



New South Wales

Nation Building and Jobs Plan (State Infrastructure Delivery) Amendment (Planning Legislation) Regulation 2011

under the

Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*.

KRISTINA KENEALLY, MP
Premier

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Act 1979* in order to restore the operation of that Act in relation to certain infrastructure projects carried out under the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*. The amendments:

- (a) deem authorisations given for infrastructure projects under the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*, and certified for that purpose, to be development consents, subject to the conditions specified in those authorisations, and
- (b) deem infrastructure projects under the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*, for which an authorisation was not required, to be exempt development, and
- (c) provide for the application of provisions of the *Environmental Planning and Assessment Act 1979* to those infrastructure projects, in particular provisions for the modification of development consents and relating to the erection and use of buildings.

This Regulation is made under section 29 of the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*.

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Clause 1 Nation Building and Jobs Plan (State Infrastructure Delivery) Amendment
(Planning Legislation) Regulation 2011

**Nation Building and Jobs Plan (State Infrastructure
Delivery) Amendment (Planning Legislation) Regulation
2011**

under the

Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009

1 Name of Regulation

This Regulation is the *Nation Building and Jobs Plan (State Infrastructure Delivery) Amendment (Planning Legislation) Regulation 2011*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

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

Schedule 6 Savings, transitional and other provisions

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

Part Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009

Definitions

In this Part:

authorisation means an authorisation under section 24 of the Nation Building Act to carry out an infrastructure project.

Co-ordinator General means the NSW Infrastructure Co-ordinator General.

infrastructure project has the same meaning as in the Nation Building Act.

nation building consent means an authorisation declared to be a development consent under this Part.

the Nation Building Act means the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*.

Authorisations declared to be development consents

- (1) An authorisation is declared to be a development consent under this Act for the development comprising the infrastructure project if the Co-ordinator General has certified in writing that this Part applies to the project.
- (2) This Act, as modified by this Part and with any other necessary modifications, applies to a nation building consent as if it were a development consent granted under this Act and to any conditions of that consent as if they were conditions of a development consent.
- (3) A nation building consent is, for the purposes of this Act, taken to have been effective and to operate from the date the relevant authorisation was granted under the Nation Building Act.
- (4) For the purposes of this Act and any instrument made under this Act, the consent authority for a nation building consent is the council for the area in which the infrastructure project is situated or, if the project is situated in the Western Division, the Western Lands Commissioner.

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

- (5) In any instrument, a reference:
- (a) to an authorisation that has been declared by this Part to be a development consent under this Act is taken to be a reference to a development consent, and
 - (b) to a condition of any such authorisation is taken to be a reference to a condition of the development consent, and
 - (c) to the NSW Infrastructure Co-ordinator General in respect of any such development consent is taken to be a reference to the consent authority referred to in subclause (4).

Infrastructure projects taken to be exempt development

Development for the purposes of an infrastructure project is taken to be exempt development for the purposes of this Act if:

- (a) it is the subject of an order under section 23 (1) (a) of the Nation Building Act, and
- (b) an authorisation under section 24 of that Act was not required for the carrying out of the project, and
- (c) the Co-ordinator General has certified in writing that this Part applies to the project or a class of projects of which the project is a member.

Certification of infrastructure projects

- (1) The Co-ordinator General must notify the council of the area in which an infrastructure project is situated in writing if the Co-ordinator General certifies that this Part applies to the project, or a class of projects of which the project is a member.
- (2) The Co-ordinator General must keep a register of certificates given under this Part. The register is to be kept in the form and manner determined by the Co-ordinator General.
- (3) A council must keep a register of notices given under this clause for infrastructure projects situated in the area of the council.
- (4) A register kept by a council under this clause may form part of the register kept by the council under section 100.
- (5) Section 100 (2) applies to a register kept by a council under this clause.
- (6) If a council is given notice under this clause that this Part applies to an infrastructure project, or a class of projects of which an infrastructure project is a member, the council is not required to include advice about previous exemptions or authorisations

under the Nation Building Act in any planning certificate issued for the land concerned under section 149 of this Act.

Application of EPA Act to nation building consents generally

- (1) Divisions 1–6A (other than section 81A), 8 and 10 of Part 4 of this Act, and sections 95, 95A, 96AA, 96A, 100 and 101, do not apply to a nation building consent except to the extent that any of those provisions are applicable because of the operation of section 96 in respect of a modification to the nation building consent.
- (2) Section 96 applies to a nation building consent with the following modifications:
 - (a) the consent authority must not consider any provisions of an environmental planning instrument, proposed environmental planning instrument or development control plan insofar as they prohibit the proposed modification,
 - (b) the consent authority must not refuse to consent to the application for modification on the ground that the application does not comply with non-discretionary development standards in a regulation or an environmental planning instrument, if the non-compliance is of a kind already permitted under the nation building consent,
 - (c) section 96 (5) does not apply.
- (3) If a nation building consent relates to particular development for the purposes of an educational establishment, any other development for the purposes of an educational establishment is taken to be substantially the same development for the purposes of section 96.
- (4) If a nation building consent relates to particular development for the purposes of affordable housing or seniors housing, any other development for the purposes of residential accommodation (other than affordable housing or seniors housing) is taken not to be substantially the same development for the purposes of section 96.