

# Environmental Planning and Assessment Regulation 2000

[2000-557]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Building Professionals Act 2005 No 115](#) (not commenced)

### Authorisation

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# Environmental Planning and Assessment Regulation 2000



New South Wales

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# Environmental Planning and Assessment Regulation 2000



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Regulation 2000*.

### 2 Commencement

This Regulation commences on 1 January 2001.

### 3 Definitions (cf clause 3 of EP&A Regulation 1994)

In this Regulation:

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

**approval body** has the same meaning as in section 90A of the Act.

**assessment method** has the same meaning as in the *Building Code of Australia*.

**Australian Rail Track Corporation Ltd** means the Australian Rail Track Corporation Ltd (ACN 081 455 754).

**BASIX affected building** means any building that contains one or more dwellings, but does not include a hotel or motel.

**BASIX certificate** means a certificate issued by the Director-General under clause 164A.

**building premises**, in relation to a building, means the building and the land on which it is situated.

**Category 1 fire safety provision** means the following provisions of the *Building Code of Australia*, namely, EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2 in Volume One of that Code and P2.3.2 in Volume Two of that Code.

**Category 2 fire safety provision** means the following provisions of the *Building Code of Australia*, namely, CP9, EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2 in Volume One of that Code.

**Category 3 fire safety provision** means the following provisions of the *Building Code of Australia*, namely, EP1.3, EP1.4, EP1.6, EP2.2 and EP3.2 in Volume One of that Code.

**class**, in relation to a building, means:

- (a) in a provision of this Regulation that imposes requirements with respect to a development consent, the class to which the building belongs, as identified by that consent, or
- (b) in any other provision of this Regulation, the class to which the building belongs, as ascertained in accordance with the *Building Code of Australia*.

**Class 1 aquaculture development** means development of the kind referred to in clause 5 (1) (d).

**concurrence authority** means a person whose concurrence is, by the Act or an environmental planning instrument, required by the consent authority before determining a development application.

**contributions plan** means a contributions plan referred to in section 94EA of the Act.

**deemed-to-satisfy provisions** has the same meaning as in the *Building Code of Australia*.

**Department** means the Department of Urban Affairs and Planning.

**Director-General** means the Director-General of the Department.

**dwelling**, in relation to a BASIX affected building, means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.

**environmental impact statement** means an environmental impact statement referred to in section 78A or 112 of the Act.

**existing use right** means a right conferred by Division 10 of Part 4 of the Act.

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

**fire alarm communication link** means that part of a fire alarm system which relays a fire alarm signal from the system to an alarm monitoring network.

**Fire Commissioner** means the Commissioner of New South Wales Fire Brigades.

**fire compartment** has the same meaning as in the *Building Code of Australia*.

**fire link conversion** means the conversion of a fire alarm communication link from connection with the fire alarm monitoring network operated by the New South Wales Fire Brigades to connection with an alarm monitoring network operated by a private service

provider.

**fire link conversion schedule** means a conversion schedule referred to in clause 168A (2) (a).

**fire protection and structural capacity** of a building means:

- (a) the structural strength and load-bearing capacity of the building, and
- (b) the measures to protect persons using the building, and to facilitate their egress from the building, in the event of fire, and
- (c) the measures to restrict the spread of fire from the building to other buildings nearby.

**fire safety schedule** means a schedule referred to in clause 168 (1), 168A (2) (b) or 182 (2).

**initial BASIX area** means the area comprising the local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Sydney, Warringah, Waverley, Willoughby and Woollahra.

**local newspaper** means a newspaper circulating throughout the relevant area at intervals of not more than 2 weeks.

**nominated integrated development** means development of the kind referred to in clause 5 (1) (b).

**other advertised development** means development of the kind referred to in clause 5 (2).

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

**private service provider** means a person or body that has entered into an agreement with the New South Wales Fire Brigades to monitor fire alarm systems.

**qualified designer** means a person registered as an architect in accordance with the [Architects Act 2003](#).

**Note—**

A building designer may be able to be registered as an architect in accordance with the [Architects Act 2003](#) even though the person may have no formal qualifications in architecture.

**relevant BASIX certificate**, in relation to development, means:

- (a) in the case of development the subject of development consent:
  - (i) a BASIX certificate that is applicable to the development when development

consent is granted or (in the case of development consent modified under section 96 of the Act) modified, or

(ii) if a replacement BASIX certificate accompanies any subsequent application for a construction certificate, the replacement BASIX certificate applicable to the development when the construction certificate is issued or (in the case of a construction certificate modified under clause 148) modified, or

(b) in the case of development the subject of a complying development certificate, a BASIX certificate that is applicable to the development when the complying development certificate is granted or (in the case of a complying development certificate modified under section 87 of the Act) modified.

**relevant submission period** means:

- (a) in relation to submissions concerning a draft development control plan, the submission period specified for the plan in the notice referred to in clause 18 (1), or
- (b) in relation to submissions concerning a draft contributions plan, the submission period specified for the plan in the notice referred to in clause 28, or
- (c) in relation to submissions concerning designated development that has been notified as required by section 79 (1) of the Act, the submission period specified for the development in the notice referred to in clause 78 (1), or
- (d) in relation to submissions concerning State significant advertised development that has been notified as required by section 79A (1) of the Act, the submission period specified for the development in the notice referred to in clause 83 (1), or
- (e) in relation to submissions concerning nominated integrated development that has been notified as required by section 79A (1) of the Act, the submission period specified for the development in the notice referred to in clause 89 (1), or
- (f) in relation to submissions concerning development that has been notified or advertised as required by a development control plan referred to in section 79A (2) of the Act, the submission period specified for the development in the instrument by which the development has been so notified or advertised, or
- (g) in relation to submissions concerning an application for authorisation as an accreditation body, the submission period specified in the notice referred to in clause 193 (1), or
- (h) in relation to submissions concerning development of a kind referred to in two or more of paragraphs (c), (d), (e) and (f), the longer or longest of those periods.

**required**, when used as an adjective, has the same meaning as in the *Building Code of Australia*.

**residential flat development** has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

**section 94 condition** means a condition under section 94 of the Act requiring the dedication of land or the payment of a monetary contribution, or both.

**section 94 contribution** means the dedication of land, the payment of a monetary contribution or the provision of a material public benefit, as referred to in section 94 of the Act.

**section 94A condition** means a condition under section 94A of the Act requiring the payment of a levy.

**section 94A levy** means the payment of a levy, as referred to in section 94A of the Act.

**State significant advertised development** means development of the kind referred to in clause 5 (1) (a).

**temporary building** means a building that is stated to be a temporary building in the development consent or complying development certificate granted or issued in relation to its erection.

**the Act** means the *Environmental Planning and Assessment Act 1979*.

**threatened species development** means development of the kind referred to in clause 5 (1) (c).

#### **4 What is designated development?** (cf clause 53C of EP&A Regulation 1994)

- (1) Development described in Part 1 of Schedule 3 is declared to be designated development for the purposes of the Act unless it is declared not to be designated development by a provision of Part 2 or 3 of that Schedule.
- (2) Part 4 of Schedule 3 defines certain words and expressions used in that Schedule.
- (3) Part 5 of Schedule 3 prescribes how certain distances are to be measured for the purposes of that Schedule.
- (4) Schedule 3, as in force when a development application is made, continues to apply to and in respect of the development application regardless of any subsequent substitution or amendment of that Schedule, and the application is unaffected by any such substitution or amendment.
- (5) References in subclause (4) to Schedule 3 include references to Schedule 3 to the *Environmental Planning and Assessment Regulation 1994*.

#### **5 What is advertised development?** (cf clause 63 of EP&A Regulation 1994)

- (1) For the purposes of the definition of **advertised development** in section 4 (1) of the



Act, the following types of development (not being designated development) are identified as advertised development:

(a) State significant development referred to in section 76A (7) (b) or (d) of the Act (not being Class 1 aquaculture development), referred to in this Regulation as **State significant advertised development**,

(b) integrated development (not being State significant advertised development, threatened species development or Class 1 aquaculture development) that requires an approval (within the meaning of section 90A of the Act) under:

(i) a provision of the *Heritage Act 1977* specified in section 91 (1) of the Act, or

(ii) a provision of the *Water Management Act 2000* specified in section 91 (1) of the Act, or

(iii) a provision of the *Protection of the Environment Operations Act 1997* specified in section 91 (1) of the Act,

referred to in this Regulation as **nominated integrated development**,

(c) development referred to in section 78A (8) (b) of the Act (not being State significant advertised development), referred to in this Regulation as **threatened species development**,

(d) development that, pursuant to *State Environmental Planning Policy No 62—Sustainable Aquaculture*, is Class 1 aquaculture development, referred to in this Regulation as **Class 1 aquaculture development**.

(2) For the purposes of this Regulation, each of the following kinds of development, namely:

(a) nominated integrated development,

(b) threatened species development,

(c) Class 1 aquaculture development,

(d) any development that is identified as advertised development by an environmental planning instrument or a development control plan,

is referred to in this Regulation as **other advertised development**.

(3) A reference in subclause (1) to State significant development is a reference to development which, before the repeal of section 76A (7) of the Act, was State significant development and which (under transitional provisions of or made under the Act) continues to be subject to the former provisions of the Act relating to State significant development.

**6 When is public notice given?** (cf clause 5 of EP&A Regulation 1994)

Public notice in a local newspaper is given for the purposes of this Regulation when the notice is first published in a local newspaper, even if the notice is required to be published more than once or in more than one newspaper.

**7 Building Code of Australia** (cf clause 5A of EP&A Regulation 1994)

- (1) For the purposes of the definition of **Building Code of Australia** in section 4 (1) of the Act:
  - (a1) the document referred to in that definition is:
    - (i) the document published in October 1996 under the title *Building Code of Australia*, or
    - (ii) if the document referred to in subparagraph (i) (or any replacement document under this subparagraph) is replaced by another document published under a title that includes the words “Building Code of Australia” together with a reference to the year 2004 or a later year, that other document, and
  - (a) all amendments to that Code that are from time to time made by the Australian Building Codes Board are prescribed, and
  - (b) all variations of that Code that are from time to time approved by the Australian Building Codes Board in relation to New South Wales are prescribed.
- (2) Any such amendment or variation comes into effect on the adoption date specified in that regard for New South Wales in the document by which the amendment or variation is published on behalf of the Australian Building Codes Board.

**8 Notes** (cf clause 4 of EP&A Regulation 1994)

The explanatory note, table of contents and notes in this Regulation do not form part of this Regulation.

## **Part 1A Major projects**

### **8A Definitions**

- (1) In this Part:

**environmental assessment requirements** for a project (including a concept plan for a project) means environmental assessment requirements prepared by the Director-General under section 75F of the Act.

**project** means development to which Part 3A of the Act applies.

- (2) In this Part:

- (a) a reference to the end of the public consultation period for a project or concept plan is a reference to the end of the period of 30 days referred to in section 75H (3) of the Act in relation to the project or concept plan, and
  - (b) a reference to the end of the proponent's environmental assessment period for a project or concept plan is a reference to the time at which the proponent has complied with all of the Director-General's requirements under section 75H of the Act.
- (3) In this Part, a reference to section 75F, 75G, 75H or 75I of the Act includes, in the case of a concept plan for a project, a reference to any such section as applied by section 75N of the Act.

### **8B Matters for environmental assessment and Ministerial consideration**

The Director-General's report under section 75I of the Act in relation to a project is to include the following matters (to the extent that those matters are not otherwise included in that report in accordance with the requirements of that section):

- (a) an assessment of the environmental impact of the project,
- (b) any aspect of the public interest that the Director-General considers relevant to the project,
- (c) the suitability of the site for the project,
- (d) copies of submissions received by the Director-General in connection with public consultation under section 75H or a summary of the issues raised in those submissions.

**Note—**

Section 75J (2) of the Act requires the Minister to consider the Director-General's report (and the reports, advice and recommendations contained in it) when deciding whether or not to approve the carrying out of a project.

### **8C Time limits for dealing with applications and other matters**

The following time limits are prescribed for dealing with applications and other matters under Part 3A of the Act:

- (a) The time within which the Director-General is to notify the proponent of environmental assessment requirements with respect to a project or concept plan is 28 days after the proponent requests the Director-General to prepare those requirements.
- (b) The time within which the Director-General is to accept the environmental assessment with respect to a project or concept plan, or require the proponent to submit a revised environmental assessment, under section 75H of the Act is 21 days after the environmental assessment is received by the Director-General.

- (c) The time within which the Director-General is required to send copies of submissions received or a report of the issues raised in those submissions to the proponent and others under section 75H (5) of the Act (or to notify the proponent that no submissions were received) is 10 days after the end of the public consultation period for the project or concept plan.

**8D Rejection of applications if proponent fails to comply with requirements**

- (1) This clause applies to the following applications:

- (a) an application for the Minister's approval to carry out a project,
- (b) an application for the Minister's approval for the concept plan for a project.

- (2) If:

- (a) any such application has not been duly made, and
  - (b) the Director-General has notified the proponent of the action required to ensure that the application is duly made, and
  - (c) the proponent has failed to take that action within 14 days after being so notified,
- the Minister may decide to reject the application without determining whether to approve or disapprove of the carrying out of the project or to give or refuse to give approval for the concept plan (as the case requires).

- (3) If:

- (a) the proponent has failed to comply with the Director-General's requirements under section 75H of the Act in connection with an application, and
- (b) the Director-General has notified the proponent of the requirements that have not been complied with, and
- (c) the proponent has failed to comply with those requirements within 21 days after being so notified,

the Minister may decide to reject the application without determining whether to approve or disapprove of the carrying out of the project or to give or refuse to give approval for the concept plan (as the case requires).

- (4) An application is taken to be rejected and never to have been made when the proponent is given notice of the Minister's decision to reject the application under this clause.
- (5) The Director-General must refund to the proponent the whole of any fee paid in connection with an application that is rejected under this clause.

