



New South Wales

Environmental Planning and Assessment Amendment (Sydney Drinking Water Catchment) Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* and *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*:

- (a) to clarify the application of the neutral or beneficial effect on water quality test in the case of a development application for the continuation of development under an existing development consent relating to the Sydney drinking water catchment, and
- (b) to validate the development consent granted on 21 September 2015 in relation to the Springvale mine extension, and to validate any other development consent that would have been valid under the test as so clarified.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 **Amendment of Environmental Planning and Assessment Act 1979 No 203**

Section 34B of the *Environmental Planning and Assessment Act 1979* provides that a State environmental planning policy is to declare the area of the Sydney drinking water catchment and require a consent authority to refuse consent to a development application relating to any part of that catchment unless the consent authority is satisfied that the carrying out of the proposed

development would have a neutral or beneficial effect on the quality of water. *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* is the relevant Policy for that purpose. Development (such as mining) is often granted consent for a limited time or for a limited area or other limit on the intensity of the development (with the expectation that future development applications would be made and assessed for the continuation of the development by way of an extension or expansion of the carrying out of the development). In the case of any such future development application, the practice has been not to refuse consent on the basis of the neutral or beneficial test unless the extension or expansion of the development would have an additional adverse impact than the impact that would have been caused by a continuation of the development under similar conditions as the existing development consent. A development consent was granted on this basis by the Planning Assessment Commission on 21 September 2015 in relation to the Springvale mine extension. The Land and Environment Court (*Anature Incorporated v Centennial Springvale Pty Ltd* [2016] NSWLEC 121) upheld the validity of the development consent because the impact on water quality under the continued development consent was likely to be less than the impact under the existing consent. However, the Supreme Court on appeal (*Anature Incorporated v Centennial Springvale Pty Ltd* [2017] NSWCA 191) determined that in the case of such continued development, the consent authority cannot have regard to any impact under a development consent that has expired and accordingly is required to refuse consent if the continued development is likely to have any adverse impact on the quality of water.

Schedule 1 [1] amends section 34B to enable the relevant State environmental planning policy to deal with the application of the neutral or beneficial test in the case of proposed development that extends or expands existing development. **Schedule 2** amends that Policy to confirm the practice that has been previously followed for any development (such as mining) for which development consent is limited to the carrying out of the development for a particular time or to a particular area or intensity, but which was likely to be the subject of future applications for consent for its extension or expansion.

Schedule 1 [4] validates the development consent granted on 21 September 2015 in relation to the Springvale mine extension and any mining lease granted or other thing done or omitted in reliance on that development consent. The amendment precludes a challenge to any other development consent that would have been valid if the clarifying amendments made by the proposed Act had been in force at the time the consent was granted.

Schedule 1 [2] removes a spent provision.

Schedule 1 [3] makes a consequential amendment.

Schedule 2 Amendment of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The Schedule amends the Policy in relation to the neutral or beneficial test in the manner outlined above.



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New South Wales

Environmental Planning and Assessment Amendment (Sydney Drinking Water Catchment) Bill 2017

