



New South Wales

Environmental Planning and Assessment Amendment Act 1999 No 72

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New South Wales

Environmental Planning and Assessment Amendment Act 1999 No 72

Act No 72, 1999

An Act to amend the *Environmental Planning and Assessment Act 1979* in various respects, including to remove any doubt that affordable housing is an object of that Act and to provide for development funds to improve public amenity; and for other purposes. [Assented to 3 December 1999]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Environmental Planning and Assessment Amendment Act 1999*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedules 5, 6 and 7 [5], and sections 3 and 4 in their application to those provisions, commence on the date of assent to this Act.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is amended as set out in Schedules 1–6.

4 Amendment of Environmental Planning and Assessment Regulation 1994

The *Environmental Planning and Assessment Regulation 1994* is amended as set out in Schedule 7.

5 Amendment of Environmental Planning and Assessment Model Provisions 1980

- (1) The *Environmental Planning and Assessment Model Provisions 1980* are amended as set out in Schedule 8.
- (2) An amendment to the *Environmental Planning and Assessment Model Provisions 1980* made by this Act may be amended or repealed by an order under section 33 of the *Environmental Planning and Assessment Act 1979*.

Schedule 1 Amendments relating to affordable housing

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

[2] Section 5 Objects

Insert after section 5 (a) (vii):

(viii) the provision and maintenance of affordable housing, and

[3] Section 26 Contents of environmental planning instruments

Insert after section 26 (1) (c):

(d) providing, maintaining, and regulating matters relating to affordable housing,

[4] Section 157 Regulations

Insert after section 157 (1) (d):

, or

(e) the purposes, objectives, provision and maintenance of affordable housing, including:

(i) means for determining whether a household is a very low income, low income or moderate income household (for example, by reference to income statistics produced by the Australian Bureau of Statistics), and

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Schedule 1 Amendments relating to affordable housing

- (ii) means for determining affordable housing costs payable in respect of affordable housing (for example, by reference to percentages of household income), and
- (iii) enabling the Minister by order to determine matters relating to affordable housing (including the matters referred to in subparagraphs (i) and (ii)).

Schedule 2 Amendments relating to Development Funds

(Section 3)

[1] Section 11 Functions of corporation

Insert after section 11 (6):

- (7) In relation to any land (whether vested in the corporation or not), the corporation may exercise any function that is necessary or convenient to be exercised in, or for any purpose of, the application of any part of a Development Fund referred to in Division 1 of Part 7.

[2] Section 23 Delegation

Omit “or by Division 4 of Part 5” from section 23 (8) (b).

Insert instead “, by Division 4 of Part 5 or by section 130 (4)”.

[3] Section 130 Development Funds

Insert after section 130 (3):

- (4) The Development Fund may also be applied, with the approval of the Minister, to the development of land (whether vested in the corporation or not) within the development area for the purpose of an improvement program, if:
 - (a) the Minister has considered likely future applications of the Development Fund for all the purposes in subsection (3), and
 - (b) in the opinion of the Minister, implementation of the improvement program will improve public amenity by:
 - (i) enhancing open space or the public domain, or
 - (ii) providing suitable infrastructure or facilities at a regional or local level.
- (5) The Development Fund in respect of each development area may be applied to purposes that are necessary, incidental, subordinate or supplementary to any of the purposes specified in subsection (3) or (4).

Schedule 3 Amendments relating to modification of development consents

(Section 3)

[1] Section 72 Development control plans

Omit section 72 (1) (c). Insert instead:

- (c) to provide for the notification or advertising to the public, a section of the public or specified persons of any of the following:
 - (i) a development application for specified development (other than designated development or advertised development),
 - (ii) an application for the modification of a development consent for specified development (including advertised development but not including designated development),
 - (iii) an application for a complying development certificate,

or to provide that the relevant application does not need to be notified or advertised, or

[2] Section 96 Modification of consents

Omit “**Minor modifications**” from the heading to section 96 (1).

Insert instead “**Modifications involving minor error, misdescription or miscalculation**”.

[3] Section 96 (1)

Omit “(2), (3), (6)”. Insert instead “(1A), (2), (3), (5), (6), (6A)”.

