



New South Wales

Environmental Planning and Assessment Amendment (Building and Subdivision Certification) Regulation 2019

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*.

ROBERT STOKES, MP
Minister for Planning and Public Spaces

Explanatory note

The object of this Regulation is to make amendments, including additional savings and transitional provisions, that are consequential on the enactment of Schedule 6 to the *Environmental Planning and Assessment Amendment Act 2017* (which revised and consolidated provisions dealing with building and subdivision certification in a new Part 6 of the *Environmental Planning and Assessment Act 1979*).

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 6.9, 6.31, 6.33, 10.13 (the general regulation-making power) and 10.15.

Environmental Planning and Assessment Amendment (Building and Subdivision Certification) Regulation 2019

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Building and Subdivision Certification) Regulation 2019*.

2 Commencement

- (1) This Regulation commences on 1 December 2019 (except as provided by subclause (2)) and is required to be published on the NSW legislation website.
- (2) Schedule 2[2] commences on 1 September 2019.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Whole Regulation (except where otherwise amended by this Schedule)

Omit “certifying authority”, “certifying authorities” and “certifying authority’s” wherever occurring.

Insert instead “certifier”, “certifiers” and “certifier’s”, respectively.

[2] Clause 3 Definitions

Omit the definition of *alternative solution* from clause 3(1).

Insert in alphabetical order—

performance solution has the same meaning as in the *Building Code of Australia*.

[3] Clauses 98(2)(a), 136A(3)(a), 143(2) and 145(3)

Omit “under clause 187” wherever occurring. Insert instead “under clause 164B, 187”.

[4] Clauses 98(2)(a), 136A(3)(a), 143(2) and 145(3)

Omit “in clause 187(6)” wherever occurring. Insert instead “in clause 164B(4), 187(6)”.

[5] Clauses 126(1)(b), 139(1)(b), 149(1) and 157(1)

Omit “that authority” wherever occurring. Insert instead “the certifier”.

[6] Clauses 130(2), (2A), (2E) and (5), 134(1)(f1), 144(1), 144A(1) and (3)(a), 147(1)(g), 152(6) (paragraph (a) of the definition of “final fire safety report”), 152B and 155(1)(f) and Schedule 1, clauses 2(1)(n)(iii), 4(1)(i)(iii) and (5)(c) and 6(3)(c)

Omit “an alternative” and “any alternative” wherever occurring.

Insert instead “a performance”.

[7] Clauses 130(2A), 144(1), (2) and (9) (paragraph (a) of the definition of “initial fire safety report”), 144A(1) and 152B

Omit “the alternative” wherever occurring. Insert instead “the performance”.

[8] Clauses 130(2E)(b) and 152B(b)

Omit “that alternative” wherever occurring. Insert instead “that performance”.

[9] Clause 138 Compliance certificate

Omit “Section 109C” from the note at the end of clause 138(1).

Insert instead “Section 6.4(e)”.

[10] Clause 138A

Insert after clause 138—

138A Restriction on issue of compliance certificates

A compliance certificate of the kind referred to in section 6.4(e)(i) or (ii) of the Act must not be issued for any building work or subdivision work unless any required development consent or complying development certificate is in force with respect to the building or subdivision to which the work relates.

