



New South Wales

Environmental Planning and Assessment Amendment (Planning Portal) Regulation 2020

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 further provision with respect to the use of the NSW planning portal.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.18, 4.26, 4.28, 4.64, 6.33, 7.44, 8.5 and 10.13 (the general regulation-making power).

Environmental Planning and Assessment Amendment (Planning Portal) Regulation 2020

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Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Planning Portal) Regulation 2020*.

2 Commencement

This Regulation commences on 1 July 2020 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 48, heading

Omit the heading. Insert instead—

48 Development application information

[2] Clause 48(b) and (c)

Omit clause 48(c) and “and” at the end of clause 48(b).

[3] Clause 49 Persons who can make development applications

Omit “in writing” wherever occurring in clause 49(1)(b), (2) and (3).

[4] Clause 49(4A)

Insert after clause 49(4)—

- (4A) The consent of an owner or other person under this clause is not required to be in writing.

[5] Clause 50 How must a development application be made?

Omit clause 50(1). Insert instead—

- (1) A development application must—
- (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
 - (c) be accompanied by the information and documents that are specified in Part 1 of Schedule 1 or required by the Act and this Regulation, and
 - (d) be lodged on the NSW planning portal.

[6] Clause 50(3)

Omit the subclause.

[7] Clause 50(8) and (9)

Insert after clause 50(7)—

- (8) The applicant must be notified, by means of the NSW planning portal, that the development application has been lodged.
- (9) A development application is taken not to have been lodged until the fees notified to the applicant by means of the NSW planning portal have been paid.
- Note.** The amount of a fee payable by an applicant for a development application is determined in accordance with Part 15.

[8] Clause 50B Special provisions relating to development requiring concurrence and integrated development

Omit “Despite clause 50(1)(c), a development” from clause 50B(2).

Insert instead “A development”.

[9] Clause 51 Rejection of development applications

Omit clause 51(1)(b). Insert instead—

- (b) the application does not contain all of the information that is specified in the approved form or required by the Act or this Regulation, or is not accompanied by all of the documents and information specified in Part 1 of Schedule 1 or required by the Act or this Regulation, or

[10] Clause 52 Withdrawal of development applications

Omit clause 52(1). Insert instead—

- (1) An applicant may withdraw a development application at any time prior to its determination by lodging notice of the withdrawal of the application on the NSW planning portal.

[11] Clause 53 Consent authority may require additional copies of development application and supporting documents

Omit the clause.

[12] Clause 54 Consent authority may request additional information

Omit “writing” from clause 54(2)(a).

Insert instead “made by means of the NSW planning portal”.

[13] Clause 54 Consent authority may request additional information

Omit “in writing” from clause 54(5).

Insert instead “, by means of the NSW planning portal,”.

[14] Clause 55 What is the procedure for amending a development application?

Insert “, by lodging the amendment or variation on the NSW planning portal” after “determined” in clause 55(1).

[15] Clause 55(2)

Omit “have annexed to it written”. Insert instead “include”.

[16] Clause 56 Extracts of development applications to be publicly available

Omit “to interested persons, either free of charge or on payment of reasonable copying charges” from clause 56(2).

Insert instead “on the NSW planning portal”.

[17] Part 6, Division 1A Communications under Divisions 2 and 3 through NSW planning portal

Omit the Division.

[18] Clause 70A Information to be included in concept development applications

Omit “clause 50(1)(a)”. Insert instead “clause 50(1)(b) and (c)”.

[19] Clause 102 How soon must a notice of determination be sent?

Omit clause 102(1) and (2). Insert instead—

- (1) For the purposes of section 4.18(1) of the Act, the consent authority must—
 - (a) publish the notice of determination of a development application on the NSW planning portal within 14 days after the date of the determination, and

- (b) send the notice of determination to the following persons within 14 days after the date of determination—
 - (i) a person to whom section 4.18(1)(b) of the Act requires the notice to be given,
 - (ii) a person who made a submission under the Act in relation to the development application (whether or not it involved designated development).

[20] Clause 103 Notice under sections 6.6 and 6.12 of the Act of appointment of principal certifier

Omit “and, if the consent authority so requires, must be in the form approved by that authority.”.

[21] Clause 103(2)

Insert at the end of clause 103—

- (2) The notice must be lodged on the NSW planning portal.

