



New South Wales

Environmental Planning and Assessment Amendment Regulation 1999

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

ANDREW REFSHAUGE, M.P.,
Minister for Urban Affairs and Planning

Explanatory note

The object of this Regulation is to make miscellaneous amendments to the *Environmental Planning and Assessment Regulation 1994* and the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998*.

The amendments to the *Environmental Planning and Assessment Regulation 1994* deal with the following matters:

- (a) the exclusion of temporary buildings from the requirements of clauses 78 and 79G as to compliance with the *Building Code of Australia*,
- (b) the inclusion of a requirement (proposed clause 78J) that temporary buildings not be used for residential purposes or the storage of dangerous goods, and that they be demolished or removed within 5 years after approval for their erection is given,
- (c) the identification of the particular version of the *Building Code of Australia* that is applicable to the erection of a particular building or structure,

- (d) the exclusion of development on certain land in Newcastle (being the Steel River project, which is subject to other advertising requirements) from the advertising requirements of clauses 64 and 65,
- (e) the provision of toilet facilities on construction sites,
- (f) the prescription of maximum, rather than actual, application fees with respect to the modification of development consents,
- (g) other minor and consequential matters.

The amendments to the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998* deal with the following matters:

- (a) the exclusion of development on certain land in Newcastle (the Steel River project, which is subject to other advertising requirements) from the advertising requirements of clause 32,
- (b) the extension, from 1 July 1999 to 1 July 2000, of the period for which the Minister for Urban Affairs and Planning may continue to regulate certain fees.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including section 157 (the general power to make regulations) and clause 1 of Schedule 6 (the power to make regulations of a savings or transitional nature).

Environmental Planning and Assessment Amendment Regulation 1999

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment Regulation 1999*.

2 Amendment of Environmental Planning and Assessment Regulation 1994

The *Environmental Planning and Assessment Regulation 1994* is amended as set out in Schedule 1.

3 Amendment of Environmental Planning and Assessment (Savings and Transitional) Regulation 1998

The *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998* is amended as set out in Schedule 2.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 1994

(Clause 2)

[1] Clause 64 What are the requirements for advertising State significant advertised development?

Omit “subclause (1) (e)” from clause 64 (3).
Insert instead “subclause (2) (e)”.

[2] Clause 64 (6)

Insert after clause 64 (5):

(6) This clause does not apply to development on land to which clause 26F of *Newcastle Local Environmental Plan 1987* applies.

[3] Clause 65 What are the requirements for advertising nominated integrated development and other advertised development?

Insert after clause 65 (12):

(13) This clause does not apply to development on land to which clause 26F of *Newcastle Local Environmental Plan 1987* applies.

[4] Clause 78

Omit the clause. Insert instead:

78 Prescribed conditions of development consents: sections 80A (11) and 85A (6) (a) of the Act

(1) The requirements of this Part are prescribed conditions for the purposes of section 80A (11) of the Act.

(2) A complying development certificate for development to which any of the requirements of this Part relate must be issued subject to conditions in the same terms as those requirements.

(3) Subclause (2) does not limit any other conditions to which a complying development certificate may be subject, as referred to in section 85A (6) (a) of the Act.

[5] Clause 78A Compliance with Building Code of Australia

Omit clause 78A (1). Insert instead:

- (1) All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the *Building Code of Australia* (as in force on the date the application for the relevant construction certificate or complying development certificate was made).

[6] Clause 78I Toilet facilities

Omit clause 78I (2). Insert instead:

- (2) Each toilet provided must be:
 - (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council, or
 - (c) if that is not practicable, any other sewage management facility approved by the council.

[7] Clause 78J

Insert after clause 78I:

78J Temporary buildings

- (1) A temporary building must be demolished or removed on or before its removal date.
- (2) A temporary building must not be used:
 - (a) for residential purposes, or
 - (b) for the storage of dangerous goods within the meaning of the *Dangerous Goods Act 1975*, or
 - (c) at any time after its removal date.
- (3) In this clause, *removal date*, in relation to a temporary building, means:
 - (a) the day occurring 5 years after the date of issue of the relevant development consent or complying development certificate, or

(b) if an earlier date is specified in that regard in the relevant development consent or complying development certificate, that earlier date.

[8] Clause 79G Compliance with development consent and Building Code of Australia

Omit clause 79 (1) (b). Insert instead:

(b) that the proposed building (not being a temporary building) will comply with the relevant requirements of the *Building Code of Australia* (as in force at the time the application for the construction certificate was made).