- [11] Clauses 140(1) and 143C(3)(j)**
Omit “or subdivision” wherever occurring.
- [12] Clause 142 Procedure for determining application for construction certificate**
Omit “section 109C(1)(b)” from clause 142(3). Insert instead “section 6.4(a)”.
- [13] Clause 143B Restriction on issue of construction certificate without inspection**
Omit “council, a consent authority or an accredited” from clause 143B(1).
- [14] Clause 143C Record of site inspections**
Omit clause 143C(1) and (2). Insert instead—
- (1) A certifier must make a record of each inspection carried out by the certifier for the purposes of clause 143B.
 - (2) Any certifier who is required to make such a record but is not the certifier in relation to the issue of the construction certificate concerned must, within 2 days after the carrying out of the inspection, provide a copy of the record to the certifier in relation to the issue of the certificate.
- [15] Clauses 145(1)(a) and 154(1B)**
Omit “are not inconsistent” wherever occurring. Insert instead “is consistent”.
- [16] Clause 145 Compliance with development consent and Building Code of Australia**
Omit clause 145(2).
- [17] Clauses 146 and 146A**
Omit “or subdivision work” wherever occurring.
- [18] Clauses 146A and 267A(1)**
Omit “the authority” wherever occurring. Insert instead “the certifier”.
- [19] Clause 146B Condition relating to fire safety systems in class 2–9 buildings**
Omit “section 109C(1)(a)” from clause 146B(2)(c)(i). Insert instead “section 6.4(e)”.
- [20] Clause 147 Form of construction certificate**
Omit “section 81A(5)” from clause 147(1)(e).
Insert instead “section 6.6(2)(f)”.
- [21] Part 8, Division 2A**
Insert after Division 2—

Division 2A Subdivision works certificates

148A Application for subdivision works certificate

- (1) An application for a subdivision works certificate—
 - (a) must contain the information, and be accompanied by the documents, specified in Part 3A of Schedule 1, and
 - (b) if the certifier so requires, must be in the form approved by the certifier, and

- (c) must be delivered by hand, sent by post or transmitted electronically to the principal office of the certifier, but may not be sent by facsimile transmission.
- (2) The application may only be made by a person who is eligible to appoint a principal certifier for the relevant development.
- (3) Immediately after it receives an application for a subdivision works certificate, the certifier must endorse the application with the date of its receipt.

148B Withdrawal of application

- (1) An application for a subdivision works certificate may be withdrawn at any time prior to its determination by service on the certifier to which it was made of a notice to that effect signed by the applicant.
- (2) The certifier may (but is not required to) refund to the applicant the whole or any part of the application fee paid in connection with an application that has been withdrawn.

148C Certifier may require additional information

- (1) A certifier may require the applicant for a subdivision works certificate to give the certifier any additional information concerning the proposed subdivision work or a planning agreement that is essential to the certifier's proper consideration of the application.
- (2) Nothing in this clause affects the certifier's duty to determine an application for a subdivision works certificate.
- (3) A planning authority that is a party to a planning agreement may, at the request of an applicant for a subdivision works 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.

148D Certifier to supply application form

If a certifier requires an application for a subdivision works certificate to be in a particular form, it must provide any person intending to make such an application with blank copies of that form.

148E Procedure for determining application

- (1) The determination of an application for a subdivision works certificate must be in writing and must contain the following information—
 - (a) the date on which the application was determined,
 - (b) whether the application has been determined—
 - (i) by approval, or
 - (ii) by refusal, and
 - (c) if the application has been determined by refusal—
 - (i) the reasons for the refusal, and
 - (ii) if the certifier is a consent authority, of the applicant's right of appeal under the Act against the refusal.
- (2) The certifier must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within 2 days after the date of the determination, copies of—
 - (a) the determination, together with the application to which it relates, and

- (b) any subdivision works certificate issued as a result of the determination, and
 - (c) any plans and specifications in relation to which the subdivision works certificate has been issued, and
 - (d) any other documents that were lodged with the application for the certificate or given to the certifier under clause 148C.
- (3) In this Part, a reference to the issuing of a subdivision works certificate includes a reference to the endorsement of the subdivision work on any relevant plans and specifications, as referred to in section 6.4(b) of the Act.