## **8E Provisions relating to appeals**

- (1) **Date of receipt of notice of determination** For the purposes of determining the commencement of the appeal period under section 75K (2) (a), 75L (3) or 75Q (2) (a) of the Act, notice of the determination concerned is received on the date that the notice is received (or taken to have been received) in accordance with section 153 of the Act.
- (2) **Proponent appeal relating to approval of project—deemed refusal** For the purposes of section 75K (2) (b) of the Act, the date on which a pending application for approval to carry out a project is taken to have been refused for the purposes only of enabling an appeal within 3 months after the date of the deemed refusal is as follows:
  - (a) 60 days from the end of the proponent’s environmental assessment period for the project, except as provided by paragraph (b) or (c),
  - (b) 120 days from the end of that period if the Director-General notifies the proponent, when notifying the environmental assessment requirements for the project, that the project involves a complex environmental assessment and approval process,
  - (c) 30 days from the end of that period if the Director-General notifies the proponent, when notifying the environmental assessment requirements for the project, that the project does not involve a complex environmental assessment and approval process.
- (3) **Proponent appeal relating to concept plan or modification of concept plan—deemed refusal** For the purposes of section 75Q (2) (b) of the Act, a pending application for approval of a concept plan or to modify a concept plan is taken to have been refused for the purposes only of enabling an appeal within 3 months after the date of the deemed refusal is as follows:
  - (a) 60 days from the end of the proponent’s environmental assessment period for the concept plan, except as provided by paragraph (b) or (c),
  - (b) 120 days from the end of that period if the Director-General notifies the proponent, when notifying the environmental assessment requirements for the concept plan, that the concept plan involves a complex environmental assessment and approval process,
  - (c) 30 days from the end of that period if the Director-General notifies the proponent, when notifying the environmental assessment requirements for the concept plan, that the concept plan does not involve a complex environmental assessment and approval process.
- (4) **Proponent appeal relating to modifications of approval** The time within which an appeal may be made under section 75W (5) of the Act is 3 months after:

- (a) the date on which the proponent received (or is taken to have received) notice of the determination of the request for a modification of the approval for a project in accordance with section 153 of the Act, or
- (b) the expiration of the period of 40 days after the request for the modification was made during which the Minister has failed to determine the request.

#### **8F Owner's consent or notification**

- (1) The consent of the owner of land on which a project is to be carried out is required for an application for approval under Part 3A unless:
  - (a) the application is made by a public authority, or
  - (b) the application relates to a critical infrastructure project, or
  - (c) the application relates to a mining or petroleum production project.
- (2) Any such consent may be obtained at any time before the determination of the application.
- (3) If the consent of the owner of the land is not required under this clause, then the proponent is required to give notice of the application:
  - (a) in the case of a project that comprises linear infrastructure—to the public by advertisement published in a newspaper circulating in the area of the project before the start of the public consultation period for the project, or
  - (b) in the case of a project that comprises mining or petroleum production—to the public by advertisement published in a newspaper circulating in the area of the project before the end of the period of 14 days after the application is made, or
  - (c) in the case of a critical infrastructure project (other than linear infrastructure or mining or petroleum production)—to the owner of the land before the end of period of 14 days after the application is made, or
  - (d) in any other case—to the owner of the land at any time before the application is made.
- (4) In this section:

**linear infrastructure** means any linear transport or public utility infrastructure, or other projects involving multiple owners of land designated by the Director-General for the purposes of this clause.

**mining or petroleum production** includes any activity that is related to mining or petroleum production, but does not include a project on land that is a state conservation area reserved under the [National Parks and Wildlife Act 1974](#).

### **8G Public information about documents relating to projects**

- (1) This clause applies to the duty of the Director-General under section 75X (2) of the Act to make specified documents relating to a project publicly available.
- (2) The documents are to be made available on the Department's website and in such other locations as the Director-General determines.
- (3) The documents are to be posted on the Department's website and in those other locations within 14 days of:
  - (a) in the case of a document that is an application, request or submission—the date on which the application, request or submission is made, or
  - (b) in the case of a document that is a determination of environmental assessment requirements, a report or an approval—the date on which the determination, report or approval is made or given.
- (4) In addition to the documents referred to in section 75X (2) of the Act, the Director-General is to include on the Department's website and in such other locations as the Director-General determines the following documents:
  - (a) the declaration of development as a project to which Part 3A of the Act applies or its declaration as a critical infrastructure project,
  - (b) guidelines published under section 75F or 75H of the Act,
  - (c) any environmental assessment in relation to a project that has been placed on public exhibition under section 75H of the Act,
  - (d) responses to submissions, preferred project reports and other material in relation to a project provided to the Director-General by the proponent after the end of the public consultation period (whether under section 75H (6) of the Act or otherwise),
  - (e) reports of panels under section 75G of the Act or of inquiries under section 119 of the Act in relation to a project,
  - (f) any reasons given to the proponent by the Minister as referred to in section 75X (3) of the Act.
- (5) A document may be made available on the Department's website by providing an electronic link to the document on another website.

### **8H Fees and charges**

- (1) The fees and charges payable under Part 15 are payable in respect of projects.
- (2) For the purposes of applying Part 15 to a project, a reference in that Part:

- (a) to a development application is a reference to an application for approval for a project or for a concept plan for a project, or
- (b) to a consent authority is a reference to the Minister, or
- (c) to development consent is a reference to the approval of the Minister, or
- (d) to evaluation of proposed development under section 79C of the Act is a reference to assessment and approval of the project under Part 3A of the Act, or
- (e) to an application for the modification of a consent under a provision of Part 4 of the Act is a reference to an application for a modification of an approval under a corresponding provision of Part 3A of the Act,

but only if the project would, but for Part 3A of the Act, be development to which Part 4 of the Act applies.

- (3) The maximum fee for both an application for approval of a concept plan for a project and an application for approval of that project is the maximum fee payable for approval of the project without a prior approval of a concept plan for the project. The Director-General is to determine the percentage of that fee to be payable in connection with the application for approval of the concept plan.

**Note—**

Clause 256 (3) of Part 15 (as applied by this clause) enables the Minister to refuse to consider an application for approval in relation to a project if the appropriate fee under this clause is not paid by the applicant.

**8I Enforcement: critical infrastructure**

In accordance with section 75R (5) of the Act, Division 2A of Part 6 of the Act applies to a critical infrastructure project only to the extent that it authorises the Minister or the Director-General to give an order or exercise any other function under that Division.

**8J Transitional provisions**

- (1) The Director-General may adopt (with or without modification), as environmental assessment requirements for a project or concept plan, environmental assessment requirements issued by the Director-General under Part 4 or under Division 4 of Part 5 of the Act with respect to any development or activity before it becomes a project to which Part 3A of the Act applies.
- (2) The Director-General may accept (with or without modification), as an environmental assessment for a project or concept plan:
  - (a) an environmental impact statement obtained in accordance with the requirements of the Director-General under Part 4 or under Division 4 of Part 5 of the Act with respect to any development or activity before it becomes a project to which Part 3A of the Act applies, or



- (b) a statement of environmental effects (as referred to in clause 2 (1) (c) of Schedule 1) prepared in connection with the development concerned before it becomes a project to which Part 3A of the Act applies, or
  - (c) a written assessment arising out of the consideration, under section 111 of the Act, of the environmental impact of an activity and prepared before the activity becomes a project to which Part 3A of the Act applies.
- (3) The Director-General may accept, as a period of public availability of the environmental assessment for a project or concept plan (under section 75H (3) of the Act), a period of public exhibition of an environmental impact statement referred to in subclause (2) before the relevant development or activity becomes a project to which Part 3A of the Act applies.
- (3A) If any such period of public exhibition of an environmental impact assessment is accepted by the Director-General, the proponent must provide the Director-General with any written submissions made during the public exhibition period in relation to the relevant development or activity.
- (4) Despite its repeal, section 88A of the Act continues to apply (and Part 3A of the Act does not apply) to development that is the subject of a development application that was directed to be referred to the Minister under that section before its repeal.
- (4A) If a development application is made after the commencement of Part 3A of the Act in respect of any development that:
- (a) was, immediately before the repeal of section 89 of the Act, the subject of a direction under that section, and
  - (b) is not a project to which Part 3A of the Act applies,
- the Minister may direct that the application is to be determined (unless the development application is withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.
- (5) If a development application is made after the commencement of Part 3A of the Act in respect of any development that, immediately before the commencement of Part 3A, was declared to be State significant development by notice in force under section 76A (7) of the Act, the Minister may direct that the application is to be determined (unless the development application is withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.
- (6) Clause 89 of Part 17 to Schedule 6 to the Act extends to development applications pending on the commencement of Part 3A of the Act for development that was State significant development on the commencement of the *State Environmental Planning*

*Policy (State Significant Development) 2005.*

(7) If:

- (a) a development application was made before the commencement of Part 3A of the Act on the basis that the development was State significant development, and
- (b) the Minister is required to form an opinion that the development is State significant development in order to determine the application on that basis (but the Minister had not, before that commencement, formed an opinion on the matter),

the Minister may, after that commencement, form an opinion that the development was, at the time the application was made, State significant development. In that case, the application is to be determined (unless withdrawn by the applicant) as if the amendments made to the Act by Schedule 1 to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005* had not been made.

(8) A development consent in force immediately before the commencement of Part 3A of the Act may be modified under section 75W of the Act as if the consent were an approval under that Part, but only if:

- (a) the consent was granted with respect to development that would be a project to which Part 3A of the Act applies but for the operation of clause 6 (2) (a) of *State Environmental Planning Policy (Major Projects) 2005*, and
- (b) the Minister approves of the development consent being treated as an approval for the purposes of section 75W of the Act.

The development consent, if so modified, does not become an approval under Part 3A of the Act.

**8K Transitional provision—existing mining leases**

(1) Despite its repeal by Schedule 7.11 to the Amending Act, section 74 of the *Mining Act 1992* (Mining unaffected by *Environmental Planning and Assessment Act 1979*) continues to have effect in respect of an existing mining lease until:

- (a) the end of the relevant transition period, or
- (b) such time as an approval is given to carry out mining operations in the mining area,

whichever is the sooner.

(2) However, if any such approval is limited to the carrying out of mining operations in a part of the mining area only, section 74 of the *Mining Act 1992* continues to have

effect in respect of so much of the existing mining lease as relates to the other parts of the mining area, but only until the end of the relevant transition period or until such time as an approval is given to carry out mining operations in those other parts (whichever is the sooner).

(3) In this clause:

**Amending Act** means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

**approval** means an approval under Part 3A of the Act, but does not include the approval of a concept plan under that Part.

**existing mining lease** means a mining lease in force immediately before the relevant commencement.

**mining area, mining lease** and **mining operations** have the same meanings as in the *Mining Act 1992*.

**relevant commencement** means the date on which Schedule 7.11 to the Amending Act commences.

**relevant transition period** means:

- (a) in the case of an existing mining lease in respect of which mining operations are carried out underground—the period ending on the fifth anniversary of the relevant commencement, or
- (b) in the case of any other existing mining lease—the period ending on the second anniversary of the relevant commencement.

#### **8L Transitional provision—objections under Mining Act in relation to Part 3A projects**

- (1) The reference in clause 28 (b) of Schedule 1 to the *Mining Act 1992* to any person who is entitled to make submissions in relation to the granting of development consent to use land for the purpose of obtaining minerals or for one or more mining purposes (**the relevant development**) is taken to include:
  - (a) if the relevant development is development to which Part 3A of the Act applies—a reference to any person who is entitled, under section 75H of the Act, to make a written submission in relation to the approval of that project, or
  - (b) if the Director-General has, under clause 8J (3) of this Regulation, accepted a period of public exhibition of an environmental impact assessment with respect to the relevant development before it becomes a project to which Part 3A of the Act applies—a reference to any person who was entitled to make a written submission during the public exhibition period in relation to the relevant development.

- (2) Pursuant to Part 1 of Schedule 6 to the Act, this clause is taken to have commenced on the commencement of Part 3A of the Act.

## **Part 2 Local environmental plans**

### **Division 1 Notice to Director-General**

#### **9 Notice to Director-General**

- (1) As soon as practicable after resolving to prepare a draft local environmental plan, a council is to give notice of that fact to the Director-General.
- (2) The notice must contain:
- (a) the terms of the resolution passed by the council, and
  - (b) such information as the Director-General may require for the purpose of determining:
    - (i) the effect of the proposed plan in relation to matters of State or regional significance,
    - (ii) the adequacy of the consultation procedures to be adopted by the council in the preparation of the proposed plan, and
    - (iii) the adequacy of any environmental study to be prepared by the council in relation to the proposed plan.

### **Division 2 Consultation and concurrence with other authorities**

#### **10 What documents must be given to other public authorities?** (cf clause 9 of EP&A Regulation 1994)

The following documents are to be given, free of charge, to each public authority that the council considers likely to be affected by, or to have an interest in, an environmental study prepared for the purposes of a draft local environmental plan:

- (a) a copy or summary of the study,
- (b) a copy or summary of the plan.

#### **11 Public authorities must concur to proposed reservation of land** (cf clause 10 of EP&A Regulation 1994)

A local environmental plan or draft local environmental plan:

- (a) may not contain a provision reserving land for a purpose referred to in section 26 (1) (c) of the Act, and
- (b) may not contain a provision in respect of that reservation as required by section 27 of

the Act,

unless the public authority responsible for the acquisition of the land has notified the council of its concurrence to the inclusion of such a provision in the plan.

### **Division 3 Public participation**

#### **12 What public notice is required for an environmental study and draft local environmental plan?** (cf clause 11 of EP&A Regulation 1994)

The public notice required to be given by the council under section 66 (1) of the Act must be published no later than the start of the public exhibition of the draft local environmental plan.

#### **13 For how long must an environmental study and draft local environmental plan be exhibited?** (cf clause 12 of EP&A Regulation 1994)

For the purposes of section 66 (2) of the Act, the environmental study and draft local environmental plan must be publicly exhibited for at least 28 days.

#### **14 How is notice of a public hearing to be given?** (cf clause 13 of EP&A Regulation 1994)

- (1) A council that decides that a public hearing is to be held under section 68 of the Act must give notice of that fact:
  - (a) in a local newspaper, and
  - (b) in a letter sent to each of the persons who requested a public hearing when making a submission about the draft local environmental plan.
- (2) The notice must contain details of the arrangements for the public hearing and must be sent or published, as the case requires, at least 21 days before the start of the public hearing.

### **Division 4 General**

#### **15 Recovery of cost of environmental study** (cf clause 14 of EP&A Regulation 1994)

For the purposes of section 57 (5) of the Act, the recovery from a person of any costs or expenses incurred by a council in the preparation of an environmental study is subject to:

- (a) the person agreeing to pay those costs and expenses, and
- (b) the terms of the agreement.

