ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979—REGULATION

(Relating to designated development)

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Environmental Planning and Assessment Act 1979, has been pleased to make the Regulation set forth hereunder.

Robert Webster

Minister for Planning.

Commencement

1. This Regulation commences on 1 July, 1994

Amendments

2. The Environmental Planning and Assessment Regulation 1980 is amended:

(a) by inserting after clause 70 (2) the following subclause:

(3) If Schedule 3 is substituted, the Schedule, before its substitution, continues to apply to or in respect of a development application lodged with the consent authority before the substitution takes effect.

(b) by omitting Schedule 3 and by inserting instead the following Schedule:

SCHEDULE 3—DESIGNATED DEVELOPMENT

(Clause 70)

PART 1—WHAT IS DESIGNATED DEVELOPMENT?

Development for the undermentioned purposes or development of the undermentioned types is designated development:

Agricultural produce industries that process agricultural produce (including dairy products, seeds, fruit, vegetables or other plant material) and:

(1) crush, juice, grind, mill or separate more than 30,000 tonnes of produce per annum; or

(2) release effluent, sludge or other waste:

(a) in or within 100 metres of a natural waterbody or wetlands; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soils; or

(iii) acid sulphate, sodic or saline soils.

Aircraft facilities (including terminals, buildings for the parking, servicing or maintenance of aircraft, installations or movement areas) for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters, if the facilities:

(1) in the case of seaplane or aeroplane facilities:

(a) cause a significant environmental impact or significantly increase the environmental impacts as a result of:

(i) the number of flight movements (including taking-off or landing); or

(ii) the maximum take-off weight of aircraft capable of using the facilities; and

(b) are located so that the whole or part of a residential zone, a school or hospital is within:

(i) the 20 ANEF contour map approved by the Civil Aviation Authority of Australia; or

(ii) 5 kilometres of the facilities if no ANEF contour map has been approved; or

(2) in the case of helicopter facilities (other than facilities used exclusively for emergency aeromedical evacuation, retrieval or rescue):

(a) have an intended use of more than 7 helicopter flight movements per week (including taking-off or landing); and

(b) are located within 1 kilometre of a dwelling not associated with the facilities; or

(3) in the case of any facilities, are located:

(a) so as to disturb more than 20 hectares of native vegetation by clearing; or

(b) within 40 metres of an environmentally sensitive area; or

(c) within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities).

Aquaculture or mariculture for the commercial production (breeding, hatching, rearing or cultivation) of marine, estuarine or fresh water organisms, including aquatic plants or animals (such as fin fish, crustaceans, molluscs or other aquatic invertebrates), involving:

(1) supplemental feeding in:

(a) tanks or artificial waterbodies:

(i) located in areas of:

- high watertable; or
- acid sulphate soils; or

(ii) with a total water storage area of more than 2 hectares or a total water volume of more than 40 megalitres:

- located on a floodplain; or
- that release effluent or sludge into a natural waterbody or wetlands or into groundwater; or

(iii) with a total water storage area of more than 10 hectares or a total water volume of more than 400 megalitres; or

(b) any other waterbody (except for trial projects that operate for a maximum period of 2 years and are approved by the Director of NSW Fisheries); or

(2) farming of species not indigenous to New South Wales located:

(a) in or within 500 metres of a natural waterbody or wetlands; or

(b) on a floodplain; or

(3) establishment of new areas for lease under the Fisheries and Oyster Farms Act 1935 or the Fisheries Management Act 1994:

(a) with a total area of more than 10 hectares and that in the opinion of the consent authority, are likely to cause significant impacts:

(i) on the habitat value or the scenic value; or

(ii) on the amenity of the waterbody by obstructing or restricting navigation, fishing or recreational activities; or

(iii) because other leases are within 500 metres; or

(b) with a total area of more than 50 hectares.

Artificial waterbodies

(1) with a maximum surface area of water of more than 0.5 hectares located:

(a) in or within 40 metres of a natural waterbody, wetlands or an environmentally sensitive area; or

(b) in an area of:

(i) high watertable; or

(ii) acid sulphate, sodic or saline soils; or

(2) with a maximum aggregate surface area of water of more than 20 hectares or a maximum total water volume of more than 800 megalitres; or

(3) if more than 30,000 cubic metres per annum of material is to be removed from the site.

Bitumen pre-mix or hot-mix industries where crushed or ground rock is mixed with bituminous or asphaltic materials and that:

(1) have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per annum; or

(2) are located:

(a) within 100 metres of a natural waterbody or wetlands; or

(b) within 250 metres of a residential zone or dwelling not associated with the development.

This designation of bitumen pre-mix or hot-mix industries does not include bitumen plants located on or adjacent to a construction site exclusively providing material to the development being carried out on that site:

(a) for a period of less than 12 months; or

(b) for which the environmental impacts were previously assessed in an environmental impact statement prepared for the development.

Breweries or distilleries that produce alcohol or alcoholic products and:

(1) have an intended production capacity of more than 30 tonnes per day or 10,000 tonnes per annum; or

(2) are located within 500 metres of a residential zone and are likely, in the opinion of the consent authority, to significantly affect the amenity of the neighbourhood by reason of odour, traffic or waste; or

(3) release effluent or sludge:

(a) in or within 100 metres of a natural waterbody or wetlands; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soils; or

(iii) acid sulphate, sodic or saline soils.

Cement works that manufacture portland or other special purpose cement and:

(1) burn, sinter or heat (until molten) calcareous, argillaceous or other materials; or

(2) grind clinker or compound cement with an intended processing capacity of more than 150 tonnes per day or 30,000 tonnes per annum; or

(3) are located:

(a) within 100 metres of a natural waterbody or wetlands; or

(b) within 250 metres of a residential zone or a dwelling not associated with the development.

Ceramic or glass industries that manufacture through a firing process bricks, tiles, pipes, pottery, ceramics, refractories or glass and:

(1) have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per annum; or

(2) are located:

(a) within 40 metres of a natural waterbody or wetlands; or

(b) within 250 metres of a residential zone or dwelling not associated with the development.

Chemical industries or works for the commercial production of, or research into, chemical substances at:

(1) the following industries or works:

(a) **agricultural fertiliser industries** that produce more than 20,000 tonnes per annum of inorganic plant fertilizers; or

(b) **battery industries** that manufacture or reprocess batteries containing acid or alkali and metal plates and use or recover more than 30 tonnes of metal per annum; or

(c) **explosive or pyrotechnics industries** that manufacture explosives for purposes including industrial, extractive industries and mining uses, ammunition, fireworks or fuel propellents; or

(d) **paints, paint solvents, pigments, dyes, printing inks, industrial polishes, adhesives or sealants manufacturing industries** that manufacture more than 5,000 tonnes per annum of products; or

(e) **petrochemical industries** that manufacture more than 2,000 tonnes per annum of petrochemicals and petrochemical products; or

(f) **pesticides, fungicides, herbicides, rodenticides, nematocides, miticides, fumigants and related products industries** that:

(i) manufacture materials classified as poisonous in the Australian Dangerous Goods Code; or

(ii) manufacture (excluding simple blending) more than 2,000 tonnes per annum of products; or

(g) **pharmaceutical or veterinary products industries** that manufacture or use materials classified as poisonous in the Australian Dangerous Goods Code; or

(h) **plastics industries** that:

(i) manufacture more than 2,000 tonnes per annum of synthetic plastic resins; or

(ii) reprocess more than 5,000 tonnes of plastics per annum other than by a simple melting and reforming process; or

(i) **rubber industries or works** that:

(i) manufacture more than 2,000 tonnes per annum of synthetic rubber; or

(ii) manufacture, retread or recycle more than 5,000 tonnes per annum of rubber products or rubber tyres; or

(iii) dump or store (otherwise than in a building) more than 10 tonnes of rubber tyres; or

(j) **soap or detergent industries** (including domestic, institutional or industrial soaps or detergent industries) that manufacture:

(i) more than 100 tonnes per annum of products containing substances classified as poisonous in the Australian Dangerous Goods Code; or

(ii) more than 5,000 tonnes per annum of products (excluding simple blending); or

(2) industries or works:

(a) that manufacture, blend, recover or use substances classified as explosive, poisonous or radioactive in the Australian Dangerous Goods Code; or

(b) that manufacture or use more than 1,000 tonnes per annum of substances classified (but other than as explosive, poisonous or radioactive) in the Australian Dangerous Goods Code; or

(c) that crush, grind or mill more than 10,000 tonnes per annum of chemical substances; or

(3) industries or works located:

(a) within 40 metres of a natural waterbody or wetlands; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soil; or

(c) in a drinking water catchment; or

(d) on a floodplain.

