



New South Wales

# Environmental Planning and Assessment Amendment Regulation 2022

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*.

ANTHONY ROBERTS, MP  
Minister for Planning

## Explanatory note

The objects of this Regulation are as follows—

- (a) to incorporate various amendments made to the *Environmental Planning and Assessment Regulation 2000* since the *Environmental Planning and Assessment Regulation 2021* was made on 17 December 2021,
- (b) to make other minor amendments, including law revision amendments and amendments that are consequent on the consolidated State environmental planning policies that commence on 1 March 2022.

## **Environmental Planning and Assessment Amendment Regulation 2022**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment Regulation 2022*.

### **2 Commencement**

- (1) This Regulation commences on the day on which it is published on the NSW legislation website, except as provided by subsection (2).
- (2) Schedule 3 commences on 1 June 2022.

## **Schedule 1      Amendment of Environmental Planning and Assessment Regulation 2021**

- [1]    **Section 2 Commencement**  
Omit “*Safety Regulation*)” from section 2(3). Insert instead “*Safety) Regulation*”.
- [2]    **Section 31 Other documents required for certain development applications**  
Omit “*State Environmental Planning Policy (Activation Precincts) 2020*” from section 31(4) and (5) wherever occurring.  
Insert instead “*State Environmental Planning Policy (Precincts—Regional) 2021, Chapter 3*”.
- [3]    **Section 34, heading**  
Omit “**under Growth Centres SEPP**”.  
Insert instead “**in Sydney region growth centres**”.
- [4]    **Section 34(1)**  
Omit “the Growth Centres SEPP”.  
Insert instead “*State Environmental Planning Policy (Precincts—Central River City) 2021, Chapter 3* or *State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 3*”.
- [5]    **Section 34(2)**  
Omit “under the Growth Centres SEPP”.
- [6]    **Section 35 Additional requirements for development applications in certain areas of Sydney**  
Omit “the Growth Centres SEPP” from section 35(2)(a) and (b) wherever occurring.  
Insert instead “*State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 3*”.
- [7]    **Section 35(2)(d)**  
Omit “*State Environmental Planning Policy (Western Sydney Employment Area) 2009*”.  
Insert instead “*State Environmental Planning Policy (Industry and Employment) 2021, Chapter 2*”.
- [8]    **Section 35(2)(e)**  
Omit “*State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*”.  
Insert instead “*State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 4*”.
- [9]    **Section 35(4), definition of “relevant plan”**  
Omit “the Growth Centres SEPP, Appendix 15” from paragraph (a).  
Insert instead “*State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Appendix 8*”.
- [10]    **Section 35(4), definition of “relevant plan”**  
Omit “the Growth Centres SEPP, Appendix 14” from paragraph (b).

Insert instead “*State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Appendix 7*”.

**[11] Section 35(4), definition of “relevant plan”**

Omit “the Growth Centres SEPP” from paragraph (c).

Insert instead “*State Environmental Planning Policy (Precincts—Central River City) 2021, Chapter 3* or *State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 3*”.

**[12] Section 35(4), definition of “relevant plan”**

Omit “*State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*” from paragraph (e).

Insert instead “*State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 4*”.

**[13] Section 50 Consent authority to seek concurrence**

Omit “*State Environmental Planning Policy (Concurrences and Consents) 2018*” from section 50(3).

Insert instead “*State Environmental Planning Policy (Planning Systems) 2021, Chapter 4*”.

**[14] Section 61 Additional matters that consent authority must consider**

Omit “*State Environmental Planning Policy (State and Regional Development) 2011, Schedule 7*” from section 61(3)(b)(iii).

Insert instead “*State Environmental Planning Policy (Planning Systems) 2021, Schedule 6*”.

**[15] Section 66 Contributions plans for certain areas in Sydney—the Act, s 4.16(1)**

Omit “*State Environmental Planning Policy (Western Sydney Employment Area) 2009*” from section 66(1)(a).

Insert instead “*State Environmental Planning Policy (Industry and Employment) 2021, Chapter 2*”.

**[16] Section 66(1)(b)**

Omit “the Growth Centres SEPP”.

Insert instead “*State Environmental Planning Policy (Precincts—Central River City) 2021, Chapter 3* or *State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 3*”.

