



New South Wales

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Planning.

FRANK SARTOR, M.P.,
Minister for Planning

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)*.

2 Aims of Policy

The aims of this Policy are:

- (a) to make the following miscellaneous amendments to *State Environmental Planning Policy (Major Projects) 2005 (the Major Projects SEPP)*:
 - (i) to provide that an activity that is the subject of an application for approval to which Part 5 of the Act applies and that becomes, after the application is made but before it is determined, a project to which Part 3A of the Act applies (*a Part 3A project*), does not become a Part 3A project unless the application is withdrawn or the Minister so directs (Schedule 1 [1]),
 - (ii) to provide for the public to be notified of proposals to add sites to the list of State significant sites in Schedule 3 of the Major Projects SEPP (Schedule 1 [2]),
 - (iii) to amend savings and transitional provisions in the Major Projects SEPP (Schedule 1 [3]),
 - (iv) to declare development for the purposes of a winery that employs 100 or more people, or has a capital investment value of more than \$30 million, to be a Part 3A project (Schedule 1 [4]),
 - (v) to declare development that employs 100 or more people, or has a capital investment value of more than \$30 million, and that the Minister for Planning considers constitutes an agricultural produce industry or food and beverage processing to be a Part 3A project (Schedule 1 [5]),
 - (vi) to declare the drilling and operation of petroleum wells (in connection with oil, gas and coal seam methane) in the

-
- Hawkesbury, Port Stephens and Upper Hunter local government areas to be Part 3A projects (Schedule 1 [6]),
- (vii) to correct a provision in Schedule 1 to the Major Projects SEPP so that it refers not just to an application for development consent under Part 4 of the Act but also extends to an application for approval of a concept plan or a project under Part 3A of the Act (Schedule 1 [7]),
 - (viii) to exclude development for the purpose of turf farming and development for the purpose of certain maintenance dredging from extractive industry that is declared to be a Part 3A project (Schedule 1 [8], [12] and [18]),
 - (ix) to add development that has a capital investment value of more than \$5 million and is for the purpose of park improvements to development in particular Sydney parklands that is declared to be a Part 3A project (Schedule 1 [9]),
 - (x) to declare development for the purposes of a facility that generates electricity or heat or co-generates electricity and heat to be a Part 3A project (Schedule 1 [10]),
 - (xi) to expand the class of development for the purpose of certain sewage and related waste water treatment plants that is declared to be a Part 3A project (Schedule 1 [11]),
 - (xii) to exclude the following from development in the coastal zone that is declared to be a Part 3A project: a change of the use of a building to use as a recreational or tourist facility; some development for the purpose of a building that is more than 13 metres high; certain development that the Minister determines to be of only local environmental planning significance (Schedule 1 [13], [14] and [16]),
 - (xiii) to declare certain incremental subdivision in the coastal zone to be a Part 3A project (namely subdivision of land adjoining or neighbouring land in the same ownership by a series of development applications concerning a small parcel of land) (Schedule 1 [15]),
 - (xiv) to remove a provision in the Major Projects SEPP that excludes development from being a Part 3A project if, under another environmental planning instrument, the Minister for Planning or the Director-General of the Department of Planning is the consent authority, or has a concurrence role, in relation to the development (Schedule 1 [17]),
 - (xv) to remove a provision relating to certain development within the Rhodes Peninsula so that such development is

-
- no longer identified as a Part 3A project (with the effect that the City of Canada Bay Council will be the consent authority for, and *Sydney Regional Environmental Plan No 29—Rhodes Peninsula* will apply to, all future development of this type on land within the Rhodes Peninsula) (Schedule 1 [19] and [21]),
- (xvi) to change the boundary of two areas in which development is declared to be a Part 3A project (Schedule 1 [20] and [22]),
 - (xvii) to exclude a basement and any space within a building with a floor level that is predominantly below a basement from the calculation of storeys in a building on land in the Redfern-Waterloo Authority sites (Schedule 1 [23]),
 - (xviii) to include certain minor development, such as public art and street signs undertaken by or on behalf of a public authority, or minor internal alteration of buildings, as exempt development on land within the Redfern-Waterloo Authority sites (Schedule 1 [24] and [25]),
 - (xix) to make the Minister the consent authority for minor development of the Sydney Cricket Ground and for development at that Ground for the purposes of non-sporting events of any size and to change the requirements that such events must satisfy in order to be exempt development (Schedule 1 [26] and [27]),
- (b) to amend *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development* to enable filming on Crown land to be exempt development in certain circumstances (Schedule 2.1), and
 - (c) to amend *State Environmental Planning Policy No 14—Coastal Wetlands* and *State Environmental Planning Policy No 26—Littoral Rainforests* as a consequence of the enactment of Part 3A of the Act (Schedule 2.2 and 2.3), and
 - (d) to amend *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts* to reinstate requirements relating to exempt development that were omitted from that Policy when it was amended by the Major Projects SEPP (Schedule 2.4), and
 - (e) to amend *State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007* to ensure that development for the purpose of certain industries compatible with extractive industry can be carried out with consent on land where an extractive industry is being carried out with consent (Schedule 2.5), and

