



New South Wales

Environmental Planning and Assessment Amendment Regulation 1998

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*.

CRAIG KNOWLES, M.P..

Minister for Urban Affairs and Planning

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 1994* as a consequence of the amendment of the *Environmental Planning and Assessment Act 1979* by the *Environmental Planning and Assessment Amendment Act 1997* in order to implement the environmental planning controls for which provision is made in the amending Act.

The main amendment is made by Schedule 1 [6] which omits Parts 6 and 7 of the current Regulation and replaces them with new Parts 6, 6A, 7, 7A, 7B, 7C, 7D and 7E.

Proposed Part 6 (Procedures relating to development applications)

Proposed Part 6 (proposed clauses 45—74) contains provisions with respect to the making and determination of development applications:

- (a) Division 1 (proposed clauses 45—48C) deals with development applications generally.

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Explanatory note

- (b) Division 2 (proposed clauses 49–51B) deals with development applications for development requiring concurrence,
- (c) Division 3 (proposed clauses 52–53B) deals with development applications for integrated development,
- (d) Division 4 (proposed clause 53C) deals with designated development,
- (e) Division 5 (proposed clauses 54–56A) deals with environmental impact statements,
- (f) Division 6 (proposed clauses 57–62) deals with public participation in applications for designated development,
- (g) Division 7 (proposed clauses 63–65) deals with public participation in applications for advertised development,
- (h) Division 8 (proposed clauses 66–68) deals with the determination of development applications,
- (i) Division 9 (proposed clauses 68A–70A) deals with post-determination notifications,
- (j) Division 10 (proposed clause 70B) deals with the circumstances in which development consent is taken to have been refused,
- (k) Division 11 (proposed clauses 73–73B) deals with the extension, completion and modification of development consents,
- (l) Division 12 (proposed clause 74) deals with the validity of development consents.

Part 6A (Procedures relating to complying development certificates)

Proposed Part 6A (proposed clauses 75–77B) sets out the procedures relating to complying development certificates:

- (a) Division 1 (proposed clauses 75–74A) deals with applications for complying development certificates,
- (b) Division 2 (proposed clauses 77–77A) deals with the determination of applications and the commencement of complying development.
- (c) Division 3 (proposed clause 77B) deals with the validity of complying development certificates.

Proposed Part 7 (Conditions of development consent)

Proposed Part 7 (proposed clauses 78–781) prescribes various conditions which are prescribed (and therefore mandatory) conditions for the purposes of section 80A of the amended Act (which deals with development consents) and section 85A of the amended Act (which deals with complying development certificates).

Proposed Part 7A (Certification of development)

Proposed Part 7A (proposed clauses 79–79W) contains provisions with respect to the certification of development:

- (a) Division 1 (proposed clause 79) deals with compliance certificates under Part 4A of the amended Act,
- (b) Division 2 (proposed clauses 79A–79IA) deals with construction certificates under Part 4A of the amended Act,
- (c) Division 3 (proposed clauses 79J–79Q) deals with occupation certificates under Part 4A of the amended Act,
- (d) Division 4 (proposed clauses 79R–79U) deals with subdivision certificates under Part 4A of the amended Act,
- (e) Division 5 (proposed clauses 79V–79Y) deals with matters common to all certificates under Part 4A of the amended Act.

Proposed Part 7B (Fire safety and matters concerning the Building Code of Australia)

Proposed Part 7B (clauses 80–80J) contains provisions with respect to fire safety and matters concerning the *Building Code of Australia*:

- (a) Division 1 (proposed clauses 80–80B) defines certain expressions used in, and establishes the ambit of, the proposed Part,
- (b) Division 2 (proposed clause 80C) deals with the issuing of fire safety schedules,
- (c) Division 3 (proposed clause 80D) deals with matters arising out of the making of a fire safety order under the Act,
- (d) Division 4 (proposed clauses 80E–80G) deals with the issuing of fire safety certificates.
- (e) Division 5 (proposed clauses 80H–80J) deals with miscellaneous matters, including the granting of certain exemptions.

Proposed Part 7C (Accreditation bodies and accredited certifiers)

Proposed Part 7C (clauses 81–81M) contains provisions with respect to accreditation bodies and accredited certifiers:

- (a) Division 1 (clauses 81–81G) deals with the authorisation of professional associations as accreditation bodies and the variation and withdrawal of authorisations granted under the Division,
- (b) Division 2 (clauses 81H–81K) deals with the registers and records to be kept, and the reports to be made, by authorised accreditation bodies,
- (c) Division 3 (clauses 81L–81M) deals with the accreditation of persons as accredited certifiers and the records to be kept by them.

Proposed Part 7D (Insurance)

Proposed Part 7D (clauses 81N–81EE) contains provisions with respect to the insurance to be taken out by accredited certifiers under section 109ZN of the Act:

- (a) Division 1 (clause 81N) defines certain expressions used in the proposed Part,
- (b) Division 2 (clauses 81O–81W) prescribes the form and content of the insurance contracts by which an accredited certifier must be indemnified,
- (c) Division 3 (clauses 81X–81AA) prescribes the kinds of exceptions and exclusions that may be contained in any such insurance contract,
- (d) Division 4 (clauses 81BB–81DD) deals with the obligations of insurers who leave or re-enter the insurance market in relation to the insurance of accredited certifiers,
- (e) Division 5 (clause 81EE) deals with the notices to be given by insurers in relation to events concerning accredited certifiers insured by them.

Proposed Part 7E (Accreditation of components, processes and designs)

Proposed Part 7C (proposed clauses 81FF–81LL) deals with the procedures for the accreditation, revocation of accreditation, extension of accreditation and renewal of accreditation of components, processes and designs for use in connection with the erection and demolition of buildings.

Another significant amendment is made by Schedule 1 [7] which omits Parts 9 and 10 of the current Regulation and replaces them with new Parts 9 and 10.

Proposed Part 9 (Fees and charges)

Proposed Part 9 (proposed clauses 92–109) contains provisions with respect to fees and charges:

- (a) Division 1 (proposed clauses 92–103) deals with fees for development applications,
- (b) Division 2 (proposed clauses 104–109) deals with other fees and charges.

Proposed Part 10 (Registers and other records)

Proposed Part 10 (proposed clauses 109A–109E) contains provisions relating to the keeping of registers and other records.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections specifically referred to in the Regulation and sections 105 and 157.

Environmental Planning and Assessment Amendment Regulation 1998

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment Regulation 1998*.

2 Commencement

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

3 Amendment of Environmental Planning and Assessment Regulation 1994

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

4 Notes

The explanatory note and notes in this Regulation do not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[1] Clause 5A

Insert after clause 5:

5A Building Code of Australia

For the purposes of the definition of *Building Code of Australia* in section 4 (1) of the Act:

- (a) all amendments made by the Board before 1 January 1998, and
- (b) all variations approved by the Board before 1 January 1998 in relation to New South Wales, are prescribed.

[2] Clause 20 Approval of development control plans

Omit "14 days" from clause 20 (2). Insert instead "28 days".

[3] Clause 25 In what form must a contributions plan be prepared?

Insert at the end of clause 25:

- (2) One or more contributions plans may be made for all or any part of the council's area and in relation to one or more public amenities or public services.
- (3) The council must not approve a contributions plan that is inconsistent with any direction given to it under section 94E of the Act.
- (4) A draft contributions management plan must be publicly exhibited for a period of not less than 28 days.

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

[4] Clause 27, Note

Omit the note.

[5] Clause 30 Approval of contributions plan by council

Omit "14 days" from clause 30 (2). Insert instead "28 days".

[6] Parts 6–7E

Omit Parts 6 and 7. Insert instead:

Part 6 Procedures relating to development applications

Division 1 Development applications generally

45 Application of Part

This Part applies to all development applications.

Note. Because of the definition of *development application* in section 4 (1) of the Act, this Part has no application to either complying development or applications for complying development certificates.

45A Consent authority to provide development application forms to intending applicants

The consent authority must provide any person intending to make a development application with:

- (a) copies of Form 1, and
- (b) the consent authority's scale of fees for development applications, and
- (c) if the consent authority has determined the fee to accompany a development application for the proposed development, advice of the amount determined.

46 Who can make a development application?

- (1) A development application may be made:
 - (a) by the owner of the land to which the development application relates, or
 - (b) by any other person, with the consent in writing of the owner of the land to which the development application relates.
- (2) Subclause (1) (b) does not require the consent in writing of the owner of the land for a development application made by a public authority if, before making the application, the public authority serves a copy of the application on the owner.
- (3) Despite subclause (1), a development application made by a lessee of Crown land may only be made with the consent in writing given by or on behalf of the Crown.

46A How must a development application be made?

- (1) A development application:
 - (a) must be in Form 1, and
 - (b) must be accompanied by the information required by Form 1, and
 - (c) must be accompanied by the fee, not exceeding the fee prescribed in Part 9, determined by the consent authority, and
 - (d) must be:
 - (i) delivered by hand, or
 - (ii) sent by post, or
 - (iii) transmitted electronically,to the principal office of the consent authority, and may not be sent by facsimile transmission.
- (2) A development application that relates to development for which consent under the *Wilderness Act 1987* is required, must be accompanied by a copy of that consent.

- (3) Immediately after it receives a development application, the consent authority:
- (a) must register the application with a distinctive number, and
 - (b) must endorse the application with its registered number and the date of its receipt, and
 - (c) must give written notice to the applicant of its receipt of the application, of the registered number of the application and of the date on which the application was received.
- (4) In the case of a development application under section 78A (3) of the Act, the application must be accompanied by such matters as would be required under section 81 of the *Local Government Act 1993* if approval was sought under that Act.
- (5) The consent authority must forward a copy of the development application to the relevant council if the council is not the consent authority.
- (6) If the development application is for designated development, the consent authority must forward to the Director (where the Minister or the Director is not the consent authority) and to the council (where the council is not the consent authority) a copy of the environmental impact statement, together with a copy of the relevant application.
- (7) If the development application is for designated development that is also integrated development, the applicant must also lodge a copy of the development application and any accompanying information with the approval body on or before the day the development application is lodged with the consent authority.

Note. Additional requirements in relation to the making of a development application apply to applications for designated development, for integrated development and applications for development that affect threatened species.

47 Rejection and withdrawal of development applications

- (1) A consent authority may reject a development application within 7 days after receiving it if the application is illegible or unclear as to the development consent sought.
- (2) An application that is rejected under this clause is taken for the purposes of the Act never to have been made.
- (3) The consent authority must refund to the applicant the whole of any application fee paid in connection with an application that is rejected under this clause.
- (4) A development application may be withdrawn at any time prior to its determination by service on the consent authority of a notice to that effect signed by the applicant.
- (5) An application that is withdrawn is taken for the purposes of the Act (section 79 (6) of the Act and clause 65 (9) excepted) never to have been made.
- (6) The consent authority may (but is not required to) refund to the applicant the whole or any part of any application fee paid in connection with an application that has been withdrawn.
- (7) In the case of development for which the concurrence of a concurrence authority is required or integrated development, the consent authority must, immediately after the rejection or withdrawal of a development application notify each relevant concurrence authority or approval body of the rejection or withdrawal.

47A Consent authority may require additional copies of development application and supporting documents

A consent authority that is required:

- (a) to refer a development application to another person, or
- (h) to arrange for the public display of a development application,

may require the applicant to give it as many additional copies of the development application and supporting documents as are reasonably required for that purpose.

48 Consent authority may request additional information

- (1) A consent authority may request the applicant for development consent to give it any additional information about the proposed development that is essential to the consent authority's proper consideration of the application.
- (2) The request must be made by the consent authority, in writing, within 21 days after it receives the development application.
- (3) The information that a consent authority may request includes, but is not limited to, information relating to any relevant matter referred to in section 79C of the Act or in any relevant environmental planning instrument.
- (4) However, the information that a consent authority may request does not include, in relation to building or subdivision work, the information that is required to be attached to an application for a construction certificate in Form 11.

Note. The aim of this provision is to ensure that the consent authority does not oblige the applicant to provide these construction details up-front where the applicant may prefer to test the waters first and delay applying for a construction certificate until, or if, development consent is granted.

- (5) The information must be provided within a reasonable period specified by the consent authority for the purpose.
- (6) The period of time that elapses between the date of the consent authority's request and the date on which:
 - (a) the information is received by the consent authority, or
 - (b) the applicant notifies the consent authority that the information will not be provided, or
 - (c) the period specified by the consent authority ends, whichever is the sooner, is not to be taken into consideration in calculating the period prescribed by clause 70B for the purposes of section 82 of the Act.

48A What is the procedure for amending a development application?

- (1) A development application may be amended or varied by the applicant (but only with the agreement of the consent authority) at any time before the application is determined.
- (2) If an amendment or variation results in a change to the proposed development, the application to amend or vary the development application must have annexed to it written particulars sufficient to indicate the nature of the changed development.
- (3) If the development application is for development for which the concurrence of a consent authority is required or integrated development, the consent authority must forward a copy of the amended or varied application to the concurrence authority or approval body.

48B Extracts of development applications to be publicly available

- (1) This clause applies to all development other than designated or advertised development.
- (2) Extracts of a development application relating to the erection of a building:
 - (a) sufficient to identify the applicant and the land to which the application relates, and
 - (b) containing a plan of the building that indicates its height and external configuration, as erected, in relation to the site on which it is to be erected, if relevant for that particular development,

are to be made available to interested persons, either free of charge or on payment of reasonable copying charges.

Note. The erection of a building is defined in the Act to include the rebuilding of, the making of structural alterations to, or the enlargement or extension of a building or the placing or relocating of a building on land.

48C Copyright in documents forming part of or accompanying development applications—applicant's indemnification

Upon a development application being made under section 78A of the Act the applicant, not being entitled to copyright, is taken to have indemnified all persons using the development application and documents in accordance with the Act against any claim or action in respect of breach of copyright.

Division 2 Development applications for development requiring concurrence

49 Application of Division

- (1) This Division applies to all development applications that relate to development for which the concurrence of a concurrence authority is required.
- (2) This Division does not apply in circumstances in which a concurrence authority's concurrence may be assumed in accordance with clause 51A.
- (3) This Division ceases to apply to a development application if the development application is rejected or withdrawn under clause 47.

49A Seeking concurrence

Within 2 days after it receives a development application for development requiring concurrence, the consent authority:

- (a) must:
 - (i) forward a copy of the application to the concurrence authority whose concurrence is required, and
 - (ii) notify the concurrence authority in writing of the date of receipt of the development application, and
- (b) if known at that time, notify the concurrence authority in writing of the dates of the relevant submission period if the application is to be publicly notified under section 79 or 79A of the Act.

50 Concurrence authority may require additional information

- (1) A concurrence authority whose concurrence has been sought may request the consent authority to give it any additional information about the proposed development that is essential to its proper consideration of whether to grant or refuse concurrence.
- (2) Immediately after receiving a request for additional information from a concurrence authority, a consent authority must request the applicant, in writing, to provide the information sought within a reasonable period specified by the consent authority.
- (3) If the request is made by the concurrence authority within 21 days after the date of lodgment of the development application with the consent authority, the period of time that elapses between the date on which the consent authority receives the concurrence authority's request and the date on which:
 - (a) the information is provided to the consent authority, or
 - (b) the applicant notifies the consent authority that the information will not be provided,is not to be taken into consideration in calculating:
 - (c) the period prescribed by clause 70B for the purposes of section 82 of the Act, or
 - (d) the period prescribed by clause 51 (1), but only if that period has commenced to run.
- (4) Immediately after receiving the requested information from the applicant, the consent authority must forward that information to the concurrence authority.

50A Forwarding of submissions to concurrence authorities

The consent authority must, immediately after the expiration of the submission period, forward to the concurrence authority a copy of all submissions received in response to the public notification under section 79A of the Act of a development application.

51 Notification of decision

- (1) A concurrence authority that has received a development application from a consent authority must give written notice to the consent authority of its decision on the development application:
 - (a) within 40 days after receipt of the copy of the application, except as provided by paragraph (b), or
 - (b) if the development has been publicly notified under section 79 or 79A of the Act, within 21 days after:
 - (i) receipt by the concurrence authority of copies of submissions made to the consent authority during the submission period, or
 - (ii) receipt of advice from the consent authority that no submissions were received.
- (2) If the consent authority determines a development application by refusing to grant consent before the expiration of the relevant period determined under subclause (1):
 - (a) the consent authority must notify the concurrence authority as soon as possible after the determination, and
 - (b) this clause ceases to apply to the development application.

51A Reasons for granting or refusal of concurrence

- (1) If the concurrence authority:
 - (a) grants concurrence subject to conditions, or
 - (b) refuses concurrence,the concurrence authority must give written notice to the consent authority of the reasons for the imposition of the conditions or the refusal.

- (2) If the concurrence is one that is required under section 79B (3) of the Act, a copy of the reasons must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.

51B Circumstances in which concurrence may be assumed

- (1) A concurrence authority may, by written notice given to the consent authority:
 - (a) inform the consent authority that concurrence may be assumed, subject to such qualifications or conditions as are specified in the notice, and
 - (b) amend or revoke an earlier notice under this clause.
- (2) A consent granted by a consent authority that has assumed concurrence in accordance with a notice under this clause is as valid and effective as if concurrence had been given.

Division 3 Development applications for integrated development

52 Application of Division

- (1) This Division applies to all development applications for integrated development.
- (2) This Division ceases to apply to a development application if the development application is rejected or withdrawn under clause 47.

52A Seeking general terms of approval

- (1) Within 2 days after it receives a development application for integrated development, the consent authority:
 - (a) must:
 - (i) forward a copy of the application to the relevant approval body, and
 - (ii) notify the approval body in writing of the date of receipt of the development application, and

- (b) if known at that time, notify the approval body in writing of the dates of the relevant submission period if the application is to be publicly notified under section 79 or 79A of the Act.
- (2) Subclause (1) (a) (i) does not apply to a development application for integrated development that is designated development.

53 Approval body may require additional information

- (1) An approval body the general terms of whose approval have been sought may request the consent authority to give it any additional information about the proposed development that is essential to the proper consideration of its decision concerning the general terms of approval.
- (2) Immediately after receiving a request for additional information from an approval body, a consent authority must request the applicant, in writing, to provide the information sought within a reasonable period specified by the consent authority.
- (3) Immediately after receiving the requested information from the applicant, the consent authority must forward that information to the approval body.
- (4) If the request is made by the approval body within the period specified by subclause (5) as the period within which a request for additional information may be made by an approval body, the period of time that elapses between the date on which the consent authority receives the approval body's request and the date that is 2 days after the date on which:
 - (a) the information is provided to the consent authority, or
 - (b) the applicant notifies the consent authority that the information will not be provided,is not to be taken into consideration in calculating:
 - (c) the period prescribed by clause 70B for the purposes of section 82 of the Act. or
 - (d) the period prescribed by clause 53B, but only if that period has commenced to run.

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- (5) The period within which a request for additional information may be made by an approval body is:
- (a) the period of 25 days after the date of lodgment of the development application with the consent authority, except as provided by paragraph (b), and
 - (b) in the case of integrated development that is not designated development, if the approval body does not receive a copy of the development application and any accompanying information within 5 days after the development application is lodged with the consent authority, the period of 21 days after the date on which the approval body receives a copy of the development application and any accompanying information.

53AA Consultation concerning relic or Aboriginal place

- (1) If:
- (a) development is integrated development because, or partly because, it requires an approval under section 90 of the *National Parks and Wildlife Act 1974*, and
 - (b) the Director-General of National Parks and Wildlife is of the opinion that consultation with an Aboriginal person or persons, an Aboriginal Land Council or another Aboriginal organisation concerning a relic or Aboriginal place is required before the Director-General can make a decision concerning the general terms of approval (including whether or not the Director-General will grant an approval), and
 - (c) the consultation commences within 25 days after the date of lodgment of the development application,

the period of time that elapses during the consultation and that does not exceed 46 days after the date of

lodgment of the development application is not to be taken into consideration for the purpose of calculating:

- (d) the period prescribed by clause 70B for the purposes of section 82 of the Act, or
 - (e) the period prescribed by clause 53B, but only if that period has commenced to run.
- (2) If both clause 53 and this clause apply, the period of time that is not to be taken into consideration for the purpose of calculating the period prescribed by clause 70B for the purposes of section 82 of the Act or the period prescribed by clause 53B is the longer of the periods of time determined under clause 53 and this clause.

53A Forwarding of submissions to approval bodies

The consent authority must, immediately after the expiration of the submission period, forward to each relevant approval body a copy of all submissions received in response to the public exhibition or public notification under section 79 or 79A of the Act of a development application.

53B Notification of general terms of approval

- (1) An approval body that has received a development application from a consent authority must give written notice to the consent authority of its decision concerning the general terms of approval (including whether or not it will grant an approval) in relation to the development application within 40 days after receipt of the copy of the application, except as provided by this clause.
- (2) If the integrated development has been publicly notified under section 79 or 79A of the Act, the approval body must give written notice to the consent authority of its decision concerning the general terms of approval (including whether or not it will grant an approval) in relation to the development application within 21 days after:
 - (a) receipt by the approval body of copies of submissions made during the submission period, or
 - (b) receipt of advice from the consent authority that no submissions were received.

