



New South Wales

Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021

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*.

ROB STOKES, MP
Minister for Planning and Public Spaces

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* for the following and other purposes—

- (a) to provide for the expiry of environmental assessment requirements,
- (b) to modify the application process for State significant development,
- (c) to introduce new *State Significant Development Guidelines* and *State Significant Infrastructure Guidelines* and require certain applications, responses, requests to modify approvals and environmental impact statements to be prepared having regard to those guidelines,
- (d) to introduce new *Registered Environmental Assessment Practitioner Guidelines* and require environmental impact statements for State significant development or State significant infrastructure to include a declaration by a registered environmental assessment practitioner that contains statements required to be provided under those guidelines,
- (e) to require the fee amount payable for an application for approval of State significant infrastructure to be determined before, or within 14 days after, the proponent submits an environmental impact statement to the Secretary of the Department of Planning, Industry and Environment, instead of before, or within 14 days after, the application is received by the consent authority.

Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021*.

2 Commencement

- (1) This Regulation commences on 1 July 2021, except as provided by this clause, and is required to be published on the NSW legislation website.
- (2) Schedule 1.2 commences on 1 October 2021.
- (3) Schedule 1.3 commences on 1 July 2022.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

1.1 Amendments relating to the expiry of environmental assessment requirements

[1] Clause 194

Insert after clause 193A—

194 Environmental assessment requirements—expiry

- (1) The environmental assessment requirements expire if an environmental impact statement is not submitted to the Planning Secretary within the period of 2 years after the Planning Secretary last gave notice under the Act, section 5.16(4).
- (2) If, before the expiry, the proponent makes a written request for an extension, the Planning Secretary may, on more than 1 occasion, extend the expiry day so long as the total period of extension does not exceed 2 years.

[2] Part 17 Miscellaneous

Insert at the end of the Part, with appropriate clause numbering—

Savings and transitional provision for certain 1 July 2021 amendments

- (1) This clause applies to environmental assessment requirements in relation to which the Planning Secretary last gave notice before 1 July 2021 (*existing requirements*) under—
 - (a) for environmental assessment requirements concerning State significant development—Schedule 2, clause 3(5), and
 - (b) for environmental assessment requirements concerning State significant infrastructure—the Act, section 5.16(4).
- (2) The amendments made by the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021*, Schedule 1.1[1], [3] and [4] commencing on 1 July 2021 do not apply to the existing requirements or to the preparation of an environmental impact statement to which the existing requirements relate.
- (3) The existing requirements are taken to expire on the following days—
 - (a) for existing requirements for which notice was last given before 1 July 2019—30 November 2021,
 - (b) for existing requirements for which notice was last given on or after 1 July 2019 and before 1 July 2021—1 July 2023,

[3] Schedule 2 Environmental impact statements

Omit clause 3(7). Insert instead—

- (7) If the development application or application for approval to which the environmental impact statement relates is not made within 2 years after notice is last given under subclause (5)—
 - (a) for State significant development—the environmental assessment requirements expire, or

(b) for other development or activity—the responsible person must consult further with the Planning Secretary in relation to the preparation of the statement.

(7A) If, before the environmental assessment requirements expire under subclause (7), the responsible person makes a written request for an extension, the Planning Secretary may, on more than 1 occasion, extend the expiry day so long as the total period of extension does not exceed 2 years.

[4] Schedule 2, clause 14

Omit the clause.

1.2 Amendments relating to certain processes concerning State significant development and State significant infrastructure

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3(1)—

State Significant Development Guidelines means the *State Significant Development Guidelines* prepared by the Secretary as in force from time to time and available on the website of the Department.

State Significant Infrastructure Guidelines means the *State Significant Infrastructure Guidelines* prepared by the Secretary as in force from time to time and available on the website of the Department.

[2] Clause 50 How must a development application be made?

Insert “, other than an application for State significant development,” after “development application” in clause 50(1).

[3] Clause 50(1AA)

Insert after clause 50(1)—

(1AA) A development application for State significant development must be—

- (a) in the form approved by the Planning Secretary and made available on the NSW planning portal, and
- (b) accompanied by an environmental impact statement, and
- (c) lodged on the NSW planning portal.

[4] Clause 51 Rejection of development applications

Omit “referred to in section 4.12(8) of the Act, the application is not accompanied by an environmental impact statement referred to in that subsection” from clause 51(1)(c).

Insert instead “for designated development, the application is not accompanied by an environmental impact statement”.