[4] Section 96 (1A)

Insert after section 96 (1):

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section, and
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

[5] Section 96 (2) (a)

Insert “as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) under this section” after “the same development”.

[6] Section 96 (2) (c)

Omit section 96 (2) (c) and (d). Insert instead:

- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

[7] Section 96 (5)

Omit “(except in the case of a minor modification)”.

[8] Section 96 (6A)

Insert after section 96 (6):

- (6A) In the case of State significant development, an applicant who is dissatisfied with the determination of the application or the failure of the consent authority to determine the application within 40 days after the application is made may appeal to the Court unless the consent for the State significant development that was originally granted was granted following the holding of an inquiry by a Commission of Inquiry. The Court may determine any such appeal.

[9] Section 96 (7)

Insert “or (6A)” after “Subsection (6)”.

Schedule 4 Miscellaneous amendments

(Section 3)

[1] Section 4 Definitions

Insert after section 4 (13):

- (14) A reference in this Act to an original document, map or plan includes a reference to a document, map or plan created, or a copy of which is kept, in electronic form.

[2] Section 80 Determination

Omit section 80 (10A).

[3] Section 83 Date from which consent operates

Omit section 83 (1) (b). Insert instead:

- (b) in the case of designated development to which an objection has been made in accordance with section 79 (5):
- (i) if consent was granted under section 80 (7) following the holding of an inquiry by a Commission of Inquiry—the date that is endorsed on the notice of the determination of the development application given to the applicant in accordance with section 81 (1), or
 - (ii) in any other case—the expiration of 28 days from the date that is endorsed on the notice of the determination of the development application given to the applicant in accordance with section 81 (1).

[4] Section 85A Process for obtaining complying development certificates

Omit “that would enable the erection of a building” from section 85A (10A).

[5] Section 109C Part 4A certificates

Insert after section 109C (1) (a) (iv):

, or

- (v) any specified aspect of development (including design of development) complies with standards or requirements specified in the certificate with respect to the development,

[6] Section 109F Restriction on issue of construction certificates

Omit “that the requirements of the regulations referred to in section 81A (5) have been complied with.” from section 109F (1).

Insert instead:

that:

- (a) the requirements of the regulations referred to in section 81A (5) have been complied with, and
- (b) any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or, where such a levy is payable by instalments, the first instalment of the levy) has been paid.

[7] Section 109J Restriction on issue of subdivision certificates

Omit section 109J (1) (c) and (d). Insert instead:

- (c) in the case of subdivision for which a development consent has been granted, that the applicant has complied with all conditions of the consent that, by its terms, are required to be complied with before a subdivision certificate may be issued in relation to the plan of subdivision,
- (d) in the case of subdivision for which a “deferred commencement” consent under section 80 (3) has been granted, that the applicant has satisfied the consent authority concerning all matters as to which the consent authority must be satisfied before the consent can operate,

[8] Section 109ZG Conflicts of interest

Insert after section 109ZG (1):

- (1A) Despite subsection (1), an accredited certifier who is an employee of a council may issue a Part 4A certificate in relation to development that is to be carried out in the area of the council if:
- (a) the certificate relates to development for which the council is not the consent authority, and
 - (b) the accredited certifier issues the certificate in the course of his or her employment with the council.

[9] Section 109ZJ Apportionment of liability

Add “or other party” after “defendant” in section 109ZJ (4).

[10] Section 115BAA

Insert after section 115BA:

115BAA Minor modification of Minister’s approval

- (1) The Minister may, on application by a proponent, modify an approval for the proponent to carry out an activity to correct a minor error, misdescription or miscalculation in the approval.
- (2) If a proponent requests modification of an approval under this section, the Minister is required to modify the approval (without conditions) or disapprove of the modification. The Minister is to notify the proponent of the decision.
- (3) The Minister’s decision on a modification of an approval is to be made within 21 days after the Minister receives the Director’s report under section 115C (1B). The proponent may agree to an extension of the period.
- (4) Section 115BB (2) and (3), and section 115C (1), (1A), (2), (2A), (5) and (6) do not apply to such a modification.

[11] Section 115C Director's report

Insert after section 115C (1A):

- (1B) The Director is also to report to the Minister on the assessment of a proposed modification of an approval requested by a proponent under section 115BAA.

