

Miscellaneous Acts (Planning) Savings and Transitional Provisions Regulation 1980

[1980-51]



New South Wales

Status Information

Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Repeal**

This Regulation was impliedly repealed by repeal of the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979* by Sch 12 to the *Environmental Planning and Assessment Amendment Act 2017 No 60* with effect from 1.3.2018.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the *Interpretation Act 1987*.

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Miscellaneous Acts (Planning) Savings and Transitional Provisions Regulation 1980



New South Wales

- 1 This Regulation may be cited as the *Miscellaneous Acts (Planning) Savings and Transitional Provisions Regulation 1980*.
- 2 This Regulation is made pursuant to clause 38 of Schedule 3 to the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979*.
- 3
 - (1) In this Regulation, **the Act** means the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979*.
 - (2) Except in so far as the context or subject-matter otherwise indicates or requires, expressions used in this Regulation have the same meanings as they would have if used in Schedule 3 to the Act.
- 4 The amendment made by section 8 (1) (b) of the *State Planning Authority (Amendment) Act 1972* continues to have force and effect as if that Act had not been repealed by the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979*.
- 5 The amendments made by sections 24 (1), (2) (a), (3), (4) (a), (4) (c), (5) and (7) and 26 of the *Land and Valuation Court Act 1921* continue to have force and effect as if that Act had not been repealed by the *Miscellaneous Acts (Planning) Repeal and Amendment Act 1979*.
- 6 A reference in a former planning instrument to a responsible authority or a council in relation to the function of determining a development application shall be read and construed as a reference to a consent authority within the meaning of the *Environmental Planning and Assessment Act 1979*.
- 7
 - (1) Notwithstanding clause 5 of Schedule 3 to the Act, where immediately before the appointed day, an application for consent, approval or permission under a former planning instrument has not been finally determined, the application shall, subject to subclause (3) of this clause, be determined as if the Act (in particular clause 2 of that Schedule), but excepting clauses 20, 30 and 38 of that Schedule, had not been enacted.
 - (2) For the purposes of subclause (1), an application is not finally determined unless:

- (a) consent, approval or permission is granted or refused in respect of that application and no appeal is lodged within a period of 12 months from the date of granting or refusing the application, or
 - (b) where an appeal is lodged within the period of 12 months referred to in paragraph (a)—that appeal is finally disposed of.
- (3) An appeal that would, but for this subclause, be made on or after the appointed day to a former tribunal in relation to any matter referred to in this clause shall be made to the new Court, and shall, for the purposes of the *Land and Environment Court Act 1979*, be treated as an appeal under section 97 of the *Environmental Planning and Assessment Act 1979*.
- (4) Notwithstanding clause 5 of Schedule 3 to the Act:
- (a) the provisions of section 101 of the *Environmental Planning and Assessment Act 1979* apply to an application referred to in this clause as if that application were an application referred to in that section, and so apply as if references (however expressed) in section 101 (2) to determining or dealing with the application in accordance with Division 1 of Part 4 of that Act were references to determining or dealing with the application in accordance with Part 12A of the *Local Government Act 1919*, and
 - (b) the provisions of sections 119 and 120 of the *Environmental Planning and Assessment Act 1979* apply to and in relation to an inquiry directed to be held pursuant to the provisions of section 101 (5) of that Act as applying by virtue of paragraph (a).

8

- (1) Any consent, approval or permission granted in respect of an application made under a former planning instrument, being an application referred to in clause 7 and that is in force, shall, subject to subclause (2) and clause 8A, continue in full force and effect subject to:
- (a) the operation of any provision of that instrument or any term or condition of that consent, approval or permission governing or relating to the currency, duration or continuing legal effect of that consent, approval or permission, and
 - (b) the operation of any condition (other than that referred to in paragraph (a)), restriction or limitation, subject to which that consent, approval or permission was granted.
- (2) Where no provision or term or condition of the type referred to in subclause (1) (a) operates in respect of a consent, approval or permission therein mentioned, the provisions of section 99 of the *Environmental Planning and Assessment Act 1979* shall apply to that consent, approval or permission as if it were a consent referred to in that

section which had taken effect on the day on which it was granted.