[5] Clause 51(1)(d)

Insert at the end of clause 51(1)(c)—

, or

- (d) being an application for State significant development, the application is—
 - (i) not in the form approved by the Planning Secretary, or
 - (ii) not accompanied by an environmental impact statement, or

- (iii) considered incomplete for reasons specified in writing to the applicant by the Planning Secretary.

[6] Clause 55, heading

Omit the heading. Insert instead—

55 Amendment or variation of development applications except for State significant development

[7] Clause 55(4)

Insert after clause 55(3)—

- (4) This clause does not apply to a development application for State significant development.

[8] Clause 55AA

Insert after clause 55—

55AA Amendment or variation of development applications for State significant development

- (1) A development application for State significant development may, with the agreement of the consent authority, be amended or varied by the applicant at any time before the application is determined.
- (2) An application to amend or vary a development application for State significant development must—
- (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) include particulars of the nature of the proposed amendments or variations, and
 - (c) be prepared having regard to the *State Significant Development Guidelines*, and
 - (d) be lodged on the NSW planning portal.

[9] Clause 82 Additional requirements for State significant development

Omit “notice in writing, require the applicant to provide a written response to any issues raised in those submissions as the Planning Secretary considers necessary.” from clause 82(2).

Insert instead—

written notice—

- (a) identify the issues raised in the submissions considered by the Planning Secretary to require a response from the applicant, and
- (b) require the applicant to provide a written response to the identified issues, and
- (c) require the applicant’s written response to be prepared having regard to the *State Significant Development Guidelines*.

[10] Clause 115, heading

Insert “**except for State significant development**” after “**development consent**”.

[11] Clause 115(13)

Insert after clause 115(12)—

- (13) This clause does not apply to an application for modification of a development consent for State significant development.

[12] Clause 115AA

Insert after clause 115—

115AA Application for modification of development consent for State significant development

An application for modification of a development consent for State significant development under the Act, section 4.55(1), (1A) or (2) or 4.56(1) must—

- (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
- (b) include particulars of the nature of the proposed modification to the development consent, and
- (c) be prepared having regard to the *State Significant Development Guidelines*, and
- (d) be lodged on the NSW planning portal.

[13] Clause 115A Application fee for modification of development consent

Insert “or 115AA” after “clause 115” in clause 115A(1).

[14] Clause 119B

Insert after clause 119A—

119B Rejection of application for modification of development consent

A consent authority may reject an application for modification of a development consent for State significant development within 7 days after receiving the application if the application is—

- (a) not in the form approved by the Planning Secretary, or
- (b) considered incomplete for reasons specified in writing to the applicant by the Planning Secretary.

[15] Clause 192 Applications for approval

Omit clause 192(1). Insert instead—

- (1) An application for approval of the Minister to carry out State significant infrastructure must be—
- (a) in the form approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) lodged on the NSW planning portal.

[16] Clause 192(2)

Insert “or varied” after “amended”.

[17] Clause 192(3)

Omit the subclause. Insert instead—

- (3) An application to amend or vary an application for approval of the Minister to carry out State significant infrastructure must—
- (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) include particulars of the nature of the proposed amendments or variations to the application for approval, and
 - (c) be prepared having regard to the *State Significant Infrastructure Guidelines*, and
 - (d) be lodged on the NSW planning portal.

[18] Clauses 193B and 193C

Insert after clause 193A—

193B Environmental assessment requirements—further particulars and specified publications

In preparing the environmental assessment requirements for State significant infrastructure under the Act, section 5.16, the Planning Secretary may—

- (a) require the proponent of State significant infrastructure to provide further particulars, and
- (b) impose environmental assessment requirements by reference to specified publications.

193C Environmental assessment requirements—environmental impact statements

The environmental impact statement for State significant infrastructure must comply with the environmental assessment requirements that have been notified to the proponent by the Planning Secretary under the Act, section 5.16.

[19] Clause 196A

Insert after clause 196—

196A Request for modification of approval for State significant infrastructure

A request to modify the Minister's approval for State significant infrastructure under the Act, section 5.25(2) must—

- (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
- (b) include particulars of the nature of the proposed modification, and
- (c) be prepared having regard to the *State Significant Infrastructure Guidelines*, and
- (d) be lodged on the NSW planning portal.

[20] Part 17 Miscellaneous

Insert after the clause inserted by Schedule 1.1[2], with appropriate clause numbering—

Savings and transitional provision for certain 1 October 2021 amendments

- (1) This clause applies to environmental assessment requirements in relation to which the Planning Secretary last gave notice before 1 October 2021 under—
- (a) for requirements concerning State significant development—Schedule 2, clause 3(5), and

(b) for requirements concerning State significant infrastructure—the Act, section 5.16(4).