- (3) If the consent authority determines a development application by refusing to grant consent before the expiration of the relevant period determined under subclause (1) or (2):
- (a) the consent authority must notify the approval body as soon as possible after the determination, and
 - (b) this clause ceases to apply to the development application.

Division 4 Designated development

53C What is designated development?

- (1) Development described in Schedule 3 is declared to be designated development for the purposes of the Act.
- (2) Schedule 3, as in force when a development application is made, continues to apply to and in respect of the development application regardless of any subsequent substitution or amendment of that Schedule, and the application is unaffected by any such substitution or amendment.
- (3) References in subclause (2) to Schedule 3 include references to Schedule 3 to the *Environmental Planning and Assessment Regulation 1980*.

Division 5 Environmental impact statements

54 What is the form for an environmental impact statement?

The form for an environmental impact statement that, under section 78A (8) of the Act, is to accompany a development application is Form 2.

54A What must an environmental impact statement contain?

- (1) The contents of an environmental impact statement must include:
 - (a) for development of a kind for which specific guidelines are in force under this clause, the matters referred to in those guidelines. or

- (b) for any other kind of development:
 - (i) the matters referred to in the general guidelines in force under this clause, or
 - (ii) if no such guidelines are in force, the matters referred to in Schedule 2.
- (2) For the purposes of this clause, the Director may establish guidelines for the preparation of environmental impact statements, in relation to development generally or in relation to any specific kind of development.
- (3) The Director may vary or revoke any guidelines in force under this clause.
- (4) An environmental impact statement prepared in accordance with this clause before the date on which any of the following events occur:
 - (a) the amendment of Schedule 2,
 - (b) the establishment of new guidelines under this clause,
 - (c) the variation or revocation of existing guidelines under this clause,is taken to have been prepared in accordance with this clause, for the purposes of any development application made within 3 months after that date, as if the relevant event had not occurred.

55 Requirements of Director and approval bodies concerning preparation of environmental impact statements

- (1) The applicant responsible for preparing an environmental impact statement must consult with the Director and, in completing the statement, must have regard to the Director's requirements:
 - (a) as to the form and content of the statement, and
 - (b) as to making the statement available for public comment.

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- (2) For the purposes of the consultation, the applicant must give the Director written particulars of:
- (a) the location, nature and scale of the development, and
 - (b) in the case of a development application for integrated development, the approvals that are required.
- (3) In the case of proposed development that is integrated development the Director must request, in writing, each relevant approval body to provide the Director with that approval body's requirements in relation to the environmental impact statement for the purpose of its decision concerning the general terms of the approval (including whether or not it will grant an approval) in relation to the development.
- (4) If an approval body does not provide the Director, in writing, with its requirements within 14 days after receipt of the Director's request under subclause (3):
- (a) the Director must inform the applicant, and
 - (b) the applicant:
 - (i) must consult with the approval body and obtain its requirements in relation to the environmental impact statement for the purpose of its decision concerning the general terms of the approval (including whether or not it will grant an approval) in relation to the development, and
 - (ii) in completing the statement, must have regard to the approval body's requirements.
- (5) Written notice of the Director's requirements must be given to the applicant within 28 days after the applicant's consultation with the Director is completed or within such further time as is agreed between the Director and the applicant.

- (6) Written notice of the Director's requirements must also be given:
- (a) to the relevant consent authority (unless the Minister or the Director is the consent authority), and
 - (b) to the relevant approval body in the case of proposed development that is integrated development and for which the approval body has provided the Director with its requirements following the Director's request under subclause (3),
- at the same time as it is given to the applicant.
- (7) If the development application to which the environmental impact statement relates is not made within 2 years after the notice is given, the applicant must consult further with the Director in relation to the preparation of the statement.
- (8) The Director may waive the requirement for consultation under this clause in relation to any particular development or any particular class or description of development, other than integrated development.

55A Consent authority may require additional copies of environmental impact Statement

The consent authority may require an applicant for development consent for designated development to give it as many additional copies of the environmental impact statement as are reasonably required for the purposes of the Act.

56 Consent authority may sell copies of environmental impact statement to the public

- (1) Copies of an environmental impact statement may be sold by a consent authority to any member of the public for not more than \$25 per copy.

- (2) A consent authority:
 - (a) must pay the proceeds of sale to the applicant responsible for the preparation of the statement, and
 - (b) must return to the applicant any unsold copies of the statement.

56A Documents adopted or referred to by environmental impact statement

- (1) Any document adopted or referred to by an environmental impact statement is taken to form part of the statement.
- (2) Nothing in this Part requires the applicant responsible for the preparation of an environmental impact statement to supply any person with a document that is publicly available.

Division 6 Public participation—designated development

57 Notice of application for designated development to public authorities (other than concurrence authorities and approval bodies)

At the same time as giving public notice under section 79 (1) of the Act, the consent authority must give written notice of a development application for designated development to such public authorities (other than relevant concurrence authorities or approval bodies) as, in the opinion of the consent authority, may have an interest in the determination of that development application.

58 What information must a written notice of designated development contain?

- (1) A written notice of a development application under section 79 (1) (b) of the Act must contain the following information:
 - (a) a description (including the address) of the land on which the development is proposed to be carried out.

- (b) the name of the applicant and of the consent authority,
- (c) a description of the proposed development,
- (d) a statement that the proposed development is designated development,
- (e) a statement that the development application and the documents accompanying the application, including the environmental impact statement, may be inspected:
 - (i) at the consent authority's principal office, and
 - (ii) at the Department's offices (if the Minister or Director is not the consent authority), and
 - (iii) at the council's principal office (if the council is not the consent authority),for a period specified in the notice during the relevant authority's ordinary office hours,
- (f) a statement that:
 - (i) any person during the period specified under paragraph (e) may make written submissions to the consent authority concerning the development application, and
 - (ii) if a submission is made by way of objection, the grounds of objection must be specified in the submission,
- (g) the dates of the period specified under paragraph (e),
- (h) if the proposed development is also integrated development:
 - (i) a statement that the development is integrated development, and
 - (ii) the approvals that are required and the relevant approval bodies for those approvals.

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- (i) a statement that, unless the proposed development is development for which a Commission of Inquiry has been held, any person:
 - (i) who makes a submission by way of objection, and
 - (ii) who is dissatisfied with the determination of the consent authority to grant development consent,
 may appeal to the Land and Environment Court under section 98 of the Act,
 - (j) a statement that if a Commission of Inquiry is held the determination is final and not subject to appeal under section 98 of the Act.
 - (2) The period referred to under subclause (1) (e) must include the period of 30 days commencing on the day after which notice of the development application is first published in a newspaper under section 79 (1) (d) of the Act.

59 How is the notice under sec 79 (1) (c) of the Act exhibited on land for designated development?

- (1) The notice for a development application for designated development under section 79 (1) (c) of the Act:
 - (a) must be exhibited on the land to which the development application relates, and
 - (b) must be displayed on a signpost or board, and
 - (c) must be clear and legible, and
 - (d) must be headed in capital letters and bold type **“DEVELOPMENT PROPOSAL”**, and
 - (e) must contain under that heading the following matters:
 - (i) a Statement that the development application has been lodged,
 - (ii) the name of the applicant.
 - (iii) a brief description of the development application,

- (iv) notice that the development application and the relevant environmental impact statement may be inspected at the places, on the dates and during the times specified in the notice, being the same places, dates and times specified in the written notice under section 79 (1) (b) of the Act, and
- (f) must, if practicable, be capable of being read from a public road, public place or public reserve.

60 How is the notice under sec 79 (1) (d) published for designated development?

The notice for a development application for designated development under section 79 (1) (d) of the Act:

- (a) must be published on at least 2 separate occasions, and
- (b) must appear across 2 or 3 columns in the display section of the newspaper, and
- (c) must be headed in capital letters and bold type “**DEVELOPMENT PROPOSAL**”, and
- (d) must contain the same matters as are required for a notice under section 79 (1) (b) of the Act.

61 Consent authority to notify applicant where submission period exceeds 30 days

If the submission period for a development application for designated development is more than 30 days, the consent authority is to notify the applicant of the period and the effect of the extension of the period on the operation of clause 70B for the purposes of section 82 of the Act.

62 Forwarding of submissions to Director

For the purposes of section 80 (9) (b) of the Act, the consent authority must, immediately after the submission period, forward to the Director (if the Minister or the

Director is not the consent authority) a copy of all submissions (including submissions by way of objection) received in response to the public exhibition of a development application for designated development.

Note. This requirement will not apply if the Director has waived the requirement under section 80 (10) (b) of the Act.

Division 7 Public participation—advertised development

63 What are the types of advertised development?

- (1) For the purposes of the definition of advertised *development* in section 4 (1) of the Act, the following types of development are identified as advertised development:
- (a) development that is State significant development referred to in section 76A (7) (b) or (d) of the Act and that is not designated development, which is referred to in this Division as *State significant advertised development*,
 - (b) integrated development that is neither designated development nor State significant advertised development but requires:
 - (i) an approval (within the meaning of section 90A of the Act) under section 58 of the *Heritage Act 1977*, or
 - (ii) an approval (within the meaning of section 90A of the Act) under the *Water Act 1912* specified in section 91 (1) of the Act, or
 - (iii) an approval (within the meaning of section 90A of the Act) under the *Pollution Control Act 1970* specified in section 91 (1) of the Act.

which is referred to in this Division as *nominated integrated development*.

Note. Development may also be identified as advertised development by an environmental planning instrument or a development control plan.

- (2) Development, other than development described in subclause (1), that is identified as advertised development by an environmental planning instrument or a development control plan is referred to in this Division as *other advertised development*.

64 What are the requirements for advertising State significant advertised development?

- (1) **Application of sec 79 of the Act relating to designated development**

For the purposes of section 79A (1) of the Act, section 79 of the Act applies to a development application for State significant advertised development in the same way as it applies to a development application for designated development.

- (2) **What must a written notice under sec 79 (1) (b) of the Act (as applied by subclause (1)) contain?**

For the purposes of section 79 (1) (b) of the Act (as applied by subclause (1)), a written notice of a development application for State significant advertised development must contain the following information:

- (a) a description (including the address) of the land on which the development is proposed to be carried out.
- (b) the name of the applicant and of the consent authority,
- (c) a description of the proposed development,
- (d) a statement that the proposed development is not designated development,
- (e) a statement that the development application and the documents accompanying the application may be inspected:
 - (i) at the Department's principal office, and
 - (ii) at the council's principal office,

for a period specified in the notice during the relevant authority's ordinary office hours,

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- (f) a statement that:
 - (i) any person during the period specified under paragraph (e) may make written submissions to the Director concerning the development application, and
 - (ii) if a submission is made by way of objection, the grounds of objection must be specified in the submission,
 - (g) the dates of the period specified under paragraph (e),
 - (h) a statement that:
 - (i) the Minister will determine the application, and
 - (ii) if the proposed development is subject to a *direction* under section 89 of the Act, the council may request that a Commission of Inquiry be held into the development, and
 - (iii) if a Commission of Inquiry is held, the Minister's determination is final and not subject to appeal,
 - (i) if the development is also integrated development:
 - (i) a statement that the development is integrated development, and
 - (ii) the approvals that are required and the relevant approval bodies for those approvals.
- (3) The period referred to under subclause (1) (e) must include the period of 30 days commencing on the day after which notice of the development application is first published in a newspaper under section 79 (1) (d) of the Act.
- (4) **How is the notice under sec 79 (1) (c) of the Act (as applied by subclause (1)) to be exhibited on land?**
 The notice for a development application for State significant advertised development under section 79 (1) (c) of the Act (as applied by subclause (1)):
- (a) must be exhibited on the land to which the development application relates, and
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- (b) must be displayed on a signpost or board, and
 - (c) must be clear and legible, and
 - (d) must be headed in capital letters and bold type “**DEVELOPMENT PROPOSAL**”, and
 - (e) must contain under that heading the following matters:
 - (i) a statement that the development application has been lodged,
 - (ii) the name of the applicant,
 - (iii) a brief description of the development application,
 - (iv) notice that the development application may be inspected at the places, on the dates and during the times specified in the notice, being the same places, dates and times specified in the written notice under section 79 (1) (b) of the Act, and
 - (f) must, if practicable, be capable of being read from a public road, public place or public reserve.
- (5) **How is the notice published under sec 79 (1) (d) of the Act (as applied by subclause (1)) published?**
The notice for a development application for State significant advertised development under section 79 (1) (d) of the Act (as applied by subclause (1)):
- (a) must be published in the public notices section of the newspaper, and
 - (b) must be headed in capital letters and bold type “**DEVELOPMENT PROPOSAL**”. and
 - (c) must contain the same matters as are required for a notice under section 79 (1) (b) of the Act.

65 What are the requirements for advertising nominated integrated development and other advertised development?

(1) **Application of clause**

This clause applies to development that is:

- (a) nominated integrated development, or
- (b) other advertised development.

(2) **How must a development application be publicly notified?**

As soon as practicable after a development application for development to which this clause applies is lodged with the consent authority, the consent authority must:

- (a) give written notice of the application (which is referred to in this clause as *the written notice*), and
- (b) cause notice of the application to be published in a local newspaper (which is referred to in this clause as *the published notice*).

(3) **Who must written notice be given to?**

Written notice of the development application must be given:

- (a) to such persons as appear to the consent authority to own or occupy the land adjoining the land to which the application relates, and
- (b) to such public authorities (other than relevant concurrence authorities or approval bodies) as, in the opinion of the consent authority, may have an interest in the determination of the application.

(4) For the purposes of subclause (3):

- (a) if land is a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973*, a written notice to the owners corporation is taken to be a written notice to the owner or occupier of each lot within the strata scheme, and

- (b) if land is a lot within the meaning of the *Strata Schemes (Leasehold Development) Act 1986*, a written notice to the lessor under the leasehold strata scheme concerned and to the owners corporation is taken to be a written notice to the owner or occupier of each lot within the strata scheme, and
- (c) if land is owned or occupied by more than one person, a written notice to one owner or one occupier is taken to be a written notice to all the owners and occupiers of that land.

(5) What information must be contained in a written notice and a published notice?

A written notice and a published notice of a development application must contain (as a minimum) the following information:

- (a) a description of the land (including the address) on which the development is proposed to be carried out,
- (b) the name of the applicant and the name of the consent authority,
- (c) a description of the proposed development,
- (d) a statement that the application and the documents accompanying that application may be inspected at the consent authority's principal office for a period specified in the notice during the consent authority's ordinary office hours.
- (e) a statement that any person during the period specified under paragraph (d) may make a written submission in relation to the development application to the consent authority.
- (f) the dates of the period specified under paragraph (d).

- (6) In the case of a development application for nominated integrated development, the written notice and the published notice must:
- (a) contain a statement that the development is integrated development, and
 - (b) state the approvals that are required and the relevant approval bodies for those approvals.
- (7) **What is the relevant submission period?**
The period referred to in subclause (5) (d) must include the following period commencing on the day after the day on which the published notice is first published in a newspaper:
- (a) for nominated integrated development, 30 days,
 - (b) for other advertised development, 14 days.
- (8) **Circumstances in which notice requirements may be dispensed with**
If:
- (a) a development application is amended, or substituted, or withdrawn and later replaced before it has been determined by the consent authority, and
 - (b) the consent authority has complied with subclauses (2)—(7) in relation to the original application, and
 - (c) the consent authority is of the opinion that the amended, substituted or later application differs only in minor respects from the original application,

the consent authority may decide to dispense with further compliance with those subclauses in relation to the amended, substituted or later application. In that event,

compliance with those subclauses in relation to the original application is taken to be compliance in relation to the amended, substituted or later application.

- (9) The consent authority must give written notice to the applicant of its decision under subclause (8) at or before the time notice of the determination of the development application is given under section 81 of the Act.
- (10) **Public notification of development application and accompanying information**
The consent authority must ensure that a development application is publicly notified in accordance with the relevant requirements and that any accompanying information is available for inspection during the period referred to in subclause (5) (d) at the place or places specified in the public notice.
- (11) **Inspection of development application and accompanying information**
During the period referred to in subclause (5) (d), any person may inspect the development application and any accompanying information and make extracts from or copies of them.
- (12) **Making of submissions**
During the period referred to in subclause (5) (d), any person may make written submissions to the consent authority with respect to the development application. A submission by way of objection must set out the grounds of the objection.

Division 8 Determination

66 What additional matters must a consent authority take into consideration in determining a development application?

For the purposes of section 79C (1) (a) (iv) of the Act, the following matters are prescribed as matters to be

taken into consideration by a consent authority in determining a development application:

- (a) the Government Coastal Policy, in the case of development on land to which that Policy applies in the area of a council referred to in the following Table:

Table

Ballina	Manly*
Bega Valley	Nambucca
Bellingen	Newcastle*
Byron	Pittwater*
Coffs Harbour	Port Stephens
Copmanhurst	Randwick*
Eurobodalla	Richmond River
Gosford*	Shellharbour*
Great Lakes	Shoalhaven
Greater Taree	Sutherland
Hastings	Tweed
Kempsey	Ulmarra
Kiama	Warringah*
Lake Macquarie*	Waverley*
Lismore	Wollongong*
Maclean	Woollahra*
Maitland	Wyong*

Note. The areas marked with asterisks are only affected by the seaward part of the Government Coastal Policy, being the area extending 3 nautical miles seaward from the open coast high water mark.

- (b) in the case of a development application for the demolition of a building, the provisions of *Australian Standard AS 2601-1991: The demolition of structures*, as in force at 1 July 1993.

66A Fire safety considerations

- (1) This clause applies to a development application for a change of building use for an existing building, being a development application that does not seek the rebuilding, alteration, enlargement or extension of the building.

- (2) In determining a development application to which this clause applies, a consent authority is to take into consideration:
- (a) whether:
- (i) the structural strength and load-bearing capacity of the building, and
 - (ii) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and
 - (iii) the measures to restrict the spread of fire from the building to other buildings nearby, will be appropriate to the building's proposed new use, and
- (b) whether the building:
- (i) already complies, or
 - (ii) will, when completed, comply, with such of the Category 1 fire safety provisions as are applicable to the building's proposed new use.
- (3) Subclause (2) (b) does not apply to the extent to which an exemption is in force under clause 80H or 80I, subject to the terms of any condition or requirement referred to in clause 80H (6) or 80I (4).
- (4) The matters prescribed by this clause are prescribed for the purposes of section 79C (1) (a) (iv) of the Act.
- (5) In this clause, *Category 1 fire safety provision* has the same meaning as it has in Part 7B.

66B Consent authority may require buildings to be upgraded

- (1) This clause applies to a development application for development comprising the rebuilding, alteration, enlargement or extension of an existing building where:
- (a) the proposed building work, together with any other building work completed or authorised

within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls, or

- (b) the measures contained in the building are inadequate:
 - (i) to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or
 - (ii) to restrict the spread of fire from the building to other buildings nearby.
- (2) In determining a development application to which this clause applies, a consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.
- (3) The matters prescribed by this clause are prescribed for the purposes of section 79C (1) (a) (iv) of the Act.

67 Deferred commencement consent

- (1) A “deferred commencement” consent must be clearly identified as a “deferred commencement” consent (whether by the use of that expression or by reference to section 80 (3) of the Act or otherwise).
- (2) A ”deferred commencement” consent must clearly distinguish conditions concerning matters as to which the consent authority must be satisfied before the consent can operate from any other conditions.
- (3) A consent authority may specify the period in which the applicant must produce evidence to the consent authority sufficient enough to enable it to be satisfied as to those matters.

- (4) The applicant may produce evidence to the consent authority sufficient to enable it to be satisfied as to those matters and, if the consent authority has specified a period for the purpose, the evidence must be produced within that period.
- (5) If the applicant produces evidence in accordance with this clause, the consent authority must notify the applicant whether or not it is satisfied as to the relevant matters. If the consent authority has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the consent authority is, for the purposes only of section 97 of the Act, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.

67A Imposition of conditions—ancillary aspects of development

- (1) If a consent authority grants development consent subject to a condition authorised by section 80A (2) of the Act with respect to an ancillary aspect of the development, the consent authority may specify the period within which the ancillary aspect must be carried out to the satisfaction of the consent authority, or a person specified by the consent authority, as referred to in that subsection.
- (2) The applicant may produce evidence to the consent authority, or to the person specified by the consent authority for the purpose, sufficient to enable it, or the person so specified, to be satisfied in respect of the ancillary aspect of the development.
- (3) For the purposes of section 80A (3) of the Act, the relevant period is the period of 28 days after the applicant's evidence is produced to the consent authority or a person specified by the consent authority.

68 Modification or surrender of development consent or existing use right

- (1) A modification or surrender of a development consent or existing use right must be in Form 3.
- (2) A duly signed and delivered notice of modification or surrender of a development consent or existing use right:
 - (a) takes effect when it is received by the consent authority, and
 - (b) operates, according to its terms, to modify, or surrender the development consent or existing use right to which it relates.

Division 9 Post-determination notifications**68A Notice of determination—what is the form of the notice?**

- (1) For the purposes of section 81 (1) (a) of the Act, notice of the determination of a development application (referred to as applicant's notice) must be given to the applicant in Form 4.
- (2) The notice must clearly identify the relevant development application by reference to its registered number.
- (3) The date on which the application was determined and the date from which the development consent operates (if development consent is granted) must be endorsed on the notice.
- (4) In the case of a development consent granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority, or a person specified by the consent authority, as to any matter specified in the condition:
 - (a) the date from which the consent operates must not be endorsed on the notice, and
 - (b) if the applicant satisfies the consent authority, or person, as to the matter, the consent authority must give notice to the applicant of the date from which the consent operates.

