



New South Wales

Environmental Planning and Assessment Amendment (Exceptions to Development Standards) Regulation 2023

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*.

PAUL SCULLY, MP
Minister for Planning and Public Spaces

Explanatory note

The objects of this regulation are—

- (a) to require a development application that proposes to contravene a development standard to be accompanied by a document setting out the grounds to justify the contravention, and
- (b) to require notice to be given to the Secretary of the Department of Planning and Environment in relation to the approving or refusing of a contravention of a development standard.

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1 Name of regulation

This regulation is the *Environmental Planning and Assessment Amendment (Exceptions to Development Standards) Regulation 2023*.

2 Commencement

This regulation commences on 1 November 2023.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2021

[1] Section 35B

Insert after section 35A—

35B Additional requirements for development applications involving contravention of development standards

- (1) This section applies to a development application that proposes, in accordance with a relevant EPI provision, development that contravenes a development standard imposed by any environmental planning instrument.
- (2) The development application must be accompanied by a document that sets out the grounds on which the applicant seeks to demonstrate that—
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- (3) In this section—

relevant EPI provision means—

 - (a) clause 4.6 of a local environmental plan that adopts the provisions of the Standard Instrument, or
 - (b) an equivalent provision of another environmental planning instrument.

[2] Section 90A

Insert after section 90—

90A Notice to Planning Secretary about development involving contravention of development standards—the Act, ss 2.20(3)(c) and 10.13(1)(b)

- (1) This section applies to a development application that—
 - (a) proposes, in accordance with a relevant EPI provision, development that contravenes a development standard imposed by any environmental planning instrument, and
 - (b) is determined by a council, local planning panel or Sydney district or regional planning panel.
- (2) As soon as practicable after the development application is determined, the council of the area in which the development is proposed to be carried out must notify the Planning Secretary of the council's or panel's reasons for approving or refusing the contravention of the development standard.
- (3) The notice must be given to the Planning Secretary through the NSW planning portal.
- (4) To avoid doubt, this section applies whether or not development consent is granted.
- (5) In this section—

relevant EPI provision has the same meaning as in section 35B.

[3] Schedule 6 Savings, transitional and other provisions

Insert at the end of the schedule, with appropriate part and clause numbering—

Part Provision consequent on Environmental Planning and Assessment Amendment (Exceptions to Development Standards) Regulation 2023

Application of amendments

Sections 35B and 90A, as inserted by the *Environmental Planning and Assessment Amendment (Exceptions to Development Standards) Regulation 2023*, apply only to a development application made on or after 1 November 2023.