



New South Wales

Environmental Planning and Assessment Amendment (Part 4A Certificates and DCPs) Regulation 2011

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*.

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 insert a definition of *planning agreement*,
- (b) to simplify requirements for the making of certain amendments to or revocation of development control plans that are done at the direction of the Minister for Planning, including by removing requirements for councils to publicly exhibit or notify the amendment or revocation of such development control plans before they are amended or revoked,
- (c) to provide that an explanatory note for a voluntary planning agreement, or an agreement that amends or revokes a voluntary planning agreement, must state whether the agreement specifies that certain requirements must be complied with before a construction, occupation or subdivision certificate is issued,
- (d) to provide that a certifying authority must not issue a construction certificate unless the authority is satisfied that all requirements of a voluntary planning agreement that are, under that agreement, required to be met before the construction certificate is issued are complied with,
- (e) to enable a certifying authority to require applicants for construction, occupation or subdivision certificates to provide additional information relating to voluntary planning agreements, if it is essential to the authority's proper consideration of the application,

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- (f) to make it clear that a planning authority that is a party to a voluntary planning agreement may, for the purposes of any such requirement to supply information, certify that specified requirements of the agreement have been met,
- (g) to enable a certifying authority to require applicants for occupation certificates to provide additional information relating to the building concerned, if it is essential to the authority's proper consideration of the application,
- (h) to insert transitional provisions consequent on the amendments.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 74E (1), 81A (5), 109H (5) (d), 109Q (1) and 157 (the general regulation-making power).

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under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Part 4A Certificates and DCPs) Regulation 2011*.

2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on 25 February 2011.
- (2) Schedule 1 [2] commences on the day on which this Regulation is published on the NSW legislation website.

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Schedule 1

Amendment of Environmental Planning and Assessment Regulation 2000

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 3 Definitions

Insert in appropriate order in clause 3 (1):

planning agreement means an agreement referred to in section 93F of the Act.

[2] Clause 22A

Insert after clause 22:

22A Amendment or revocation of development control plan at Minister's direction

- (1) This clause applies if the Minister directs a council under section 74F of the Act:
 - (a) to revoke a development control plan, or
 - (b) to amend a development control plan and the direction specifies that the amending plan is not required to be exhibited.
- (2) The council may amend or revoke the development control plan by making a development control plan.
- (3) The council must give public notice in a local newspaper of the making of the development control plan not later than 14 days after making the plan.
- (4) Notice of a development control plan to revoke a development control plan must specify the following:
 - (a) the date the council made the plan and when the plan takes or took effect,
 - (b) the name of the plan that is to be revoked.
- (5) Notice of a development control plan to amend a development control plan must specify the following:
 - (a) the date the council made the plan and when the plan takes or took effect,
 - (b) the name of the plan that is to be amended,
 - (c) that the amendment is in accordance with a direction under section 74F of the Act.
- (6) The development control plan comes into effect on the date that the notice is given, or 14 days after the council makes the development control plan, whichever occurs first.

- (7) Clauses 18, 21, 21A, 22 and 23 do not apply to a development control plan made under this clause.

[3] Clause 25E Explanatory note

Insert at the end of clause 25E (2) (f):

, and

- (g) state whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

[4] Clause 140 Certifying authority may require additional information

Insert “or a planning agreement” after “subdivision work” in clause 140 (1).

[5] Clause 140 (3)

Insert after clause 140 (2):

- (3) A planning authority that is a party to a planning agreement may, at the request of an applicant for a construction certificate that is made for the purposes of obtaining information required under this clause, certify that specified requirements of the agreement have been complied with.

[6] Clause 146A

Insert after clause 146:

146A Restriction on issue of construction certificates without compliance with planning agreement

If a planning agreement specifies requirements of the agreement that are required to be complied with before a construction certificate for building work or subdivision work is issued, a certifying authority must not issue a construction certificate for the work unless the authority is satisfied that those requirements have been complied with.

[7] Clause 149A

Insert after clause 149:

149A Certifying authority may require additional information

- (1) A certifying authority may require the applicant for an occupation certificate to give the certifying authority any additional information concerning the proposed building work or

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Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

a planning agreement that is essential to the authority's proper consideration of the application.

- (2) Nothing in this clause affects the certifying authority's duty to determine an application for an occupation certificate.
- (3) A planning authority that is a party to a planning agreement may, at the request of an applicant for an occupation certificate that is made for the purposes of obtaining information required under this clause, certify that specified requirements of the agreement have been complied with.

[8] **Clause 158 Certifying authority may require additional information**

Insert "or a planning agreement" after "proposed subdivision" in clause 158 (1).

[9] **Clause 158 (3)**

Insert after clause 158 (2):

- (3) A planning authority that is a party to a planning agreement may, at the request of an applicant for a subdivision certificate that is made for the purposes of obtaining information required under this clause, certify that specified requirements of the agreement have been complied with.

[10] **Clause 291A**

Insert after clause 291:

291A Transitional provisions relating to Part 4A certificates and planning agreements

- (1) The amendment made to clause 25E by the *Environmental Planning and Assessment Amendment (Part 4A Certificates and DCPs) Regulation 2011* applies only in relation to planning agreements for which public notice is given under clause 25D on or after 25 February 2011.
- (2) The amendments made to this Regulation by the *Environmental Planning and Assessment Amendment (Part 4A Certificates and DCPs) Regulation 2011* apply only in relation to an application for a construction certificate, occupation certificate or subdivision certificate made on or after 25 February 2011.