



New South Wales

Environmental Planning and Assessment Amendment (Bush Fire Prone Land) Regulation 2010

under the

Environmental Planning and Assessment Act 1979

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

TONY KELLY, MLC
Minister for Planning

Explanatory note

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

- (a) to extend a transitional period during which a repealed provision of the *Mining Act 1992* (which allows mining operations to be carried out in areas the subject of a mining lease, unaffected by the *Environmental Planning and Assessment Act 1979*) continues to operate in respect of certain existing mining leases,
- (b) to omit a spent aspect of the relevant transitional provision,
- (c) to permit single applications for complying development certificates for development comprising the concurrent erection of new single storey or two storey dwelling houses each to be erected on existing adjoining lots,
- (d) to require documents associated with complying development certificates relating to bush fire prone land to be given to the NSW Rural Fire Service and the relevant council,
- (e) to ensure that bonded asbestos material or friable asbestos material is removed to the landfill site specified in the contract for that work for the purposes of applicable complying development conditions,
- (f) to require a professional engineer's report for the erection or demolition of boundary walls in certain circumstances,

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- (g) to permit consent authorities to consult with the NSW Rural Fire Service in certain circumstances until 20 May 2012 in relation to appropriate measures for protecting bush fire prone land.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 80 (11), 85A (6) (a), 105 and 157 (the general regulation-making power) and clause 1 of Schedule 6 (Savings, transitional and other provisions).

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Bush Fire Prone Land) Regulation 2010*.

2 Commencement

- (1) This Regulation commences on the day on which it is published on the NSW legislation website, except as provided by subclause (2).
- (2) Schedule 1 [5]–[10] commence on 25 February 2011.

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Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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[1] Clause 8K Transitional provision—existing mining leases

Insert “in respect of which mining operations are carried out underground” after “existing mining lease” in clause 8K (1).

[2] Clause 8K (3), definition of “existing mining lease”

Omit “the relevant commencement”. Insert instead “16 December 2005”.

[3] Clause 8K (3), definition of “relevant commencement”

Omit the definition.

[4] Clause 8K (3), definition of “relevant transition period”

Omit the definition. Insert instead:

relevant transition period means:

- (a) the period ending on 31 December 2011 if, on or before 16 December 2010, the Director-General has notified environmental assessment requirements under section 75F (3) of the Act for approval to carry out mining operations in the mining area, or
- (b) the period ending on 16 December 2010, in any other case.

[5] Clause 126 How must an application for a complying development certificate be made?

Insert after clause 126 (3):

- (4) A single application for a complying development certificate may be made for development comprising the concurrent erection of new single storey or two storey dwelling houses if each is to be erected on existing adjoining lots.

[6] Clause 130A

Insert after clause 130:

130A Copy of particular documents to be given to NSW Rural Fire Service and council

- (1) If a certifying authority issues a complying development certificate for development on bush fire prone land, the certifying authority must send a copy of the following to the NSW Rural Fire Service:
 - (a) the complying development certificate, and

(b) any associated documentation (including a copy of the application and the certification required under clause 3.36B or 3A.37 of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*).

(2) If the certifying authority is not a council, the certifying authority must also send a copy of the documents mentioned in subclause (1) to the council.

[7] Clause 136E Development involving bonded asbestos material and friable asbestos material

Insert after clause 136E (1) (c):

(d) if the contract indicates that bonded asbestos material or friable asbestos material will be removed to a specified landfill site, the person having the benefit of the complying development certificate must give the principal certifying authority a copy of a receipt from the operator of the landfill site stating that all the asbestos material referred to in the contract has been received by the operator.

[8] Schedule 1 Forms

Insert after clause 4 (1) (f) of Part 2 of the Schedule:

- (f1) if the development involves the erection of a wall to a boundary that has a wall less than 0.9m from the boundary, a report by a professional engineer, within the meaning of the *Building Code of Australia*, outlining the proposed method of supporting the adjoining wall,
- (f2) if the development involves the demolition or removal of a wall to a boundary that has a wall less than 0.9m from the boundary, a report by a professional engineer, within the meaning of the *Building Code of Australia*, outlining the proposed method of maintaining support for the adjoining wall after the demolition or removal,

[9] Schedule 4 Planning certificates

Omit “clause 1.19” from clause 3 wherever occurring.

Insert instead “clauses 1.17A (c) and (d) and 1.19”.

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Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[10] Schedule 7 Savings and transitional provisions

Insert at the end of Part 1 of the Schedule:

21A References to section 76A (6)

In any Act, regulation, environmental planning instrument or other instrument, a reference to section 76A (6) of the Act is taken to be a reference to clause 1.17A of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

21B Transitional provisions for development consents for bush fire prone land

- (1) This clause applies to applications for development consent lodged before 25 February 2012.
- (2) The consent authority may grant development consent to development referred to in section 79BA (1) of the Act if it has consulted with the Commissioner of the NSW Rural Fire Service about development consents for bush fire prone land to ensure appropriate measures are taken with respect to development to protect persons, property and the environment from danger that may arise from a bush fire.