



New South Wales

Environmental Planning and Assessment Amendment Act 2012 No 93

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New South Wales

Environmental Planning and Assessment Amendment Act 2012 No 93

Act No 93, 2012

An Act to amend the *Environmental Planning and Assessment Act 1979* and other Acts with respect to housing and other development; and for other purposes.
[Assented to 21 November 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Amendment Act 2012*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Sections 1 and 2 and Subschedules 2.6 and 2.9 commence on the date of assent to this Act.
- (3) Subschedules 2.1, 2.2, 2.7 and 2.8 commence on 12 December 2012.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203

[1] Section 74BA

Insert after section 74B:

74BA Purpose and status of development control plans

- (1) The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:
 - (a) giving effect to the aims of any environmental planning instrument that applies to the development,
 - (b) facilitating development that is permissible under any such instrument,
 - (c) achieving the objectives of land zones under any such instrument.

The provisions of a development control plan made for that purpose are not statutory requirements.

- (2) The other purpose of a development control plan is to make provisions of the kind referred to in section 74C (1) (b)–(e).
- (3) Subsection (1) does not affect any requirement under Division 3 of Part 4 in relation to complying development.

[2] Section 74C Preparation of development control plans

Omit section 74C (1) (a). Insert instead:

- (a) to provide the guidance referred to in section 74BA (1), or

[3] Section 74C (5)

Omit the subsection. Insert instead:

- (5) A provision of a development control plan (whenever made) has no effect to the extent that:
 - (a) it is the same or substantially the same as a provision of an environmental planning instrument applying to the same land, or
 - (b) it is inconsistent or incompatible with a provision of any such instrument.

[4] Section 79BA Consultation and development consent—certain bush fire prone land

Insert after section 79BA (1B):

- (1C) The regulations may exclude development from the application of this section subject to compliance with any requirements of the regulations. The regulations may (without limiting the requirements that may be made):
- (a) require the issue of a certificate by the Commissioner of the NSW Rural Fire Service or other qualified person in relation to the bush fire risk of the land concerned, and
 - (b) authorise the payment of a fee for the issue of any such certificate.

[5] Section 79C Evaluation

Insert after section 79C (3):

(3A) Development control plans

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, *standards* include performance criteria.

[6] Section 94EC Contributions plans—complying development

Insert after section 94EC (2):

- (3) The regulations may make provision for or with respect to anything for which a contributions plan may make provision under this section (being provisions that apply despite anything to the contrary in the contributions plan). The regulations may

provide that the amount of a monetary contribution or levy be determined in a manner and by a person or body authorised by the regulations.

[7] Section 105 Regulations—Part 4

Omit section 105 (2).

[8] Section 109C Part 4A certificates

Insert “or standards” after “specifications” in section 109C (1) (a) (i).

[9] Section 109D Certifying authorities

Omit section 109D (1) (a). Insert instead:

- (a) a compliance certificate may be issued by:
 - (i) a consent authority, the council or an accredited certifier, or
 - (ii) a person of a class prescribed by the regulations as being authorised to issue a compliance certificate in relation to the matters to be certified,

[10] Section 109NA

Insert after section 109N:

109NA Provision of information to replacement principal certifying authorities

- (1) This section applies when a principal certifying authority (*the new principal certifying authority*) has been appointed to replace another principal certifying authority (*the old principal certifying authority*).
- (2) The new principal certifying authority may request the Building Professionals Board in writing to give a direction under this section if the new principal certifying authority is unable to obtain the prescribed information from the old principal certifying authority in relation to the matter for which the new principal certifying authority has been appointed.
- (3) The Building Professionals Board may give a direction in writing to any of the following persons to provide the prescribed information, or a copy of that information, to the new principal certifying authority within the period specified in the notice:
 - (a) the old principal certifying authority,
 - (b) a person whom the Board reasonably believes has possession of that information.

- (4) A person must not, without reasonable excuse, fail to comply with a direction given to the person by the Building Professionals Board under this section.
- (5) It is not a reasonable excuse for the purposes of subsection (4) that any person has a claim to a lien over any document or record that is prescribed information or any other right to keep such a document or record as security for payment.
- (6) In this section, *prescribed information* means the following:
 - (a) if the old principal certifying authority is not a council, the documents and records required to be kept under section 60 of the *Building Professionals Act 2005* by an accreditation holder in relation to the matter concerned,
 - (b) if the old principal certifying authority is a council, the information required to be provided to the Building Professionals Board under section 74B of the *Building Professionals Act 2005* in relation to the person who performed the certification work concerned on behalf of the council and the records required to be kept under that section by the council in relation to the matter concerned.