- (5) If the determination is made by the granting of consent subject to conditions or by the refusing of consent, the notice of the determination must:
 - (a) indicate the reasons for the imposition of the conditions or the refusal, and
 - (b) inform the applicant of the provisions of the Act conferring a right of appeal against the determination.
- (6) If the determination is one for which concurrence was required under section 79B (3) of the Act, a copy of a notice of determination referred to in subclause (5):
 - (a) must be given to the Director-General of National Parks and Wildlife, and
 - (b) must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service.

69 How soon must a notice of determination be sent to the applicant?

- (1) A notice under section 81 (1) (a) of the Act to an applicant must be sent to the applicant within 14 days after the date of the determination of the applicant's development application.
- (2) Failure to send the notice within the 14-day period does not affect the validity of the notice or the development consent (if any) to which it relates.

69A What additional particulars must be included in a notice of determination to the applicant with respect to sec 94 conditions?

A notice under section 81 (1) (a) of the Act to an applicant concerning a development consent the subject of a section 93 condition must include the following particulars in addition to any other particulars it is required to contain:

- (a) the specific public amenity or service in respect of which the condition is imposed,

- (b) the contributions plan under which the condition is imposed,
- (c) the address of the places where a copy of the contributions plan may be inspected.

69B Notification of consent authority's determination to objectors and persons who make submissions for the purposes of sec 81 (1)(b) of the Act

- (1) A notice under section 81 (1)(b) of the Act must be in Form 5.
- (2) The notice must be given on the same day as the notice under section 81 (1)(a) of the Act is given to the applicant.

69C Notification of consent authority's determination to other persons—development notified or advertised in accordance with a development control plan for the purposes of sec 81 (1)(c) of the Act

- (1) A consent authority must send a notice under section 81 (1)(c) of the Act to a person who made a submission in relation to a development application that was notified or advertised as referred to in section 79A (1) of the Act.
- (2) The form for such a notice is Form 6.
- (3) The notice must be given on the same day as the notice under section 81 (1)(a) of the Act is given to the applicant.

70 Notice under sec 81A of the Act of intention to commence subdivision work or erection of building

A notice given under or for the purposes of section 81A (2) (b) (ii) or (c), or (4) (b) (ii) or (c) of the Act is to be in Form 7.

70A Notice under sec 91A (6) or sec 92 (7) of the Act to approval bodies of determination of development application for integrated development

- (1) A notice under section 91A (6) or section 92 (7) of the Act to an approval body must be sent to the approval body within 14 days after the date of the determination of the relevant development application.

- (2) Failure to send the notice within the 14-day period does not affect the validity of the notice or the development consent (if any) to which it relates.

Division 10 Circumstances in which consent is taken to have been refused

70B When is an application taken to be refused?

- (1) For the purposes of section 82 (1) of the Act, a development application is taken to be refused if a consent authority has not determined the application:
- (a) within 40 days, except as provided by paragraph (b), or
 - (b) in the case of development that:
 - (i) is designated development, or
 - (ii) is integrated development, or
 - (iii) is development for which the concurrence of a concurrence authority is required, within 60 days.
- (2) The 40-day and 60-day periods are measured from:
- (a) the date the development application is lodged with the consent authority, or
 - (b) the date the Minister complies with section 119 (8) of the Act, if a Commission of Inquiry has been held under section 119 of the Act into local development that is not designated development, or part of any such development.

Note. Deemed refusal provisions do not apply to development under section 80 (7) of the Act (where a Commission of Inquiry is held into designated development) or to any State significant development for which a Commission of Inquiry is held.

- (3) In the case of designated development for which the submission period under section 79 (1) (a) of the Act exceeds 30 days, the 60-day period is to be increased by that part of the submission period that exceeds 30 days, despite subclause (1).

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- (4) The periods do not include the time that elapses under the provisions of clause 48 (6), 50 (3), 53 (4) or 53AA (1), despite subclause (1).

Division 11 Development consents—extension, completion and modification

71 What is the form for an application for extension of a development consent?

An application under section 95A of the Act for the extension of time to commence development:

- (a) must be in writing, and
- (b) must identify the development consent to which it relates, and
- (c) must indicate why the consent authority should extend the time.

71A What are the requirements for an application for modification of a development consent under sec 96 (1) or (2) of the Act?

An application for modification of a development consent under section 96 (1) or (2) of the Act:

- (a) is to be in Form 8, and
- (b) is to be accompanied by the fee prescribed by clause 105.

72 Applications for modification of development consents granted by the Land and Environment Court or the Minister

- (1) If the development consent referred to in section 96 (1) or (2) of the Act is a development consent referred to in section 83 (4) of the Act, the Court is taken for the purposes of section 96 (1) or (2) of the Act to be the consent authority.
- (2) In the case of a development consent referred to in section 83 (4) of the Act that is the result of an appeal, a copy of the application for modification of the

development consent is to be lodged by the applicant with the consent authority from whose decision the Court has granted development consent on appeal.

- (3) In the case of a development consent referred to in section 80 (7) of the Act, a copy of the application for modification of the development consent is to be lodged by the applicant with the council.

72A Public participation—application under sec 96 (2) of the Act for modification of development consents

- (1) This clause applies to an application under section 96 (2) of the Act to modify a development consent if the original development application for the consent was notified or advertised under section 79 or 79A of the Act.
- (2) Notice of the application must be published in a local newspaper by:
 - (a) the consent authority that granted the development consent, or
 - (b) the consent authority to which the original development application was made, if development consent was granted by the Court on appeal.
- (3) A consent authority referred to in subclause (2) (b) must notify the Court of the date on which notice of the application is published under subclause (2).
- (4) The notice published under subclause (2) must contain the following information:
 - (a) a brief description of the development consent, the land to which it relates and the details of the modification sought,
 - (b) a statement that written submissions concerning the proposed modification may be made to the consent authority that publishes the notice within the period specified in accordance with paragraph (c),

- (c) the period during which the application may be inspected at the principal office of the consent authority that publishes the notice,
 - (d) a statement that, if the application is approved, there is no right of appeal under section 98 of the Act by an objector.
- (5) For the purposes of section 96 (2) (d) of the Act, the period referred to in subclause (4) (c) must be not less than the period of 14 days commencing on the day after which notice of the application for modification is first published in a local newspaper.
- (6) During the period referred to in subclause (4) (c), any person may inspect the application and any accompanying information and make extracts from or copies of them.

73 Applications for modifications of development consents to be kept available for public inspection

An application for the modification of a development consent must be made available at the principal office of the consent authority that published the notice of the application under clause 72A (2) for inspection, free of charge, during the consent authority's ordinary office hours for the period specified in the notice in accordance with clause 72A (4) (c).

73A Notice of determination of application to modify development consent

- (1) Notice in writing of the determination of an application for the modification of a development consent must be given to the applicant as soon as practicable after the determination is made.
- (2) If the determination is made subject to conditions or by refusing the application, the notice:
 - (a) must indicate the consent authority's reasons for the imposition of the conditions or the refusal, and

- (b) must state that the Act gives a right of appeal against the determination, unless:
 - (i) the development is State significant development, or
 - (ii) the development consent was granted by the court.

73B Persons to be informed of proposed revocation or modification of consent under sec 96A (3) of the Act

- (1) For the purposes of section 96A (3) (a) (ii) of the Act, the Director-General of the Department of Fair Trading is a prescribed person if the proposed revocation or modification affects:
 - (a) the transfer, alteration, repair or extension of water service pipes, or
 - (b) the carrying out of sanitary plumbing work, sanitary drainage work or stormwater drainage work.
- (2) The notification of the proposed revocation or modification of a consent or a complying development certificate must include the reasons for the proposed revocation or modification.

Division 12 Validity of development consents

74 What are the public notification procedures for the purposes of sec 101 of the Act?

- (1) The granting of a development consent is publicly notified for the purposes of section 101 of the Act:
 - (a) if public notice in a local newspaper is given by:
 - (i) the consent authority, or
 - (ii) if the consent authority is not the council, by the consent authority or the council, and
 - (b) if the notice describes the land and the development the subject of the development consent, and

- (c) if the notice contains a statement that the development consent is available for public inspection, free of charge, during ordinary office hours at:
 - (i) the consent authority's principal office, or
 - (ii) if the consent authority is not the council, at the consent authority's office or the council's principal office.
- (2) Nothing in this clause confers a right or entitlement to inspect, make copies of or take extracts from so much of a document that, because of section 12 (1A) of the *Local Government Act 1993*, a person does not have the right to inspect.

Part 6A Procedures relating to complying development certificates

Division 1 Applications for complying development certificates

75 Application of Part

This Part applies to complying development.

75A How must an application for a complying development certificate be made?

- (1) An application for a complying development certificate:
 - (a) must be in Form 9, and
 - (b) must be accompanied by the information required by Form 9, and
 - (c) must be:
 - (i) delivered by hand, or
 - (ii) sent by post, or
 - (iii) transmitted electronically,to the principal office of the council or the accredited certifier. and may not be sent by facsimile transmission, and

- (d) must, in respect of an application to a council, be accompanied by a fee to be determined by the council in accordance with the provisions of the *Local Government Act 1993*.
- (2) Immediately after it receives an application for a complying development certificate, the council or accredited certifier must endorse the application with the date of its receipt.

76 Council or accredited certifier may require additional information

- (1) A council or accredited certifier may require the applicant for a complying development certificate to give the council or accredited certifier any additional information concerning the proposed development that is essential to the council's or accredited certifier's proper consideration of the application.
- (2) Nothing in this clause affects the council's or accredited certifier's duty to determine an application for a complying development certificate duly made.

76A Council or accredited certifier to supply application form for complying development certificates

The council or accredited certifier must provide any person intending to make an application for a complying development certificate with copies of Form 9.

Division 2 Determination of applications and commencement of complying development

77 Procedure for determining an application for a complying development certificate

- (1) An application for a complying development certificate must be determined in accordance with the requirements of Form 9.
- (2) The development standards applicable to proposed development for which a complying development certificate is sought (being development comprising

building work associated with a change of building use of an existing building) include the following requirements:

- (a) that, on completion of the building work:
 - (i) the structural strength and load-bearing capacity of the building, and
 - (ii) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and
 - (iii) the measures to restrict the spread of fire from the building to other buildings nearby, will be appropriate to the proposed new use, and
- (b) that the building will comply with such of the Category 1 fire safety provisions as are applicable to the proposed new use,

assuming that the building work is carried out in accordance with the plans and specifications to which the complying development certificate relates and any conditions to which the complying development certificate is subject.

- (3) The development standards applicable to proposed development for which a complying development certificate is sought (being development comprising building work that involves the alteration, enlargement or extension of an existing building in circumstances in which no change of building use is proposed) includes the requirement that, on completion of the building work:
 - (a) the structural strength and load-bearing capacity of the building, and
 - (b) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and
 - (c) the measures to restrict the spread of fire from the building to other buildings nearby,

will not be reduced, assuming that the building work is carried out in accordance with the plans and specifications to which the complying development certificate relates and any conditions to which the complying development certificate is subject.

- (4) If an environmental planning instrument provides that complying development must comply with the deemed-to-satisfy provisions of Volume One, or Section 3 of Volume Two, of the *Building Code of Australia*, a complying development certificate cannot authorise compliance with an alternative solution to the performance requirements corresponding to those deemed-to-satisfy provisions.
- (5) If a complying development certificate is issued, evidence of its issue must be endorsed by the council or the accredited certifier on any plans, specifications and any other documents that were lodged with the application for the certificate or submitted to the accredited certifier in accordance with clause 76.
- (6) For the purposes of section 85A (11) (b) of the Act, the accredited certifier must notify the council of the determination by forwarding copies of the determination and any endorsed plans, specifications and any other documents that were lodged with the application for the certificate or submitted to the accredited certifier in accordance with clause 76 to the council within 7 days after the date of the determination.
- (7) In this clause:
- Category 1 fire safety provision* has the same meaning as it has in Part 7B.

77A Notification of principal certifying authority and of commencement of complying development

A notice given under or for the purposes of section 86 (1) (a) (ii) or (b), or (2) (a) (ii) or (b) of the Act is to be in Form 7.

Division 3 Validity of complying development certificates**77B What are the public notification procedures for the purposes of sec 101 of the Act?**

- (1) The determination of an application for a complying development certificate is publicly notified for the purposes of section 101 of the Act:
 - (a) if public notice in a local newspaper is given by the council or an accredited certifier, and
 - (b) if the notice describes the land and the development the subject of the complying development certificate, and
 - (c) if the notice contains a statement that the determination of the application for a complying development certificate is available for public inspection, free of charge, during ordinary office hours at the council's offices.
- (2) If the public notification is given by an accredited certifier, the accredited certifier must send a copy of the page of the newspaper in which notice of the complying certificate was published to the council within 7 days after the notice is published.
- (3) Nothing in this clause confers a right or entitlement to inspect, make copies of or take extracts from so much of a document that, because of section 12 (1A) of the *Local Government Act 1993*, a person does not have the right to inspect.

Part 7 Conditions of development consent**78 Prescribed conditions of development consents: sections 80A (11) and 85A (6) (a) of the Act**

The provisions of this Part are prescribed conditions for the purposes of section 80A (11) and 85A (6) (a) of the Act.

78A Compliance with Building Code of Australia

- (1) All building work must be carried out in accordance with the provisions of the *Building Code of Australia*.
- (2) This clause does not apply to the extent to which an exemption is in force under clause 80H or 80I, subject to the terms of any condition or requirement referred to in clause 80H (6) or 80I (4).

78B Change of building use

- (1) A building in respect of which there is a change of building use must comply with the Category 1 fire safety provisions applicable to the proposed new use.

Note. The obligation under this subclause to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in the relevant development consent.

- (2) This clause does not apply to the extent to which an exemption is in force under clause 80H or 80I, subject to the terms of any condition or requirement referred to in clause 80H (6) or 80I (4).
- (3) In this clause, *Category 1 fire safety provision* has the same meaning as it has in Part 7B.

78C Residential building work

- (1) Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be carried out unless the principal certifying authority for the development to which the work relates:
 - (a) in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number, and
 - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act, or

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- (b) in the case of work to be done by any other person:
- (i) has been informed in writing of the person's name and owner-builder permit number, or
 - (ii) has been given a declaration, signed by the owner of the land, that states 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,

and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Note. The amount referred to in paragraph (b) (ii) is prescribed by regulations under the *Home Building Act 1989*. As at the date on which this Regulation was Gazetted, that amount was \$3,000. As those regulations are amended from time to time, so that amount may vary.

- (2) A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

78D Excavations and backfilling

- (1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- (2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

78E Retaining walls and drainage

If the soil conditions require it:

- (a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and
- (b) adequate provision must be made for drainage.

78F Support for neighbouring buildings

- (1) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
 - (a) must preserve and protect the building from damage, and
 - (b) if necessary, must underpin and support the building in an approved manner, and
 - (c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- (3) In this clause, *allotment of land* includes a public road and any other public place.

78G Protection of public places

- (1) If the work involved in the erection or demolition of a building:
 - (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - (b) building involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place.
- (2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- (3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- (4) Any such hoarding, fence or awning is to be removed when the work has been completed.

78H Signs to be erected on building and demolition sites

- (1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
 - (a) stating that unauthorised entry to the work site is prohibited, and
 - (b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.
- (2) Any such sign is to be removed when the work has been completed.
- (3) This clause does not apply to:
 - (a) building work carried out inside an existing building, or
 - (b) building work carried out on premises that are to be occupied continuously (both during and outside working hours) while the work is being carried out.

78I Toilet facilities

- (1) Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
- (2) Each toilet provided:
 - (a) must be a standard flushing toilet, and
 - (b) must be connected:
 - (i) to a public sewer, or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the council, or
 - (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the council.
- (3) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.

- (4) In this clause:

accredited sewage management facility means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the Regulation.

approved by the council means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

public sewer has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

sewage management facility has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

Part 7A Certification of development**Division 1 Compliance certificates****79 Compliance certificates**

- (1) A compliance certificate must be in the form set out in the relevant part of Form 10.
- (2) Within 7 days after the date on which it issues a compliance certificate, a certifying authority must cause a copy of the certificate to be given to the consent authority and to the council.

Division 2 Construction certificates**79A Applications for construction certificates**

- (1) An application for a construction certificate:
 - (a) must be in the form set out in the relevant part of Form 11, and
 - (b) must be accompanied by the information required by Form 11, and
 - (c) must be delivered by hand, sent by post or transmitted electronically to the principal office of the certifying authority and may not be sent by facsimile transmission, and
 - (d) if the certifying authority is a consent authority, must be accompanied by the fee determined by the consent authority (being, in the case of a council, a fee determined in accordance with the provisions of the *Local Government Act 1993*).
- (2) Immediately after it receives an application for a construction certificate, the certifying authority must endorse the application with the date of its receipt.

79B Certifying authority may require additional information

- (1) A certifying authority may require the applicant for a construction certificate to give the certifying authority

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

any additional information concerning the proposed building or subdivision work that is essential to the certifying authority's proper consideration of the application.

- (2) The initial requirement and any subsequent requirement must, where they are made by a consent authority, be made by the consent authority within 14 days after it receives the application for the construction certificate.
- (3) Nothing in this clause affects the certifying authority's duty to determine an application for a construction certificate duly made.

79C Consent authority to supply application form for construction certificates

A certifying authority that is a consent authority must provide any person intending to make an application for a construction certificate with copies of Form 11.

79D Procedure for determining application for construction certificate

- (1) An application for a construction certificate must be determined by the certifying authority in accordance with Part 4A of the Act by the certifying authority endorsing on the application:
 - (a) the date on which the application was determined, and
 - (b) whether the application has been determined:
 - (i) by approval, or
 - (ii) by refusal, and
 - (c) if the application has been determined by refusal:
 - (i) the reasons for the refusal, and
 - (ii) if the certifying authority is a consent authority, of the applicant's right of appeal under section 109K of the Act against the refusal, and

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- (d) if a construction certificate has been issued subject to conditions:
- (i) the reasons for the conditions, and
 - (ii) if the certifying authority is a consent authority, of the applicant's right of appeal under section 109K of the Act against any such conditions.
- (2) The certifying authority must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within 7 days after the date of the determination, copies of:
- (a) the determination, together with the application to which it relates, and
 - (b) any construction certificate issued as a result of the determination, and
 - (c) any plans and specifications in relation to which such a construction certificate has been issued, and
 - (d) any fire safety schedule attached to such a construction certificate, and
 - (e) any other documents that were lodged with the application for the certificate (such as any relevant decision on an objection under clause 80H or 80I) or submitted to the certifying authority under clause 79B.
- Note.** See also clause 80C which requires a fire safety schedule to be attached to a construction certificate when it is issued.
- (3) In this Part, a reference to the issuing of a construction certificate includes a reference to the endorsement of the construction certificate on any relevant plans and specifications, as referred to in section 81A (5) of the Act.
- (4) In this clause, *fire safety schedule* has the same meaning as it has in Part 7B.

79E Fire protection and structural strength

- (1) A certifying authority must not issue a construction certificate for building work under a development consent that authorises a change of building use unless:
 - (a) it is satisfied that:
 - (i) the structural strength and load-bearing capacity of the building, and
 - (ii) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and
 - (iii) the measures to restrict the spread of fire from the building to other buildings nearby, will be appropriate to its new use, and
 - (b) it is satisfied that the building will comply with such of the Category 1 fire safety provisions as are applicable to the new use,

assuming that the building work is carried out in accordance with the plans and specifications to which the construction certificate relates and any conditions to which the construction certificate is subject.
- (2) Subclause (1) (b) does not apply to the extent to which an exemption is in force under clause 80H or 80I, subject to the terms of any condition or requirement referred to in clause 80H (6) or 80I (4).
- (3) In the case of building work that involves the alteration, enlargement or extension of an existing building in circumstances in which no change of building use is proposed, a certifying authority must not issue a construction certificate for the work unless it is satisfied that, on completion of the building work:
 - (a) the structural strength and load-bearing capacity of the building, and
 - (b) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and
 - (c) the measures to restrict the spread of fire from the building to other buildings nearby.

will not be reduced, assuming that the building work is carried out in accordance with the plans and specifications to which the construction certificate relates and any conditions to which the construction certificate is subject.

- (4) This clause does not apply to building work required by a consent authority as a condition of a development consent that authorises a change of building use.
- (5) In this clause, *Category 1 fire safety provision* has the same meaning as it has in Part 7B.

79F Referral of certain plans and specifications to New South Wales Fire Brigades

- (1) This clause applies to:
- (a) a class 9a building that is proposed to have a total floor area of 2000 m² or more, or
 - (b) a building (other than a class 9a building) that is proposed to have:
 - (i) a fire compartment with a total floor area of more than 2000 m², or
 - (ii) a total floor area of more than 6000 m²,
- where:
- (c) the building is the subject of an application for erection, rebuilding, alteration, enlargement or extension, and
 - (d) the plans and specifications for the erection, rebuilding, alteration, enlargement or extension provide for an alternative solution to meet the performance requirements contained in any one or more of the Category 2 fire safety provisions.
- (2) Within 2 days after receiving an application for a construction certificate for a building to which this clause applies, the certifying authority must forward to the Commissioner of New South Wales Fire Brigades (the *Commissioner*):
- (a) a copy of the application, and
 - (b) a copy of the plans and specifications for the building, and

- (c) details of the performance requirements that the alternative solution is intended to meet, and
- (d) details of the assessment methods to be used to establish compliance with those performance requirements.

