



New South Wales

Environmental Planning and Assessment Amendment (Ski Resorts) Regulation 2002

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, and on the recommendation of the Minister for Planning made after consultation with the Minister for the Environment, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

ANDREW REFSHAUGE, M.P.,

Minister for Planning

Explanatory note

State Environmental Planning Policy No 73—Kosciuszko Ski Resorts provides that certain development in specified ski resort areas within Kosciuszko National Park that until now has been required to be assessed under Part 5 of the *Environmental Planning and Assessment Act 1979* (*the 1979 Act*) will require development consent under Part 4 of that Act.

The *Environmental Planning and Assessment Amendment (Ski Resort Areas) Act 2001* amended the 1979 Act to provide that the Minister for Planning would be the consent authority for all such development and to enable regulations to be made modifying the operation of the 1979 Act in relation to those ski resort areas. Regulations can also be made in relation to the conversion of existing Part 5 approvals, building consents and the like relating to the ski resort areas into equivalent development consents and certificates under Part 4A of the 1979 Act.

The objects of this Regulation are:

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- (a) to enable the Director-General of the Department of Planning to issue certificates effecting the conversions referred to above, and
- (b) to modify the application of the provisions of the 1979 Act and to amend the *Environmental Planning and Assessment Regulation 2000*:
 - (i) so as to recognise the role of the Minister as the consent authority for development in the ski resort areas and as certifying authority for the purposes of Part 4A of the 1979 Act, and
 - (ii) so as to alter references to “the council” because the Councils for the local government areas of Snowy River and Tumut will not have a role under the 1979 Act in relation to the ski resort areas.

The Regulation also imposes special requirements in relation to the preparation of statements of environmental effects to accompany development applications for land in the ski resort areas if the proposed development is advertised development.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 78A, 105 and 157 (the general regulation-making power) and clauses 32B and 32C in Part 8A of Schedule 6 to that Act.

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Ski Resorts) Regulation 2002*.

2 Commencement

This Regulation commences on 6 September 2002.

3 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 287

Insert after clause 286:

287 Special provisions relating to ski resort areas

Schedule 6 has effect.

[2] Schedule 6

Insert after Schedule 5:

Schedule 6 Special provisions relating to ski resort areas

(Clause 287)

Division 1 Preliminary

1 Definitions

(1) In this Schedule:

converted Part 5 approval means an existing Part 5 approval that is taken to be a development consent by the operation of clause 2 (4).

convertible Part 5 approval means an existing Part 5 approval granted before the commencement of this clause (and in force immediately before that commencement) that authorises the carrying out of development for which development consent is required.

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- (5) For the avoidance of doubt, section 81A (1) of the Act applies to a converted Part 5 approval and, in so applying that subsection, a reference to a purpose specified in the development application is to be read as a reference to a purpose specified in the application for the convertible Part 5 approval concerned.
- (6) A certificate issued under this clause has effect according to its terms.

3 Further development consent required in certain circumstances

If a converted Part 5 approval is expressed so as to require a further Part 5 approval to carry out any development the subject of the converted Part 5 approval, a development consent must be obtained for that development instead of a further Part 5 approval.

4 Conversion of certain authorisations to construction certificates

- (1) In this clause, *building consent* means a consent granted under the *National Parks and Wildlife Act 1974* before the commencement of this Schedule for the purposes of a convertible Part 5 approval, being a consent that authorised the carrying out of building works in a ski resort area.
- (2) Without limiting the generality of clause 5, the Director-General may issue to the holder of a building consent a certificate certifying that the building consent is taken to be a construction certificate that authorises the carrying out of the building works authorised by the consent.
- (3) The certificate issued by the Director-General may provide that the construction certificate is subject to all of the conditions to which the building consent was subject or to such of those conditions as are specified in the Director-General's certificate.
- (4) The Director-General is not to issue a certificate under this clause unless:
 - (a) the Director-General is satisfied that 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, and

- (b) the certificate identifies the classification, in accordance with the *Building Code of Australia*, of any building or proposed building the subject of the construction certificate concerned.
- (5) On the issue of the certificate by the Director-General, the building consent the subject of the certificate is taken to be a construction certificate that authorises the carrying out of the building works formerly authorised by the building consent, subject to the conditions imposed by the Director-General under subclause (3).