This designation of chemical industries or works does not include:

(a) chemical industries or works where chemical substances listed in the NSW Dangerous Goods Regulation 1978 are stored in quantities below the licence level set out in that Regulation; or

(b) development specifically listed elsewhere in this Schedule.

Chemical storage facilities that:

(1) store or package chemical substances in containers, bulk storage facilities, stockpiles or dumps with a total storage capacity in excess of:

(a) 20 tonnes of pressurised gas; or

(b) 200 tonnes of liquified gases; or

(c) 2,000 tonnes of any chemical substances; or

(2) are located:

(a) within 40 metres of a natural waterbody or wetlands; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soil; or

(c) in a drinking water catchment; or

(d) on a floodplain.

Coal mines that mine, process or handle coal and are:

(1) underground mines; or

(2) open cut mines that:

(a) produce or process more than 500 tonnes of coal or carbonaceous material per day; or

(b) disturb or will disturb a total surface area of more than 4 hectares of land (associated with a mining lease or mineral claim or subject to a section 8 notice under the Mining Act 1992) by:

(i) clearing or excavating; or

(ii) constructing dams, ponds, drains, roads, railways or conveyors; or

(iii) storing or depositing overburden, coal or carbonaceous material or tailings; or

(3) located:

(a) in or within 40 metres of a natural waterbody, wetlands, a drinking water catchment or an environmentally sensitive area; or

(b) within 200 metres of a coastline; or

(c) on land that slopes at more than 18 degrees to the horizontal; or

(d) if involving blasting, within:

(i) 1,000 metres of a residential zone; or

(ii) 500 metres of a dwelling not associated with the mine.

This designation of coal mines does not include continued coal mines within the meaning of State Environmental Planning Policy No. 37—Continued Mines and Extractive Industries in respect of which an application for development consent has been made before the end of the moratorium period prescribed under that Policy.

Coal works that store and handle coal or carbonaceous material (including any coal loader, conveyor, washery or reject dump) at an existing coal mine or on a separate coal industry site, and:

(1) handle more than 500 tonnes per day of coal or carbonaceous material; or

(2) store more than 5,000 tonnes of coal, except where the storage is within a closed container or a closed building; or

(3) store or deposit more than 5,000 tonnes of carbonaceous reject material; or

(4) are located in or within 40 metres of a natural waterbody, wetlands, a drinking water catchment or an environmentally sensitive area.

Concrete works that produce pre-mixed concrete or concrete products and:

(1) have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per annum of concrete or concrete products; or

(2) are located:

(a) within 100 metres of a natural waterbody or wetlands; or

(b) within 250 metres of a residential zone or dwelling not associated with the development.

This designation of concrete works does not include concrete works located on or adjacent to a construction site exclusively providing material to the development carried out on that site:

(a) for a period of less than 12 months; or

(b) for which the environmental impacts were previously assessed in an environmental impact statement prepared for that development.

Contaminated soil treatment works for on-site or off-site treatment (including, in either case, incineration or storage of contaminated soil) that:

(1) handle soil contaminated by substances classified as poisonous in the Australian Dangerous Goods Code and are located:

(a) within 100 metres of a natural waterbody or wetlands; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soils; or

(c) within a drinking water catchment; or

(d) on land that slopes at more than 6 degrees to the horizontal; or

(e) on a floodplain; or

(f) within 250 metres of a dwelling not associated with the development; or

(2) handle more than 1,000 cubic metres per annum of contaminated soil not originating from the site on which the development is located; or

(3) handle contaminated soil originating exclusively from the site on which the development is located and:

(a) incinerate more than 1,000 cubic metres per annum of contaminated soil; or

(b) treat (other than by incineration) or store more than 30,000 cubic metres of contaminated soil; or

(c) disturb more than an aggregate area of 3 hectares of contaminated soil.

Crushing, grinding or separating works that process materials including sand, gravel, rock, minerals or materials for recycling or reuse, including slag, road base or demolition material (such as concrete, bricks, tiles, asphaltic material, metal or timber) by crushing, grinding or separating into different sizes, and that:

(1) have an intended processing capacity of more than 150 tonnes per day or 30,000 tonnes per annum; or

(2) are located:

(a) within 40 metres of a natural waterbody or wetlands; or

(b) within 250 metres of a residential zone or dwelling not associated with the development.

This designation of crushing, grinding or separating works does not include development specifically listed elsewhere in this Schedule.

Drum or container reconditioning works that recondition, recycle or store:

(1) packaging containers (including metal, plastic or glass drums, bottles or cylinders) previously used for the transport or storage of substances classified as poisonous or radioactive in the Australian Dangerous Goods Code; or

(2) more than 100 metal drums per day, unless the works (including associated drum storage) are wholly contained within a building.

Electricity generating stations, including associated water storage, ash or waste management facilities, that supply or are capable of supplying:

(1) electrical power where:

(a) the associated water storage facilities inundate land identified as wilderness under the Wilderness Act 1987; or

(b) the temperature of the water released from the generating station into a natural waterbody is more than 2 degrees centigrade from the ambient temperature of the receiving water; or

(2) more than 1 megawatt of hydroelectric power requiring a new dam, weir or inter-valley transfer of water; or

(3) more than 30 megawatts of electrical power from other energy sources (including coal, gas, bio-material or solar powered generators, hydroelectric stations on existing dams or co-generation).

This designation of electricity generating stations does not include power generation facilities used exclusively for stand-by power purposes for less than 4 hours per week averaged over any continuous 3-month period.

Extractive industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating and:

(1) obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per annum; or

(2) disturb or will disturb a total surface area of more than 2 hectares of land by:

(a) clearing or excavating; or

(b) constructing dams, ponds, drains, roads or conveyors; or

(c) storing or depositing overburden, extractive material or tailings; or

(3) are located:

(a) in or within 40 metres of a natural waterbody, wetlands or an environmentally sensitive area; or

(b) within 200 metres of a coastline; or

(c) in an area of:

(i) contaminated soil; or

(ii) acid sulphate soil; or

(d) on land that slopes at more than 18 degrees to the horizontal; or

(e) if involving blasting, within:

(i) 1,000 metres of a residential zone; or

(ii) 500 metres of a dwelling not associated with the development; or

(f) within 500 metres of the site of another extractive industry that has operated during the last 5 years.

This designation of extractive industries does not include:

(a) extractive industries on land to which the following environmental planning instruments apply:

(i) Sydney Regional Environmental Plan No. 11—Penrith Lakes Scheme;

(ii) Western Division Regional Environmental Plan No. 1—Extractive Industries; or

(b) maintenance dredging involving the removal of less than 1,000 cubic metres of alluvial material from oyster leases, sediment ponds or dams, artificial wetlands or deltas formed at stormwater outlets, drains or the junction of creeks with rivers provided that:

(i) the extracted material does not include contaminated soil or acid sulphate soil; or

(ii) any dredging operations do not remove any seagrass or native vegetation; or

(iii) there has been no other dredging within 500 metres during the past 5 years; or

(c) extractive industries undertaken in accordance with a plan of management (such as river, estuary, land or water management plans) provided that:

(i) the plan is:

- prepared in accordance with guidelines approved by the Director of Planning and includes consideration of cumulative impacts, bank and channel stability, flooding, ecology and hydrology of the area to which the plan applies; and

- approved by a public authority and adopted by the consent authority; and
- reviewed every 5 years; and

(ii) less than 1,000 cubic metres of extractive material is removed from any potential extraction site that is specifically described in the plan; or

(d) continued operations within the meaning of State Environmental Planning Policy No. 37—Continued Mines and Extractive Industries in respect of which an application for development consent has been made before the end of the moratorium period prescribed under that Policy; or

(e) artificial waterbodies, contaminated soil treatment works, turf farms, or waste management facilities or works, specifically listed elsewhere in this Schedule.

Limestone mines or works that mine, process or handle limestone or limestone products, being:

(1) **limestone mines** that mine or process limestone from the mine and:

(a) disturb or will disturb a total surface area of more than 2 hectares of land (associated with a mining lease or mineral claim or subject to a section 8 notice under the Mining Act 1992) by:

(i) clearing or excavating; or

(ii) constructing dams, ponds, drains, roads, railways or conveyors; or

(iii) storing or depositing overburden, limestone or its products or tailings; or

(b) are located:

(i) in or within 40 metres of a natural waterbody, wetlands, a drinking water catchment or an environmentally sensitive area; or

(ii) if involving blasting, within:

- 1,000 metres of a residential zone; or
- 500 metres of a dwelling not associated with the mine; or

(iii) within 500 metres of another mining site that has operated within the past 5 years.