148F Compliance with development consent

- (1) A certifier must not issue a subdivision works certificate for subdivision work unless the design and construction of the work (as depicted in the plans and specifications and as described in any other information furnished to the certifier under clause 148C) is consistent with the development consent.
- (2) A certifier must not issue a subdivision works certificate for subdivision work under a development consent unless each of the following have been complied with—
 - (a) each condition or agreement requiring the provision of security before work is carried out in accordance with the development consent (as referred to in section 4.17(6) of the Act),
 - (b) each condition requiring the payment of a monetary contribution or levy before work is carried out in accordance with the development consent (as referred to in section 7.11 or 7.12 of the Act),
 - (c) each other condition of the development consent that must be complied with before a subdivision works certificate may be issued in relation to the subdivision work.

148G Restriction on issue of certificate without compliance with planning agreement

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

148H Form of certificate

A subdivision works certificate must contain the following—

- (a) the identity of the certifier that issued it, including, in a case where the certifier is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifier is an accredited certifier, the accreditation number of the certifier, including, in a case where the certifier is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,
- (c) if the certifier is an accredited certifier who is an individual, the signature of the accredited certifier,
- (d) if an individual issued the certificate on behalf of the certifier, the signature of the individual who issued the certificate,
- (e) the registered number and date of issue of any relevant development consent,

- (f) the date of the certificate,
- (g) a statement to the effect that work completed in accordance with documentation accompanying the application for the certificate (with such modifications verified by the certifier as may be shown on that documentation) will comply with the requirements referred to in section 6.12 of the Act.

148I Modification of certificate

- (1) A person who has made an application for a subdivision works certificate and a person having the benefit of a subdivision works certificate may apply to modify the development the subject of the application or certificate.
- (2) This Division applies to an application to modify development in the same way as it applies to the original application.

[22] Clause 149 Applications

Omit clause 149(1)(d). Insert instead—

- (d) whether the application relates to the occupation or use of a new building or a change of building use for an existing building,
- (d1) if the application relates to a part of a new building (including a partially completed building)—a description of the part of the building to which the application relates,

[23] Clause 149A Certifier may require additional information

Omit “authority’s” from clause 149A(1). Insert instead “certifier’s”.

[24] Clause 151 Procedure for determining application

Omit “consent authority and the application relates to a final occupation certificate” from clause 151(1)(c)(ii).

Insert instead “council”.

[25] Clause 151(2)(d)(i)

Omit “section 109E(3)(d) of the Act”. Insert instead “this Regulation”.

[26] Clause 151(2)(d)(ii)

Omit the subparagraph.

[27] Clauses 151(2)(e) and 162C(3)(h)

Omit “Part A2, clause A2.2” wherever occurring. Insert instead “Part A5, clause A5.2”.

[28] Clauses 152 and 152A

Omit “: section 109H” from the headings.

[29] Clause 153 Fire safety certificates

Omit “For the purposes of section 109H(5)(d) and (6)(c) of the Act, a final” from clause 153(1).

Insert instead “An”.

[30] Clause 153(1B)

Omit “final” where firstly occurring.

- [31] Clause 153(2)**
Omit “For the purposes of section 109H(3)(d) and (4)(c) of the Act, an interim”.
Insert instead “An”.
- [32] Clause 153(4), definition of “new building”**
Omit the definition.
- [33] Clause 154 Health, safety and other issues**
Omit clause 154(1). Insert instead—
- (1) An occupation certificate authorising a person—
 - (a) to commence occupation or use of a partially completed new building,
or
 - (b) to commence a new use of a part of an existing building,
must not be issued unless the building will not constitute a hazard to the health
or safety of the occupants of the building.
- [34] Clause 154(1A)**
Omit “For the purposes of section 109H(5)(d) of the Act, a final”.
Insert instead “An”.
- [35] Clause 154(2)**
Omit the subclause.
- [36] Clauses 154B(2) and 154D(1)**
Omit “(whether interim or final)” wherever occurring.
- [37] Clause 154C BASIX completion receipt**
Insert after clause 154C(1A)—
- (1AA) This clause does not apply in relation to an application for an occupation
certificate to commence occupation or use of part of a partially completed
building.
- [38] Clause 154C(1)**
Omit “a final”. Insert instead “an”.
- [39] Clause 154D Lighting affecting observing conditions at Siding Spring Observatory**
Omit “For the purposes of section 109H of the Act, a certifying authority” from clause
154D(1).
Insert instead “The principal certifier”.
- [40] Clause 154E**
Insert after clause 154D—
- 154E Restriction on issue of certificates without compliance with planning
agreement**
- If a planning agreement specifies requirements of the agreement that are
required to be complied with before an occupation certificate relating to the
occupation or use of a new building or a change of building use for an existing