These may be delivered by hand, forwarded by post or transmitted electronically, but may not be sent by facsimile transmission.

- (3) The Commissioner must furnish a written report to the certifying authority specifying whether or not the Commissioner is satisfied, on the basis of the documents referred to in subclause (2):

- (a) that the alternative solution will meet such of the performance requirements as it is intended to meet, and
- (b) that the fire hydrants in the proposed fire hydrant system will be accessible for use by New South Wales Fire Brigades, and
- (c) that the couplings in the system will be compatible with those of the fire appliances and equipment used by New South Wales Fire Brigades.

The report may recommend conditions to be imposed on the erection, rebuilding, alteration, enlargement or extension of the building to which the application relates.

- (4) The certifying authority must not issue a construction certificate for a building to which this clause applies unless:
 - (a) it has received the report and it has taken the report into consideration, or
 - (b) at least 23 days have elapsed since the plans and specifications were forwarded to the Commissioner but no such report has been received by the certifying authority.

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- (5) If the certifying authority does not adopt any recommendation in a report received from the Commissioner (either because the report had not been received when the construction certificate was issued or because the certifying authority does not agree with the recommendation), the certifying authority must cause written notice to be given to the Commissioner of the fact that it has not adopted the recommendation and of the reasons why it has not adopted the recommendation.
- (6) If the certifying authority adopts any condition recommended by a report received from the Commissioner:
- (a) it must ensure that the terms of the recommended condition have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
 - (b) it must attach to the construction certificate a condition in the same terms as those of the recommended condition, in the case of a condition whose terms are not capable of being so included.
- (7) Compliance with the requirement that the terms of a recommended condition be included in the plans and specifications for building work is sufficiently complied with:
- (a) if the plans and specifications are redrawn so as to accord with those terms, or
 - (b) if those terms are included by way of an annotation (whether by way of insertion, deletion or alteration) marked on the relevant part of those plans and specifications.
- (8) In this clause, *Category 2 fire safety provision* has the same meaning as it has in Part 7B.

79G Compliance with development consent and Building Code of Australia

- (1) A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters:
 - (a) that the design and construction of the building (as depicted in the plans and specifications and as described in any other information furnished to the certifying authority under clause 79B) are not inconsistent with the development consent,
 - (b) that the proposed building will comply with the relevant requirements of the *Building Code of Australia*.
- (2) A certifying authority must not issue a construction certificate for subdivision work unless it is satisfied that the design and construction of the work (as depicted in the plans and specifications and as described in any other information furnished to the certifying authority under clause 79B) are not inconsistent with the development consent.
- (3) Subclause (1) (b) does not apply to the extent to which an exemption is in force under clause 80H or 80I, subject to the terms of any condition or requirement referred to in clause 80H (6) or 80I (4).

79H Compliance with conditions of development consent

A certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it is satisfied:

- (a) that each condition or agreement requiring the provision of security before work is carried out in accordance with the consent (as referred to in section 80A (6) of the Act) has been complied with,
- (b) that each condition requiring the payment of a monetary contribution before work is carried out in accordance with the consent (as referred to in section 94 or 93A of the Act) has been complied with,

- (c) that each other condition of the development consent that must be complied with before a construction certificate may be issued in relation to the building work or subdivision work has been complied with.

79I Form of construction certificate

A construction certificate is to be in the form set out in the relevant part of Form 11.

79IA Modification of construction certificate

- (1) A person who has made an application for a construction certificate and a person having the benefit of a construction certificate may apply to modify the development the subject of the application or certificate.
- (2) This Division applies to an application to modify development in the same way as it applies to the original application.

Division 3 Occupation certificates

79J Applications for occupation certificates

- (1) An application for an occupation certificate:
 - (a) must be in the form set out in the relevant part of Form 12, and
 - (b) must be accompanied by the information required by Form 12, and
 - (c) must be delivered by hand, sent by post or transmitted electronically to the principal office of the certifying authority and may not be sent by facsimile transmission, and
 - (d) if the certifying authority is a consent authority, must be accompanied by the fee determined by the consent authority (being, in the case of a council, a fee determined in accordance with the provisions of the *Local Government Act 1993*).

- (2) Immediately after it receives an application for an occupation certificate, the certifying authority must endorse the application with the date of its receipt.

79K Consent authorities to supply application form for occupation certificates

A certifying authority that is a consent authority must provide any person intending to make an application for an occupation certificate with copies of Form 12.

79L Procedure for determining application for occupation certificate

- (1) An application for an occupation certificate must be determined by the certifying authority in accordance with Part 4A of the Act by the certifying authority endorsing on the application:
- (a) the date on which the application was determined, and
 - (b) whether the application has been determined:
 - (i) by approval, or
 - (ii) by refusal, and
 - (c) if the application has been determined by refusal:
 - (i) the reasons for the refusal, and
 - (ii) if the certifying authority is a consent authority and the application relates to a final occupation certificate, of the applicant's right of appeal under section 109K of the Act against the refusal.
- (2) The certifying authority must cause a copy of its determination to be given to the consent authority, and to the council, by forwarding to it, within 7 days after the date of the determination, copies of:
- (a) the determination, and
 - (b) any other documents that were lodged with the application for the certificate.

79M Reports of Commissioner of New South Wales Fire Brigades: section 109H

- (1) This clause applies to a building to which clause 79F applies.
- (2) Within 2 days after receiving an application for an occupation certificate for a building to which this clause applies, the certifying authority must request the Commissioner of New South Wales Fire Brigades (the *Commissioner*) to furnish it with a report in respect of the building. This subclause does not apply if the consent authority has already refused the application.
- (3) If the certifying authority refuses the application, after making such a request but before receiving any report from the Commissioner under subclause (4), it must cause notice of the refusal to be given to the Commissioner.
- (4) Within 7 days after receiving a request from the certifying authority under subclause (2), the Commissioner must furnish the certifying authority with a report specifying:
 - (a) whether or not the building complies with the Category 2 fire safety provisions, and
 - (b) whether or not the fire hydrants in the fire hydrant system will be accessible for use by New South Wales Fire Brigades, and
 - (c) whether or not the couplings in the fire hydrant system will be compatible with those of the fire appliances and equipment used by New South Wales Fire Brigades.

The requirements of this subclause do not apply if, before the end of the 7-day period, the Commissioner receives notice from the certifying authority that the application has been refused.

- (5) The certifying authority must not issue an occupation certificate for the building unless it has taken into consideration any report furnished to it by the

Commissioner in respect of the building within the 7-day period. This subclause does not apply if the certifying authority has already refused the application.

- (6) In this clause, *Category 2 fire safety provision* has the same meaning as it has in Part 7B.

79N Fire safety certificates: section 109H

- (1) In the case of a final occupation certificate to authorise a person:
- (a) to commence occupation or use of a new building, or
 - (b) to commence a change of building use for an existing building,

a certifying authority must be satisfied that a final fire safety certificate has been issued for the building.

- (2) In the case of an interim occupation certificate to authorise a person:
- (a) to commence occupation or use of a partially completed new building, or
 - (b) to commence a change of building use for part of an existing building,

a certifying authority must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.

- (3) This clause does not apply to a class 1a or class 10 building within the meaning of clause 80B.

- (4) In this clause:

interim fire safety certificate has the same meaning as it has in Part 7B.

final fire safety certificate has the same meaning as it has in Part 7B.

new building has the same meaning as it has in section 109H of the Act.

79O Health and safety: section 109H

- (1) In the case of an interim occupation certificate to authorise a person:
- (a) to commence occupation or use of a partially completed new building, or
 - (b) to commence a change of building use for part of an existing building,
- a certifying authority must be satisfied that the building will not constitute a hazard to the health or safety of the occupants of the building.
- (2) In this clause, *new building* has the same meaning as it has in section 109H of the Act.

79P Form of occupation certificate

An occupation certificate is to be in Form 12.

79Q Occupation and use of new buildings: section 109M (2) of the Act

For the purposes of section 109M(2) (c) of the Act, the fact that a building is a class 1a or class 10 building is a prescribed circumstance.

Note. Section 109M of the Act prohibits the occupation or use of a new building unless an occupation certificate has been issued for the building. Subsection (2) (c) provides for the disapplication of that section in circumstances prescribed by the regulations. This clause prescribes such a circumstance.

Division 4 Subdivision certificates**79R Applications for subdivision certificates**

- (1) An application for a subdivision certificate:
- (a) must be in the form set out in the relevant part of Form 13, and
 - (b) must be accompanied by the information required by Form 13. and

- (c) must be delivered by hand, sent by post or transmitted electronically to the principal office of the certifying authority and may not be sent by facsimile transmission, and
 - (d) if the certifying authority is a consent authority, must be accompanied by the fee determined by the consent authority (being, in the case of a council, a fee determined in accordance with the provisions of the *Local Government Act 1993*).
- (2) The plan of subdivision to which the application relates must be accompanied by a certificate on the plan in the relevant form required by the regulations in force under the *Surveyors Act 1929*.
 - (3) Immediately after it receives an application for a subdivision certificate, the certifying authority must endorse the application with the date of its receipt.

79S Certifying authority may require additional information

- (1) A certifying authority may require the applicant for a subdivision certificate to give the certifying authority any additional information concerning the proposed subdivision that is essential to the certifying authority's proper consideration of the application.
- (2) The initial requirement and any subsequent requirement must, where they are made by a consent authority, be made by the consent authority within 14 days after it receives the application for the subdivision certificate.
- (3) Nothing in this clause affects the certifying authority's duty to determine an application for a subdivision certificate duly made.

79T Consent authorities to supply application form for subdivision certificates

A certifying authority that is a consent authority must provide any person intending to make an application for a subdivision certificate with copies of Form 13.

79U Procedure for determining application for subdivision certificate

- (1) An application for a subdivision certificate must be determined by the certifying authority in accordance with Part 4A of the Act by the certifying authority endorsing on the application:
 - (a) the date on which the application was determined, and
 - (b) whether the application has been determined:
 - (i) by approval, or
 - (ii) by refusal, and
 - (c) if the application has been determined by refusal:
 - (i) the reasons for the refusal, and
 - (ii) if the certifying authority is a consent authority, of the applicant's right of appeal under section 109K of the Act against the refusal.
- (2) The certifying authority must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within 7 days after the date of the determination, copies of:
 - (a) the determination, and
 - (b) the endorsed plan of subdivision, and
 - (c) any other documents that were lodged with the application for the certificate or submitted to the certifying authority under clause 79S.

Division 5 General**79V Certifying authorities may be satisfied as to certain matters: section 1090**

Any requirement for a consent authority or council to be satisfied as to any of the following matters, being a requirement that arises from the conditions of a development consent, is taken to have been complied with if a certifying authority is satisfied as to that matter:

- (a) any matter that relates to the form or content of the plan and specifications for the following kind of work to be carried out in connection with the erection of a building or the subdivision of land:
 - (i) earthwork.

- (ii) road work, including road pavement and road finishing,
 - (iii) stormwater drainage work,
 - (iv) landscaping work,
 - (v) erosion and sedimentation control work,
 - (vi) excavation work,
 - (vii) mechanical work,
 - (viii) structural work,
 - (ix) hydraulic work,
 - (x) work associated with driveways and parking bays, including road pavement and road finishing,
- (b) any matter that relates to the external finish of a building.

79W Consent authority to be notified of replacement principal certifying authority

A replacement principal certifying authority must ensure that notice of his or her appointment as such, together with the relevant accreditation body's approval of the appointment, is given to the consent authority within 2 days of the appointment.

79X Notice to allow inspection

For the purpose of ensuring that it has an opportunity to inspect building work before it is covered, a certifying authority may require that specified work not be covered unless it has been given such notice of the proposal to cover the work (not exceeding 48 hours) as the authority may require.

79Y No need for duplicate notices

Nothing in this Part requires a certifying authority to give a copy of a document to itself just because it is also a consent authority or council or to give more than one copy of a document to any other person just because that other person is both a consent authority and a council.

Part 7B Fire safety and matters concerning the Building Code of Australia

Division 1 Preliminary

80 Definitions

In this Part:

Category 1 fire safety provision means the following provisions of the *Building Code of Australia*, namely, EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2 in Volume One of that Code and P2.3.2 in Volume Two of that Code.

Category 2 fire safety provision means the following provisions of the *Building Code of Australia*, namely, CP9, EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2 in Volume One of that Code.

Category 3 fire safety provision means the following provisions of the *Building Code of Australia*, namely, EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2 in Volume One of that Code.

essential fire safety measure, in relation to a building, means a fire safety measure that is included in the fire safety schedule for the building.

final fire safety certificate means a certificate referred to in clause 80E.

fire safety certificate means an interim fire safety certificate or a final fire safety certificate.

fire safety measure means any measure (including any item of equipment, form of construction or fire safety strategy) that is, or is proposed to be, implemented in a building to ensure the safety of persons using the building in the event of fire.

fire safety order means an order of the kind referred to in item 6 of the Table to section 121B of the Act and includes, if an order is subsequently made under section 121R of the Act, an order under that section.

fire safety schedule means the schedule attached to the most recent development consent, construction certificate or fire safety order for the building.

interim fire safety certificate means a certificate referred to in clause 80F.

statutory fire safety measure means a fire safety measure of a kind referred to in the Table to clause 80A.

80A Statutory fire safety measures

The fire safety measures listed in the Table to this clause are *statutory fire safety measures* for the purposes of this Part.

Table

Access panels, doors and hoppers to fire-resisting shafts	Fire windows
Automatic fail-safe devices	Hose reel systems
Automatic fire detection and alarm systems	Lightweight construction
Automatic fire suppression systems	Mechanical air handling systems
Emergency lighting	Perimeter vehicle access for emergency vehicles
Emergency lifts	Portable fire extinguishers
Emergency warning and intercommunication systems	Safety curtains in proscenium openings
Exit signs	Smoke and heat vents
Fire control centres and rooms	Smoke dampers
Fire dampers	Smoke detectors and heat detectors
Fire doors	Smoke doors
Fire hydrant systems	Solid core doors
Fire seals protecting openings in fire-resisting components of the building	Standby power systems
Fire shutters	Wall-wetting sprinkler and drencher systems
	Warning and operational signs

80B Application of Part

- (1) This Part applies to all buildings other than class 1a and class 10 buildings.
- (2) In this clause, a reference to a class 1a or class 10 building:
 - (a) in the case of the erection of a new building, is a reference to a building that will be a class 1a or class 10 building when completed, and
 - (b) in the case of the rebuilding, alteration, enlargement or extension of an existing building, is a reference to an existing class 1a or class 10 building, and
 - (c) in the case of the change of building use for a building, is a reference to a building that will be a class 1a or class 10 building as a result of the change of building use.

Division 2 Fire safety schedules**80C Fire safety schedules**

- (1) When:
 - (a) granting a development consent for a change of building use (other than a complying development certificate) in circumstances in which no building work is proposed by the applicant for the consent and no building work is required by the consent authority, or
 - (b) issuing a complying development certificate for the erection of a building or for a change of building use, or
 - (c) issuing a construction certificate for proposed building work, or
 - (d) giving a fire safety order in relation to building premises,

the person doing so must issue a schedule (a fire *safety schedule*) specifying the fire safety measures (both current and proposed) that should be implemented in the building premises.

- (2) In the case of a fire safety order in respect of which a further order is made under section 121R of the Act, the fire safety schedule is to be issued when the further order is given.
- (3) A fire safety schedule:
 - (a) must deal with the whole of the building, not merely the part of the building to which the development consent, construction certificate or fire safety order relates, and
 - (b) must include:
 - (i) such of the fire safety measures currently implemented in the building premises, and
 - (ii) such of the fire safety measures proposed or required to be implemented in the building premises,as are statutory fire safety measures, and
 - (c) must distinguish between:
 - (i) the fire safety measures currently implemented in the building premises, and
 - (ii) the fire safety measures proposed or required to be implemented in the building premises, and
 - (d) must specify the minimum standard of performance for each fire safety measure included in the schedule.
- (4) A copy of the fire safety schedule must be attached to (and is taken to form part of) the relevant development consent, complying development certificate, construction certificate or fire safety order and for the purposes of an appeal forms part of the development consent or construction certificate.
- (5) An earlier fire safety schedule is superseded by a later fire safety schedule, and ceases to have effect when the later fire safety schedule is issued.

Division 3 Fire safety orders**80D Fire safety schedules and fire safety certificates**

- (1) As soon as practicable after making a fire safety order, a person must cause copies of the fire safety schedule required by clause 80C to be given to the council and to the Commissioner of New South Wales Fire Brigades.
- (2) A person to whom a fire safety order is given in relation to any building must, within the time specified in the order, cause copies of a final fire safety certificate for the building (being a certificate issued after the requirements of the order have been complied with) to be given to the person by whom the order was given (and, if that person was not the council, to the council).

Note. See also clause 80E which requires a copy of the ensuing fire safety certificate to be given to the Commissioner of New South Wales Fire Brigades.

Division 4 Fire safety certificates**80E What is a final fire safety certificate?**

- (1) A final fire safety certificate is a certificate that states that each essential fire safety measure specified in the current fire safety schedule for the building to which the certificate relates:
 - (a) has been assessed by a properly qualified person, and
 - (b) was found, when it was assessed, to be capable of performing to a standard not less than that required by the current fire safety schedule for the building for which the certificate is issued.
- (2) The assessment must have been carried out within the period of 3 months prior to the date on which the final fire safety certificate is issued.
- (3) The choice of person to carry out the assessment is up to the owner of the building.

- (4) The person who carries out the assessment:
 - (a) must inspect and verify the performance of each fire safety measure being assessed, and
 - (b) must test the operation of each new item of equipment installed in the building premises that is included in the current fire safety schedule for the building.
- (5) A final fire safety certificate issued in relation to work that has been authorised or required by a development consent, construction certificate or fire safety order need not deal with any essential fire safety measure the subject of some other final fire safety certificate issued within the previous 6 months, unless the person by whom the development consent, construction certificate or fire safety order is issued or given otherwise determines.
- (6) The person by whom the development consent, construction certificate or fire safety order is issued or given may make such a determination only if:
 - (a) the person is of the opinion that the measure will be affected by the work, and
 - (b) the person has specified in the fire safety schedule attached to the development consent, construction certificate or fire safety order that the final fire safety certificate issued in relation to the work must deal with that measure.
- (7) As soon as practicable after a final fire safety certificate is issued, the owner of the building to which it relates:
 - (a) must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Commissioner of New South Wales Fire Brigades, and
 - (b) must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

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- (8) Subclause (7) (b) ceases to apply to a final fire safety certificate only when every essential fire safety measure with which it deals has become the subject of a later fire safety certificate.

Note. A final fire safety certificate must be provided before a final occupation certificate can be issued for a building under clause 79N (1), and must also be provided if a fire safety order is made in relation to building premises.

80F What is an interim fire safety certificate?

- (1) An interim fire safety certificate is a certificate that states that each essential fire safety measure specified in the current fire safety schedule for the part of the building to which the Certificate relates:
- (a) has been assessed by a properly qualified person, and
 - (b) was found, when it was assessed, to be capable of performing to a standard not less than that required by the current fire safety schedule for the building for which the certificate is issued.
- (2) The provisions of clause 80E (2)–(8) apply to an interim fire safety certificate in the same way as they apply to a final fire safety certificate.

Note. An interim fire safety certificate (or a final fire safety certificate) must be provided before an interim occupation certificate can be issued for a building under clause 79N (2).

80G Form of fire safety certificates

A fire safety certificate is to be in Form 15.

Division 5 Miscellaneous

80H Modification and supplementation of Building Code of Australia standards

- (1) This clause applies to development the subject of:
- (a) a development application for the change of building use of an existing building where the application does not seek any alteration, enlargement or extension of the building, or

- (b) an application for a construction certificate for building work, other than building work associated with a change of building use referred to in paragraph (a).
- (2) The applicant in relation to development to which this clause applies may lodge with the consent authority or certifying authority an objection:
 - (a) that the *Building Code of Australia* (as applied by clauses 78A and 78B) does not make appropriate provision with respect to:
 - (i) the building in relation to which the change of building use is sought, or
 - (ii) the proposed building work, or
 - (b) that compliance with any specified provision of the *Building Code of Australia* (as applied by clauses 78A and 78B) is unreasonable or unnecessary in the particular circumstances of the case.

Note. This clause does not authorise the making of an objection to a condition imposed on a development consent otherwise than by operation of clauses 78A and 78B. So if a consent authority requires the provision of specified fire safety equipment, an objection to that requirement cannot be made merely because the requirement happens to be the same as a requirement imposed by the *Building Code of Australia*. Nor can it be made if the consent authority requires the development to be carried out in accordance with the *Building Code of Australia*, as the requirement then arises not from the *Building Code of Australia* (as applied by clauses 78A and 78B) but from the *Building Code of Australia* (as applied by the terms of the condition).