-
- (f) to amend *Sydney Regional Environmental Plan No 29—Rhodes Peninsula* to reinstate (with minor modifications) a provision that applied to development at Rhodes Peninsula under *State Environmental Planning Policy No 56—Sydney Harbour Foreshores and Tributaries* until its repeal, being a provision that suspends the application of certain instruments to development on the Peninsula (Schedule 2.6).

3 Land to which Policy applies

This Policy applies to the State.

4 Amendment of State Environmental Planning Policy (Major Projects) 2005

State Environmental Planning Policy (Major Projects) 2005 is amended as set out in Schedule 1.

5 Amendment of other environmental planning instruments

The following environmental planning instruments are amended as set out in Schedule 2:

- (a) *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development,*
- (b) *State Environmental Planning Policy No 14—Coastal Wetlands,*
- (c) *State Environmental Planning Policy No 26—Littoral Rainforests,*
- (d) *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts,*
- (e) *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007,*
- (f) *Sydney Regional Environmental Plan No 29—Rhodes Peninsula.*

2007 No 359

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)

Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005

Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005

(Clause 4)

[1] Clause 6 Identification of Part 3A projects

Omit clause 6 (3). Insert instead:

- (3) If, after the commencement of Part 3A of the Act, any class of development or activity that was not a project to which that Part applies becomes such a project because of an amendment to this Policy (or because of a change in the application of a provision of this Policy), and:
 - (a) in the case of development to which Part 4 of the Act applies—a development application in respect of any particular development within that class of development was pending on the commencement of that amendment or change, or
 - (b) in the case of an activity to which Part 5 of the Act applies—an application for approval (within the meaning of that Part) in relation to an activity that is within that class of development was made to a determining authority and had not been finally determined on the commencement of that amendment or change,

that particular development or activity does not become such a project by the operation of subclause (1) unless the application is withdrawn or the Minister so directs.

[2] Clause 8 Proposals for State significant site listing

Insert before clause 8 (1):

- (1A) The Minister may publish a notice in the Gazette advising of a proposal that Schedule 3 be amended to add a site that the Minister considers to be a State significant site.

[3] Clause 16 Savings and transitional provisions

Insert at the end of clause 16 (2) (before the note):

*State Environmental Planning Policy (Major Projects) 2005
(Amendment No 16)*

[4] Schedule 1 Part 3A projects—classes of development

Insert “; wineries” after “manufacturing” in clause 3 (b).

[5] Schedule 1, clause 3 (d)

Insert at the end of clause 3 (c):

, or

- (d) any purpose that the Minister considers constitutes an agricultural produce industry or food and beverage processing.

[6] Schedule 1, clause 6 (1) (c)

Insert “, Hawkesbury, Port Stephens, Upper Hunter” after “Singleton”.

[7] Schedule 1, clause 7 (1) (b)

Insert “(or other relevant application under the Act)” after “development application”.

[8] Schedule 1, clause 7 (1A)

Insert after clause 7 (1):

(1A) Subclause (1) (c) does not apply to extraction:

- (a) by a public authority in maintenance dredging of a tidal waterway, or
- (b) in maintenance dredging of oyster lease areas, or adjacent areas, in Wallis Lake.

[9] Schedule 1, clause 15 (1)

Omit the subclause. Insert instead:

(1) Development for any of the following purposes on land to which *Sydney Regional Environmental Plan No 31—Regional Parklands* or *State Environmental Planning Policy No 29—Western Sydney Recreation Area* applies:

- (a) recreational facilities or other park improvements, being development that has a capital investment value of more than \$5 million,
- (b) a new sporting complex, being development that has a capital investment value of more than \$10 million.