### **Part 3 Development control plans**

#### **Division 1 Preparation of development control plans by councils**

##### **16 In what form must a development control plan be prepared?** (cf clause 15 of EP&A

Regulation 1994)

- (1) A development control plan must be in the form of a written statement, and may include supporting maps, plans, diagrams, illustrations and other materials.
- (2) A development control plan must describe the land to which it applies, and must identify any local environmental plan or deemed environmental planning instrument applying to that land.

## **17, 17A (Repealed)**

## **Division 2 Public participation**

### **18 Draft development control plan must be publicly exhibited** (cf clause 17 of EP&A Regulation 1994)

- (1) Following the preparation of a draft development control plan, the council:
  - (a) must give public notice in a local newspaper of the places, dates and times for inspection of the draft plan,
  - (b) must publicly exhibit at the places, on the dates and during the times set out in the notice:
    - (i) a copy of the draft plan, and
    - (ii) a copy of any relevant local environmental plan or deemed environmental planning instrument, and
  - (c) must specify in the notice the period during which submissions about the draft plan may be made to the council (which must include the period during which the plan is being publicly exhibited).
- (2) A draft development control plan must be publicly exhibited for at least 28 days.

### **19 Copies of draft development control plans to be publicly available** (cf clause 18 of EP&A Regulation 1994)

Copies of the draft development control plan, and of any relevant local environmental plan or deemed environmental planning instrument, are to be made available to interested persons, either free of charge or on payment of reasonable copying charges.

### **20 Who may make submissions about a draft development control plan?** (cf clause 19 of EP&A Regulation 1994)

Any person may make written submissions to the council about the draft development control plan during the relevant submission period.

## **Division 3 Approval of development control plans**

### **21 Approval of development control plans** (cf clause 20 of EP&A Regulation 1994)

- (1) After considering any submissions about the draft development control plan that have been duly made, the council:
  - (a) may approve the plan in the form in which it was publicly exhibited, or
  - (b) may approve the plan with such alterations as the council thinks fit, or
  - (c) may decide not to proceed with the plan.
- (2) The council must give public notice of its decision in a local newspaper within 28 days after the decision is made.
- (3) Notice of a decision not to proceed with a development control plan must include the council's reasons for the decision.
- (4) A development control plan comes into effect on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice.

### **21A Approval of development control plans relating to residential flat development**

- (1) The council must not approve a draft development control plan (including an amending plan) containing provisions that apply to residential flat development unless the council:
  - (a) has referred the provisions of the draft development control plan that relate to design quality to the design review panel (if any) constituted for the council's area (or a region that includes the council's area) under *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*, and
  - (b) has taken into consideration any comments made by the design review panel concerning those provisions.
- (2) This clause extends to a plan the preparation of which commenced before the constitution of the relevant design review panel.

## **Division 4 Amendment and repeal of development control plans**

### **22 How may a development control plan be amended or repealed?** (cf clause 21 of EP&A Regulation 1994)

- (1) A council may amend a development control plan by a subsequent development control plan.
- (2) A council may repeal a development control plan:
  - (a) by a subsequent development control plan, or

(b) by public notice in a local newspaper of its decision to repeal the plan.

**23 Procedure for repealing a development control plan by public notice** (cf clause 22 of EP&A Regulation 1994)

- (1) Before repealing a development control plan by public notice in a local newspaper, the council must give public notice in a local newspaper:
  - (a) of its intention to repeal the development control plan, and
  - (b) of its reasons for doing so.
- (2) Publication of the notice of intention must take place at least 14 days before publication of the notice of repeal.
- (3) The repeal of a development control plan by public notice in a local newspaper takes effect on the date of publication of the notice.

**Division 5 Development control plans made by the Director-General**

**24 Application of Part to development control plans made by the Director-General** (cf clause 23 of EP&A Regulation 1994)

This Part applies to a development control plan prepared by the Director-General, as the relevant planning authority, under section 74C of the Act, subject to the following modifications:

- (a) a reference to a council is taken to be a reference to the Director-General,
- (b) a reference to a local environmental plan or deemed environmental planning instrument is taken to be a reference to a regional environmental plan or a State environmental planning policy.

**Division 6 Miscellaneous**

**25 Additional information requested by relevant planning authority**

- (1) If an environmental planning instrument requires or permits a development control plan to be prepared and submitted to the relevant planning authority, the planning authority may request the owners (as referred to in section 74D of the Act) who are submitting the plan to provide the planning authority with such additional information as the planning authority considers necessary for the purposes of making the plan.
- (2) Any such request is to be in writing.
- (3) The information that the relevant planning authority may request is limited to information relating to any relevant matter referred to in an environmental planning instrument.



- (4) In accordance with section 74D (6) of the Act, the 60-day period referred to in section 74D (5) of the Act may be extended by the number of days from the day on which the request for the information was made until the day on which the information is provided or on which the owners refuse to supply the information (whichever is the sooner).
- (5) If the owners refuse to supply the requested information, the development control plan is taken not to have been submitted to the relevant planning authority.

#### **25AA Assessment and preparation fees**

- (1) If a draft development control plan under section 74D of the Act is prepared (and submitted to the relevant planning authority) by the owners of the land to which it applies, the owners must pay the relevant planning authority an assessment fee as determined by the planning authority.
- (2) If any such draft development control plan is prepared by the relevant planning authority at the request of the owners (or the percentage of the owners as referred in section 74D (3) of the Act), those owners must pay the planning authority a preparation fee as determined by the planning authority.
- (3) Any such assessment or preparation fee must not exceed the reasonable cost, to the relevant planning authority, of assessing or preparing the draft development control plan, carrying out any associated studies and publicly exhibiting the draft plan.
- (4) If there is more than one owner of the land to which the draft development control plan applies, the fee concerned is to be apportioned between them as the relevant planning authority determines.
- (5) If the Minister, in accordance with section 74D (5) (b) of the Act, acts in the place of a council to make the development control plan concerned, the council must, if directed by the Minister to do so, forward to the Minister any assessment or preparation fee that has been paid to the council in relation to that plan.
- (6) Any assessment or preparation fees payable under clause 272, 273, 273A, 274A or 274B (as in force before their repeal by the *Environmental Planning and Assessment Amendment (Planning Instruments and Development Consents) Regulation 2005*) are taken to be fees (as determined by the relevant planning authority concerned) payable under this clause. If, under any such repealed clause, a lessee was liable to pay a fee, a reference in this clause to the owner of the land extends to any such lessee.

#### **25AB Councils to provide copies of development control plans to Director-General**

A council must, within 28 days of making a development control plan, provide the Director-General with a copy of the plan.

### **25AC Purchase of copies of development control plans**

Copies of a development control plan (including any document referred to in a development control plan such as a supporting map, plan, diagram, illustration or other material) are to be made available for purchase from the principal office of the relevant planning authority that prepared the plan.

**Note—**

Under section 74E (4) of the Act, a development control plan must be available for inspection (without charge) at the principal office of the relevant planning authority that prepared the plan.

The above clause does not require the relevant planning authority to supply certified copies of any document. Certified copies are supplied under section 150 of the Act on payment of a prescribed fee. The fee for a certified copy is prescribed by clause 262.

### **25AD Further transitional provisions: 2005 Amending Act**

(1) In this clause:

**deemed DCP** means a master plan, in force under a provision of an environmental planning instrument immediately before the relevant commencement, that is taken to be a development control plan under section 74D of the Act because of clause 95 of Schedule 6 to the Act, and includes a master plan that is taken to be a development control plan as provided by subclause (4).

**relevant commencement** means the date on which Schedule 2 to the 2005 Amending Act commences.

**2005 Amending Act** means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

- (2) **Effect of section 74C on deemed DCPs** Section 74C (2) and (5) of the Act (as inserted by the 2005 Amending Act) does not render invalid any deemed DCP until such time as the principal local environmental planning instrument applying to the land concerned adopts the provisions of a standard instrument (as referred to in section 33A of the Act).
- (3) **Amendment of deemed DCPs** A deemed DCP may be amended or revoked only in accordance with the procedures provided in relation to the making of the master plan by the environmental planning instrument under which it was made. Accordingly, section 74C (4) of the Act does not apply in relation to a deemed DCP.
- (4) **Pending master plans** Any master plan lodged under a provision of an environmental planning instrument but not made or adopted as at the relevant commencement may, after that commencement, proceed to be made or adopted as if the amendments made to the Act and this Regulation by Schedules 2 and 7.3 to the 2005 Amending Act had not been made. Once it is made or adopted, the master plan is taken to be a development control plan under section 74D of the Act.

## **Part 4 Development contributions**

### **Division 1 Preliminary**

#### **25A Planning authorities**

Pursuant to paragraph (e) of the definition of **planning authority** in section 93C of the Act, all public authorities are declared to be planning authorities for the purposes of Division 6 of Part 4 of the Act.

### **Division 1A Planning agreements**

#### **25B Form and subject-matter of planning agreements**

- (1) A planning agreement must:
  - (a) be in writing, and
  - (b) be signed by the parties to the agreement.

**Note—**

Section 93F (10) of the Act requires a planning agreement to conform with the Act, environmental planning instruments and development consents applying to the relevant land.

- (2) The Director-General may from time to time issue practice notes to assist parties in the preparation of planning agreements.

**Note—**

Under section 93K of the Act the Minister may give planning authorities directions on requirements with respect to planning agreements.

#### **25C Making, amendment and revocation of agreements**

- (1) A planning agreement is not entered into until it is signed by all the parties to the agreement.

**Note—**

Section 93G of the Act provides that the agreement cannot be entered into until public notice of the proposed agreement has been given.

- (2) A planning agreement may specify that it does not take effect until:
  - (a) if the agreement relates to a proposed change to an environmental planning instrument—the date the change is made, or
  - (b) if the agreement relates to a development application or proposed development application—the date consent to the application is granted.
- (3) A planning agreement may be amended or revoked by further agreement in writing signed by the parties to the agreement (including by means of a subsequent planning

agreement).

## **25D Public notice of planning agreements**

- (1) If a planning authority proposes to enter into a planning agreement, or an agreement to amend or revoke a planning agreement, in connection with a proposed change to a local environmental plan, or a development application, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation, is given as part of and contemporaneously with, and in the same manner as:
  - (a) any public notice of the relevant draft local environmental plan that is required to be given by the planning authority under section 66 (1) of the Act, or
  - (b) any notice of the development application that is required to be given by the planning authority by or under the Act,as the case requires.
- (2) If the Minister proposes to enter into a planning agreement, or an agreement to amend or revoke a planning agreement, in connection with a proposed change to a regional environmental plan, the Director-General is to ensure that public notice of the proposed agreement, amendment or revocation, is given as part of and contemporaneously with, and in the same manner as, any public notice of the relevant draft regional environmental plan that is required to be given under section 47 of the Act.
- (3) The public notice of a proposed agreement, amendment or revocation must specify the arrangements relating to inspection by the public of copies of the proposed agreement, amendment or revocation.

### **Note—**

Section 93G of the Act requires a copy of the proposed agreement, amendment or revocation to be made available for inspection by the public for a period of not less than 28 days.

## **25E Explanatory note**

- (1) A planning authority proposing to enter into a planning agreement, or an agreement that revokes or amends a planning agreement, must prepare a written statement (referred to in this Division as an **explanatory note**):
  - (a) that summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and
  - (b) that contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.
- (2) Without limiting subclause (1), an explanatory note must:

- (a) identify how the agreement, amendment or revocation promotes the public interest and one or more of the objects of the Act, and
  - (b) if the planning authority is a development corporation, identify how the agreement, amendment or revocation promotes one or more of its responsibilities under the *Growth Centres (Development Corporations) Act 1974*, and
  - (c) if the planning authority is a public authority constituted by or under an Act, identify how the planning agreement, amendment or revocation promotes one or more of the objects (if any) of the Act by or under which it is constituted, and
  - (d) if the planning authority is a council, identify how the agreement, amendment or revocation promotes one or more of the elements of the council's charter under section 8 of the *Local Government Act 1993*, and
  - (e) identify a planning purpose or purposes served by the agreement, amendment or revocation, and contain an assessment of whether the agreement, amendment or revocation provides for a reasonable means of achieving that purpose, and
  - (f) identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any).
- (3) The explanatory note is to be prepared jointly with the other parties proposing to enter into the planning agreement.
  - (4) However, if 2 or more planning authorities propose to enter into a planning agreement, an explanatory note may include separate assessments prepared by the planning authorities in relation to matters affecting only one of the planning authorities, or affecting those planning authorities in a different manner.
  - (5) A copy of the explanatory note must be exhibited with the copy of the proposed agreement, amendment or revocation when it is made available for inspection by the public in accordance with the Act.
  - (6) If a council is not a party to a planning agreement that applies to the area of the council, a copy of the explanatory note must be provided to the council when a copy of the agreement is provided to the council under section 93G (4) of the Act.
  - (7) A planning agreement may provide that the explanatory note is not to be used to assist in construing the agreement.

## **25F Councils to facilitate public inspection of relevant planning agreements**

- (1) A council must keep a planning agreement register.
- (2) The council must record in the register a short description of any planning agreement (including any amendment) that applies to the area of the council, including the date the agreement was entered into, the names of the parties and the land to which it

applies.

- (3) A council must make the following available for public inspection (free of charge) during the ordinary office hours of the council:
  - (a) the planning agreement register kept by the council,
  - (b) copies of all planning agreements (including amendments) that apply to the area of the council,
  - (c) copies of the explanatory notes relating to those agreements or amendments.
- (4) In this clause, **planning agreement** includes a planning agreement to which the council is not a party but which has been provided to the council under the Act.

#### **25G Director-General to facilitate public inspection of relevant planning agreements**

- (1) The Director-General must keep a planning agreement register.
- (2) The Director-General must record in the register a short description of any planning agreement (including any amendment) entered into by the Minister, including the date the agreement was entered into, the names of the parties and the land to which it applies.
- (3) The Director-General must make the following available for public inspection (free of charge) during the ordinary office hours of the Department:
  - (a) the planning agreement register kept by the Director-General,
  - (b) copies of all planning agreements (including amendments) to which the Minister is a party,
  - (c) copies of the explanatory notes relating to those agreements or amendments.