building is issued, a certifier must not issue an occupation certificate for the building unless the certifier is satisfied that those requirements have been complied with.

[41] Clause 155 Form of certificate

Omit clause 155(1)(d). Insert instead—

- (d) whether the certificate relates to the occupation or use of a new building or a change of building use for an existing building (and whether it is for the whole building or part of the building or for a partially completed building),

[42] Clause 155(1)(e)(i)

Omit “interim occupation certificate”.

Insert instead “an occupation certificate for a part of a new building (or partially completed building)”.

[43] Clause 156 Circumstances when occupation certificate not required

Omit “section 109M(2)(c)” from clause 156(1).

Insert instead “section 6.9(2)(a)(iii) and (b)(ii)”.

[44] Clause 156(2)

Omit “section 88(2)(a)”. Insert instead “section 4.32(2)(a)”.

[45] Clause 156(2)

Omit “section 109M(2)(d)”. Insert instead “section 6.9(2)(a)(iv) and (b)(iii)”.

[46] Clause 156, note

Omit the note. Insert instead—

Note. Section 6.9 of the Act requires an occupation certificate for the commencement of the occupation or use of the whole or any part of a new building or the commencement of a change of building use for the whole or any part of an existing building.

Section 6.9(2)(a)(iii) and (b)(ii) provide for the disapplication of section 6.9 in circumstances prescribed by the regulations. Subclause (1) of this clause prescribes such circumstances.

Section 6.9(2)(a)(iv) and (b)(iii) provide for the disapplication of section 6.9 in the case of buildings erected by or on behalf of the Crown or by or on behalf of prescribed persons. Subclause (2) of this clause prescribes such persons.

[47] Clause 156A

Insert after clause 156—

156A Condition of occupation certificates for part of partially completed buildings

An occupation certificate that is issued for the first completed stage of a partially completed building (the *partial occupation certificate*) is subject to the condition that an occupation certificate must be obtained for the whole of the building within 5 years after the partial occupation certificate is issued.

[48] Clause 157 Applications

Omit “construction” from clause 157(2)(c). Insert instead “subdivision works”.

[49] Clause 157(2), note

Omit “section 109O”. Insert instead “section 6.29”.

[50] Clause 160A Prescribed persons—subdivision certificates

Omit the clause.

[51] Clause 161, heading

Omit “: section 109O”.

[52] Clauses 161A and 161B

Insert after clause 161—

161A Directions by principal certifiers as to non-compliance with aspects of development—section 6.31 of Act

- (1) Section 6.31 of the Act applies in relation to the carrying out of works otherwise than in accordance with a development consent or complying development certificate, including any approved plans and development consent conditions.
- (2) However, section 6.31 of the Act does not apply in relation to non-compliance identified during a critical stage inspection or during an inspection under this clause.
- (3) Any notice containing a direction by a principal certifier under section 6.31 of the Act is to be in the form approved by the Planning Secretary and be issued within 2 business days of the certifier becoming aware of the non-compliance concerned.
- (4) The notice is to specify a period in which the direction must be complied with (the *compliance period*).
- (5) A principal certifier who issues a direction under section 6.31 of the Act must, at the end of the compliance period, inspect the site to which the direction relates to assess whether the direction has been complied with.
- (6) The principal certifier must make a record of the inspection and provide a copy of the record to the person responsible for carrying out the aspect of the development to which the non-compliance relates.
- (7) The inspection record must include the following information—
 - (a) the address of the site at which the inspection was carried out,
 - (b) the date on which the inspection was carried out,
 - (c) if the inspection was carried out by a council, the name of the council and the identity and signature of the individual who carried out the inspection on behalf of the council,
 - (d) if the inspection was carried out by an accredited certifier, the identity of the accredited certifier, including, in a case where the accredited certifier is a body corporate, the identity of the individual who carried out the inspection on behalf of the body corporate,
 - (e) if the inspection was carried out by an accredited certifier, the accreditation number of the accredited certifier, including, in a case where the accredited certifier is a body corporate, the accreditation number of the individual who carried out the inspection on behalf of the body corporate,
 - (f) details as to whether or not the direction has been complied with.