[10] Schedule 1, clause 24

Omit the clause. Insert instead:

24 Generation of electricity or heat or co-generation

Development for the purpose of a facility for the generation of electricity or heat or their co-generation (using any energy

2007 No 359

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)

Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005

source, including gas, coal, bio-fuel, distillate and waste and hydro, wave, solar or wind power), being development that:

- (a) has a capital investment value of more than \$30 million, or
- (b) has a capital investment value of more than \$5 million and is located in an environmentally sensitive area of State significance.

[11] Schedule 1, clause 26 (1)

Insert “, or for the reticulation of treated water,” after “other waste water”.

[12] Schedule 2 Part 3A projects—specified sites

Insert after “industries,” in clause 1 (1) (a):

other than:

- (i) maintenance dredging by a public authority in a tidal waterway, and
- (ii) maintenance dredging of oyster lease areas, or adjacent areas, in Wallis Lake,

[13] Schedule 2, clause 1 (1) (f)

Insert “or a change of use of a building by which the building becomes a recreational or tourist facility” after “existing facilities”.

[14] Schedule 2, clause 1 (1) (g) (ii)

Insert “excluding any building that complies with all development standards relating to the height of such a building set by a local environmental plan that applies to the land on which the building is located,” after “coastal zone,”.

[15] Schedule 2, clause 1 (1) (h)–(k)

Omit clause 1 (1) (h) and (i). Insert instead:

- (h) subdivision of land that is wholly or partly in a sensitive coastal location and that will lead to development that is not connected to an approved sewage treatment work or system:
 - (i) into more than 2 lots, or
 - (ii) into 2 lots, if the land to be subdivided and adjoining or neighbouring land in the same ownership as that land could be subdivided into more than 2 lots,
- (i) subdivision of land that is outside a sensitive coastal location and that will lead to development that is not connected to an approved sewage treatment work or system:

- (i) into more than 5 lots, or
- (ii) into 5 or fewer lots, if the land to be subdivided and adjoining or neighbouring land in the same ownership as that land could be subdivided into more than 5 lots,
- (j) subdivision for residential purposes of land that is not in the metropolitan coastal zone (unless it is wholly or partly in a sensitive coastal location):
 - (i) into more than 25 lots, or
 - (ii) into 25 or fewer lots, if the land proposed to be subdivided and adjoining or neighbouring land in the same ownership as that land could be subdivided into more than 25 lots,
- (k) subdivision for rural-residential purposes of land that is not in the metropolitan coastal zone (unless it is wholly or partly in a sensitive coastal location):
 - (i) into more than 5 lots, or
 - (ii) into 5 or fewer lots, if the land proposed to be subdivided and adjoining or neighbouring land in the same ownership as that land could be subdivided into more than 5 lots.

[16] Schedule 2, clause 1 (1A)

Insert after clause 1 (1):

- (1A) Subclause (1) (f)–(k) does not apply to development that the Minister determines is of only local environmental planning significance.

[17] Schedule 2, clause 1 (2)

Omit the subclause.

[18] Schedule 2, clause 1 (4), definition of “extractive industry”

Omit the definition. Insert instead:

extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include:

- (a) turf farming, or
-

2007 No 359

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)

Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005

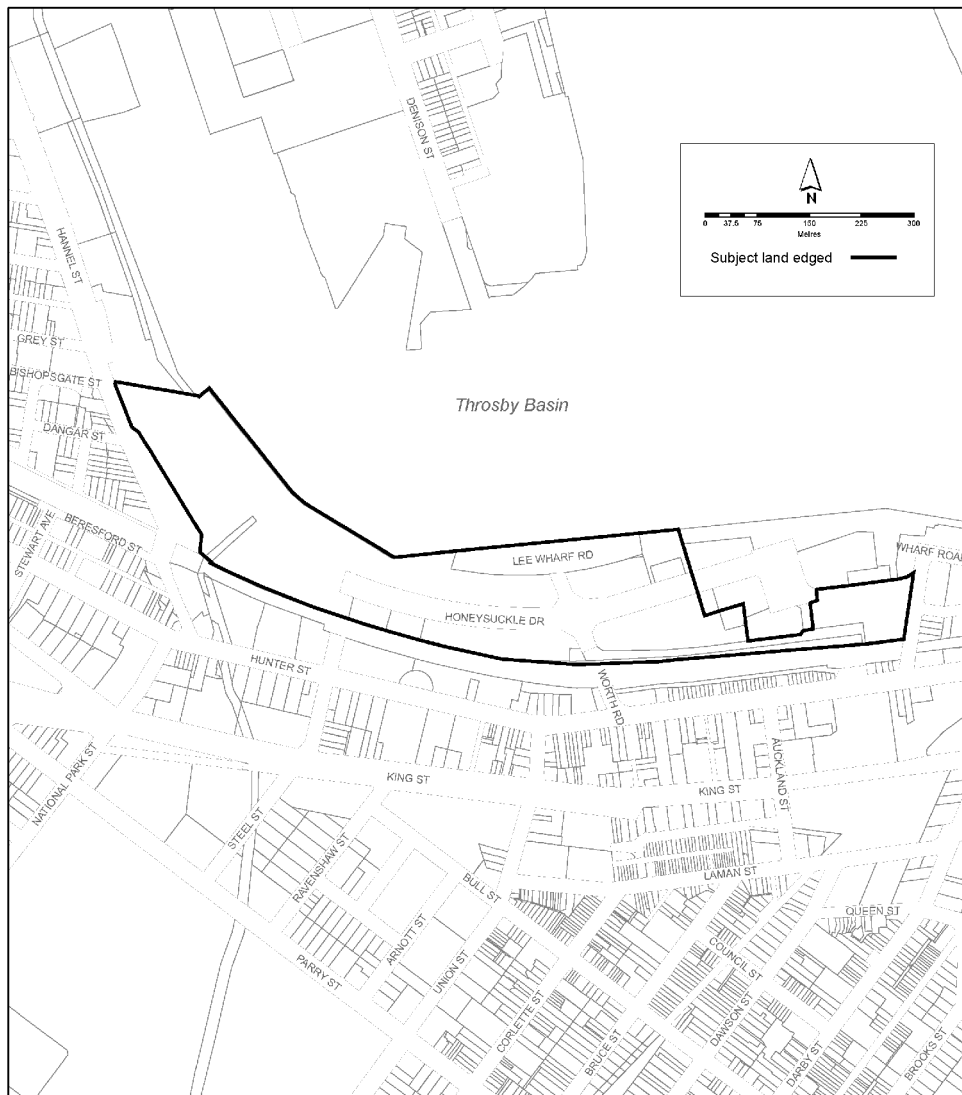
- (b) tunnelling for the purpose of an approved infrastructure development, or
- (c) cut and fill operations, or the digging of foundations, ancillary to approved development, or
- (d) the creation of a farm dam if the material extracted in the creation of the dam is used on site and not removed from the site.

[19] Schedule 2, clause 8

Omit the clause.

[20] Schedule 2, Map 3

Omit the map. Insert instead:



[21] Schedule 2, Map 7

Omit the map.