#### **25H Other planning authorities to facilitate public inspection of relevant planning agreements**

A planning authority (not being a council or the Minister) must make the following available for public inspection (free of charge) during the ordinary office hours of the planning authority:

- (a) copies of all planning agreements (including amendments) to which it is a party,
- (b) copies of the explanatory notes relating to those agreements or amendments.

### **Division 1B Development consent contributions**

#### **25I Indexation of monetary section 94 contribution—recoupment of costs**

For the purposes of section 94 (3) of the Act, the cost of providing public amenities or

public services is to be indexed quarterly or annually (as specified in the relevant contributions plan) in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

**25J Section 94A levy—determination of proposed cost of development**

- (1) The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 94A levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:
  - (a) if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,
  - (b) if the development involves a change of use of land—the costs of or incidental to doing anything necessary to enable the use of the land to be changed,
  - (c) if the development involves the subdivision of land—the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.
- (2) For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.
- (3) The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:
  - (a) the cost of the land on which the development is to be carried out,
  - (b) the costs of any repairs to any building or works on the land that are to be retained in connection with the development,
  - (c) the costs associated with marketing or financing the development (including interest on any loans),
  - (d) the costs associated with legal work carried out or to be carried out in connection with the development,
  - (e) project management costs associated with the development,
  - (f) the cost of building insurance in respect of the development,
  - (g) the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an

enlargement, expansion or intensification of a current use of land),

(h) the costs of commercial stock inventory,

(i) any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law.

(4) The proposed cost of carrying out development may be adjusted before payment, in accordance with a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date the proposed cost was determined by the consent authority and the date the levy is required to be paid.

(5) To avoid doubt, nothing in this clause affects the determination of the fee payable for a development application.

#### **25K Section 94A levy—maximum percentage**

The maximum percentage of a section 94A levy is 1 percent of the proposed cost of carrying out the development.

### **Division 1C Preparation of contributions plans**

#### **26 In what form must a contributions plan be prepared?** (cf clause 25 of EP&A Regulation 1994)

- (1) A contributions plan must be prepared having regard to any relevant practice notes adopted for the time being by the Director-General, copies of which are available for inspection and purchase from the offices of the Department.
- (2) One or more contributions plans may be made for all or any part of the council's area and in relation to one or more public amenities or public services.
- (3) The council must not approve a contributions plan that is inconsistent with any direction given to it under section 94E of the Act.
- (4) A draft contributions plan must be publicly exhibited for a period of at least 28 days.

#### **27 What particulars must a contributions plan contain?** (cf clause 26 of EP&A Regulation 1994)

- (1) A contributions plan must include particulars of the following:
  - (a) the purpose of the plan,
  - (b) the land to which the plan applies,
  - (c) the relationship between the expected types of development in the area and the demand for additional public amenities and services to meet that development,
  - (d) the formulas to be used for determining the section 94 contributions required for



different categories of public amenities and services,

- (e) the section 94 contribution rates for different types of development, as specified in a schedule to the plan,
  - (f) if the plan authorises the imposition of a section 94A condition:
    - (i) the percentage of the section 94A levy and, if the percentage differs for different types of development, the percentage of the levy for those different types of development, as specified in a schedule to the plan, and
    - (ii) the manner (if any) in which the proposed cost of carrying out the development, after being determined by the consent authority, is to be adjusted to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date of that determination and the date the levy is required to be paid,
  - (g) the council's policy concerning the timing of the payment of monetary section 94 contributions, section 94A levies and the imposition of section 94 conditions or section 94A conditions that allow deferred or periodic payment,
  - (h) a map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging (whether by reference to dates or thresholds),
  - (i) if the plan authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes, the priorities for the expenditure of the contributions or levies, particularised by reference to the works schedule.
- (2) In determining the section 94 contribution rates or section 94A levy percentages for different types of development, the council must take into consideration the conditions that may be imposed under section 80A (6) (b) of the Act or section 97 (1) (b) of the *Local Government Act 1993*.
- (3) A contributions plan must not contain a provision that authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes unless the council is satisfied that the pooling and progressive application of the money paid will not unreasonably prejudice the carrying into effect, within a reasonable time, of the purposes for which the money was originally paid.

## **Division 2 Public participation**

### **28 Draft contributions plan must be publicly exhibited** (cf clause 27 of EP&A Regulation 1994)

Following the preparation of a draft contributions plan, the council:

- (a) must give public notice in a local newspaper of the places, dates and times for inspection of the draft plan, and
- (b) must publicly exhibit at the places, on the dates and during the times set out in the notice:
  - (i) a copy of the draft plan, and
  - (ii) a copy of any supporting documents, and
- (c) must specify in the notice the period during which submissions about the draft plan may be made to the council (which must include the period during which the plan is being publicly exhibited).

**29 Copies of draft contributions plans to be publicly available** (cf clause 28 of EP&A Regulation 1994)

Copies of the draft contributions plan, and of any supporting documents, are to be made available to interested persons, either free of charge or on payment of reasonable copying charges.

**30 Who may make submissions about a draft contributions plan?** (cf clause 29 of EP&A Regulation 1994)

Any person may make written submissions to the council about the draft contributions plan during the relevant submission period.

### **Division 3 Approval of contributions plans**

**31 Approval of contributions plan by council** (cf clause 30 of EP&A Regulation 1994)

- (1) After considering any submissions about the draft contributions plan that have been duly made, the council:
  - (a) may approve the plan in the form in which it was publicly exhibited, or
  - (b) may approve the plan with such alterations as the council thinks fit, or
  - (c) may decide not to proceed with the plan.
- (2) The council must give public notice of its decision in a local newspaper within 28 days after the decision is made.
- (3) Notice of a decision not to proceed with a contributions plan must include the council's reasons for the decision.
- (4) A contributions plan comes into effect on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice.

## **Division 4 Amendment and repeal of contributions plans**

### **32 How may a contributions plan be amended or repealed?** (cf clause 31 of EP&A Regulation 1994)

- (1) A council may amend a contributions plan by a subsequent contributions plan.
- (2) A council may repeal a contributions plan:
  - (a) by a subsequent contributions plan, or
  - (b) by public notice in a local newspaper of its decision to repeal the plan.
- (3) A council may make the following kinds of amendments to a contributions plan without the need to prepare a new contributions plan:
  - (a) minor typographical corrections,
  - (b) changes to the rates of section 94 monetary contributions set out in the plan to reflect quarterly or annual variations to:
    - (i) readily accessible index figures adopted by the plan (such as a Consumer Price Index), or
    - (ii) index figures prepared by or on behalf of the council from time to time that are specifically adopted by the plan,
  - (c) the omission of details concerning works that have been completed.

### **33 Procedure for repealing a contributions plan by public notice** (cf clause 32 of EP&A Regulation 1994)

- (1) Before repealing a contributions plan by public notice, the council must give public notice in a local newspaper:
  - (a) of its intention to repeal the contributions plan, and
  - (b) of its reasons for doing so.
- (2) Publication of the notice of intention must take place at least 14 days before publication of the notice of repeal.
- (3) The repeal of a contributions plan by public notice in a local newspaper takes effect on the date of publication of the notice.

### **33A Review of contributions plan**

- (1) A council is required to keep a contributions plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) A council is also to consider any submissions about contributions plans received from

public authorities or the public.

## **Division 5 Accounting**

### **34 Councils must maintain contributions register** (cf clause 33 of EP&A Regulation 1994)

- (1) A council that imposes section 94 conditions or section 94A conditions on development consents must maintain a contributions register.
- (2) The council must record the following details in the register:
  - (a) particulars sufficient to identify each development consent for which any such condition has been imposed,
  - (b) the nature and extent of the section 94 contribution or section 94A levy required by any such condition for each public amenity or service,
  - (c) the contributions plan under which any such condition was imposed,
  - (d) the date or dates on which any section 94 contribution or section 94A levy required by any such condition was received, and its nature and extent.

### **35 Accounting for contributions and levies** (cf clause 34 of EP&A Regulation 1994)

- (1) A council must maintain accounting records that allow monetary section 94 contributions, section 94A levies, and any additional amounts earned from their investment, to be distinguished from all other money held by the council.
- (2) The accounting records for a contributions plan must indicate the following:
  - (a) the various kinds of public amenities or services for which expenditure is authorised by the plan,
  - (b) the monetary section 94 contributions or section 94A levies received under the plan, by reference to the various kinds of public amenities or services for which they have been received,
  - (ba) in respect of section 94 contributions or section 94A levies paid for different purposes, the pooling or progressive application of the contributions or levies for those purposes, in accordance with any requirements of the plan or any ministerial direction under Division 6 of Part 4 of the Act,
  - (c) the amounts spent in accordance with the plan, by reference to the various kinds of public amenities or services for which they have been spent.
- (3) A council must disclose the following information for each contributions plan in the notes to its annual financial report:
  - (a) the opening and closing balances of money held by the council for the accounting

period covered by the report,

- (b) the total amounts received by way of monetary section 94 contributions or section 94A levies during that period, by reference to the various kinds of public amenities or services for which they have been received,
- (c) the total amounts spent in accordance with the contributions plan during that period, by reference to the various kinds of public amenities or services for which they have been spent,
- (d) the outstanding obligations of the council to provide public amenities or services, by reference to the various kinds of public amenities or services for which monetary section 94 contributions or section 94A levies have been received during that or any previous accounting period.

**36 Councils must prepare annual statements** (cf clause 35 of EP&A Regulation 1994)

- (1) As soon as practicable after the end of each financial year, a council must prepare an annual statement for the contributions plans in force in its area.
- (2) The annual statement must disclose, for each contributions plan, the information required by this Division to appear in the notes to its annual financial report.

## **Division 6 Public access**

**37 Councils must keep certain records available for public inspection** (cf clause 36 of EP&A Regulation 1994)

- (1) A council must make the following documents available for inspection:
  - (a) each of its current contributions plans,
  - (b) each of its annual statements,
  - (c) its contributions register.
- (2) The documents must be available at the council's principal office, free of charge, during the council's ordinary office hours.
- (3) Subject to section 428 of the [Local Government Act 1993](#), the annual statement may be included in, or form part of, the annual report prepared by the council under that section.

**38 Copies of contributions plans to be publicly available** (cf clause 37 of EP&A Regulation 1994)

A council must make the following documents available for copying, either free of charge or on payment of reasonable copying charges:

- (a) each of its current contributions plans,
- (b) each document referred to in any such contributions plan that is held by the council.

**Note—**

This clause does not require a council to supply certified copies of any document. Certified copies are supplied under section 150 of the Act on payment of a prescribed fee. The fee for a certified copy is prescribed by clause 262.

## Part 5 Existing uses

### 39 Definitions

In this Part:

**changed existing use** means a use to which an existing use is changed in accordance with this Part.

**relevant date** means:

- (a) in relation to an existing use referred to in section 106 (a) of the Act—the date on which an environmental planning instrument having the effect of prohibiting the existing use first comes into force, or
- (b) in relation to an existing use referred to in section 106 (b) of the Act—the date when the building, work or land being used for the existing use was first erected, carried out or so used.

### 40 Object of Part (cf clause 38 of EP&A Regulation 1994)

The object of this Part is to regulate existing uses under section 108 (1) of the Act.

**Note—**

By section 108 (2) of the Act, the provisions of this Part are **the incorporated provisions** and so are taken to be incorporated in every environmental planning instrument in force under the Act.

### 41 Certain development allowed (cf clause 39 of EP&A Regulation 1994)

- (1) An existing use may, subject to this Division:
  - (a) be enlarged, expanded or intensified, or
  - (b) be altered or extended, or
  - (c) be rebuilt, or
  - (d) be changed to another use, including a use that would otherwise be prohibited under the Act.
- (2) A use to which an existing use is changed is itself taken to be an existing use for the purposes of the Act and may, subject to this Division, be changed to another use.

**42 Development consent required for enlargement, expansion and intensification of existing uses** (cf clause 40 of EP&A Regulation 1994)

- (1) Development consent is required for any enlargement, expansion or intensification of an existing use.
- (2) The enlargement, expansion or intensification:
  - (a) must be for the existing use, or for a changed existing use, but for no other use, and
  - (b) must be carried out only on the land on which the existing use was carried out immediately before the relevant date.

**43 Development consent required for alteration or extension of buildings and works** (cf clause 41 of EP&A Regulation 1994)

- (1) Development consent is required for any alteration or extension of a building or work used for an existing use.
- (2) The alteration or extension:
  - (a) must be for the existing use of the building or work, or for a changed existing use, but for no other use, and
  - (b) must be erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.

**44 Development consent required for rebuilding of buildings and works** (cf clause 42 of EP&A Regulation 1994)

- (1) Development consent is required for any rebuilding of a building or work used for an existing use.
- (2) The rebuilding:
  - (a) must be for the existing use of the building or work, or for a changed existing use, but for no other use, and
  - (b) must be carried out only on the land on which the building or work was erected or carried out immediately before the relevant date.

**45 Development consent required for changes of existing uses** (cf clause 43 of EP&A Regulation 1994)

Development consent is required:

- (a) for any change of an existing use to another use, and
- (b) in the case of a building, work or land that is used for different existing uses, for any

change in the proportions in which the various parts of the building, work or land are used for those purposes.

**46 Uses may be changed at the same time as they are altered, extended, enlarged or rebuilt** (cf clause 44 of EP&A Regulation 1994)

Nothing in this Part prevents the granting of a development consent referred to in clause 42, 43 or 44 at the same time as the granting of a development consent referred to in clause 45.

## **Part 6 Procedures relating to development applications**

### **Division 1 Development applications generally**

**47 Application of Part** (cf clause 45 of EP&A Regulation 1994)

This Part applies to all development applications.

**Note—**

Because of the definition of **development application** in section 4 (1) of the Act, this Part does not apply to complying development or to applications for complying development certificates.

**48 Consent authority to provide development application forms to intending applicants** (cf clause 45A of EP&A Regulation 1994)

The consent authority must provide any person intending to make a development application with:

- (a) the consent authority's scale of fees for development applications generally, and
- (b) if the consent authority has determined the fee to accompany that particular application, advice of the amount determined, and
- (c) if the consent authority requires such an application to be in a particular form, blank copies of that form.

