



New South Wales

Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2007

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*.

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* as follows:

- (a) to remove the requirement that multiple owners of certain land individually consent to an application for approval for a major project or a concept plan for a major project,
- (b) to make it clear that the Director-General is not required to prepare environmental assessment requirements if a previous statement or assessment under Part 4 or Part 5 of the *Environmental Planning and Assessment Act 1979* (the **EPA Act**) is accepted as an environmental assessment for the purposes of a project or concept plan under Part 3A of that Act,
- (c) to enable such a previous statement or assessment for part of a project to be accepted as such an environmental assessment,
- (d) to continue in force development consents under Part 4 of the EPA Act and approvals under Part 5 of that Act for development that has been declared to be a major project but for which approval has not been given,
- (e) to enable the Minister, if a declaration of a project under Part 3A of the EPA Act is revoked, to make determinations deeming any approval of the project to be a development consent, reviving the effect of previous actions or deeming environmental assessments under Part 3A to have effect for the purposes of Part 4 or Part 5,

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- (f) to prohibit approval for the carrying out of a major project, or for a concept plan for a project, from being given for land located within an environmentally sensitive area of the State or a sensitive coastal location, if the project is prohibited by an environmental planning instrument that would be applicable to the development but for Part 3A of the EPA Act,
- (g) to prohibit approval for the carrying out of a major project from being given for projects for which the preparation of a concept plan has not been authorised or required, if the project is prohibited by an environmental planning instrument that would be applicable to the development but for Part 3A of the EPA Act,
- (h) to set out procedures for the surrender of approvals under Part 3A of the EPA Act and existing use rights, when required as a condition of an approval under that Part,
- (i) to make law revision amendments to provisions relating to fees payable under Part 3A of the EPA Act,
- (j) to clarify provisions for giving notice of planning agreements,
- (k) to make consequential amendments to reflect the power contained in section 94CA of the EPA Act to impose conditions under section 94 or 94A of the EPA Act for the provision of a public amenity or public service on land in another State or Territory,
- (l) to make consequential amendments as a result of the removal of subjective considerations for the issue of construction certificates and occupation certificates,
- (m) to require planning certificates to disclose any direction by the Minister for Planning, affecting land on which a major project is to be carried out, that a provision of an environmental planning instrument does not apply to the land,
- (n) to prescribe certain offences under the EPA Act for which penalty notices may be given,
- (o) to make other minor amendments.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 75J (3), 75K (2) (b), 75O (3), 75YA, 75Z, 75ZA (2), 81A (5), 85A, 93L, 94EA (3), 109H, 109J, 127A, 149 (4) and 157 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2007*.

2 Commencement

This Regulation commences on 20 July 2007.

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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Schedule 1 Amendments

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(Clause 3)

[1] Clause 8A Definitions

Insert in alphabetical order in clause 8A (1):

project application means:

- (a) an application for the Minister's approval to carry out a project under Part 3A of the Act, or
- (b) an application for the Minister's approval for a concept plan for a project under Part 3A of the Act, or
- (c) a single application for both an approval to carry out a project under Part 3A of the Act and for a concept plan for a project under that Part.

[2] Clause 8D Rejection of applications if proponent fails to comply with requirements

Omit clause 8D (1). Insert instead:

- (1) This clause applies to project applications.

[3] Clause 8E Provisions relating to appeals

Insert "the date on which" before "a pending application" in clause 8E (3).

[4] Clause 8F Owner's consent or notification

Omit "an application for approval under Part 3A of the Act" from clause 8F (1).

Insert instead "a project application".

[5] Clause 8F (1) (e)

Insert at the end of clause 8F (1) (d):

, or

- (e) the application relates to a project on land with multiple owners designated by the Director-General for the purposes of this clause.

[6] Clause 8F (3) (a)

Insert "or a project designated under subclause (1) (e)" after "linear infrastructure project".

[7] Clause 8F (4), definition of “linear infrastructure project”

Omit “, or any other development on land with multiple owners designated by the Director-General for the purposes of this clause”.

[8] Clause 8J Transitional provisions

Insert “or part of a project” after “project” where firstly occurring in clause 8J (2).

[9] Clause 8J (2) (a), (b) and (c) and (3)

Insert “or part of a project” after “project” wherever occurring.

[10] Clause 8J (2A)

Insert after clause 8J (2):

(2A) If the Director-General accepts (with or without modification) an environmental impact statement, a statement of environmental effects or a written assessment as an environmental assessment for a project or part of a project or a concept plan:

- (a) the Director-General is taken to have prepared environmental assessment requirements in respect of the project or part of a project or concept plan, and
- (b) the environmental assessment as so accepted is taken to comply with those requirements.

