

# Environmental Planning and Assessment (Savings and Transitional) Regulation 1998

As at 1 March 2004

## Part 1 - Preliminary

### 1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998*.

### 2 Commencement

This Regulation commences on the day appointed under section 2 of the *Environmental Planning and Assessment Amendment Act 1997* for the commencement of that Act.

### 3 Definitions

In this Regulation:

**amended EP&A; Act 1979** means the *Environmental Planning and Assessment Act 1979*, as amended by the EP&A; Amendment Acts.

**amended EP&A; Regulation 1994** means the *Environmental Planning and Assessment Regulation 1994*, as amended by the *Environmental Planning and Assessment Amendment Regulation 1998* and the *Environmental Planning and Assessment Further Amendment Regulation 1998*.

**amended LG Act 1993** means the *Local Government Act 1993*, as amended by the EP&A; Amendment Acts.

**appointed day** means the day appointed under section 2 of the EP&A; Amendment Acts for the commencement of that Act.

**EP&A; Amendment Acts** means the *Environmental Planning and Assessment Amendment Act 1997* and the *Statute Law (Miscellaneous Provisions) Act 1998*.

**existing EPI** means an environmental planning instrument:

- (a) that was in existence immediately before the appointed day, or
- (b) that was the subject of a decision under section 54 of the unamended EP&A; Act 1979 immediately before the appointed day and was made before 1 July 1999.

**existing provision** of an existing EPI means a provision of the EPI:

- (a) as in force immediately before the appointed day, or
- (b) as amended after the appointed day, but before 1 July 1999, by some other environmental planning instrument that was the subject of a decision under section 54 of the unamended EP&A; Act 1979 immediately before the appointed day, or
- (c) as inserted in the EPI after the appointed day, but before 1 July 1999, by some other environmental planning instrument that was the subject of a decision under section 54 of

the unamended EP&A; Act 1979 immediately before the appointed day.  
**new EPI** means an environmental planning instrument that is not an existing EPI.

**new provision** of an existing EPI means a provision of the EPI that is not an existing provision.

**prescribed activity** means an activity specified in the Table to section 68 of the unamended LG Act 1993:

- (a) in item 1, 2, 5, 6 or 7 of Part A (buildings, temporary structures or moveable dwellings), or
- (b) in item 2 (but only in relation to the erection of an advertising structure over a public road) or 3 of Part E (public roads).

**repealed LG Act 1919** means the *Local Government Act 1919*, as in force immediately before the appointed day.

**unamended EP&A; Act 1979** means the *Environmental Planning and Assessment Act 1979*, as in force immediately before the appointed day.

**unamended EP&A; Regulation 1994** means the *Environmental Planning and Assessment Regulation 1994*, as in force immediately before the appointed day.

**unamended LG Act 1993** means the *Local Government Act 1993*, as in force immediately before the appointed day.

#### 4 Notes

The explanatory note and table of contents do not form part of this Regulation.

## Part 2 - Provisions arising from repeal of Local Government Act 1919

### Division 1 - Continued operation of repealed LG Act 1919

#### 5 Certain applications for approvals may continue to be made

(1) An application for approval for the subdivision of land or the opening of a public road (other than subdivision that comprises development of the kind referred to in clause 29

(2) (g)) may be made on or after the appointed day under Part 12 of the repealed LG Act 1919, as if that Act had not been repealed, in the following circumstances:

- (a) where the application is for the same development as a development consent granted under the unamended EP&A; Act 1979 before the appointed day,
- (b) where the application is for the same development as a development consent granted under the unamended EP&A; Act 1979 on or after the appointed day in response to a development application made under that Act before the appointed day.

(2) An application may not be made under subclause (1) on or after 1 July 1999.

(3) Nothing in this clause prevents a development application for the subdivision of land (including the opening of a public road by a person other than the Crown) from being made under the amended EP&A; Act 1979 in the circumstances referred to in subclause

(1).

#### 5A (Expired)

#### 6 Applications for approvals

The repealed LG Act 1919 continues to apply to and in respect of an application for approval for

the subdivision of land or the opening of a public road made under Part 12 of that Act (including an application arising under clause 5 or 5A) as if the EP&A; Amendment Acts had not been enacted.

## **7 Post-determination matters**

(1) The repealed LG Act 1919 continues to apply to and in respect of:

- (a) any approval given under Part 12 of that Act for the subdivision of land or the opening of a public road (including an approval arising under this Division), and
- (b) any subdivision of land or opening of a public road carried out in accordance with such an approval, and
- (c) the vesting of land required to be conveyed or transferred to a council under Part 12 of that Act as a condition of such an approval,

as if the EP&A; Amendment Acts had not been enacted.

(2) Division 3 of Part 23 of the *Conveyancing Act 1919*, as in force immediately before the appointed day, continues to apply to and in respect of the conveyance or transfer of land for the purposes referred to in sections 340A and 340B of the repealed LG Act 1919 as if the EP&A; Amendment Acts had not been enacted.

## **8 Appeals**

Section 341 of the repealed LG Act 1919 continues to apply to and in respect of any determination under Part 12 of that Act (including any determination arising under this Division) as if the EP&A; Amendment Acts had not been enacted.

## **Division 2 - Transition to amended EP&A; Act 1979**

### **9 Securities**

Any security lodged under section 331 of the repealed LG Act 1919 is taken to have been lodged under a condition of a development consent referred to in section 80A (6) of the amended EP&A; Act 1979, and may be enforced accordingly.

### **9A Conditions on subdivision arising from existing development consents**

(1) This clause applies to subdivision authorised by:

- (a) a development consent granted under the unamended EP&A; Act 1979 before the appointed day, or
- (b) a development consent granted under the unamended EP&A; Act 1979 on or after the appointed day in response to a development application made under that Act before the appointed day,

referred to in this clause as the **original development consent**.

(2) At any time before issuing a subdivision certificate under the amended EP&A; Act 1979 for subdivision to which this clause applies, the consent authority by which the original development consent was granted may, by notice in writing given to the applicant for the certificate, impose such conditions on the development consent as it could have imposed on a subdivision approval under the unamended LG Act 1919.