[11] Section 109P Satisfaction as to compliance with conditions precedent to the issue of certificates

Omit section 109P (2). Insert instead:

- (2) This section does not apply to a certifying authority (other than a council or consent authority) in relation to any Part 4A certificate or complying development certificate that the certifying authority has issued.

[12] Section 113 Publicity and examination of environmental impact statements

Omit section 113 (4).

[13] Section 121CA Compliance cost notices

Omit section 121CA (1) (c). Insert instead:

- (c) any costs or expenses relating to an investigation that leads to the giving of the order, and
- (d) any costs or expenses relating to the preparation or serving of the notice of the intention to give the order, and
- (e) any other matters associated with the order.

[14] Section 146 Bush fire prone land

Insert after section 146 (2):

- (2A) The Commissioner of the NSW Rural Fire Service may, in accordance with the regulations, review the designation of land on a bush fire prone land map for an area at any time after the map is certified and revise the map accordingly. The revised map:
- (a) becomes the bush fire prone land map for the area on being certified by the Commissioner, and
 - (b) is to be provided to the council by the Commissioner.

[15] Section 158A

Insert after section 158:

**158A Copyright in documents used for purposes of this Act—
indemnification**

- (1) A relevant person who is not entitled to copyright in a document that is part of a planning matter is taken to have indemnified all persons using the document for the purposes of this Act against any claim or action in respect of a breach of copyright in the document.
- (2) For the purposes of this section:
 - (a) a development application or an application for a complying development certificate (or an application to modify a development consent) is a planning matter, and the applicant is the relevant person, and
 - (b) an application for approval to carry out State significant infrastructure (or an application to modify an approval of State significant infrastructure) is a planning matter, and the applicant is the relevant person, and
 - (c) a Part 3A project or concept plan application within the meaning of Schedule 6A (or a request to modify an approval or concept plan under Part 3A), and any environmental assessment or report under Part 3A, is a planning matter, and the applicant is the relevant person, and
 - (d) an environmental impact statement under Part 5 or 5.1 (including any preferred infrastructure report under Part 5.1) is a planning matter, and the proponent under Part 5 or 5.1 is the relevant person, and

- (e) a planning proposal under Part 3 is a planning matter, and the person preparing the proposal is the relevant person, and
 - (f) a planning agreement referred to in section 93F is a planning matter, and the developer under the agreement is the relevant person, and
 - (g) a matter or thing under this Act that is declared by the regulations for the purposes of this section is a planning matter, and the person declared by the regulations is the relevant person in respect of that matter or thing.
- (3) For the purposes of this section, a document is part of a planning matter if it forms part of or accompanies the planning matter, or is subsequently submitted by the relevant person in support of the planning matter or is exhibited or made public in accordance with a requirement made by or under this Act in relation to the planning matter.
- (4) The regulations may limit the operation of this section.
- (5) This section extends to a planning matter that was made or submitted before the commencement of this section.

[16] Schedule 5 Paper subdivisions

Insert in alphabetical order in clause 1:

development plan costs means the following:

- (a) the costs of obtaining or preparing any reports,
- (b) the amount of any levies, fees or other charges applicable to the proposed subdivision or subdivision works,
- (c) administrative costs of the relevant authority relating to the development plan,
- (d) any other costs prescribed by the regulations for the purposes of this definition.

[17] Schedule 5, clause 1, definition of “subdivision works”

Insert after paragraph (d) of the definition:

- (e) any other purpose prescribed by the regulations for the purposes of this definition.

[18] Schedule 5, clause 3 (4) and (5)

Insert after clause 3 (3):

- (4) The Minister may repeal a subdivision order only if the Minister:
 - (a) has consulted with the relevant authority for the subdivision land and the council of the area in which the land is situated, and
 - (b) is satisfied that notice of the proposed repeal has been given to the owners of the land subject to the order in the manner prescribed by the regulations.
- (5) Subclause (2) (g) does not apply to an order amending a subdivision order.