- (3) The provisions of section 103 of the *Environmental Planning and Assessment Act 1979* shall apply to a consent referred to in subclause (1) as if that consent were a consent referred to in that section.

8A Lapsing of consent

Where, pursuant to clause 7 (1) of the Act or clause 8 (1) of this Regulation, any consent, approval or permission continues in full force and effect subject to a provision of a former planning instrument to the effect that the consent, approval or permission shall lapse unless the development the subject of the consent, approval or permission is commenced or substantially commenced within a period specified in the former planning instrument, the provisions of section 99 (5)–(11) of the *Environmental Planning and Assessment Act 1979* shall apply to that consent, approval or permission as if:

- (a) it were a consent referred to in section 99 of that Act, and
- (b) the reference in section 99 (5) of that Act to the period specified in section 99 (1) of that Act were a reference to the period specified in the former planning instrument.

8B Development control plans

- (1) The provisions of section 72 of the *Environmental Planning and Assessment Act 1979* shall apply to and in relation to a deemed environmental planning instrument as if it were a local environmental plan.

- (2) Where:

- (a) before the appointed day, a council adopted by resolution a plan, code or design relating to the use or development of any land, and
- (b) before adopting that plan, code or design, the council advertised it, invited the public to make submissions with respect to its provisions and considered any submissions received with respect to those provisions,

the plan, code or design shall, to the extent to which it makes provision for or with respect to any matter for or with respect to which a local environmental plan may make provision, be deemed to be a development control plan for the purposes of the *Environmental Planning and Assessment Act 1979*.

8C Amendment of consents

The provisions of section 102 (1), (4), (5) and (6) of the *Environmental Planning and Assessment Act 1979* shall apply to and in relation to a consent, approval or permission referred to in:

- (a) clause 7 (1) of Schedule 3 to the Act, or

(b) clause 8 (1) of this Regulation,

as if that consent, approval or permission were a development consent referred to in those provisions, and shall so apply as if the reference in section 102 (1) (c) to a condition referred to in section 82 (1) were a reference to a condition imposed by a Minister or public authority, not being the consent authority, in pursuance of a former planning instrument.

9 For the purposes of Division 3 of Part 6 of the *Environmental Planning and Assessment Act 1979*:

(a) a consent, approval or permission referred to in:

- (i) clause 7 (1) of Schedule 3 to the Act, or
- (ii) clause 8 of this Regulation,

shall be deemed to be a consent referred to in section 122 (b) (ii) of the *Environmental Planning and Assessment Act 1979*, and

(b) a term or condition of a consent, approval or permission referred to in paragraph (a) shall be deemed to be a condition referred to in section 122 (b) (iii) of the *Environmental Planning and Assessment Act 1979*.

10

(1) This clause applies to proceedings referred to in clause 28 (1) of Schedule 3 to the Act in respect of an objection that was referred to the Local Government Appeals Tribunal under section 342NA or section 342VA of the *Local Government Act 1919*.

(2) For the purpose of enabling proceedings to which this clause applies to be continued in and disposed of by the new Court, sections 342NA and 342VA of the *Local Government Act 1919* shall, notwithstanding the repeal of Part 12A, but subject to Schedule 3 to the Act (in particular clause 30 thereof), be deemed to continue in force as if that Part had not been repealed.

11

(1) This clause applies to a determination made before the appointed day by a Valuation Board of Review, whether or not that determination is the subject of any pending proceedings referred to in clause 28 (1) of Schedule 3 to the Act.

(2) Part 4 of the *Valuation of Land Act 1916*, as in force immediately before the appointed day, shall, notwithstanding section 5 of the Act, but subject to Schedule 3 to the Act (in particular clause 30 thereof), be deemed to continue in force in respect of a determination to which this clause applies as if that Part had not been omitted.

