



New South Wales

Environmental Planning and Assessment Amendment (Regional Panels) Regulation 2009

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*.

KRISTINA KENEALLY, MP
Minister for Planning

Explanatory note

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

- (a) to provide for various machinery matters arising out of the conferral on joint regional planning panels of council functions of determining development applications and applications to modify development consents,
- (b) to require joint regional planning panels to provide the Minister with information and reports,
- (c) to provide for periods after which a Crown development application may be referred to the Minister or a joint regional planning panel,
- (d) to make other consequential amendments and savings and transitional provisions relating to Crown development.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 23G (5A), 23H (a), 80A (2) and (3), 89 (2) and (5), 96 (1A) and (2) and 157 (the general regulation-making power) and clause 1 of Schedule 6 to that Act.

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Environmental Planning and Assessment Amendment (Regional Panels)
Clause 1 Regulation 2009

**Environmental Planning and Assessment Amendment
(Regional Panels) Regulation 2009**

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Regional Panels) Regulation 2009*.

2 Commencement

This Regulation commences on 1 July 2009 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

regional panel means a joint regional planning panel.

[2] Clause 98A Erection of signs

Omit “section 116G” from clause 98A (5). Insert instead “section 109R”.

[3] Clause 98B Notification of Home Building Act 1989 requirements

Omit “section 116G” from clause 98B (4). Insert instead “section 109R”.

[4] Clause 113B

Insert after clause 113A:

113B Period after which Crown development applications may be referred to Minister or regional panel

- (1) For the purposes of section 89 (2) of the Act, the prescribed period is 70 days after the Crown development application is lodged with the consent authority.
- (2) For the purposes of section 89 (5) of the Act, the prescribed period is 50 days after the Crown development application is referred to the applicable regional panel under section 89 (2) (b) of the Act.

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

Insert after clause 117 (3):

- (3A) If an application to which this clause applies relates to a development consent that was originally granted or deemed to have been refused by a regional panel, the council or councils of the area in which the development concerned is to be carried out are to notify or advertise the application, and are to notify the Court (if applicable), in accordance with this clause instead of the regional panel.

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

Insert after clause 118 (2) (b):

, or

- (c) by the council or councils of the area in which the development concerned is to be carried out, if the development consent was granted by a regional panel or if the development consent was granted by the Court on appeal and the original development consent was granted or was deemed to have been refused by a regional panel.

[7] Clause 118 (4)

Insert “or a council referred to in subclause (2) (c) (if development consent was granted by the Court)” after “subclause (2) (b)”.

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

Insert after clause 119 (5):

- (5A) If an application to which this clause applies is made about a development consent granted, or deemed to have been refused, by a regional panel, the council or councils of the area in which the development concerned is to be carried out are to notify or advertise the application, and are to notify the Court (if applicable), in accordance with this clause instead of the regional panel.

[9] Clause 120 Notification of concurrence authorities and approval bodies

Insert at the end of clause 120:

- (2) If an application to which this clause applies is made about a development consent granted by a regional panel, the council or councils of the area in which the development concerned is to be carried out are to comply with subclause (1) instead of the regional panel.

[10] Part 6, Division 12A

Insert after Division 12:

Division 12A Additional provisions where regional panel is exercising consent authority functions

123B Application of Division

- (1) This Division applies to development for which a regional panel has the function of determining the development application or an application to modify a development consent.
- (2) In this Division, a reference to a development application includes a reference to an application to modify a development consent.

123C Development applications where land is in 2 or more local government areas

- (1) This clause applies to development applications for development located in 2 or more local government areas.
- (2) A separate development application for the proposed development must be lodged with each council for an area in which the proposed development is situated.

123D Provisions of Act not to apply as if regional panels were councils

- (1) For the purposes of section 23G (5A) of the Act, a regional panel is not taken to be the council for the purposes of the following provisions of the Act:
 - (a) section 78A (3)–(6),
 - (b) section 81 (2),
 - (c) section 82A,
 - (d) section 89 (2).