[12] Section 118J In what circumstances can entry be made to a residence?

Insert after section 118J (c):

- , or
- (d) if an application for a building certificate has been made under section 149B in respect of premises used for residential purposes and entry is necessary for the purpose of inspecting the premises in order to issue a building certificate in accordance with sections 149A–149E.

[13] Section 121 Settlement of disputes

Insert after section 121 (1):

- (1A) Where a dispute arises between a public authority, other than a council, and another public authority, other than a council, with respect to:
- (a) the operation of any provision made by or under this Act, the regulations or an environmental planning instrument, or
- (b) the exercise of any function conferred or imposed upon any such public authority by or under this Act, the regulations or an environmental planning instrument,
- a party to the dispute may submit that dispute to the Premier for settlement in accordance with this section.

[14] Section 121 (3) and (7)

Insert “, (1A)” after “subsection (1)” wherever occurring.

[15] Section 126 Penalties

Omit “1,000 penalty units and to a further daily penalty not exceeding 100 penalty units” from section 126 (1).

Insert instead “10,000 penalty units and to a further daily penalty not exceeding 1,000 penalty units”.

[16] Section 126 (2)

Omit “100 penalty units”. Insert instead “1,000 penalty units”.

[17] Section 127 Proceedings for offences

Omit “100 penalty units” from section 127 (3).

Insert instead “1,000 penalty units”.

[18] Section 137 Charges and fees fixed by regulation

Omit section 137 (1) (a)–(e). Insert instead:

- (a) supplies any service, product, commodity or publication, or
- (b) makes any registration, or
- (c) gives any permission, or
- (d) furnishes any information, or
- (e) receives any application for its approval, or
- (f) issues any certificate, requirement or direction, or
- (g) allows admission to any building,

[19] Section 145A Definitions

Insert after paragraph (a) of the definition of *planning authority*:

- (a1) in the case of a function relating to an application for a complying development certificate—the council or accredited certifier to whom the application is made, and

[20] Section 145B Exemption from liability—contaminated land

Insert after section 145B (2) (d):

- (d1) the processing and determination of an application for a complying development certificate,

Schedule 5 Amendments by way of statute law revision

(Section 3)

[1] Section 11 Functions of corporation

Omit section 11 (5).

[2] Section 11 (6)

Omit “subsection (4) (c) or (g), consultations shall be held with the Traffic Authority of New South Wales”.

Insert instead “subsection (4) (g), consultations are to be held with the Roads and Traffic Authority”.

[3] Section 50 Submission of draft regional environmental plan to the Minister

Omit “exclude certain provisions thereof or exclude from the application thereof part of the region to which that draft plan applied” from section 50 (2).

Insert instead “exclude certain provisions of the draft plan or exclude part of the region from the draft plan, or both”.

[4] Section 68 Consideration of submissions

Omit “exclude certain provisions thereof or exclude from the application thereof part of the land to which the draft plan applied” from section 68 (5).

Insert instead “exclude certain provisions of the draft plan or exclude part of the land from the draft plan, or both”.

[5] Section 70 Making of local environmental plan

Omit “exclude certain provisions thereof or exclude from the application thereof part of the land to which the draft plan applied” from section 70 (4).

Insert instead “exclude certain provisions of the draft plan or exclude part of the land from the draft plan, or both”.

[6] Section 76A Development that needs consent

Insert “and the development may be carried out with development consent” after “the exclusion of Part 5” in section 76A (8) (b).

[7] Section 79B Consultation and concurrence

Omit “or objections” from section 79B (5) (c).

[8] Section 80 Determination

Omit “an objection is made to the application within the submission period, until after 21 days following the date on which a copy of the objection” from section 80 (9) (b).

Insert instead “a submission is made with respect to the application within the submission period, until after 21 days following the date on which a copy of the submission”.

[9] Section 80 (10) (b)

Omit “objections”. Insert instead “submissions”.

[10] Section 112C Concurrence of or consultation with Director-General of National Parks and Wildlife if Minister is not determining authority

Omit “Sections 78 (subsection (2) excepted), 79 (subsection (4) excepted), 80, 81 and 82” from section 112C (3).