- (3) In the case of an objection with respect to a Category 3 fire safety provision, the objection:
 - (a) must indicate that a similar objection has been made to the Commissioner of New South Wales Fire Brigades. and
 - (b) must be accompanied by a copy of the Commissioner's determination of the objection.

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- (4) An objection may not be made with respect to a Category 1 fire safety provision by an applicant in relation to development the subject of a development application referred to in subclause (1) (a) if the application has already been determined by the granting of development consent.
 - (5) The applicant must specify the grounds of the objection and (in the case of proposed building work) must furnish the authority with a copy of the plans and specifications for the building work.
 - (6) If the consent authority or certifying authority is satisfied that the objection is well founded, it may do either or both of the following:
 - (a) it may exempt the development, either conditionally or unconditionally, from any specified provision of the *Building Code of Australia* (as applied by clauses 78A and 78B),
 - (b) it may direct that specified requirements are to apply to the proposed building work.
 - (7) A consent authority or certifying authority may not take action under this clause except with the concurrence of the Director-General of the Department of Local Government.
 - (8) The Director-General of the Department of Local Government:
 - (a) may give the consent authority or certifying authority notice that concurrence may be assumed, in relation to any particular class of objections, subject to such conditions as are specified in the notice, and
 - (b) may amend any such notice by a further notice given to that consent authority or certifying authority.
 - (9) Action taken in accordance with a notice referred to in subsection (8) is as valid as it would be if the consent authority or certifying authority had obtained the concurrence of the Director-General of the Department of Local Government.
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- (10) Concurrence is to be assumed if at least 40 days have passed since concurrence was sought and the Director-General of the Department of Local Government has not, within that period, expressly refused concurrence.
- (11) Any exemption or direction given by the consent authority or certifying authority under this clause must be given subject to, and must not be inconsistent with, any conditions to which the concurrence of the Director-General of the Department of Local Government is subject.
- (12) When granting development consent for development the subject of a development application referred to in subclause (1) (a), the consent authority must ensure that the terms of any condition referred to in subclause (6) (a) and any requirement referred to in subclause (6) (b):
 - (a) have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
 - (b) are included in the conditions attached to the development consent, in the case of a condition whose terms are not capable of being so included.
- (13) When issuing a construction certificate for building work the subject of an application referred to in subclause (1) (b), the certifying authority must ensure that the terms of any condition referred to in subclause (6) (a) and any requirement referred to in subclause (6) (b):
 - (a) have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
 - (b) are included in the conditions attached to the certificate, in the case of a condition whose terms are not capable of being so included.
- (14) Compliance with the requirement that the terms of a condition be included in the plans and specifications for building work is sufficiently complied with:
 - (a) if the plans and specifications are redrawn so as to accord with those terms, or

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- (b) if those terms are included by way of an annotation (whether by way of insertion, deletion or alteration) marked on the relevant part of those plans and specifications.

80I Exemption from fire safety standards

- (1) This clause applies to development the subject of
 - (a) a development application for the change of building use of an existing building where the application does not seek any alteration, enlargement or extension of the building, or
 - (b) an application for a construction certificate for building work, other than building work associated with a change of building use referred to in paragraph (a).

Note. This clause does not authorise the making of an objection to a condition imposed on a development consent otherwise than by operation of clauses 78A and 78B. So if a consent authority requires the provision of specified fire safety equipment, an objection to that requirement cannot be made merely because the requirement happens to be the same as a requirement imposed by the *Building Code of Australia*. Nor can it be made if the consent authority requires the development to be carried out in accordance with the *Building Code of Australia*, as the requirement then arises not from the *Building Code of Australia* (as applied by clauses 78A and 78B) but from the *Building Code of Australia* (as applied by the terms of the condition).

- (2) The applicant in relation to development to which this clause applies may lodge with the Commissioner of New South Wales Fire Brigades (the *Commissioner*) an objection that compliance with any specified Category 3 fire safety provision (as applied by clauses 78A and 78B) is unreasonable or unnecessary in the particular circumstances of the case.
- (3) The applicant must specify the grounds of the objection and (in the case of proposed building work) must furnish the Commissioner with a copy of the plans and specifications for the building work.

- (4) If the Commissioner is satisfied that the objection is well founded, the Commissioner may exempt the development, either conditionally or unconditionally, from any specified Category 3 fire safety provision (as applied by clauses 78A and 78B).
- (5) When granting development consent for development the subject of a development application referred to in subclause (1) (a), a consent authority must ensure that the terms of any condition referred to in subclause (4):
 - (a) have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
 - (b) are included in the conditions attached to the development consent, in the case of a condition whose terms are not capable of being so included.
- (6) When issuing a construction certificate for building work the subject of an application referred to in subclause (1) (b), a certifying authority must ensure that the terms of any condition referred to in subclause (4):
 - (a) have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
 - (b) are included in the conditions attached to the certificate, in the case of a condition whose terms are not capable of being so included.
- (7) Compliance with the requirement that the terms of a condition be included in the plans and specifications for building work is sufficiently complied with:
 - (a) if the plans and specifications are redrawn so as to accord with those terms, or
 - (b) if those terms are included by way of an annotation (whether by way of insertion, deletion or alteration) marked on the relevant part of those plans and specifications.

**80J Prescribed matters for inspection by NSW Fire Brigades:
section 118L (1)(b) of the Act**

For the purposes of section 118L (1) (b) of the Act, the following provisions are prescribed:

- (a) such of the provisions of Division 2A of Part 6 of the Act as relate to compliance with a fire safety order,
- (b) such of the provisions of this Part as relate to the implementation, maintenance or certification of essential fire safety measures applicable to building premises.

Part 7C Accreditation bodies and accredited certifiers**Division 1 Accreditation bodies****81 Application for authorisation**

- (1) A professional association may apply to the Minister to be authorised as an accreditation body with respect to any specified class of matters.
- (2) An application:
 - (a) must be in writing, and
 - (b) must indicate the class of matters in relation to which the association seeks to be authorised, and
 - (c) must address each of the matters in respect of which the Minister must be satisfied (as referred to in clause 81B) before the association may be authorised as an accreditation body, and
 - (d) must comply with such requirements (if any) as are contained in the Ministerial guidelines.

81A Public notice of applications

- (1) The Minister must ensure that an application is publicly notified in a daily newspaper circulating throughout New South Wales and, together with any accompanying information, is available for inspection during the period, and at the place or places, specified in the notice.

- (2) The notice:
 - (a) must indicate where a copy of the application may be inspected or obtained, and
 - (b) must indicate that any person may make submissions to the Minister with respect to the application, and
 - (c) must indicate the period of time (being not less than 28 days) within which any such submission must be made.
- (3) During the period specified in the notice, any person may inspect the application and any accompanying information and make extracts from or copies of them.
- (4) During the period specified in the notice, any person may make written submissions to the Minister with respect to the application.
- (5) In determining an application, the Minister must have regard to any submissions duly made in response to the notice.

81B Matters to be demonstrated by proposed accreditation body

- (1) A professional association is not to be authorised as an accreditation body unless the Minister is satisfied that the association:
 - (a) has sufficient resources and expertise to exercise the functions of an accreditation body, and
 - (b) in the exercise of those functions, will comply with the requirements of the Act, this Regulation and the Ministerial guidelines,in relation to the class of matters in respect of which it is to be authorised.
- (2) For the purposes of this clause, the Minister must have particular regard to the following functions of an accreditation body:
 - (a) the annual accreditation of certifiers, including procedures for establishing that applicants for accreditation:

- (i) have the qualifications or expertise to exercise the functions of an accredited certifier, and
- (ii) are covered by the required insurance (within the meaning of section 109ZN of the Act) for the whole of the period for which the certifier is to be accredited, and
- (b) the monitoring of the conduct of accredited certifiers, and
- (c) the taking of disciplinary proceedings against accredited certifiers, and
- (d) the implementation of the decisions of the Tribunal with respect to accredited certifiers, and
- (e) the maintenance of records and the provision of information concerning accredited certifiers, and
- (f) such other functions of an accreditation body as the Ministerial guidelines may specify.

81C Authorisations

- (1) As soon as practicable after authorising a professional association as an accreditation body, the Minister must cause notice of that fact to be published in the Gazette.
- (2) The notice must indicate the name of the association, the fact that it is authorised as an accreditation body, the class of matters in relation to which it is authorised and the terms of the authorisation or the place at which the terms of the authorisation may be inspected.
- (3) The authorisation takes effect on the date on which the notice is published in the Gazette.

81D Variation of authorisations

- (1) The Minister may from time to time vary the terms of an accreditation body's authorisation.
- (2) The proposal to vary the terms of an authorisation may be made by the Minister or by the accreditation body.

- (3) Clause 81A applies to a proposal to vary the terms of an accreditation body's authorisation (whether made by the Minister or by the accreditation body) in the same way as it applies to an application for authorisation as an accreditation body.
- (4) The terms of an accreditation body's authorisation may not be varied unless the Minister is satisfied (having regard to the functions referred to in clause 81B) that the accreditation body:
 - (a) has sufficient resources and expertise to exercise the functions of an accreditation body, and
 - (b) in the exercise of those functions, will comply with the requirements of the Act, this Regulation and the Ministerial guidelines,in relation to the class of matters in respect of which the accreditation body is, or (if the variation affects that class of matters) is to be, authorised.
- (5) As soon as practicable after deciding to vary the terms of an accreditation body's authorisation, the Minister must cause notice of that fact to be published in the Gazette.
- (6) The notice must indicate the name of the association, the fact that the terms of its authorisation have been varied and the terms of its authorisation (as so varied) or the place at which the terms of its authorisation (as so varied) may be inspected.
- (7) A variation of the terms of an accreditation body's authorisation takes effect on the date on which the notice is published in the Gazette.

81E Withdrawal of authorisations

- (1) If satisfied that an accreditation body:
 - (a) is in breach of its authorisation, or
 - (b) does not have sufficient resources or expertise to exercise the functions of an accreditation body, or
 - (c) has failed to comply with the requirements of the Act, this Regulation and the Ministerial guidelines,the Minister may withdraw its authorisation by means of a notice published in the Gazette.

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- (2) Before taking any action under this clause, the Minister:
 - (a) must notify the accreditation body of the action proposed by the Minister, and
 - (b) must give the accreditation body a reasonable opportunity to make submissions to the Minister with respect to the action proposed, and
 - (c) must have due regard to any submissions made by the accreditation body with respect to the action proposed.
 - (3) Withdrawal of an accreditation body's authorisation takes effect on the date on which the notice is published in the Gazette.
 - (4) On withdrawing an accreditation body's authorisation, the Minister must cause a copy of the notice to be given to the accreditation body.

81F Ministerial guidelines

- (1) The Minister may from time to time establish guidelines for the purposes of this Part (*Ministerial guidelines*) and may from time to time amend or revoke any guidelines so established.
- (2) Ministerial guidelines may deal with:
 - (a) the form and content of applications made by professional associations for authorisation as accreditation bodies, and
 - (b) any aspect of the exercise of an accreditation body's functions, and
 - (c) any other matter relating to accreditation bodies with respect to which the Minister considers that it is appropriate to establish guidelines,whether generally or in relation to particular accreditation bodies or particular classes of matters.

81G Savings and transitional provisions where authorisation ceases

- (1) This clause applies to:
 - (a) an accreditation body that ceases to exist or whose authorisation as an accreditation body is withdrawn, and
 - (b) an accreditation body that ceases to be authorised in respect of a class of matters because of a variation in the terms of its authorisation,

(referred to in either case as a *defunct accreditation body*) but, in relation to an accreditation body that ceases to be authorised in respect of a class of matters, applies only in relation to the class of matters in respect of which the accreditation body has ceased to be authorised.
- (2) Subject to action taken under the Act or this Regulation, as applied by this clause, any accreditation granted by a defunct accreditation body continues to have effect according to its terms.
- (3) If an accreditation body becomes defunct:
 - (a) the functions of the accreditation body (including the commencement and maintenance of any proceedings before the Tribunal under Division 3 of Part 4B of the Act) are to be exercised by the Minister, or by such other person as the Minister may appoint to exercise those functions, and
 - (b) the Act and this Regulation apply to the Minister, or to the person so appointed, in the same way as they previously applied to the accreditation body before it became defunct.
- (4) Without limiting subclause (3) (a), an accreditation body may be appointed to exercise the functions of another accreditation body that becomes defunct.
- (5) Neither the Minister, nor any person appointed to exercise the functions of an accreditation body, is liable for any act or omission done or omitted to be done in good faith in the exercise of those functions.

Division 2 Registers and records**81H Accreditation bodies' registers**

- (1) Each accreditation body must keep a register in relation to all accredited certifiers accredited by it.
- (2) The register must contain the following particulars for each person who is, or has at any time been, accredited by the accreditation body as a certifier:
 - (a) the person's name and the address of the person's place of business,
 - (b) the class of matters for which the person is or has been accredited,
 - (c) the date on which the person was first accredited, and the date of each occasion on which the person's accreditation has been renewed,
 - (d) the name of each insurer with whom the person has effected the required insurance within the meaning of section 109ZN of the Act, the identifying number of each relevant insurance contract and the dates between which the indemnity (other than the run-off cover) provided by the relevant insurance contract has or has had effect,
 - (e) the terms of any conditions to which the person's accreditation is or has been subject, and the dates between which any such condition has or has had effect,
 - (f) in the case of a person whose accreditation is or has been suspended, the dates between which the suspension has or has had effect,
 - (g) in the case of an accredited certifier whose accreditation has been withdrawn or has otherwise ceased to have effect, the date on which the accreditation was withdrawn or ceased to have effect, as the case requires.

- (3) An accreditation body must make its register available for inspection, free of charge, during the accreditation body's ordinary office hours.
- (4) A copy of any extracts from the register may be made on payment of a reasonable copying charge set by the accreditation body.
- (5) An accreditation body must furnish the Director-General with copies of all entries it makes in its register.
- (6) An accredited certifier must ensure that the relevant accreditation body is notified immediately of any event or circumstance that requires any alteration to be made to the information contained in the register in relation to the certifier.

81I Other documents to be kept by accreditation bodies

- (1) An accreditation body must keep copies of the following documents:
 - (a) all applications for accreditation under the Act,
 - (b) all notices received by it under the Act or this Regulation,
 - (c) all records made by it, under the Act or under this Regulation, in relation to complaints made to it under the Act,
 - (d) all reports received by it under section 109U of the Act,
 - (e) all copies of documents given to it as referred to in clause 81M (3).
- (2) Subclause (1) (e) does not require an accreditation body to keep copies of any certificate, or of any ancillary application, determination, plan, specification or other document, for more than 15 years from the date on which the certificate was issued.
- (3) An accreditation body must cause a copy of any document referred to in subclause (1) to be given to the Director-General if the Director-General so requests by notice in writing served on the accreditation body.

81J Central register

- (1) The Director-General must cause a register to be kept in relation to all accredited certifiers (a *central register*).
- (2) The central register must contain the following particulars for each person who is, or has at any time been, an accredited certifier:
 - (a) the person's name and the address of the person's place of business,
 - (b) the class of matters for which the person is or has been accredited,
 - (c) the name of the accreditation body by which the person is or has been accredited,
 - (d) the date on which the person was first accredited, and the date of each occasion on which the person's accreditation has been renewed,
 - (e) the name of each insurer with whom the person has effected the required insurance within the meaning of section 109ZN of the Act, the identifying number of each relevant insurance contract and the dates between which the indemnity (other than the run-off cover) provided by the relevant insurance contract has or has had effect,
 - (f) the terms of any conditions to which the person's accreditation is or has been subject, and the dates between which any such condition has or has had effect,
 - (g) in the case of a person whose accreditation is or has been suspended, the dates between which the suspension has or has had effect,
 - (h) in the case of an accredited certifier whose accreditation has been withdrawn or has otherwise ceased to have effect, the date on which the accreditation was withdrawn or ceased to have effect, as the case requires.

- (3) The Director-General must make the central register available for inspection, free of charge, during ordinary office hours.
- (4) A copy of any extracts from the central register may be made on payment of a reasonable copying charge set by the Director-General.
- (5) A certificate that is issued by the Director-General, being a certificate that states that on a date or during a period specified in the certificate:
 - (a) a specified person was or was not an accredited certifier in relation to a specified class of matters, or
 - (b) a specified person's accreditation as a certifier was or was not subject to specified conditions, or
 - (c) a specified person's accreditation as a certifier was or was not suspended, or
 - (d) a specified person's accreditation as a certifier was withdrawn or otherwise ceased to have effect,is admissible in any legal proceedings and is evidence of the fact or facts so stated.

81K Annual reports

- (1) As soon as practicable after 30 June, but before 31 December, in each year, an accreditation body must prepare and forward to the Minister a report of the accreditation body's work and activities under the Act for the period of 12 months ending on 30 June in that year (the *reporting year*).
- (2) An accreditation body's report must include particulars as to the following:
 - (a) the number of persons accredited by the accreditation body during the reporting year,
 - (b) the number of complaints against accredited certifiers made to the accreditation body during the reporting year,

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- (c) the action taken by the accreditation body with respect to each such Complaint, including details as to:
 - (i) the number of complaints that it has dismissed, and
 - (ii) the number of complaints in respect of which it has instituted proceedings in the Tribunal, and
 - (iii) the number of complaints that it has dealt with otherwise than as referred to in subparagraphs (i) and (ii),
 - (d) the action taken by the Tribunal with respect to each complaint in respect of which it has instituted proceedings in the Tribunal,
 - (e) the number of persons whose accreditation has been suspended or withdrawn during the reporting year, including details as to:
 - (i) the number of persons whose accreditation has been suspended as a consequence of action taken by the Tribunal with respect to a complaint, and
 - (ii) the number of persons whose accreditation has been withdrawn as a consequence of action taken by the Tribunal with respect to a complaint, and
 - (iii) the number of persons whose accreditation has been withdrawn otherwise than as a consequence of action taken by the Tribunal with respect to a complaint,
 - (f) such particulars as are required by the terms of its authorisation to be included in its report.
- (3) The Minister must cause each such report to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Division 3 Accredited certifiers

81L Grounds for refusing, withdrawing or suspending accreditation: section 109T (2) (c)

- (1) For the purposes of section 109T (2) (c) of the Act, an accreditation body may withdraw a person's accreditation as an accredited certifier if:
 - (a) the person dies, or
 - (b) the person is a mentally incapacitated person, or
 - (c) the person makes a written request to the accreditation body for the withdrawal of that person's accreditation, or
 - (d) the person's accreditation as a certifier (in whatever terms expressed) is suspended (otherwise than at that person's request) under corresponding legislation of some other State or Territory, or
 - (e) the person has been accredited on the basis of an error of fact (whether or not arising from a misrepresentation made by the person).
- (2) For the purposes of section 109T (2) (c) of the Act, an accreditation body may suspend a person's accreditation as an accredited certifier if:
 - (a) the person makes a written request to the accreditation body for the suspension of that person's accreditation, or
 - (b) the person's accreditation as a certifier (in whatever terms expressed) is suspended (otherwise than at that person's request) under corresponding legislation of the Commonwealth or of some other State or Territory.
- (3) For the purposes of section 109T (2) (c) of the Act, an accreditation body may refuse to accredit a person as an accredited certifier on any of the grounds on which it could (otherwise than at that person's request) withdraw or suspend that person's accreditation under subsection (1) or (2).

- (4) In this clause, *corresponding law* means:
- (a) the *Building Act 1975* of Queensland,
 - (b) the *Building Act 1993* of Victoria,
 - (c) the *Building Act 1993* of the Northern Territory,
 - (d) the *Development Act 1993* of South Australia.

81M Record keeping by accredited certifiers

- (1) An accredited certifier must cause copies of the following documents to be kept at his or her business premises at all times:
- (a) any application for a certificate that has been made to the accredited certifier under this Act,
 - (b) any written determination that has been made by the accredited certifier in relation to an application for a certificate under this Act,
 - (c) any certificate or other document that the accredited certifier has relied on for the purpose of issuing a certificate under this Act,
 - (d) any certificate issued by the accredited certifier under this Act,
 - (e) any plans and specifications in respect of which the accredited certifier has issued a certificate under this Act.
- (2) This clause does not require an accredited certifier to keep copies of any such certificate, or of any ancillary application, determination, plan, specification or other document, for more than 15 years from the date on which the certificate was issued.
- (3) An accredited certifier must cause a copy of any document referred to in subclause (1) to be given to the Director-General if the Director-General so requests by notice in writing served on the accredited certifier.
- (4) On ceasing to be an accredited certifier, a person must cause copies of all documents referred to in subclause (1) to be given to the relevant accreditation body.