5 Conversion of certain authorisations to Part 4A certificates

- (1) In this clause, *existing authority* means any certificate, permission or other authority issued or otherwise given before the commencement of this Schedule for the purposes of a convertible Part 5 approval.
- (2) The Director-General may issue to the holder of an existing authority a certificate certifying that the authority is taken to be a Part 4A certificate that authorises the matters formerly authorised by the existing authority.
- (3) The Director-General must, in the certificate, specify the type of Part 4A certificate that the existing authority is taken to be (for example, a compliance certificate or an interim or final occupation certificate).
- (4) The certificate issued by the Director-General may provide that the Part 4A certificate is subject to all of the conditions to which the existing authority was subject or to such of those conditions as are specified in the Director-General's certificate.
- (5) On the issue of the certificate by the Director-General, the existing authority the subject of the certificate is taken to be a Part 4A certificate of the type specified in the Director-General's certificate that authorises the matters that were authorised by the existing authority, subject to the conditions imposed by the Director-General under subclause (4).

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6 Construction of certain references in converted Part 5 approvals and construction certificates

- (1) In any converted Part 5 approval:
 - (a) a requirement to obtain a consent or other approval to the carrying out of building works is taken to be a requirement to obtain a construction certificate authorising the carrying out of those building works, and
 - (b) a requirement to obtain an occupation certificate for a building, or any other certificate authorising the occupation of a building, is taken to be a requirement to obtain an occupation certificate (within the meaning of the *Environmental Planning and Assessment Act 1979*) in relation to that building.
- (2) In any converted Part 5 approval, or construction certificate referred to in clause 4 (5):
 - (a) a reference (however expressed) to the Director-General of National Parks and Wildlife, the National Parks and Wildlife Service or an officer of the National Parks and Wildlife Service being of the opinion or satisfied as to a matter is to be read as a reference to the Director-General of the Department of Planning being of the opinion or satisfied as to the matter, and
 - (b) a reference (however expressed) to something being done or required to be done to the satisfaction of the Director-General of National Parks and Wildlife, the National Parks and Wildlife Service or an officer of the National Parks and Wildlife Service is to be read as a reference to the thing being done or required to be done to the satisfaction of the Director-General of the Department of Planning.

7 Certifying authority

For the purposes of the Act, the Minister:

- (a) is taken to have been appointed as the principal certifying authority for development authorised by a converted Part 5 approval, and
- (b) is the only certifying authority for all aspects of development authorised by a converted Part 5 approval.

8 Pending applications for Part 5 approvals

- (1) Anything lodged in connection with an application for a Part 5 approval in respect of development within a ski resort area (being an application that was lodged before the commencement of this Schedule but not finally determined before that commencement) is, if an application for development consent is lodged for the same development for which the Part 5 approval was sought, taken to have been lodged in connection with the application for development consent.
- (2) Despite any other provision of this Regulation, no fee is required in connection with an application for development consent referred to in subclause (1).

9 Register to be kept

The Director-General is to ensure that a public register is kept of all certificates issued under this Division.

10 Appeals

- (1) The holder of a convertible Part 5 approval who requests, in writing, the Director-General to issue a certificate under clause 2, 4 or 5 in relation to the convertible Part 5 approval may appeal to the Minister against a decision of the Director-General to refuse to issue the certificate.
- (2) For the purposes of this clause, the Director-General is taken to have made a decision to refuse to issue a certificate under clause 2, 4 or 5 if the Director-General has not issued the certificate before the expiration of the period of 40 days after the day on which the request for the certificate was made to the Director-General (or such longer period as is agreed to in writing by the Director-General and the holder of the approval concerned).

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Division 3 Modification of provisions in relation to ski resort areas

11 Modification of provisions of the Act in relation to ski resort areas

- (1) The provisions of the Act are modified as set out in this clause in relation to a ski resort area.
- (2) Section 81 (2) does not require notice to be given to a council of the determination of a development application relating to a ski resort area.
- (3) Section 81A (2) (b) (ii) does not require a notification to be given to a council in respect of a development consent relating to a ski resort area.
- (4) A reference in section 81A (2) (c) or (4) (c) and 100 (1) to a council is to be read as a reference to the Minister.
- (5) Section 81A (4) (b) (ii) does not require notice to be given to a council where the development consent concerned relates to a ski resort area.
- (6) The reference in section 100 (1) to a council is to be read as a reference to the Director-General.
- (7) The reference in section 100 (2) to the office of the council is to be read as a reference to the office of the Department of Planning located at Jindabyne.
- (8) Section 109L (3) does not require copies of notices to be sent to a council where the development concerned relates to a ski resort area.
- (9) A reference in section 118L (2) (a) to the council of the area in which the building is located is to be read as a reference to the Minister.
- (10) A reference in section 118L (3) to a council is to be read as a reference to the Director-General.
- (11) A reference in section 118L (3) to a person authorised by the council is to be read as a reference to a person authorised by the Director-General.