Insert instead “Section 79B (8), (9) and (11) and the prescribed provisions of the regulations”.

[11] Section 115B Minister’s approval

Insert “and (1B)” after “section 112 (1) (a)–(c)” in section 115B (1).

[12] Section 115BA (5)

Insert “and (1B)” after “section 112 (1) (a)–(c)” in section 115BA (5) (a).

[13] Section 157 Regulations

Insert “or” after “person,” in section 157 (1) (a).

[14] Section 157 (1) (b)

Omit “, and”. Insert instead “, or”.

[15] Schedule 6 Savings, transitional and other provisions

Omit “, except in relation to a Part 4A certificate for which the consent authority is the Darling Harbour Authority and, on its dissolution, the Sydney Harbour Foreshore Authority” from clause 22 (1).

[16] Schedule 6, clause 28 Consent authority

Omit “, except in relation to a Part 4A certificate, for which the consent authority is the Sydney Harbour Foreshore Authority” from clause 28 (1).

Schedule 6 Amendments by way of savings and transitional provisions

(Section 3)

[1] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1) the following:

Protection of the Environment Operations Act 1997

Environmental Planning and Assessment Amendment Act 1999

[2] Schedule 6, Part 9

Insert after Part 8:

Part 9 Environmental Planning and Assessment Amendment Act 1999

33 Modification of development consents

An amendment made by Schedule 3 to the *Environmental Planning and Assessment Amendment Act 1999* extends to a development consent granted before the commencement of the amendment.

34 Date from which consent operates

Section 83 (1) (b), as substituted by the *Environmental Planning and Assessment Amendment Act 1999*, extends to a development application made before the commencement of the substitution.

35 Building and construction industry long service levy

If a long service levy, or the first instalment of such a levy, has been paid under section 80 (10A) before its repeal, section 109F as amended by the *Environmental Planning and Assessment Amendment Act 1999* does not apply in respect of the levy, or the first instalment of the levy.

36 Appportionment of liability

Section 109ZJ, as amended by the *Environmental Planning and Assessment Amendment Act 1999*, does not apply to or in respect of any development referred to in clause 34 of the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998*.

37 Entry to residences for building certificate inspections

Section 118J, as amended by the *Environmental Planning and Assessment Amendment Act 1999*, extends to an application for a building certificate that was made before the commencement of the amendment.

Schedule 7 Amendments to Environmental Planning and Assessment Regulation 1994

(Section 4)

- [1] Clause 71A What are the requirements for an application for modification of a development consent under sec 96 (1), (1A) or (2) of the Act?**

Insert “, (1A)” after “section 96 (1)”.

- [2] Clause 72 Applications for modification of development consents granted by the Land and Environment Court or the Minister**

Insert “, (1A)” after “section 96 (1)” wherever occurring in clause 72 (1).

- [3] Clause 72A Public participation—application under sec 96 (2) of the Act for modification of certain development consents**

Omit clause 72A (1). Insert instead:

- (1) This clause applies to an application under section 96 (2) of the Act to modify a development consent if the original development application for the consent was an application to carry out any of the following:
 - (a) designated development,
 - (b) State significant advertised development as referred to in clause 63 (1) (a) of this Regulation,
 - (c) nominated integrated development as referred to in clause 63 (1) (b) of this Regulation,
 - (d) any other advertised development where the application was made to a consent authority other than a council.

[4] Clauses 72B and 72C

Insert after clause 72A:

72B Public participation—application under sec 96 (2) for modification of other development consents

- (1) This clause applies to an application under section 96 (2) of the Act to which clause 72A does not apply.
- (2) An application to which this clause applies must be notified or advertised for a period not exceeding 14 days but otherwise in the same manner as the original development application was notified or advertised.
- (3) However, if the application is made to a council that has provided in a development control plan made under section 72 of the Act for the notification or advertising of such an application (or has provided that such an application is not required to be notified or advertised), the application is to be notified or advertised in accordance with the development control plan.
- (4) If an application to which this clause applies is required by this clause or a development control plan to be notified or advertised and the development consent was granted by the Court on appeal, the application must be so notified or advertised by the council to which the original development application was made.
- (5) A council referred to in subclause (4) must notify the Court of:
 - (a) the manner in which the application was notified or advertised, and
 - (b) any submission period required by the development control plan, and
 - (c) the date (or dates) on which the application was notified or advertised.
- (6) During the period referred to in subclause (2) or, if a development control plan provides for a period for notification or advertising of an application, during that period, any person may inspect the application and any accompanying information and make extracts from or copies of them.