**[17] Section 66(1)(c)**

Omit “*State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*”.

Insert instead “*State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 4*”.

**[18] Section 81 Built-to-rent housing**

Omit “clause 73” from section 81(3), definition of *relevant period*.

Insert instead “section 73”.

**[19] Section 81(3), definition of “tenanted component”**

Omit “clause 71”. Insert instead “section 71”.

**[20] Section 82 In-fill affordable housing**

Omit “clause 21” from section 82(4), definition of *affordable housing component*.

Insert instead “section 21”.

**[21] Sections 87 Notice of determination of development application**

Omit “*State Environmental Planning Policy (Three Ports) 2013*, clause 19”.

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapter 5, section 5.17”.

**[22] Sections 87(2), 126(2), 127 and 129(6)**

Omit “that Policy” wherever occurring. Insert instead “that Chapter”.

**[23] Section 101(3), definition of “Penrith Lakes Development Corporation development consent” and Schedule 3, sections 6(5) and 26(4)(a)**

Omit “*State Environmental Planning Policy (Penrith Lakes Scheme) 1989*” wherever occurring.

Insert instead “*State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 5”.

**[24] Section 103 Modification applications for mining and petroleum development consents**

Omit “*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, Part 4AA, other than Divisions 2 and 5” from section 103(3).

Insert instead “*State Environmental Planning Policy (Resources and Energy) 2021*, Part 2.4, other than Divisions 2 and 5”.

**[25] Section 126(1) and Schedule 3, section 50**

Omit “*State Environmental Planning Policy (Activation Precincts) 2020*” wherever occurring.

Insert instead “*State Environmental Planning Policy (Precincts—Regional) 2021*, Chapter 3”.

**[26] Section 127 Complying development in Western Sydney Aerotropolis**

Omit “*State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*”.

Insert instead “*State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 4”.

**[27] Section 128 Traffic generating complying development**

Omit section 128(1). Insert instead—

- (1) This section applies to an application for a complying development certificate for the following development—
  - (a) development for a purpose specified in *State Environmental Planning Policy (Infrastructure) 2021*, section 3.38(1) that will result in a school being able to accommodate at least 50 additional students,
  - (b) development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 5A for the following purposes—
    - (i) food and drink premises with a gross floor area of 300m<sup>2</sup> or more,

- (ii) shops or wholesale supplies with a gross floor area of 500m<sup>2</sup> or more,
- (iii) commercial premises with a gross floor area of 2,500m<sup>2</sup> or more,
- (iv) industries with a gross floor area of 5,000m<sup>2</sup> or more,
- (v) depots or warehouses or distribution centres with a gross floor area of 8,000m<sup>2</sup> or more,
- (vi) the construction, installation or alteration of a drive through facility as referred to in Division 1, Subdivision 11A of that Part,
- (vii) car parks of 50 car parking spaces or more,
- (c) development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 5A for the following purposes, if the development involves 50 or more vehicles per hour—
  - (i) community facilities,
  - (ii) health consulting rooms,
  - (iii) information and education facilities,
  - (iv) medical centres,
  - (v) storage premises,
  - (vi) vehicle repair stations,
  - (vii) veterinary hospitals.

**[28] Section 128(2)(b)**

Insert “issued by the relevant roads authority” after “certificate”.

**[29] Section 128(3)**

Omit the subsection.

**[30] Section 129 Complying development on contaminated land**

Omit section 129(1). Insert instead—

- (1) This section applies to an application for a complying development certificate for complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 5A.

**[31] Section 129(6) and Schedule 1, section 2**

Omit “*State Environmental Planning Policy (Three Ports) 2013*” wherever occurring.

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapter 5”.

**[32] Section 129A**

Insert after section 129—

**129A Design statement for industrial and business buildings under Codes SEPP**

- (1) This section applies to an application for a complying development certificate for complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 5A that relates to development for a specified purpose on land in Zone B5, B6 or B7.
- (2) The statement must—
  - (a) be in the approved form, and

- (b) verify that the qualified designer designed, or directed the design of, the development, and
  - (c) explain how the design is consistent with the relevant design criteria set out in the *Business Zone Design Guidelines* published on the NSW planning portal from time to time.
- (3) In this section—  
*specified purpose* has the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 5A.