(2) **lime works** (not associated with a mine) that:

(a) crush, screen, burn or hydrate more than 150 tonnes per day, or 30,000 tonnes per annum, of material; or

(b) are located:

(i) within 100 metres of a natural waterbody or wetlands; or

(ii) within 250 metres of a residential zone or a dwelling not associated with the development.

This designation of limestone mines or works does not include continued mines within the meaning of State Environmental Planning Policy No. 37—Continued Mines and Extractive Industries in respect of which an application for development consent has been made before the end of the moratorium period prescribed under that Policy.

Livestock intensive industries, being:

(1) **feedlots** that accommodate in a confinement area and rear or fatten (wholly or substantially) on prepared or manufactured feed, more than 1,000 head of cattle, 4,000 sheep or 400 horses (excluding facilities for drought or similar emergency relief); or

(2) **piggeries** that:

(a) accommodate more than 200 pigs or 20 breeding sows and are located:

(i) within 100 metres of a natural waterbody or wetlands; or

(ii) in an area of:

- high watertable; or
- highly permeable soils; or
- acid sulphate, sodic or saline soils; or

(iii) on land that slopes at more than 6 degrees to the horizontal; or

(iv) within a drinking water catchment; or

(v) on a floodplain; or

(vi) within 5 kilometres of a residential zone and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, traffic or waste; or

(b) accommodate more than 2,000 pigs or 200 breeding sows; or

(3) **poultry farms** for the commercial production of birds (such as domestic fowls, turkeys, ducks, geese, game birds or emus), whether as meat birds, layers or breeders and whether as free range or shedded birds, that are located:

(a) within 100 metres of a natural waterbody or wetlands; or

(b) within a drinking water catchment; or

(c) within 500 metres of an another poultry farm; or

(d) within 500 metres of a residential zone or 150 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

Livestock processing industries, being industries for the commercial production of products derived from the slaughter of animals or the processing of skins or wool of animals that:

(1) slaughter animals (including poultry) with an intended processing capacity of more than 3,000 kilograms live weight per day; or

(2) manufacture products derived from the slaughter of animals, including:

(a) tanneries or fellmongeries; or

(b) rendering or fat extraction plants with an intended production capacity of more than 200 tonnes per annum of tallow, fat or their derivatives or proteinaceous matter; or

(c) plants with an intended production capacity of more than 5,000 tonnes per annum of products (including hides, adhesives, pet feed, gelatine, fertilizer or meat products); or

(3) scour, top or carbonise greasy wool or fleeces with an intended production capacity of more than 200 tonnes per annum; or

(4) are located:

(a) within 100 metres of a natural waterbody or wetlands; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soils; or

(iii) acid sulphate, sodic or saline soils; or

(c) on land that slopes at more than 6 degrees to the horizontal; or

(d) within a drinking water catchment; or

(e) on a floodplain; or

(f) within 5 kilometres of a residential zone and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

Marinas or other related land or water shoreline facilities that:

(1) moor, park or store vessels (excluding rowing boats, dinghies or other small craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles on hardstand areas:

(a) with an intended capacity of 30 or more vessels and:

(i) are located:

- in non-tidal waters; or
- within 100 metres of wetlands or an aquatic reserve; or

(ii) require the construction of a groyne or annual maintenance dredging; or

(iii) the ratio of car park spaces to vessels is less than 0.5:1; or

(b) with a intended capacity of 80 or more vessels; or

(2) repair or maintain vessels out of the water (including slipways, hoists or other facilities) with an intended capacity of:

(a) one or more vessel 25 metres or longer; or

(b) 5 or more vessels at any one time.

Mineral processing or metallurgical works for the commercial production or extraction of ores (using methods including chemical, electrical, magnetic, gravity or physico-chemical) or the refinement, processing or reprocessing of metals involving smelting, casting, metal coating or metal products recovery that:

(1) process into ore concentrates more than 150 tonnes per day of material; or

(2) smelt, process, coat, reprocess or recover more than 10,000 tonnes per annum of ferrous or non-ferrous metals, alloys or ore concentrates; or

(3) crush, grind, shred, sort or store:

(a) more than 150 tonnes per day, or 30,000 tonnes per annum, of scrap metal and are not wholly contained within a building; or

(b) more than 50,000 tonnes per annum and are wholly contained within a building; or

(4) are located:

(a) within 40 metres of a natural waterbody or wetlands; or

(b) in an area of high watertable; or

(c) within 500 metres of a residential zone and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, smoke, soot, dust, traffic or waste; or

(d) so that, in the opinion of the consent authority, having regard to topography and local meteorological conditions, the works are likely to significantly affect the environment because of the use or production of substances classified as poisonous in the Australian Dangerous Goods Code.

Mines that mine, process or handle minerals (being minerals within the meaning of the Mining Act 1992 other than coal or limestone) and:

(1) disturb or will disturb a total surface area of more than 4 hectares of land (associated with a mining lease or mineral claim or subject to a Section 8 notice under the Mining Act 1992) by:

(a) clearing or excavating; or

(b) constructing dams, ponds, drains, roads, railways or conveyors;

(c) storing or depositing overburden, ore or its products or tailings; or

(2) are located:

(a) in or within 40 metres of a natural waterbody, wetlands, a drinking water catchment or an environmentally sensitive area; or

(b) within 200 metres of a coastline; or

(c) if involving blasting, within:

(i) 1,000 metres of a residential zone; or

(ii) 500 metres of a dwelling not associated with the mine; or

(d) within 500 metres of another mining site that has operated during the past 5 years; or

(e) so that, in the opinion of the consent authority, having regard to topography and local meteorological conditions, the mine is likely to significantly affect the environment because of the use or production of substances classified as poisonous in the Australian Dangerous Goods Code.

This designation of mines does not include continued mines within the meaning of State Environmental Planning Policy No. 37—Continued Mines and Extractive Industries in respect of which an application for development consent has been made before the end of the moratorium period prescribed under that Policy.

Paper, pulp or pulp products industries that manufacture paper, paper pulp or pulp products and:

(1) have an intended production capacity of more than:

(a) 30,000 tonnes per annum; or

(b) 70,000 tonnes per annum if recycled material is used exclusively as raw material and no bleaching or de-inking is undertaken; or

(2) release effluent or sludge:

(a) in or within 100 metres of a natural waterbody or wetlands; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soils; or

(c) in a drinking water catchment.

Petroleum works that:

(1) produce crude petroleum or shale oil; or

(2) produce more than 5 petajoules per annum of natural gas or methane; or

(3) refine crude petroleum, shale oil or natural gas; or

(4) manufacture more than 100 tonnes per annum of petroleum products (including aviation fuel, petrol, kerosene, mineral turpentine, fuel oils, lubricants, wax, asphalt, liquified gas and the precursors to petrochemicals, such as acetylene, ethylene, toluene and xylene); or

(5) store petroleum and natural gas products with an intended storage capacity in excess of:

(a) 200 tonnes for liquified gases; or

(b) 2,000 tonnes of any petroleum products; or

(6) dispose of oil or petroleum waste or process or recover more than 20 tonnes of waste per annum; or

(7) are located:

(a) within 40 metres of a natural waterbody or wetlands; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soils; or

(c) within a drinking water catchment; or

(d) on a floodplain.

Sewerage systems or works that:

(1) treat sewage and:

(a) have an intended processing capacity of more than 2,500 persons equivalent capacity or 750 kilolitres per day; or

(b) have an intended processing capacity of more than 20 persons equivalent capacity or 6 kilolitres per day and are located:

(i) on a floodplain; or

(ii) within a coastal dune field; or

(2) incinerate sewage or sewage products; or

(3) temporarily or permanently store sewage, sludge or effluent:

(a) with a capacity of more than 1,000 tonnes of material; or

(b) at a location:

(i) within 100 metres of a natural waterbody or wetlands; or

(ii) in an area of:

- high watertable; or
- highly permeable soils; or

(iii) within a drinking water catchment; or

(iv) on a floodplain; or

(v) within 250 metres of a dwelling not associated with the development; or

(4) release or reuse more than 20 persons equivalent capacity or 6 kilolitres per day of sewage, effluent or sludge at a location:

(a) in or within 100 metres of a natural waterbody, wetlands, coastal dune fields or an environmentally sensitive area; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soils; or

(iii) acid sulphate, sodic or saline soils; or

(c) on land that slopes at more than 6 degrees to the horizontal; or

(d) within a drinking water catchment; or

(e) within a catchment of an estuary where the entrance to the sea is intermittently open; or

(f) on a floodplain; or

(g) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development.