(3) Conditions imposed under subclause (2):

- (a) are not to deal with matters of a kind that, under the amended EP&A; Act 1979 or the amended EP&A; Regulation 1994, must be done before the subdivision certificate may be issued, and
- (b) are to be additional to, but not inconsistent with, any other conditions to which the original development consent is subject.

(4) Conditions may not be imposed under this clause if conditions have been imposed under clause 49A in relation to the same subdivision.

(5) The amended EP&A; Act 1979 applies to the consent authority's determination to impose conditions on the original development consent under subclause (2) in the same

way as it applies to a consent authority's determination to impose conditions on a development consent under section 80A of that Act.

(6) Nothing in this section authorises the making of an appeal under section 97 of the amended EP&A; Act 1979 in relation to any aspect of the development consent other than the conditions imposed under this clause.

(7) A subdivision certificate must not be issued under the amended EP&A; Act 1979 in relation to subdivision to which this clause applies unless the certifying authority for the subdivision (which, by virtue of clause 30, will be a consent authority or council) is satisfied that all of the conditions of the original development consent in relation to the subdivision (including those imposed under subclause (2)) have been duly complied with.

(8) Subclause (7) does not apply to any condition that, according to its terms or by necessary implication from its content, does not have to be complied before a subdivision certificate is issued.

(9) This clause does not apply to or in respect of a subdivision the subject of a development consent that authorises or requires any work in the nature of subdivision work.

### **9B Construction of references to certain approvals**

In any development consent granted under the unamended EP&A; Act 1979 before, on or after the appointed day, a reference to:

- (a) an approval under Part 12 of the repealed LG Act 1919 (in whatever terms expressed), or
- (b) a certificate under section 327 of the repealed LG Act 1919 (in whatever terms expressed),

is taken to be a reference to a subdivision certificate under the amended EP&A; Act 1979.

## **Division 3 - General**

### **10 General savings**

Subject to this Part:

- (a) anything begun under a provision of the repealed LG Act 1919 (whether begun before, on or after the appointed day) may be continued and completed under that Act as if the EP&A; Amendment Acts had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the repealed LG Act 1919 for which there is a corresponding provision in the amended EP&A; Act 1979 (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of the amended EP&A; Act 1979.

## **Part 3 - Provisions arising from amendment of Environmental Planning and Assessment Act 1979**

### **Division 1 - Continued operation of unamended EP&A; Act 1979**

#### **11 Development applications**

The unamended EP&A; Act 1979 continues to apply to and in respect of any development application made, but not determined by the consent authority, before the appointed day as if the EP&A; Amendment Acts had not been enacted.

#### **12 Development applications the subject of section 101 directions**

- (1) This clause applies to a development application that was made, but not determined by the consent authority, before the appointed day, under the unamended EP&A; Act 1979 (including a development application for prohibited development within the

meaning of section 101 of that Act), being a development application:

- (a) that is the subject of a direction in force immediately before the appointed day under section 101 of that Act, or
- (b) that belongs to a class or description of development applications the subject of a direction in force immediately before the appointed day under section 101 of that Act.

(2) Section 101 of the unamended EP&A; Act 1979 continues to apply to a development application to which this clause applies as if the EP&A; Amendment Acts had not been enacted.

### **13 Post-determination matters**

Sections 92, 95 and 96 of the unamended EP&A; Act 1979 continue to apply to and in respect of any determination of a development application under Part 4 of that Act (including a determination arising under this Division) as if the EP&A; Amendment Acts had not been enacted.

### **14 Revocation and modification of development consents**

(1) Section 102 of the unamended EP&A; Act 1979 continues to apply to the modification of a development consent in respect of which an application was made, but not determined by the consent authority, under that section before the appointed day as if the EP&A; Amendment Acts had not been enacted.

(2) Section 103 of the unamended EP&A; Act 1979 continues to apply to the revocation or modification of a development consent in respect of which a notice of intention was given by the Director under that section before the appointed day as if the EP&A; Amendment Acts had not been enacted.

### **15 Appeals against determinations**

(1) Sections 97, 98 and 99 of the unamended EP&A; Act 1979 continue to apply to a determination of a development application under Part 4 of that Act (including a determination arising under this Division) as if the EP&A; Amendment Acts had not been enacted.

(2) Section 100 of the unamended EP&A; Act 1979 continues to apply to and in respect of any appeal under section 97, 98 or 99 of that Act (including an appeal arising under subclause (1)) as if the EP&A; Amendment Acts had not been enacted.

(3) Section 102 (5) of the unamended EP&A; Act 1979 continues to apply to a determination of an application made under section 102 (1) of that Act (including a determination arising under this Division) as if the EP&A; Amendment Acts had not been enacted.

(4) Section 103 (4) and (5) of the unamended EP&A; Act 1979 continue to apply to any action taken under section 103 (1) of that Act (including action arising under this Division) as if the EP&A; Amendment Acts had not been enacted.

### **16 Continuation of certain regulations**

To the extent to which any provision of the unamended EP&A; Act 1979 continued by this Division depends on the provisions of the unamended EP&A; Regulation 1994, the provisions of the unamended EP&A; Regulation 1994 are taken to continue in force for that purpose as if the *Environmental Planning and Assessment Amendment Regulation 1998* and the *Environmental Planning and Assessment Further Amendment Regulation 1998* had not been made.

## **Division 2 - Transition to amended EP&A; Act 1979**

### **17 State significant development**

(1) Development that, immediately before the appointed day, was the subject of a direction in force under section 101 (1) of the unamended EP&A; Act 1979 (being development the subject of a development application made on or after the appointed day

but not being development the subject of a development application referred to in clause 12) is taken to be State significant development as if it had been declared to be State significant development by means of a notice referred to in section 76A (7) (b) (iii) of the amended EP&A; Act 1979.

(1A) Without limiting subclause (1), development with respect to any coal mine the subject of a direction under section 101 of the unamended EP&A; Act 1979 is State significant development.

(2) Development referred to in subclause (1) or (1A) ceases to be State significant development on 1 July 2001 unless, before that date, it becomes State significant development as a consequence of action of the kind referred to in section 76A (7) of the amended EP&A; Act 1979 having been taken.

