



New South Wales

# Environmental Planning and Assessment Further Amendment (Miscellaneous) Regulation 2018

under the

Environmental Planning and Assessment Act 1979

His Excellency the Lieutenant-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 Schedules 1 and 5 to the *Environmental Planning and Assessment Act 1979* (the *principal Act*), and the regulations made under that Act, in connection with the enactment of the *Environmental Planning and Assessment Amendment Act 2017*, as follows:

- (a) to enable the public notification of the reasons for certain decisions by reference to other documents,
- (b) to clarify an item relating to restore works orders,
- (c) to update references to the Planning Secretary and Independent Planning Commission,
- (d) to update terminology and update cross-references to the principal Act,
- (e) to make further savings and transitional provisions,
- (f) to clarify that a consent authority may refuse to grant development consent, issue a complying development certificate or issue a construction certificate on the basis that any building product or system relating to the development is prohibited under the *Building Products (Safety) Act 2017*,
- (g) to enable the Planning Secretary to reduce or waive development application fees,
- (h) to extend the date by which councils within the Greater Sydney Region must exhibit and make their first local strategic planning statements,
- (i) to extend the date by which a planning authority is required to prepare its first community participation plan,
- (j) to postpone the commencement of Part 6 (Building and subdivision certification) of the principal Act.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 1.4 (1), 3.44 (6), 3.45 (4), 3.46, 4.12 (8), 4.15 (4), 4.17 (10B), 4.17 (10C), 4.28 (4), 4.33 (2) (b), 4.55, 4.56, 4.64 (1) (g), 7.11, 7.12, 10.13 (the general regulation-making power) and Schedules 1, 2 and 5.

## **Environmental Planning and Assessment Further Amendment (Miscellaneous) Regulation 2018**

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### **1 Name of Regulation**

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

### **2 Commencement**

This Regulation commences on 1 September 2018 and is required to be published on the NSW legislation website.

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

### **[1]    Schedule 1 Community participation requirements**

Insert after clause 20 (2):

- (3)    The requirement in subclause (2) (c) may be satisfied by reference to any document that contains the reasons for decision.

### **[2]    Schedule 5 Development control orders**

Omit the matter from Column 3 of item 10 in the table to Part 1. Insert instead:

- The owner of the premises
- Any person entitled to act on a planning approval or acting in contravention of a planning approval
- In relation to work unlawfully carried out that was the deposit of material in a public place, the person responsible for unlawfully depositing material in a public place

## **Schedule 2      Amendment of Environmental Planning and Assessment Regulation 2000**

- [1] **Whole of regulation (except for clauses 100 (6), 111 (2), 123 and 167A)**  
Omit “Secretary”. Insert instead “Planning Secretary”.
- [2] **Clause 3 Definitions**  
Omit the definitions of *Class 1 aquaculture development*, *nominated integrated development* and *threatened species development* from clause 3 (1).  
Insert in alphabetical order:  
*Class 1 aquaculture development* means development that is categorised as Class 1 under *State Environmental Planning Policy No 62—Sustainable Aquaculture*.
- [3] **Clause 3B Extension of meaning of “work”**  
Omit “section 4 (2) (d)”. Insert instead “the definition of *work* in section 1.4 (1)”.
- [4] **Clause 3B**  
Omit “for the purposes of the Act”.
- [5] **Clause 22A Amendment or revocation of development control plan at Minister’s direction**  
Omit “section 74F” wherever occurring. Insert instead “section 3.46”.
- [6] **Clause 24 Application of Part to development control plans made by Planning Secretary**  
Omit “section 74C”. Insert instead “section 3.43”.
- [7] **Clause 25 Additional information requested by relevant planning authority**  
Omit “section 74D” wherever occurring. Insert instead “section 3.44”.
- [8] **Clause 25AA Assessment and preparation fees**  
Omit “section 74D” wherever occurring. Insert instead “section 3.44”.
- [9] **Clause 25AC Purchase of copies of development control plans**  
Omit “section 74E (4)” from the note. Insert instead “section 3.45 (4)”.
- [10] **Clause 25AC, note**  
Omit “section 150”. Insert instead “section 10.8”.
- [11] **Clause 25AD Further transitional provisions: 2005 Amending Act**  
Omit the clause and transfer it to Part 1B of Schedule 4 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* as clause 25AD.
- [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, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation is given:

- (a) 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
- (b) 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.