[9] Clause 105 What is the fee for an application for modification of a consent for local development or State significant development?

Insert “maximum” before “fee for an application” in clause 105 (2).

[10] Clause 109A (as appearing at the beginning of Part 11)

Renumber the clause as clause 110E and move it to appear after clause 110D.

[11] Schedule 2 Environmental impact statements

Omit item 8. Insert instead:

8 For the purposes of this Schedule, the *principles of ecologically sustainable development* are as follows:

(a) The precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

- (ii) an assessment of the risk-weighted consequences of various options.
- (b) Intergenerational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.
- (c) Conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.
- (d) Improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:
 - (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
 - (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
 - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

[12] Schedule 5 Forms

Omit Forms 4, 9 and 13. Insert instead:

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 1994

Form 4

**Notice of determination
of a development application**
issued under the *Environmental Planning and Assessment
Act 1979* Section 81 (1) (a)

**development application
no**

development application
applicant name _____
applicant address _____

land to be developed: address _____

proposed development _____

**Building Code of
Australia building
classification**

**determination
made on (date)**

consent granted unconditionally
 consent granted subject to conditions described below
 application refused
 consent granted for erection of temporary building

consent to operate from (date) / /
consent to lapse on (date) / /
details of conditions
(including section 94
conditions
& relevant prescribed
conditions)
removal date of temporary
buildings

see note 1

see note 2

see note 3

see note 4

reasons for conditions/refusal

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other approvals

list *Local Government Act 1993* approvals granted under s 78A (5)

general terms of other approvals integrated as part of the consent (list approvals)

right of appeal

If you are dissatisfied with this decision section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice.

**section 97 of the Environmental Planning and Assessment Act 1979 does not apply to the determination of a development application for State significant development or local designated development that has been the subject of a Commission of Inquiry.*

signed

on behalf of the consent authority

signature
name
date

Note 1

Where the consent is subject to a condition that the consent is not to operate until the applicant satisfies a particular condition the date should not be endorsed until that condition has been satisfied.

Note 2

Clause 69A of the *Environmental Planning and Assessment Regulation 1994* contains additional particulars to be included in a notice of determination where a condition under section 94 of the *Environmental Planning and Assessment Act 1979* has been imposed.

Note 3

Only those conditions prescribed in Part 7 of the *Environmental Planning and Assessment Regulation 1994* that relate to the development for which consent has been granted are to be attached to this form.

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Note 4

If development consent is granted to erect a temporary building that consent must specify the date by which that temporary building is to be demolished. The temporary building must be demolished by the removal date specified in the consent. The removal date cannot be later than five years after the date the consent is granted, but can be less than five years if an earlier date is specified in the conditions of the consent.

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Form 9

Complying Development Certificate

made under the *Environmental Planning and Assessment Act 1979*

Sections 85, 85A

Application

applicant

name _____

address _____

contact no (telephone/fax) _____

signature _____

owner

name _____

address _____

contact no (telephone/fax) _____

see note 1

Consent of all owner(s)

I/we consent to this application

Signature _____

date _____

land to be developed

address _____

lot no, DP/MPS, etc vol/fol

area of site (m²) of site _____

or

map(s) attached (see note 2)

proposed complying development type

- use of land/building
- erection of a building
- erection of temporary building
- subdivision of land/building
- carrying out of work
- demolition
- other

description (eg dwelling house) _____

proposed use _____

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value of work
building/subdivision

builder/owner builder

(if known)

*to be completed in the case of
proposed residential building
work*

name

contractor licence no/permit no
in case of owner builder

required attachments
see notes 3-7

long service levy
see note 8

schedule

(for building work only)

- the attached schedule is required to be completed for the purposes of providing information to the Australian Bureau of Statistics

date of receipt

date received (to be completed
by certifying authority)

Determination

determination

Approved/approved with conditions/refused*

* delete whichever is not applicable

date of determination/
commencement

(this date is to be the same as
the date of endorsement of the
certificate on the approved
plans and specifications)

(removal date of temporary
buildings)

* A complying development certificate becomes effective
and commences from the date endorsed on the certificate

see note 9

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date of lapse

5 years from commencement
date

attachments

- conditions of approval (includes the prescribed conditions in Part 7 of the *Environmental Planning and Assessment Regulation 1994* that relate to the development, or other conditions required to be attached by the Regulation or relevant EPI or DCP including any condition relating to the payment of a s 94 contribution)
- schedule of essential fire safety measures
- reasons for refusal

plans and specifications

approved /refused

list plan nos and specifications
reference

**environmental planning
instrument decision made
under**

list SEPP, REP, LEP and
relevant clause

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Certificate

certificate

I certify that the proposed development:

- is complying development and that if carried out in accordance with the plans and specifications will comply with all development standards, any standards in a DCP and all requirements of the *Environmental Planning and Assessment Regulation 1994*; and
- is upon completion to be a class _____ building. *

* delete if proposal does not involve the erection of a building

signature
date of issue
certificate no

* prior to commencement of works 86 (1) and (2) of the Environmental Planning and Assessment Act 1979 must be satisfied (see form 7)

if this certificate is issued, evidence of its issue must be endorsed on any plans, specifications or other documents that were lodged with the application

certifying authority

name of certifying authority
name of accredited certifier
accreditation no
contact no
address

* for the purposes of notifying a council under s 85A (1) (b) of the Environmental Planning and Assessment Act 1979 of the determination of an application, an accredited certifier must forward all sections of this form, including all attachments, to the relevant council.

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Schedule 1

Schedule to Complying Development Certificate Application

particulars of the proposal

What is the area of the land (m²) _____

Gross floor area of existing building (m²) _____

What are the current uses of all or parts of the building(s)/land? (If vacant state vacant) _____

Location	Use
_____	_____
_____	_____

Does the site contain a dual occupancy? _____

What is the gross floor area of the proposed addition or new building (m²) _____

What are the proposed uses of all parts of the building(s)/land? _____

Location	Use
_____	_____
_____	_____

Number of pre-existing dwellings _____

Number of dwellings to be demolished _____

How many dwellings are proposed? _____

How many storeys will the building consist of? _____

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materials to be used

Please circle the code allocated for the material that best describes the materials the new work will be constructed of:

walls	code	Roof	code
brick veneer	12	Aluminium	70
full brick	11	Concrete	20
single brick	11	concrete tile	10
concrete block	11	fibrous cement	30
concrete/masonry	20	fibreglass	80
concrete	20	masonry/terracotta	
steel	60	shingle tiles	10
fibrous cement	30	slate	20
hardiplank	30	steel	60
timber/		terracotta tile	10
weatherboard	40	other	80
cladding-		unknown	90
aluminium	70		
curtain glass	50		
other	80		
unknown	90		

floor		frame	
concrete	20	timber	40
timber	10	steel	60
other	80	other	80
unknown	90	unknown	90

Notes for completing Complying Development Certificate Application

Note 1 In the case of Crown land within the meaning of the *Crown Lands Act 1989* the owner's consent must be signed by an officer of the Department of Land and Water Conservation, authorised for these purposes by the Governor-in-Council, from time to time.

Note 2 A description of the land to be developed can be given in the form of a map which contains details of the lot number, DP/MPS, vol/fol etc.

Note 3 A plan of the land must indicate:

- location, boundary dimensions, site area and north point of the land
- existing vegetation and trees on the land
- location and uses of existing buildings on the land
- existing levels of the land in relation to buildings and roads
- location and uses of buildings on sites adjoining the land.

Note 4 Plans or drawings describing the proposed development must indicate (where relevant):

- the location of proposed new buildings or works (including extensions or additions to existing buildings or works) in relation to the land's boundaries and adjoining development
- floor plans of proposed buildings showing layout, partitioning, room sizes and intended uses of each part of the building
- elevations and sections showing proposed external finishes and heights
- proposed finished levels of the land in relation to buildings and roads
- building perspectives, where necessary to illustrate the proposed building
- proposed parking arrangements, entry and exit points for vehicles, and provision for movement of vehicles within the site (including dimensions where appropriate)
- proposed landscaping and treatment of the land (indicating plant types and their height and maturity)
- proposed methods of draining the land.

Note 5 The following information must also accompany a complying development certificate application for building or subdivision work and change of building use:

Building Work

In the case of an application for a complying development certificate for building work:

- copies of compliance certificates relied upon
- four (4) copies of detailed plans and specifications

The plan for the building must be drawn to a suitable scale and consist of a general plan and a block plan. The general plan of the building is to:

- show a plan of each floor section
- show a plan of each elevation of the building

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- show the levels of the lowest floor and of any yard or unbuilt on area belonging to that floor and the levels of the adjacent ground
- indicate the height, design, construction and provision for fire safety and fire resistance (if any)

Where the proposed building work involves any alteration or addition to, or rebuilding of, an existing building the general plan is to be coloured or otherwise marked to the satisfaction of the certifying authority to adequately distinguish the proposed alteration, addition or rebuilding.