Note. Regulations under clause 6 (3A) may require consent to be obtained to amendments to an applicable development plan.

[19] Schedule 5, clause 6 (2) (c1)

Insert after clause 6 (2) (c):

- (c1) details of the development plan costs,

[20] Schedule 5, clause 6 (2) (d)

Omit “those costs” where firstly occurring.

Insert instead “the costs referred to in paragraphs (c) and (c1)”.

[21] Schedule 5, clause 6 (3A)

Insert after clause 6 (3):

- (3A) Without limiting subclause (3), the regulations may require the consent of the owners of subdivision land to be obtained to proposed amendments to the applicable development plan in the circumstances, and in the manner, specified by the regulations.

[22] Schedule 5, clause 9 (1) and (3)

Insert “and the development plan costs” after “subdivision works” wherever occurring.

[23] Schedule 5, clause 10 (1) (a)

Insert “or development plan costs” after “subdivision works”.

[24] Schedule 5, clause 17 (1)

Insert “or development plan costs” after “subdivision works”.

[25] Schedule 5, clause 20

Insert after paragraph (b):

- (c) the effect of the repeal or amendment of a subdivision order, or of the amendment of a development plan.

[26] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Environmental Planning and Assessment Amendment Act 2012

[27] Schedule 6

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

**Part Environmental Planning and Assessment
Amendment Act 2012**

Definition

In this Part:

amending Act means the *Environmental Planning and Assessment Amendment Act 2012*.

Application of DCP amendments

- (1) The amendments made by Schedule 1 [1]–[3] and [5] to the amending Act extend to development control plans in force immediately before the commencement of those amendments.
- (2) Section 79C (3A), as inserted by the amending Act, does not apply to the determination of a development application made before the commencement of section 79C (3A).

Schedule 2 Amendment of other Acts

2.1 Annual Reports (Departments) Act 1985 No 156

Section 17 Land register

Omit the section.

2.2 Annual Reports (Statutory Bodies) Act 1984 No 87

Section 14 Land register

Omit the section.

2.3 Building Professionals Act 2005 No 115

[1] Section 8 Suspension or cancellation of accreditation

Insert at the end of section 8 (2) (g):

, or

- (h) the Board has determined, following an assessment undertaken under section 9A, that the person's accreditation should be suspended or cancelled.

[2] Section 8 (4)

Omit "(2) (c)–(g)". Insert instead "(2) (c)–(h)".

[3] Section 9A

Insert after section 9:

9A Ongoing assessment of accredited certifiers

- (1) The Board may, by notice in writing, require an accredited certifier to undertake a specified type of assessment (such as an examination) within the period specified in the notice.
- (2) The Board may issue a notice under this section for any reason.

Note. Action that may be taken by the Board following an assessment includes the suspension or cancellation of accreditation under section 8 or the imposition of conditions on, or variation of the conditions of, accreditation under section 9.

[4] Section 19 Definitions

Insert in alphabetical order in section 19 (1):

disciplinary action means any of the following action:

- (a) any action taken by the Board under section 31 (4) or by the Tribunal under section 34 (2) in respect of an accreditation holder,
- (b) the suspension of, or imposition of conditions on, a certificate of accreditation under Division 3 of Part 2.

[5] Section 31 Decision after investigation of complaint

Insert after section 31 (5):

- (5A) When considering what action should be taken under subsection (4) in relation to an accreditation holder, the Board is to take into consideration any previous disciplinary action taken against the accreditation holder. This subsection does not limit any other matter that the Board may take into consideration.

[6] Section 34 Tribunal may make certain disciplinary findings

Insert after section 34 (3):

- (3A) When considering what action should be taken under subsection (2) in relation to an accreditation holder, the Tribunal is to take into consideration any previous disciplinary action taken against the accreditation holder. This subsection does not limit any other matter that the Tribunal may take into consideration.

[7] Section 38 Definitions

Omit the definition of *disciplinary action*.

[8] Section 66 Conflicts of interest

Omit section 66 (2). Insert instead:

- (2) If an accredited certifier issues (otherwise than as a principal certifying authority) a compliance certificate within the meaning of the *Environmental Planning and Assessment Act 1979* for an aspect of development, the accredited certifier:
 - (a) does not contravene subsection (1) (a) by being involved in the design of that aspect of the development, and
 - (b) does not contravene subsection (1) (b) by being involved in the carrying out of work on that aspect of the development.