- (8) The period prescribed for the purposes of section 6.31(2) of the Act is the period of 2 days after the inspection is carried out.
Note. Under section 6.31(2) of the Act, the principal certifier who issues a direction is to notify the consent authority if the direction has not been complied with.
- (9) A copy of any notification under section 6.31(2) of the Act that a direction has not been complied is to be given to the owner of the land (including an owners corporation) to which the direction relates.

161B General duties of principal certifiers

A principal certifier for building work or subdivision work to be carried out on a site is required to be satisfied—

- (a) before the work commences on the site—that a construction certificate or complying development certificate has been issued for such of the building work or subdivision work as requires development consent and over which the principal certifier has control, and
- (b) before any residential building work over which the principal certifier has control commences on the site—that the principal contractor for the work is, if required by the *Home Building Act 1989*, the holder of the appropriate licence and is covered by the appropriate insurance (unless the work is to be carried out by an owner-builder), and
- (c) before an owner-builder commences on the site any residential building work over which the principal certifier has control—that the owner-builder is the holder of any owner-builder permit required under the *Home Building Act 1989*, and
- (d) before the principal certifier issues an occupation certificate or subdivision certificate for the building or work—that building work or subdivision work on the site has been inspected by the principal certifier or another certifier on such occasions as are required by this Regulation and on such other occasions as may be required by the principal certifier, and
- (e) before the principal certifier issues an occupation certificate or subdivision certificate for the work—that any preconditions required by a development consent or complying development certificate to be met for the work before the issue of the occupation certificate or subdivision certificate have been met.

[53] Clauses 162 and 162AA

Omit clause 162. Insert instead—

162 Replacement of principal certifier

- (1) In this clause and in clause 162AA—
Registration Authority means the Building Professionals Board or, following the commencement of the *Building and Development Certifiers Act 2018*, the Secretary within the meaning of that Act.
- (2) A person may not be appointed to replace another person as the principal certifier for building work or subdivision work unless—
- (a) the Registration Authority so approves in writing and the relevant council and consent authority are notified before the replacement occurs, or
- (b) the current principal certifier, the proposed principal certifier and a person who is eligible to appoint a principal certifier for the work agree.

- (3) An application to the Registration Authority for approval under subclause (2), or a notification under that subclause, is to be accompanied by the fee (if any) prescribed by the regulations under the *Building Professionals Act 2005* or the *Building and Development Certifiers Act 2018* and is to be in a form approved by that Authority.
- (4) If the Registration Authority approves the appointment of the relevant council to replace another person as the principal certifier under subclause (2)(a), the council must accept that appointment.
- (5) A principal certifier for building work or subdivision work appointed to replace another certifier for the work must ensure that notice of the appointment and of the approval of that appointment is given to the consent authority (and, if the consent authority is not the council, to the council) within 2 days after the appointment.
- (6) Clause 103 applies to a notice given for the purposes of this clause in the same way as it applies to a notice given for the purposes of section 6.6(2)(a) or 6.12(2)(a) of the Act.
- (7) In addition to the information required by subclause (6) to be included in a notice under this clause, the following information is to be included—
 - (a) the name of the former certifier who has been replaced,
 - (b) a statement that the former certifier agreed to be replaced.
- (8) A person is not required to give a notice under this clause to a person who has agreed to, or been notified of, the proposed appointment.

