



New South Wales

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

Explanatory note

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

Overview of Bill

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

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

Outline of provisions

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

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

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

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

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

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

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

Schedule 1 [2] removes a spent provision.

Schedule 1 [3] makes a consequential amendment.

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

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