This designation of sewerage systems or works does not include development for the pumping out of sewage from recreational vessels.

Shipping facilities, being wharves or wharf-side facilities at which cargo is loaded onto vessels, or unloaded from vessels, or temporarily stored, at a rate of more than:

(1) 150 tonnes per day, or 5,000 tonnes per annum, for facilities handling goods classified in the Australian Dangerous Goods Code; or

(2) 500 tonnes per day or 50,000 tonnes per annum.

Turf farms that, in the opinion of the consent authority, are likely to significantly affect the environment because of their location:

(1) within 100 metres of a natural waterbody or wetlands; or

(2) in an area of:

(i) high watertable; or

(ii) acid sulphate, sodic or saline soils; or

(3) within a drinking water catchment; or

(4) within 250 metres of another turf farm.

Waste management facilities or works that store, treat, purify or dispose of waste or sort, process, recycle, recover, use or reuse material from waste and that:

(1) dispose (by landfilling, incinerating, storing, placing or other means) of solid or liquid waste:

(a) that includes any substance classified in the Australian Dangerous Goods Code or medical, cytotoxic or quarantine waste; or

(b) that comprises more than 100,000 tonnes of 'clean fill' (such as soil, sand, gravel, bricks or other excavated or hard material) in a manner that, in the opinion of the consent authority, is likely to cause significant impacts on drainage or flooding; or

(c) that comprises more than 1,000 tonnes per annum of sludge or effluent; or

(d) that comprises more than 200 tonnes per annum of other waste material; or

(2) sort, consolidate or temporarily store waste at transfer stations or materials recycling facilities for transfer to another site for final disposal, permanent storage, reprocessing, recycling, use or reuse and:

(a) handle substances classified in the Australian Dangerous Goods Code or medical, cytotoxic or quarantine waste; or

(b) have an intended handling capacity of more than 10,000 tonnes per annum of waste containing food or livestock, agricultural or food processing industries waste or similar substances; or

(c) have an intended handling capacity of more than 30,000 tonnes per annum of waste such as glass, plastic, paper, wood, metal, rubber or building demolition material; or

(3) purify, recover, reprocess or process (including by mulching or composting) more than 5,000 tonnes per annum of solid or liquid waste organic materials, including food waste, oil, sludge, pulp, garden refuse, sawdust or wood chips; or

(4) are located:

(a) in or within 100 metres of a natural waterbody, wetlands, coastal dune fields or an environmentally sensitive area; or

(b) in an area of high watertable, highly permeable soils, acid sulphate, sodic or saline soils; or

(c) within a drinking water catchment; or

(d) within a catchment of an estuary where the entrance to the sea is intermittently open; or

(e) on a floodplain; or

(f) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, visual impacts, air pollution (including odour, smoke, fumes or dust), vermin or traffic.

This designation of waste management facilities or works does not include:

(a) development comprising or involving any use of sludge or effluent if:

(i) the dominant purpose is not waste disposal; and

(ii) the development is carried out in a location other than one listed in paragraph (4) above; or

(b) development comprising or involving waste management facilities or works specifically listed elsewhere in this Schedule.

Wood or timber milling or processing works (other than a joinery, builders supply yard or home improvement centre) that saw, machine, mill, chip, pulp or compress timber or wood and:

(1) have an intended production capacity of more than 4,000 cubic metres per annum of sawn timber or timber products and:

(a) are located within 500 metres of a dwelling not associated with the milling works; or

(b) are located within 40 metres of a natural waterbody or wetlands; or

(c) burn waste (other than as a source of fuel); or

(2) have an intended production capacity of more than 30,000 cubic metres per annum of sawn timber or timber products.

Wood preservation works that treat or preserve timber using chemical substances (containing copper, chromium, arsenic, creosote or any substance classified in the Australian Dangerous Goods Code) and:

(1) process more than 10,000 cubic metres per annum of timber; or

(2) are located:

(a) within 250 metres of a natural waterbody, wetlands or an environmentally sensitive area; or

(b) in an area of:

(i) high watertable; or

(ii) highly permeable soils; or

(c) on land that slopes at more than 6 degrees to the horizontal; or

(d) within a drinking water catchment; or

(e) within 250 metres of a dwelling not associated with the development.

PART 2—ARE ALTERATIONS OR ADDITIONS DESIGNATED DEVELOPMENT?

Is there a significant increase in the environmental impacts of the total development?

1. Development involving alterations or additions to development (whether existing or approved) is not designated development if, in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development (that is the development together with the additions or alterations) compared with the existing or approved development.

Factors to be taken into consideration

2. In forming its opinion, a consent authority is to consider:

(a) the impact of the existing development having regard to factors including:

(i) previous environmental management performance, including compliance with:

- conditions of any consents, licences, leases or authorisations by a public authority; and
- any relevant codes of practice; and

(ii) rehabilitation or restoration of any disturbed land; and

(iii) the number and nature of all past changes and their cumulative effects; and

(b) the likely impact of the proposed alterations or additions having regard to factors including:

(i) the scale, character or nature of the proposal in relation to the development; and

(ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality; and

(iii) the degree to which the potential environmental impacts can be predicted with adequate certainty; and

(iv) the capacity of the receiving environment to accommodate changes in environmental impacts; and

(c) any proposals:

(i) to mitigate the environmental impacts and manage any residual risk; and

(ii) to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department of Planning or other public authorities.

PART 3—WHAT DO TERMS USED IN THIS SCHEDULE MEAN?

In this Schedule:

acid sulphate soil means acid sulphate soil, potential acid sulphate soil, sulphidic clay or sulphidic sand with soil profiles or layers (within the material to be disturbed or impacted by the development) with more than 0.1 percent sulphide and a net acid generation potential of more than zero.

ANEF means Australian Noise Exposure Forecast as defined in Australian Standard AS2021-1985 Acoustics-Aircraft Noise Intrusion.

Australian Dangerous Goods Code means the most recent edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the Federal Office of Road Safety, Department of Transport and Communications.

coastal dune field means any system of wind blown sand deposits extending landwards of the coastline, whether active or stable.

coastline means ocean beaches, headlands or other coastal landforms, excluding bays, estuaries or inlets.

contaminated soil means soil that contains a concentration of chemical substances (including substances listed in the Australian Dangerous Goods Code) that are likely to pose an immediate or long term hazard to human health or the environment. Soil is considered to be a hazard if it is:

(a) unsafe or unfit for habitation or occupation by people or animals; or

(b) degraded in its capacity to support plant life; or

(c) otherwise environmentally degraded.

drinking water catchment means the restricted areas prescribed by the controlling water authority or within 100 metres of a potable groundwater supply bore.

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

effluent includes treated or partially treated wastewater from processes such as sewage treatment plants or from treatment plants associated with intensive livestock industries, aquaculture or agricultural, livestock, wood, paper or food processing industries.

environmentally sensitive area means:

(a) land identified in an environmental planning instrument as an environment protection zone such as for the protection or preservation of habitat, plant communities, escarpments, wetlands or foreshore or land protected or preserved under State Environmental Planning Policy No. 14—Coastal Wetlands or State Environmental Planning Policy No. 26—Littoral Rainforests; or

(b) land reserved as national parks or historic sites or dedicated as nature reserves or declared as wilderness under the National Parks and Wildlife Act 1974; or

(c) land reserved as an aquatic reserve under the Fisheries and Oyster Farms Act 1935; or

(d) land reserved or dedicated within the meaning of the Crown Lands Act 1989 for the preservation of flora, fauna, geological formations or for other environmental protection purposes; or public recreation ?

