment Amendment Act 1996*, is taken to have commenced on 1 September 1980.

13 Modification of approvals under Division 4 of Part 5

Division 4 of Part 5, as amended by an item of Schedule 4 to the *Environmental Planning and Assessment Amendment Act 1996*, extends to approvals granted by the Minister under that Division before the commencement of that item.

14 Minister's consent for certain proceedings

Section 127, as amended by the *Environmental Planning and Assessment Amendment Act 1996*, extends to proceedings for offences alleged to have been committed before the commencement of Schedule 5 to that Act.

[Minister's second reading speech made in—
Legislative Assembly on 22 November 1995
Legislative Council on 26 June 1996]