



New South Wales

# Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2010

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*.

TONY KELLY, MLC  
Minister for Planning

## Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* as follows:

- (a) to insert an updated definition of *capital investment value* and make a consequential amendment,
- (b) to require the consent of an owner of land to a request for modification of a project approval under Part 3A of the *Environmental Planning and Assessment Act 1979*, if the owner's consent to the original project application was required,
- (c) to make it clear that the consent of an owner of land is required for a project application to the extent that it relates to mining or petroleum production on any part of the land that is a state conservation area reserved under the *National Parks and Wildlife Act 1974*,
- (d) to clarify the effect of the declaration of a project under Part 3A of the *Environmental Planning and Assessment Act 1979* on existing development consents under Part 4 of that Act and existing approvals under Part 5 of that Act,
- (e) to enable development consents granted by the Minister for Planning under former provisions relating to State significant development, or subsequently by the Land and Environment Court, to be modified under Part 3A of the *Environmental Planning and Assessment Act 1979* as if they were approvals under that Part,
- (f) to remove the requirement for the Minister for Planning to make arrangements for the preparation of an infrastructure plan relating to the infrastructure requirements of growth centres,

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#### Explanatory note

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- (g) to remove the requirement for the Minister for Planning to consult public authorities about declarations that a growth centre precinct or part of a growth centre precinct is released for urban development,
- (h) to delay, for a further 12 months (until 28 February 2011), the implementation of the requirement for a certificate or report by a fire safety engineer before a complying development certificate or construction certificate may be issued for work on certain buildings involving an alternative solution under the *Building Code of Australia* in respect of a fire safety requirement,
- (i) to insert a note in the Schedule relating to planning certificates about the requirements relating to such certificates that are specified in the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009*,
- (j) to enable penalty notices to be issued for breaches of the requirement to comply with the conditions of a project approval under Part 3A of the *Environmental Planning and Assessment Act 1979*,
- (k) to make savings and transitional provisions consequent on the commencement of the *Aboriginal Land Rights Amendment Act 2009*,
- (l) to make other consequential amendments.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 75J (3), 75O (3), 75Z, 78A (1), 81A (5), 85 (5), 127A and 157 (the general regulation-making power) of, and clause 1 of Schedule 6 to, that Act.

## **Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2010**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2010*.

### **2 Commencement**

- (1) This Regulation commences on the day on which it is published on the NSW legislation website, except as provided by subclause (2).
- (2) Schedule 1 [3], [4] and [21] commence on 31 March 2010.

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Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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### Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

#### [1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

*capital investment value* of a development or project includes all costs necessary to establish and operate the project, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment, other than the following costs:

- (a) amounts payable, or the cost of land dedicated or any other benefit provided, under a condition imposed under Division 6 or 6A of Part 4 of the Act or a planning agreement under that Division,
- (b) costs relating to any part of the development or project that is the subject of a separate development consent or project approval,
- (c) land costs (including any costs of marketing and selling land),
- (d) GST (within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth).

#### [2] Clause 8F Owner's consent or notification

Insert "or modification application" after "project application" in clause 8F (1).

#### [3] Clause 8F (1A)

Insert "or modification application" after "project application" where firstly occurring.

#### [4] Clause 8F (1A)

Omit "project" where secondly occurring.

#### [5] Clause 8F (3)

Insert "for a project application" after "required".

#### [6] Clause 8F (4)

Insert in alphabetical order:

*modification application* means a request for modification of approval for a project under section 75W of the Act.

**[7] Clause 8F (4), definition of “mining or petroleum production”**

Omit “a project”. Insert instead “any activity to the extent that it is carried out”.

**[8] Clause 8J Transitional provisions**

Omit clause 8J (8). Insert instead:

- (8) For the purposes only of modification, the following development consents are taken to be approvals under Part 3A of the Act and section 75W of the Act applies to any modification of such a consent:
- (a) a development consent granted by the Minister under section 100A or 101 of the Act before 1 July 1998,
  - (b) a development consent granted by the Minister under *State Environmental Planning Policy No 34—Major Employment-Generating Industrial Development*,
  - (c) a development consent granted by the Minister under Division 4 of Part 4 of the Act (relating to State significant development) before 1 August 2005 or under clause 89 of Schedule 6 to the Act,
  - (d) a development consent granted by the Land and Environment Court, if the original consent authority was the Minister and the consent was of a kind referred to in paragraph (c).