Part 7D Insurance

Division 1 Preliminary

81N Definitions

In this Part:

associate has the same meaning as it has in the *Corporations Law*.

automatic run-off contract means an insurance contract that indemnifies an individual, a company or a partnership against an accredited certifier's statutory liability.

automatic run-off insurance scheme means a scheme under which:

- (a) single automatic run-off contracts, or numbers of identical or substantially identical automatic run-off contracts, are entered into from time to time between a number of insureds and an insurer, and
- (b) continuity of the indemnity provided to a practising insured by such a contract requires the insured and the insurer to enter into further such contracts from time to time.

certifying functions means the functions of a certifying authority under the Act.

company contract means an automatic run-off contract issued to a company.

expiry date, for an automatic run-off contract, means the date specified in the contract as the contract's expiry date.

individual contract means an automatic run-off contract issued to an individual.

non-practising insured means an insured who has been, but is no longer, an accredited certifier.

partnership contract means an automatic run-off contract issued to a partnership.

person covered by the contract, in relation to a company contract or partnership contract, means an accredited certifier to whom the indemnity provided by the contract extends.

practising insured means an insured who is an accredited certifier, and includes an accredited certifier whose accreditation is suspended for the time being.

run-off cover means the indemnity that an automatic run-off contract is required to provide, as referred to in clause 81S (1).

statutory liability means a person's liability to pay compensatory damages for breach of professional duty as an accredited certifier (whether actual or alleged) arising from:

- (a) any act or omission of the person, or
- (b) any misleading or deceptive conduct by the person (including conduct that is likely to mislead or deceive) within the meaning of:
 - (i) section 52, 53, 53A or 74 of the *Trade Practices Act 1974* of the Commonwealth, or
 - (ii) any provision of the legislation of this or any other State or Territory that corresponds to a section referred to in subparagraph (1),

while acting in the capacity of an accredited certifier, whether as an individual, as a director or employee of a company or as a partner or employee of a partnership.

Division 2 Automatic run-off contracts

81O Required insurance: section 109ZN

For the purposes of section 109ZN (2) of the Act:

- (a) an insurance contract that an accredited certifier is required to be indemnified by is an automatic run-off contract. and

- (b) the liability against which an accredited certifier is required to be indemnified by such a contract (or by a number of such contracts) is the accredited certifier's statutory liability for the whole of the period during which he or she has been an accredited certifier.

81P Individual contracts

- (1) An automatic run-off contract may provide indemnity to an individual accredited certifier.
- (2) The indemnity provided by an individual contract must extend to all acts and omissions of the person covered by the contract that have occurred at any time since the insured first became an accredited certifier.
- (3) Except as provided by clause 81S, the indemnity provided by an individual contract may be limited to those acts and omissions in respect of which a claim is made against the insured, and notified to the insurer, before the contract's expiry date.
- (4) Nothing in this clause requires an individual contract to provide indemnity for acts or omissions that occur after the contract's expiry date.
- (5) An individual contract may require the insured to notify the insurer in the event that the insured ceases to be an accredited certifier.
- (6) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

81Q Company contracts

- (1) An automatic run-off contract may provide indemnity to a company, including such of the directors or employees of the company as are accredited certifiers.
- (2) The indemnity provided by a company contract must extend to:

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- (a) all persons who, at any time during the term of the contract, are or become:
- (i) accredited certifiers, and
 - (ii) directors or employees of the company, whether or not they cease to be accredited certifiers, or cease to be directors or employees of the company, during the term of the contract, and
- (b) all persons who, at any time before the beginning of the term of the contract, had been:
- (i) accredited certifiers, and
 - (ii) directors or employees of the company, but who had ceased to be accredited certifiers, or had ceased to be directors or employees of the company, before the beginning of that term.
- (3) Each person covered by a company contract must be named in the contract.
- (4) The indemnity provided by a company contract must extend to all acts and omissions of the persons covered by the contract that have occurred, while those persons were directors or employees of the company, in the course of work carried out on behalf of the company.
- Note.** A company contract does not cover an accredited certifier for any period before he or she became a director or employee of the company. Consequently the person will need to obtain separate indemnity for that period in order to comply with the requirements of section 109ZN of the Act.
- (5) Except as provided by clause 81S, the indemnity provided by a company contract may be limited to those acts and omissions in respect of which a claim is made against the insured, and notified to the insurer, before the contract's expiry date.
- (6) Nothing in this clause requires a company contract to provide indemnity for acts or omissions that occur after the contract's expiry date.

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

- (7) A company contract may require the insured company to notify the insurer in the event that any of the insured accredited certifiers cease to be accredited certifiers or cease to be directors or employees of the company.
- (8) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

81R Partnership contracts

- (1) An automatic run-off contract may provide indemnity to a partnership, including such of the partners or employees of the partnership as are accredited certifiers.
- (2) The indemnity provided by a partnership contract must extend to:
 - (a) all persons who, at any time during the term of the contract, are or become:
 - (i) accredited certifiers, and
 - (ii) partners or employees of the partnership, whether or not they cease to be accredited certifiers, or cease to be partners or employees of the partnership, during the term of the contract, and
 - (b) all persons who, at any time before the beginning of the term of the contract, had been:
 - (i) accredited certifiers, and
 - (ii) partners or employees of the partnership, but who had ceased to be accredited certifiers, or had ceased to be partners or employees of the partnership, before the beginning of that term.
- (3) Each person covered by a partnership contract must be named in the contract.
- (4) The indemnity provided by a partnership contract must extend to all acts and omissions of the persons covered

by the contract that have occurred, since those persons first became partners or employees of the partnership, in the course of work carried out on behalf of the partnership.

Note. A company contract does not cover an accredited certifier for any period before he or she became a director or employee of the company. Consequently the person will need to obtain separate indemnity for that period in order to comply with the requirements of section 109ZN of the Act.

- (5) Except as provided by clause 81S, the indemnity provided by a partnership contract may be limited to those acts and omissions in respect of which a claim is made against the insured, and notified to the insurer, before the contract's expiry date.
- (6) Nothing in this clause requires a partnership contract to provide indemnity for acts or omissions that occur after the contract's expiry date.
- (7) A partnership contract may require the insured partnership to notify the insurer in the event that any of the insured accredited certifiers cease to be accredited certifiers or cease to be partners or employees of the partnership.
- (8) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

81S Run-off cover

- (1) If by the expiry date of an automatic run-off contract:
 - (a) in the case of an individual contract, the person covered by the contract is or has become a non-practising insured, or
 - (b) in the case of a company contract, any of the persons covered by the contract is or has become a non-practising insured, or
 - (c) in the case of a partnership contract, any of the persons covered by the contract is or has become a non-practising insured,

the indemnity provided by the contract must extend to all of the person's acts or omissions in respect of which a claim is made against the insured, and notified to the insurer, after the contract's expiry date.

Note. Because of the operation of subclause (2) (a), subclause (1) operates, in relation to company contracts and partnership contracts, only with respect to the last of a series of such contracts, for the indemnity provided to a non-practising insured under an earlier contract is preserved by any replacement contract, unlike the case of an individual contract in respect of which the indemnity provided to a non-practising insured remains with the contract in force at the time the person concerned became a non-practising insured.

- (2) Subclause (1) does not require the indemnity provided by an automatic run-off contract to extend to any of a person's acts or omissions:
 - (a) in respect of which a claim is made against the insured, and notified to the insurer, while some other automatic run-off contract (whether or not a replacement contract) is in force with respect to that person's statutory liability for that act or omission, or
 - (b) in the case of a company contract or partnership contract, that have occurred otherwise than in the course of work carried out by the person on behalf of the company or partnership.
- (3) An automatic run-off contract must provide the indemnity referred to in subclause (1) free of charge and without the need for any request.

81T Extent of indemnity for costs and expenses

- (1) An automatic run-off contract must indemnify the insured for costs and expenses incurred by the insured, with the consent of the insurer, in defending or settling any such claim.
- (2) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

81U Excess

- (1) An automatic run-off contract must not require the insured to bear a greater proportion of the liability under any single claim than the prescribed excess.
- (2) Nothing in this clause prevents an automatic run-off contract from providing for a counter-indemnity from the insured to the insurer.
- (3) In this clause:
prescribed excess, in relation to a claim paid by an insurer under an automatic run-off contract, means:
 - (a) \$5,000, or
 - (b) 5 per cent of the insured's gross income during the financial year preceding the beginning of the term of the contract,

whichever is the greater.

financial year means the period of 12 months ending 30 June.

81V Limit of indemnity as to compensation

- (1) An automatic run-off contract may limit the indemnity provided to an insured (being an individual), with respect to all claims made by the insured under the contract in any one year, to an amount of not less than \$1,000,000.
- (2) For an insured that is a company, an automatic run-off contract must indemnify the company, with respect to all claims made by the company under the contract in any one year, for not less than the amount calculated by multiplying \$1,000,000 by:
 - (a) the number of accredited certifiers who are directors or employees of the company as at the date on which the contract is issued, or
 - (b) if the contract is the fourth or subsequent contract issued to the company, whether by the same or by another insurer, the average number of accredited certifiers who have been directors or employees of the company at any one time during the previous 3 years.

- (3) For an insured that is a partnership, an automatic run-off contract must indemnify the partnership, with respect to all claims made by the partnership in any one year under the contract, for not less than the amount calculated by multiplying \$1,000,000 by:
 - (a) the number or accredited certifiers who are partners or employees of the partnership as at the date on which the contract is issued, or
 - (b) if the contract is the fourth or subsequent contract issued to the partnership, whether by the same or by another insurer, the average number of accredited certifiers who have been partners or employees of the partnership at any one time during the previous 3 years.
- (4) Nothing in subclause (2) or (3) requires the indemnity provided by an automatic run-off contract, with respect to all claims made by a company or partnership in any one year under the contract, to be for an amount greater than \$10,000,000.
- (5) An automatic run-off contract must contain at least one automatic reinstatement of the indemnity provided by it.

81W Limitation of indemnity as to costs and expenses

- (1) The indemnity provided to an insured by an automatic run-off contract in relation to the insured's costs may be limited in respect of any one claim to such amount as does not exceed:
 - (a) 20 per cent of the insurer's maximum liability, or
 - (b) an amount calculated by dividing the product of the insured's costs and the insurer's maximum liability by the settlement amount,whichever is the lesser.
- (2) In this clause:

insured's costs, in relation to a claim, means the costs and expenses incurred by the insured, with the consent of the insurer, in defending or settling the claim.

insurer's maximum liability in relation to an automatic run-off contract, means the limit of the insurer's indemnity under the contract in respect of any single claim.

settlement amount, in relation to a claim, means the amount required to settle the claim (disregarding the insured's costs).

Division 3 Exceptions and exclusions

81X Insured becomes re-accredited

- (1) An automatic run-off contract may provide:
 - (a) that the insurer ceases to be liable to provide run-off cover to a non-practising insured if the insured is re-accredited as a certifier, and
 - (b) that if the insured becomes a non-practising insured and, within 2 years after becoming a non-practising insured, is re-accredited as a certifier, the insured must pay to the insurer an amount equivalent to the insurance premiums that the insured for which he or she would have been liable had he or she remained a practising insured during that period.
- (2) A non-practising insured under an automatic run-off contract who becomes re-accredited as a certifier-must cause the insurer under that contract to be notified of that fact.

Maximum penalty: 10 penalty units.

81Y Non-practising insured engages in employment with certifying authority

- (1) This clause applies to a person who is a non-practising insured, who is an employee of a certifying authority and who is employed to exercise certifying functions for and on behalf of the authority.
- (2) An automatic run-off contract may require periodic insurance premiums to be paid in respect of a person to whom this clause applies, after the contract's expiry date, for the run-off cover provided by that contract.

- (3) No such premium may be required to be paid after the expiration of 10 years after finalisation of the building work or subdivision work with which the person was most recently involved.
- (4) A non-practising insured under an automatic run-off contract who becomes a person to whom this clause applies must cause the insurer to be notified of that fact.
Maximum penalty: 10 penalty units.
- (5) For the purposes of this clause, building work is taken to have been finalised:
 - (a) on the date on which the relevant occupation certificate is issued, or
 - (b) in the case of building work for which no occupation certificate is issued, the expiration of 10 years from:
 - (i) the last date on which the building work was inspected by a certifying authority, or
 - (ii) if no such inspection has been conducted, the date on which that part of the building in relation to which the building work was carried out is first occupied or used.
- (6) For the purposes of this clause, subdivision work is taken to have been finalised:
 - (a) in the case of work completed before the relevant subdivision certificate is issued, on the date on which that certificate is issued, or
 - (b) in the case of subdivision work completed after the relevant subdivision certificate is issued, on the date on which the compliance certificate that certifies that the work has been completed is issued.

81Z Buildings for which no occupation certificate issued

An automatic run-off contract may provide that the indemnity provided by the contract does not apply to any claim made against the insured in relation to building

work in respect of which no occupation certificate has been issued unless the claim is made against the insured, and notified to the insurer, before the expiration of 10 years from:

- (a) the last date on which the building work was inspected by a certifying authority, or
- (b) if no such inspection has been conducted, the date on which that part of the building in relation to which the building work was carried out is first occupied or used.

Note. Section 109M (2) of the Act provides that, in certain circumstances, a building in respect of which building work has been carried out may be occupied and used without an occupation certificate having been issued in relation to that work. In these circumstances, section 109ZK of the Act does not bar the taking of legal action in relation to that work in the way it bars the taking of legal action in relation to other building work.

81AA Standard exclusions

Nothing in this Part prevents an automatic run-off contract from containing exceptions and exclusions (not inconsistent with this Part) of a kind that, in accordance with standard practice, are generally included in insurance contracts of the same kind.

Division 4 Inactive insurers

81BB Insurer becomes inactive

- (1) This clause applies to an insurer under an automatic run-off insurance scheme:
 - (a) if a substantial proportion of the practising insureds under the scheme decide that they will no longer enter into insurance contracts under the scheme, or
 - (b) if the insurer decides that it will no longer issue any insurance contracts under the scheme otherwise than because a substantial proportion of the practising insureds under the scheme have not entered into insurance contracts under the scheme.

- (2) An automatic run-off contract may provide that the run-off cover provided by the contract to non-practising insureds will cease if the insurer becomes an insurer to which this clause applies.
- (3) Within 7 days after the run-off cover provided by an automatic run-off contract to non-practising insureds ceases as a consequence of a provision referred to in subclause (2), the insurer must cause notice of that fact:
 - (a) to be notified to each accreditation body responsible for accredited certifiers of that class, and
 - (b) to be published, on 2 separate occasions:
 - (i) in at least one daily newspaper circulating throughout Australia, and
 - (ii) in at least one other daily newspaper circulating throughout New South Wales.

Maximum penalty: 100 penalty units.

81CC Replacement contracts under different schemes

- (1) An insurer that enters into, or offers to enter into, an automatic run-off contract under a replacement automatic run-off insurance scheme must offer run-off cover to all of the non-practising insureds under that scheme.

Maximum penalty: 100 penalty units

- (2) For the purposes of this clause
 - (a) a replacement automatic run-off insurance scheme is a scheme whose automatic run-off contracts provide indemnity of substantially the same kind and amount, and to substantially the same class of persons, as the automatic run-off contracts under an earlier automatic run-off insurance scheme, and
 - (b) a person is a non-practising insured under an automatic run-off insurance scheme if the person is a non-practising insured under any of the automatic run-off contracts that have been entered into under that scheme.

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- (3) It is relevant to the decision as to whether an automatic run-off insurance scheme is a replacement automatic run-off insurance scheme that the scheme is promoted:
- (a) by the same person, or by an associate of the same person, as the person by whom an earlier automatic run-off insurance scheme was promoted, or
 - (b) under the same description, or under a similar description, as the description under which an earlier automatic run-off insurance scheme was promoted.

81DD Return of inactive insurers to the market

- (1) An insurer that has left the market must not re-enter it within 3 years after having left it unless, not later than 14 days before re-entering it, it has caused notice of its intention to do so to be published in at least one daily newspaper circulating throughout Australia.
- Maximum penalty: 100 penalty units.
- (2) The notice must indicate that the insurer is willing to provide run-off cover, free of charge, to all eligible persons who request the insurer to provide such cover.
- (3) An insurer that re-enters the market within 3 years after having left it must provide run-off cover, free of charge, to all eligible persons who request the insurer to provide such cover.
- Maximum penalty: 100 penalty units.
- (4) For the purposes of this clause:
- (a) an insurer *leaves the market* if the insurer ceases to issue automatic run-off contracts under an automatic run-off insurance scheme in the circumstances referred to in clause 81 BB (1)(b), and
 - (b) an insurer *re-enters the market* if the insurer enters into, or holds itself out as being willing to enter into, an automatic run-off contract of the same kind as those it ceased to issue when it left the market, and

- (c) a person is an *eligible person*, in relation to an insurer who has left the market, if he or she is a person:
 - (i) who, when the insurer left the market, was a non-practising insured under an automatic run-off contract with the insurer, or
 - (ii) who (when the insurer left the market) was a practising insured, who has subsequently ceased to be an accredited certifier but who has not subsequently been an insured under some other automatic run-off contract.

Division 5 General

81EE Insurers to notify accreditation bodies of certain events

- (1) An insurer under an automatic run-off contract must cause notice of the following events to be given to each accreditation body responsible for the accredited certifiers covered by the contract:
 - (a) the cancellation of an individual contract,
 - (b) the removal of an accredited certifier's name from a company contract or partnership contract,
 - (c) the insurer's refusal to issue a replacement automatic run-off contract naming a particular accredited certifier as an insured where an application for the issue of such a contract has been made to the insurer,
 - (d) the insurer's failure to issue a replacement automatic run-off contract naming a particular accredited certifier as an insured arising from the fact that no application for the issue of such a contract has been made to the insurer,
 - (e) the settlement of any claim made against the insurer under an automatic run-off contract, together with such details of the settlement as are not the subject of a confidentiality agreement between the parties to the settlement.

Maximum penalty: 100 penalty units.

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- (2) The notice is to be given:
- (a) in the case of action taken by the insurer, at the same time as the action is taken, and
 - (b) in the case of action taken by the insured, within 14 days after the action is taken.

Part 7E Accreditation of components, processes and designs

81FF Definition

In this Part, *Director-General* means the Director-General of the Department of Local Government.

81GG Applications for accreditation

- (1) Any person may apply to the Director-General for the accreditation of any component, process or design relating to the erection or demolition of a building.
- (2) An application for accreditation:
 - (a) must be in the form determined by the Director-General and must be accompanied by the information required by that form, and
 - (b) must be accompanied by the fee determined by the Director-General.
- (3) The Director-General may require the applicant to furnish any additional information concerning the component, process or design to which the application relates (including information describing any relevant method of installation, attachment or construction) that is essential to the Director-General's proper consideration of the application.
- (4) The Director-General may refuse to consider an application but in that event must refund the fee paid.

81HH Determination of application

- (1) The Director-General may determine an application for accreditation of a component, process or design:
 - (a) by accrediting the component, process or design, or
 - (b) by refusing the application.
- (2) Accreditation may be granted subject to such conditions and qualifications, and for such period, as the Director-General thinks fit.
- (3) In determining an application for accreditation, the Director-General may have regard to sources of information published or otherwise made available by such persons or bodies as the Director-General considers appropriate.
- (4) In granting accreditation, the Director-General must state the provisions of any instrument (such as a statutory rule, standard, specification or code of practice) which the accredited component, process or design satisfies or with which the accredited component, process or design complies.

81II Revocation of accreditation

- (1) The Director-General may at any time revoke accreditation of a component, process or design if the Director-General finds that:
 - (a) the accreditation has been obtained by fraud, misrepresentation or concealment of facts, or
 - (b) the standard of the component, process or design:
 - (i) is unsatisfactory, or
 - (ii) differs from or fails to comply with the standard of that component, process or design as at the time the accreditation was granted, or
 - (c) an accreditation granted in any place outside New South Wales in respect of the component, process or design has been revoked or cancelled.

- (2) If the Director-General determines to revoke an accreditation, the Director-General must notify the applicant for accreditation of the Director-General's determination.

81JJ Councils to be informed of accreditation and revocation

The Director-General must notify the Minister and each council of the accreditation of a component, process or design and of the revocation of any such accreditation as soon as practicable after the accreditation is granted or revoked, as the case requires.

81KK Application for extension or renewal of accreditation

- (1) The person on whose application a component, process or design has been accredited may apply to the Director-General for an extension or renewal of the accreditation.
- (2) This Part applies:
 - (a) to an application under this clause in the same way as it applies to an application for accreditation, and
 - (b) to the extension or renewal of an accreditation in the same way as it applies to an accreditation.

81LL Register of accreditations

- (1) The Director-General must ensure that a register is kept of the components, processes and designs that are accredited under this Part.
- (2) The Director-General must make the register available for inspection, free of charge, during ordinary office hours.
- (3) A copy of any extracts from the register may be made on payment of a reasonable copying charge set by the Director-General.

[7] Parts 9 and 10

Omit the Parts. Insert instead:

Part 9 Fees and charges

Division 1 Fees for development applications

92 What is the maximum fee?

The fee for a development application must not exceed the maximum amount determined in accordance with this Division.

93 What is the fee for a development application?

- (1) The maximum fee for development involving the erection of a building, the carrying out of work or the demolition of a work or a building, and having an estimated cost within the range specified in the Table to this clause is calculated in accordance with that Table.

Table

Estimated cost	Maximum fee payable
Less than \$250,000	\$170, plus an additional \$3 for each \$1,000 (or part of \$1,000) of the estimated cost.
\$250,000-\$500,000	\$1,000, plus an additional \$1.70 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$250,000.
\$500,001-\$1,000,000	\$1,425, plus an additional \$1 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$500,000.
\$1,000,001-\$10,000.00	\$1,975, plus an additional \$0.80 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$1,000,000.
More than \$10,000,000	\$9,475, plus an additional \$0.55 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$10,000,000.

-
- (2) Despite subclause (1), the maximum fee payable for development for the purpose of one or more advertisements is:
- (a) \$215, plus \$70 for each advertisement in excess of one, or
 - (b) the fee calculated in accordance with the Table, whichever is the greater.
- (3) The fees determined under this clause do not apply to development for which a fee is payable under clause 94 or 95.