[22] Clause 103A Notice under section 6.6 of the Act of critical stage inspections

Insert at the end of the clause—

- (2) The notice must be lodged on the NSW planning portal.

[23] Clause 104 Notice under sections 6.6 and 6.12 of the Act of intention to commence subdivision work or erection of building

Omit “and, if the consent authority so requires, must be in the form approved by that authority.”.

[24] Clause 104(2)

Insert at the end of clause 104—

- (2) The notice must be lodged on the NSW planning portal.

[25] Clauses 107, 109(2), 111(1) and 113(2)(a)

Omit “with the consent authority” wherever occurring.

Insert instead “on the NSW planning portal”.

[26] Clause 113 Applications taken to be refused

Omit “clause 85A” from clause 113(7). Insert instead “clause 82(2)”.

[27] Clause 114 What is the form for an application for extension of a development consent?

Omit clause 114(a).

[28] Clause 114(2)

Insert at the end of the clause—

- (2) The application may be lodged on the NSW planning portal if the Planning Secretary determines that applications may be so lodged.

[29] Clause 115 Application for modification of development consent

Omit “signed by the owner of the land to the effect” from clause 115(1)(h).

[30] Clause 115(1)

Omit “and, if the consent authority so requires, must be in the form approved by that authority.”.

[31] Clause 115(1A)

Insert after clause 115(1)—

- (1A) An application for modification of development consent must—
- (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) be accompanied by the information and documents specified in the approved form and information or documents required by the Act or this Regulation, and
 - (c) be lodged on the NSW planning portal.

Note. An application for the modification of a development consent granted by the Court is not required to be lodged with the Court.

[32] Clause 115(9)

Omit the subclause.

[33] Clause 115A

Insert after clause 115—

115A Application fee for modification of development consent

- (1) An applicant for modification of a development consent under clause 115 must pay the relevant fee prescribed under Part 15.
- (2) The application for modification of a development consent is taken not to be lodged until the fee prescribed under Part 15 has been paid.

[34] Clause 116 Modification of consent granted by Court

Omit the clause.

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

Insert “, by means of the NSW planning portal,” after “given to the applicant” in clause 122(1).

[36] Clause 123G

Omit the clause. Insert instead—

123G Review of determination of development application

- (1) An application for a review of a determination of a development application under section 8.3 of the Act must—
 - (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) be lodged on the NSW planning portal.
- (2) A council must, as soon as practicable after a review of a determination of a development application under section 8.3 of the Act is determined, notify the applicant of the result of a review by means of the NSW planning portal.

[37] Clause 123H Review of decision to reject development application

Omit “written” from clause 123H(1).

[38] Clause 123H(2)

Omit the subclause. Insert instead—

- (2) A council must, as soon as practicable after the review is determined, notify the applicant of the result of the review by means of the NSW planning portal.

[39] Clause 123I Review of modification decision

Omit clause 123I(5). Insert instead—

- (5) The council must, as soon as practicable after the review is determined—
- (a) notify the applicant of the result of the review by means of the NSW planning portal, and
 - (b) if the application applies to land owned by a Local Aboriginal Land Council—notify the New South Wales Aboriginal Land Council of the result of the review (but not if the review confirms the determination).

[40] Clause 126 Making application for complying development certificate

Omit clause 126(1) and (2). Insert instead—

- (1) An application for a complying development certificate must—
- (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
 - (c) be accompanied by the documents that are specified in Part 2 of Schedule 1 or required by the Act and this Regulation, and
 - (d) be lodged on the NSW planning portal.
- (2) The applicant must be notified, by means of the NSW planning portal, that the application for a complying development certificate has been lodged.
- (2A) If the application is made in relation to development for the purposes of a new building, or the alteration of or addition to an existing building, to which Part 5A of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* applies, the application must also contain information on whether the land on which the development is to be carried out—
- (a) is used, or was formerly used, for a purpose listed in Table 1 to clause 3.2.1 of the document entitled *Managing Land Contamination Planning Guidelines, SEPP 55—Remediation of Land* and published in 1998 by the Department of Urban Affairs and Planning and the Environment Protection Authority, or
 - (b) is on the list of sites notified under section 60 of the *Contaminated Land Management Act 1997*.
- (2B) Subclause (2A) does not apply to complying development carried out under the complying development provisions of *State Environmental Planning Policy (Three Ports) 2013* in the Lease Area within the meaning of that Policy.