## **18 Concurrences**

Any concurrence in force immediately before the appointed day for the purposes of section 77A or 79 of the unamended EP&A; Act 1979 is taken to have been given for the purposes of section 79B of the amended EP&A; Act 1979.

## **19 Determination of specific development applications by Minister**

(1) Despite Division 1, section 88A of the amended EP&A; Act 1979 applies to a development application made before the appointed day in the same way as it applies to a development application made on or after the appointed day.

(2) The amended EP&A; Act 1979 applies to a development application made before the appointed day (being a development application the subject of a direction made on or after the appointed day under section 88A of that Act) in the same way as it applies to a development application made on or after the appointed day.

## **20 Development consents**

(1) Subject to Division 1, a development consent granted and in force under the unamended EP&A; Act 1979 (including a development consent arising under Division 1) is taken to be a development consent granted and in force under the amended EP&A; Act 1979.

(2) In particular:

(a) a condition of a "deferred commencement" consent referred to in section 91AA of the unamended EP&A; Act 1979 is taken to be a condition of a "deferred commencement" consent referred to in section 80 (3) of the amended EP&A; Act 1979, and

(b) a condition of a "staged development" consent referred to in section 91AB of the unamended EP&A; Act 1979 is taken to be a condition of a "staged development" consent referred to in section 80 (4) of the amended EP&A; Act 1979.

(3) A development consent arising under subclause (1) is taken to be subject to the conditions prescribed by Part 7 of the amended EP&A; Regulation 1994 (the **Part 7 conditions**) as if the development consent had been granted under the amended EP&A; Act 1979 and, if the Part 7 conditions are inconsistent with any other conditions of the development consent, the Part 7 conditions prevail to the extent of the inconsistency.

## **21 Section 94 contributions**

(1) Division 6 of Part 4 of the amended EP&A; Act 1979 applies to and in respect of a condition of a development consent (including a development consent arising under Division 1) imposed under section 94 or 94AA of the unamended EP&A; Act 1979 in the same way as it applies to and in respect of a condition imposed under Division 6 of Part 4 of the amended EP&A; Act 1979.

(2) A contributions plan in force immediately before the appointed day under section 94AB of the unamended EP&A; Act 1979 is taken to be a contributions plan in force under section 94B of the amended EP&A; Act 1979, and may be amended or repealed

accordingly.

(3) A direction in force immediately before the appointed day under section 94A of the unamended EP&A; Act 1979 is taken to be a direction in force under section 94E of the amended EP&A; Act 1979, and may be amended or revoked accordingly.

## **22 Lapsing of development consent**

(1) A variation of the period of a development consent made before the appointed day under section 99 (2) of the unamended EP&A; Act 1979 is taken to be a variation made under section 95 (2) of the amended EP&A; Act 1979.

(2) An extension of the period of a development consent granted and in force before the appointed day under section 99 (4C) of the unamended EP&A; Act 1979 is taken to be an extension granted under section 95A (2) of the amended EP&A; Act 1979.

## **23 Revocation and modification of development consents**

(1) The provisions of the amended EP&A; Act 1979 and the amended EP&A; Regulation 1994 apply to and in respect of the modification and revocation of a development consent granted and in force under the unamended EP&A; Act 1979 (including a development consent arising under Division 1) in the same way as they apply to and in respect of a development consent granted and in force under the amended EP&A; Act 1979.

(2) For the purposes of applying the amended EP&A; Regulation 1994 to the modification of a development consent referred to in subclause (1), clause 72A of that Regulation is taken to apply to an application under section 96 (2) of the amended EP&A; Act 1979 to modify a development consent if the original development application for the consent was notified or advertised:

(a) under section 84 of the unamended EP&A; Act 1979, or

(b) under a provision of an environmental planning instrument referred to in section 30 (4) of the unamended EP&A; Act 1979.

## **24 Registers of development consents**

The register kept by a council for the purposes of section 104 of the unamended EP&A; Act 1979 is taken to be the register kept by the council for the purposes of section 100 of the amended EP&A; Act 1979.

## **25 Application of sections 102, 103 and 104 of the amended EP&A; Act 1979**

Sections 102, 103 and 104 of the amended EP&A; Act 1979 apply to and in respect of a development consent granted by the Minister under the unamended EP&A; Act 1979 and in force (including a development consent arising under Division 1) in the same way as they apply to and in respect of a development consent granted by the Minister under the amended EP&A; Act 1979.

## **26 Avoidance of development consents**

Section 79B (10) of the amended EP&A; Act 1979 applies to and in respect of a development consent granted under the unamended EP&A; Act 1979 (including a development consent arising under Division 1) in the same way as it applies to and in respect of a development consent granted under the amended EP&A; Act 1979.

## **27 Existing indemnities**

Any indemnity that a person is taken to have given under section 77 (9) of the unamended EP&A; Act 1979 continues as if it had been given under the amended EP&A; Regulation 1994.

## **28 (Expired)**

## **Division 3 - General**

## **29 Certain activities require development consent under amended EP&A; Act 1979**

(1) This clause applies to development consisting of:

(a) a prescribed activity proposed to be carried out within the area of a council, or  
(b) the subdivision of land within the area of a council,  
including development proposed to be carried out in connection with an existing use, but  
not including development referred to in subclause (2).

