



New South Wales

Water Management Amendment (Controlled Activities) Regulation 2008

under the

Water Management Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Water Management Act 2000*.

PHILIP KOPERBERG, M.P.,
Minister for Climate Change, Environment and Water

Explanatory note

This Regulation is made in connection with proclamations under the *Water Management Act 2000* that commence the provisions of that Act in relation to controlled activity approvals and repeal the *Rivers and Foreshores Improvement Act 1948*.

The object of this Regulation is to amend the *Water Management (General) Regulation 2004* so as to ensure that the exemptions from the requirement for a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948* are carried over as exemptions from the requirement for a controlled activity approval under Part 3 of Chapter 3 of the *Water Management Act 2000*. This Regulation also extends existing provisions with respect to the provision of security so that they cover all obligations under an approval, not merely obligations with respect to the reinstatement of land.

This Regulation is made under the *Water Management Act 2000*, including section 400 (the general power to make regulations) and clause 1 of Schedule 9 (the power to make regulations of a savings or transitional nature).

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Clause 1 Water Management Amendment (Controlled Activities) Regulation 2008

Water Management Amendment (Controlled Activities) Regulation 2008

under the

Water Management Act 2000

1 Name of Regulation

This Regulation is the *Water Management Amendment (Controlled Activities) Regulation 2008*.

2 Commencement

This Regulation commences on 4 February 2008.

3 Amendment of Water Management (General) Regulation 2004

The *Water Management (General) Regulation 2004* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 35 Register of approvals

Insert at the beginning of the clause:

- (1) For the purposes of section 113 (2) of the Act, the register kept under that section may be kept in written or in electronic form.

[2] Clause 36

Omit the clause. Insert instead:

36 Security deposits

- (1) An approval may be granted subject to a condition to the effect that, before commencing the construction of any work or the carrying out of any activity, the holder of the approval must provide the Minister with security for the cost of performing the holder's obligations under the approval in the event that the holder fails to perform those obligations.
- (2) The security is to be for such reasonable amount as is determined by the Minister and specified in the condition as to security.
- (3) The security may be provided, at the choice of the holder, by means of a deposit with the Minister or a guarantee satisfactory to the Minister.
- (4) Security provided by way of deposit may be paid out to meet the cost of performing the holder's obligations under the approval.
- (5) Any amount repaid to the applicant from a deposit is to be repaid together with any interest accrued as a consequence of its investment.

[3] Clause 39A

Insert after clause 39:

39A Exemption from controlled activity approval

- (1) Public authorities (other than Landcom) and local councils are exempt from section 344 (1) (a) of the Act in relation to all controlled activities that they carry out in, on or under waterfront land.

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Schedule 1 Amendments

- (2) Persons (excluding public authorities and local councils, but including Landcom) are exempt from section 344 (1) (a) of the Act in relation to the following controlled activities that they carry out in, on or under waterfront land:
- (a) activities carried out in accordance with any lease, licence permit or other right in force under the *Mining Act 1992*, the *Crown Lands Act 1989* or the *Crown Lands (Continued Tenures) Act 1989*,
 - (b) activities comprising the excavation of the bed of a river, lake or estuary for the purpose of facilitating the use of a water supply work,
 - (c) activities carried out pursuant to section 52 (Domestic and stock rights) of the Act,
 - (d) activities carried out, in accordance with a harvestable rights order, in connection with the construction or use of a dam on land within the harvestable rights area constituted by the order,
 - (e) activities carried out in connection with the construction or use of a work to which Part 2 of the *Water Act 1912* applies in accordance with a licence issued under that Part in relation to that work,
 - (f) activities carried out in connection with the construction or use of a controlled work within the meaning of Part 8 of the *Water Act 1912* in accordance with an approval issued under that Part in relation to that work,
 - (g) activities carried out in connection with:
 - (i) the erection of a dwelling house or dual occupancy building, or
 - (ii) the making of alterations or additions to an existing dwelling house or dual occupancy building, or
 - (iii) the provision of ancillary facilities for an existing dwelling house or dual occupancy building,being activities that comprise exempt development or activities the subject of a development consent or complying development certificate issued under the *Environmental Planning and Assessment Act 1979*, but excluding any activity carried out in, on or over the bed of any river, lake or estuary,
 - (h) activities comprising nothing more than the removal of vegetation in circumstances that would otherwise be lawful,

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- (i) the carrying out of development in accordance with:
- (i) *Development Control Plan No 33—Rouse Hill Regional Centre*, and
 - (ii) the Master Plan referred to in section 1.10 of that development control plan,
on the land bounded by Windsor Road, Commercial Road and Withers Road, Rouse Hill, comprising Lots 1–9, DP 270520, Lot 401, DP 1111687, Lots 304, 305, 307 and 309, DP 1107129, Lot 105, DP 1108407, and Lot 201, DP 1096167.
- (3) The exemptions conferred by subclauses (1) and (2) (a) are subject to a condition requiring the person by whom the relevant controlled activity is carried out to comply with any direction that the Minister may give to the person for the protection of:
- (a) the waterfront land on which the activity is carried out, or
 - (b) any river, lake or estuary to which that land has frontage.
- (4) To the extent to which they are regulated by Ministerial guidelines, the activities referred to in subclause (2) (b) and (c) must be carried out in accordance with those guidelines.
- (5) In this clause:
- development** has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.
- dual occupancy building** means a building containing 2, but no more, dwellings within the meaning of the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.
- dwelling house** has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.
- Ministerial guidelines** means guidelines established by the Minister, by order published in the Gazette, for the purposes of this clause.

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Schedule 1 Amendments

[4] Schedule 7 Savings and transitional provisions

Insert after Part 2 of Schedule 7:

Part 3 Provisions relating to the repeal of the Rivers and Foreshores Improvement Act 1948

9 Definitions

In this Part:

Constructing Authority has the same meaning as it has in Part 3A of the former 1948 Act.

Part 3A permit means a permit under Part 3A of the former 1948 Act.

10 Conditions as to security under sec 22C

- (1) This clause applies to any Part 3A permit in respect of which security has been required to be given pursuant to section 22C (2) of the former 1948 Act.
- (2) The controlled activity approval that arises from a Part 3A permit to which this clause applies is taken to be subject to a condition having the same terms and conditions as those specified by the Constructing Authority under section 22C (2) of the former 1948 Act in respect of the permit.

11 Continued application of Part 3A to certain offences

- (1) Part 3A of the former 1948 Act continues to apply to and in respect of any alleged offence under section 22B of that Act as if that Act had not been repealed.
- (2) In particular:
 - (a) any order that, immediately before the commencement of this clause, was in force under section 22D or 22F of the former 1948 Act, and
 - (b) any direction that, immediately before the commencement of this clause, was in force under section 22G of the former 1948 Act,continues to have effect, and may be enforced under that Act, as if that Act had not been repealed.

12 General terms of approval for integrated development

Any general terms of approval given by the Constructing Authority for the purposes of Division 5 of Part 4 of the *Environmental Planning and Assessment Act 1979* (Special procedure for integrated development) in relation to an activity that, before the commencement of this clause, required a Part 3A permit continue to have effect in relation to that activity to the extent to which, after that commencement, it requires a controlled activity approval.

13 Exemption from requirement for Minister to give notice under cl 20 of Sch 10

Clause 20 of Schedule 10 to the Act does not require notice of the terms of a controlled activity approval to be given to the holder of the approval if the approval is due to expire within 2 years after the approval comes into being under clause 3 of that Schedule.