[41] Clause 128 Council or accredited certifier to supply application form for complying development certificates

Omit the clause.

[42] Clause 129C Record of site inspections

Insert “, by means of the NSW planning portal” after “to the certifier” in clause 129C(2).

[43] Clause 129E

Insert after clause 129D—

129E Application form to modify complying development

- (1) The Planning Secretary is to determine the form of an application under section 4.30 of the Act to modify the development the subject of a complying development certificate or application.
- (2) This Part applies to an application to modify complying development in the same way as it applies to the original application.

[44] Clause 130 Procedure for determining application for complying development certificate and notification requirements

Omit clause 130(4). Insert instead—

- (4) For the purposes of section 4.28(11) of the Act, the registered certifier must, within 2 days after the date of the determination, by means of the NSW planning portal—
 - (a) notify the applicant of the determination, and
 - (b) notify the council of the determination and provide the council with the following—
 - (i) the determination, together with the application to which it relates,
 - (ii) any endorsed plans, specifications or other documents that were lodged with the application or submitted to the registered certifier in accordance with clause 127,
 - (iii) any complying development certificate issued as a result of the determination, together with any associated fire safety schedule,
 - (iv) the record of any inspection made for the purposes of clause 129B in relation to the issue of the complying development certificate unless the inspection was carried out by the council.

[45] Clause 137 Validity of complying development certificates

Insert “(including a certificate that is issued by a registered certifier)” after “complying development certificate”.

[46] Clause 137

Omit “consent authority’s”. Insert instead “relevant council’s”.

[47] Clause 139 Applications for construction certificates

Omit clause 139(1). Insert instead—

- (1) An application for a construction certificate must—
 - (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and

- (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
- (c) be accompanied by documents that are specified in Part 3 of Schedule 1 or required by the Act and this Regulation, and
- (d) be lodged on the NSW planning portal.

[48] Clause 139(2)

Omit the subclause. Insert instead—

- (2) The applicant must be notified, by means of the NSW planning portal, that the application for a construction certificate has been lodged.

[49] Clause 139A Withdrawal of application for construction certificate

Omit clause 139A(1). Insert instead—

- (1) An applicant may withdraw an application for a construction certificate at any time prior to its determination by lodging notice of the withdrawal of the application on the NSW planning portal.

[50] Clause 141 Certifier to supply application form for construction certificates

Omit the clause.

[51] Clauses 142(1), 148E(1), 151(1) and 160(1)

Omit “must be in writing and” wherever occurring.

[52] Clause 142 Procedure for determining application for construction certificate

Omit clause 142(2). Insert instead—

- (2) Within 2 days of the date of the determination, the certifier must, by means of the NSW planning portal—
 - (a) notify the applicant of the determination, and
 - (b) notify the consent authority and the council of the determination and provide them with the following—
 - (i) the determination, together with the application to which it relates,
 - (ii) any construction certificate issued as a result of the determination,
 - (iii) any plans and specifications in relation to which such a construction certificate has been issued,
 - (iv) any fire safety schedule attached to such a construction certificate,
 - (v) any other documents that were lodged with the application for the certificate (such as any relevant decision on an objection under clause 187 or 188) or given to the certifier under clause 140,
 - (vi) the record of any inspection made for the purposes of clause 143B in relation to the issue of the construction certificate.

Note. See also clause 168 which requires a fire safety schedule to be attached to a construction certificate when it is issued.

[53] Clause 142(2A)

Omit “subclause (2)(f)”. Insert instead “subclause 2(b)(iv)”.

[54] Clause 143C Record of site inspections

Insert “, by means of the NSW planning portal” after “the certificate” in clause 143C(2).

[55] Clause 144 Referral of certain plans and specifications to New South Wales Fire Brigades

Insert after clause 144(8A)—

- (8B) A certifier or the Fire Commissioner may provide any document, information or notice required under this clause by means of the NSW planning portal if the Planning Secretary determines that the document, information or notice may be so lodged.