[11] Clauses 8M–8P

Insert after clause 8L:

8M Transitional provisions—development consents under Part 4 of Act and approvals under Part 5 of Act

- (1) If development is declared to be a project under Part 3A of the Act as referred to in section 75ZA (1) of the Act, any development consent under Part 4 of the Act or approval under Part 5 of the Act that authorises the carrying out of all or part of the development continues in force but ceases to have effect when the project is approved under Part 3A of the Act.
- (2) If a declaration of a project under Part 3A of the Act is revoked before or after approval has been given under that Part to carry out the project, the Minister may make any of the following determinations:
 - (a) that the whole or part of the effect of the approval is preserved and is taken to be a development consent granted under Part 4 of the Act by an appropriate consent authority nominated by the Minister,

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- (b) that the whole or a specified part of an action under Part 4 or Part 5 of the Act in respect of the whole or part of a project is revived and has effect,
 - (c) that an environmental assessment under Part 3A of the Act is to be recognised for the purpose of complying with a specified environmental assessment requirement under Part 4 or Part 5 of the Act.
- (3) A determination of the Minister under subclause (2) has effect on the revocation of the declaration of the project.
 - (4) Subclause (2) does not apply if a project ceases to be a project to which Part 3A of the Act applies because of section 75P (1) (b) of the Act.

8N Projects or concept plans for which approval may not be given concerning environmentally sensitive land or sensitive coastal locations

- (1) For the purposes of sections 75J (3) and 75O (3) of the Act, approval for a project application may not be given under Part 3A of the Act for any project, or part of a project, that:
 - (a) is located within an environmentally sensitive area of State significance or a sensitive coastal location, and
 - (b) is prohibited by an environmental planning instrument that would not (because of section 75R of the Act) apply to the project if approved.
- (2) To avoid doubt, a project is not prohibited for the purposes of subclause (1) (b) if:
 - (a) it is not permitted because of the application of a development standard under the environmental planning instrument, or
 - (b) it is prohibited under the environmental planning instrument but is permitted to be carried out because of the application of another environmental planning instrument to the environmental planning instrument.
- (3) In this clause:
 - environmentally sensitive area of State significance* has the same meaning as it has in *State Environmental Planning Policy (Major Projects) 2005*.
 - sensitive coastal location* has the same meaning as it has in clause 1 of Schedule 2 to *State Environmental Planning Policy (Major Projects) 2005*.

8O Other projects prohibited by environmental planning instruments for which project approval may not be given

- (1) For the purposes of section 75J (3) of the Act, approval for the carrying out of a project may not be given under Part 3A of the Act for any project, or part of a project, that:
 - (a) is not the subject of an authorisation or requirement under section 75M of the Act to apply for approval of a concept plan, and
 - (b) is prohibited by an environmental planning instrument that would not (because of section 75R of the Act) apply to the project if approved.
- (2) To avoid doubt, a project is not prohibited for the purposes of subclause (1) (b) if:
 - (a) it is not permitted because of the application of a development standard under the environmental planning instrument, or
 - (b) it is prohibited under the environmental planning instrument but is permitted to be carried out because of the application of another environmental planning instrument to the environmental planning instrument.
- (3) This clause does not apply to a project for which the giving of approval is prohibited by clause 8N.

8P Surrender of approvals given under Part 3A of Act or existing use rights

- (1) A surrender of an approval under Part 3A of the Act or a right conferred by Division 10 of Part 4 of the Act (referred to in section 75YA of the Act) is to be made by giving to the Director-General a notice in writing of the surrender of the approval or right.
- (2) The notice must contain the following information:
 - (a) the name and address of the person by whom the notice is given,
 - (b) the address, and formal particulars of title, of the land to which the approval or right relates,
 - (c) a description of the approval or right to be surrendered,
 - (d) if the person giving notice is not the owner of the land, a statement by the owner of the land to the effect that the owner consents to the surrender of the approval or right.

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- (3) A duly signed and delivered notice of surrender of an approval or right conferred by Division 10 of Part 4 of the Act takes effect on the date determined by the Director-General and operates, according to its terms, to surrender the approval or right to which it relates.

[12] Clause 25D Public notice of planning agreements

Omit clause 25D (1). Insert instead:

- (1) If a planning authority proposes to enter into a planning agreement, or an agreement to amend or revoke a planning agreement, in connection with a development application or a project application, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation is given:
- (a) in the case of an agreement in connection with a development application:
 - (i) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of the development application that is required to be given by a consent authority for a development application by or under the Act, or
 - (ii) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of the development application that is required to be given by a consent authority for a development application by or under the Act and in the manner determined by the planning authorities that are parties to the agreement, or
 - (b) in the case of an agreement in connection with a project application:
 - (i) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of an environmental assessment in connection with the application that is required to be given by the Director-General by or under the Act, or
 - (ii) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of an environmental assessment for the project that is required to be given by the Director-General by or under the Act and in the manner determined by the planning authorities that are parties to the agreement.

[13] Clause 25D (1A) (a)

Omit “by the planning authority”.

