



New South Wales

Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005

under the

Environmental Planning and Assessment Act 1979

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

CRAIG KNOWLES, M.P.,

Minister for Infrastructure and Planning

Explanatory note

The object of this Regulation is to make provision consequent on the commencement of the amendments made by the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* relating to environmental assessment and approval of major infrastructure and other projects.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 75Z and 157 and Schedule 6.

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Clause 1 Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005

**Environmental Planning and Assessment
Amendment (Infrastructure and Other Planning
Reform) Regulation 2005**

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Regulation 2005*.

2 Commencement

This Regulation commences on the commencement of Part 3A of the *Environmental Planning and Assessment Act 1979*.

3 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

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(Clause 3)

[1] Clause 5 What is advertised development?

Insert at the end of the clause:

- (3) A reference in subclause (1) to State significant development is a reference to development which, before the repeal of section 76A (7) of the Act, was State significant development and which (under transitional provisions of or made under the Act) continues to be subject to the former provisions of the Act relating to State significant development.

[2] Part 1A

Insert after Part 1:

Part 1A Major projects

8A Definitions

- (1) In this Part:

environmental assessment requirements for a project (including a concept plan for a project) means environmental assessment requirements prepared by the Director-General under section 75F of the Act.

project means development to which Part 3A of the Act applies.

- (2) In this Part:

- (a) a reference to the end of the public consultation period for a project or concept plan is a reference to the end of the period of 30 days referred to in section 75H (3) of the Act in relation to the project or concept plan, and
- (b) a reference to the end of the proponent's environmental assessment period for a project or concept plan is a reference to the time at which the proponent has

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complied with all of the Director-General's requirements under section 75H of the Act.

- (3) In this Part, a reference to section 75F, 75G, 75H or 75I of the Act includes, in the case of a concept plan for a project, a reference to any such section as applied by section 75N of the Act.

8B Matters for environmental assessment and Ministerial consideration

The Director-General's report under section 75I of the Act in relation to a project is to include the following matters (to the extent that those matters are not otherwise included in that report in accordance with the requirements of that section):

- (a) an assessment of the environmental impact of the project,
- (b) any aspect of the public interest that the Director-General considers relevant to the project,
- (c) the suitability of the site for the project,
- (d) copies of submissions received by the Director-General in connection with public consultation under section 75H or a summary of the issues raised in those submissions.

Note. Section 75J (2) of the Act requires the Minister to consider the Director-General's report (and the reports, advice and recommendations contained in it) when deciding whether or not to approve the carrying out of a project.

8C Time limits for dealing with applications and other matters

The following time limits are prescribed for dealing with applications and other matters under Part 3A of the Act:

- (a) The time within which the Director-General is to notify the proponent of environmental assessment requirements with respect to a project or concept plan is 28 days after the proponent requests the Director-General to prepare those requirements.
- (b) The time within which the Director-General is to accept the environmental assessment with respect to a project or concept plan, or require the proponent to submit a

revised environmental assessment, under section 75H of the Act is 21 days after the environmental assessment is received by the Director-General.

- (c) The time within which the Director-General is required to send copies of submissions received or a report of the issues raised in those submissions to the proponent and others under section 75H (5) of the Act (or to notify the proponent that no submissions were received) is 10 days after the end of the public consultation period for the project or concept plan.

8D Rejection of applications if proponent fails to comply with requirements

- (1) This clause applies to the following applications:
- (a) an application for the Minister's approval to carry out a project,
 - (b) an application for the Minister's approval for the concept plan for a project.
- (2) If:
- (a) any such application has not been duly made, and
 - (b) the Director-General has notified the proponent of the action required to ensure that the application is duly made, and
 - (c) the proponent has failed to take that action within 14 days after being so notified,

the Minister may decide to reject the application without determining whether to approve or disapprove of the carrying out of the project or to give or refuse to give approval for the concept plan (as the case requires).

- (3) If:
- (a) the proponent has failed to comply with the Director-General's requirements under section 75H of the Act in connection with an application, and
 - (b) the Director-General has notified the proponent of the requirements that have not been complied with, and

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- (c) the proponent has failed to comply with those requirements within 21 days after being so notified,
the Minister may decide to reject the application without determining whether to approve or disapprove of the carrying out of the project or to give or refuse to give approval for the concept plan (as the case requires).
- (4) An application is taken to be rejected and never to have been made when the proponent is given notice of the Minister's decision to reject the application under this clause.
- (5) The Director-General must refund to the proponent the whole of any fee paid in connection with an application that is rejected under this clause.