The development consent, if so modified, does not become an approval under Part 3A of the Act.

- (8A) Subclause (8), as in force before its substitution by the *Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2010*, continues to apply to any development consent for which approval was given before that substitution for the treatment of the consent as an approval for the purposes of section 75W of the Act.

**[9] Clause 8M Transitional provisions—development consents under Part 4 of the Act and approvals under Part 5 of the Act**

Omit clause 8M (1). Insert instead:

- (1) If development is declared to be a project under Part 3A of the Act, any development consent under Part 4 of the Act or approval under Part 5 of the Act that applies to the project or land on which the project is to be carried out continues in force despite that declaration.

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- [10] **Clause 8N Projects or concept plans for which approval may not be given concerning environmentally sensitive land or sensitive coastal locations**  
Omit “clause 1 of Schedule 2 to” from the definition of *sensitive coastal location* in clause 8N (3).
- [11] **Clause 130 Procedure for determining applications for complying development certificate and notification requirements**  
Omit “28 February 2010” from clause 130 (2B).  
Insert instead “28 February 2011”.
- [12] **Clause 130 (2C)**  
Omit “1 March 2010”. Insert instead “1 March 2011”.
- [13] **Clause 144A Compliance certificate required for certain fire safety aspects of building work**  
Omit “28 February 2010” from clause 144A (2).  
Insert instead “28 February 2011”.
- [14] **Clause 144A (3)**  
Omit “1 March 2010”. Insert instead “1 March 2011”.
- [15] **Clause 245N Meaning of “estimated cost” for determining fee under this Division**  
Omit clause 245N (5).
- [16] **Clause 275 Development assessment during precinct planning in North West and South West growth centres of Sydney Region**  
Omit clause 275 (4). Insert instead:  
(4) This clause does not apply to land to which clause 17 of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* does not apply.
- [17] **Clause 276 Growth Centres SEPP—release of precinct for urban development and planning process for the precinct**  
Omit clause 276 (2) and (3). Insert instead:  
(2) The Minister is to make arrangements for the preparation of a development code that provides guidelines (in conjunction with the relevant growth centre structure plan) to assist environmental planning in precincts released for urban development.

- (3) The Minister is to consult:
- (a) relevant councils about the making of declarations under this clause, and
  - (b) relevant councils and such public authorities as the Minister considers appropriate about the making of arrangements under this clause.

**[18] Clause 291 Savings and transitional provisions relating to requirements to obtain compliance certificates for alternative fire safety solutions**

Omit “1 March 2010” wherever occurring in clause 291 (4).

Insert instead “1 March 2011”.

**[19] Schedule 4 Planning certificates**

Insert after the note at the end of the Schedule:

**Note.** Section 26 of the *Nation Building and Jobs Plan (State Infrastructure Delivery) Act 2009* provides that a planning certificate must include advice about any exemption under section 23 or authorisation under section 24 of that Act if the council is provided with a copy of the exemption or authorisation by the Co-ordinator General under that Act.

**[20] Schedule 5 Penalty notice offences**

Omit “section 75D (1)” from Column 1 of the Table to the Schedule.

Insert instead “section 75D”.

**[21] Schedule 7 Savings and transitional provisions**

Insert with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of  
Aboriginal Land Rights Amendment Act  
2009**

**Application of amendments to existing development and project applications**

The amendments made by the *Aboriginal Land Rights Amendment Act 2009* do not apply to or in respect of an application of the following kind that was made, but not finally determined, before the commencement of that Act:

- (a) a development application,

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- (b) an application for approval of a project under Part 3A of the Act,
- (c) an application to modify a development consent or project approval under Part 3A of the Act.