

1993—No. 185

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT  
1979—REGULATION**

(Relating to development control plans and applications for modification of development consent)

NEW SOUTH WALES



*[Published in Gazette No. 49 of 21 May 1993]*

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, M.L.C.,  
Minister for Planning.

**Commencement**

1. This Regulation commences on 28 June 1993.

**Amendments**

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

(a) by inserting after clause 25 the following clause:

**Application of Part to development control plans made by Director**

25A. This Part applies to a development control plan which is prepared or caused to be prepared by the Director under section 51A of the Act, with the following modifications:

(a) a reference to a council is taken to be a reference to the Director and a reference to an office of a council is taken to be a reference to an office of the Department; and

(b) a reference to a local environmental plan is taken to be a reference to a regional environmental plan; and

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- (c) clause 24 (2A) (which would require the Director to furnish to the Secretary a certified copy of any development control plan) does not apply.
- (b) by omitting clause 47 (2) and by inserting instead the following subclause:
  - (2) For the purposes of section 102 (1A) of the Act, the person prescribed (being the person with whom a copy of the application is to be lodged) is the consent authority which made the decision that is the subject of the appeal.
- (c) by inserting after clause 47 the following clauses:

**Fee for application for modification of consent**

47A. (1) The fee to accompany an application under section 102 of the Act is a fee made up of:

- (a) an amount calculated under subclause (2), or such lesser amount as the consent authority may require in a particular case, payable to the consent authority; and
- (b) if notice of the application is required to be given under section 102 (2) of the Act to a person or persons who made submissions in relation to the application for consent—an additional amount of \$500 payable to the consent authority required to give the notice.

(2) The fee payable under subclause (1) (a) is:

- (a) if the fee paid to the consent authority (including the Court) in respect of the application resulting in the development consent concerned was less than \$100—30 per cent of the fee paid; or
- (b) in any other case—30 per cent of the fee paid to the consent authority (including the Court) in respect of the application resulting in the development consent concerned or \$100 (whichever is the greater).

(3) The consent authority required to give notice under section 102 (2) of the Act is to refund so much of the fee paid under subclause (1) (b) as is not expended in giving that notice.

**Notice of application for modification to consent**

47B. (1) For the purposes of section 102 (2) of the Act, notice of an application for modification of consent is to be given by the consent authority, unless the application relates to a consent referred to in section 93 (4) of the Act (a consent resulting from an appeal), in which case the notice is to be given by the consent authority which made the decision the subject of that appeal.

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(2) The notice is to be in writing and is to be given within 7 days after the application or a copy of that application is received by the consent authority required to give the notice.

(3) The notice is to:

- (a) contain a brief description of the development consent, the land to which that consent relates and the details of the modification sought; and
- (b) indicate that submissions in writing may be made to the consent authority in relation to the application within the prescribed period; and
- (c) indicate that the application may be inspected during the prescribed period at the office of the consent authority giving the notice; and
- (d) indicate that if the application is approved there is no right of appeal by an objector under section 98 of the Act.

(4) The prescribed period for the purposes of section 102 (2) of the Act (being the period within which a person's submissions in relation to the application must be made to the consent authority) is 21 days after notice under this clause is given to the person.

(5) In the case of an application for modification of a consent referred to in section 93 (4) of the Act (a consent resulting from an appeal), the consent authority required to give notice of the application under this clause is to notify the Court of the date on which that notice is given.

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**EXPLANATORY NOTE**

The object of this Regulation is to amend the Environmental Planning and Assessment Regulation 1980 to prescribe certain matters for the purposes of the Environmental Planning and Assessment (Miscellaneous Amendments) Act 1992 (which is to commence on the commencement of this Regulation).

The Regulation provides that:

- (a) the current procedure which is required to be followed by a council when making or amending a development control plan relating to a local environmental plan is also to be followed by the Director when making or amending a development control plan relating to a regional environmental plan; and
- (b) a person who applies for a modification of a development consent given by the Land and Environment Court (on an appeal to that Court) is to give a copy of that application to the consent authority which made the decision the subject of that appeal; and

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- (c) in such a case, that consent authority is to give notice of the application to any persons who made submissions in relation to the original application for consent (in order to enable them to make submissions in relation to the modification sought); and
- (d) the fee payable for an application for modification of development consent is to be based on the fee payable to the consent authority (including the Land and Environment Court) for the application resulting in the development consent concerned, with an additional amount payable if notice of the modification application is required to be given to persons who made submissions in respect of the original development application.

This Regulation is made under the Environmental Planning and Assessment Act 1979, including section 157 (general regulation making power) and the sections referred to in this Regulation.

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