162AA Provision of information to replacement principal certifying authorities

- (1) This clause applies when a principal certifier (*the new principal certifier*) has been appointed to replace another principal certifier (*the old principal certifier*).
- (2) The new principal certifier may request the Registration Authority in writing to give a direction under this clause if the new principal certifier is unable to obtain the prescribed information from the old principal certifier in relation to the matter for which the new principal certifier has been appointed.
- (3) The Registration Authority may give a direction in writing to any of the following persons to provide the prescribed information, or a copy of that information, to the new principal certifier within the period specified in the notice—
 - (a) the old principal certifier,
 - (b) a person whom the Registration Authority reasonably believes has possession of that information.
- (4) A person must not, without reasonable excuse, fail to comply with a direction given to the person by the Registration Authority under this clause.
- (5) It is not a reasonable excuse for the purposes of subclause (4) that any person has a claim to a lien over any document or record that is prescribed information or any other right to keep such a document or record as security for payment.
- (6) In this clause, *prescribed information* means the following—
 - (a) if the old principal certifier is not a council, the documents and records required to be kept under section 60 of the *Building Professionals Act 2005* by an accreditation holder, or required to be kept under the *Building and Development Certifiers Act 2018* by a registration holder, in relation to the matter concerned,

- (b) if the old principal certifier is a council, the information required to be provided to the Registration Authority under section 74B of the *Building Professionals Act 2005*, or under a provision of the *Building and Development Certifiers Act 2018*, in relation to the person who performed the certification work concerned on behalf of the council and the records required to be kept under that section or provisions by the council in relation to the matter concerned.

[54] Clause 162A Critical stage inspections for building work

Omit clause 162A(1). Insert instead—

- (1) Building work must be inspected on the occasions set out in this clause. Those inspections are *critical stage inspections* for the purposes of this Regulation.

[55] Clause 162A(4A)

Omit the subclause.

[56] Clause 162A(8)

Omit “prescribe”. Insert instead “apply in relation to”.

[57] Clause 162AB Critical stage inspections and other matters for certain structures at Ports Botany and Kembla and Port of Newcastle

Omit “PCA” wherever occurring. Insert instead “PC”.

[58] Clause 162B Record of critical stage and other inspections

Omit “section 109E(3)(d) of the Act or” from clause 162B(1)(b).

[59] Clause 162C Progress inspection unavoidably missed

Omit clause 162C(1) and (1A). Insert instead—

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

[60] Clause 162D Council to be notified of significant fire safety issues

Omit “Part 4A certificate” from clause 162D(1)(a).

Insert instead “certificate under Part 6 of the Act”.

[61] Clause 162D(1)(c)

Omit “Part 4A”.

[62] Clause 162D(2)(a) and (c)

Omit “section 109E” wherever occurring. Insert instead “section 6.6(1)”.

[63] Clause 164C

Insert after clause 164B—

164C Interpretation

Words and expressions used in this Part that are defined in Part 6 of the Act have the same meanings they have in that Part.

[64] Clause 170 What is a final fire safety certificate?

Omit “a final occupation certificate” from the note at the end of the clause.

Insert instead “an occupation certificate”.

[65] Clause 173 What is an interim fire safety certificate?

Omit “interim occupation certificate can be issued for a building under clause 153(2)” from the note at the end of the clause.

Insert instead “occupation certificate can be issued for a building under clause 153(1) or for part of a partially completed new building under clause 153(2)”.

[66] Clause 186A Owners of existing buildings and dwellings must ensure smoke alarms are installed

Omit “section 121B” from the note to clause 186A(1)(a). Insert instead “section 9.34”.