12 Notwithstanding the repeal of Part 12A, the following provisions of Ordinance No 4 under the *Local Government Act 1919*:

(a) clauses 31D-31L and 32 (f) and the headings thereto, and

- (b) the definition of **Committee** in clause 2, so far as it relates to the Local Government Town and Country Planning Examination Committee,

as in force immediately before the appointed day, continue in force, and may be altered, rescinded or remade, as if that Part had not been repealed.

13

- (1) Notwithstanding the repeal of Part 12A, section 342R of the *Local Government Act 1919*, as in force immediately before the appointed day, shall, subject to Schedule 3 to the Act (in particular clause 20 thereof), be deemed to continue in force with respect to a former planning instrument referred to in clause 2 (1) of that Schedule as if that Part had not been repealed.
- (2) Nothing in this clause authorises the inclusion, on or after the appointed day, in an instrument referred to in subclause (1), of provisions to the effect that the erection of buildings on any land is prohibited or restricted until such time as a council has given notice as provided in section 342R of the *Local Government Act 1919*.

14

- (1) Notwithstanding the repeal of Part 12A, section 342ZA of the *Local Government Act 1919*, as in force immediately before the appointed day, shall, subject to Schedule 3 to the Act, be deemed to continue in force with respect to a development application made to carry out development to which a provision of a former planning instrument, being a provision as in force immediately before the appointed day, relates.
- (2) The provisions of section 84 (2) and (3) of the *Environmental Planning and Assessment Act 1979* apply in relation to the serving of written notice referred to in section 342ZA (1) (a) of the *Local Government Act 1919*, as continued in force by subclause (1), in the same manner as they apply in relation to the giving of written notice under section 84 (1) (a) of that Act.
- (2A) A reference in section 342ZA of the *Local Government Act 1919*, as continued in force by subclause (1), to a person shall be read and construed as a reference to a person as defined in section 4 of the *Environmental Planning and Assessment Act 1979*.
- (2B) Clause 26 (2) of the *Environmental Planning and Assessment Regulation 1980* applies to and in respect of a development application to which section 342ZA of the *Local Government Act 1919*, as continued in force by subclause (1), relates as if notice of that development application were required to be given under section 84 of the *Environmental Planning and Assessment Act 1979* and as if the development concerned were development to which section 30 (4) of that Act applies.
- (3) The provisions of section 85 of the *Environmental Planning and Assessment Act 1979* apply to and in respect of a development application to which section 342ZA of the

Local Government Act 1919, as continued in force by subclause (1) relates, in the same way as they apply to and in respect of a development application to which that section relates.

15

- (1) A notification given under section 47 (2) of the *State Planning Authority Act 1963* in relation to an assessment for the year ending on 31 December 1981 shall be deemed to be a notification duly given by the corporation under section 143 (2) of the *Environmental Planning and Assessment Act 1979* in relation to that assessment.
- (2) A statement furnished under section 47 (3) of the *State Planning Authority Act 1963* in relation to an assessment for the year ending on 31 December 1981 shall be deemed to be a statement duly furnished by the council under section 143 (3) of the *Environmental Planning and Assessment Act 1979* in relation to that assessment.

16 Section 113 (1A) (c) of the *Mining Act 1973* as amended by the Act, does not apply to any application for the granting of a mining lease or a mining purpose lease:

- (a) lodged as at 1 September 1980 in accordance with the *Mining Act 1973*, or
- (b) lodged before 1 December 1980 in accordance with the *Mining Act 1973* where, as at 1 September 1980, the application had reached a stage of preparation, by reason of prior exploration, investigation or assessment by the applicant, which, in the opinion of the Minister for Mineral Resources, renders the application of that paragraph unreasonable or unnecessary.

17 Section 87 (3A) (c) of the *Coal Mining Act 1973*, as amended by the Act, does not apply to any application for the granting of a coal lease:

- (a) lodged as at 1 September 1980 in accordance with the *Coal Mining Act 1973*, or
- (b) lodged before 1 December 1980 in accordance with the *Coal Mining Act 1973*, where, as at 1 September 1980, the application had reached a stage of preparation, by reason of prior exploration, investigation or assessment by the applicant, which, in the opinion of the Minister for Mineral Resources, renders the application of that paragraph unreasonable or unnecessary.