(e) land declared as wilderness under the Wilderness Act 1987.

extractive material means sand, soil, stone, gravel, rock, sandstone or similar substances that are not prescribed minerals within the meaning of the Mining Act 1992.

floodplain means the floodplain level nominated in a local environmental plan or those areas inundated as a result of a 1 in 100 flood event if no level has been nominated.

high watertable means those areas where the groundwater depth is less than 3 metres below the surface at its highest seasonal level.

highly permeable soil means soil profiles or layers (within the upper 2 metres of the material to be disturbed or impacted by the development) with a saturated hydraulic conductivity of more than 50 millimetres per hour.

incinerate includes any method of burning or thermally oxidising solids, liquids or gases.

poisonous means substances classified as poisonous in the Australian Dangerous Goods Code, including poisonous gases (Class 2.3) or poisonous (toxic), infectious and genetically modified substances (Class 6).

residential zone means land identified in an environmental planning instrument as being predominantly for residential use, including urban, village or living area zones, but excluding rural residential zones.

saline soil means soil profiles or layers (within the upper 2 metres of soil) with an electrical conductivity of saturated extracts (ECe) value of more than 4 decisiemens per metre (dS/m).

sludge includes waste particulate matter (mainly organic) from processes such as sewage treatment plants, intensive livestock industries or agricultural, livestock, wood, paper or food processing industries.

sodic soil means soil profiles or layers (within the upper 2 metres of soil) with an exchangeable sodium percentage (ESP) of more than 5 percent.

waste includes any matter or thing whether solid, gaseous or liquid or a combination of any solids, gases or liquids that is discarded or is refuse from processes or uses (such as domestic, medical, industrial, mining, agricultural or commercial processes or uses).

waterbody means:

(a) **a natural waterbody**, including:

(i) a lake or lagoon either naturally formed or artificially modified; or

(ii) a river or stream, whether perennial or intermittent, flowing in a natural channel with an established bed or in an artificially modified channel which has changed the course of the stream; or

(iii) tidal waters including any bay, estuary or inlet; or

(b) **an artificial waterbody**, including any waterway, canal, inlet, bay, channel, dam, pond or lake constructed and permanently or intermittently inundated with water.

wetlands means:

(a) **natural wetlands** including marshes, mangroves, backwaters, billabongs, swamps, sedgelands, wet meadows or wet heathlands that form a shallow waterbody (up to 2 metres in depth) when inundated cyclically, intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities; or

(b) **artificial wetlands**, including marshes, swamps, wet meadows, sedgelands or wet heathlands that form a shallow water body (up to 2 metres in depth) when inundated cyclically, intermittently or permanently with water, and are constructed and vegetated with wetland plant communities.

PART 4—HOW ARE DISTANCES MEASURED FOR THE PURPOSES OF THIS SCHEDULE?

aquaculture or mariculture:

The distance between leases is to be measured as the shortest distance between the boundary of any existing lease area and the boundary of the area to which the development application applies.

coastline:

The distance from a coastline is to be measured as the shortest distance between the mean high water mark and the boundary of the land to which the development application applies (excluding access roads).

dwelling:

The distance from a dwelling is to be measured as the shortest distance between the edge of the dwelling and the boundary of any development or works to which the development application applies.

environmentally sensitive area:

The distance from an environmentally sensitive area is to be measured as the shortest distance between the boundary of the area and the boundary of the land to which the development application applies.

extractive industries and mines (including coal and limestone):

The distance between extractive industries or mine sites is to be measured as the shortest distance between any area of disturbance by a mine or extractive industry that has operated within the past 5 years and the boundary of the land to which the development application applies (excluding access roads).

poultry farms:

The distance between poultry farms is to be measured as the shortest distance between the edge of any facilities or works associated with an existing poultry farm and the facilities or works to which the development application applies (excluding access roads).

residential zone:

The distance from a residential zone is to be measured as the shortest distance between the boundary of the residential zone and the facilities or works to which the development application applies (excluding access roads).

turf farm:

The distance between turf farms is to be measured as the shortest distance between the edge of an area which is growing or has previously grown turf sod within the last 5 years and the edge of the area for growing turf sod to which the development application applies.

waterbody:

The distance from a waterbody is to be measured as the shortest distance between:

(a) the top of the high bank, if present; or

(b) if no high bank is present, then:

(i) the mean high water mark in tidal waters; or

(ii) the mean water level in non-tidal waters,

and the boundary of the land to which the development application applies.

wetlands:

The distance from a wetland is to be measured as the shortest distance between:

(a) the top of the high bank, if present; or

(b) if no high bank is present, then the edge of vegetation communities dominated by wetland species,

and the boundary of the land to which the development application applies.

EXPLANATORY NOTE

The object of this Regulation is to redefine designated development for the purposes of the Environmental Planning and Assessment Act 1979.

The Regulation is made under sections 157 and 158 of that Act.

NOTICE

COPYRIGHT IN LEGISLATION

[Published in Gazette No. 94 of 27 August 1993]

Recognising that the Crown has copyright in the legislation of New South Wales and in certain other material, including but not limited to prerogative rights and privileges of the Crown in the nature of copyright, and that it is desirable in the interests of the people of New South Wales that access to such legislation should not be impeded except in limited special circumstances:

I, The Honourable John Planta Hannaford MLC, Attorney General for the State of New South Wales, make and publish this instrument on behalf of the State of New South Wales.

Definitions

1. In this instrument:

"authorisation" means the authorisation granted by this instrument;

"copyright" includes any prerogative right or privilege of the Crown in the nature of copyright;

"legislation of New South Wales" means:

(a) Acts of the Parliament of New South Wales; and

(b) regulations, rules, by-laws and ordinances made under an Act of New South Wales and made, approved or confirmed by the Governor acting with the advice of the Executive Council; and

(c) any such Acts, regulations, rules, by-laws and ordinances in the form in which they are officially printed or reprinted, with or without the inclusion of amendments; and

(d) provisions applying as a law of New South Wales, by virtue of an Act of the Parliament of New South Wales; and

(e) official Explanatory Notes published in connection with any such legislation;

"State" means the State of New South Wales, and includes the Crown in right of the State of New South Wales.

Authorisation

2. Any publisher is by this instrument authorised to publish and otherwise deal with any legislation of New South Wales, subject to the following conditions:

(a) copyright in the legislation of New South Wales continues to reside in the State;

(b) the State reserves the right at any time to revoke, vary or withdraw the authorisation if the conditions of its grant are breached and otherwise on reasonable notice;

(c) any publication of material pursuant to the authorisation must not indicate directly or indirectly that it is an official version of the material;

(d) the arms of the State must not be used in connection with the publication of material pursuant to the authorisation, except with the further authority of the Governor (acting with the advice of the Executive Council) or of the Attorney General;

(e) any publication of material pursuant to the authorisation is required to be accurately reproduced in proper context and to be of an appropriate standard.

Non-enforcement of copyright

3. The State will not enforce copyright in legislation of New South Wales to the extent that it is published or otherwise dealt with in accordance with the authorisation. For this purpose, the authorisation has effect as a licence binding on the State.

Revocation, variation or withdrawal of authorisation

4. Any revocation, variation or withdrawal of the authorisation may be effected generally or in relation to specified publishers or specified classes of publishers. The authorisation may also be revoked, varied or withdrawn in relation to specified legislation of New South Wales or specified classes of such legislation. Any such revocation, variation or withdrawal may be by notice in the Government Gazette, or by notice to any particular publisher, or in any other way as determined from time to time by the Attorney General.

Unauthorised Documents Act 1922

5. Attention is drawn to the Unauthorised Documents Act 1922, which restricts use of the State coat of arms.

Copyright Act 1968 of the Commonwealth

6. Nothing in this instrument affects the rights of any person (other than the State) under the Copyright Act 1968 of the Commonwealth.

Interim arrangements

7. The authorisation does not apply to the publication of legislation of New South Wales in electronic form (including by way of disk, tape or on-line access) during the period of six months commencing on the date of publication of this instrument in the Government Gazette, except with the further approval of the Attorney General.

BY AUTHORITY

AUTHORISED REPRINTED ACT

NEW SOUTH WALES

SUBORDINATE LEGISLATION ACT 1989 No. 146

Reprinted as in force at 26 October 1993
to include all amendments
up to Act 1993 No. 48

This reprint is compiled by the Parliamentary Counsel's Office, certified under the Reprints Act 1972, and published by the NSW Government Information Service

Information about this reprint

This reprint of the Subordinate Legislation Act 1989 No. 146 is up to date as at 26 October 1993 and includes amendments up to and including the Subordinate Legislation (Amendment) Act 1993 No. 48

The reprint contains

- Table of Contents listing all headings
- Text of the Subordinate Legislation Act as amended and in force at 26 October 1993
- Table of Acts listing, in chronological order, the Acts amending the Subordinate Legislation Act and providing assent and commencement details (p. 11)
- Table of Amendments listing provisions of the Subordinate Legislation Act that have been amended, inserted, substituted or repealed since its enactment in 1989 (p. 12)

Information about the sale and distribution of authorised NSW legislation by the NSW Government Information Service is provided on the inside back cover.

SUBORDINATE LEGISLATION ACT 1989 No. 146

[Reprinted as at 26 October 1993]

NEW SOUTH WALES

TABLE OF PROVISIONS

SUBORDINATE LEGISLATION ACT 1989 No. 146

Reprinted under the Reprints Act 1972

[Reprinted as at 26 October 1993]

NEW SOUTH WALES

An Act relating to the making and staged repeal of subordinate legislation.

