



# Environmental Planning and Assessment Amendment (Port Botany and Port Kembla) Regulation 2013

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*.

BRAD HAZZARD, MP  
Minister for Planning and Infrastructure

## Explanatory note

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

- (a) to prescribe the operators of the ports of Botany Bay and Port Kembla (the **Port Operators**) as public authorities so that the Port Operators are determining authorities under Part 5 of the *Environmental Planning and Assessment Act 1979* for development that is permitted without consent on certain land under *State Environmental Planning Policy (Port Botany and Port Kembla) 2013*,
- (b) to require the consent authority to notify the chief executive of a Port Operator of the determination of development applications relating to Port Botany or Port Kembla land in certain circumstances,
- (c) to exempt certain structures at Port Botany and Port Kembla from the requirement to obtain an occupation certificate and to require the principal certifying authorities for such structures to conduct critical stage inspections during their construction,
- (d) to enable the Port Operators to issue subdivision certificates.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4 (1) (the definition of **public authority**), 81 (1), 109D (1) (d) (iii), 109E (4), 109M (2) (c) and 157 (the general regulation-making power).

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Clause 1 Port Kembla) Regulation 2013

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**1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Port Botany and Port Kembla) Regulation 2013*.

**2 Commencement**

This Regulation commences on 31 May 2013 and is required to be published on the NSW legislation website.

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## Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

### [1] Clause 100 Notice of determination

Insert after clause 100 (7):

- (8) For the purposes of section 81 (1) of the Act, a notice of the determination of a development application to which clause 19 of *State Environmental Planning Policy (Port Botany and Port Kembla) 2013* applies must also be given to the chief executive of the applicable Port Operator (within the meaning of that Policy) not later than 7 days after the determination is made.

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

Insert after clause 156 (1) (b):

- (c) the fact that the building is a structure that is not within a classification of building under the *Building Code of Australia* and is erected for the purposes of development of a kind specified as complying development under *State Environmental Planning Policy (Port Botany and Port Kembla) 2013*.

### [3] Clause 160A Prescribed persons—subdivision certificates

Insert after clause 160A (e):

- (f) port operator of the Port of Botany Bay within the meaning of the *Ports and Maritime Administration Act 1995*,
- (g) port operator of the Port of Port Kembla within the meaning of the *Ports and Maritime Administration Act 1995*.

### [4] Clause 162AB

Insert after clause 162A:

#### 162AB Critical stage inspections for certain structures at Port Botany and Port Kembla

- (1) This clause applies to a structure that is not within a classification of building under the *Building Code of Australia* and is erected for the purposes of development of a kind specified as complying development under *State Environmental Planning Policy (Port Botany and Port Kembla) 2013*.
- (2) A principal certifying authority for a structure to which this clause applies is required to be satisfied that building work on the

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site has been inspected by the principal certifying authority or another certifying authority at the critical stages specified by this clause (*critical stage inspections*).

- (3) The last critical stage inspection required to be carried out for the structure must be carried out by the principal certifying authority before use of the structure commences.
- (4) The occasions on which building work must be inspected are:
  - (a) after excavation for, and prior to the placement of, any footings, and
  - (b) prior to pouring any in-situ reinforced concrete building element, and
  - (c) prior to covering any stormwater drainage connections, and
  - (d) on completion of the building work.

**[5] Clause 162B Record of inspections conducted under section 109E (3) or clause 162AB**

Insert “under clause 162A or 162AB” after “critical stage inspection” in clause 162B (1).

**[6] Clause 162C Progress inspection unavoidably missed**

Insert after clause 162C (1):

- (1A) If the circumstances described in subclause (2) apply, an inspection, other than a final inspection, that is required to be carried out under clause 162AB need not be carried out.

**[7] Clause 162C (6)**

Insert “or 162AB (4) (d)” after “(6) (c)”.

**[8] Clause 277 Public authorities**

Insert after clause 277 (2):

- (3) For the purpose of the definition of *public authority* in section 4 (1) of the Act, a Port Operator (within the meaning of *State Environmental Planning Policy (Port Botany and Port Kembla) 2013*) is prescribed, but only so as to allow the Port Operator to be a determining authority within the meaning of Part 5 of the Act for development that is permitted without consent under that Policy on unzoned land or land in the Lease Area (within the meaning of that Policy) of the port concerned.