(2) This clause does not apply to development of the kind referred to in subclause (1) that  
consists of:

(a) any activity that, immediately before the appointed day, was specified in item  
6 of Part A of the Table to section 68 of the unamended LG Act 1993 (relating to  
the use and occupation of uncompleted buildings), or  
(b) any prescribed activity (other than an activity referred to in paragraph (a)) that,  
immediately before the appointed day, was exempted, excluded or suspended  
from the requirement for approval under the unamended LG Act 1993:

(i) by the *Local Government (Approvals) Regulation 1993*, as in force  
immediately before the appointed day, or

(ii) by a local approvals policy in force under the unamended LG Act 1993  
(being a local approvals policy that is still in force at the time the  
development application for development consent is made), or

(iii) by or under the provisions of any Act, including the provisions of an  
environmental planning instrument of a kind referred to in section 28 of  
the unamended EP&A; Act 1979, or

(c) any subdivision of land that, immediately before the appointed day, was  
exempted from the requirements for approval under the repealed LG Act 1919 by  
or under the provisions of that or any other Act, including the provisions of an  
environmental planning instrument of a kind referred to in section 28 of the  
unamended EP&A; Act 1979, or

(d) any development:

(i) carried out by the Crown, or

(ii) carried out by any person prescribed by the amended EP&A;  
Regulation 1994 for the purposes of section 115M of that Act (as referred  
to in section 115H (a) of that Act) in relation to Crown building work,

being development that, immediately before the appointed day, constituted an  
activity within the meaning of Part 5 of the unamended EP&A; Act 1979,

(d1) any development consisting of the demolition of a building or work:

(i) carried out by the Crown, or

(ii) carried out by any person prescribed by the amended EP&A;  
Regulation 1994 for the purposes of section 115M of that Act (as referred  
to in section 115H (a) of that Act) in relation to Crown building work,

(d2) any development consisting of subdivision:

(i) carried out by the Crown, or

(ii) carried out by any person prescribed by the amended EP&A;  
Regulation 1994 for the purposes of section 115M of that Act (as referred  
to in section 115H (a) of that Act) in relation to Crown building work,

(d3) any non-structural alterations to a building:

(i) carried out by the Crown, or

(ii) carried out by any person prescribed by the amended EP&A;  
Regulation 1994 for the purposes of section 115M of that Act (as referred  
to in section 115H (a) of that Act) in relation to Crown building work,

(e) any prohibited development, or

(f)

(g) any activity within the meaning of Part 5 of the Act:

(i) in respect of which an application for approval to a determining  
authority within the meaning of that Part has been made, but not finally



- determined, immediately before the appointed day, or  
(ii) which was approved by a determining authority within the meaning of that Part before the appointed day and that commences pursuant to that approval not later than 3 years after the appointed day.
- (3) Development to which this clause applies may not be carried out except with development consent.
- (4) Development consent may not be granted in relation to development for a prescribed activity that involves the erection of a building unless the requirements of Division 4 of Part 1 of Chapter 7 of the unamended LG Act 1993 have been complied with.
- (5) The requirements relating to the notification of proposed development under the amended EP&A; Act 1979 (including any requirements applied by clause 32 (1)) do not apply to a development application for development for which the requirements referred to in subclause (4) are required to be complied with.
- (6) Subclauses (4) and (5) apply only if a local approvals policy (being a local approvals policy with respect to the notification of applications for approvals) is in force under the unamended LG Act 1993 at the time the development application for development consent is made.
- (7) This clause has effect:
- (a) despite the existing provisions of an existing EPI, and
  - (b) despite any rezoning of land (whether effected by existing or new provisions of an existing EPI or otherwise),
- but is otherwise subject to the provisions of any new EPI and to any new provisions of an existing EPI.
- (7A) Nothing in this clause requires development consent to be obtained for any development for which development consent is required to be obtained otherwise than by operation of this clause.
- (8) The consent authority for the purposes of development to which this clause applies is the council unless, by or under the Act, some other person is the consent authority for the purposes of that development.
- (9) Despite Part 9 of the amended EP&A; Regulation 1994, the fee for an application to carry out development of the kind to which this clause applies, being the erection of a building within the meaning of the unamended LG Act 1993, is the fee determined in accordance with an order under clause 33.
- (10) (Repealed)
- (11) This clause ceases to have effect on 1 July 2001.

## **29A (Expired)**

### **29B Demolition on certain land in Gosford**

- (1) This clause applies to land to which a prescribed Gosford planning instrument applies, other than:
- (a) land in respect of which demolition may be carried out (whether or not with development consent) pursuant to that instrument, and
  - (b) land in respect of which demolition is prohibited otherwise than by virtue only of the zone in which it is situated, and
  - (c) land in respect of which demolition is prohibited by virtue of a provision of the instrument that has come into effect after the commencement of this clause.
- (2) Demolition may be carried out on land to which this clause applies, but only with development consent.
- (3) In this clause, **prescribed Gosford planning instrument** means:
- (a) *Gosford Planning Scheme Ordinance* ,
  - (b) *Interim Development Order No 122--Gosford* ,
  - (c) *Gosford Local Environmental Plan No 22* .
- (4) This clause ceases to have effect on 31 December 2002.

### **30 Certifying authorities**

(1) The consent authority or council by which a development consent is taken to have been granted by virtue of clause 20 or 45 is taken to have been appointed as the principal certifying authority for the development, and is to be the certifying authority for all aspects of the development, for the purposes of the amended EP&A; Act 1979.

(2) If, but for this clause, both a consent authority (not being a council) and a council:

(a) would be taken to have been appointed as the principal certifying authority for the development, and

(b) would be the certifying authority for all aspects of the development, the council only is taken to have been appointed as the principal certifying authority for the development and is to be the certifying authority for all aspects of the development.

### **31 Development control plans**

A development control plan in force immediately before the appointed day under section 72 of the unamended EP&A; Act 1979 is taken to be a development control plan in force under section 72 of the amended EP&A; Act 1979.

### **32 (Repealed)**

### **33 (Expired)**

### **34 Operation of Part 4C**

Part 4C of the amended EP&A; Act 1979 does not apply to or in respect of any development carried out under the authority of:

(a) a development consent granted under the unamended EP&A; Act 1979 (including a development consent arising under clause 20 or 45), or

(b) an approval for a prescribed activity granted under the unamended LG Act 1993.

### **35 General savings**

Subject to this Part:

(a) anything begun under a provision of the unamended EP&A; Act 1979 (whether begun before, on or after the appointed day) may be continued and completed under that Act as if the EP&A; Amendment Acts had not been enacted, and

(b) subject to paragraph (a), anything done under a provision of the unamended EP&A; Act 1979 that has been repealed by the EP&A; Amendment Acts and for which there is a corresponding provision in the amended EP&A; Act 1979 (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of the amended EP&A; Act 1979.