[67] Clause 186N Occupation certificate to be provided to Implementation Committee

Omit “a final”. Insert instead “an”.

[68] Clause 263 Other fees

Insert after clause 263(2)(b)(i)—

- (ia) a subdivision works certificate, or

[69] Clauses 266(1)(o) and 267(h)

Omit “alternative” wherever occurring. Insert instead “performance”.

[70] Schedule 1 Forms

Omit “or subdivision work” wherever occurring in clause 5(b) and (c).

[71] Schedule 1, clause 6(1)(c) and (4)

Omit the provisions.

[72] Schedule 1, Part 3A

Insert after Part 3—

Part 3A Subdivision works certificates

6AA Information to be included in application for subdivision works certificate

An application for a subdivision works certificate must contain the following information—

- (a) the name and address of the applicant,
- (b) a description of the subdivision work to be carried out,
- (c) the address, and formal particulars of title, of the land on which the subdivision work is to be carried out,
- (d) the registered number and date of issue of the relevant development consent, if consent has already been granted for the proposed development,
- (e) the estimated cost of the development,
- (f) a list of the documents accompanying the application.

6AB Documents to accompany application for subdivision works certificate

An application for a subdivision works certificate must be accompanied by appropriate subdivision work plans and specifications, including the following—

- (a) details of the existing and proposed subdivision pattern (including the number of lots and the location of roads),
- (b) details as to which public authorities have been consulted with as to the provision of utility services to the land concerned,
- (c) detailed engineering plans as to the following matters—
 - (i) earthworks,
 - (ii) roadworks,
 - (iii) road pavement,
 - (iv) road furnishings,
 - (v) stormwater drainage,
 - (vi) water supply works,
 - (vii) sewerage works,
 - (viii) landscaping works,
 - (ix) erosion control works,
- (d) copies of any compliance certificates to be relied on.

[73] Schedule 5 Penalty notice offences

Insert after the matter relating to clause 162(1)—

Clause 162AA(4)	200	200
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Schedule 2 Amendment of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

[1] Clause 18 Postponement of revised building and subdivision certification provisions
Insert “and clause 18A” after “In this clause” in clause 18(1).

[2] Clause 18(2)
Omit “1 September”. Insert instead “1 December”.

[3] Clauses 18A–18D
Insert after clause 18—

18A Continuation of matters arising under former building and subdivision certification provisions

The former building and subdivision provisions continue to apply, despite their repeal, to or in respect of the following—

- (a) an interim occupation certificate or final occupation certificate in force under those provisions immediately before 1 December 2019,
- (b) a development consent granted before that date.

18B Subdivision certificates issued by Newcastle Port Corporation and private port operators

Until 1 December 2020, a subdivision certificate under Part 6 of the Act may be issued in relation to a subdivision carried out by or on behalf of any of the following persons by that person or by another person acting on that person’s behalf—

- (a) Newcastle Port Corporation,
- (b) port operator of the Port of Botany Bay within the meaning of the *Ports and Maritime Administration Act 1995*,
- (c) port operator of the Port of Port Kembla within the meaning of the *Ports and Maritime Administration Act 1995*,
- (d) port operator of the Port of Newcastle within the meaning of the *Ports and Maritime Administration Act 1995*.

18C Building and subdivision certification for ski resort area

Until 1 December 2020, the Minister may issue a certificate under Part 6 of the Act for any work or activity carried out in a ski resort area within the meaning of Part 8A of Schedule 1 as if the Minister was a certifier under Part 6 of the Act.

18D Acceptance by certifiers of accredited building products

- (1) Until 1 December 2020, a certifier must not refuse to issue a construction certificate under Part 6 of the Act on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with clause 224 of the *Environmental Planning and Assessment Regulation 2000*.

- (2) A certifier and (but only in the case of a certifier that is a consent authority) an employee of a certifier do not incur any liability as a consequence of acting in accordance with subclause (1).