8E Provisions relating to appeals

- (1) **Date of receipt of notice of determination**
For the purposes of determining the commencement of the appeal period under section 75K (2) (a), 75L (3) or 75Q (2) (a) of the Act, notice of the determination concerned is received on the date that the notice is received (or taken to have been received) in accordance with section 153 of the Act.
- (2) **Proponent appeal relating to approval of project—deemed refusal**
For the purposes of section 75K (2) (b) of the Act, the date on which a pending application for approval to carry out a project is taken to have been refused for the purposes only of enabling an appeal within 3 months after the date of the deemed refusal is as follows:
 - (a) 60 days from the end of the proponent's environmental assessment period for the project, except as provided by paragraph (b) or (c),
 - (b) 120 days from the end of that period if the Director-General notifies the proponent, when notifying the environmental assessment requirements for the project, that the project involves a complex environmental assessment and approval process,
 - (c) 30 days from the end of that period if the Director-General notifies the proponent, when notifying the environmental assessment requirements for the

project, that the project does not involve a complex environmental assessment and approval process.

(3) **Proponent appeal relating to concept plan or modification of concept plan—deemed refusal**

For the purposes of section 75Q (2) (b) of the Act, a pending application for approval of a concept plan or to modify a concept plan is taken to have been refused for the purposes only of enabling an appeal within 3 months after the date of the deemed refusal is as follows:

- (a) 60 days from the end of the proponent's environmental assessment period for the concept plan, except as provided by paragraph (b) or (c),
- (b) 120 days from the end of that period if the Director-General notifies the proponent, when notifying the environmental assessment requirements for the concept plan, that the concept plan involves a complex environmental assessment and approval process,
- (c) 30 days from the end of that period if the Director-General notifies the proponent, when notifying the environmental assessment requirements for the concept plan, that the concept plan does not involve a complex environmental assessment and approval process.

(4) **Proponent appeal relating to modifications of approval**

The time within which an appeal may be made under section 75W (5) of the Act is 3 months after:

- (a) the date on which the proponent received (or is taken to have received) notice of the determination of the request for a modification of the approval for a project in accordance with section 153 of the Act, or
- (b) the expiration of the period of 40 days after the request for the modification was made during which the Minister has failed to determine the request.

8F Owner's consent or notification

- (1) The consent of the owner of land on which a project is to be carried out is required for an application for approval under Part 3A unless:

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- (a) the application is made by a public authority, or
 - (b) the application relates to a critical infrastructure project, or
 - (c) the application relates to a mining or petroleum production project.
- (2) Any such consent may be obtained at any time before the determination of the application.
- (3) If the consent of the owner of the land is not required under this clause, then the proponent is required to give notice of the application:
- (a) in the case of a project that comprises linear infrastructure—to the public by advertisement published in a newspaper circulating in the area of the project before the start of the public consultation period for the project, or
 - (b) in the case of a project that comprises mining or petroleum production—to the public by advertisement published in a newspaper circulating in the area of the project before the end of the period of 14 days after the application is made, or
 - (c) in the case of a critical infrastructure project (other than linear infrastructure or mining or petroleum production)—to the owner of the land before the end of period of 14 days after the application is made, or
 - (d) in any other case—to the owner of the land at any time before the application is made.
- (4) In this section:
- linear infrastructure*** means any linear transport or public utility infrastructure, or other projects involving multiple owners of land designated by the Director-General for the purposes of this clause.
- mining or petroleum production*** includes any activity that is related to mining or petroleum production, but does not include a project on land that is a state conservation area reserved under the *National Parks and Wildlife Act 1974*.

