



New South Wales

Environmental Planning and Assessment Amendment (Miscellaneous) Regulation (No 2) 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 require the written consent of the owner of land if a development application is made by a person other than the owner,
- (b) to provide that a development application for development involving mine grouting works may be made, in certain circumstances, by a person other than the owner of the land to which the development application relates and without the consent of the owner,
- (c) to require an assessment of the consistency of development with the Macquarie Park Innovation District Place Strategy and Master Plan for development on land in the Macquarie Park Corridor under *Ryde Local Environmental Plan 2014*,
- (d) to require certification that impacts on roads are, or will be, acceptable as a result of development for the purposes of waste or resource transfer stations carried out by or on behalf of public authorities,
- (e) to require a design statement for certain complying development on Zone E3 Productivity Support, other than development involving only a change of use to premises or internal alterations to a building,
- (f) to require a report confirming that development is consistent with a performance solution report for a building for development comprising internal alterations or a change of use to an existing building subject to a performance solution under the *Building Code of Australia*,
- (g) to specify that development for the purposes of waste or resource transfer stations is not designated development in certain circumstances,
- (h) to remove spent provisions and update incorrect references to provisions,
- (i) to make savings and transitional provisions.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.10(1), 4.12(1), 4.27(5), 4.28(1), 4.55, 4.64(1), 5.6(3) and 10.13, the general regulation-making power.

Environmental Planning and Assessment Amendment (Miscellaneous) Regulation (No 2) 2022

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Miscellaneous) Regulation (No 2) 2022*.

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 2021

[1] Section 23 Persons who may make development applications

Insert “written” before “consent” in section 23(1)(b) and (5).

[2] Section 23(4A)

Insert after section 23(4)—

- (4A) The consent of the owner of the land is not required for a development application for development involving mine grouting works if the works—
- (a) will be carried out at a depth of 10m or more below the surface of the land, and
 - (b) are ancillary to other development requiring development consent.

[3] Section 23(8)

Insert in alphabetical order—

mine grouting works includes—

- (a) works to stabilise land and reduce the risk of subsidence by the injection of cementitious grouting material into underground mine workings or voids created by mining, and
- (b) drilling to enable the injection of the cementitious grouting material.

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

Insert after section 35(2)(g)—

- (h) land in the Macquarie Park Corridor under *Ryde Local Environmental Plan 2014*.

[5] Section 35(4), definition of “relevant plan”, paragraph (h)

Insert after paragraph (g)—

- (h) for land in the Macquarie Park Corridor—the *Macquarie Park Innovation Precinct Place Strategy* and the *Macquarie Park Innovation Precinct Master Plan*, published on the Department’s website on 30 September 2022.

[6] Section 61 Additional matters that consent authority must consider

Omit section 61(7)–(8).

[7] Section 104 Consent authority may request additional information from applicant

Omit “Part 4,” from section 104(2)(d).

[8] Section 128 Traffic generating complying development

Omit “*State Environmental Planning Policy (Infrastructure) 2021*, section 3.38(1)” from section 128(1)(a).

Insert instead “*State Environmental Planning Policy (Transport and Infrastructure) 2021*, section 3.40(1)”.

[9] Section 128(1)(b)(viii)

Insert after section 128(1)(b)(vii)—

- (viii) development for the purposes of waste or resource transfer stations carried out by or on behalf of a public authority.

[10] Section 129A Design statement for industrial and business buildings under Codes SEPP

Omit section 129A(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 relating to development for a specified purpose on land in one or more of the following zones—
 - (a) Zone B5 Business Development,
 - (b) Zone B6 Enterprise Corridor,
 - (c) Zone B7 Business Park,
 - (d) Zone E3 Productivity Support.
- (1A) This section does not apply to an application for a complying development certificate for development involving only one or both of the following—
 - (a) a change of use to premises,
 - (b) internal alterations to a building.
- (1B) A design statement must accompany an application to which this section applies.

[11] Section 136 Form of complying development certificate

Omit “about a performance solution is required under section 137(3)” from section 136(1)(i).