**[33] Section 134 Notice to neighbours and councils**

Omit “the Growth Centres SEPP” from section 134(5), definition of *relevant land*, paragraph (b).

Insert instead “*State Environmental Planning Policy (Precincts—Central River City) 2021*, Chapter 3 or *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 3”.

**[34] Section 134(5), definition of “relevant land”**

Omit “*State Environmental Planning Policy (State Significant Precincts) 2005*, Appendix 5, 14 or 15” from paragraph (c).

Insert instead “*State Environmental Planning Policy (Precincts—Regional) 2021*, Appendix 1, 4 or 5”.

**[35] Section 138 Complying development under Education SEPP**

Omit “*State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, Schedule 4” from section 138(1).

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, Schedule 8”.

**[36] Section 138(1)(a) and (b)**

Omit “that Policy, clause 39(1)(a) or 40(2)(e)” wherever occurring.

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, section 3.38(1)(a) or 3.39(2)(e)”.

**[37] Section 138(2)**

Omit “*State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*”.

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapter 3”.

**[38] Section 171 Review of environmental factors—the Act, s 5.10(a)**

Omit section 171(7).

Insert instead—

- (7) If a provision of an approved code under Division 6 applies to a determining authority’s exercise of functions under the Act, section 5.5, the provision of the approved code prevails to the extent of an inconsistency with a provision of this section.

**[39] Section 175 Environmental assessment requirements for State significant development**

Omit “*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*” from section 175(6), definition of **Gateway Panel**.

Insert instead “*State Environmental Planning Policy (Resources and Energy) 2021*, Chapter 2”.

**[40] Section 175(6), definition of “unconditional gateway certificate”**

Omit “a gateway certificate issued under *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, clause 17I(3)”.

Insert instead “an unconditional certificate under *State Environmental Planning Policy (Resources and Energy) 2021*, Chapter 2”.

**[41] Section 181 Owner’s consent for applications for approval and modification requests**

Omit “*State Environmental Planning Policy (State and Regional Development) 2011*, Schedule 1, clause 5(1)–(4)” from section 181(5)(d).

Insert instead “*State Environmental Planning Policy (Planning Systems) 2021*, Schedule 1, section 5(1)–(4)”.

**[42] Section 198 Approved Codes**

Omit “*State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, clause 36” from section 198(1)(b).

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, section 3.35”.

**[43] Section 223 Definitions**

Omit “*State Environmental Planning Policy No 55—Remediation of Land*” from section 223(2), definition of **remediation**.

Insert instead “*State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 4”.

**[44] Section 269 Fees for site compatibility certificates and site verification certificates**

Omit section 269(1)(b) and (c).

Insert instead—

- (b) *State Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapters 2 and 3.

**[45] Section 269(3)**

Omit “*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*”.

Insert instead “*State Environmental Planning Policy (Resources and Energy) 2021*, Chapter 2”.

**[46] Schedule 1, sections 1(1)(b) and (2), definition of “rail corridor” and 4(a)**

Omit “*State Environmental Planning Policy (Infrastructure) 2007*” wherever occurring.

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapter 2”.



**[47] Schedule 1, section 3**

Omit “*State Environmental Planning Policy (Infrastructure) 2007 or State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*”.

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021, Chapter 2 or 3*”.

**[48] Schedule 1, section 5(1)(a)**

Omit “*State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, clause 18*”.

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021, section 3.16*”.

**[49] Schedule 1, section 5(1)(b)**

Omit “that Policy, clause 36, on land in a prescribed zone within the meaning of that Policy, clause 33”.

Insert instead “that Policy, section 3.35 on land in a prescribed zone within the meaning of that Policy, Part 3.4”.

**[50] Schedule 2 Planning certificates**

Omit the heading to section 20. Insert instead—

**20 Western Sydney Aerotropolis**

**[51] Schedule 2, section 20**

Omit “*State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*”.

Insert instead “*State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 4*”.

**[52] Schedule 2, section 20(a)**

Omit “that Policy, clause 19”. Insert instead “that Chapter, section 4.17”.

**[53] Schedule 2, section 21**

Omit “clause 88(2)”. Insert instead “section 88(2)”.