- (2A) If an accredited certifier issues (otherwise than as a principal certifying authority) a compliance certificate of the kind referred to in section 109C (1) (a) (i) of the *Environmental Planning and Assessment Act 1979* for an aspect of development, the accredited certifier does not contravene subsection (1) (e) by being related to a person who was involved in the design of that aspect of the development.

[9] Part 6, Division 4, heading

Omit “offences”. Insert instead “**matters**”.

[10] Section 73A

Omit the section. Insert instead:

73A Requirements relating to contracts for certification work

- (1) An accredited certifier must not carry out certification work for a person unless the accredited certifier, or the employer of the accredited certifier, has entered into a written contract with the person and that contract complies with the requirements (if any) of the regulations.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
 - (a) requiring contracts to contain provisions to the effect of those prescribed by the regulations,
 - (b) providing that contracts must not contain provisions to the effect of those prescribed by the regulations,
 - (c) requiring specified particulars or information to be included in contracts or to accompany contracts, for example, an information document published by the Board or another person or body,
 - (d) the time or times at which fees and charges under contracts are to be paid.
- (3) Carrying out certification work in contravention of this section is capable of being unsatisfactory professional conduct or professional misconduct.

[11] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

2.4 Building Professionals Amendment Act 2008 No 37

[1] Schedule 1 Principal amendments

Omit Schedule 1 [8], [14], [45] and [46].

[2] Schedule 2 Consequential amendments

Omit the Schedule.

2.5 Environmental Planning and Assessment Amendment Act 2008 No 36

Schedule 4.1 [2] and [17]

Omit the items.

2.6 Growth Centres (Development Corporations) Act 1974 No 49

Section 33 Misuse of information

Insert after section 33 (6):

- (7) In this section, a reference to gaining an advantage does not include a reference to Landcom (or any other public authority prescribed by the regulations) gaining an advantage.

2.7 Heritage Act 1977 No 136

Section 4 Definitions

Omit paragraph (a) of the definition of *government instrumentality* in section 4 (1).

Insert instead:

- (a) a government agency that is required to furnish details of land to Government Property NSW under section 21A of the *Government Property NSW Act 2006*, and

2.8 State Property Authority Act 2006 No 40

[1] Long title

Omit “the State Property Authority”.

Insert instead “Government Property NSW”.

[2] Long title

Omit “the Authority”. Insert instead “Government Property NSW”.

[3] Section 1 Name of Act

Omit “*State Property Authority*”. Insert instead “*Government Property NSW*”.

[4] Section 3 Definitions

Omit the definitions of *Chief Executive Officer* and *the Authority* from section 3 (1).

Insert in alphabetical order:

Chief Executive Officer means the person holding office as the Chief Executive Officer of Government Property NSW under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

Government Property NSW means Government Property NSW constituted by this Act.

[5] Parts 2 and 3 and Schedule 1, headings

Omit “**Authority**” wherever occurring.

Insert instead “**Government Property NSW**”.

[6] Section 4

Omit the section. Insert instead:

4 Constitution of Government Property NSW

There is constituted by this Act a corporation with the corporate name of Government Property NSW.

[7] Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18 and 20 (5) and clause 3 of Schedule 2

Omit “The Authority” and “the Authority” wherever occurring.

Insert instead “Government Property NSW”.

[8] Section 11 Functions—generally

Omit “Treasurer” wherever occurring. Insert instead “Minister”.

[9] Section 21A

Insert after section 21:

21A Land register of government agency property

- (1) In this section, *government agency* means a Department within the meaning of the *Annual Reports (Departments) Act 1985* or a

statutory body within the meaning of the *Annual Reports (Statutory Bodies) Act 1984*.