Insert instead “is required under section 137(3) or (3A)”.

[12] Section 136(1)(i)(vi)

Insert after section 136(1)(i)(v)—

- (vi) for a compliance report—a statement that a relevant registered certifier has confirmed the development is consistent with the performance solution report for the building,

[13] Section 137 Compliance with Building Code of Australia

Omit “, or development comprising internal alterations to, or a change of building use for, an existing building,” from section 137(3).

[14] Section 137(3A)

Insert after section 137(3)—

- (3A) A certifier must not issue a complying development certificate for development comprising internal alterations or a change of use to an existing building subject to a performance solution under the *Building Code of Australia* unless the certifier has obtained or been given a compliance report for the development.

[15] Section 137(5)

Omit “referred to in subsection (3) that relates”. Insert instead “relating to”.

[16] Section 137(6)

Insert in alphabetical order—

compliance report, for development, means a report—

- (a) prepared by a relevant registered certifier, other than the certifier issuing the complying development certificate for which the report is required, and
- (b) confirming that the development is consistent with the performance solution report for the building involved in the development.

relevant registered certifier means a registered certifier registered for the purpose of issuing complying development certificates for buildings of the kind to which the compliance report relates.

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

Omit “201” from section 171(4)(b)(i). Insert instead “200”.

[18] Section 198 Approved Codes

Omit “section 3.35” from section 198(1)(b). Insert instead “section 3.37”.

[19] Schedule 3 Designated development

Omit “Division 2” from section 5(7)(a). Insert instead “Division 3”.

[20] Schedule 3, section 45(4A)

Insert after Schedule 3, section 45(4)—

- (4A) Despite subsection (4)(f), development for the purposes of waste or resource transfer stations carried out by or on behalf of a public authority is not designated development if the development is carried out—
 - (i) within 500m of a residential zone or 250m of a dwelling not associated with the development, and
 - (ii) under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 5A.

[21] Schedule 3, section 50

Omit the note.

[22] Schedule 6 Savings, transitional and other provisions

Insert at the end of section 3—

- (2) Despite subsection (1), a requirement to use the NSW Planning Portal under the 2000 Regulation, clause 55(1), 55AA(2)(d) or 121B(1) does not apply if the development application or modification application is subject to proceedings in the Court.

[23] Schedule 6, section 4

Omit “section 5.9”. Insert instead “section 5.5”.

[24] Schedule 6, Part 3

Insert at the end of the Schedule, with appropriate Part and section numbering—

**Part Provision consequent on Environmental Planning
and Assessment Amendment (Miscellaneous)
Regulation (No 2) 2022**

Written consent of owner of land

This Regulation, section 23(1)(b), as in force immediately before the commencement of the *Environmental Planning and Assessment Amendment (Miscellaneous) Regulation (No 2) 2022*, continues to apply to a development application lodged before 1 January 2023.

[25] Schedules 8 and 10

Omit the Schedules.

Schedule 2 Other amendments

2.1 Environmental Planning and Assessment Amendment (Notice Requirements) Regulation 2022

[1] Section 2 Commencement

Omit “23 December 2022”. Insert instead “30 June 2023”.

[2] Schedule 1[6]

Omit subsections (1) and (2) under the heading “**Notice not required to be in approved form for certain applications**”.

Insert instead—

Notice of the following is not required to be given in the approved form—

- (a) a development application lodged, but not finally determined, before 30 June 2023,
- (b) a modification application if the original development application was lodged before 30 June 2023,
- (c) an application for review under the Act, Division 8.2 if the development application to which the review relates was lodged before 30 June 2023.

2.2 Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

[1] Section 121 Crown development

Insert before section 121(1)(a)—

- (a1) the Government of New South Wales, and
- (a2) a Minister of the Crown in right of New South Wales, and

[2] Schedule 1 Penalty notice offences

Omit “**Offences under this Act**” from the table. Insert instead “**Offences under the Act**”.

2.3 Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

Sections 18B–18C

Omit “1 December 2022” wherever occurring. Insert instead “1 December 2024”.