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Subordinate Legislation Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"principal statutory rule" means a statutory rule that contains provisions apart from:

(a) direct amendments or repeals; and

(b) provisions that deal with its citation and commencement;

"Regulation Review Committee" means the committee for the time being constituted under the Regulation Review Act 1987;

"responsible Minister", in connection with a statutory rule, means the Minister administering the Act under which the statutory rule is or is proposed to be made;

"statutory rule" means a regulation, by-law, rule or ordinance:

(a) that is made by the Governor; or

(b) that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor,

but does not include any instruments specified or described in Schedule 4.

(2) In this Act, a reference to a direct amendment is a reference to an amendment that inserts, adds, amends or substitutes matter.

PART 2—REQUIREMENTS REGARDING THE MAKING OF STATUTORY RULES

Guidelines

4. Before a statutory rule is made, the responsible Minister is required to ensure that, as far as is reasonably practicable, the guidelines set out in Schedule 1 are complied with.

Regulatory impact statements

5. (1) Before a principal statutory rule is made, the responsible Minister is required to ensure that, as far as is reasonably practicable, a regulatory impact statement complying with Schedule 2 is prepared in connection with the substantive matters to be dealt with by the statutory rule.

(2) Before a principal statutory rule is made, the responsible Minister is required to ensure that, as far as is reasonably practicable, the following provisions are complied with:

(a) A notice is to be published in the Gazette and in a daily newspaper circulating throughout New South Wales and, where appropriate, in any relevant trade, professional, business or public interest journal or publication:

(i) stating the objects of the proposed statutory rule; and

(ii) advising where a copy of the regulatory impact statement may be obtained or inspected; and

(iii) advising whether, and (if so) where, a copy of the proposed statutory rule may be obtained or inspected; and

(iv) inviting comments and submissions within a specified time, but not less than 21 days from publication of the notice.

(b) Consultation is to take place with appropriate representatives of consumers, the public, relevant interest groups, and any sector of industry or commerce, likely to be affected by the proposed statutory rule.

(c) All the comments and submissions received are to be appropriately considered.

(3) The nature and extent of the publicity for the proposal, and of the consultation regarding the proposal, are to be commensurate with the impact likely to arise for consumers, the public, relevant interest groups, and any sectors of industry or commerce from the making of the statutory rule.

(4) In the event that the statutory rule is made, a copy of the regulatory impact statement and all written comments and submissions received are to be forwarded to the Regulation Review Committee within 14 days after it is published in the Gazette.

(5) Comments and submissions received within one week before the statutory rule is submitted to the Governor (or at any time afterwards) need not be considered or forwarded to the Regulation Review Committee.

(6) Section 75 of the Interpretation Act 1987 does not apply to notices required to be published under this Act.

Regulatory impact statements not necessary in certain cases

6. (1) It is not necessary to comply with section 5 to the extent that:

(a) the responsible Minister certifies in writing that, on the advice of the Attorney General or the Parliamentary Counsel, the proposed statutory rule comprises or relates to matters set out in Schedule 3; or

(b) the Attorney General (or a Minister for the time being nominated by the Attorney General for the purpose) certifies in writing that, in his or her opinion in the special circumstances of the case, the public interest requires that the proposed statutory rule should be made without complying with section 5; or

(c) the responsible Minister certifies in writing that:

(i) the proposed statutory rule has been or is to be made by a person or body (other than the Governor) who or which is not expressly subject to the control or direction of the responsible Minister; and

(ii) it was not practicable, in the circumstances of the case, for the responsible Minister to comply with section 5.

(2) If a statutory rule is made in the circumstances mentioned in subsection (1) (b), the responsible Minister is required to ensure that the relevant requirements of section 5 (with any necessary adaptations) are complied with within 4 months after the statutory rule is made.

(3) A certificate under this section may relate to either or both of the following:

(a) all or any specified requirements of section 5;

(b) all or any specified aspects of the statutory rule concerned.

Requirements before making statutory rules

7. A proposed statutory rule must not be submitted for making by the Governor, or for the approval or confirmation of the Governor, unless the following are submitted together with the proposed statutory rule:

(a) a copy of a certificate of the responsible Minister stating whether or not, in his or her opinion, the provisions of this Act relating to the proposed statutory rule have been complied with;

(b) a copy of any relevant certificate under section 6;

(c) a copy of the opinion of the Attorney General or the Parliamentary Counsel as to whether the proposed statutory rule may legally be made.

Remaking of disallowed statutory rule

8. (1) This section applies where a House of Parliament has disallowed a statutory rule under section 41 of the Interpretation Act 1987.

(2) No statutory rule, being the same in substance as the statutory rule so disallowed, may be published in the Gazette within 4 months after the date of the disallowance, unless the resolution has been rescinded by the House of Parliament by which it was passed.

(3) If a statutory rule is published in the Gazette in contravention of this section, the statutory rule is void.

Compliance with Part

9. (1) Except as provided by section 8, failure to comply with any provisions of this Part does not affect the validity of a statutory rule.

(2) The provisions of this Part regarding the requirements to be complied with before a statutory rule is made, approved or confirmed are in addition to, and do not affect, the provisions of any other Act.

PART 3—STAGED REPEAL OF STATUTORY RULES

Staged repeal of statutory rules

10. (1) Unless it sooner ceases to be in force, a statutory rule published before a date specified in Column 1 below is repealed on the date specified opposite in Column 2:

Column 1	Column 2
1 September 1941	1 September 1991
1 September 1964	1 September 1992
1 September 1978	1 September 1993
1 September 1986	1 September 1994
1 September 1990	1 September 1995

(2) Unless it sooner ceases to be in force, a statutory rule published on or after 1 September 1990 is repealed:

(a) on the fifth anniversary of the date on which it was published (in the case of a statutory rule published on 1 September in any year); or

(b) on 1 September following the fifth anniversary of the date on which it was published (in any other case).

Postponement of repeal in specific cases

11. (1) The Governor may, by order published in the Gazette, from time to time postpone by one year the date on which a specified statutory rule is repealed by section 10.

(2) Such an order is effective to postpone the repeal of the statutory rule, provided the order is published before the repeal would otherwise take effect.

(3) The repeal of a particular statutory rule may not be postponed on more than 5 occasions.

(4) The repeal of a statutory rule may not be postponed on a third, fourth or fifth occasion unless the responsible Minister has given the Regulation Review Committee at least one month's written notice of the proposed postponement.

(5) The Regulation Review Committee may make such reports to the reponsible Minister and to each House of Parliament as it thinks desirable in connection with the third, fourth or fifth postponement of the repeal of a statutory rule.

Machinery provisions regarding repeal

12. (1) A statutory rule is, for the purposes of this Part, to be taken to have been published on the following date:

(a) if the statutory rule was required to be published in the Government Gazette or any other official gazette—the date on which it was originally so published;

(b) if the statutory rule was not required to be so published but was required to be made, approved or confirmed by the Governor—the date on which it was so made, approved or confirmed;

(c) in any other case—the date on which it was made.

(2) The repeal of a statutory rule by this Part extends to any direct amendments (whenever made) of the statutory rule and to so much of any statutory rule as makes any such amendments.

(3) A set of regulations, by-laws, rules or ordinances constituting a single instrument is, for the purposes of this Part, to be taken to be a single statutory rule.

(4) If an instrument made under one Act is by law to be treated as a statutory rule made under another Act, the date of publication is, for the purposes of this Part, the date it was originally published.

(5) The Mines Inspection General Rules 1901 under the Mines Inspection Act 1901 are, for the purposes of this Act, to be taken to have been originally published on 29 June 1979.

(6) The Navigation (Collision) Regulations 1983 under the Navigation Act 1901 are, for the purposes of this Act, taken to have been originally published on 1 July 1987.

PART 4—MISCELLANEOUS

Procedure when Regulation Review Committee not in office

13. If the Regulation Review Committee is not in office when material is required to be forwarded to it under section 5, the material is to be forwarded to a person nominated by the Clerk of the Legislative Assembly, for the attention of the Committee after its appointment.

Regulations

14. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations may, after consultation with the Regulation Review Committee, be made amending or replacing Schedule 3 or 4.

Amendment of Regulation Review Act 1987 No. 165

15. *(The amending provisions relating to the Regulation Review Act 1987 are not reprinted: Reprints Act 1972, s. 6.)*

SCHEDULE 1—GUIDELINES FOR THE PREPARATION OF STATUTORY RULES

(Sec. 4)

1. Wherever costs and benefits are referred to in these guidelines, economic and social costs and benefits are to be taken into account and given due consideration.

2. Before a statutory rule is proposed to be made:

(a) The objectives sought to be achieved and the reasons for them must be clearly formulated.

