



New South Wales

Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2018

under the

Environmental Planning and Assessment Act 1979

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

ANTHONY ROBERTS, MP
Minister for Planning

Explanatory note

The object of this Regulation is to amend the regulations under the *Environmental Planning and Assessment Act 1979* (*the principal Act*) in connection with the enactment of the *Environmental Planning and Assessment Amendment Act 2017* (*the amending Act*) as follows:

- (a) to continue arrangements applying before the enactment of the amending Act for applications for certain minor modifications of development consents in relation to regionally significant development to be dealt with by councils rather than by a Sydney district or regional planning panel,
- (b) to ensure a Minister may continue to be appointed as the consent authority for development following the enactment by the amending Act of detailed provisions relating to the designation of the consent authority for development,
- (c) to make a transitional provision consequent on the Independent Planning Commission (instead of the Minister) becoming the consent authority for State significant development,
- (d) to extend to proposed modifications that involve minimal environmental impact or modification of consents granted by the Land and Environment Court an existing transitional provision dealing with modifications of previously approved former Part 3A projects that relate to substantially the same development as the development as last modified,
- (e) to provide that requests to modify previously approved former Part 3A projects that cannot be dealt with under that Part (as continued under the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*) because they are made after 1 September 2018 or because insufficient information has been provided cannot be dealt with under the corresponding provisions of the principal Act,
- (f) to ensure certain previously approved Part 3A projects that are declared to be critical infrastructure projects or that have become State significant infrastructure will be subject to provisions of the principal Act relating to that category of development,
- (g) to ensure penalty notices may continue to be issued for failure to comply with a brothel closure order,
- (h) to make a savings provision to continue provisions for development control orders in relation to the enforcement of former Part 3A project approvals,

- (i) to make a savings provision to continue an offence for the carrying out of a Part 3A project without the approval of the Minister for Planning or in contravention of the conditions of such an approval.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 1.4 (1) (definition of *public authority*), 4.7 (2), 10.13 (the general regulation-making power) and 10.15.

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2018*.

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 Regulation 2000

[1] Clause 123BA

Insert after clause 123B:

123BA Functions exercisable by council on behalf of regional panel

The following consent authority functions of a Sydney district or regional planning panel are prescribed under section 4.7 (2) (h) of the Act as functions to be exercised on behalf of a panel by the council of the area concerned:

- (a) the determination of applications to modify a development consent under section 4.55 (1) of the Act,
- (b) the determination of applications to modify a development consent under section 4.55 (1A) of the Act.

[2] Clause 123D Provisions of Act not to apply as if regional panels were councils

Omit the clause.

[3] Clause 123E Procedural matters related to determination of development applications

Omit “section 80 (3) or 80A (2) of the Act” from clause 123E (2).

Insert instead “section 4.16 (3) or 4.17 (2) of the Act”.

[4] Clause 123F Procedural matters relating to determination of applications to modify consents

Omit “For the purposes of section 23H (a) of the Act, a regional panel may carry out consultation for the purposes of section 96 (2) (b)”.

Insert instead “A regional panel may carry out consultation for the purposes of section 4.55 (2) (b)”.

[5] Clause 123F, note

Omit the note.

[6] Clause 277 Public authorities

Insert at the end of clause 277:

- (11) To avoid doubt, a Minister of the Government of New South Wales is, for the purposes of the definition of *public authority* in section 1.4 (1) of the Act, prescribed as a public authority in relation to section 4.5 (c) of the Act.

[7] Schedule 5 Penalty notice offences

Omit “section 9.37 or failure to comply with order under Part 1 of Schedule 5 (except items 6, 10, 12 and 13) or under Part 2 of Schedule 5” from Column 1 of the table in Schedule 5.

Insert instead “section 9.37 for failure to comply with development control order (except an order referred to in item 6, 10, 12 or 13 of Schedule 5)”.

Schedule 2 Amendment of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

[1] Clause 19

Insert after clause 18:

19 References to Minister as consent authority for State significant development

- (1) In this clause:
document includes any Act, statutory instrument, contract, agreement or other instrument issued or made under or for the purposes of any Act or statutory or other instrument.
- (2) A reference in section 7.14 or 7.16 (3) of the *Biodiversity Conservation Act 2016*, or in any other document, to the Minister for Planning as consent authority for an application for development consent for State significant development includes a reference to the Independent Planning Commission as consent authority for any such application as a consequence of the enactment of section 4.5 (a) of the Act by Schedule 4.1 to the *Environmental Planning and Assessment Amendment Act 2017*.

[2] Schedule 2 Transferred transitional arrangements on repeal of Part 3A—former Schedule 6A to the Act

Omit “section 4.55 (2) of the Act (formerly section 96 (2))” from clause 3BA (6).

Insert instead “section 4.55 (1A) or (2) or 4.56 (1) of the Act”.

[3] Schedule 2, clause 5 (4) (b)

Insert after clause 5 (4) (a):

- (b) any approval under Part 3A to carry out development is taken to be approval under Division 5.2 for the carrying out of that development, and

[4] Schedule 2, clause 5 (4A)

Insert after clause 5 (4):

- (4A) Despite subclause (4), a request to modify an approved project or concept plan under section 75W that, by operation of clause 3BA (4), cannot be dealt with under that section is not taken to be an action taken under a provision of Part 5.1.

[5] Schedule 2, clause 5 (7)

Insert after clause 5 (6):

- (7) An approved project (whether approved before or after the repeal of Part 3A) that is State significant infrastructure declared under this clause and that is also declared to be a critical infrastructure project is taken to be critical State significant infrastructure declared under section 5.13 of the Act.

[6] Schedule 2, clause 6 (3A)

Insert after clause 6 (3):

- (3A) Despite subclause (3), a request to modify an approved project or concept plan under section 75W that, by operation of clause 3BA (4), cannot be dealt with under that section is not taken to be an action taken under a provision of Part 4.

[7] Schedule 2

Insert at the end of the Schedule:

22 Continuation of enforcement arrangements in relation to Part 3A approvals

- (1) In this clause:
Part 3A approval means an approval for a transitional Part 3A project, whether granted before or after the repeal of Part 3A.
- (2) A person who contravenes or fails to comply with section 75D of the Act is guilty of an offence. The maximum penalty applicable to the offence is the same maximum penalty that applies to an offence in connection with the carrying out of State significant infrastructure in contravention of an approval under Division 5.2 of the Act.
- (3) Division 9.3 of, and Schedule 5 to, the Act apply to a Part 3A approval in the same way as they apply to an approval for State significant infrastructure.
Note. A development control order in connection with State significant infrastructure may be given only by the Minister or the Planning Secretary (see section 9.35 (2) of the Act).