**49 Who can make a development application?** (cf clause 46 of EP&A Regulation 1994)

- (1) A development application may be made:
  - (a) by the owner of the land to which the development application relates, or
  - (b) by any other person, with the consent in writing of the owner of that land.
- (2) Subclause (1) (b) does not require the consent in writing of the owner of the land for a development application made by a public authority if, before making the application, the public authority serves a copy of the application on the owner.
- (3) Despite subclause (1), a development application made by a lessee of Crown land may only be made with the consent in writing given by or on behalf of the Crown.



- (4) In this clause, **public authority** includes an irrigation corporation within the meaning of the *Water Management Act 2000* that the Minister administering that Act has, by order in writing, declared to have the status of a public authority for the purposes of this clause in relation to development of a kind specified in the order.

**50 How must a development application be made?** (cf clause 46A of EP&A Regulation 1994)

- (1) A development application:
- (a) must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1, and
  - (b) if the consent authority so requires, must be in the form approved by that authority, and
  - (c) must be accompanied by the fee, not exceeding the fee prescribed by Part 15, determined by the consent authority, and
  - (d) must be delivered by hand, sent by post or transmitted electronically to the principal office of the consent authority, but may not be sent by facsimile transmission.
- (1A) A development application that relates to a residential flat development, and that is made on or after 1 December 2003, must be accompanied by a design verification from a qualified designer, being a statement in which the qualified designer verifies:
- (a) that he or she designed, or directed the design, of the residential flat development, and
  - (b) that the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* are achieved for the residential flat development.
- (1B) If a development application referred to in subclause (1A) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim:
- (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
  - (b) to improve the thermal performance of the building.
- (2) A development application that relates to development for which consent under the *Wilderness Act 1987* is required must be accompanied by a copy of that consent.
- (3) Immediately after it receives a development application, the consent authority:
- (a) must register the application with a distinctive number, and

- (b) must endorse the application with its registered number and the date of its receipt, and
  - (c) must give written notice to the applicant of its receipt of the application, of the registered number of the application and of the date on which the application was received.
- (4) In the case of a development application under section 78A (3) of the Act, the application must be accompanied by such matters as would be required under section 81 of the *Local Government Act 1993* if approval were sought under that Act.
  - (5) The consent authority must forward a copy of the development application to the relevant council if the council is not the consent authority.
  - (6) If the development application is for designated development, the consent authority must forward to the Director-General (where the Minister or the Director-General is not the consent authority) and to the council (where the council is not the consent authority) a copy of the environmental impact statement, together with a copy of the relevant application.

**Note—**

Additional requirements in relation to the making of a development application apply to applications for designated development, for integrated development and applications for development that affect threatened species.

**51 Rejection of development applications** (cf clause 47 (1)–(3) of EP&A Regulation 1994)

- (1) A consent authority may reject a development application within 7 days after receiving it if:
  - (a) the application is illegible or unclear as to the development consent sought, or
  - (b) the application does not contain any information, or is not accompanied by any document, specified in Part 1 of Schedule 1.
- (2) A consent authority may reject a development application within 14 days after receiving it if:
  - (a1) being an application for development requiring concurrence, the application fails to include the concurrence fees appropriate for each concurrence relevant to the development, or
  - (a) being an application for integrated development, the application fails:
    - (i) to identify all of the approvals referred to in section 91 of the Act that are required to be obtained before the development may be carried out, or
    - (ii) to include the approval fees appropriate for each approval relevant to the

development, or

(iii) to include the additional information required by this Regulation in relation to the development, or

(b) being an application referred to in section 78A (8) (b) of the Act, the application is not accompanied by a species impact statement referred to in that paragraph.

(3) An application that is rejected under this clause is taken for the purposes of the Act never to have been made.

(4) The consent authority must refund to the applicant the whole of any application fee paid in connection with an application that is rejected under this clause.

(5) Immediately after the rejection of a development application for:

(a) development for which the concurrence of a concurrence authority is required, or

(b) integrated development,

the consent authority must notify each relevant concurrence authority or approval body of the rejection.

**52 Withdrawal of development applications** (cf clause 47 (4)–(6) of EP&A Regulation 1994)

(1) A development application may be withdrawn at any time prior to its determination by service on the consent authority of a notice to that effect signed by the applicant.

(2) An application that is withdrawn is taken for the purposes of the Act (section 79 (6) of the Act and clause 90 (3) of this Regulation excepted) never to have been made.

(3) The consent authority may (but is not required to) refund to the applicant the whole or any part of any application fee paid in connection with an application that has been withdrawn.

(4) Immediately after the withdrawal of a development application for:

(a) development for which the concurrence of a concurrence authority is required, or

(b) integrated development,

the consent authority must notify each relevant concurrence authority or approval body of the withdrawal.

**53 Consent authority may require additional copies of development application and supporting documents** (cf clause 47A of EP&A Regulation 1994)

A consent authority that is required:

(a) to refer a development application to another person, or

(b) to arrange for the public display of a development application,

may require the applicant to give it as many additional copies of the development application and supporting documents as are reasonably required for that purpose.

**54 Consent authority may request additional information** (cf clause 48 of EP&A Regulation 1994)

- (1) A consent authority may request the applicant for development consent to provide it with such additional information about the proposed development as it considers necessary to its proper consideration of the application.
- (2) The request:
  - (a) must be writing, and
  - (b) may specify a reasonable period within which the information must be provided to the consent authority.
- (3) The information that a consent authority may request includes, but is not limited to, information relating to any relevant matter referred to in section 79C (1) (b)–(e) of the Act or in any relevant environmental planning instrument.
- (4) However, the information that a consent authority may request does not include, in relation to building or subdivision work, the information that is required to be attached to an application for a construction certificate.

**Note—**

The aim of this provision is to ensure that the consent authority does not oblige the applicant to provide these construction details up-front where the applicant may prefer to test the waters first and delay applying for a construction certificate until, or if, development consent is granted.

- (5) Instead of providing the information requested, the applicant to whom a request is made under this clause may notify the consent authority in writing that the information will not be provided.
- (6) If the applicant for development consent has failed to provide any of the requested information by the end of:
  - (a) any period specified as referred to in subclause (2) (b), or
  - (b) such further period as the consent authority may allow,the applicant is taken to have notified the consent authority that the information will not be provided, and the application may be dealt with accordingly.

**55 What is the procedure for amending a development application?** (cf clause 48A of EP&A Regulation 1994)

- (1) A development application may be amended or varied by the applicant (but only with

the agreement of the consent authority) at any time before the application is determined.

(2) If an amendment or variation results in a change to the proposed development, the application to amend or vary the development application must have annexed to it written particulars sufficient to indicate the nature of the changed development.

(3) If the development application is for:

(a) development for which concurrence is required, as referred to in section 79B of the Act, or

(b) integrated development,

the consent authority must immediately forward a copy of the amended or varied application to the concurrence authority or approval body.

#### **55A Amendments with respect to BASIX commitments**

(1) This clause applies to a development application that has been accompanied by a BASIX certificate pursuant to clause 2A of Schedule 1.

(2) Without limiting clause 55, a development application may be amended or varied by the lodging of:

(a) a new BASIX certificate to replace a BASIX certificate that accompanied the application, or to replace any subsequent BASIX certificate lodged under this clause, and

(b) if any new accompanying document is required or any existing accompanying document requires amendment, a new or amended accompanying document.

(3) If an amendment or variation of a development application, or of any accompanying document, results in the proposed development differing in any material respect from the description contained in a current BASIX certificate for the development, the application to amend or vary the development application must have annexed to it a replacement BASIX certificate whose description takes account of the amendment or variation.

(4) In this clause, a reference to the **accompanying document** is a reference to any document required to accompany a development application pursuant to clause 2 of Schedule 1.

#### **56 Extracts of development applications to be publicly available** (cf clause 48B of EP&A Regulation 1994)

(1) This clause applies to all development other than designated or advertised development.

(2) Extracts of a development application relating to the erection of a building:

- (a) sufficient to identify the applicant and the land to which the application relates, and
- (b) containing a plan of the building that indicates its height and external configuration, as erected, in relation to the site on which it is to be erected, if relevant for that particular development,

are to be made available to interested persons, either free of charge or on payment of reasonable copying charges.

**Note—**

The erection of a building is defined in the Act to include the rebuilding of, the making of structural alterations to, or the enlargement or extension of a building or the placing or relocating of a building on land.

**57 Copyright in documents forming part of or accompanying development applications—applicant’s indemnification** (cf clause 48C of EP&A Regulation 1994)

Upon a development application being made under section 78A of the Act, the applicant (not being entitled to copyright) is taken to have indemnified all persons using the development application and documents in accordance with the Act against any claim or action in respect of breach of copyright.

**Division 2 Development applications for development requiring concurrence**

**58 Application of Division** (cf clause 49 of EP&A Regulation 1994)

- (1) This Division applies to all development applications that relate to development for which the concurrence of a concurrence authority is required.
- (2) This Division does not apply in circumstances in which a concurrence authority’s concurrence may be assumed in accordance with clause 64.
- (3) This Division ceases to apply to a development application if the development application is rejected or withdrawn under clause 51 or 52.

**59 Seeking concurrence** (cf clause 49A of EP&A Regulation 1994)

- (1) After it receives a development application for development requiring concurrence, the consent authority:
  - (a) must forward a copy of the application (together with all accompanying documentation) to the concurrence authority whose concurrence is required, and
  - (b) must notify the concurrence authority in writing of the basis on which its concurrence is required and of the date of receipt of the development application,

and

(c) if known at that time, must notify the concurrence authority in writing of the dates of the relevant submission period or periods if the application is to be publicly notified under section 79 or 79A of the Act.

(2) In the case of a development application that indicates on its face that such concurrence is required, the application must be forwarded to the relevant concurrence authority within 2 days after the application is lodged.

**60 Concurrence authority may require additional information** (cf clause 50 of EP&A Regulation 1994)

(1) A concurrence authority whose concurrence has been sought may request the consent authority to provide it with such additional information about the proposed development as it considers necessary to its proper consideration of the question as to whether concurrence should be granted or refused.

(2) The request:

(a) must be in writing, and

(b) may specify a reasonable period within which the information must be provided to the consent authority.

(3) Immediately after receiving a request for additional information from a concurrence authority, a consent authority must request the applicant, in writing, to provide the information sought within the period specified by the concurrence authority.

(4) Immediately after receiving the requested information from the applicant, the consent authority must forward that information to the concurrence authority.

(5) Instead of providing the information requested, the applicant to whom a request is made under this clause may notify the consent authority in writing that the information will not be provided.

(6) If the applicant for development consent has failed to provide any of the requested information by the end of:

(a) any period specified as referred to in subclause (2) (b), or

(b) such further period as the concurrence authority may allow,

the applicant is taken to have notified the consent authority that the information will not be provided, and the application may be dealt with accordingly.

**61 Forwarding of submissions to concurrence authorities** (cf clause 50A of EP&A Regulation

1994)

- (1) This clause applies to development that is required to be advertised or notified under section 79 or 79A of the Act.
- (2) Immediately after the expiration of the relevant submission period, the consent authority must forward to each concurrence authority a copy of all submissions received in response to the advertisement or notification.

**62 Notification of decision** (cf clause 51 of EP&A Regulation 1994)

- (1) A concurrence authority that has received a development application from a consent authority must give written notice to the consent authority of its decision on the development application:
  - (a) within 40 days after receipt of the copy of the application, or
  - (b) in the case of development that is required to be advertised or notified under section 79 or 79A of the Act, within 21 days after it receives:
    - (i) the last of the submissions made during the relevant submission period, or
    - (ii) advice from the consent authority that no submissions were made.

**Note—**

This period may be extended by operation of Division 11.

- (2) If the consent authority determines a development application by refusing to grant consent before the expiration of the relevant period under subclause (1):
  - (a) the consent authority must notify the concurrence authority as soon as possible after the determination, and
  - (b) this clause ceases to apply to the development application.
- (3) Nothing in this clause prevents a consent authority from having regard to a concurrence authority's decision on a development application that has been notified to the consent authority after the expiration of the relevant period under subclause (1).

**63 Reasons for granting or refusal of concurrence** (cf clause 51A of EP&A Regulation 1994)

- (1) If the concurrence authority:
  - (a) grants concurrence subject to conditions, or
  - (b) refuses concurrence,the concurrence authority must give written notice to the consent authority of the reasons for the imposition of the conditions or the refusal.



- (2) If the concurrence is one that is required under section 79B (3) of the Act, a copy of the reasons must be available for public inspection, during ordinary office hours:
  - (a) at the head office of the National Parks and Wildlife Service, or
  - (b) if the matter concerns critical habitat of fish or marine vegetation, or threatened species, populations or ecological communities of fish or marine vegetation or their habitats, at the head office of NSW Fisheries.

**64 Circumstances in which concurrence may be assumed** (cf clause 51B of EP&A Regulation 1994)

- (1) A concurrence authority may, by written notice given to the consent authority:
  - (a) inform the consent authority that concurrence may be assumed, subject to such qualifications or conditions as are specified in the notice, and
  - (b) amend or revoke an earlier notice under this clause.
- (2) A consent granted by a consent authority that has assumed concurrence in accordance with a notice under this clause is as valid and effective as if concurrence had been given.

### **Division 3 Development applications for integrated development**

**65 Application of Division** (cf clause 52 of EP&A Regulation 1994)

- (1) This Division applies to all development applications for integrated development.
- (2) This Division ceases to apply to a development application if the development application is rejected or withdrawn under clause 51 or 52.

**66 Seeking general terms of approval** (cf clause 52A of EP&A Regulation 1994)

- (1) After it receives a development application for integrated development, the consent authority:
  - (a) must forward a copy of the application (together with all accompanying documentation) to the approval body whose approval is required, and
  - (b) must notify the approval body in writing of the basis on which its approval is required and of the date of receipt of the development application, and
  - (c) if known at that time, must notify the approval body in writing of the dates of the relevant submission period if the application is to be publicly notified under section 79 or 79A of the Act.
- (2) In the case of a development application that indicates on its face that such an approval is required, the application must be forwarded to the relevant approval body

within 2 days after the application is lodged.