72C Public participation—application under sec 96 (1A) for modification of development consents

- (1) This clause applies to an application under section 96 (1A) of the Act.
- (2) If an application to which this clause applies is required by a development control plan to be notified or advertised and the development consent was granted by the Court on appeal, the application must be so notified or advertised by the council to which the original development application was made.
- (3) A council referred to in subclause (2) must notify the Court of:
 - (a) the manner in which the application was notified or advertised, and
 - (b) any submission period required by the development control plan, and
 - (c) the date (or dates) on which the application was notified or advertised.
- (4) If a development control plan provides for a period for notification or advertising of an application, any person during that period may inspect the application and any accompanying information and make extracts from or copies of them.

[5] Clause 91B

Insert after clause 91A:

91B Concurrence or consultation with Director-General of National Parks and Wildlife

For the purposes of section 112C (3) of the Act, clauses 49A, 50, 50A, 51A and 51B of this Regulation apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under section 112C in the same way as they apply to and in respect of the granting of concurrence under section 79B.

[6] Schedule 3 Designated development

Omit the definition of *drinking water catchment* from Part 3 of the Schedule.

Insert instead:

drinking water catchment means the restricted areas prescribed by the controlling water authority, including the inner and outer catchment areas declared under the *Sydney Water Catchment Management Act 1998*, and catchment districts proclaimed under section 128 of the *Local Government Act 1993*.

Schedule 8 Amendments to Environmental Planning and Assessment Model Provisions 1980

(Section 5)

[1] Clause 4 Definitions

Omit the definition of *advertising structure* in clause 4 (1).

[2] Clause 4 (1), definition of “advertisement”

Omit the definition.

[3] Clause 4 (1), definition of “Department”

Omit “Department of Environment and Planning constituted under the *Environmental Planning and Assessment Act 1979*”.

Insert instead “Department of Urban Affairs and Planning”.

[4] Clause 4 (1), definition of “health care professional”

Omit “*Podiatrists Registration Act 1989*”.

Insert instead “*Podiatrists Act 1989*”.

[5] Clause 4 (1), definition of “main road”

Omit “*Main Roads Act 1924*”.

Insert instead “*Roads Act 1993*”.

[6] Clause 4 (1), definition of “professional consulting rooms”

Omit “*Dentists Act 1934*”.

Insert instead “*Dentists Act 1989*”.

[7] Clause 4 (1), definition of “units for aged persons”

Omit “Housing Commission of New South Wales”.

Insert instead “Department of Housing”.

[8] Clauses 5 (2) and (3), 10 (2), 19 and 20 (2)

Omit “Traffic Authority of New South Wales” wherever occurring.
Insert instead “Roads and Traffic Authority”.

[9] Clause 8 Preservation of trees

Omit “trees required to be lopped in accordance with Regulation 38 or 39 of the *Overhead Line Construction and Maintenance Regulations 1962*” from clause 8 (7).

Insert instead “trees required to be trimmed or removed under section 48 of the *Electricity Supply Act 1995*”.

[10] Clause 9 Relocation of major roads

Omit “Commissioner for Main Roads”.
Insert instead “Roads and Traffic Authority”.

[11] Clause 10 Opening of public road

Omit “and the Commissioner for Main Roads” from clause 10 (2).

[12] Clause 10 (2) (c)

Omit “or the Commissioner for Main Roads”.

[13] Schedule 1

Omit “Pastures Protection Board” from clause 10 of the Schedule.
Insert instead “rural lands protection board”.

[14] Schedule 1, clause 11

Omit “Water Resources Commission”.
Insert instead “Department of Land and Water Conservation”.

[Minister's second reading speech made in—
Legislative Assembly on 27 October 1999
Legislative Council on 24 November 1999]

BY AUTHORITY