



New South Wales

Water Industry Competition (General) Amendment (Certificates of Compliance) Regulation 2015

under the

Water Industry Competition Act 2006

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Water Industry Competition Act 2006*.

KEVIN HUMPHRIES, MP
Minister for Natural Resources, Lands and Water

Explanatory note

A subdivision certificate cannot be issued under the *Environmental Planning and Assessment Act 1979* in respect of a subdivision of land to which water or sewerage services are to be provided under the *Water Industry Competition Act 2006* (the **WIC Act**), unless the applicant for the subdivision certificate has obtained a certificate of compliance under the WIC Act.

The object of this Regulation is to provide for the issue of those certificates of compliance. Certificates of compliance are issued by an **approval holder** (being the holder of a network operator licence that authorises water industry infrastructure to be constructed, operated or maintained) and certify that the requirements of the approval holder for connection of a particular development to the water industry infrastructure have been complied with.

This Regulation is made under the *Water Industry Competition Act 2006*, including section 101 (the general regulation-making power) and clause 3A of Schedule 2.

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1 Name of Regulation

This Regulation is the *Water Industry Competition (General) Amendment (Certificates of Compliance) Regulation 2015*.

2 Commencement

This Regulation commences on 5 March 2015 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Water Industry Competition (General) Regulation 2008

Part 3A

Insert after Part 3:

Part 3A Connecting development to infrastructure

Division 1 Preliminary

24AA Definitions

In this Part:

approval holder for water industry infrastructure means the holder of a network operator licence that authorises the infrastructure to be constructed, operated or maintained.

certificate of compliance—see clause 24AB.

consent authority means an authority responsible for determining an application for development authorisation.

developer means a person who has made an application for development authorisation.

development means any activity to which an application for development authorisation relates.

development authorisation means:

- (a) a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (b) an approval under Part 5 of that Act, or
- (c) an approval under Part 1 of Chapter 7 of the *Local Government Act 1993* for the erection of a building.

requirements notice has the meaning given by clause 24AE.

24AB Certificates of compliance

For the purposes of this Part, a certificate of compliance is a certificate issued under this Part by an approval holder for water industry infrastructure certifying that:

- (a) the reasonable requirements of the approval holder in relation to connection to the water industry infrastructure have been complied with, or
- (b) no such requirements were imposed by the approval holder.

Division 2 Obligations of consent authority

24AC Consent authority to notify approval holder of development and building applications

- (1) A consent authority must give an approval holder for water industry infrastructure notice of an application for development authorisation received by the consent authority if, in the opinion of the consent authority, the

development would significantly affect the operation of the infrastructure, for example by:

- (a) increasing the demand for water supplied by means of the infrastructure, or
 - (b) increasing the amount of sewage that is to be removed by means of the infrastructure, or
 - (c) damaging or interfering with, or adversely affecting the operation of, the infrastructure.
- (2) The consent authority is not required to give notice of the application if it decides:
- (a) not to approve the application, or
 - (b) to approve the application with a condition that the developer must obtain a certificate of compliance from the approval holder.
- (3) IPART may issue guidelines from time to time to assist consent authorities to determine which matters should be the subject of a notice under subclause (1).
- (4) The consent authority must take into account any submissions made by the approval holder in relation to an application for development authorisation that is the subject of a notice under subclause (1), in determining whether to approve the application or to attach conditions to it.
- (5) The consent authority may, however, approve the application at any time if it imposes a condition that the developer must obtain a certificate of compliance from the approval holder.
- (6) The consent authority may assume that the approval holder has no submissions to make in relation to an application of which notice has been given under this clause if no such submissions are received by the consent authority within 21 days after the notice was given to the approval holder.

Division 3 Certificates of compliance

24AD Applications for certificates of compliance

- (1) If a developer proposes to connect a development to water industry infrastructure operated (or to be operated) under the Act, the developer may apply to the approval holder for the infrastructure for a compliance certificate (whether or not it is a requirement of the development authorisation to obtain the certificate).
- (2) The application must be accompanied by a copy of the application for development authorisation or, if the application has been approved, by a copy of the development authorisation.

24AE Notice of requirements before grant of certificate of compliance

- (1) If an application is made for a certificate of compliance, the approval holder may, before proceeding further with the application, serve a notice (a *requirements notice*) on the developer requiring the developer to do any one or more of the following:
 - (a) to pay an amount to the approval holder (or as directed by the approval holder) to cover the whole or an appropriate portion of relevant costs as assessed by the approval holder either in the notice or in another notice,

- (b) to enter into one or more agreements providing for any one or more of the following:
 - (i) the payment of the amount to the approval holder (or as directed by the approval holder),
 - (ii) the construction, or the construction and the manner of construction, of works specified in the notice (being works for the purposes of connecting the development to the water industry infrastructure),
 - (iii) the transfer of any works to the approval holder,
 - (c) to provide reasonable security, in a form approved by the approval holder, for due performance of an agreement under paragraph (b),
 - (d) to attend to additional or ancillary matters as are necessary to give effect to any one or more requirements imposed under paragraphs (a)–(c) as specified by the approval holder.
- (2) The approval holder may withdraw a requirement contained in a notice under this clause, in which case the requirement is treated as not having been made.
- (3) In this clause, *relevant costs* means:
- (a) the full cost (based on net present value, historical cost or any other appropriate basis, and having regard (if the approval holder thinks it appropriate) to expected operating costs and revenues) of water industry infrastructure that:
 - (i) benefits or is available to the land concerned, and
 - (ii) is constructed, or is to be constructed, by or on behalf of, or at the request of, or under an agreement with, the approval holder or a predecessor of the approval holder, and
 - (b) the full cost of amplification of the approval holder's water industry infrastructure in consequence of the proposed development, and
 - (c) the investment costs incurred by the approval holder or a predecessor of the approval holder and by developers in relation to the existing and proposed water industry infrastructure referred to in paragraphs (a) and (b).

24AF Grant of certificates of compliance

If an application is made to the approval holder for a certificate of compliance, the approval holder:

- (a) may grant the developer a certificate of compliance, without serving a requirements notice on the developer, or
- (b) must grant the developer a certificate of compliance, when the approval holder is satisfied that a requirements notice served on the developer has been complied with, or
- (c) must, at the developer's request, grant the developer a certificate of compliance, if no certificate of compliance has been granted to, and no requirements notice has been served on, the developer within 60 days after the making of an application for the certificate or within a further period approved by IPART in a particular case that is notified to the developer within that period of 60 days.

24AG Conditions of certificates of compliance

- (1) A certificate of compliance may be granted unconditionally or subject to specified conditions, including a condition to the effect that the grant is

conditional on carrying out the terms of an agreement entered into under a requirements notice.

- (2) The requirement to obtain a certificate of compliance is taken not to be complied with until the conditions attached to the certificate or requirements notice have been complied with.
- (3) An unconditional certificate of compliance may be granted to replace one already granted subject to conditions.

24AH Grant of certificates of compliance in stages

- (1) A certificate of compliance may, instead of being issued in relation to the whole of the development concerned, be issued progressively in relation to any or all of the stages of the development.
- (2) A certificate of compliance may be granted to replace one or more already granted.

24AI Enforcement

- (1) Any money owing to a person as a consequence of a requirements notice may be recovered in any court of competent jurisdiction as if it were a debt due to the person.
- (2) Nothing in this clause affects any power or remedy that the person has apart from this clause.