8G Public information about documents relating to projects

- (1) This clause applies to the duty of the Director-General under section 75X (2) of the Act to make specified documents relating to a project publicly available.
- (2) The documents are to be made available on the Department's website and in such other locations as the Director-General determines.
- (3) The documents are to be posted on the Department's website and in those other locations within 14 days of:
 - (a) in the case of a document that is an application, request or submission—the date on which the application, request or submission is made, or
 - (b) in the case of a document that is a determination of environmental assessment requirements, a report or an approval—the date on which the determination, report or approval is made or given.
- (4) In addition to the documents referred to in section 75X (2) of the Act, the Director-General is to include on the Department's website and in such other locations as the Director-General determines the following documents:
 - (a) the declaration of development as a project to which Part 3A of the Act applies or its declaration as a critical infrastructure project,
 - (b) guidelines published under section 75F or 75H of the Act,
 - (c) any environmental assessment in relation to a project that has been placed on public exhibition under section 75H of the Act,
 - (d) responses to submissions, preferred project reports and other material in relation to a project provided to the Director-General by the proponent after the end of the public consultation period (whether under section 75H (6) of the Act or otherwise),
 - (e) reports of panels under section 75G of the Act or of inquiries under section 119 of the Act in relation to a project,

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- (f) any reasons given to the proponent by the Minister as referred to in section 75X (3) of the Act.
- (5) A document may be made available on the Department's website by providing an electronic link to the document on another website.

8H Fees and charges

- (1) The fees and charges payable under Part 15 are payable in respect of projects.
- (2) For the purposes of applying Part 15 to a project, a reference in that Part:
 - (a) to a development application is a reference to an application for approval for a project or for a concept plan for a project, or
 - (b) to a consent authority is a reference to the Minister, or
 - (c) to development consent is a reference to the approval of the Minister, or
 - (d) to evaluation of proposed development under section 79C of the Act is a reference to assessment and approval of the project under Part 3A of the Act, or
 - (e) to an application for the modification of a consent under a provision of Part 4 of the Act is a reference to an application for a modification of an approval under a corresponding provision of Part 3A of the Act,but only if the project would, but for Part 3A of the Act, be development to which Part 4 of the Act applies.
- (3) The maximum fee for both an application for approval of a concept plan for a project and an application for approval of that project is the maximum fee payable for approval of the project without a prior approval of a concept plan for the project. The Director-General is to determine the percentage of that fee to be payable in connection with the application for approval of the concept plan.

Note. Clause 256 (3) of Part 15 (as applied by this clause) enables the Minister to refuse to consider an application for approval in relation to a project if the appropriate fee under this clause is not paid by the applicant.

8I Enforcement: critical infrastructure

In accordance with section 75R (5) of the Act, Division 2A of Part 6 of the Act applies to a critical infrastructure project only to the extent that it authorises the Minister or the Director-General to give an order or exercise any other function under that Division.

8J Transitional provisions

- (1) The Director-General may adopt (with or without modification), as environmental assessment requirements for a project or concept plan, environmental assessment requirements issued by the Director-General under Part 4 or under Division 4 of Part 5 of the Act with respect to any development or activity before it becomes a project to which Part 3A of the Act applies.
- (2) The Director-General may accept (with or without modification), as an environmental assessment for a project or concept plan, an environmental impact statement obtained in accordance with requirements of the Director-General under Part 4 or under Division 4 of Part 5 of the Act with respect to any development or activity before it becomes a project to which Part 3A of the Act applies.
- (3) The Director-General may accept, as a period of public availability of the environmental assessment for a project or concept plan (under section 75H (3) of the Act), a period of public exhibition of an environmental impact statement referred to in subclause (2) before the relevant development or activity becomes a project to which Part 3A of the Act applies.
- (4) Despite its repeal, section 88A of the Act continues to apply (and Part 3A of the Act does not apply) to development that is the subject of a development application that was directed to be referred to the Minister under that section before its repeal.
- (5) If a development application is made after the commencement of Part 3A of the Act in respect of any development that, immediately before the commencement of Part 3A, was declared to be State significant development by notice in force under section 76A (7) of the Act, the Minister may direct that the application is to be determined (unless the development

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application is withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.

[3] Clause 114A Applications to extend lapsing period for consent for State significant development

Omit the clause.

[4] Clause 237A

Insert before clause 238:

237A Application

This Division applies in relation to the provisions of Division 4 of Part 5 of the Act, as in force immediately before their repeal, to the extent that those provisions continue to apply to an activity by the operation of a transitional provision made by or under the Act.

[5] Clause 283 False or misleading statements

Insert “the Director-General or” after “lodged with”.

[6] Schedule 4 Planning certificates

Omit clause 3.

BY AUTHORITY