



New South Wales

# Environmental Planning and Assessment Amendment (Integrated Development and Concurrences) Regulation 2018

under the

Environmental Planning and Assessment Act 1979

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

ANTHONY ROBERTS, MP  
Minister for Planning

## Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* to provide for the following:

- (a) the use of the NSW planning portal by consent authorities, concurrence authorities, approval bodies and the Secretary of the Department of Planning and Environment (the **Planning Secretary**) in connection with development applications for development requiring concurrence or for integrated development,
- (b) the authorisation of the Planning Secretary to act on behalf of an approval body in respect of an application for integrated development,
- (c) procedural and other matters applying when the Planning Secretary acts on behalf of an approval body in respect of an application for integrated development,
- (d) the provision of fees in connection with development applications for development requiring concurrence or for integrated development,
- (e) other amendments of a law revision nature.

This Regulation also makes a consequential amendment to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.13, 4.47 (4A) and (5), 4.64, 10.13 (the general regulation-making power) and 10.15 and clause 3 of Schedule 3.

## **Environmental Planning and Assessment Amendment (Integrated Development and Concurrences) Regulation 2018**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Integrated Development and Concurrences) Regulation 2018*.

### **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 [8] and [12] commence on 28 February 2019.

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

### [1]    **Clause 50B**

Insert after clause 50A:

#### **50B    Special provisions relating to development requiring concurrence and integrated development**

- (1) This clause applies to a development application for:
  - (a) development for which the concurrence of a concurrence authority is required, or
  - (b) integrated development.
- (2) Despite clause 50 (1) (c), a development application to which this clause applies is not to be accompanied by any fees (*additional fees*) payable by the applicant under clause 252A or 253.
- (3) The applicant must pay any additional fees that are notified, by means of the NSW planning portal, to the applicant.
- (4) The development application is taken not to have been lodged until any additional fees notified to the applicant have been paid in accordance with the notice.

**Note.** See the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* for transitional arrangements applying until 1 January 2020.

### [2]    **Part 6, Division 1A**

Insert after clause 56:

#### **Division 1A    Communications under Divisions 2 and 3 through NSW planning portal**

##### **57    Definitions**

- (1) In this Division:

*document or information* includes any application, notification, advice or request.

*relevant authority* means a consent authority, a concurrence authority, an approval body or the Planning Secretary.
- (2) A reference in this Division to forwarding or giving any document or information to a relevant authority includes a reference to making any request or application to the relevant authority.

##### **57A    Communications under Division 2 or 3 by means of NSW planning portal**

- (1) A relevant authority that is required or permitted by Division 2 or 3 to forward or give any document or information to another relevant authority may do so by means of the NSW planning portal.
- (2) Any requirement in Division 2 or 3 for any such document or information to be given by a relevant authority in writing is taken to have been met if it is done by means of the NSW planning portal.

**57B Time of dispatch and receipt**

For the purposes of Division 2 or 3:

- (a) the time at which any document or information is forwarded or given by a relevant authority by means of the NSW planning portal is the time when the document or information is shown on the NSW planning portal to have been sent by the authority, and
- (b) the time at which a document or information is received by a relevant authority is the time when the document or information becomes capable of being retrieved by the authority by means of the NSW planning portal.

**[3] Clause 59 Seeking concurrence**

Omit clause 59 (2). Insert instead:

- (2) The development application must be forwarded to the relevant concurrence authority within 14 days after the application is lodged, except as otherwise provided by this clause.

**[4] Clause 59 (3)**

Omit “However, if”. Insert instead “If”.

**[5] Clause 59 (4)**

Insert after clause 59 (3):

- (4) If the Planning Secretary has made an election under *State Environmental Planning Policy (Concurrences) 2018* in relation to development, the consent authority must forward the development application concerned to the Planning Secretary as soon as possible after receiving notice of the election.

**[6] Clause 62 Notification of decision**

Insert “(or a lesser period, if any, provided for in an environmental planning instrument)” after “days” in clause 62 (1) (a).

**[7] Clause 66 Seeking general terms of approval**

Omit “In the case of a development application that indicates on its face that such an approval is required, the” from clause 66 (2).

Insert instead “The”.

**[8] Clause 70AA**

Insert after clause 70:

**70AA Planning Secretary may act on behalf of approval body**

- (1) The Planning Secretary is authorised to act on behalf of an approval body as referred to in section 4.47 (4A) of the Act where:
  - (a) the approval body has failed to inform the consent authority under section 4.47 of the Act, within the GTA assessment period, whether or not the approval body will grant the approval or of the general terms of its approval, or
  - (b) there is an inconsistency that has been identified by the consent authority in the general terms of approval of 2 or more approval bodies (being an inconsistency in which it would not be possible for a general

term of approval of an approval body to be complied with without breaching a general term of approval of another approval body).

- (2) The ***GTA assessment period*** is the period of 21 or 40 days, as the case may be, prescribed by clause 70 (1) as the period within which the approval body must notify its decision to the consent authority.

**Note.** This period may be extended by operation of Division 11.

- (3) As soon as practicable after deciding to act on behalf of an approval body as referred to in section 4.47 (4A) of the Act, the Planning Secretary must give written notice to the consent authority and approval body or bodies of that decision.
- (4) For the purposes of section 4.47 (4A) (b) of the Act, the assessment requirements set out in the Secretary's Assessment Requirements, are prescribed as State assessment requirements.
- (5) In this clause, ***Secretary's Assessment Requirements*** means *Secretary's Assessment Requirements for Development Requiring General Terms of Approval*, as in force on the commencement of this clause and published on the NSW planning portal.