[14] Clause 25D (1A) (b)

Omit the paragraph. Insert instead:

- (b) if it is not practicable for notice to be given contemporaneously, as soon as possible after any public notice of the relevant draft local environmental plan that is required to be given under section 66 (1) of the Act and in the manner determined by the planning authorities that are parties to the agreement.

[15] Clause 25D (2A)

Insert after clause 25D (2):

- (2A) In the case of a planning agreement of a kind other than an agreement referred to in subclause (1), (1A) or (2) of which public notice is required to be given under section 93G of the Act, the Director-General is to ensure that public notice of the proposed agreement, amendment or revocation is given not less than 28 days before the agreement is entered into or amended or revoked and in the manner determined by the planning authorities that are parties to the agreement.

[16] Clause 25D (4)

Insert after clause 25D (3) and before the note:

- (4) In this clause:
project application has the same meaning as it has in Part 1A.

[17] Clause 26 In what form must a contributions plan be prepared?

Insert after clause 26 (2):

- (2A) Despite subclause (2), a contributions plan may be made for land outside the council’s area for the purposes of a condition referred to in section 94CA of the Act.

[18] Clause 27 What particulars must a contributions plan contain?

Insert “to which the plan applies” after “area” in clause 27 (1) (c).

[19] Clause 130 Procedure for determining application for complying development certificate

Omit “it is satisfied that” from clause 130 (1).

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- [20] Clause 143 Fire protection and structural capacity**
Omit “it is satisfied that” from clause 143 (1) (a) and (b) and (3) wherever occurring.
- [21] Clause 145 Compliance with development consent and Building Code of Australia**
Omit “it is satisfied of the following matters” from clause 145 (1).
- [22] Clause 145 (1)**
Omit “that the” wherever occurring. Insert instead “the”.
- [23] Clause 145 (1) (a1)**
Omit “requires,”. Insert instead “requires, and”.
- [24] Clause 145 (1) (a)**
Omit “consent,”. Insert instead “consent, and”.
- [25] Clause 145 (2)**
Omit “it is satisfied that”.
- [26] Clause 146 Compliance with conditions of development consent**
Omit “it is satisfied that”.
- [27] Clause 153 Fire safety certificates: section 109H**
Omit clause 153 (1). Insert instead:
- (1) For the purposes of section 109H (5) (d) and (6) (c) of the Act, a final occupation certificate authorising a person:
 - (a) to commence occupation or use of a new building, or
 - (b) to commence a change of use for an existing building,must not be issued unless a final fire safety certificate has been issued for the building.
- [28] Clause 153 (2)**
Omit the subclause. Insert instead:
- (2) For the purposes of section 109H (3) (d) and (4) (c) of the Act, an interim occupation certificate authorising a person:
 - (a) to commence occupation or use of a partially completed new building, or

- (b) to commence a change of use for part of an existing building,
must not be issued unless a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.

[29] Clause 154 Health and safety: section 109H

Omit clause 154 (1). Insert instead:

- (1) For the purposes of section 109H (3) (d) and (4) (c) of the Act, an interim occupation certificate authorising a person:
- (a) to commence occupation or use of a partially completed new building, or
- (b) to commence a change of building for use for part of an existing building,
must not be issued unless the building will not constitute a hazard to the health or safety of the occupants of the building.

[30] Clause 154B Fulfilment of BASIX commitments

Omit “it is satisfied that” from clause 154B (2).

[31] Clause 245A Definitions

Omit “in a newspaper circulating throughout the State” from the definition of *public notice*.

Insert instead “in accordance with Part 3A of the Act”.

[32] Clause 245C Payment of fees for Part 3A applications

Omit “applicant” wherever occurring. Insert instead “proponent”.

[33] Clause 245H Maximum fee for applications relating to critical infrastructure payments

Omit “applicant” from clause 245H (2). Insert instead “proponent”.

[34] Clause 245L Fee for assessment of project by panel of experts

Omit “applicant” wherever occurring in clause 245L (4).

Insert instead “proponent”.

[35] Clause 277 Public authorities

Omit clause 277 (1).

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[36] Schedule 4 Planning certificates

Insert with appropriate clause number at the end of the Schedule:

Directions under Part 3A

If there is a direction by the Minister in force under section 75P (2) (c1) of the Act that a provision of an environmental planning instrument prohibiting or restricting the carrying out of a project or a stage of a project on the land under Part 4 of the Act does not have effect, a statement to that effect identifying the provision that does not have effect.

[37] Schedule 5 Penalty notice offences

Insert in appropriate order in Columns 1 and 2, respectively, of the matter relating to offences under the Act:

Section 125 (1) of the Act in relation to contravention of section 75D	\$1,500
Section 125 (1) of the Act in relation to contravention of section 122E (3)	\$1,500
Section 125 (1) of the Act in relation to contravention of order No 18 in Table to section 121B (1)	\$1,500

BY AUTHORITY