No. , 2017

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* and *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* to clarify the test for granting development consent in relation to the Sydney drinking water catchment and to validate a development consent relating to the Springvale mine extension.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Environmental Planning and Assessment Amendment (Sydney Drinking Water Catchment) Act 2017*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Environmental Planning and Assessment Act 1979 No 203	1
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[1]	Section 34B Special provision for development in Sydney water catchment relating to water quality	3
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	Insert after section 34B (2):	5
	(2A) A State environmental planning policy that requires proposed development to have a neutral or beneficial effect on the quality of water may deal with the application of that test in the case of proposed development that extends or expands existing development.	6
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[2]	Section 34B (3)	10
	Omit the subsection and the note to the subsection.	11
[3]	Schedule 7, heading	12
	Omit “ Transferred provisions ”. Insert instead “ Special provisions ”.	13
[4]	Schedule 7	14
	Insert at the end of the Schedule:	15
Part 4	Validation of development consent relating to Springvale mine extension etc	16
		17
8	Definitions	18
	In this Part:	19
	<i>Springvale mine extension development consent</i> means the development consent granted, or purported to have been granted, on 21 September 2015 with respect to State significant development application number SSD 5594 (being the development consent the subject of the proceedings in <i>4nature Incorporated v Centennial Springvale Pty Ltd</i> [2017] NSWCA 191), together with any modifications of that consent granted or purported to have been granted before the commencement of the amending Act.	20
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	<i>the amending Act</i> means the <i>Environmental Planning and Assessment Amendment (Sydney Drinking Water Catchment) Act 2017</i> .	27
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	<i>this Act</i> includes:	29
	(a) the regulations under this Act, and	30
	(b) <i>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</i> and any other environmental planning instrument.	31
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9	Validation of Springvale mine extension development consent	33
(1)	The Springvale mine extension development consent is validated (to the extent of any invalidity), and is taken:	34
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	(a) to have been duly granted in accordance with this Act and otherwise in accordance with law, and	36
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	(b) to have been duly granted on 21 September 2015, and thereafter to be, and to have been at all relevant times, a valid development consent.	38
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(2)	Without limiting subclause (1), the granting of a mining lease or any other thing done or omitted to be done on or after 21 September 2015 is as valid as	40
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- it would have been had the development consent concerned been in force when the mining lease was granted or the thing was done or omitted. 1
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- (3) This clause has effect despite the existence of any proceedings pending in any court immediately before the commencement of the amending Act or the decision in any such proceedings or in any other proceedings instituted before that commencement. 3
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- (4) If any proceedings are withdrawn or terminated (or any decision in any proceedings no longer has effect) because of the operation of the amending Act, the Treasurer may, in the absolute discretion of the Treasurer, pay to any party to those proceedings the whole or any part of any amount that the Attorney General, on application made to the Attorney General in writing by or on behalf of that party, certifies as being the costs of or incidental to the proceedings reasonably incurred by that party. This subclause does not apply to any party to the proceedings to whom or for whose benefit a development consent the subject of the proceedings was granted. 7
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- 10 Other development consents not subject to challenge 16**
- (1) This clause applies to any development consent granted, or purported to have been granted, before the commencement of the amending Act (other than the Springvale mine extension development consent) to which *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* applied. 17
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- (2) After the commencement of the amending Act, any such development consent is not subject to challenge on the ground that it was not granted in accordance with this Act and *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* if the development consent was granted in accordance with this Act and that Policy, as amended by the amending Act. 22
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Schedule 2	Amendment of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011	1
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Clause 11A		3
Insert after clause 11:		4
11A	Neutral or beneficial effect on water quality—continuing development	5
(1)	This clause applies for the purposes of determining under this Policy whether the carrying out of continuing development on land in the Sydney drinking water catchment would have a neutral or beneficial effect on water quality.	6 7 8
(2)	<i>Continuing development</i> is any development (such as mining) for which development consent was limited to the carrying out of the development for a particular time or to a particular area or intensity, but which was likely to be the subject of future applications for consent for its extension or expansion.	9 10 11 12
(3)	If:	13
(a)	development consent was granted for continuing development (“the existing development consent”), and	14 15
(b)	a development application is made for consent to extend or expand the carrying out of the development (“the proposed development”), and	16 17
(c)	the development application is made before the authority conferred by the existing development consent expires or is exhausted,	18 19
	the carrying out of the proposed development will have a neutral or beneficial effect on water quality if it will have the same or a lesser adverse impact on water quality when compared to the adverse impact that the continuing development would have if it were extended or expanded under similar conditions as the existing development consent.	20 21 22 23 24
(4)	Subclause (3) extends to an existing development consent that is to be surrendered if consent is granted on the determination of the development application.	25 26 27
(5)	In this clause, a reference to an existing development consent includes a reference to a project approved under Part 3A of the Act before its repeal (or granted after its repeal pursuant to Schedule 6A to the Act).	28 29 30