



New South Wales

Environmental Planning and Assessment Amendment (Review of Determination and Modification of Consent) Regulation 2003

under the

Environmental Planning and Assessment Act 1979

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

ANDREW REFSHAUGE, M.P.,

Minister for Planning

Explanatory note

The object of this Regulation is, consequent on the enactment of the *Land and Environment Court Amendment Act 2002*, to amend the *Environmental Planning and Assessment Regulation 2000*:

- (a) to specify the process for the public notification of, and public participation in the determination of, applications made under section 82A of the *Environmental Planning and Assessment Act 1979* for the review of a council's determination, and
- (b) to specify the process for the public notification of, and public participation in the determination of, applications made under section 96AA of the *Environmental Planning and Assessment Act 1979* for the modification by a consent authority of a consent granted by the Land and Environment Court, and
- (c) to prescribe the fees for such applications, and
- (d) to make savings and transitional provisions, and
- (e) to make amendments by way of law revision.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 82A, 96AA and 157 and clause 1 of Schedule 6.

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Clause 1 Environmental Planning and Assessment Amendment (Review of Determination and Modification of Consent) Regulation 2003

**Environmental Planning and Assessment Amendment
(Review of Determination and Modification of Consent)
Regulation 2003**

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Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Review of Determination and Modification of Consent) Regulation 2003*.

2 Commencement

This Regulation commences on 10 February 2003.

3 Amendment of Environmental Planning and Assessment Regulation 2000

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

Schedule 1 Amendments

(Clause 3)

[1] Clause 113A

Insert after clause 113:

113A Public participation: application under section 82A of the Act for review of council's determination

- (1) This clause applies to an application under section 82A of the Act for review by a council of its determination of a development application.
- (2) An application to which this clause applies must be notified or advertised for a period not exceeding 14 days, but otherwise in the same manner as the original development application was notified or advertised.
- (3) However, if the application is made to a council that has provided in a development control plan for the notification or advertising of such an application, the application is to be notified or advertised in accordance with the development control plan.
- (4) The council must cause copies of the application to be given to each concurrence authority for the development to which the application relates.
- (5) The notice or advertisement referred to in subclause (2) must contain the following information:
 - (a) a brief description of the original development application and the land to which it relates,
 - (b) a statement that submissions concerning the application for review may be made to the council within the period referred to in section 82A (4) (b) of the Act.
- (6) For the purposes of section 82A (4) (b) of the Act, the period within which submissions may be made in relation to such an application is the period specified:
 - (a) in subclause (2), except as provided by paragraph (b), or
 - (b) if the council has made a development control plan specifying such a period, in the development control plan.

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Schedule 1 Amendments

- (7) During the period referred to in subclause (2) or, if a development control plan provides for a period for notification or advertising of an application, during that period, any person may inspect the application and any accompanying information and make extracts from or copies of them.

[2] Clause 115 What are the requirements for an application for modification of a development consent?

Insert “or 96AA (1)” after “section 96 (1), (1A) or (2)” in clause 115 (1).

[3] Clause 115 (1) (i)

Insert at the end of clause 115 (1) (h):

- (i) a statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA),

[4] Clause 115 (1A)

Insert “or 96AA (1)” after “section 96 (2)”.

[5] Clause 115 (3)

Insert after clause 115 (2):

- (3) A development consent may not be modified by the Land and Environment Court under section 96 of the Act if an application for modification of the consent has been made to the consent authority under section 96AA of the Act and has not been withdrawn.

[6] Clause 116 Applications for modification of development consents granted by the Land and Environment Court or the Minister

Omit clause 116 (2).

[7] Clause 117 Public participation—applications for modification of development consents involving minimal environmental impact

Insert “or under section 96AA of the Act in respect of a modification which, in the opinion of the consent authority, is of minimal environmental impact” after “the Act” in clause 117 (1).

[8] Clause 117 (3)

Insert “, in the case of an application under section 96 (1A) of the Act,” after “must”.

[9] Clause 118 Public participation—application under sections 96 (2) and 96AA for modification of certain development consents

Insert “or 96AA (1)” after “section 96 (2)” in clause 118 (1).

[10] Clause 118 (4)

Insert “, in the case of an application under section 96 (2) of the Act,” after “must”.

[11] Clause 118 (6)

Omit “section 96 (2) (d)”. Insert instead “sections 96 (2) (d) and 96AA (1) (d)”.

[12] Clause 118 (6)

Omit “subclause (4) (c)”. Insert instead “subclause (5) (c)”.

[13] Clause 118 (7)

Omit “subclause (4) (c)”. Insert instead “subclause (5) (c)”.

[14] Clause 119 Public participation—application under sections 96 (2) and 96AA for modification of other development consents

Insert “or under section 96AA (1) of the Act to which clauses 117 and 118 do not apply” after “apply” in clause 119 (1).

[15] Clause 119 (5)

Insert “, in the case of an application under section 96 (2) of the Act,” after “must”.

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Schedule 1 Amendments

[16] Clause 123A

Insert after clause 123:

123A Effect of amendments made by Land and Environment Court Amendment Act 2002

- (1) The Act, as in force immediately before the commencement of the *Land and Environment Court Amendment Act 2002*, continues to apply to and in respect of:
 - (a) a review of a determination requested under section 82A of the Act, but not completed, before that commencement, and
 - (b) an appeal made under section 97 of the Act, but not finally determined, before that commencement.
- (2) The Act, as in force immediately before the commencement of the *Land and Environment Court Amendment Act 2002*, continues to apply to and in respect of the modification of a development consent the application for which was made, but not finally determined, before that commencement.

[17] Clause 257 What is the fee for a request for a review of a determination?

Insert after paragraphs (a), (b) and (c) of clause 257:

plus an additional amount of not more than \$500 if notice of the application is required to be given under section 82A of the Act.

[18] Clause 258 What is the fee for an application for modification of a consent for local development or State significant development?

Insert “, or under section 96AA (1) of the Act in respect of a modification which, in the opinion of the consent authority, is of minimal environmental impact,” after “Act” in clause 258 (1A).

[19] Clause 258 (2)

Omit “for the modification of a development consent”. Insert instead “, or under section 96AA (1) of the Act in respect of a modification which, in the opinion of the consent authority, is not of minimal environmental impact,”.

[20] Clause 258 (2)

Insert “or 96AA (1)” after “section 96 (2)” where secondly occurring.

[21] Clause 258 (3)

Insert “or 96AA (1)” after “section 96 (2)”.