- (2) A government agency is required to furnish to Government Property NSW details of the following within such time and in such manner as are specified by Government Property NSW:
 - (a) all land owned or occupied by the government agency,
 - (b) the current use of that land,
 - (c) all land which is, at the time at which the details are furnished, considered by the government agency to be essential to its operations,
 - (d) all land which is, at the time at which the details are furnished, considered by the government agency not to be essential to its operations,
 - (e) in relation to land to which paragraph (d) applies that is owned or occupied by a government agency that is a statutory body:
 - (i) a valuation of the current market value of that land, and
 - (ii) the date and source of that valuation,
 - (f) such other matters relating to the land owned or occupied by the government agency as Government Property NSW may determine.
- (3) Without limiting the generality of subsection (2) (f), Government Property NSW may require a government agency to give detailed reasons and other relevant information to indicate why land to which subsection (2) (c) applies is considered by the government agency to be essential to its operations.
- (4) A government agency that is a statutory body must, at intervals of not more than 3 years, review a valuation of the current market value of land to which subsection (2) (d) applies.
- (5) Government Property NSW must cause to be kept a register which includes the details furnished to Government Property NSW under this section (or furnished under section 17 of the *Annual Reports (Departments) Act 1985* or under section 14 of the *Annual Reports (Statutory Bodies) Act 1984* before the repeal of those sections).
- (6) Government Property NSW may request the Valuer-General to provide advice on the details in the register under subsection (5) or any other matter under this section.

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- (7) Government Property NSW may exempt a government agency from compliance with such of the provisions of this section as are specified in the exemption. Government Property NSW may at any time revoke any such exemption.
 - (8) An exemption may be granted generally or subject to such conditions as Government Property NSW may specify in the exemption or in relation to such matters as may be so specified.
 - (9) A reference in this section to land owned or occupied by a government agency that is a Department is a reference to land owned or occupied, or under the control of, the Department or the Minister responsible for the Department.

[10] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Environmental Planning and Assessment Amendment Act 2012

[11] Schedule 2

Insert at the end of the Schedule:

**Part 4 Provisions consequent on enactment of
Environmental Planning and Assessment
Amendment Act 2012**

5 Definition

In this Part:

amending Act means the *Environmental Planning and Assessment Amendment Act 2012*.

**6 Change of name of State Property Authority to Government
Property NSW**

The substitution of section 4 of this Act by the amending Act effects the alteration of the name of the State Property Authority in terms of section 53 of the *Interpretation Act 1987* and accordingly that section applies.

Note. Section 53 of the *Interpretation Act 1987* provides that if an Act alters the name of a body or office:

- (a) the body or office continues in existence under its new name so that its identity is not affected, and
- (b) a reference in any Act or instrument, or in any other document, to the body or office under its former name is to be read as a reference to the body or office under its new name (except in relation to matters that occurred before the alteration took place).

2.9 Threatened Species Conservation Act 1995 No 101

[1] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Environmental Planning and Assessment Amendment Act 2012

[2] Schedule 7

Omit the heading to Part 7. Insert instead:

Part 7 Biocertification of Sydney Region Growth Centres SEPP and related EPIs

[3] Schedule 7, clause 17 Definitions

Omit the definition of *Growth Centres SEPP* from clause 17 (1).

Insert instead:

Growth Centres EPIs means the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* and any other environmental planning instrument that applies to the subject land, as in force from time to time.

[4] Schedule 7, clause 18 Biodiversity certification of Growth Centres EPIs

Omit “Growth Centres SEPP” from clause 18 (1).

Insert instead “Growth Centres EPIs”.

[5] Schedule 7, clause 18 (2) (b)

Omit the paragraph. Insert instead:

- (b) to all development and activities that may be carried out under the Growth Centres EPIs, and

[6] Schedule 7, clause 19

Omit the clause. Insert instead:

19 Effect of biodiversity certification

- (1) Section 126I applies to the subject land in the same way it applies to biodiversity certified land referred to in that section.
- (2) Subclause (1) extends to things done or omitted to be done before the substitution of this clause by the *Environmental Planning and Assessment Amendment Act 2012*.

[7] Schedule 7, clause 20 Period of biodiversity certification and clause 21 Suspension or revocation of biodiversity certification

Omit “Growth Centres SEPP” wherever occurring.

Insert instead “Growth Centres EPIs”.

[8] Schedule 7, clause 22 Part has effect from 14 December 2007

Insert after clause 22 (2):

- (3) For the purposes of this clause, biodiversity certification conferred by this Part includes biodiversity certification conferred by this Part as a consequence of any amendment made to this Part after its enactment.

[Second reading speech made in—

Legislative Assembly on 24 October 2012

Legislative Council on 14 November 2012]