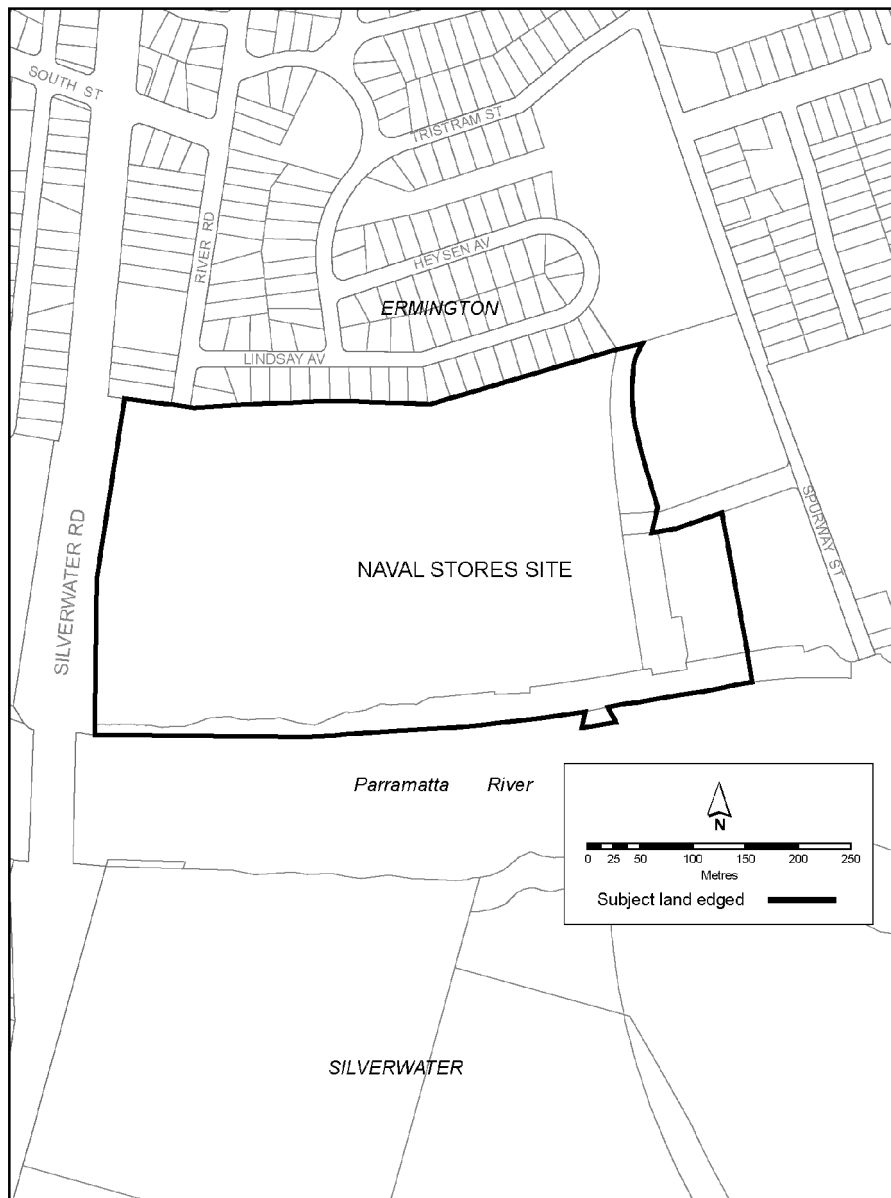
2007 No 359

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)

Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005

[22] Schedule 2, Map 14

Omit the map. Insert instead:



[23] Schedule 3 State significant sites

Omit clause 2 from Part 5. Insert instead:

2 Definitions

- (1) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* unless it is otherwise defined in this Part.
- (2) In this Part:
storey means a space within a building that is situated between one floor level and the floor level next above or, if there is no floor level above, the ceiling or roof above, but does not include:
 - (a) a space that contains only a lift shaft, stairway or meter room, or
 - (b) a mezzanine, or
 - (c) an attic, or
 - (d) a basement, or
 - (e) any space within a building with a floor level that is predominantly below a basement.

[24] Schedule 3, Part 5

Omit clause 17 (d) and (e). Insert instead:

- (d) the erection, installation, maintenance and upgrading by or on behalf of a public authority of public furniture, planter boxes, lighting, public art, street signs, bus shelters, public telephone booths or post boxes, or the carrying out by or on behalf of a public authority of street planting, work for the purpose of changing the width or surface of a footpath, and related road works,
- (e) the erection, installation, maintenance and upgrading by or on behalf of a public authority in existing public recreation areas of public furniture, shade structures, public art, tables, seats, children's play equipment, barbecues and toilets,
- (e1) the carrying out, by or on behalf of a public authority, of landscaping associated with existing public recreation areas,

2007 No 359

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)

Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005

[25] Schedule 3, Part 5

Insert after clause 17 (i):

- (j) minor internal alterations to commercial or retail premises, such as fit-out works or the installation of partitions, shelving, benches or workstations, if the alterations are not structural, do not result in the creation of additional floor space and do not change the building classification.

[26] Schedule 6 Minister consent authority for Part 4 development

Insert in Part 1 with appropriate numbering:

Sydney Cricket Ground

Development in that part of the area identified on Map 8 to Schedule 2 that is land described in Part 1 of Schedule 2 to the *Sydney Cricket and Sports Ground Act 1978*, being:

- (a) development that has a capital investment value of not more than \$5 million, or
- (b) development for the purpose of a non-sporting event (such as a concert).