Where the proposed building work involves a modification to previously approved plans and specifications the general plans must be coloured or otherwise marked to the satisfaction of the certifying authority to adequately distinguish the modification.

The specification is:

- to describe the construction and materials of which the building is to be built and the method of drainage, sewerage and water supply
- state whether the materials proposed to be used are new or second hand and give particulars of any second-hand and give particulars of any second-hand materials to be used

c) where the application involves an alternative solution to meet the performance requirements of the BCA, the application must also be accompanied by:

- details of the performance requirements that the alternative solution is intended to meet, and
- details of the assessment methods used to establish compliance with those performance requirements

d) if relevant, evidence of any accredited component, process or design sought to be relied upon

NB If an EPI provides that complying development must comply with the deemed-to-satisfy provisions of the BCA a CDC cannot authorise compliance with alternative solutions to the performance requirements corresponding to those deemed-to-satisfy provisions

e) except in the case of a class 1a or class 10 building:

- a list of any fire safety measures that are proposed to be implemented in the building or on the land on which the building is situated, and
- if the application relates to a proposal to carry out any alteration or rebuilding of, or addition to, an existing building, a separate list of such of those measures as are currently implemented in the building or on the land on which the building is situated.

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The list must describe the extent, capability and basis of design of each of the measures concerned.

Subdivision Work

In the case of an application for a complying development certificate for **subdivision work**:

- a) details of the existing and proposed subdivision pattern (including the number of lots and location of roads)
- b) details of consultation with public authorities responsible for provision or amplification of utility services required by the proposed subdivision
- c) existing and finished ground levels
- d) copies of compliance certificates relied upon
- e) four (4) copies of detailed engineering plans. The detailed plans may include but are not limited to the following:
 - earthworks
 - roadworks
 - road pavement
 - road furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - erosion control works
- f) where the proposed subdivision work involves a modification to previously approved plans the plans must be coloured or otherwise marked to the satisfaction of the certifying authority to adequately distinguish the modification.

Change of Building Use

In the case of an application for a complying development certificate for a **change of building use** (except for an application that, if granted, would authorise the building concerned being used as a class 1a or class 10 building):

- a list of any fire safety measures that are proposed to be implemented in the building or on the land on which the building is situated in connection with the proposed change of building use,
- a separate list of such of those measures as are currently implemented in the building or on the land on which the building is situated.

The list must describe the extent, capability and basis of design of each of those measures concerned.

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Note 6 Other information must indicate (where relevant):

- a) in the case of shops, offices, commercial or industrial development:
 - details of hours of operation
 - plant and machinery to be installed
 - type, size and quantity of goods to be made, stored or transported, loading and unloading facilities
- b) in the case of demolition:
 - details of age and condition of buildings or works to be demolished
- c) in the case of advertisements:
 - details of the size, type, colour, materials and position of the sign board or structure on which the proposed advertisement is to be displayed
- d) in the case of development relating to an existing use:
 - details of the existing use
- e) in the case of a development involving the erection of a building, work or demolition:
 - details of the methods of securing the site during the course of construction.

Note 7 Home Building Act Requirements

In the case of an application for a complying development certificate for residential building work (within the meaning of the *Home Building Act 1989*) attach the following:

- (a) in the case of work by a licensee under that Act:
 - (i) a statement detailing the licensee's name and contractor licence number, and
 - (ii) documentary evidence that the licensee has complied with the applicable requirements of that Act*, or
- (b) in the case of work done by any other person:
 - (i) a statement detailing the person's name and owner-builder permit number, or
 - (ii) a declaration signed by the owner of the land, to the effect that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of *owner-builder work* in section 29 of that Act.

* A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* to the effect that a person is the holder of an insurance contract issued for the purposes of that Part, is sufficient evidence that the person has complied with the requirements of that Part.

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Note 8

Long Service Levy

Under s 85A (10A) of the *Environmental Planning and Assessment Act 1979* a complying development certificate cannot be issued until any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or where such a levy is payable by instalments, the first instalment of the levy) has been paid. The local council may be authorised to accept payment.