### **35A Continuation of certain regulations**

To the extent to which any provision of the unamended EP&A; Act 1979 continued by this Part depends on the provisions of the unamended EP&A; Regulation 1994:

(a) the provisions of that Regulation are taken to continue in force for that purpose as if the *Environmental Planning and Assessment Amendment Regulation 1998* and the *Environmental Planning and Assessment Further Amendment Regulation 1998* had not been made, and

(b) in particular, the Director's requirements under clause 52 of the unamended EP&A; Regulation 1994 continue to have effect.

### **35B Director's requirements**

Any Director's requirements that, immediately before the appointed day, were in force under clause 52 of the unamended EP&A; Regulation 1994 are taken to be Director's requirements in force under clause 55 of the amended EP&A; Regulation 1994, and may be amended and revoked accordingly.

## **Part 4 - Provisions arising from amendment of Local Government Act 1993**

## **Division 1 - Continued operation of unamended LG Act 1993**

### **36 Certain applications for approvals may continue to be made**

(1) An application for approval of a prescribed activity (other than a prescribed activity that comprises development of the kind referred to in clause 29 (2) (g)) may be made on or after the appointed day under Division 3 of Part 1 of Chapter 7 of the unamended LG Act 1993, as if that Act had not been amended, in the following circumstances:

(a) where the application is for the same development as a development consent granted under the unamended EP&A; Act 1979 before the appointed day,

(b) where the application is for the same development as a development consent granted under the unamended EP&A; Act 1979 on or after the appointed day in response to a development application made under that Act before the appointed day.

(2) An application may not be made under subclause (1) on or after 1 July 1999.

(3) Nothing in this clause prevents a development application for a prescribed activity from being made under the amended EP&A; Act 1979 in the circumstances referred to in subclause (1).

### **36A Approvals required for certain prescribed activities**

(1) This clause applies to development of the kind referred to in clause 29 (2) (g).

(2) Development to which this clause applies must not be carried out without an approval under Division 3 of Part 1 of the unamended LG Act 1993.

(3) This clause ceases to have effect on 1 July 2001.

### **37 Applications for approvals**

The unamended LG Act 1993 continues to apply to and in respect of an application for an approval for a prescribed activity made, but not determined by the council, under Division 3 of Part 1 of Chapter 7 of that Act (including an application arising under clause 36 or 36A) as if the EP&A; Amendment Acts had not been enacted.

### **38 Post-determination matters**

Sections 99, 100, 101, 102, 103, 104 and 105 of the unamended LG Act 1993 continue to apply to and in respect of:

(a) any determination of an application for an approval for a prescribed activity made under that Act (including a determination arising under this Division), and

(b) any approval for a prescribed activity granted under that Act (including an approval arising under this Division),

as if the EP&A; Amendment Acts had not been enacted.

### **39 Appeals**

Sections 176 and 177 of the unamended LG Act 1993 continue to apply to and in respect of any determination of an application for an approval for a prescribed activity under that Act (including a determination arising under this Division) as if the EP&A; Amendment Acts had not been enacted.

### **40 Continued operation of section 70**

Section 70 of the unamended LG Act 1993 continues to apply to a building:

(a) for whose erection tenders had been called before the appointed day, or

(b) if no tenders had been called, whose erection had commenced before the appointed day,

as if the EP&A; Amendment Acts had not been enacted.

### **40A (Repealed)**

#### **41 Continued operation of section 732 (c)**

Section 732 (c) of the unamended LG Act 1993 continues to have effect in relation to a council's receipt of a certificate issued before the appointed day in accordance with the certification procedure referred to in section 653B of that Act as if the EP&A; Amendment Acts had not been enacted.

#### **42 Continued operation of section 733**

Section 733 of the unamended LG Act 1993 continues to have effect in relation to any advice furnished in good faith by a council before the appointed day, and anything done or omitted to be done in good faith by a council before the appointed day, as if the EP&A; Amendment Acts had not been enacted.

#### **43 Continuation of certain regulations**

To the extent to which any provision of the unamended LG Act 1993 continued by this Part depends on the provisions of the *Local Government (Approvals) Regulation 1993*, the *Local Government (Orders) Regulation 1993*, the *Local Government (General) Regulation 1993* or the *Local Government (Savings and Transitional) Regulation 1993*, as in force immediately before the appointed day, the provisions of those Regulations are taken to continue in force for that purpose as if the *Local Government (Miscellaneous Amendments) Regulation 1998* had not been made.

### **Division 2 - Transition to amended EP&A; Act 1979: matters relating to approvals**

#### **44 (Repealed)**

#### **45 Approvals**

(1) Subject to Division 1, an approval for a prescribed activity granted and in force under the unamended LG Act 1993 (including an approval arising under Division 1 but not including an approval for an activity specified in item 6 of Part A of the Table to section 68 of that Act) is taken to be a development consent granted under the amended EP&A; Act 1979.

(2) In particular:

(a) a condition of a "deferred commencement" approval referred to in section 95 of the unamended LG Act 1993 is taken to be a condition of a "deferred commencement" consent referred to in section 80 (3) of the amended EP&A; Act 1979, and

(b) a condition of a "staged development" approval referred to in section 96 of the unamended LG Act 1993 is taken to be a condition of a "staged development" consent referred to in section 80 (4) of the amended EP&A; Act 1979.

(3) However, an approval for a prescribed activity granted under the unamended LG Act 1993 is not taken to be a development consent if:

(a) the activity comprises development that, immediately before the appointed day, required development consent under the unamended EP&A; Act 1979, and

(b) the development consent referred to in paragraph (a) has not been obtained.

(4) A development consent arising under subclause (1) (being a development consent for building work or demolition work) is taken to be subject to the conditions prescribed by Part 7 of the amended EP&A; Regulation 1994 as if the development consent had been granted under the amended EP&A; Act 1979.

#### **46 Certain approvals taken to be construction certificates**

(1) An approval granted and in force under the unamended LG Act 1993 for a prescribed activity involving building work is taken to be a construction certificate issued under the

amended EP&A; Act 1979.