**[13] Clause 51 Rejection of development applications**

Omit “section 78A (8A)” from section 51 (1) (c). Insert instead “section 4.12 (8)”.

**[14] Clauses 59 (1) (c), 61 (1), 62 (1) (b), 66 (1) (c), 69 (1) and 70 (1) (b)**

Omit “section 79 or 79A” wherever occurring. Insert instead “Schedule 1”.

**[15] Clause 77 Notice of development application for designated development to be given to public authorities (other than concurrence authorities and approval bodies)**

Omit “At the same time as giving public notice under section 79 (1) of the Act,”.

Insert instead “For the purposes of section 4.64 (1) (g) of the Act, at the same time as giving public notice,”.

**[16] Clause 78 Information to be contained in notice for designated development**

Omit “A written notice of a development application under section 79 (1) (b) of the Act” from section 78 (1).

Insert instead “For the purposes of section 4.64 (1) (g) of the Act, a written notice of a development application”.

**[17] Clauses 78 (1) (i) and (j), 100 (1) (h), 113 (2) (b), 124E, 124G (b), 243 (3) (e) (iii), 245L and 256N**

Omit “Planning Assessment Commission” wherever occurring.

Insert instead “Independent Planning Commission”.

**[18] Clause 78 (1) (i) and (j)**

Omit “review”. Insert instead “public hearing”.

**[19] Clause 78 (1) (j)**

Omit “Minister’s”. Insert instead “Commission’s”.

**[20] Clause 78 (2)**

Omit “section 79 (1) (d) of the Act”. Insert instead “clause 80”.

**[21] Clause 79 Exhibition of notice on land for designated development**

Omit “The notice for a development application for designated development under section 79 (1) (c) of the Act:” from clause 79 (1).

Insert instead “For the purposes of section 4.64 (1) (g) of the Act, the notice for a development application for designated development:”.

**[22] Clause 79 (1) (e) (iv)**

Omit “under section 79 (1) (b) of the Act,”. Insert instead “under clause 78,”.

**[23] Clause 80 Publication of notice for designated development**

Omit “The notice for a development application for designated development under section 79 (1) (d) of the Act.”.

Insert instead “For the purposes of section 4.64 (1) (g) of the Act, the notice for a development application for designated development.”.

**[24] Clause 80 (d)**

Omit “matters as are required for a notice under section 79 (1) (b) of the Act”.

Insert instead “information that is required under clause 78”.

**[25] Clause 83 Public exhibition period**

Omit the clause.

**[26] Clause 84 Public notice of application**

Omit “section 89F (1) (b)” wherever occurring. Insert instead “section 4.64 (1) (g)”.

**[27] Clause 85 Content of notice**

Omit “section 89F (1) (b)”. Insert instead “section 4.64 (1) (g)”.

**[28] Clause 89 What information must be contained in a written notice and a published notice?**

Omit “30 days” from clause 89 (3) (a). Insert instead “28 days”.

**[29] Clause 89 (4)**

Insert after clause 89 (3):

(4) In this clause:

*nominated integrated development* means integrated development (not being threatened species development or Class 1 aquaculture development) that requires an approval (within the meaning of section 4.45 of the Act) under:

- (a) a provision of the *Heritage Act 1977* specified in section 4.46 (1) of the Act, or
- (b) a provision of the *Water Management Act 2000* specified in section 4.46 (1) of the Act, or
- (c) a provision of the *Protection of the Environment Operations Act 1997* specified in section 4.46 (1) of the Act.

*threatened species development* means development to which section 7.7 (2) of the *Biodiversity Conservation Act 2016* or section 221ZW of the *Fisheries Management Act 1994* applies.

**[30] Clause 92 Additional matters that consent authority must consider**

Omit clause 92 (1) (a).

**[31] Clause 92 (2)**

Omit the definition of *Government Coastal Policy*.

**[32] Clause 92, Table**

Omit the table.

**[33] Clause 111 Days occurring during consultation under National Parks and Wildlife Act 1974**

Omit “Secretary” from clause 111 (2). Insert instead “Chief Executive”.

**[34] Clause 113 Applications taken to be refused**

Omit “clause 268V (3), if a review (with or without a public hearing)” from clause 113 (2) (b).

Insert instead “clause 6 of Schedule 2 to the Act, if a public hearing”.

**[35] Clause 113 (3)–(6)**

Omit “30 days” wherever occurring. Insert instead “28 days”.

**[36] Clause 113B Period after which Crown development applications may be referred to Minister or regional panel**

Omit “section 89 (2) (b)” from clause 113B (2). Insert instead “section 4.33 (2) (b)”.