94 Development involving the erection of a dwelling-house with an estimated construction cost of \$100,000 or less

A maximum fee of \$115 is payable for development involving the erection of a dwelling-house with an estimated cost of construction of \$100,000 or less.

95 Development involving the erection of a building for the purposes of a hospital, school or police station by a public authority

- (1) A maximum fee of \$115 is payable for development involving the erection of a building for the purposes of a hospital, school or police station if the development application is made by a public authority.
- (2) The consent authority is entitled to be reimbursed by the public authority to the extent to which the fee does not reimburse it for its costs in dealing with the application.
- (3) The amount payable by the public authority is to be determined by agreement between the consent authority and the public authority, but must not exceed the maximum fee that would be applicable for an application made otherwise than a public authority.

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

96 Development involving the subdivision of land

The maximum fee payable for development involving the subdivision of land is calculated in accordance with the Table to this clause.

Table

New road	\$500 plus \$50 per additional lot
No new road	\$250 plus \$40 per additional lot
Strata	\$250 plus \$50 per additional lot

97 Development not involving the erection of a building, the carrying out of a work, the subdivision of land or the demolition of a building or work

A maximum fee of \$170 is payable for development that does not involve the erection of a building, the carrying out of a work, the subdivision of land or the demolition of a building or work.

98 Minimum fee for designated development

Despite the provisions of this Division, a consent authority may charge a minimum fee of \$555 for designated development.

99 What additional fees are payable for development that requires advertising?

- (1) In addition to any other fees payable under this Division, a consent authority may charge up to the following maximum fees for the giving of the notice required for the development:
 - (a) \$1,665, in the case of designated development,
 - (b) \$830, in the case of advertised development,
 - (c) \$830, in the case of prohibited development,

- (d) \$830, in the case of development for which an environmental planning instrument or development control plan requires notice to be given otherwise than as referred to in paragraph (a), (b) or (c).
- (2) The consent authority must refund so much of the fee paid under this clause as is not spent in giving the notice.

100 What additional fees are payable for integrated development?

- (1) An additional fee of \$250 for each approval body is payable in respect of an application for integrated development.
- (2) The consent authority must forward the fee to the approval body at the same time at which it forwards a copy of the development application to the approval body under clause 52A.

101 What if two or more fees are applicable to a single development application?

If two or more fees are applicable to a single development application (such as an application to subdivide land and erect a building on one or more lots created by the subdivision), the maximum fee payable for the development is the sum of those fees.

102 How is a fee based on estimated cost determined?

- (1) In determining the fee for development consisting of the erection of a building, the carrying out of a work or the demolition of a building or work, the consent authority must make its determination by reference to a genuine estimate of the construction costs of the building or work or the costs of demolition.
- (2) The estimate must, unless the consent authority is satisfied that the estimated cost indicated in the development application is neither genuine nor accurate, be the estimate so indicated.

103 Determination of fees after development applications have been made

- (1) The determination of a fee to accompany a development application must be made before, or within 14 days after, the application is lodged with the consent authority.
- (2) A determination made after the lodging of a development application has no effect until notice of the determination is given to the applicant.
- (3) A consent authority may refuse to consider a development application for which a fee has been duly determined and notified to the applicant but remains unpaid.

Division 2 Other fees and charges

104 What is the fee for a request for a review of a determination?

The fee under section 82A (3) for a request for a review of a determination is \$500.

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

- (1) The maximum fee for an application under section 96 (1) of the Act for the modification of a development consent is:
 - (a) if the fee for the original application was less than \$100, 50% of that fee, or
 - (b) in all other cases, 50% of the fee for the original application or \$350, whichever is the lesser.
- (2) The fee for an application under section 96 (2) of the Act for the modification of a development consent is:
 - (a) if the fee for the original application was less than \$100, 50% of that fee, or
 - (b) in all other cases, \$100 or 50% of the fee for the original application, whichever is the greater,

plus an additional amount of not more than \$500 if notice of the application is required to be given under section 96 (2) of the Act.

- (3) The consent authority must refund so much of the additional amount as is not spent in giving the notice under section 96 (2) of the Act.
- (4) In this clause:
 - (a) a reference to an original development application is a reference to the development application that resulted in the granting of the consent to be modified, and
 - (b) a reference to the fee for the original development application does not include a reference to any fee under clause 99 that was payable for the giving of notice.
- (5) This clause does not apply to an application for the modification of a development consent granted by the Land and Environment Court on appeal from some other consent authority.

Note. The *Land and Environment Court (Fees) Regulation 1994* provides for the payment of fees in connection with applications made to the Land and Environment Court under section 102 of the Act.

106 What is the fee for a planning certificate?

- (1) The prescribed fee for the issue of a certificate under section 149 (2) of the Act is \$40.
- (2) A council may charge one additional fee of not more than \$60 for any advice given under section 149 (5) of the Act.

107 What is the fee for a building certificate?

- (1) For the purposes of section 149B (2) of the Act, the fee for an application for a building certificate in relation to a building is:
 - (a) in the case of a class 1 building (together with any class 10 buildings on the site) or a class 10 building—\$50 for each dwelling contained in the building or in any other building on the allotment, or

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

- (b) in the case of any other class of building—as set out in the following Table:

Table

Floor area of building or part	Fee
Not exceeding 200 square metres	\$50
Exceeding 200 square metres but not exceeding 2 000 square metres	\$50, plus an additional 10 cents per square metre over 200
Exceeding 2 000 square metres	\$230, plus an additional 1.5 cents per square metre over 2 000

- (c) in any case where the application relates to a part of a building and that part consists of an external wall only or does not otherwise have a floor area—\$50.
- (2) If it is reasonably necessary to carry out more than one inspection of the building before issuing a building certificate, the council may require the payment of an additional fee (not exceeding \$25) for the issue of the certificate. However, the council may not charge an additional fee for any initial inspection.
- (3) In this clause, a reference to a class 1 building includes a reference to a class 2 building that comprises 2 dwellings only.

108 What is the fee for a certified copy of a document, map or plan held by the department or a council?

The prescribed fee for a certified copy of a document, map or plan referred to in section 150 (2) of the Act is \$40.

109 What other fees and charges may be imposed by this Act?

The maximum charge or fee that may be imposed under section 137 (1) of the Act is:

- (a) the amount determined by the Director (either generally or in any particular case or class of cases), having regard to the cost to the Minister, corporation, Department or director of doing anything referred to in that subsection, or
- (b) if there is not a relevant determination in force, 120 per cent of the cost to the Minister, corporation, Department or Director of doing anything referred to in that subsection.

Note. It is not proposed to prescribe any fees for Part 4A certificates. The fees for Part 4A certificates, if issued by a council or another consent authority, will be determined by the council or the consent authority.

Part 10 Registers and other records**109A Council to maintain a register of development applications and consents**

- (1) A council must maintain a register containing details of the following matters for each development application that is either made to it as the consent authority or furnished to it in cases where it is not the consent authority:
 - (a) the registered number of the application,
 - (b) the date when the application was made,
 - (c) the amount of any fee payable in connection with the application,
 - (d) the date or dates when any such fee, or any part of such fee, was paid,
 - (e) the date when the application was determined.

- (2) The register must also contain details of the following matters for each development consent:
- (a) the name and address of the person to whom the consent was granted,
 - (b) the address of the land to which the consent relates,
 - (c) the date when the consent was granted,
 - (d) a brief description of the subject-matter of the consent, including a statement as to the nature of the development (residential, commercial, industrial or other),
 - (e) any conditions to which the consent is subject,
 - (f) the duration of the consent,
 - (g) the date when the consent became effective,
 - (h) whether the consent has been revoked, modified or surrendered,
 - (i) the date when any notice was published in respect of the consent as referred to in section 101 of the Act,
 - (j) the date of issue of any related construction certificates.
 - (k) the date of commencement of building or subdivision work the subject of the consent,
 - (l) the name and accreditation number of the principal certifying authority appointed in relation to a consent involving building or subdivision work.
 - (m) in the case of a consent concerning residential building work (within the meaning of the *Home Building Act 1989*) the names of licensees and owner-builders, the names of the approved insurers (where relevant) of the licensees under Part 6 of the *Home Building Act 1989* and the numbers endorsed on contractor licences and permits of which the council is informed under the requirements of this Regulation,

-
- (n) the date of issue of any related subdivision or occupation certificate,
 - (o) any approvals taken, by section 78A of the Act, to have been granted under the *Local Government Act 1993*,
 - (p) any approvals under an Act that were considered as part of the integrated development process.
- (3) The register must contain the following indexes of the development consents referred to in subclause (2):
- (a) an index prepared by reference to the address of the land to which each development relates,
 - (b) an index prepared by reference to the chronological order of the granting of each development consent.
- (4) The register is to be kept in the form of a book, in loose-leaf form, or in the form of an electronic data retrieval system.
- (5) The register under this clause is the register prescribed for the purposes of section 100 of the Act.

109B Council to maintain a register of complying development applications

- (1) A council must maintain a register containing details of the following matters for each complying development certificate whether or not the council is the certifying authority:
- (a) the date when the application was made,
 - (b) the name and address of the person making the application,
 - (c) the address of the land to which the certificate relates,
 - (d) the date when the certificate was granted or refused.

- (e) if the certificate was granted or refused by an accredited certifier, the name and accreditation number of the accredited certifier,
 - (f) the date of commencement of building or subdivision work the subject of the certificate,
 - (g) the name and accreditation number of the principal certifying authority appointed in relation to the building or subdivision work the subject of the certificate,
 - (h) in the case of a certificate concerning residential building work (within the meaning of the *Home Building Act 1989*) the names of licensees and owner-builders, the names of the approved insurers (where relevant) of the licensees under Part 6 of the *Home Building Act 1989* and the numbers endorsed on contractor licences and permits of which the council is informed under the requirements of this Regulation,
 - (i) the date of issue of any related subdivision or occupation certificate,
 - (j) the date on which notice of the granting of the certificate was published under section 101 of the Act.
- (2) The register must contain the following indexes of the complying development certificates referred to in subclause (1):
- (a) an index prepared by reference to the address of the land to which each certificate relates,
 - (b) an index prepared by reference to the chronological order of the granting of each certificate.
- (3) The register is to be kept in the form of a book, in loose-leaf form, or in the form of an electronic data retrieval system.
- (4) The register under this clause is the register prescribed for the purposes of section 100 of the Act.

109C Council to keep certain documents relating to development applications and consents

- (1) A council must keep the following documents for each development application made to it and each development consent resulting from a development application made to it:
- (a) a copy of the development application,
 - (b) a copy of the relevant section 81 notice to the applicant,
 - (c) a copy of any instrument by which some other development consent or existing use right has been modified or surrendered,
 - (d) a copy of the decision of the Land and Environment Court, in the case of a development consent granted by the Court on appeal from the determination of the council,
 - (e) a copy of the Minister's determination of the application, in the case of an application determined by the Minister for State significant development or an application determined by the Minister under section 80 (7) of the Act,
 - (f) a copy of any recommendations made by relevant employees of the council with respect to the determination of the application,
 - (g) if the development consent has been revoked, modified or surrendered, a copy of the instrument of revocation, modification or surrender,
 - (h) if a notice has been published in respect of the development consent as referred to in section 101 of the Act, a copy of the page of the newspaper in which the notice was published,
 - (i) a copy of the notification of the determination to issue a construction certificate relating to the consent and a copy of the certificate and any related plans, specifications and any other documents that were forwarded to the council,

- (j) a copy of the notification of the appointment of the principal certifying authority and the notification of the commencement of building or subdivision work relating to the development the subject of the consent,
 - (k) a copy of the notification of the determination of an application for an occupation certificate relating to any building the subject of the consent,
 - (l) a copy of the notification of the determination of an application for a subdivision certificate relating to any subdivision the subject of the consent and the endorsed plan of subdivision,
 - (m) a copy of the notification of the determination of any application for a compliance certificate relating to the development the subject of the consent and any relevant plans and specifications and other documents relating to the compliance certificate,
 - (n) a copy of a decision of the Land and Environment Court in the case of an occupation certificate, subdivision certificate or construction certificate issued by the Court on appeal from a determination of the council,
 - (o) details of approved alternative solutions relating to construction certificates or compliance certificates together with details of the assessment methods used to establish compliance with the relevant performance requirements.
- (2) A council must keep the documents referred to in subclause (1) that are furnished to it in accordance with this Regulation by any other consent authority or certifying authority in those cases where the council is not the consent authority or certifying authority.

109D Council to keep certain documents relating to complying development certificates

A council must keep the following documents for each application for a complying development certificate

109E Council to keep certain records available for public inspection

- (1) A council must make the following documents available for inspection at its principal office, free of charge, during the council's ordinary office hours:
 - (a) the registers kept under clauses 109A and 109B,
 - (b) the documents kept under clauses 109C and 109D.
- (2) A copy of any extracts from the registers or a copy of any of the other documents may be made on payment of a reasonable copying charge set by the council.
- (3) Nothing in this clause confers a right or entitlement to inspect, make copies of or take extracts from so much of a document that, because of section 12 (1A) of the *Local Government Act 1993*, a person does not have the right to inspect.

[8] Clause 112A

Insert after clause 112:

112A Application for building certificate

- (1) An application for a building certificate is to be in Form 16.
- (2) An application for a building certificate in relation to the whole or a part of a building may be made to the council by:
 - (a) the owner of the building or part or any other person having the owner's consent to make the application, or
 - (b) the purchaser under a contract for the sale of property, which comprises or includes the building or part, or the purchaser's solicitor or agent, or
 - (c) a public authority that has notified the owner of its intention to apply for the certificate.
- (3) An application must be accompanied by the prescribed fee.

-
- (4) Despite subclause (2) (a), the consent in writing of the owner of the building or part is not required if the applicant is a public authority and the public authority has, before making the application, served a copy of the application on the owner.
- (5) A building certificate is to be in Form 16.

[9] Schedule 5, Forms

Insert after the Note at the beginning of Schedule 5:

In this Schedule, an acronym or expression specified in the following Table has, where used in a Form set out in this Schedule, the meaning specified opposite the acronym or expression in the Table.

Table

acronym or expression	meaning
EPI	Environmental planning instrument
SEPP	State environmental planning policy
REP	Regional environmental plan
LEP	Local environmental plan
DCP	Development control plan
CDC	Complying development certificate
BCA	Building Code of Australia
Class 1a. 10	Class of building under the Building Code of Australia
DP	Deposited plan
SP	Strata plan
MPS	Miscellaneous plan of subdivision
Vol/Fol	Volume/Folio
No	Number
Fax	Facsimile
EIS	Environmental impact statement
cl	Clause
ss	Sections

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

Omit Forms 1–8. Insert instead:

Form1

Application for development
made under the Environmental Planning and Assessment Act 1979
Section 78A

applicant

name
address
contact no (telephone/fax)

land to be developed

address
lot no. DP/MPS. etc vol/fol

or
 map(s) attached (see note 1)

proposed development

type

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

description (eg residential
flat building)

proposed use

estimated cost (see note 2)

**approvals under s 68
Local Government Act
1993**

does this application seek
approval for one or more of the
approvals listed in the note
s 78A (3)?

to
yes no

list approvals sought

information to be submitted
(see note 3)

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

integrated development

is this application for integrated development? yes no

list other approvals required to be obtained (see note 4)

Fisheries Management Act 1994 s 144 s 201 s 205
Heritage Act 1977 s 58
Mine Subsidence Compensation Act 1961 s 15
National Parks and Wildlife Act 1974 s 90
Pollution Control Act 1970 s 17A s 17C s 17D s 17I
Rivers and Foreshores Improvement Act 1948 Part 3A
Roads Act 1993 s 138
Waste Minimisation and Management Act 1995 s 44
Water Act 1912 s 10 s 13A s 18F s 20B
 30CA s 20L s Part 16

construction certificate

is a construction certificate application to be lodged at the same time as the application for development consent? yes no

information to be submitted Where yes Form 11 must be completed and lodged with the application

type of consent

(if applicable) deferred commencement
 staged development

required attachments

- 3 copies of plan of land (see note 5)
- 3 copies of plans/drawings of proposed development (see note 6)
- 1 copy of plan for purposes of clause 48B of the *Environmental Planning and Assessment Regulation 1994* (see note 7)
- other information (see note 8)
- application fee

environmental impact

(for designated development) or (for other development) or
 an environmental impact statement (EIS) is attached
 a statement on environmental effects is attached (see note 9)
 the proposed development is considered to have negligible effect

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

other attachments

- additional material requested by consent authority (see note 10)
- additional material submitted by applicant (see note 11)
- details of any prior stage consent granted

long service levy

see note 12

consent of all owner(s)

signature(s)

(required if the applicant is not the owner of the land)

As the owner of the above property, I/we consent to this application.
(see note 13)

name(s)

date

signed by applicant

or person signing on behalf of applicant - please state in what capacity

signature(s)

name, if not applicant

capacity, if not applicant

date

____/____/____

Notes for completing Development Application

- Note 1 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 2 In the case of a building or work, the fee is based on the estimated cost.
- Note 3 The application must be accompanied by such matters as would be required under s 81 of the Local Government Act 1993 if approval was to be sought under that Act
- Note 4 An application for Integrated development must include:
 - a) sufficient information for the approval body to make an assessment of the application by an additional fee for each approval hold as determined by cl 100 of the Regulation
 - additional copies of plans as determined by the consent authority
- Note 5 A plan of the land must indicate:
 - a) location, boundary dimensions, site area and north point of the land
 - b) existing vegetation and trees on the land
 - c) location and uses of existing buildings on the land
 - d) existing levels of the land in relation to buildings and roads
 - e) location and uses of buildings on sites adjoining the land.

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

-
- Note 6 Plans or drawings describing the proposed development must indicate (where relevant):
- a) 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
 - b) floor plans of proposed buildings showing layout, partitioning, room sizes and intended uses of each part of the building
 - c) elevations and sections showing proposed external finishes and heights
 - d) proposed finished levels of the land in relation to buildings and roads
 - e) building perspectives, where necessary to illustrate the proposed building
 - f) proposed parking arrangements, entry and exit points for vehicles, and provision for movement of vehicles within the site (including dimensions where appropriate)
 - g) proposed landscaping and treatment of the land (indicating plant types and their height and maturity)
 - h) proposed methods of draining the land.
- Note 7 Where relevant an A4 plan of the building that indicates its height and external configuration, as erected, in relation to the site on which it is to be erected.
- Note 8 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 a change of building use (except where the proposed change is to a class 1a or class 10 building) where no alterations or additions to the existing building are proposed:
 - a list of any fire safety measures in the building or on the land on which the building is situated in connection with the proposed change of building use, and
 - 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 the measures concerned.
 - c) in the case of subdivision:
 - details of the existing and proposed subdivision pattern (including the number of lots and location of roads)
 - details of consultation with public authorities responsible for provision or amplification of utility services required by the proposed subdivision
 - preliminary engineering drawings indicating proposed infrastructure including roads, water, sewerage, and earthworks
 - existing and finished ground levels
 - d) in the case of demolition:
 - details of age and condition of buildings or works to be demolished
 - e) 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
 - f) in the case of development relating to an existing use:
 - details of the existing use
 - g) in the case of development that requires consent under the *Wilderness Act 1987*:
 - a copy of the consent under the *Wilderness Act 1987*
 - h) in the case of development involving the erection of a building work or demolition:
 - details of the methods of securing the site during the course of construction
-

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

- Note 9 Where a proposed development is not designated development, the application must be accompanied by a statement of environmental effects unless the proposed development is considered to have negligible effect (eg minor interior alterations) which must:
- a) demonstrate that the environmental impact of the development has been considered
 - b) set out steps to be taken to protect the environment or to mitigate the harm.
- Note 10 The consent authority may, within 21 days of receiving the development application, ask for additional information on the development if that information is necessary for the determination of the application or if that information is required by a concurrence authority.
- The consent authority may, within 25 days after the lodgment of a development application for integrated development, ask for additional information concerning the development if the information is necessary for the determination of the application or if the information is required by an approved body.
- Note 11 The application may be supported with additional material (eg photographs, slides, models, etc) illustrating the proposed development and its context.
- Note 12 Under s 80 (10A) of the *Environmental Planning and Assessment Act 1979* development consent cannot be granted 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 13 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.

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

Form 2

Submission of environmental impact statement (EIS)

prepared under the *Environmental Planning and Assessment Act 1979*
Section 78A (8)

EIS prepared by

name
qualifications

address

in respect of

development application

applicant name
applicant address

land to be developed

lot no, DP/MPS, vol/fol etc
proposed development

or
 map(s) attached

environmental impact statement

an environmental impact statement (EIS) is attached

certificate

I certify that I have prepared the contents of this Statement and to the best of my knowledge

- it is in accordance with clauses 54A and 55 of the *Environmental Planning and Assessment Regulation 1994*, and
- it is true in all material particulars and does not, by its presentation or omission of Information, materially mislead

signature
name
date

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

Form 3

Modification or surrender of a consent

granted under the *Environmental Planning and Assessment Act 1979*

or "existing use" right

conferred by Division 10 of Part 4 of the Act

owner of the land

name

address

land

address

lot no. DP/MPS. vol/fol etc

consent/right*

give details

modification

give details of
manner and extent

**agreement of all
owner(s)**

Being the owner of the land described above.