**[54] Schedule 2, section 22(2)**

Omit “clause 21(1) or 40(1)”. Insert instead “section 21(1) or 40(1)”.

**[55] Schedule 3 Designated development**

Omit “*State Environmental Planning Policy (Coastal Management) 2018*” from section 1(1), definition of ***environmentally sensitive area of State significance***, paragraph (b).

Insert instead “*State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2*”.

**[56] Schedule 3, section 1(1), definition of “relevant irrigation land”**

Omit “*State Environmental Planning Policy (Primary Production and Rural Development) 2019*” from paragraph (b).

Insert instead “*State Environmental Planning Policy (Primary Production) 2021, Chapter 2*”.

**[57] Schedule 3, section 1(1), definition of “saline soil”**

Omit “(Ece) value of more than 4 decisiemens”.

Insert instead “(ECe) value of more than 4 deciSiemens”.

**[58] Schedule 3, section 5(7)(a)**

Omit “*State Environmental Planning Policy (Primary Production and Rural Development) 2019*, Part 5, Division 2”.

Insert instead “*State Environmental Planning Policy (Primary Production) 2021*, Part 2.5, Division 2”.

**[59] Schedule 3, section 5, note**

Omit “*State Environmental Planning Policy (Primary Production and Rural Development) 2019*, clause 28”.

Insert instead “*State Environmental Planning Policy (Primary Production) 2021*, section 2.26”.

**[60] Schedule 4 Fees**

Omit “*State Environmental Planning Policy (Infrastructure) 2007* or *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*” from item 8.2.

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapter 2 or 3”.

**[61] Schedule 4, item 8.3**

Omit “*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, Part 4AA”.

Insert instead “*State Environmental Planning Policy (Resources and Energy) 2021*, Part 2.4”.

**[62] Schedule 5 Penalty notice offences**

Omit “*State Environmental Planning Policy No 64—Advertising and Signage*, clause 27A(2)” from the matter relating to section 4.2(1), paragraph (c).

Insert instead “*State Environmental Planning Policy (Industry and Employment) 2021*, section 2.26(2)”.

**[63] Schedule 5**

Omit “*State Environmental Planning Policy No 64—Advertising and Signage*, clause 27A(1)” from the matter relating to section 4.3, paragraph (a).

Insert instead “*State Environmental Planning Policy (Industry and Employment) 2021*, section 2.26(1)”.

**[64] Schedule 7 Dictionary**

Omit “*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*” from the definitions of **biophysical strategic agricultural land**, **critical industry cluster land** and **Strategic Agricultural Land Map** wherever occurring.

Insert instead “*State Environmental Planning Policy (Resources and Energy) 2021*, Chapter 2”.

- [65] Schedule 7, definition of “Class 1 aquaculture development”**  
Omit “*State Environmental Planning Policy (Primary Production and Rural Development) 2019*, Part 5”.  
Insert instead “*State Environmental Planning Policy (Primary Production) 2021*, Part 2.5”.
- [66] Schedule 7, definition of “electricity transmission or distribution network”**  
Omit “*State Environmental Planning Policy (Infrastructure) 2007*, Part 3, Division 5”.  
Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, Part 2.3, Division 5”.
- [67] Schedule 7, definitions of “gateway certificate”, “mining or petroleum development” and “site verification certificate”**  
Omit “*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, Part 4AA” wherever occurring.  
Insert instead “*State Environmental Planning Policy (Resources and Energy) 2021*, Part 2.4”.
- [68] Schedule 7, definition of “Growth Centres SEPP”**  
Omit the definition.
- [69] Schedule 7, definition of “public notification development”**  
Omit “*State Environmental Planning Policy (State and Regional Development) 2011*, Schedule 1, clause 5 or 6”.  
Insert instead “*State Environmental Planning Policy (Planning Systems) 2021*, Schedule 1, section 5 or 6”.
- [70] Schedule 7, definition of “rail infrastructure facilities”**  
Omit “*State Environmental Planning Policy (Infrastructure) 2007*, Part 3, Division 15”.  
Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, Part 2.3, Division 15”.
- [71] Schedule 8 Amendment of Environmental Planning and Assessment Regulation 2021—commencing on 1 July 2022**  
Re-number proposed section 190(3)(i)–(iv), as inserted by Schedule 8[1], as section 190(3)(a)–(d).
- [72] Schedule 8[1], proposed section 190(4), definition of “relevant person”**  
Re-number subparagraphs (i) and (ii) as paragraphs (a) and (b).
- [73] Schedule 9 Amendment of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021**  
Omit the Schedule.

