2005 No 600

New South Wales

Environmental Planning and Assessment Amendment (Planning Instruments and Development Consents) Regulation 2005

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*.

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000*:

(a) to make provision consequent on the commencement of the amendments made by the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* in relation to planning instruments (including development control plans) and development consents (including staged development applications), and

(b) to make other minor and consequential amendments.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 74E and 157 (the general regulation-making power) and Part 1 of Schedule 6 (savings and transitional regulations).

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Planning Instruments and Development Consents) Regulation 2005*.

2 Commencement

This Regulation commences on 30 September 2005.

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 17A Where specific consultation is required

Omit the clause.

[2] Clause 24 Application of Part to development control plans made by the Director-General

Omit "under section 51A".

Insert instead "by the Director-General, as the relevant planning authority, under section 74C".

[3] Clause 24 (b)

Insert "or a State environmental planning policy" after "regional environmental plan".

[4] Part 3, Division 6

Omit the Division. Insert instead:

Division 6 Miscellaneous

25 Additional information requested by relevant planning authority

(1) If an environmental planning instrument requires or permits a development control plan to be prepared and submitted to the relevant planning authority, the planning authority may request the owners (as referred to in section 74D of the Act) who are submitting the plan to provide the planning authority with such additional information as the planning authority considers necessary for the purposes of making the plan.

(2) Any such request is to be in writing.

(3) The information that the relevant planning authority may request is limited to information relating to any relevant matter referred to in an environmental planning instrument.

(4) In accordance with section 74D (6) of the Act, the 60-day period referred to in section 74D (5) of the Act may be extended by the number of days from the day on which the request for the information was made until the day on which the information is provided or on which the owners refuse to supply the information (whichever is the sooner).

(5) If the owners refuse to supply the requested information, the development control plan is taken not to have been submitted to the relevant planning authority.

25AA Assessment and preparation fees

(1) If a draft development control plan under section 74D of the Act is prepared (and submitted to the relevant planning authority) by the owners of the land to which it applies, the owners must pay the relevant planning authority an assessment fee as determined by the planning authority.

(2) If any such draft development control plan is prepared by the relevant planning authority at the request of the owners (or the percentage of the owners as referred in section 74D (3) of the Act), those owners must pay the planning authority a preparation fee as determined by the planning authority.

(3) Any such assessment or preparation fee must not exceed the reasonable cost, to the relevant planning authority, of assessing or preparing the draft development control plan, carrying out any associated studies and publicly exhibiting the draft plan.

(4) If there is more than one owner of the land to which the draft development control plan applies, the fee concerned is to be apportioned between them as the relevant planning authority determines.

(5) If the Minister, in accordance with section 74D (5) (b) of the Act, acts in the place of a council to make the development control plan concerned, the council must, if directed by the Minister to do so, forward to the Minister any assessment or preparation fee that has been paid to the council in relation to that plan.

(6) Any assessment or preparation fees payable under clause 272, 273, 273A, 274A or 274B (as in force before their repeal by the *Environmental Planning and Assessment Amendment (Planning Instruments and Development Consents) Regulation 2005*) are taken to be fees (as determined by the relevant planning authority concerned) payable under this clause. If, under any such repealed clause, a lessee was liable to pay a fee, a reference in this clause to the owner of the land extends to any such lessee.

25AB Councils to provide copies of development control plans to Director-General

A council must, within 28 days of making a development control plan, provide the Director-General with a copy of the plan.

25AC Purchase of copies of development control plans

Copies of a development control plan (including any document referred to in a development control plan such as a supporting map, plan, diagram, illustration or other material) are to be made available for purchase from the principal office of the relevant planning authority that prepared the plan.

Note. Under section 74E (4) of the Act, a development control plan must be available for inspection (without charge) at the principal office of the relevant planning authority that prepared the plan.

The above clause does not require the relevant planning authority to supply certified copies of any document. Certified copies are supplied under section 150 of the Act on payment of a prescribed fee. The fee for a certified copy is prescribed by clause 262.

25AD Further transitional provisions: 2005 Amending Act

(1) In this clause:

deemed DCP means a master plan, in force under a provision of an environmental planning instrument immediately before the relevant commencement, that is taken to be a development control plan under section 74D of the Act because of clause 95 of Schedule 6 to the Act, and includes a master plan that is taken to be a development control plan as provided by subclause (4).

relevant commencement means the date on which Schedule 2 to the 2005 Amending Act commences.

2005 Amending Act means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

(2) **Effect of section 74C on deemed DCPs**

Section 74C (2) and (5) of the Act (as inserted by the 2005 Amending Act) does not render invalid any deemed DCP until such time as the principal local environmental planning instrument applying to the land concerned adopts the provisions of a standard instrument (as referred to in section 33A of the Act).