[27] Schedule 8 Exempt development

Omit clause 1 (g). Insert instead:

- (g) temporary outdoor non-sporting events (such as concerts) that:
 - (i) are subject to noise controls in a prevention notice issued under the *Protection of the Environment Operations Act 1997*, and
 - (ii) have a total duration of not more than 14 days, and
 - (ii) are the subject of a written plan for the management of traffic, parking and vehicle and pedestrian access in relation to the event,

and associated equipment, structures and facilities (such as stages, public address systems, food or beverage outlets, video screens, and information or ticket booths).

Schedule 2 Amendment of other environmental planning instruments

(Clause 5)

2.1 State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development

Clause 15 When filming is exempt development

Omit clause 15 (1) (d) (ii). Insert instead:

- (ii) that is an iconic site, or
- (iii) that is Crown land, and

2.2 State Environmental Planning Policy No 14—Coastal Wetlands

Clause 6 Consent authority

Omit clause 6 (2). Insert instead:

- (2) If development that requires consent under this Policy is declared to be a project to which Part 3A of the Act applies, the concurrence of the Director-General is not required, despite anything to the contrary in this Policy.

2.3 State Environmental Planning Policy No 26—Littoral Rainforests

Clause 6A

Omit the clause. Insert instead:

6A Part 3A projects

If development that requires consent under this Policy is declared to be a project to which Part 3A of the Act applies, the concurrence of the Director-General or Minister is not required, despite anything to the contrary in this Policy.

2007 No 359

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)

Schedule 2 Amendment of other environmental planning instruments

2.4 State Environmental Planning Policy No 73—Kosciuszko Ski Resorts

[1] Schedule 2 Exempt development

Insert before clause 1:

1 Requirements relating to exempt development

- (1) To be exempt development, development:
 - (a) must:
 - (i) meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (ii) be carried out more than 1 metre from any easement or sewer main, and
 - (b) must not:
 - (i) if it relates to an existing building, cause the building to contravene the *Building Code of Australia*, or
 - (ii) create interference with the neighbourhood because it is noisy, causes vibrations or creates smells, fumes, smoke, vapour, steam, soot, ash, dust, waste, water, grit or oil, or
 - (iii) be of such a nature that, were it to require consent, it would be designated development, and
 - (c) must not be carried out on the site of an item of the environmental heritage that:
 - (i) is listed on the State Heritage Register under the *Heritage Act 1977*, or
 - (ii) is subject to an interim heritage order under the *Heritage Act 1977*, or
 - (iii) is identified in any ski resorts heritage or conservation study that is nominated by the National Parks and Wildlife Service and approved by the Director-General of the Department of Planning and a copy of which is kept and available for public access at the head office of the Department.
- (2) Development that relates to an existing building that is classified under the *Building Code of Australia* as class 1b or class 2–9 is not exempt development unless:
 - (a) the building is the subject of a current fire safety certificate or fire safety statement, or

- (b) no fire safety measures are currently implemented, required or proposed for the building.

2 Types of exempt development

Subject to clause 14 of this Policy, the development referred to in the following Table is exempt development.

Table

[2] Schedule 2, clause 2 (as inserted by item [1])

Insert existing clauses 1–13 into the Table referred to in new clause 2.

2.5 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

Clause 7 Development permissible with consent

Omit clause 7 (3) and (4). Insert instead:

(3) Extractive industry

Development for any of the following purposes may be carried out with development consent:

- (a) extractive industry on land on which development for the purposes of agriculture or industry may be carried out (with or without development consent),
- (b) extractive industry in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone.

(4) Co-location of industry

If extractive industry is being carried out with development consent on any land, development for any of the following purposes may also be carried out with development consent on that land:

- (a) the processing of extractive material,
- (b) the processing of construction and demolition waste or of other material that is to be used as a substitute for extractive material,
- (c) facilities for the processing or transport of extractive material,

2007 No 359

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 16)

Schedule 2 Amendment of other environmental planning instruments

- (d) concrete works that produce only pre-mixed concrete or bitumen pre-mix or hot-mix.

2.6 Sydney Regional Environmental Plan No 29—Rhodes Peninsula**Clause 23**

Insert after clause 22:

23 Suspension of covenants

- (1) To the extent necessary to enable development to be carried out on land to which this plan applies in accordance with this plan or in accordance with a development consent, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the development.
- (2) Nothing in subclause (1) affects the rights or interests of the Minister or any public authority under any instrument that has been registered by the Registrar-General.
- (3) Under section 28 of the Act, the Governor approved of subclauses (1) and (2) before the making of this clause.

BY AUTHORITY