**67 Approval body may require additional information** (cf clause 53 of EP&A Regulation 1994)

- (1) An approval body the general terms of whose approval have been sought may request the consent authority to provide it with such additional information about the proposed development as it considers necessary to its 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 consent authority.
- (3) Immediately after receiving a request for additional information from an approval body, a consent authority must request the applicant, in writing, to provide the information sought within the period specified by the approval body.
- (4) Immediately after receiving the requested information from the applicant, the consent authority must forward that information to the approval body.
- (5) Instead of providing the information requested, the applicant to whom a request is made under this clause may notify the consent authority in writing that the information will not be provided.
- (6) If the applicant for development consent has failed to provide any of the requested information by the end of:
  - (a) any period specified as referred to in subclause (2) (b), or
  - (b) such further period as the approval body may allow,the applicant is taken to have notified the consent authority that the information will not be provided, and the application may be dealt with accordingly.

**68 Consent authority to be notified of proposed consultations under [National Parks and Wildlife Act 1974](#)** (cf clause 53AA of EP&A Regulation 1994)

- (1) If:
  - (a) development is integrated development because, or partly because, it requires consent under section 90 of the [National Parks and Wildlife Act 1974](#), and
  - (b) the Director-General of National Parks and Wildlife is of the opinion that consultation with an Aboriginal person or persons, an Aboriginal Land Council or another Aboriginal organisation concerning a relic or Aboriginal place is required before the Director-General can make a decision concerning the general terms of

approval in relation to such a consent (including whether or not the Director-General will grant consent),

the Director-General must cause notice of that fact to be given to the consent authority.

**69 Forwarding of submissions to approval bodies** (cf clause 53A of EP&A Regulation 1994)

- (1) This clause applies to development that is required to be advertised or notified under section 79 or 79A of the Act.
- (2) Immediately after the expiration of the relevant submission period, the consent authority must forward to each approval body a copy of all submissions received in response to the advertisement or notification.

**70 Notification of general terms of approval** (cf clause 53B of EP&A Regulation 1994)

- (1) An approval body that has received a development application from a consent authority must give written notice to the consent authority of its decision concerning the general terms of approval in relation to the development application (including whether or not it will grant an approval):
  - (a) within 40 days after receipt of the copy of the application, or
  - (b) in the case of development that is required to be advertised or notified under section 79 or 79A of the Act, within 21 days after it receives:
    - (i) the last of the submissions made during the relevant submission period, or
    - (ii) advice from the consent authority that no submissions were made.

**Note—**

This period may be extended by operation of Division 11.

- (2) If the consent authority determines a development application by refusing to grant consent before the expiration of the relevant period under subclause (1):
  - (a) the consent authority must notify the approval body as soon as possible after the determination, and
  - (b) this clause ceases to apply to the development application.
- (3) Nothing in this clause prevents a consent authority from having regard to an approval body's general terms of approval that have been notified to the consent authority after the expiration of the relevant period under subclause (1).

**Division 3A Special provisions relating to staged development applications**

### **70A Information to be included in staged development applications**

Despite clause 50 (1) (a), the information required to be provided in a staged development application in respect of the various stages of the development may, with the approval of the consent authority, be deferred to a subsequent development application.

### **70B Staged development applications—residential flat development**

Clause 50 (1A) applies in relation to a staged development application only if the application sets out detailed proposals for the development or part of the development.

## **Division 4 Environmental impact statements**

### **71 What is the form for an environmental impact statement? (cf clause 54 of EP&A Regulation 1994)**

For the purposes of section 78A (8) of the Act, the prescribed form for an environmental impact statement to accompany a development application is a form that contains the following information:

- (a) the name, address and professional qualifications of the person by whom the statement is prepared,
- (b) the name and address of the person by whom the development application was made,
- (c) the address of the land in respect of which the development application was made,
- (d) a description of the development to which the statement relates,
- (e) an assessment by the person by whom the statement is prepared of the environmental impact of the development to which the statement relates, dealing with the matters referred to in clause 72,
- (f) a declaration by the person by whom the statement is prepared to the effect that:
  - (i) the statement has been prepared in accordance with clauses 72 and 73, and
  - (ii) the statement contains all available information that is relevant to the environmental assessment of the development to which the statement relates, and
  - (iii) that the information contained in the statement is neither false nor misleading.

### **72 What must an environmental impact statement contain? (cf clause 54A of EP&A Regulation 1994)**

- (1) The contents of an environmental impact statement must include:

- (a) for development of a kind for which specific guidelines are in force under this clause, the matters referred to in those guidelines, or
  - (b) for any other kind of development:
    - (i) the matters referred to in the general guidelines in force under this clause, or
    - (ii) if no such guidelines are in force, the matters referred to in Schedule 2.
- (2) For the purposes of this clause, the Director-General may establish guidelines for the preparation of environmental impact statements, in relation to development generally or in relation to any specific kind of development.
- (3) The Director-General may vary or revoke any guidelines in force under this clause.
- (4) An environmental impact statement prepared in accordance with this clause before the date on which any of the following events occur:
- (a) the amendment of Schedule 2,
  - (b) the establishment of new guidelines under this clause,
  - (c) the variation or revocation of existing guidelines under this clause,
- is taken to have been prepared in accordance with this clause, for the purposes of any development application made within 3 months after that date, as if the relevant event had not occurred.

**73 Requirements of Director-General and approval bodies concerning preparation of environmental impact statements** (cf clause 55 of EP&A Regulation 1994)

- (1) The applicant responsible for preparing an environmental impact statement must consult with the Director-General and, in completing the statement, must have regard to the Director-General's requirements:
- (a) as to the form and content of the statement, and
  - (b) as to making the statement available for public comment.
- (2) For the purposes of the consultation, the applicant must give the Director-General written particulars of:
- (a) the location, nature and scale of the development, and
  - (b) in the case of a development application for integrated development, the approvals that are required.
- (3) In the case of proposed integrated development the Director-General must request, in writing, each relevant approval body to provide the Director-General with that approval body's requirements in relation to the environmental impact statement for

the purpose of its decision concerning the general terms of the approval in relation to the development (including whether or not it will grant an approval).

- (4) If an approval body does not provide the Director-General, in writing, with its requirements within 14 days after receipt of the Director-General's request under subclause (3):
  - (a) the Director-General must inform the applicant, and
  - (b) the applicant:
    - (i) must consult with the approval body and obtain its requirements in relation to the environmental impact statement for the purpose of its decision concerning the general terms of the approval in relation to the development (including whether or not it will grant an approval), and
    - (ii) in completing the statement, must have regard to the approval body's requirements.
- (5) Within 28 days after the applicant's consultation with the Director-General is completed, or within such further time as is agreed between the Director-General and the applicant, written notice of the Director-General's requirements must be given:
  - (a) to the applicant, and
  - (b) to the relevant consent authority (unless the Minister or the Director-General is the consent authority), and
  - (c) to the relevant approval body (in the case of proposed integrated development for which the approval body has provided the Director-General with its requirements following the Director-General's request under subclause (3)).
- (6) If the development application to which the environmental impact statement relates is not made within 2 years after the notice is given, the applicant must consult further with the Director-General in relation to the preparation of the statement.
- (7) The Director-General may waive the requirement for consultation under this clause in relation to any particular development or any particular class or description of development, other than integrated development.

**74 Consent authority may require additional copies of environmental impact statement** (cf clause 55A of EP&A Regulation 1994)

The consent authority may require an applicant for development consent for designated development to give it as many additional copies of the environmental impact statement as are reasonably required for the purposes of the Act.

**75 Consent authority may sell copies of environmental impact statement to the public** (cf

clause 56 of EP&A Regulation 1994)

- (1) Copies of an environmental impact statement may be sold by a consent authority to any member of the public for not more than \$25 per copy.
- (2) A consent authority:
  - (a) must pay the proceeds of sale to the applicant responsible for the preparation of the statement, and
  - (b) must return to the applicant any unsold copies of the statement.

**76 Documents adopted or referred to by environmental impact statement** (cf clause 56A of EP&A Regulation 1994)

- (1) Any document adopted or referred to by an environmental impact statement is taken to form part of the statement.
- (2) Nothing in this Part requires the applicant responsible for the preparation of an environmental impact statement to supply any person with a document that is publicly available.

## **Division 5 Public participation—designated development**

**77 Notice of application for designated development to public authorities (other than concurrence authorities and approval bodies)** (cf clause 57 of EP&A Regulation 1994)

At the same time as giving public notice under section 79 (1) of the Act, the consent authority must give written notice of a development application for designated development to such public authorities (other than relevant concurrence authorities or approval bodies) as, in the opinion of the consent authority, may have an interest in the determination of that development application.

**78 What information must a written notice of designated development contain?** (cf clause 58 of EP&A Regulation 1994)

- (1) A written notice of a development application under section 79 (1) (b) of the Act must contain the following information:
  - (a) a description (including the address) of the land on which the development is proposed to be carried out,
  - (b) the name of the applicant and of the consent authority,
  - (c) a description of the proposed development,
  - (d) a statement that the proposed development is designated development,
  - (e) a statement that the development application and the documents accompanying the application, including the environmental impact statement, may be inspected:

- (i) at the consent authority's principal office, and
  - (ii) at the Department's offices (if the Minister or Director-General is not the consent authority), and
  - (iii) at the council's principal office (if the council is not the consent authority),
- for a period specified in the notice during the relevant authority's ordinary office hours,

(f) a statement that:

- (i) any person during the period specified under paragraph (e) may make written submissions to the consent authority concerning the development application, and
- (ii) if a submission is made by way of objection, the grounds of objection must be specified in the submission,

(g) the dates of the period specified under paragraph (e),

(h) if the proposed development is also integrated development:

- (i) a statement that the development is integrated development, and
- (ii) a statement of the approvals that are required and the relevant approval bodies for those approvals,

(i) a statement that, unless the proposed development is development for which a Commission of Inquiry has been held, any person:

- (i) who makes a submission by way of objection, and
- (ii) who is dissatisfied with the determination of the consent authority to grant development consent,

may appeal to the Land and Environment Court,

(j) a statement that, if a Commission of Inquiry is held, the Minister's determination of the application is final and not subject to appeal.

(2) The period referred to under subclause (1) (e) must include the period of 30 days commencing on the day after which notice of the development application is first published in a newspaper under section 79 (1) (d) of the Act.

**79 How is the notice under section 79 (1) (c) of the Act exhibited on land for designated development?** (cf clause 59 of EP&A Regulation 1994)

(1) The notice for a development application for designated development under section 79 (1) (c) of the Act:



- (a) must be exhibited on the land to which the development application relates, and
- (b) must be displayed on a signpost or board, and
- (c) must be clear and legible, and
- (d) must be headed in capital letters and bold type “**DEVELOPMENT PROPOSAL**”, and
- (e) must contain under that heading the following matters:
  - (i) a statement that the development application has been lodged,
  - (ii) the name of the applicant,
  - (iii) a brief description of the development application,
  - (iv) notice that the development application and the relevant environmental impact statement may be inspected at the places, on the dates and during the times specified in the notice, being the same places, dates and times specified in the written notice under section 79 (1) (b) of the Act, and
- (f) must, if practicable, be capable of being read from a public place.

**80 How is the notice under section 79 (1) (d) published for designated development?** (cf clause 60 of EP&A Regulation 1994)

The notice for a development application for designated development under section 79 (1) (d) of the Act:

- (a) must be published on at least 2 separate occasions, and
- (b) must appear across 2 or 3 columns in the display section of the newspaper, and
- (c) must be headed in capital letters and bold type “**DEVELOPMENT PROPOSAL**”, and
- (d) must contain the same matters as are required for a notice under section 79 (1) (b) of the Act.

**81 Forwarding of submissions to Director-General** (cf clause 62 of EP&A Regulation 1994)

For the purposes of section 80 (9) (b) of the Act, the consent authority must, immediately after the relevant submission period, forward to the Director-General (if the Minister or the Director-General is not the consent authority) a copy of all submissions (including submissions by way of objection) received in response to the public exhibition of a development application for designated development.

**Note—**

This requirement will not apply if the Director-General has waived the requirement under section 80 (10) (b) of the Act.

## **Division 6 Public participation—State significant advertised development**

### **82 Application of section 79 of the Act relating to designated development** (cf clause 64 of EP&A Regulation 1994)

- (1) For the purposes of section 79A (1) of the Act, section 79 of the Act applies to a development application for State significant advertised development in the same way as it applies to a development application for designated development, and this Division applies accordingly.
- (2) This Division does not apply to development on land to which clause 26F of *Newcastle Local Environmental Plan 1987* applies.

### **83 What must a written notice under section 79 (1) (b) of the Act contain?** (cf clause 64 of EP&A Regulation 1994)

- (1) For the purposes of section 79 (1) (b) of the Act, a written notice of a development application for State significant advertised development must contain the following information:
  - (a) a description (including the address) of the land on which the development is proposed to be carried out,
  - (b) the name of the applicant and of the consent authority,
  - (c) a description of the proposed development,
  - (d) a statement that the proposed development is not designated development,
  - (e) a statement that the development application and the documents accompanying the application may be inspected:
    - (i) at the Department's principal office, and
    - (ii) at the council's principal office,for a period specified in the notice during the relevant authority's ordinary office hours,
  - (f) a statement that:
    - (i) any person during the period specified under paragraph (e) may make written submissions to the Director-General concerning the development application, and
    - (ii) if a submission is made by way of objection, the grounds of objection must be specified in the submission,

- (g) the dates of the period specified under paragraph (e),
  - (h) a statement that:
    - (i) the Minister will determine the application, and
    - (ii) if the proposed development is subject to a direction under section 89 of the Act, the council may request that a Commission of Inquiry be held into the development, and
    - (iii) if a Commission of Inquiry is held, the Minister's determination of the application is final and not subject to appeal,
  - (i) if the development is also integrated development:
    - (i) a statement that the development is integrated development, and
    - (ii) a statement of the approvals that are required and the relevant approval bodies for those approvals.
- (2) The period referred to under subclause (1) (e) must include the period of 30 days commencing on the day after which notice of the development application is first published in a newspaper under section 79 (1) (d) of the Act.

**84 How is the notice under section 79 (1) (c) of the Act to be exhibited on land?** (cf clause 64 of EP&A Regulation 1994)

The notice for a development application for State significant advertised development under section 79 (1) (c) of the Act:

- (a) must be exhibited on the land to which the development application relates, and
- (b) must be displayed on a signpost or board, and
- (c) must be clear and legible, and
- (d) must be headed in capital letters and bold type "**DEVELOPMENT PROPOSAL**", and
- (e) must contain under that heading the following matters:
  - (i) a statement that the development application has been lodged,
  - (ii) the name of the applicant,
  - (iii) a brief description of the development application,
  - (iv) notice that the development application may be inspected at the places, on the dates and during the times specified in the notice, being the same places, dates and times specified in the written notice under section 79 (1) (b) of the Act, and
- (f) must, if practicable, be capable of being read from a public place.