(b) Those objectives are to be checked to ensure that they:

- are reasonable and appropriate; and
- accord with the objectives, principles, spirit and intent of the enabling Act; and
- are not inconsistent with the objectives of other Acts, statutory rules and stated government policies.

(c) Alternative options for achieving those objectives (whether wholly or substantially), and the option of not proceeding with any action, must be considered.

(d) An evaluation must be made of the costs and benefits expected to arise from each such option as compared with the costs and benefits (direct and indirect, and tangible and intangible) expected to arise from proceeding with the statutory rule.

(e) If the statutory rule would impinge on or may affect the area of responsibility of another authority, consultation must take place with a view to ensuring in advance that (as far as is reasonably practicable in the circumstances):

- any differences are reconciled; and
- there will be no overlapping of or duplication of or conflict with Acts, statutory rules or stated government policies administered by the other authority.

3. In determining whether and how the objectives should be achieved, the responsible Minister is to have regard to the following principles:

(a) Administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action.

(b) Implementation by means of a statutory rule should not normally be undertaken unless the anticipated benefits to the community from the proposed statutory rule outweigh the anticipated costs to the community, bearing in mind the impact of the proposal on the economy and on consumers, members of the public, relevant interest groups, and any sector of industry and commerce, that may be affected.

(c) The alternative option that involves the greatest net benefit or the least net cost to the community should normally be chosen from the range of alternative options available to achieve the objectives.

4. A statutory rule must be expressed plainly and unambiguously, and consistently with the language of the enabling Act.

SCHEDULE 2—PROVISIONS APPLYING TO REGULATORY IMPACT STATEMENTS

(Sec. 5)

1. A regulatory impact statement must include the following matters:

(a) A statement of the objectives sought to be achieved and the reasons for them.

(b) An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially).

(c) An assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance.

(d) An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.

(e) An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community.

(f) A statement of the consultation program to be undertaken.

2. (1) Wherever costs and benefits are referred to in this Schedule, economic and social costs and benefits, both direct and indirect, are to be taken into account and given due consideration.

(2) Costs and benefits should be quantified, wherever possible. If this is not possible, the anticipated impacts of the proposed action and of each alternative should be stated and presented in a way that permits a comparison of the costs and benefits.

SCHEDULE 3—MATTERS NOT REQUIRING REGULATORY IMPACT STATEMENTS

(Sec. 6)

1. Matters of a machinery nature.

2. Direct amendments or repeals.

3. Matters of a savings or transitional nature.

4. Matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

5. Matters involving the adoption of international or Australian standards or codes of practice, where an assessment of the costs and benefits has already been made.

SCHEDULE 4—EXCLUDED INSTRUMENTS

(Sec. 3)

1. Standing Rules and Orders of the Legislative Council and Legislative Assembly.

2. Rules of court.

3. Regulations under the Constitution Act 1902.

4. Regulations under the Companies (Acquisition of Shares) (Application of Laws) Act 1981, the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981, the Companies (Application of Laws) Act 1981, the Securities Industry (Application of Laws) Act 1981 or the Futures Industry (Application of Laws) Act 1986.

5. By-laws under the Anzac Memorial (Building) Act 1923.

6. By-laws under the Australian Jockey Club Act 1873.

7. By-laws under the Colleges of Advanced Education Act 1975.

8. By-laws under the Farrer Memorial Research Scholarship Fund Act 1930.

9. Rules under the McGarvie Smith Institute Incorporation Act 1928.

10. By-laws under the New South Wales State Conservatorium of Music Act 1965.

10A. By-laws under the National Trust of Australia (New South Wales) Act 1990.

11. By-laws under the Private Irrigation Districts Act 1973.

12. Rules under the Sporting Injuries Insurance Act 1978.

13. By-laws under the State Bank Act 1981.

14. By-laws under the Sydney Turf Club Act 1943.

15. By-laws under the Technical Education Trust Funds Act 1967.

16. By-laws of a university.

16A. By-laws made by the Council of the Women's College (being by-laws under the Women's College Act 1902).

17. By-laws under the Wellington Show Ground Act 1929.

18. An instrument containing matters of a savings or transitional nature (provided the only other provisions contained in the instrument are provisions dealing with its citation and commencement).

SCHEDULE 4—EXCLUDED INSTRUMENTS—*continued*

19. Regulations under Part 6 of the Energy Administration Act 1987.

20. Regulations under Part 2 of the Essential Services Act 1988.

21. Regulations under the Road Obstructions (Special Provisions) Act 1979.

22. Ordinances under Part 12A of the Local Government Act 1919, being:

(a) planning scheme ordinances that are deemed to be deemed environmental planning instruments under the Environmental Planning and Assessment Act 1979; and

(b) ordinances under section 342U (2) of the Local Government Act 1919 that are continued in force by clause 11 of Schedule 3 to the Miscellaneous Acts (Planning) Repeal and Amendment Act 1979.

NOTES

This Act is reprinted with the omission of all amending provisions authorised to be omitted under sec. 6 of the Reprints Act 1972.

Table of Acts

Subordinate Legislation Act 1989 No. 146. Assented to, 31.10.1989. Date of commencement of Parts 1 and 3, secs. 8, 9 and 14 and Sch. 4, 1.1.1990, sec. 2 and Gazette No. 124 of 22.12.1989, p. 11035; date of commencement of remainder of provisions, 1.7.1990, sec. 2 and Gazette No. 124 of 22.12.1989, p. 11035. This Act is reprinted as amended by:

National Trust of Australia (New South Wales) Act 1990 No. 92. Assented to, 7.12.1990. Date of commencement of sec. 40, 5.7.1991, sec. 2 (1) and Gazette No. 103 of 5.7.1991, p. 5394.

Statute Law (Miscellaneous Provisions) Act 1991 No. 17. Assented to, 3.5.1991. Date of commencement of the provision of Sch. 1 relating to the Subordinate Legislation Act 1989, assent, sec. 2.

Statute Law (Miscellaneous Provisions) Act 1992 No. 34. Assented to, 18.5.1992. Date of commencement of the provision of Sch. 1 relating to the Subordinate Legislation Act 1989, assent, Sch. 1.

Subordinate Legislation (Amendment) Act 1993 No. 48. Assented to, 15.6.1993. Date of commencement, 1.7.1993, sec. 2.

This Act has also been amended by a regulation under sec. 14 of this Act, published in Gazette No. 157 of 8.11.1991, p. 9375.

NOTES—*continued*

Table of Amendments

Sec. 5—Am. 1993 No. 48, Sch. 1 (1).
Sec. 10—Am. 1993 No. 48, Sch. 1 (2).
Sec. 11—Am. 1993 No. 48, Sch. 1 (3).
Sec. 12—Am. 1992 No. 34, Sch. 1.
Sch. 4—Am. 1990 No. 92, s. 40; 1991 No. 17, Sch. 1; G.G. No. 157 of 8.11.1991, p. 9375.

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TIM ROBERTSON

Frederick Jordan Chambers
53 Martin Place
SYDNEY NSW 2000

29 June 1994

John Corkill
c/o Big Scrub Environment Centre
88a Keen Street
Lismore NSW 2480

Dear John

AMENDMENTS TO LIST OF DESIGNATED DEVELOPMENTS

Last week the Minister for Planning made a regulation to replace the list of designated developments under the Environmental Planning and Assessment Act. I have not had the opportunity to study it in detail.

I draw your attention to the provisions of the Subordinate Legislation Act 1989 which provides that the responsible Minister is required to ensure that, as far as is reasonably practicable, the guidelines set out in Schedule 1 of the Act are complied with before a statutory rule is made. I enclose a copy of Schedule 1 of the Act.

The only remedy for failing to comply with this provision is a complaint to the Regulation Review Committee of the Parliament. The Committee has a surprisingly good track record in policing Government compliance with the Subordinate Legislation Act. Another provision of that Act requires regulatory impact statements where new regulations are made. As this regulation operates by way of an amendment to an existing regulation, the regulatory impact statement requirement does not apply.

I also note that land clearing, private forestry, urban subdivisions and large scale tourist developments are not dealt with directly as designated developments. In most such cases, however, the FIS requirement does apply, thereby ensuring heightened environmental scrutiny and some merits review rights.

The regulation may also be disallowed. Parliament does not resume until September 1994 so there should be ample time for consideration of this option.

Best regards.