I modify/surrender* the consent/the right* described above

signature(s)

name(s)

date

**Cross out whichever does not apply*

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)

____ / ____ / ____

determination

- consent granted unconditionally
- consent granted subject to conditions described below
- application refused

consent to operate from (date)

____ / ____ / ____ *see note 1*

consent to lapse on (date,

____ / ____ / ____

details of conditions

_____ *see note 2*

including section 94

conditions

reasons for conditions/refusal

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

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

signature
name
date

on behalf of the consent authority

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 Regulation 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

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

Form 5

Determination of development application
(designated development)

Notice to people who made submissions (including objections) under section 79 (5) of the Act

issued under the *Environmental Planning and Assessment Act 1979*
Section 81 (1) (b)

submission made by

name
address

development application

number
applicant name
land to be developed: address

proposed development

has a Commission of Inquiry been held?

yes no

determination

- consent granted unconditionally
- consent granted subject to conditions described below
- application refused

rights of appeal

applicant's right of appeal

If the applicant is dissatisfied with this decision, section 97 of the *Environmental Planning and Assessment Act 1979* gives him or her the right to appeal to the Land and Environment Court within 12 months after the date on which he or she received the 'Notice of determination' under section 81 (1) (a) of the *Environmental Planning and Assessment Act 1979* (copy attached).

your right to be informed

If the applicant appeals, section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to be given notice of the appeal, and to be heard at the hearing of the appeal (you need to apply to the court within 28 days of the notice of the appeal).

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

your right of appeal

If you are an objector to designated development, and are dissatisfied with a decision to grant consent (either unconditionally or subject to conditions), section 98 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 28 days of the date of this notice
Your appeal may be made by lodging an application to the Court in accordance with the Rules of Court. You do not have right of appeal where a Commission of Inquiry has been held (see section 80 (8) and section 89A (2) of the *Environmental Planning and Assessment Act 1979*).

signed

on behalf of the consent authority

signature

name

date

/ /

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

Form 6

Determination of development application
(advertised development)

**Notice to people who made submissions under
section 81 (1) (c) of the Act**

issued under the *Environmental Planning and Assessment Act 1979*
Section 81 (1) (c)

submission made by

name
address

development application

number
applicant name
land to be developed. address

proposed development

determination

- consent granted unconditionally
- consent granted subject to conditions described below
- application refused

signed

on behalf of the consent authority

signature
name
date

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

Form 7

**Notice of Commencement of Building or
Subdivision work and Appointment of
Principal Certifying Authority**

under *Environmental Planning and Assessment Act 1979*
Sections 81A (2) (b) (ii) or (c), or (4) (b) (ii) or (c), 86 (1) and (2)

subject land

address

lot no, DP/MPS, etc vol/fol

**description of
development**

type of work



subdivision



building

consent

development application no or
complying development
certificate no
date of determination

construction certificate

Certificate no
date of issue
accreditation no

**principal certifying
authority**

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

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

**compliance with
development
consent/complying
development certificate**

have all conditions required to be satisfied prior to the commencement of work been satisfied?

yes no

(conditions may include payment of security, s 94 contributions, endorsement of building work plans by wafer supply authority)

**Home Building Act 1989
requirements**

principal certifying authority has been advised of the requirements— of cl 78C of the Regulation

yes no
see note 1

**date work is to
commence**

signed

applicant's name
date

Note 1 *Home Building Act 1989* requirements in case of building work that involves residential building work (within the meaning of the *Home Building Act 1989*) attach the following:

- (a) in the case of work by a licence 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 the 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

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

Form 8

Application to modify a consent

made under the *Environmental Planning and Assessment Act 1979*
Section 96 (1) or 96 (2)

owner of the land

name
address

land

address

lot no, DP/MPS, vol/fol

or

map(s) attached

consent

give details

development consent no and
date of determination

type of modification

minor (s 96 (1))

other (s 96 (2))

give details of
manner and extent
(provide evidence that the
modification does not
substantially alter the
development)

In the case of a minor:
indicate minor
error, misdescription or
miscalculation

signature of applicant(s)

signature(s)

name(s)

date

Form 9

Complying Development Certificate

issued 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
 maps(s) attached (see note 2)

proposed complying development

type
 [] use of land/building
 [] erection of a building
 subdivision of land/building
 carrying out of work
 — demolition
 — other
 description (eg dwelling house) _____
 proposed use _____

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

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)

- * A CDC becomes effective and commences from the date endorsed on the certificate

date of lapse

5 years from commencement
date

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

attachments

- conditions of approval (includes conditions prescribed, or 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

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 Regulation under the *Environmental Planning and Assessment Act 1979*:
- and will upon completion 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 work s 86 (1) and (2) of the Environmental Planning and Assessment Act 1970 must be satisfied (see form 7)*

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

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 (11) (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.*

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?

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

materials to be used

Place a tick () in the box which 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 shingle	
steel	60	tiles	10
fibrous cement	30	slate	20
hardiplank	30	steel	60
timber/weatherboard	40	terracotta tile	10
timber-aluminium	70	other	80
curtain glass	50	unknown	90
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
 - buildings perspectives, where necessary to illustrate the proposed building

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

- f) proposed parking arrangements, entry and exit points for vehicles, and provision for movement of vehicles within the site (including dimensions where appropriate)
- g) proposed landscaping and treatment of the land (indicating plant types and their height and maturity)
- h) 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**:

- a) copies of compliance certificates relied upon
- b) 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
- 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 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

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

- 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.

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.

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

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

- 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 that 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.

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.

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

Form 10

Compliance Certificate

Issued under the *Environmental Planning and Assessment Act 1979*
Section 109C (1) (a)

applicant

name
address
contact no (phone/fax)

**development consent no
or complying
development
certificate**

(where in force)
development consent no/CDC no
date of determination

construction certificate

(where in force)
certificate no
date of issue

**description of
development**

(Where relevant)

subject land

address

lot, DP/MPS etc

type of certificate

(nominate type of certificate)

specified building/subdivision work has been completed and
complies with plans and specifications

give details of the specified
aspect of development (eg
footings, road construction,
drainage system and detail the
plans and specifications the
work relates to

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

[] condition(s) has/have been complied with

give details of the specific condition(s) of development consent or complying development certificate and detail the matter the condition relates to and the standards/instruments that the matter is required to comply with

classification of building or proposed building

give details of the classification of the building in accordance with the BCA (eg class 1 (a))

specified aspect of development complies with prescribed requirements

give details of the development and specific aspect of the development and the prescribed requirements it complies with

inspection date

date of inspection of building /subdivision works

certificate

I certify that:

- the above described building/subdivision work has been completed and complies with the attached plans and specifications
- the above condition(s) have been complied with
- the building or proposed building designed constructed or adapted for use for the purposes of:

delete where not applicable

..... would be a class building under the Building Code of Australia

- the above described aspect of development complies with the prescribed requirement referred to above

signature
date of issue
certificate no

plans(s) approved

list plans where relevant

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

certifying authority

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

* For the purposes of notifying a council under clause 79 (2) of the Regulation of the issue of a compliance certificate 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.

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

Form 11

Construction Certificate

issued under the *Environmental Planning and Assessment Act 1979*
Sections 109C (1) (b), 81A (2) and 81A (4)

Application

applicant

name _____
address _____
contact no (telephone/fax) _____
signature _____

owner

name _____
address _____
contact no (telephone/fax) _____

consent of all owner(s)

I/we consent to this application
signature _____

subject land

address _____

lot no. DP/MPS. etc vol/fol _____
area of site (m²) _____

**description of
development**

type of work building work subdivision work
description _____

development consent

development consent no _____
date of determination _____

**Building Code of
Australia building
classification**

nominated on the development consent _____

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

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 _____

value of work

building/subdivision _____

required attachments

see note 1 and 2

- note 1 details the information that must be submitted with an application for a construction certificate for proposed subdivision or building works
- note 2 details the information that may be submitted with an application for a construction certificate for proposed residential building work.

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 (be completed by 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 of the certificate on the approved plans and specifications) _____

attachments

- detail reasons for refusal
- schedule of essential fire safety measures
- conditions required to be attached by the Regulations

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

**plans and specifications
approved/refused**

list plan no(s) and specifications
reference

right of appeal

under s 109K where the certifying authority is a council an applicant may appeal to the Land and Environment Court against the refusal to issue a construction certificate within 12 months from the date of the decision

Certificate

certificate

signature
date of endorsement
certificate no

I certify that the work if completed in accordance with these plans and specifications will comply with the requirements of s 81A (5) of the *Environmental Planning and Assessment Act 1979*.

**prior to commencement of work ss 81A (2) (b) and (c), and/or 81A (4) (b) and (c) of the Environmental Planning and Assessment Act 1979 must be satisfied (see form 7).*

certifying authority

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

development consent

number and date of
determination

**For the purposes of notifying a council under clause 79D (2) of the Regulation 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.*

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

Notes for completing Construction Certificate Application

Note 1 The following information must accompany applications for a construction certificate for building and subdivision work.

Building Work

In the case of an application for a construction certificate for **building work**:

- a) copies of compliance certificates relied upon
- b) 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:

- a show a plan of each floor section
- a show a plan of each elevation of the building
- a 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
- a 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 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) evidence of any accredited component, process or design sought to be relied upon
 - e) except in the case of an application for, or in respect 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 current) implemented in the building or on the land on which the building is situated

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

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 construction certificate for **subdivision work**:

- a) copies of compliance certificates relied upon
- b) 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

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.

Note 2 **Home Building Act Requirements**

In the case of an application for a construction 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.

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

Schedule to Construction 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?

materials to be used

Place a tick () in the box which best describes the materials the new work will be constructed of:

walls	code	roof	code
bick veneer	12	aluminium	70
full brick	11	concrete	20
single brick	11	concrete tile	10
concrete block	11	fibrous cement	30
concrete/masonry	20	fiberglass	80
concrete	30	massonry/terracotta shingle	
steel	60	tiles	10
fibrous cement	30	slate	20
hardiplank	30	steel	60
timber/weatherboard	40	terracotta tile	10
cladding-aluminium	70	other	80
curtain glass	50	unknown	90
other	80		
unknown	90		
floor		frame	
concrete	20	timber	40
timber	10	steel	60
other	80	other	80
unknown	90	unknown	90

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

Form 12

Occupation Certificate

issued under the *Environmental Planning and Assessment Act 1979*
Sections 109C (1) (c) and 109H

Application

type of certificate sought

tick appropriate boxes

- interim certificate
- final certificate
- change of building use of an existing building
- occupation/use of a new building

applicant

name

address

contact no (telephone/fax)

owner of building

(if not applicant)

**development consent no
or complying
development
certificate no**

date of determination

see note 1

construction certificate

construction certificate no and
date of issue

subject land

address

lot, DP/MPS etc

building details

whole/part of building _____
use _____

the building classification must
be the same as that specified
in the development consent or
complying development
certificate

BCA class _____

new _____ existing _____

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

attachments

- copy of development consent or complying development certificate
- construction Certificate (where relevant)
- final fire safety certificate or interim fire safety certificate (where relevant see note 2)
- other certificates relied on

date of receipt

date received (to be completed by certifying authority)

Determination

determination

type of certificate

interim certificate/final certificate*
* delete whichever is not applicable

approved/refused

approved/refused*
* delete whichever is not applicable

date of determination

attachments

- reason(s) for refusal
- final fire safety certificate or interim fire safety certificate

right of appeal

under s 109K where the certifying authority is a council an applicant may appeal to the Land and Environment Court against the refusal to issue an occupation certificate within 12 months from the date of the decision

Certificate

certificate final

- * I certify that:
- The Council certifies that:
- *1 have been/it has been appointed as the principal certifying authority under s 109E
- a development consent/complying development certificate is in force with respect to the building
- a construction certificate has been issued with respect to the plans and specifications for the building
- the building is suitable for occupation or use in accordance with its classification under the Building Code of Australia

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

- where required, a final fire safety certificate has been issued for the building (see note 2)
- where required, a report from the Commissioner of Fire Brigades has been considered

certificate no

** delete whichever is not applicable*

interim certificate

- * I certify that:
- * The Council certifies that:
- * I have been/it has been appointed as the principal certifying authority under s 109E
- I have/it has taken into consideration the health and safety of the occupants of the building
- a development consent or complying development certificate is in force with respect to the building
- a construction certificate has been issued with respect to the plans and specifications for the building
- the building is suitable for occupation or use in accordance with its classification under the Building Code of Australia
- where required, a final fire safety certificate has been issued for the building or an interim fire safety certificate has been issued for the relevant part of the building (see note 2)
- where required, a report from the Commissioner of Fire Brigades has been considered

certificate no

** delete whichever is not applicable*

principal certifying authority

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

- Note 1 Before an occupation certificate may be issued, the certifying authority must be satisfied that:
- a development consent or a complying development certificate is in force with respect to the building and
 - a construction certificate has been issued with respect to the plans and specifications for the building
- Note 2 A final fire safety certificate or interim fire safety certificate is not required for a class 1a or class 10 building.
- Note 3 For the purposes of notifying a council under clause 79L (2) (1) of the Regulation 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.

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

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, 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

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

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 by 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)

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

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 s 109J 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

* *Authorised Person/General Manager/Accredited Certifier*

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, I should include a signature in an electronic or digital format approved by the Registrar-General.
- Delete whichever is inapplicable

Certificate

(Manufactured Home Estates or Caravan Parks)

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

certificate

I certify that the provisions of s 109J of the *Environmental Planning and Assessment Act 1979* have been satisfied in relation to:

- the proposed set out herein; and
* (insert 'subdivision' or 'new road')
- the subdivision is for lease purposes in accordance with s 23H of the *Conveyancing Act 1919**

signature

* *Authorised Person/General Manager/Accredited Certifier*

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

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*

For the purposes of notifying a council under clause 79U (2) of the Regulation 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 registered 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

Form 14

**Submission of
environmental impact statement (EIS)**
prepared under the *Environmental Planning and Assessment Act 1979*
Section 112

EIS prepared by

name _____
qualifications _____
address _____

in respect of

Part 5 activity

proponent name _____
proponent address _____

land on which activity is to
be carried out. address _____

lot no. DP/MPS. vol/fol etc
proposed development _____

or
 map(s) attached

**environmental impact
statement**

an environmental impact statement (EIS) is attached

certificate

I certify that I have prepared the contents of this Statement and to
the best of my knowledge

- it is in accordance with clauses 84 and 85 of the
Environmental Planning and Assessment Regulation 1994, and
- it is true in all material particulars and does not, by its
presentation or omission of information, materially mislead.

signature _____
name _____
date _____

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

Form 15

Final/Interim Fire Safety Certificate

issued under the *Environmental Planning and Assessment Regulation 1994*
Clauses 80E and 80F

Certificate

type of certificate

see note 1

interim final

certificate

name owner/agent
address

I _____
of _____

certify that:

(a) each of the essential fire measures listed below:

see note 2 assessment requirements.

- has been assessed by a person (chosen by me) who was properly qualified to do so, and was found, when it was assessed, to have been properly implemented and to be capable of performing to a standard not less than that required by the most recent fire safety schedule (copy attached) for the building for which the certificate is issued.
-

see note 3 relevant fire safety schedule

(b) the Information contained in this certificate is, to the best of my knowledge and belief, true and accurate.

identification of building

location

street _____
side of street _____
nearest cross street _____
house/unit no or name _____

particulars of building

whole/part _____
description of part (*where applicable*) _____

date of assessment

owner's details

name
address

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

essential fire safety measures

see note 3

measure	standard of performance
•	
•	
•	
•	
•	
•	

date of certificate

dated this _____ day of _____ 19____

signature

owner/agent

** A copy of this certificate together with the relevant fire safety schedule must be forwarded to the council and the Commissioner of the New South Wales Fire Brigades.*

** A copy of this certificate together with the relevant fire safety schedule must be prominently displayed in the building*

Notes for completing Final/Interim Fire Safety Certificate

- Note 1 An **interim fire safety certificate** or a **final fire safety certificate** is required before:
- an interim occupation certificate can be Issued to allow a partially completed new building (including an altered portion of, or an extension to, a new building) to be occupied or used, or
 - an interim occupation certificate can be Issued to allow a change of building use for part of an existing building
- A **final fire safety certificate** is required:
- before a final occupation certificate can be issued to allow a new building (including an altered portion of, or extension to, a new building) to be occupied or used, or
 - before a final occupation certificate can be Issued to allow a change of building use for an existing building or
 - in accordance with a fire safety order given by a council.
- An **interim fire safety certificate** is Issued for part of the building and may deal only with those essential fire safety measures appearing on the most recent fire safety schedule (see note 3) relevant to the part of the building for which an interim occupation certificate will be sought

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

A **final fire safety certificate** must deal with all essential fire safety measures appearing on the most recent fire safety schedule (see note 3), subject to the following.

An **interim fire safety certificate** or a **final fire safety certificate** need not deal with those essential fire safety measures which have been the subject of some other final fire safety certificate or annual fire safety statement within the previous 6 months, unless the person or authority responsible for determining the relevant development consent, complying development certificate, construction certificate or fire safety order, has specified otherwise in the schedule.

See also note 3.

- Note 2 The person who carries out the assessment:
- must inspect and verify the performance of each fire safety measure being assessed, and
 - in the case of a (interim or final) fire safety certificate for a new building (not an alteration to, or enlargement or extension of an existing building) must test the operation of each item of fire safety equipment installed in the building.
- Note 3 The relevant essential fire safety measures are those specified in the most recent fire safety schedule, attached to one of the following:
- development consent for a change of building use.
 - complying development certificate for the erection of a building or a change of building use.
 - construction certificate for proposed building work, including building work associated with a change of building use, or
 - a fire safety order.

The fire safety schedule will also identify the required standard of performance for each essential fire safety measure.

Environmental Planning and Assessment Amendment Regulation 1998

Amendments

Schedule 1

Form 16

Building certificate

issued under the *Environmental Planning and Assessment Act 1979*
Section 149D

certificate

The Council certifies that, in relation to the building or part of the building identified below, the Council:

(a) by virtue of anything existing or occurring before the date of the inspection stated in this certificate;

must not

(b) make an order under the Environmental Planning and Assessment Act 1979 or any other Act requiring the building to be repaired, demolished, altered, added to or rebuilt, by reason only of its design, appearance, form of construction or state of repair,

(c) take proceedings for the making of an order or injunction under the *Environmental Planning and Assessment Act 1979* or any other Act requiring the building to be repaired, demolished altered, added to or rebuilt, by reason only of its design, appearance, form of construction or state of repair,

(d) take proceedings in relation to any encroachment by the building or part onto land vested in or under the control of council *

* See notes below.

This certificate remains in force for 7 years from the date of this certificate

identification of building

location

street:
side of Street:
nearest cross street.
house/unit no or name:

particulars of building

classification of building:
whole/part
description of part (where applicable):
owner

1998 No 267

Environmental Planning and Assessment Amendment Regulation 1998

Schedule 1 Amendments

date of inspection of building or part

subject land

lot or portion no
section
DP/SP or estate

lease no and type of holding
(if Crown land)

district, town or village

county/parish

schedule

the following written information was used by Council in deciding to issue this certificate

date of certificate

dated this day of 19

signature

General Manager

applicant

name
address

office use fee receipt no

notes

* The issue of a building certificate does not operate to prevent the Council or any other person:

- (a) from making an order (or taking proceedings for the making of an order or injunction) requiring the building to be repaired, demolished, altered, added to or rebuilt, where the order is made only in relation to matters arising otherwise than by virtue of the deterioration of the building as a result of fair wear and tear, or
- (b) from making an order No 6 in the Table to section 121 B of the *Environmental Planning and Assessment Act 1979*, or
- (c) from taking proceedings against any person under section 125 of the *Environmental Planning and Assessment Act 1979* with respect to that person's failure:
 - (i) to obtain a development consent, or
 - (ii) with respect to the erection of a building, to comply with the conditions of such a development consent.

[11] Dictionary

Omit the definitions of *advertised development*, *section 92 notice* and *section 95 notice*.

[12] Dictionary

Insert in order:

alternative solution has the same meaning as in the *Building Code of Australia*.

approval body has the same meaning as in section 90A of the Act.

assessment method has the same meaning as in the *Building Code of Australia*.

class, in relation to a building, means:

- (a) in a provision of this Regulation that imposes requirements with respect to a development consent, the class to which the building belongs, as identified by that consent, or

- (b) in any other provision of this regulation, the class to which the building belongs, as ascertained in accordance with the *Building Code of Australia*.

concurrency authority means a person whose concurrence is, by the Act or an environmental planning instrument, required by the consent authority before determining a development application.

deemed-to-satisfy provisions has the same meaning as in the *Building Code of Australia*.

exit has the same meaning as in the *Building Code of Australia*.

fire compartment has the same meaning as in the *Building Code of Australia*.

fire-resistance level has the same meaning as in the *Building Code of Australia*.

performance requirement has the same meaning as in the *Building Code of Australia*.

required, when used as an adjective, has the same meaning as in the *Building Code of Australia*.

[13] Dictionary, definition of “contributions plan”

Omit “section 94AB”. Insert instead “section 94B”.

[14] Dictionary, definition of “existing use right”

Omit “Division 2”. Insert instead “Division 10”.