Note. Under section 23G (5A) of the Act, a regional panel exercising consent authority functions of a council is taken to be the council, subject to the regulations.
- (2) For the purposes of section 23G (5A) of the Act, a regional panel is not taken to be the council for the purposes of appeal proceedings under the Act, or proceedings under section 123 of the Act, if:
 - (a) the council is the applicant for a development application or the modification of a development consent, and

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- (b) the council makes an appeal under the Act, or brings proceedings under section 123 of the Act, in relation to a determination by the regional panel.

123E Procedural matters related to determination of development applications

- (1) A regional panel may, for the purpose of determining a development application:
 - (a) obtain assessment reports, in addition to any assessment report or other information provided by a relevant council in dealing with the application, and
 - (b) obtain other technical advice or assistance as the panel thinks fit.
- (2) If a development consent is granted by a regional panel subject to a condition referred to in section 80 (3) or 80A (2) of the Act, the regional panel is taken to be satisfied as to a matter specified in the condition if the council for the area in which the land on which the development is to be carried out notifies the chairperson of the panel in writing that the matter specified in the condition has been satisfied.

123F Procedural matters relating to determination of applications to modify consents

For the purposes of section 23H (a) of the Act, a regional panel may carry out consultation for the purposes of section 96 (2) (b) of the Act by directing the general manager of a council for an area in which the development the subject of the consent is to be carried out to consult with the relevant Minister, public authority or approval body on behalf of the regional panel.

Note. It is an offence under section 23N (2) of the Act for a general manager to fail to comply with a direction.

[11] Clause 136B Erection of signs

Omit “section 116G” from clause 136B (5). Insert instead “section 109R”.

[12] Clause 136C Notification of Home Building Act 1989 requirements

Omit “section 116G” from clause 136C (4). Insert instead “section 109R”.

[13] Clause 156 Occupation and use of new buildings: section 109M (2)

Omit “section 116G of the Act (as referred to in section 116B (a) of the Act)” from clause 156 (2).

Insert instead “section 88 (2) (a) of the Act”.

[14] Clause 226 Prescribed persons: section 88

Omit “for the purposes of sections 116C, 116F and 116G of the Act (as referred to in section 116B (a) of the Act)” from clause 226 (1).

Insert instead “for the purposes of Division 4 of Part 4 of the Act (as referred to in section 88 (2) (a) of the Act)”.

[15] Clause 227 Technical provisions of State’s building laws

Omit “section 116G”. Insert instead “section 109R”.

[16] Clause 268C Definitions

Omit “joint regional planning panel” from the definition of *planning body*.

Insert instead “regional panel”.

[17] Clause 268NA

Insert after clause 268N:

268NA Provision of information by regional panels

A regional panel must provide the Minister with such information and reports as the Minister may, from time to time, request.

[18] Schedule 7 Savings and transitional provisions

Insert with appropriate numbering at the end of the Schedule:

Crown developments

- (1) Division 4 of Part 4 of the Act, as inserted by the amending Act, does not apply in respect of a development application, or an application to modify a development application, made by or on behalf of the Crown but not finally determined before the commencement of that Division.
- (2) The Act and this Regulation and section 57 (1A) of the *Heritage Act 1977*, as in force before the commencement of Division 4 of Part 4 of the Act, continue to apply in respect of a development application referred to in subclause (1).
- (3) Section 116H of the Act, as repealed by the amending Act, continues to have effect as if a reference in that section to “this Part” were a reference to Division 4 of Part 4 of the Act.
- (4) Subclause (3) ceases to have effect on the commencement of section 89C of the Act, as inserted by Schedule 2.1 [27] to the amending Act.

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Existing planning assessment panels

- (1) This clause applies to planning assessment panels established under Division 1AA of Part 6 of the Act before the commencement of Division 3 of Part 2A of the Act.
- (2) A planning assessment panel may not exercise any consent authority functions of a council (the *affected council*) conferred on the planning assessment panel in respect of development if:
 - (a) the development is of a class for which a regional panel is to exercise council functions as a consent authority, and
 - (b) a regional panel has been constituted for the area of the affected council.
- (3) This clause does not apply in respect of any development application made but not finally determined before the commencement of this clause.