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- (12) A reference in section 118L (4) to the council concerned is to be read as a reference to the Director-General.
- (13) A reference in section 118M to a council is to be read as a reference to the Director-General.
- (14) Section 121B (1) is to be read as authorising only the Minister to make an order referred to in that subsection.
- (15) A reference in Division 2A of Part 6 (other than section 121B) to a council is to be read as a reference to the Minister.
- (16) Sections 121F, 121H (4), 121ZH and 121ZI do not apply within a ski resort area.
- (17) Section 121ZE does not apply to a notice or order that relates to a ski resort area.
- (18) A reference in section 121ZP (2) to a form determined by the council is to be read as a reference to a form approved by the Minister.
- (19) A reference in section 121ZP (2) to a fee determined by the council under the *Local Government Act 1993* is to be read as a reference to a fee determined by the Minister.
- (20) A reference in Division 2A of Part 6 to an owner of premises, land or a building is, in relation to premises, land or a building within a ski resort area:
- (a) if the premises, land or building are or is subject to a lease, licence or easement, to be read as a reference to the lessee, licensee or person who has the benefit of the easement, except as provided by paragraph (b), or
 - (b) if the reference relates to an order that can only be complied with by a person who is occupying premises, land or a building within a ski resort area, to be read as a reference to the occupier of the premises, land or building.
- (21) A reference in sections 149A–149G (other than in the provisions referred to in subclause (22)):
- (a) to a council is to be read as a reference to the Minister, and

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(b) to an owner of land is, if the land is subject to a lease, licence or easement, to be read as a reference to the lessee, licensee or person who has the benefit of the easement.

(22) Sections 149D (1) (a) (iii) and 149E (1) (b) and (2) (b) do not apply in respect of building certificates relating to land within a ski resort area.

12 Modification of provisions of this Regulation in relation to ski resort areas

(1) The provisions of this Regulation are modified as set out in this clause in relation to a ski resort area.

(2) Despite clause 49 (1), a development application in relation to land within a ski resort area may be made by the lessee of the land.

(3) Clause 49 (3) does not apply to a development application relating to a ski resort area.

(4) Clause 138 (3) does not require a copy of a compliance certificate that relates to a ski resort area to be given to the council.

(5) Clauses 142 (2), 151 (2) and 160 (2) do not require notice of a determination relating to a ski resort area to be given to a council.

(6) A reference in clauses 168 (3) (d) and 169 (1) to the council is to be read as a reference to the Minister.

(7) Clause 169 does not require copies of a final fire safety certificate, relating to a ski resort area, to be given to the council.

(8) A reference in clause 182:

(a) to the council is to be read as a reference to the Minister, and

(b) to the owner of a building is to be read as a reference to the lessee of the building.

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- (9) Clause 264 is to be read as if the words preceding subclause (1) (a) were omitted and the following words inserted:

The Director-General is to maintain a register containing details of the following matters for each development application that is made in relation to a ski resort area

- (10) Clauses 265 and 267 do not apply in relation to a ski resort area.
- (11) A reference in clauses 266 and 268 to a council is to be read as a reference to the Director-General.
- (12) Clause 2 (4) (d) of Schedule 1 does not apply to a statement of environmental effects required to accompany a development application relating to a ski resort area if the proposed development is advertised development.

13 Statements of environmental effects for advertised development

- (1) A statement of environmental effects required by Schedule 1 to accompany a development application relating to a ski resort area must be prepared in accordance with guidelines issued under this clause if the proposed development is advertised development.
- (2) A person (*the proposed applicant*) intending to apply for consent to carry out development in a ski resort area that is advertised development must, before doing so, give to the Director-General written particulars of the location, nature and scale of the development.
- (3) The Director-General is to issue guidelines to the proposed applicant specifying matters that must be addressed in the statement of environmental effects required to accompany the development application.
- (4) The guidelines are to be issued within 28 days after the written particulars are given under subclause (2), or within such further time as is agreed between the Director-General and the proposed applicant.
- (5) Before issuing guidelines under this clause, the Director-General is:
- (a) to consult with the proposed applicant, and

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(b) to request in writing the Director-General of National Parks and Wildlife, and such government agencies as the Director-General considers have an interest in the proposed development application, to provide the Director-General of the Department of Planning with their requirements in relation to the statement of environmental effects.

- (6) In preparing the guidelines, the Director-General is to consider:
- (a) in particular, the response of the Director-General of National Parks and Wildlife, and
 - (b) all responses from government agencies referred to in subclause (5) (b),

if those responses are made during the period of 14 days after the request under subclause (5) is made.

Note. Advertised development for the purposes of the ski resort areas is identified in clause 13 of *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts*.

BY AUTHORITY