[56] Clause 148A Application for subdivision works certificate

Omit clause 148A(1). Insert instead—

- (1) An application for a subdivision works certificate must—
- (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
 - (c) be accompanied by documents that are specified in Part 3A of Schedule 1 or required by the Act and this Regulation, and
 - (d) be lodged on the NSW planning portal.

[57] Clause 148A(3)

Omit the subclause. Insert instead—

- (3) The applicant must be notified, by means of the NSW planning portal, that the application for a subdivision works certificate has been lodged.

[58] Clause 148B Withdrawal of application

Omit clause 148B(1). Insert instead—

- (1) An applicant may withdraw an application for a subdivision works certificate at any time prior to its determination by lodging notice of the withdrawal of the application on the NSW planning portal.

[59] Clause 148D Certifier to supply application form

Omit the clause.

[60] Clause 148E Procedure for determining application

Omit clause 148E(2). Insert instead—

- (2) Within 2 days after the date of the determination, the certifier must, by means of the NSW planning portal—
- (a) notify the applicant of the determination, and
 - (b) notify the consent authority and the council of the determination and provide them with the following—
 - (i) the determination, together with the application to which it relates,
 - (ii) any subdivision works certificate issued as a result of the determination,

- (iii) any plans and specifications in relation to which the subdivision works certificate has been issued,
- (iv) any other documents that were lodged with the application for the certificate or given to the certifier under clause 148C.

[61] Clause 149 Applications

Omit clause 149(1). Insert instead—

- (1) An application for an occupation certificate must—
 - (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
 - (c) be lodged on the NSW planning portal.

[62] Clause 149(3)

Omit clause 149(3) and (4). Insert instead—

- (3) The applicant must be notified, by means of the NSW planning portal, that the application for an occupation certificate has been lodged.

[63] Clause 150 Certifiers to supply application form for occupation certificates

Omit the clause.

[64] Clause 151 Procedure for determining application

Omit clause 151(2). Insert instead—

- (2) Within 2 days of the date of the determination, the certifier must, by means of the NSW planning portal—
 - (a) notify the applicant of the determination, and
 - (b) notify the consent authority and the council of the determination and provide them with the following—
 - (i) a copy of the determination,
 - (ii) copies of any documents that were lodged with the application for the certificate,
 - (iii) if an occupation certificate was issued, a copy of the certificate,
 - (iv) a copy of the record required to be made of all critical stage inspections and any other inspections carried out because they were required by the principal certifier under this Regulation and any missed inspection to which clause 162C applies,
 - (v) a copy of any compliance certificate and of any other documentary evidence, whether or not of a kind referred to in Part A5, clause A5.2, of the *Building Code of Australia*, relied on in issuing the occupation certificate.

[65] Clause 152 Reports of Fire Commissioner

Insert after clause 152(5A)—

- (5B) A certifier or the Fire Commissioner may provide any document, information or notice required under this clause by means of the NSW planning portal if the Planning Secretary determines that the document, information or notice may be so lodged.

[66] Clause 152A Reports of the Fire Commissioner for class 2 or 3 buildings containing certain fire safety systems

Insert after clause 152A(6)—

- (6A) A certifier or the Fire Commissioner may provide any document, information or notice required under this clause by means of the NSW planning portal if the Planning Secretary determines that the document, information or notice may be so lodged.

[67] Clause 157 Applications

Omit clause 157(1). Insert instead—

- (1) An application for a subdivision certificate must—
- (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
 - (c) be lodged on the NSW planning portal.

[68] Clause 157(2A)(b)

Omit “in writing”.

[69] Clause 157(3)

Omit the subclause. Insert instead—

- (3) The consent of an owner under this clause is not required to be in writing.

[70] Clause 157(5)

Omit the subclause. Insert instead—

- (5) The applicant must be notified, by means of the NSW planning portal, that the application for a subdivision certificate has been lodged.

[71] Clause 159 Certifiers to supply application form for subdivision certificates

Omit the clause.

[72] Clause 160 Procedure for determining application for subdivision certificate

Omit clause 160(2). Insert instead—

- (2) Within 2 days after the date of the determination, the certifier must, by means of the NSW planning portal—
- (a) notify the applicant of the determination, and
 - (b) notify the consent authority and the council of the determination and provide them with the following—
 - (i) a copy of the determination,
 - (ii) copies of any documents that were lodged with the application for the certificate,
 - (iii) if a subdivision certificate was issued, a copy of the endorsed plan of subdivision.