(3) **Amendment of deemed DCPs**

A deemed DCP may be amended or revoked only in accordance with the procedures provided in relation to the making of the master plan by the environmental planning instrument under which it was made. Accordingly, section 74C (4) of the Act does not apply in relation to a deemed DCP.

(4) **Pending master plans**

Any master plan lodged under a provision of an environmental planning instrument but not made or adopted as at the relevant commencement may, after that commencement, proceed to be made or adopted as if the amendments made to the Act and this Regulation by Schedules 2 and 7.3 to the 2005 Amending Act had not been made. Once it is made or adopted, the master plan is taken to be a development control plan under section 74D of the Act.

[5] Part 6, Division 3A

Insert after Division 3:

Division 3A Special provisions relating to staged development applications

70A Information to be included in staged development applications

Despite clause 50 (1) (a), the information required to be provided in a staged development application in respect of the various stages of the development may, with the approval of the consent authority, be deferred to a subsequent development application.

70B Staged development applications—residential flat development

Clause 50 (1A) applies in relation to a staged development application only if the application sets out detailed proposals for the development or part of the development.

[6] Clause 92A Preliminary planning: sections 79C (1) (a) (iv) and 80 (11) of the Act

Omit the clause.

[7] Clause 100 Notice of determination

Insert after clause 100 (1) (c):

(c1) whether the applicant has the right to request a review of the determination under section 82A of the Act,

(c2) in the case of a consent for a staged development application—whether a subsequent development application is required for any part of the site concerned,

[8] Clause 109 Days occurring while consent authority's request for additional information remains unanswered

Insert ", or is taken to have notified," after "notifies" in clause 109 (1) (b).

[9] Clause 112 Consent authority to notify applicant that time has ceased to run

Omit "periods of time" from clause 112 (1).

Insert instead "assessment periods".

[10] Clause 256B

Insert after clause 256A:

256B Staged development applications

The maximum fee payable for a staged development application in relation to a site, and for any subsequent development application for any part of the site, is the maximum fee that would be payable as if a single development application only was required for all the development on the site.

[11] Clause 271 Precinct plans etc under SEPP 59

Insert before clause 271 (1):

Note. Precinct plans as referred to in this clause are taken to be development control plans under the Act—see clause 25AD and clause 95 of Schedule 6 to the Act.

[12] Clauses 272, 273, 273A, 274A, 274B and 275

Omit the clauses.

[13] Clauses 289 and 290

Insert after clause 288:

289 Miscellaneous savings and transitional provisions: 2005 Amending Act

(1) In this clause:

2005 Amending Act means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

(2) **Adoption of model provisions**

An environmental planning instrument made after the commencement of the repeal of section 33 of the Act by Schedule 2 to the 2005 Amending Act (but initiated before that commencement) may, despite the repeal of that section, adopt model provisions made under that section as in force immediately before its repeal. Accordingly, those model provisions continue in force for the purposes of any environmental planning

instrument that adopts them and clause 93 (2) of Schedule 6 to the Act extends to those provisions.

(3) For the purposes of subclause (2), an environmental planning instrument is taken to have been initiated if the relevant council (or the Director-General, as the case requires) has resolved to make the instrument.

(4) **Existing development control plans**

Section 74C of the Act does not render invalid any provision of a development control plan that is continued in force by clause 94 (1) of Schedule 6 to the Act until such time as:

(a) a development control plan is made under section 74C of the Act in respect of the land concerned, or

(b) the principal local environmental planning instrument applying to the land concerned adopts the provisions of a standard instrument as referred to in section 33A of the Act,

whichever is the sooner.

(5) Subclause (4) has effect despite clause 94 (2) of Schedule 6 to the Act.

(6) **Existing section 117 (2) directions continue to apply to draft plans**

Despite clause 96 (2) of Schedule 6 to the Act, a direction given under section 117 (2) of the Act before the commencement of Schedule 2 to the 2005 Amending Act continues in force in relation to a draft local environmental plan only if the draft plan:

(a) is submitted to the Director-General under section 68 (4) of the Act before 31 January 2006, or

(b) is the subject of a report under section 69 of the Act that is furnished before that date.

(7) **Master plans under epis made before 31 December 2005**

A reference in clause 95 (2) of Schedule 6 to the Act to a provision of an environmental planning instrument that requires, before the grant of development consent, a master plan for the land concerned extends to a provision of that kind in an environmental planning instrument that is made before 31 December 2005.

290 Savings and transitional provision: references to "comprehensive development applications"

(1) A reference in an environmental planning instrument to a comprehensive development application (as referred to in clause 92A immediately before the repeal of that clause by the *Environmental Planning and Assessment Amendment (Planning Instruments and Development Consents) Regulation 2005*) is taken to be a reference to a staged development application within the meaning of the Act.

(2) Section 83C (1) of the Act does not apply to any provision of an environmental planning instrument (as in force as at the commencement of this clause) that requires the making of a comprehensive development application that is taken to be a staged development application.