**85 How is the notice published under section 79 (1) (d) of the Act published?** (cf clause 64 of EP&A Regulation 1994)

The notice for a development application for State significant advertised development under section 79 (1) (d) of the Act:

- (a) must be published in the public notices section of the newspaper, and
- (b) must be headed in capital letters and bold type “**DEVELOPMENT PROPOSAL**”, and
- (c) must contain the same matters as are required for a notice under section 79 (1) (b) of the Act.

## **Division 7 Public participation—other advertised development**

**86 Application of Division** (cf clause 65 of EP&A Regulation 1994)

- (1) This Division applies to other advertised development.
- (2) This Division does not apply to development on land to which clause 26F of *Newcastle Local Environmental Plan 1987* applies.

**87 How must a development application be publicly notified?** (cf clause 65 of EP&A Regulation 1994)

As soon as practicable after a development application for other advertised development is lodged with the consent authority, the consent authority must:

- (a) give written notice of the application (referred to in this Division as a **written notice**), and
- (b) cause notice of the application to be published in a local newspaper (referred to in this Division as a **published notice**).

**88 Who must written notice be given to?** (cf clause 65 of EP&A Regulation 1994)

- (1) Written notice of the development application must be given:
  - (a) to such persons as appear to the consent authority to own or occupy the land adjoining the land to which the application relates, and
  - (b) to such public authorities (other than relevant concurrence authorities or approval bodies) as, in the opinion of the consent authority, may have an interest in the determination of the application.
- (2) For the purposes of this clause:
  - (a) if land is a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973*, a written notice to the owners corporation is taken to be a written notice to the owner or occupier of each lot within the strata scheme, and

- (b) if land is a lot within the meaning of the *Strata Schemes (Leasehold Development) Act 1986*, a written notice to the lessor under the leasehold strata scheme concerned and to the owners corporation is taken to be a written notice to the owner or occupier of each lot within the strata scheme, and
- (c) if land is owned or occupied by more than one person, a written notice to one owner or one occupier is taken to be a written notice to all the owners and occupiers of that land.

**89 What information must be contained in a written notice and a published notice?** (cf clause 65 of EP&A Regulation 1994)

- (1) A written notice and a published notice of the development application must contain the following information:
  - (a) a description of the land (including the address) on which the development is proposed to be carried out,
  - (b) the name of the applicant and the name of the consent authority,
  - (c) a description of the proposed development,
  - (d) a statement that the application and the documents accompanying that application may be inspected at the consent authority's principal office for a period specified in the notice during the consent authority's ordinary office hours,
  - (e) a statement that any person during the period specified under paragraph (d) may make a written submission in relation to the development application to the consent authority,
  - (f) the dates of the period specified under paragraph (d).
- (2) The written notice and the published notice:
  - (a) in the case of development that is integrated development:
    - (i) must contain a statement that the development is integrated development, and
    - (ii) must state the approvals that are required and the relevant approval bodies for those approvals, and
  - (b) in the case of development that is threatened species development, must contain a statement that the development is threatened species development.
- (3) The period referred to in subclause (1) (d) must include:
  - (a) in the case of nominated integrated development or threatened species development, the period of 30 days, and

(b) in any other case, the period of 14 days,

commencing on the day after the day on which the published notice is first published in a newspaper.

**90 Circumstances in which notice requirements may be dispensed with** (cf clause 65 of EP&A Regulation 1994)

(1) This clause applies to a development application that before being determined by the consent authority, has been amended or substituted, or that has been withdrawn and later replaced, where:

(a) the consent authority has complied with this Division in relation to the original application, and

(b) the consent authority is of the opinion that the amended, substituted or later application differs only in minor respects from the original application,

referred to in this clause as a **replacement application**.

(2) The consent authority may decide to dispense with further compliance with this Division in relation to a replacement application and, in that event, compliance with this Division in relation to the original application is taken to be compliance in relation to the replacement application.

(3) The consent authority must give written notice to the applicant of its decision under this clause at or before the time notice of the determination of the replacement application is given under section 81 of the Act.

**91 Public notification of development application and accompanying information** (cf clause 65 of EP&A Regulation 1994)

(1) The consent authority must ensure that a development application is publicly notified in accordance with the relevant requirements and that any accompanying information is available for inspection during the relevant submission period at the place or places specified in the public notice.

(2) During the relevant submission period:

(a) any person may inspect the development application and any accompanying information and make extracts from or copies of them, and

(b) any person may make written submissions to the consent authority with respect to the development application.

(3) A submission by way of objection must set out the grounds of the objection.

## Division 8 Determination of development applications

### 92 What additional matters must a consent authority take into consideration in determining a development application? (cf clause 66 of EP&A Regulation 1994)

(1) For the purposes of section 79C (1) (a) (iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:

(a) in the case of a development application for the carrying out of development:

(i) in a local government area referred to in the Table to this clause, and

(ii) on land to which the Government Coastal Policy applies,

the provisions of that Policy,

(b) in the case of a development application for the demolition of a building, the provisions of AS 2601.

(2) In this clause:

**AS 2601** means the document entitled Australian Standard AS 2601—1991: *The Demolition of Structures*, published by Standards Australia, and as in force at 1 July 1993.

**Government Coastal Policy** means the publication entitled *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*, as published by the Government (and including any maps accompanying that publication and any amendments to those maps that are publicly notified), a copy of which may be inspected during ordinary office hours:

(a) at any of the offices of the Department, or

(b) at the offices of any of the councils of the local government areas listed in the Table to this clause.

### Table

Ballina	Manly*
Bega Valley	Nambucca
Bellingen	Newcastle*
Byron	Pittwater*
Coffs Harbour	Port Stephens
Copmanhurst	Pristine Waters
Eurobodalla	Randwick*
Gosford*	Richmond Valley
Great Lakes	Shellharbour*
Greater Taree	Shoalhaven
Hastings	Sutherland*
Kempsey	Tweed
Kiama	Warringah*
Lake Macquarie*	Waverley*
Lismore	Wollongong*
Maclean	Woollahra*
Maitland	Wyong*

**Note—**

The areas marked with asterisks are only affected by the seaward part of the Government Coastal Policy, being the area extending 3 nautical miles seaward from the open coast high water mark.

**92A (Repealed)**

**93 Fire safety considerations** (cf clause 66A of EP&A Regulation 1994)

- (1) This clause applies to a development application for a change of building use for an existing building, where the applicant does not seek the rebuilding, alteration, enlargement or extension of a building.
- (2) In determining the development application, the consent authority is to take into consideration whether the fire protection and structural capacity of the building will be appropriate to the building's proposed new use.
- (3) Consent to the change of building use sought by a development application to which this clause applies must not be granted unless the consent authority is satisfied that the building complies (or will, when completed, comply) with such of the Category 1 fire safety provisions as are applicable to the building's proposed new use.

**Note—**

The obligation to comply with the Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in relation to the relevant development consent.

- (4) Subclause (3) does not apply to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4).
- (5) The matters prescribed by this clause are prescribed for the purposes of section 79C



(1) (a) (iv) of the Act.

**94 Consent authority may require buildings to be upgraded** (cf clause 66B of EP&A Regulation 1994)

- (1) This clause applies to a development application for development comprising the rebuilding, alteration, enlargement or extension of an existing building where:
  - (a) the proposed building work, together with any other building work completed or authorised within the previous 3 years, represents more than half the total volume of the building, as it was before any such work was commenced, measured over its roof and external walls, or
  - (b) the measures contained in the building are inadequate:
    - (i) to protect persons using the building, and to facilitate their egress from the building, in the event of fire, or
    - (ii) to restrict the spread of fire from the building to other buildings nearby.
- (2) In determining a development application to which this clause applies, a consent authority is to take into consideration whether it would be appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.
- (3) The matters prescribed by this clause are prescribed for the purposes of section 79C (1) (a) (iv) of the Act.

**95 Deferred commencement consent** (cf clause 67 of EP&A Regulation 1994)

- (1) A “deferred commencement” consent must be clearly identified as a “deferred commencement” consent (whether by the use of that expression or by reference to section 80 (3) of the Act or otherwise).
- (2) A “deferred commencement” consent must clearly distinguish conditions concerning matters as to which the consent authority must be satisfied before the consent can operate from any other conditions.
- (3) A consent authority may specify the period within which the applicant must produce evidence to the consent authority sufficient enough to enable it to be satisfied as to those matters.
- (4) The applicant may produce evidence to the consent authority sufficient to enable it to be satisfied as to those matters and, if the consent authority has specified a period for the purpose, the evidence must be produced within that period.
- (5) If the applicant produces evidence in accordance with this clause, the consent authority must notify the applicant whether or not it is satisfied as to the relevant

matters.

- (6) If the consent authority has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the consent authority is, for the purposes only of section 97 of the Act, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.

**Note—**

See also section 1090 of the Act and clause 161 of this Regulation.

**96 Imposition of conditions—ancillary aspects of development** (cf clause 67A of EP&A Regulation 1994)

- (1) If a consent authority grants development consent subject to a condition authorised by section 80A (2) of the Act with respect to an ancillary aspect of the development, the consent authority may specify the period within which the ancillary aspect must be carried out to the satisfaction of the consent authority, or a person specified by the consent authority, as referred to in that subsection.
- (2) The applicant may produce evidence to the consent authority, or to the person specified by the consent authority for the purpose, sufficient to enable it, or the person so specified, to be satisfied in respect of the ancillary aspect of the development.
- (3) For the purposes of section 80A (3) of the Act, the relevant period is the period of 28 days after the applicant's evidence is produced to the consent authority or a person specified by the consent authority.

**97 Modification or surrender of development consent or existing use right** (cf clause 68 of EP&A Regulation 1994)

- (1) A notice of modification or surrender of a development consent or existing use right, as referred to in section 80A (5) of the Act, must include the following information:
  - (a) the name and address of the person by whom the notice is given,
  - (b) the address, and formal particulars of title, of the land to which the consent or right relates,
  - (c) a description of the development consent or existing use right to be modified or surrendered,
  - (d) particulars as to whether the consent or right is to be modified (including details of the modification) or surrendered,
  - (e) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the modification or surrender of the consent or right.

- (2) A duly signed and delivered notice of modification or surrender of a development consent or existing use right referred to in subclause (1):
- (a) takes effect when it is received by the consent authority, and
  - (b) operates, according to its terms, to modify or surrender the development consent or existing use right to which it relates.
- (3) A notice of voluntary surrender of a development consent, as referred to in section 104A of the Act, is to be given to the consent authority and is to include the following information:
- (a) the name and address of the person by whom the notice is given,
  - (b) the address, and formal particulars of title, of the land to which the consent relates,
  - (c) a description of the development consent to be surrendered,
  - (d) if the person giving the notice is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the surrender of the consent,
  - (e) if development has commenced to be carried out in accordance with the consent—a statement setting out the circumstances that indicate:
    - (i) that so much of the development as has been carried out has been carried out in compliance with any condition of the consent, or any agreement with the consent authority relating to the consent, that is relevant to that part of the development, and
    - (ii) that the surrender will not have an adverse impact on any third party or the locality.
- (4) A duly signed and delivered notice of surrender of a development consent referred to in subclause (3):
- (a) takes effect when the consent authority notifies the person that:
    - (i) it is satisfied that so much of the development as has been carried out has been carried out in compliance with any condition of the consent, or any agreement with the consent authority relating to the consent, that is relevant to that part of the development, and
    - (ii) that the surrender will not have an adverse impact on any third party or the locality, and
  - (b) operates, according to its terms, to surrender the consent to which it relates.

### **97A Fulfilment of BASIX commitments**

- (1) This clause applies:
  - (a) on and from 1 July 2004, to all land within the initial BASIX area, and
  - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) This clause applies to all development:
  - (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or
  - (b) that involves a change of building use by which a building becomes a BASIX affected building.
- (3) For the purposes of section 80A (11) of the Act, fulfilment of the commitments listed in the relevant BASIX certificate for development to which this clause applies is a prescribed condition of any development consent for the development.

## **Division 8A Prescribed conditions of development consent**

### **98 Compliance with Building Code of Australia and insurance requirements under the [Home Building Act 1989](#)** (cf clauses 78 and 78A of EP&A Regulation 1994)

- (1) For the purposes of section 80A (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:
  - (a) that the work must be carried out in accordance with the requirements of the *Building Code of Australia*,
  - (b) in the case of residential building work for which the [Home Building Act 1989](#) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
- (2) This clause does not apply:
  - (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
  - (b) to the erection of a temporary building.
- (3) In this clause, a reference to the *Building Code of Australia* is a reference to that Code as in force on the date the application for the relevant construction certificate is made.

### **98A Erection of signs**

- (1) For the purposes of section 80A (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (c) stating that unauthorised entry to the work site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.
- (6) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

#### **Note—**

Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

### **98B Notification of [Home Building Act 1989](#) requirements**

- (1) For the purposes of section 80A (11) of the Act, the requirements of this clause are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the [Home Building Act 1989](#).
- (2) Residential building work within the meaning of the [Home Building Act 1989](#) must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (a) in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and licence number of the principal contractor, and
    - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

## **Division 9 Public inquiries**

### **99 Public inquiries**

- (1) This clause applies to any development application that relates to development with respect to which a public inquiry is directed to be held under Division 2 of Part 6 of the Act.
- (2) The consent authority for the development concerned must cause to be given to each concurrence authority and approval body for that development:
  - (a) as soon as practicable after the direction is given, notice of the fact that a public inquiry is to be held, and
  - (b) as soon as practicable after the findings and recommendations of the inquiry have been made public, copies of those findings and recommendations and (in the case of development other than designated development) any comments made by the Minister on them.
- (3) At any time within 14 days after receiving a copy of the findings and recommendations arising from the public inquiry:
  - (a) a concurrence authority may vary any conditions that it may previously have imposed in relation to its concurrence to the development, and
  - (b) an approval body may vary any general terms of approval that it may previously

have given in relation to the development.