**70AB Additional information sought by Planning Secretary acting on behalf of approval body**

- (1) If the Planning Secretary decides to act on behalf of an approval body as referred to in section 4.47 (4A) of the Act, the Planning Secretary may request the applicant for development consent to provide the Planning Secretary with such additional information about the proposed development as the Planning Secretary considers necessary to the Planning Secretary's proper consideration of the general terms of approval.
- (2) The request:
- (a) must be in writing, and
  - (b) may specify a reasonable period within which the information must be provided to the Planning Secretary.
- (3) Instead of providing the information requested, the applicant to whom a request is made under this clause may notify the Planning Secretary in writing that the information will not be provided.
- (4) If the applicant notifies the Planning Secretary that the information will not be provided, or fails to provide it by the end of any period specified as referred to in subclause (2) (b) or such further period as the Planning Secretary may allow, the Planning Secretary may deal with the request for general terms of approval without that information.

**70AC Notification of general terms of approval by Planning Secretary**

- (1) Within 21 days after giving written notice under clause 70AA (3), the Planning Secretary must give written notice to the consent authority and each approval body concerned of the Planning Secretary's decision concerning the general terms of approval (including whether or not approval will be given).
- (2) If the consent authority determines the development application concerned by refusing to grant consent before the expiration of the relevant period under subclause (1):
- (a) the consent authority must notify the Planning Secretary, in writing, as soon as possible after the determination, and
  - (b) subclause (1) ceases to apply in relation to the development application.

- (3) Nothing in this clause prevents a consent authority from having regard to any general terms of approval notified to the consent authority by the Planning Secretary after the expiration of the relevant period under subclause (1).

**[9] Clause 106 Definition of “assessment period”**

Omit “of 21 or 40 days, as the case may be,” from paragraph (a) of the definition of *assessment period*.

**[10] Clause 106, definition of “assessment period”**

Insert after paragraph (a) of the definition:

**Note.** Generally, the period prescribed by clause 62 (1) is 21 or 40 days.

**[11] Clause 108 Days prior to referral of application to other bodies to be disregarded**

Omit the clause.

**[12] Clause 110 Days occurring while concurrence authority’s or approval body’s request for additional information remains unanswered**

Insert after clause 110 (2):

- (3) Subclause (1) does not apply in relation to a request for additional information that is made by the Planning Secretary under:
- (a) clause 60 (in circumstances in which the Planning Secretary is a concurrence authority due to the operation of *State Environmental Planning Policy (Concurrences) 2018*), or
  - (b) clause 70AA.

**[13] Clause 252A (1) and 253 (1)**

Omit “up to a maximum” wherever occurring.

**[14] Clause 252A Additional fees—development requiring concurrence**

Omit clause 252A (2). Insert instead:

- (2) The concurrence fee is to be paid to the concurrence authority.

**[15] Clause 252A (3) (b)**

Omit the paragraph. Insert instead:

- (b) to any concurrence authority that has waived the payment of the fee.

**[16] Clause 252A (3A)**

Omit the subclause. Insert instead:

- (3A) A concurrence authority may determine to repay the whole or any part of a concurrence fee paid to it under this clause, in which case the whole or part of the concurrence fee must be repaid to the applicant.

**[17] Clause 252A (5) and (6)**

Omit clause 252A (5). Insert instead:

- (5) For the purposes of this clause, the *concurrence fee* payable to a concurrence authority for a development application is \$320.
- (6) A concurrence authority may waive or reduce the concurrence fee payable to it generally, in relation to a particular application or in relation to a class of applications by giving written notice to:

- (a) a consent authority for concurrence fees collected by the consent authority, or
- (b) the Planning Secretary for concurrence fees collected by means of the NSW planning portal.

**[18] Clause 253 Additional fees—integrated development**

Omit clause 253 (2). Insert instead:

- (2) The approval fee is to be paid to the approval body.

**[19] Clause 253 (2A)**

Omit the subclause. Insert instead:

- (2A) The approval fee for a development application is not payable to any approval body that has waived the payment of the fee.

**[20] Clause 253 (2B)**

Omit the subclause. Insert instead:

- (2B) An approval body may determine to repay the whole or any part of an approval fee paid to it under this clause, in which case the whole or part of the approval fee must be repaid to the applicant.

**[21] Clause 253 (4) and (5)**

Omit clause 253 (4). Insert instead:

- (5) For the purposes of this clause, the *approval fee* payable to an approval body for a development application is \$320.
- (6) An approval body may waive or reduce the approval fee payable to it generally, in relation to a particular application or in relation to a class of applications by giving written notice to:
  - (a) a consent authority for approval fees collected by the consent authority, or
  - (b) the Planning Secretary for approval fees collected by means of the NSW planning portal.

## **Schedule 2      Amendment of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017**

### **New Part**

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

### **Part            Provision consequent on commencement of Environmental Planning and Assessment Amendment (Integrated Development and Concurrences) Regulation 2018**

#### **Payment of fees for integrated development and development requiring concurrence through NSW planning portal**

- (1) The *Environmental Planning and Assessment Regulation 2000*, as in force immediately before the commencement of the *Environmental Planning and Assessment Amendment (Integrated Development and Concurrences) Regulation 2018*, continues to apply in relation to a development application lodged before 1 January 2020 as if Schedule 1 [1], [3], [7] and [11] to that Regulation had not been made.
- (2) Subclause (1) does not apply in relation to a development application if:
  - (a) the Planning Secretary has, by order published in the Gazette, exempted a consent authority from the application of the subclause on and from a specified day, and
  - (b) the development application is lodged with the consent authority on or after that day.