(2) The amendments made by the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021*, Schedule 1.2[24] commencing on 1 October 2021 do not apply to an environmental impact statement to which the requirements relate if the statement is received by the Planning Secretary on or before 31 March 2022.

[21] Schedule 2 Environmental impact statements

Omit the definition of *environmental assessment requirements* from Schedule 2, clause 1.

[22] Schedule 2, clause 3(2)

Omit the subclause. Insert instead—

(2) The application must—

- (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
- (b) include particulars of the location, nature and scale of the development or activity, and
- (c) for State significant development—be prepared having regard to the *State Significant Development Guidelines*.

[23] Schedule 2, clause 3(4)

Omit the subclause. Insert instead—

- (4) The Planning Secretary must consult relevant public authorities and have regard to the need for the environmental assessment requirements to address key issues raised by the public authorities when preparing the requirements for an application for State significant development that—
 - (a) would be designated development but for the Act, section 4.10(2), or
 - (b) is partly prohibited by an environmental planning instrument, or
 - (c) is wholly prohibited by an environmental planning instrument, to the extent permitted by the Act, section 4.38(5), or
 - (d) is a concept development application for State significant development.

[24] Schedule 2, clause 6(2)

Insert at the end of clause 6—

(2) The person preparing the statement must have regard to the following—

- (a) for State significant development—*State Significant Development Guidelines*,
- (b) for State significant infrastructure—*State Significant Infrastructure Guidelines*.

[25] Schedule 2, Part 4

Omit the Part.

1.3 Amendments relating to registered environmental assessment practitioners

[1] Part 17 Miscellaneous

Insert after the clause inserted by Schedule 1.2[20], with appropriate clause numbering—

Savings and transitional provision for certain 1 July 2022 amendments

- (1) This clause applies to environmental assessment requirements in relation to which the Planning Secretary last gave notice before 1 July 2022 under—
 - (a) for requirements concerning State significant development—Schedule 2, clause 3(5), and
 - (b) for requirements concerning State significant infrastructure—the Act, section 5.16(4).
- (2) The amendments made by the *Environmental Planning and Assessment Amendment (Major Projects) Regulation 2021*, Schedule 1.3[2] and [3] commencing on 1 July 2022 do not apply to an environmental impact statement to which the requirements relate if the statement is received by the Planning Secretary on or before 31 December 2022.

[2] Schedule 2, clause 6(1)(f), as amended by Schedule 1.2[24]

Omit the paragraph. Insert instead—

- (f) a declaration by a relevant person as follows—
 - (i) to the effect that the statement has been prepared in accordance with this Schedule and, for State significant infrastructure, also prepared in accordance with this Regulation, Part 10, and
 - (ii) to the effect that the statement contains all available information relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates, and
 - (iii) to the effect that the information contained in the statement is neither false nor misleading, and
 - (iv) for State significant development or State significant infrastructure—that contains information required to be provided under the *Registered Environmental Assessment Practitioner Guidelines*.

[3] Schedule 2, clause 6(3)

Insert after clause 6(2), as inserted by Schedule 1.2[24]—

- (3) In this clause—

registered environmental assessment practitioner means a person who is registered or certified under a professional scheme that is specified as a registered environmental assessment practitioner scheme in the *Accredited Registered Environmental Assessment Practitioner (REAP) Schemes* published on the NSW Planning Portal on 1 July 2021.

Registered Environmental Assessment Practitioner Guidelines means the Registered Environmental Assessment Practitioner Guidelines prepared by the Secretary as in force from time to time and available on the website of the Department.

relevant person, in relation to an environmental impact statement, means—

 - (i) for State significant development or State significant infrastructure—a registered environmental assessment practitioner, or

(ii) otherwise—the person who prepares the statement.

1.4 Amendments relating to fees for State significant infrastructure

[1] Part 15, Division 1AA, heading

Insert “—the Act, ss 4.64 and 5.29” after “infrastructure”.

[2] Clause 256E Determination of fees

Omit “or State significant infrastructure” from clause 256E(1).

[3] Clause 256E(1A)

Insert after clause 256E(1)—

- (1A) The determination of a fee to accompany an application for State significant infrastructure must be made before, or within 14 days after, the proponent submits an environmental impact statement to the Planning Secretary under the Act, section 5.17(1).