[73] Clause 246A What is the maximum fee?

Omit the note. Insert instead—

Note. Clause 50(9) provides that a development application is taken not to have been lodged until the fees notified to the applicant by means of the NSW planning portal have been paid.

[74] Clause 256, heading

Omit “after development applications have been made”.

Insert instead “for development applications”.

[75] Clause 256(1)

Omit “with the consent authority”. Insert instead “on the NSW planning portal”.

[76] Clause 256(2)

Omit clause 256(2). Insert instead—

- (2) A determination has no effect until notice of the determination is given to the applicant by means of the NSW planning portal.

[77] Clause 256E, heading

Omit “after application is made”.

[78] Clause 256E(1)

Omit “with the consent authority”. Insert instead “on the NSW planning portal”.

[79] Clause 256E(2)

Omit clause 256E(2). Insert instead—

- (2) A determination has no effect until notice of the determination is given to the applicant by means of the NSW planning portal.

[80] Clause 263 Other fees

Omit “with it of any of the following certificates” from clause 263(2).

Insert instead “of any of the following certificates on the NSW planning portal”.

[81] Clause 284 Penalty notice offences

Omit “126(2)” from clause 284(4)(b).

[82] Clauses 295 and 296

Insert after clause 294—

295 Use of NSW planning portal

- (1) If a relevant authority is, under this Regulation, required or permitted to provide a document or information to, or request a document or information from, an applicant or another relevant authority by means other than the NSW planning portal, the relevant authority may provide or request the document or information by means of the NSW planning portal.
- (2) For the purposes of this Regulation—
 - (a) the time at which a document or information is provided 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 provided by the relevant authority, and
 - (b) the time at which a document or information is received by an applicant or relevant authority is the time when the document or information

becomes capable of being retrieved by the applicant or relevant authority by means of the NSW planning portal.

- (3) In this clause—
document or information includes any application, notification, advice or request.
relevant authority means a consent authority, a concurrence authority, an approval body, a council, a registered certifier or the Planning Secretary.

296 Transitional provision relating to phasing in of NSW planning portal

- (1) Despite amendments made by the *Environmental Planning and Assessment Amendment (Planning Portal) Regulation 2020*, the consent authority or certifier, as the case requires, may require an application for any of the following to be made in accordance with this Regulation as if the amendments had not been made—
- (a) development consent,
 - (b) modification of a development consent under section 4.55 or 4.56 of the Act,
 - (c) review of a determination under section 8.3 of the Act,
 - (d) a construction certificate,
 - (e) a subdivision works certificate,
 - (f) an occupation certificate,
 - (g) a subdivision certificate.
- (2) This clause ceases to have effect on—
- (a) for an application made in respect of land in a relevant local government area—31 December 2020, and
 - (b) for an application made in respect of any other land—1 July 2021.
- (3) In this clause—
relevant local government area means the local government areas of Bayside, Blacktown, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Canterbury-Bankstown, Central Coast, Cessnock, Coffs Harbour, Cumberland, Fairfield, Georges River, Hawkesbury, Hornsby, Hunters Hill, Inner West, Kiama, Ku-ring-gai, Lake Macquarie, Lane Cove, Liverpool, Maitland, Mid Coast, Mosman, Newcastle, North Sydney, Northern Beaches, Parramatta, Penrith, Port Macquarie-Hastings, Port Stephens, Randwick, Ryde, Shellharbour, Shoalhaven, Strathfield, Sutherland, City of Sydney, The Hills, Tweed, Waverley, Wingecarribee, Willoughby, Woollahra, Wollondilly or Wollongong.

[83] Schedule 1 Forms

Omit clauses 1(1)(a)–(e) and (g1)–(j), 3, 5 and 6AA.

[84] Schedule 1, clause 4(1)(l)

Omit “clause 3(i) of this Schedule”. Insert instead “clause 126(2)”.

[85] Schedule 1, clause 4B

Omit “Clauses 3(i) and 4(1)(l) of this Schedule do”.

Insert instead “Clause 4(1)(l) of this Schedule does”.

[86] Schedule 5 Penalty notice offences

Omit the matter relating to clause 126(2).