(2) Subclause (1) does not affect the requirements of any condition imposed on the approval including, in particular, any requirements that must be complied with before work is carried out under the authority of the approval.

#### **47 Fire safety certificates and statements**

(1) An interim fire safety statement issued before the appointed day under clause 27A of the *Local Government (Approvals) Regulation 1993* is taken to be an interim fire safety certificate issued under Part 7B of the amended EP&A; Regulation 1994.

(2) A fire safety certificate issued before the appointed day under clause 27 of the *Local Government (Approvals) Regulation 1993* or clause 5E of the *Local Government (Orders) Regulation 1993* is taken to be a final fire safety certificate issued under Part 7B of the amended EP&A; Regulation 1994.

(3) An annual fire safety statement issued before the appointed day under clause 6H of the *Local Government (General) Regulation 1993* is taken to be an annual fire safety statement issued under Part 7B of the amended EP&A; Regulation 1994.

#### **48 Certain approvals taken to be interim occupation certificates**

(1) An approval granted and in force under the unamended LG Act 1993 for an activity referred to in item 6 of Part A to the Table to section 68 of that Act is taken to be an interim occupation certificate issued under the amended EP&A; Act 1979.

(2) Subclause (1) does not affect the requirements of any condition imposed on the approval including, in particular, any requirements that must be complied with before the building to which the approval relates may be occupied or used.

#### **49 Certificates of classification taken to be final occupation certificates**

A certificate of classification granted under the *Local Government (Approvals) Regulation 1993* is taken to be a final occupation certificate issued under Part 4A of the amended EP&A; Act 1979.

#### **49A Conditions on buildings and works arising from existing development consents**

(1) This clause applies to a building or work (including work in the nature of subdivision work) authorised or required by:

(a) a development consent granted under the unamended EP&A; Act 1979 before the appointed day, or

(b) a development consent granted under the unamended EP&A; Act 1979 on or after the appointed day in response to a development application made under that Act before the appointed day,

referred to in this clause as the **original development consent**.

(2) After receiving an application for a construction certificate under the amended EP&A; Act 1979 for a building or work to which this clause applies, the certifying authority for the development (which, by virtue of clause 30, will be a consent authority or council) may impose such conditions on the construction certificate:

(a) as it could have imposed on an approval under the unamended LG Act 1993, or

(b) in the case of work in the nature of subdivision work, as it could have imposed on a subdivision approval under Part 12 of the repealed LG Act 1919.

(3) Conditions imposed under subclause (2):

(a) are not to deal with matters of a kind that, under the amended EP&A; Act 1979 or the amended EP&A; Regulation 1994, must be done before the construction certificate may be issued, and

(b) are not to be inconsistent with any conditions to which the original development consent is subject.

(4) A construction certificate in relation to the erection of a building is not to be forwarded or delivered to the person to whom it is granted unless:

- (a) the certifying authority for the development (which, by virtue of clause 30, will be a consent authority or council) is satisfied that 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, and
- (b) the certificate identifies the classification of the building in accordance with the *Building Code of Australia*.

#### **49B Construction of references to certain approvals**

In any development consent granted under the unamended EP&A; Act 1979 before, on or after the appointed day:

- (a) a reference to an approval under Division 3 of Part 1 of Chapter 7 of the unamended LG Act 1993 for the erection of a building (in whatever terms expressed) is taken to be a reference to a construction certificate under the amended EP&A; Act 1979 for the building work involved in the erection of the building, and
- (b) a reference to a certificate of classification under the *Local Government (Approvals) Regulation 1993* (in whatever terms expressed) is taken to be a reference to an occupation certificate.

#### **50 Securities**

Any security lodged under section 97 of the unamended LG Act 1993 is taken to have been lodged under a condition of a development consent referred to in section 80A (6) of the amended EP&A; Act 1979, and may be enforced accordingly.

#### **51 (Repealed)**

#### **52 Certification of components, processes and designs**

Any component, process or design that, immediately before the appointed day, was accredited under Division 5 of Part 1 of Chapter 7 of the unamended LG Act 1993 is taken to have been accredited in accordance with Part 7E of the amended EP&A; Regulation 1994, and any such accreditation may be extended, reviewed or revoked accordingly.

#### **53 Substitution of section 69 not to affect prescribed persons under that section**

The replacement of section 69 of the unamended LG Act 1993 by section 69 of the amended LG Act 1993 does not affect the validity or continuity of any regulation under which a person is a prescribed person for the purposes of that section.

#### **54 Records under section 113**

Records kept by a council under section 113 of the unamended LG Act 1993 in relation to approvals for prescribed activities are taken to be records kept by the council under section 100 of the amended EP&A; Act 1979.

### **Division 3 - Transition to amended EP&A; Act 1979: matters relating to orders**

#### **55 Definition**

In this Division, **prescribed action** means action of a kind referred to in the following orders set out in the Table to section 124 of the unamended LG Act 1993:

- (a) order No 1, but only when given in the circumstances set out in paragraph (a), (b) or (c) of the matter set out in Column 2 of that Table,
- (b) order No 2,
- (c) order No 3, but only when given in the circumstances set out in paragraph (a) or (b) of the matter set out in Column 2 of that Table,
- (d) order No 4,

- (e) order No 5, but only when given in respect of the matters referred to in paragraph (g) of the matter set out in Column 1 of that Table,
- (f) order No 6, 13, 14, 15A or 26.

### **56 Powers to give orders**

Anything done before the appointed day under Part 2 of Chapter 7 of the unamended LG Act 1993 is taken to have been done under Division 2A of Part 6 of the amended EP&A; Act 1979, but only to the extent to which it could have been done under that Division had that Division been in force when it was done.

### **57 Orders under section 124**

- (1) An order for prescribed action in force immediately before the appointed day under section 124 of the unamended LG Act 1993 is taken to be an order for the corresponding action specified in the Table to section 121B of the amended EP&A; Act 1979.
- (2) Despite the provisions of the amended EP&A; Act 1979, the maximum penalty that may be imposed under that Act for a contravention of such an order is the maximum penalty that could have been imposed under the unamended LG Act 1993 had the EP&A; Amendment Acts not been enacted.