## **Schedule 2      Amendment of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021**

**[1]      Sections 15(1) and 43(1)**

Omit “*Environmental Planning and Assessment Regulation 2000*, clause 50” wherever occurring.

Insert instead “*Environmental Planning and Assessment Regulation 2021*, section 29”.

**[2]      Section 40 Consideration of performance solution report**

Omit “*Environmental Planning and Assessment Regulation 2000*, section 130” from section 40(2)(b).

Insert instead “*Environmental Planning and Assessment Regulation 2021*, section 137”.

**[3]      Section 62 Critical stage inspections for building work at ports**

Omit “*State Environmental Planning Policy (Three Ports) 2013*” from section 62(1)(a).

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapter 5”.

**[4]      Section 74 Exemption from BCA standards for fire safety building work**

Omit “*Environmental Planning and Assessment Regulation 2000*, section 136AA” from section 74(2)(b).

Insert instead “*Environmental Planning and Assessment Regulation 2021*, section 147”.

**[5]      Section 102B Compliance with short-term rental accommodation fire safety standard**

Omit section 102B(1). Insert instead—

- (1) A host of a dwelling must not use the dwelling to provide short-term rental accommodation unless it complies with the requirements of the fire safety standard.

Maximum penalty (subsection (1))—

- (a) for a corporation—300 penalty units, or  
(b) for an individual—150 penalty units.

**[6]      Section 102B(2)**

Omit “Division”. Insert instead “Part”.

**[7]      Section 108 Fire safety notices**

Omit “subsections (1)–(4)” from the penalty provision.

Insert instead “subsections (2)–(4)”.

**[8]      Sections 111(8), definition of “relevant provision” and 115(2), definition of “relevant provision”**

Omit “*Environmental Planning and Assessment Regulation 2000*, clause 98 or 136A” wherever occurring.

Insert instead “*Environmental Planning and Assessment Regulation 2021*, section 69 or 146”.

**[9] Schedule 1 Penalty notice offences**

Omit “Section 102E” from the matter relating to **Offences under this Regulation**.

Insert instead “Section 102B(1)”.

**[10] Schedule 1**

Omit “Section 108(1)–(4)” from the matter relating to **Offences under this Regulation**.

Insert instead “Section 108(2)–(4)”.

**[11] Schedule 2 Dictionary**

Omit “*Environmental Planning and Assessment Regulation 2000*” from the definition of ***Building Code of Australia***.

Insert instead “*Environmental Planning and Assessment Regulation 2021*”.

**[12] Schedules 3 and 4**

Omit the Schedules.

## **Schedule 3      Amendment of Environmental Planning and Assessment Regulation 2021—commencing on 1 June 2022**

**[1]    Section 35 Additional requirements for development applications in certain areas of  
Sydney**

Insert “development” after “consent authority for” in section 35(1) and (2) wherever occurring.

**[2]    Section 35A**

Insert after section 35—

**35A    Additional requirements for development applications in Frenchs Forest  
Precinct**

- (1) A person must not apply to a consent authority for development consent to carry out development on land in the Frenchs Forest Precinct unless the application is accompanied by an assessment of the consistency of the proposed development with the *Frenchs Forest 2041 Place Strategy*.
- (2) A person must not make a concept development application to a consent authority for development consent to carry out development on Site F unless the application is accompanied by a study about traffic and transport that—
  - (a) is endorsed by Transport for NSW, and
  - (b) sets out the transport infrastructure and capacity that will service Site F.
- (3) In this section—

***Frenchs Forest 2041 Place Strategy*** means the *Frenchs Forest 2041 Place Strategy* published on the Department’s website from time to time.

***Frenchs Forest Precinct*** has the same meaning as in *Warringah Local Environmental Plan 2011*, Part 8.

***Site F*** has the same meaning as in *Warringah Local Environmental Plan 2011*, Part 8.