**[37] Clause 122A Effect of failure to determine modification applications**

Omit “section 96 or 96AA” from section 122A (1) (a). Insert instead “section 4.55 or 4.56”.

**[38] Clause 123I Review of modification decision**

Omit “section 8.9” from clause 123I (1). Insert instead “section 8.3”.

**[39] Clause 124A Application of Division**

Omit “section 80A (10B)”. Insert instead “section 4.17 (10B)”.

**[40] Clause 146 Compliance with conditions of development consent**

Omit “section 80A (6)” from clause 146 (a). Insert instead “section 4.17 (6)”.

**[41] Clause 146 (b)**

Omit “section 94 or 94A”. Insert instead “section 7.11 or 7.12”.

**[42] Clause 146B Condition relating to fire safety systems in class 2–9 buildings**

Omit “complying development certificate” wherever occurring.

Insert instead “construction certificate”.

**[43] Clause 194 Minimum exhibition period**

Omit the clause.

**[44] Clause 224 Building products and systems certified under CodeMark scheme**

Omit “and 4.28 (4)” from clause 224 (1). Insert instead “, 4.28 (4) and 6.8 (1) (a)”.

**[45] Clause 224 (1)**

Omit “and only if a certificate of conformity issued in accordance with the CodeMark scheme is in force with respect to the building product or system”.

Insert instead:

- (a) a certificate of conformity issued in accordance with the CodeMark scheme is in force with respect to the building product or system, and
- (b) use of the building product or system is not prohibited under the *Building Products (Safety) Act 2017*.

**[46] Clause 224 (1), note**

Omit the note. Insert instead:

**Note.** This clause also applies in relation to accreditation for the purposes of the issue of construction certificates. Section 109F of the Act (as in force immediately before the repeal of that section by the *Environmental Planning and Assessment Amendment Act 2017*) continues to apply pursuant to clause 18 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

**[47] Clause 243 Report to be prepared for activities to which an environmental impact statement relates**

Omit “review” from clause 243 (3) (e) (iii). Insert instead “public hearing”.

**[48] Clause 256A Proportion of development application fees to be remitted to Secretary**

Insert after clause 256A (2):

- (3) The Planning Secretary may at any time reduce or waive (unconditionally or subject to conditions) the amount to be paid under this clause.

**[49] Clause 291C**

Insert after clause 291B:

**291C Transitional provision relating to CodeMark scheme**

The amendment made to clause 224 by the *Environmental Planning and Assessment Further Amendment (Miscellaneous) Regulation 2018* applies to any of the following applications made, but not determined, on or before 1 September 2018:

- (a) development applications,
- (b) applications for a complying development certificate,
- (c) applications for a construction certificate.

**[50] Schedule 4 Planning certificates**

Omit “section 15 of the *Mine Subsidence Compensation Act 1961*” from clause 5.

Insert instead “the *Coal Mine Subsidence Compensation Act 2017*”.



### **Schedule 3 Amendment of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017**

- [1] **Clause 11A First local strategic planning statements prepared by councils**  
Omit “prepare and”.
- [2] **Clause 11A**  
Omit “1 July 2019” from clause 11A (a). Insert instead “1 December 2019”.
- [3] **Clause 11A (2)**  
Insert at the end of the clause:  
(2) The council of an area within the Greater Sydney Region is required to exhibit a draft local strategic planning statement before 1 July 2019.
- [4] **Clause 16 Community participation plans**  
Omit “1 July 2019” from clause 16 (1). Insert instead “1 December 2019”.
- [5] **Clause 18 Postponement of revised building and subdivision certification provisions**  
Omit “, 86 and 121ZP” from clause 18 (1) (a). Insert instead “and 86”.
- [6] **Clause 18 (2)**  
Omit “1 September 2018”. Insert instead “1 September 2019”.
- [7] **Clause 20**  
Insert after clause 19:  
**20 Community consultation**  
Section 57 of the Act, as in force immediately before the repeal of that section by the amending Act, continues to have effect for the purposes of section 29 of the *Local Government Act 1993*.
- [8] **Schedule 4 Transferred savings, transitional and other provisions—former provisions of Environmental Planning and Assessment Regulation 2000**  
Insert “and the *Environmental Planning and Assessment Further Amendment (Miscellaneous) Regulation 2018*” after “*Environmental Planning and Assessment Amendment Regulation 2018*” in clause 1.