



New South Wales

Environmental Planning and Assessment Amendment (Planning Appeals) 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* with respect to the following:

- (a) the rejection of development applications,
- (b) the time in which development applications are to be forwarded to concurrence authorities and approval bodies,
- (c) the giving of notices of determination,
- (d) the effect of a failure to determine an application for the modification of a development consent within 40 days,
- (e) the review of decisions to reject development applications,
- (f) the review of decisions with respect to applications for modification of development consents,
- (g) the fees payable in respect of certain applications,
- (h) the exemption of temporary structures from certain requirements relating to construction certificates and occupation certificates,
- (i) the removal of provisions relating to planning arbitrators.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 23G, 79B, 81, 82C, 96, 96AA, 105, 109Q, 137 and 157 (the general regulation-making power) and clause 1 (1) of Schedule 6.

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Planning Appeals) Regulation 2011*.

2 Commencement

This Regulation commences on 28 February 2011 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 51 Rejection of development applications

Omit “7 days” from clause 51 (1). Insert instead “14 days”.

[2] Clause 51 (3)

Omit the subclause. Insert instead:

- (3) An application is taken for the purposes of the Act never to have been made if the application is rejected under this clause and the determination to reject the application is not changed following any review.

[3] Clause 51 (4)

Insert “and must notify the applicant in writing of the reasons for the rejection of the application” after “this clause”.

[4] Clause 59 Seeking concurrence

Omit “2 days” from clause 59 (2). Insert instead “14 days”.

[5] Clause 66 Seeking general terms of approval

Omit “2 days” from clause 66 (2). Insert instead “14 days”.

[6] Clause 100 Notice of determination

Insert “or a right to make an application for a review” after “appeal” in clause 100 (1) (j).

[7] Clause 122 Notice of determination of application to modify development consent

Omit clause 122 (2) (b). Insert instead:

- (b) must specify any right of the applicant to seek a review or make an appeal against the determination under the Act.

[8] Clause 122A

Insert after clause 122:

122A Effect of failure to determine modification applications

- (1) For the purposes of sections 96 (6) and 96AA (3) of the Act:
- (a) a consent authority is taken to have refused an application under section 96 or 96AA if it fails to determine the

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application within 40 days after the application is made,
and

- (b) a later determination does not prejudice or affect the continuance or determination of an appeal made under section 97AA of the Act in respect of a determination that is taken by this clause to have been made.

- (2) If a later determination is made by granting consent, the consent authority is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal (being an appeal made under section 97AA of the Act in respect of a determination that is taken to have been made by this clause) withdrawn at any time prior to the determination of that appeal.

[9] Clause 123D Provisions of Act not to apply as if regional panels were councils

Omit clause 123D (1) (c). Insert instead:

- (c) sections 82A, 82C, 82D and 96AB,

[10] Part 6, Division 12B

Insert after Division 12A:

Division 12B Applications for review under Division 2 of Part 4 of the Act

123G Review of determination of development application

A council must give written notice to an applicant of the result of a review under section 82A of the Act as soon as practicable after the review is determined.

123H Review of decision to reject development application

- (1) An application for a review under section 82B of the Act by a council must be made not later than 14 days after the applicant is given written notice by the council of its decision to reject and not to determine the application.
- (2) A council must give written notice to the applicant of the result of a review as soon as practicable after the review is determined.
- (3) A council is taken to have refused an application for a review if it fails to determine the application within 14 days after the application is made.

123I Review of modification decision

- (1) An application for a review under section 96AB of the Act is to be made not later than 28 days after the date on which the application for the modification of the development consent was determined.
- (2) An application must be notified or advertised:
 - (a) for a period not exceeding 14 days, but otherwise in the same manner as the original application for modification was notified or advertised, or
 - (b) if the application is made to a council that has provided in a development control plan for the notification or advertising of such an application, the application is to be notified or advertised in accordance with the development control plan.
- (3) The notice or advertisement must contain the following information:
 - (a) a brief description of the original modification application and the land to which it relates,
 - (b) a statement that submissions concerning the application for review may be made to the council within the notification period.
- (4) Submissions may be made in relation to such an application during the notification period and during that period any person may inspect the application and any accompanying information and make extracts from or copies of them.
- (5) The council must, as soon as practicable after the review is determined, give written notice of the results of the review to:
 - (a) the applicant, and
 - (b) if the application applies to land owned by a Local Aboriginal Land Council—the New South Wales Aboriginal Land Council (but not if the review confirms the determination).
- (6) In this clause:
notification period means the period during which the application is required to be advertised or notified under subclause (2).

[11] Clause 257 Fee for request to review a determination

Insert “or section 96AB” after “section 82A (3)”.

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[12] Clause 257A

Insert after clause 257:

257A Fee for review of decision to reject a development application

The fee for an application under section 82B for a review of a decision is as follows:

- (a) \$55—if the estimated cost of the development is less than \$100,000,
- (b) \$150—if the estimated cost of the development is \$100,000 or more and less than or equal to \$1,000,000,
- (c) \$250—if the estimated cost of the development is more than \$1,000,000.

[13] Clause 258 Fee for application for modification of consent

Insert after clause 258 (4):

- (4A) A reference in the Table to this clause to an estimated cost is a reference to the estimated cost of the development for which development consent was granted.

[14] Clause 258A

Insert after clause 258:

258A Fee for review of modification application

The fee for an application under section 96AB for a review of a decision is 50 per cent of the fee that was payable in respect of the application that is the subject of the review.

[15] Clause 268A Development for temporary structures that are entertainment venues

Omit “that is granted on or after 26 October 2007 and before 26 October 2011” from clause 268A (1).

[16] Part 16B, heading

Omit “and planning arbitrators”.

[17] Part 16B

Omit Division 2.

[18] Schedule 7 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of
Planning Appeals Legislation Amendment
Act 2010**

**Construction of references in Land and Environment Court Act
1979**

The reference in section 17 (d) of the *Land and Environment Court Act 1979* to section 96 of the *Environmental Planning and Assessment Act 1979* includes a reference to section 97AA of that Act.

**No review of modification decisions determined before
28 February 2011**

Section 96AB of the Act does not apply in respect of an application for the modification of a development consent if that application was determined before the commencement of the *Environmental Planning and Assessment Amendment (Planning Appeals) Regulation 2011*.

Appeals by applicants—modifications

Section 96 (6) of the Act, as in force immediately before its substitution by the *Planning Appeals Legislation Amendment Act 2010*, continues to apply in respect of an application under section 96 or 96AA of the Act that was determined before 28 February 2011, and section 97AA of the Act does not apply.