Yours sincerely

for TIM ROBERTSON

Diamond Beach Sandmining Action Group, in conjunction with The Hallidays Point Area Advancement Association Inc.,

PUBLIC FORUM:SANDMINING

Wednesday, 3rd July 1991
Blackhead Surf Lifesaving Club 7.30 pm

QUESTIONS TO THE SPEAKERS:

1. As pointed out at Mineral Deposits' original meeting with Council and the public on 22/3/91, they failed to consult the Department of Agriculture and Fisheries which does not comply with Clause 34 of the Environmental Planning Act regulations. Have they fulfilled this obligation? When? Consultants 4 May to DAg.
Wayne Mills, Diamond Beach.
Was an oversight by Consultant! 28/3 DAg to Council complaining of lack of consultation

2. We cannot see from information in the EIS how they hope to contain environmental disruption to the mining lease area. There is an obvious risk to the wider setting of this wetland when water tables, soil disruption, drainage patterns are altered. Where are the guarantees that this area can be rehabilitated and where is the information upon which Mineral Deposits will base its case for rehabilitation?
Jeanette & David Milne, Lindfield (Sydney Committee Members - DBSAG). Similar questions from John Kelly, Redhead: Liz & Ron Bridges, Diamond Beach: Robynne & Athol Gunn, Toronto (regular tourists), Florence & Jim Marr, Diamond Beach: Jane deWright, Diamond Beach: Warren Smith, Diamond Beach.
Very few studies done?
Maddock - there can be no guarantees.

3. Mineral Deposits EIS is wrong. Our roads are not safe for their trucks and increased traffic from personnell use. Properties around the mine site will hear noise. The first thing people will see when they come over Diamond Beach Road past Redhead will be the mine. There will be increased pollution just because they are there. Why didn't they tell the truth in the first place?
Fay & Jim Anderson, Hilldale Est. Similar questions from Elizabeth Thomas, Blackhead: Penny Gray, Diamond Beach, Ann & Noel Ferris Diamond Beach.
Use of buds, levees quick grass trees
Rehab to be done "quite rapidly"
Options (1) Build new road
(2) use Hallidays Rd. → pay levy to G.T.S.C. under s.94
No chemicals used

4. Biological surveys carried out by the Co. (inadequate as they are) confirm that significant mammal species such as the New Holland Mouse and Eastern Chestnut Mouse exist within the proposed mining path. According to the Company's own reference, these species, though capable of surviving some disturbance, are threatened if the habitat is grossly altered or if no refuge patches remain from which colonisation can occur. The Company has no apparent idea where the population centres and migration routes of these species occur and has failed to propose any strategy plan to cope with this problem. Is this the result of scientific incompetence or is it the Company's way of avoiding a complex ecological problem?
Terry Evans, Wilderness Society, Killabakh.
Relatively new? optimal habitat
Barry Fox UNSW Shouldn't be a Sch? Appropriate d't = common limited dist'
"Very little known about Chestnut mouse!"
Maddock No enough work done - EIS is deficient in three areas

depends on consent conditions

not considered necessary by Co.

5. Is Mineral Deposits going to carry out further floral and faunal surveys? No study at all was carried out on invertebrates nor mention made of migratory bat colonies - the list goes on.
Linda Gill, Buladelah. Similar question Sita Thomson, Diamond Bch.

Will do more studies - common practice
12-20 additional transects prior to mining

Area to be mined is least sensitive

Sensitive areas are to W + N

6. As a result of studies carried out by the Co., the Saltwater site has been rated as having a moderate to high ecological significance. Subsequent studies by recognised researchers have found this rating to be extremely conservative with a no. of rare and scientifically important species being found within the mining path e.g. Allocasuarina defungens together with a number of wet heath and sedge heath communities dominated by Leptospermun arachnoides which do not occur elsewhere in N.S.W. In such circumstances, why does the Co. attempt to downgrade the significance of the site within the main body of the EIS where statements such as

Letter to NPWS asking for studies for N.R. proposal - Co has made FOI.

Maddock range of imp. sp + worth preserving.

a. No plant species of major conservation significance have been identified within the study area (I-5)
b. In a regional context it appears the majority of communities occurring in the study area are represented within National Parks along the coastal strip.

Both statements are wrong and clearly misleading.
Chris Evans, Wilderness Society, Killabakh.

no lease - ELA only.

MLA lodged 7/3/90

7. How long have Mineral Deposits held the lease to sand mine the area in question? When granted the lease, was it a routine departmental matter or Ministerial direction? If the latter, name the Minister.
Jack Thomas, HPAAA Inc., Blackhead.

s. 40 Notice 9/3/90.

1:1000 chance of finding 'commercial' deposit.

8. Would Mineral Deposits provide a copy of the complete drilling program as mentioned P.20.3.2 EIS. I am interested in how Mineral Deposits calculated the reserve of mineral sands and what is the cut off formulae for defining the limits of MLA126 - or, as I suspect, this is not the limit of their interest?
Gus deWright, Diamond Beach.

Considerable drilling done in area: 5 drill lines.

Reasons: mineral under crest of dune
env. constraints to difficult
grade too low elsewhere

9. Seeing as Mineral Deposits has already offered to upgrade our roads and supply a new playing field for our new school, what's their limit in dollars when pre-empting Council's role in approving development applicatoins?
Terry Aldridge, Homestead Estate.

Experts to contribute under s.94 to roads.

Maddock - Rehab - proposed not adequate -

10. In what way has the EIS taken into account guidelines set out in State Environmental Planning Policy No. 14?
Mic & Kerry O'Brien, Diamond Beach. Similar question Jon Crosskill, Seashells Resort.

579 wetland smaller than mapped area

No consideration of alternatives

11. A Rural Environmental Protection Zone 7 has been placed on all privately owned beachfront land in the immediate area. What right has Mineral Deposits to carry out development within this boundary when private land owners have to comply with the zoning? → permanent uses only
Allan Hooper, Diamond Beach.

4 year transient use only. Quality rehab can be achieved.
Nothing inconsistent in mining + NPR.

12. Export of minerals is one of Australia's major dollar earners, but so were wool and wheat. What is the market trend of rutile? Prices are falling, stockpiles enlarging - why mine a sensitive area like Saltwater? Tourism is Australia's fastest growing industry, why put it at risk?
Thearle Nelson, Diamond Beach.

If not mining + reliance on tourist = 3rd World economy.
Balance! Infrastructure

13. With taking the water from the water table being 6 mtrs. deep in some parts, can you guarantee that you would not go through the indurated sand layer to the next water table and if so, how would you re pair that damage so the two tables are not mixed by colloidal humic material and become polluted?
Francina Mills, Diamond Beach.

no guarantees.

Not Unique ? but is valuable part of wet heath

14. What makes Saltwater wetland 577 unique? Is it worth protecting and preserving? What is an alternative to mining?
Kim & Gina Godwin, Blackhead: similar question Kym & Greg Barratt, Diamond Beach.

no wrong doings.

Study done by consultants under NPWS direction

15. In light of the fact that the wrong Aboriginals were contacted re. the EIS, how long will it take to do a proper and comprehensive archeological survey of the mining area and to what effect will the outco me of the survey have on the sand mining proposal should significant Aboriginal heritage sites be discovered?
Carol & Terry Pearson, Diamond Beach.

Bert Marr Purfleet — Taree LALC

monazite in Nuclear weapons.

16. Can Mineral Deposits assure the Manning Peace Group that Rutile (TiO_2) will be used for peaceful use only?
Bill & Phyllis Latona, John's River: Manning Peace Group, Taree.

Co. rejects these claims

17. The EIS which Mineral Deposits has submitted in support of its case for mining has been proved to be lacking in its treatment of basic issues - i.e. disturbance/rehabilitation of flora and fauna, water tables, soil, Aboriginal heritage, impact on the community and tourist industry, road infrastructure - how can the community be convinced that Mineral Deposits will not continue with such an insensitive treatment of the project?
Megan Benson, Diamond Beach: similar question Jon Crosskill, Seashells Resort, Jane deWright, Diamond Beach.

18. Is Mineral Deposits at this stage willing to recognise the significant shortfalls in the EIS and rectify the situation by commissioning an entirely new EIS to allow the facts to speak for themselves?
Robert & Cathy Kench, Gladesville (reg. tourists).

Notes on Public Meeting @ BLACKHEAD SLSC
3/7/91 Re Sandmining @ Diamond Beach

David Freeman Chairman
Jan Wisken Mit Deposits
Prof Max Maddock, Hunter Wetlands Centre

Mayor: - DoP yet to advise G.T.S.C. of whether Minister will determine or whether S.C will make determination
G.T.S.C. Can't ☹ want support application for mining!

Wisken: Why mine here? You tell us where to go otherwise!

Maddock: Values question is important should be conserved
Wetlands is valuable + worth conserving - boardwalk
EIS deficient - birds (migratory sig) rare sp. plant? ☺ stilted mangrove ext^n to range
Rehabilitation not good historically
cannot replace what is there