### **58 (Repealed)**

## **Division 4 - General**

### **59 Building certificates**

- (1) Anything done before the appointed day under Part 4 of Chapter 7 of the unamended LG Act 1993 is taken to have been done under sections 149A-149G of the amended EP&A; Act 1979, but only to the extent to which it could have been done under those sections had those sections been in force when it was done.
- (2) In particular:
  - (a) a building certificate issued before the appointed day under section 172 of the unamended LG Act 1993 is taken to be a building certificate issued under sections 149A-149D of the amended EP&A; Act 1979, and
  - (b) records kept by a council under section 174 of the unamended LG Act 1993 are taken to be records kept by the council under section 149G of the amended EP&A; Act 1979.

### **60 Powers of entry**

Anything done before the appointed day under Part 2 of Chapter 8 of the unamended LG Act 1993 is taken to have been done under Division 1A of Part 6 of the amended EP&A; Act 1979, but only to the extent to which it could have been done under that Division had that Division been in force when it was done.

### **61 Requests under section 202**

A request made before the appointed day by the Director-General of New South Wales Fire Brigades under section 202 (3) of the unamended LG Act 1993 is taken to be a request made under section 118L (3) of the amended EP&A; Act 1979.

### **62 Requests under section 203**

A request made before the appointed day by the Director-General of New South Wales Fire Brigades under section 203 (1) of the unamended LG Act 1993 is taken to be a request made under section 118M (1) of the amended EP&A; Act 1979.

### **63 Authorisations for purposes of section 679**

Any person authorised before the appointed day by a council for the purposes of section 679 of the unamended LG Act 1993 in relation to offences under section 654 or 657 (c) of that Act (as referred to in the definition of **authorised person** in the Dictionary to that Act) is taken to be

authorised for the purposes of section 127A of the amended EP&A; Act 1979 in relation to offences under clause 80GG or 80GJ (c) of the amended EP&A; Regulation 1994 (as referred to in the definition of **authorised person** in section 127A (9) of the amended EP&A; Act 1979).

#### **64 General savings**

Subject to this Part:

- (a) anything begun under a provision of the unamended LG Act 1993 (whether begun before, on or after the appointed day) may be continued and completed under that Act as if the EP&A; Amendment Acts had not been enacted, and
- (b) subject to paragraph (a), anything done under a provision of the unamended LG Act 1993 that has been repealed by the EP&A; Amendment Acts and for which there is a corresponding provision in the amended EP&A; Act 1979 (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of the amended EP&A; Act 1979.

## **Part 5 - Provisions arising from amendment of other Acts**

#### **65 Amendment of Heritage Act 1977**

The provisions of:

- (a) section 78 of the *Heritage Act 1977* , as in force immediately before the appointed day, and
- (b) Subdivision 1 of Division 4 of Part 4 of that Act as applied by section 78, as then in force,

continue to apply to an appeal that the Minister has commenced to determine before the appointed day as if the EP&A; Amendment Acts had not been enacted.

#### **66 Amendment of Hunter Water Board (Corporatisation) Act 1991**

A compliance certificate issued under section 50 of the *Hunter Water Board (Corporatisation) Act 1991* is taken to be a certificate of compliance for the purposes of:

- (a) section 109J of the amended EP&A; Act 1979, and
- (b) section 37 of *Strata Schemes (Freehold Development) Act 1973* , and
- (c) section 66 of *Strata Schemes (Leasehold Development) Act 1986* .

#### **67 Amendment of Land and Environment Court Act 1979**

(1) The *Land and Environment Court Act 1979* , as in force immediately before the appointed day, continues to apply to:

- (a) any appeal made under section 341 of the repealed LG Act 1919 (including any appeal arising under Division 1 of Part 2 of this Regulation), and
- (b) any appeal made under section 97, 98, 99, 102 or 103 of the unamended EP&A; Act 1979 (including any appeal arising under Division 1 of Part 3 of this Regulation), and
- (c) any appeal made under section 176, 177, 178, 180, 182 or 185 of the unamended LG Act 1993 (including any appeal arising under Division 1 of Part 4 of this Regulation),

as if the EP&A; Amendment Acts had not been enacted.

(2) Any order for prescribed action (within the meaning of Division 3 of Part 4) made or confirmed by the Land and Environment Court in a decision arising from an appeal referred to in subclause (1) (c) is taken to be an order for the corresponding action specified in the Table to section 121B of the amended EP&A; Act 1979.

#### **68 Amendment of Roads Act 1993**

(1) Section 9 (3) of the *Roads Act 1993* , as in force immediately before the appointed day, continues to apply to and in respect of the opening of a public road carried out after the appointed day under the authority of an approval under Part 12 of the *Local*



*Government Act 1919* as if the EP&A; Amendment Acts had not been enacted.

(2) Section 15 of the *Roads Act 1993* , as in force immediately before the appointed day, continues to apply to and in respect of:

(a) any application made before the appointed day for an approval under that section, and

(b) any approval given under that section in respect of such an application, and

(c) any determination of a roads authority with respect to such an application,

as if the EP&A; Amendment Acts had not been enacted.

### **69 Amendment of Strata Schemes (Freehold Development) Act 1973**

Section 37 of the *Strata Schemes (Freehold Development) Act 1973* , as in force immediately before the appointed day, continues to apply to an application made under that section before the appointed day as if the EP&A; Amendment Acts had not been enacted.

### **70 Amendment of Strata Schemes (Leasehold Development) Act 1986**

Section 66 of the *Strata Schemes (Leasehold Development) Act 1986* , as in force immediately before the appointed day, continues to apply to an application made under that section before the appointed day as if the EP&A; Amendment Acts had not been enacted.

### **71 Amendment of Water Board (Corporatisation) Act 1994**

A compliance certificate granted under section 73 of the *Water Board (Corporatisation) Act 1994* is taken to be a certificate of compliance for the purposes of:

(a) section 109J of the amended EP&A; Act 1979, and

(b) section 37 of *Strata Schemes (Freehold Development) Act 1973* , and

(c) section 66 of *Strata Schemes (Leasehold Development) Act 1986* .