Note 9

Temporary Buildings

If complying development certificate is issued to erect a temporary building the complying development certificate must identify that a temporary building is to be erected, and specify the date by which that temporary building is to be demolished. The temporary building must be demolished by the removal date specified in the complying development certificate. The removal date cannot be after the earlier of any period of time identified in any EPI or DCP permitting the erection of temporary buildings as complying development ends. However, the removal date can be before that period of time ends, if an earlier date is specified in the complying development certificate.

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Form 13

Subdivision Certificate

issued under the *Environmental Planning and Assessment Act 1979*
Section 109C (1) (d)

Application

applicant

name

address

contact no (telephone/fax)

signature

owner

name

address

contact no (telephone/fax)

consent of all owner(s)

signature

I/we consent to this application

subject land

address

lot no, DP/MPS, etc vol/fol

area of site (m²)**description of development**

description of subdivision

approved

(boundary adjustment,

no of lots)

development consent

development consent

no/complying development

certificate no

date of determination

construction certificate

certificate no

date of issue

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required attachments

the matters detailed in note 1 need to accompany the application for a subdivision certificate

date of receipt

date received (to be completed certifying authority)

Determination

determination

*approved/refused

**delete whichever is not applicable*

date of determination (this date is to be the same as the date of endorsement on the certificate)

Note:

A certifying authority cannot issue a subdivision certificate in the case of a subdivision the subject of a development consent for designated development until:

- (a) at least 28 days have elapsed since the objector was notified, or
- (b) an appeal (if any) made by an objector has been finally determined

right of appeal

Under s 109K of the *Environmental Planning and Assessment Act 1979*, where the principal certifying authority is a council an applicant may appeal to the Land and Environment Court against the refusal to issue a subdivision certificate within 12 months from the date of the decision

attachments

reasons for refusal

- detail reasons for refusal

plans approved /refused

list plan no(s)

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principal certifying authority

name of principal certifying authority
where accredited certifier
accreditation no
contact no
address

environmental planning instrument under which the certificate was issued
specify instrument and relevant clauses if the principal certifying authority is not the council

development consent

number and date of determination

Certificate

certificate

I certify that the provisions of s109J of the *Environmental Planning and Assessment Act 1979* have been satisfied in relation to the proposed

set out herein

* (insert 'subdivision' or 'new road')

signature

consent authority
date of endorsement
accreditation no
subdivision certificate no
file no

Note:

When the plan is to be lodged electronically in the Land Titles Office, it should include a signature in an electronic or digital format approved by the Registrar-General.

* Delete whichever is inapplicable

*** Authorised Person/General Manager/Accredited Certifier**

For the purposes of notifying a council under clause 79U(2) of the Environmental Planning and Assessment Regulation 1994 of the determination of an application an accredited certifier must forward all sections of this form, including all attachments, to the relevant council where they have not been previously forwarded to the council

Notes for completing a Subdivision Certificate Application

Note 1

The following information must accompany an application:

- original plan of subdivision prepared by a qualified surveyor and 5 copies of the original plan
- relevant development consent or complying development certificate
- detailed subdivision engineering plans endorsed with a construction certificate (where applicable)
- for a deferred commencement consent evidence that the applicant has satisfied the consent authority on all matters which it must be satisfied of before the consent can operate
- evidence that the applicant has complied with all conditions of consent, that it is required to comply with before a subdivision certificate can be issued (where applicable)
- a certificate of compliance from the relevant water supply authority (where applicable)
- if a subdivision is the subject of an order of the Land and Environment Court under section 40 of the *Land and Environment Court Act 1979* evidence that required drainage easements have been acquired by the relevant council
- for subdivision involving subdivision works evidence that:
 - the work has been completed, or
 - agreement reached with the relevant consent authority regarding payment of the cost of work or as to the time for carrying out the work, or
 - security given to the consent authority with respect to the completion of the work

[13] Dictionary

Insert in alphabetical order:

temporary building means a building that is stated to be a temporary building in the development consent or complying development certificate granted or issued in relation to its erection.

Schedule 2 Amendment of Environmental Planning and Assessment (Savings and Transitional) Regulation 1998

(Clause 3)

[1] Clause 32 Notification of development

Insert after clause 32 (3):

(4) This clause does not apply to development on land to which clause 26F of *Newcastle Local Environmental Plan 1987* applies.

[2] Clause 33 Maximum fees chargeable for certain matters arising under amended EP&A Act 1979

Omit “1 July 1999” from clause 33 (4).

Insert instead “1 July 2000”.

BY AUTHORITY