### **72 Amendments with respect to integrated development**

The amendments made to other Acts by the EP&A; Amendment Acts in relation to integrated development do not apply to or in respect of any licence, permit, authority or approval for which an application was made before the appointed day.

### **73 Construction of certain references**

In any Act or instrument:

(a) a reference to a provision of the repealed LG Act 1919, the unamended EP&A; Act 1979 or the unamended LG Act 1993 is, if the provision has been replaced by a corresponding provision in the amended EP&A; Act 1979, taken to be a reference to the corresponding provision of the amended EP&A; Act 1979, and

(b) a reference to any act, matter or thing referred to in a provision of the repealed LG Act 1919, the unamended EP&A; Act 1979 or the unamended LG Act 1993 is, if the provision has been replaced by a corresponding provision in the amended EP&A; Act 1979, taken to be a reference to the corresponding act, matter or thing referred to in the corresponding provision of the amended EP&A; Act 1979.

## **Part 6 - Other provisions**

### **74 (Repealed)**

## **Part 7 - Provisions consequent on enactment of Environmental Planning and Assessment Amendment Act 1999**

### **75 Existing applications for modification of development consents**

(1) Section 96 of the unamended 1979 Act continues to apply to an application for the modification of a development consent made under that section before the

commencement of Schedule 3 to the 1999 amending Act as if the 1999 amending Act had not been enacted.

(2) In this clause:

**the 1999 amending Act** means the *Environmental Planning and Assessment Amendment Act 1999* .

**the unamended 1979 Act** means the *Environmental Planning and Assessment Act 1979* , as in force immediately before the commencement of Schedule 3 to the 1999 amending Act.

## **Part 8 - Provisions consequent on enactment of Protection of the Environment Operations Act 1997**

### **76 Definitions and application**

(1) In this Part:

**approval** has the same meaning as it has in Division 5 of Part 4 of the 1979 Act.

**grant** has the same meaning as it has in Division 5 of Part 4 of the 1979 Act.

**the 1997 Act** means the *Protection of the Environment Operations Act 1997* .

**the 1979 Act** means the *Environmental Planning and Assessment Act 1979* .

(2) Pursuant to clause 1 of Schedule 6 to the Act, this Part is taken to have commenced on 1 July 1999 (the date of commencement of the 1997 Act).

### **77 Development that is no longer integrated development**

(1) This clause applies to development:

(a) that was integrated development before the commencement of the 1997 Act, and

(b) in respect of which an application for development consent was made (but not determined) before that commencement,

being development that, as a consequence of the enactment of the 1997 Act, has ceased to be integrated development because it no longer requires any approval of a kind referred to in section 91 of the Act.

(2) Division 5 of Part 4 of the 1979 Act does not apply to development to which this clause applies.

(3) Any action taken under the 1979 Act in relation to development to which this clause applies on the basis that it was integrated development has effect as if it had been taken on the basis that it was development that was not integrated development.

(4) In particular, concurrence given under section 93A of the 1979 Act in relation to development to which this clause applies is taken to have been given under section 79B of the Act.

### **78 Development that continues to be integrated development**

(1) This clause applies to development:

(a) that was integrated development before the commencement of the 1997 Act, and

(b) in respect of which an application for development consent was made before (whether determined before or after) that commencement,

being development that, as a consequence of the enactment of the 1997 Act, continues to

be integrated development because it still requires an approval of a kind referred to in section 91 of the Act.

(2) In the case of development that formerly required an approval under the *Pollution Control Act 1970* or the *Waste Minimisation and Management Act 1995* :

- (a) the general terms of approval to be given under section 91A or 92 of the 1979 Act are to be general terms of the corresponding approval under the 1997 Act, and
- (b) the approval to be granted as referred to in section 93 of the 1979 Act is to be the corresponding approval under the 1997 Act.

## Part 9 - (Repealed)

### Historical notes

Table of amending instruments *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998* published in Gazette No 101 of 1.7.1998, p 5145 and amended in Gazettes No 171 of 11.12.1998, p 9481, No 22 of 19.2.1999, p 742 and No 75 of 30.6.1999, p 4520 and as follows: *Environmental Planning and Assessment Amendment Regulation 2000* (GG No 65 of 31.5.2000, p 4486) *Environmental Planning and Assessment (Savings and Transitional) Amendment (Fisheries) Regulation 2000* (GG No 92 of 19.7.2000, p 6449) *Olympic Co-ordination Authority Dissolution Act 2002 No 55* . Assented to 8.7.2002. Date of commencement, 1.7.2002, sec 2. *Environmental Planning and Assessment (Savings and Transitional) (Demolition) Amendment Regulation 2002* (GG No 128 of 9.8.2002, p 5844) *Building Legislation Amendment (Quality of Construction) Act 2002 No 134* . Assented to 18.12.2002. Sch 1.3 was not commenced and was repealed by the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003 No 95* . *Environmental Planning and Assessment Amendment (Fisheries Management) Regulation 2003* (GG No 39 of 7.2.2003, p 771) *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003 No 95* . Assented to 10.12.2003. Date of commencement of Sch 2.2, 1.3.2004, sec 2 (1) and GG No 197 of 19.12.2003, p 11260.

Table of amendments

	12.1998.
	12.1998. Am 31.5.2000.
	12.1998.
9B	12.1998.
	12.1998; 31.5.2000.
23	12.1998.
	12.1998; 31.5.2000.
	12.1998. Am 31.5.2000.
	2002.
	12.1998.
	12.1998; 30.6.1999. Rep 31.5.2000.

12.1998; 30.6.1999; 31.5.2000.

u, 35B

12.1998.

12.1998.

12.1998. Am 31.5.2000.

12.1998.

12.1998. Rep 31.5.2000.

12.1998. Rep 31.5.2000.

u, 49B

12.1998.

03 No 95, Sch 2.2.

.5.2000.

12.1998.

2.1999.

2.1999. Rep 2002 No 55, Sch 1.2.

8 (c11 75-78)

5.2000.

c11 79-83)

7.2000. Rep 7.2.2003.