## **Division 10 Post-determination notifications**

### **100 Notice of determination** (cf clause 68A of EP&A Regulation 1994)

- (1) For the purposes of section 81 (1) of the Act, a notice of the determination of a development application must contain the following information:
  - (a) whether the application has been granted or refused,
  - (b) if the application has been granted, the terms of any conditions (including conditions prescribed under section 80A (11) of the Act) on which it has been granted,
  - (c) if the application has been refused, or granted subject to conditions (other than conditions prescribed under section 80A (11) of the Act), the consent authority's reasons for the refusal or for the imposition of those conditions,
  - (c1) whether the applicant has the right to request a review of the determination under section 82A of the Act,
  - (c2) in the case of a consent for a staged development application—whether a subsequent development application is required for any part of the site concerned,
  - (d) the date on which the determination was made,
  - (e) the date from which any development consent that is granted operates,
  - (f) the date on which any development consent that is granted lapses,
  - (g) if the development involves a building but does not require a construction certificate for the development to be carried out, the class of the building under the *Building Code of Australia*,
  - (h) whether a public inquiry into the application has been held under section 119 of the Act,
  - (i) which approval bodies have given general terms of approval in relation to the development, as referred to in section 93 of the Act,
  - (j) whether the Act gives a right of appeal against the determination to the applicant,
  - (k) whether the Act gives a right of appeal against the determination to an objector.
- (2) The notice of determination must clearly identify the relevant development application by reference to its registered number.
- (3) A notice of determination of a grant of development consent must include a copy of

any relevant plans endorsed by the consent authority.

- (4) In the case of a development consent granted subject to a condition that the consent is not to operate until the applicant satisfies the consent authority, or a person specified by the consent authority, as to any matter specified in the condition:
  - (a) the date from which the consent operates must not be endorsed on the notice of determination, and
  - (b) if the applicant satisfies the consent authority, or person, as to the matter, the consent authority must give notice to the applicant of the date from which the consent operates.
- (5) (Repealed)
- (6) If the determination is one for which concurrence was required under section 79B (3) of the Act, a copy of the notice of determination:
  - (a) except as provided by paragraph (b):
    - (i) must be given to the Director-General of National Parks and Wildlife, and
    - (ii) must be available for public inspection, during ordinary office hours, at the head office of the National Parks and Wildlife Service, or
  - (b) if the matter concerns critical habitat of fish or marine vegetation, or threatened species, populations or ecological communities of fish or marine vegetation or their habitats:
    - (i) must be given to the Director of NSW Fisheries, and
    - (ii) must be available for public inspection, during ordinary office hours, at the head office of NSW Fisheries.

**101 Additional particulars with respect to section 94 and 94A conditions** (cf clause 69A of EP&A Regulation 1994)

- (1) The notice to an applicant concerning a development consent the subject of a section 94 condition must include the following particulars in addition to any other particulars it is required to contain:
  - (a) the specific public amenity or service in respect of which the condition is imposed,
  - (b) the contributions plan under which the condition is imposed,
  - (c) the address of the places where a copy of the contributions plan may be inspected.
- (2) The notice to an applicant concerning a development consent the subject of a section 94A condition must include the following particulars in addition to any other



particulars it is required to contain:

- (a) the contributions plan under which the condition is imposed,
- (b) the address of the places where a copy of the contributions plan may be inspected.

**102 How soon must a notice of determination be sent?** (cf clause 69 of EP&A Regulation 1994)

- (1) A notice under section 81 (1) of the Act must be sent to each person to whom it is required by that subsection to be sent within 14 days after the date of the determination of the applicant's development application.
- (2) For the purposes of section 81 (1) (c) of the Act, any person who made a submission under the Act in relation to a development application (whether or not involving designated development) is required to be notified of the consent authority's determination of the application.
- (3) Failure to send the notice within the 14-day period does not affect the validity of the notice or the development consent (if any) to which it relates.

**103 Notice under section 81A of the Act of appointment of principal certifying authority** (cf clause 70 of EP&A Regulation 1994)

A notice given under or for the purposes of section 81A (2) (b1) (i) or (4) (b1) (i) of the Act must contain the following information:

- (a) (Repealed)
  - (b) a description of the work to be carried out,
  - (c) the address of the land on which the work is to be carried out,
  - (d) the registered number and date of issue of the relevant development consent,
  - (e) the name and address of the principal certifying authority, and of the person by whom the principal certifying authority was appointed,
  - (f) if the principal certifying authority is an accredited certifier:
    - (i) his or her accreditation number, and
    - (ii) the name of the accreditation body by which he or she is accredited, and
    - (iii) a statement signed by the accredited certifier to the effect that he or she consents to being appointed as principal certifying authority, and
    - (iv) a telephone number on which he or she may be contacted for business purposes,
- and, if the consent authority so requires, must be in the form approved by that authority.

**103A Notice under section 81A of the Act of critical stage inspections**

A notice given under section 81A (2) (b1) (ii) of the Act must contain the following information:

- (a) the name and accreditation number of the principal certifying authority by whom the notice is given,
- (b) a telephone number on which the principal certifying authority can be contacted for business purposes,
- (c) the registered numbers of the development consent and of the construction certificate,
- (d) a description of the work to be carried out,
- (e) the address of the land at which the work is to be carried out,
- (f) a list of the critical stage inspections and other inspections required to be carried out in respect of the work.

**104 Notice under section 81A of the Act of intention to commence subdivision work or erection of building** (cf clause 70 of EP&A Regulation 1994)

A notice given under or for the purposes of section 81A (2) (c) or (4) (c) of the Act must contain the following information:

- (a) the name and address of the person by whom the notice is being given,
- (b) a description of the work to be carried out, and
- (c) the address of the land on which the work is to be carried out, and
- (d) the registered number and date of issue of the relevant development consent,
- (e) the registered number and date of issue of the relevant construction certificate,
- (f) a statement signed by or on behalf of the principal certifying authority to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied,
- (g) the date on which the work is intended to commence,

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

**105 Notice under section 91A (6) or section 92 (7) of the Act to approval bodies of determination of development application for integrated development** (cf clause 70A of EP&A Regulation 1994)

- (1) A notice under section 91A (6) or section 92 (7) of the Act to an approval body must

be sent to the approval body within 14 days after the date of the determination of the relevant development application.

- (2) Failure to send the notice within the 14-day period does not affect the validity of the notice or the development consent (if any) to which it relates.

## **Division 11 Time within which development application procedures to be completed**

### **106 Definitions**

In this Division, ***assessment period*** means:

- (a) the period of 21 or 40 days, as the case may be, prescribed by clause 62 (1) as the period within which a concurrence authority must notify its decision as to a development application relating to development that requires its concurrence, but only if that period has commenced to run, or
- (b) the period of 21 or 40 days, as the case may be, prescribed by clause 70 (1) as the period within which an approval body must notify its decision as to a development application relating to integrated development, but only if that period has commenced to run,
- (c) the period of 25 days referred to in clauses 109 (2), 110 (2) and 111 (2),
- (d) the period of 40 or 60 days, as the case may be, prescribed by clause 113 (1) as the period beyond which a development application is taken to have been refused.

### **107 First 2 days after development application is lodged**

Neither the day on which a development application is lodged with the consent authority nor the following day are to be taken into consideration in calculating the number of days in any of the assessment periods.

### **108 Days prior to referral of application to other bodies to be disregarded**

- (1) This clause applies to a development application:
  - (a) that is required to be referred to a concurrence authority, other than a concurrence authority to which, under clause 59 (2), the application is required to be forwarded within 2 days after it is lodged or
  - (b) that is required to be referred to an approval body, other than an approval body to which, under clause 66 (2), the application is required to be forwarded within 2 days after it is lodged.
- (2) Any day that occurs between the date on which a development application is lodged with a consent authority and:

(a) the date on which the consent authority forwards it to a concurrence authority or approval body, or

(b) the date occurring at the end of the period of 14 days after the application was lodged with the consent authority,

whichever is the earlier, is not to be taken into consideration in calculating the number of days in any of the assessment periods.

**109 Days occurring while consent authority's request for additional information remains unanswered**

(1) Any day that occurs between the date of a consent authority's request for additional information under clause 54 and:

(a) the date on which the information is provided to the consent authority, or

(b) the date on which the applicant notifies, or is taken to have notified, the consent authority in writing that the information will not be provided,

whichever is the earlier, is not to be taken into consideration in calculating the number of days in any of the assessment periods.

(2) Subclause (1) applies only if the relevant request is made within 25 days after the date on which the development application was lodged with the consent authority.

**Note—**

The 25-day period may be extended by operation of clauses 107 and 108.

**110 Days occurring while concurrence authority's or approval body's request for additional information remains unanswered**

(1) Any day that occurs between the date on which a consent authority receives a concurrence authority's or approval body's request for additional information under clause 60 or 67 and:

(a) the date occurring 2 days after the date on which the consent authority refers to the concurrence authority or approval body the additional information provided by the applicant, or

(b) the date occurring 2 days after the date on which the consent authority notifies the concurrence authority or approval body that the applicant has notified the consent authority that the additional information will not be provided,

whichever is the earlier, is not to be taken into consideration in calculating the number of days in any of the assessment periods.

(2) Subclause (1) applies only if the relevant request is made within 25 days after the date on which the development application is received by the concurrence authority

or approval body concerned.

**Note—**

The 25-day period may be extended by operation of clauses 107 and 108.

**111 Days occurring during consultation under [National Parks and Wildlife Act 1974](#)**

(1) If:

- (a) development is integrated development because, or partly because, it requires consent under section 90 of the [National Parks and Wildlife Act 1974](#), and
- (b) the Director-General of National Parks and Wildlife is of the opinion that consultation with an Aboriginal person or persons, an Aboriginal Land Council or another Aboriginal organisation concerning a relic or Aboriginal place is required before the Director-General can make a decision concerning the general terms of approval in relation to such a consent (including whether or not the Director-General will grant consent),

any day that occurs during the consultation (being a period that does not extend more than 46 days from the date on which the development application was lodged with the consent authority) is not to be taken into consideration for the purpose of calculating the number of days in any of the assessment periods.

(2) Subclause (1) applies only if the consultation commences within 25 days after the date on which the development application is forwarded to the Director-General of National Parks and Wildlife.

**Note—**

The 25-day period may be extended by operation of clauses 107 and 108.

**112 Consent authority to notify applicant that time has ceased to run**

(1) On the occurrence of each of the following events, namely:

- (a) a request by a consent authority for additional information under clause 54,
- (b) the receipt by a consent authority of a concurrence authority's or approval body's request for additional information under clause 60 or 67,
- (c) the receipt by a consent authority of a notice from the Director-General of National Parks and Wildlife under clause 68,

the consent authority must notify the applicant of the effect that this Division has on the various assessment periods to which this Division relates as a consequence of those events having occurred.

(2) If several events require notification under this clause, a single notification referring to each of those events is sufficient.

**Note—**

The object of this clause is to ensure that the applicant is kept informed as to when the various deadlines imposed by this Regulation occur in relation to the processing of his or her development application and, in particular, as to when any right of appeal may arise as a consequence of a deemed refusal of the application.

**113 When is an application taken to be refused?** (cf clause 70B of EP&A Regulation 1994)

- (1) For the purposes of section 82 (1) of the Act, a development application is taken to be refused if a consent authority has not determined the application within:
  - (a) 40 days, except in the case of development referred to in paragraph (b), or
  - (b) 60 days, in the case of:
    - (i) designated development, or
    - (ii) integrated development (other than integrated development that, pursuant to [State Environmental Planning Policy No 62—Sustainable Aquaculture](#), is Class 1 aquaculture development), or
    - (iii) development for which the concurrence of a concurrence authority is required.
- (2) The 40-day and 60-day periods are measured from:
  - (a) the date the development application is lodged with the consent authority, or
  - (b) the date the Minister complies with section 119 (8) of the Act, if a public inquiry has been held under section 119 of the Act into local development that is not designated development, or part of any such development.
- (3) In the case of designated development or other advertised development for which the relevant submission period exceeds 30 days, the 60-day period is to be increased by that part of the submission period that exceeds 30 days, despite subclause (1).
- (4) If the relevant submission period for a development application for designated development is more than 30 days, the consent authority is to notify the applicant of the period and the effect of the extension of the period on the operation of this Division for the purposes of section 82 of the Act.

**Note—**

Clause 107 provides that certain periods of time are to be ignored when calculating a 40-day or 60-day period under this clause. Deemed refusal provisions do not apply to development under section 80 (7) of the Act (where a public inquiry is held into designated development) or to any State significant development for which a public inquiry is held.

**113A Public participation: application under section 82A of the Act for review of council's determination**

- (1) This clause applies to an application under section 82A of the Act for review by a

council of its determination of a development application.

- (2) An application to which this clause applies must be notified or advertised for a period not exceeding 14 days, but otherwise in the same manner as the original development application was notified or advertised.
- (3) However, if the application is made to a council that has provided in a development control plan for the notification or advertising of such an application, the application is to be notified or advertised in accordance with the development control plan.
- (4) The council must cause copies of the application to be given to each concurrence authority for the development to which the application relates.
- (5) The notice or advertisement referred to in subclause (2) must contain the following information:
  - (a) a brief description of the original development application and the land to which it relates,
  - (b) a statement that submissions concerning the application for review may be made to the council within the period referred to in section 82A (4) (b) of the Act.
- (6) For the purposes of section 82A (4) (b) of the Act, the period within which submissions may be made in relation to such an application is the period specified:
  - (a) in subclause (2), except as provided by paragraph (b), or
  - (b) if the council has made a development control plan specifying such a period, in the development control plan.
- (7) During the period referred to in subclause (2) or, if a development control plan provides for a period for notification or advertising of an application, during that period, any person may inspect the application and any accompanying information and make extracts from or copies of them.

## **Division 12 Development consents—extension, completion and modification**

### **114 What is the form for an application for extension of a development consent?** (cf clause 71 of EP&A Regulation 1994)

An application under section 95A of the Act for the extension of time to commence development:

- (a) must be in writing, and
- (b) must identify the development consent to which it relates, and
- (c) must indicate why the consent authority should extend the time.

**114A (Repealed)**

**115 What are the requirements for an application for modification of a development consent?** (cf clause 71A of EP&A Regulation 1994)

- (1) An application for modification of a development consent under section 96 (1), (1A) or (2) or 96AA (1) of the Act must contain the following information:
  - (a) the name and address of the applicant,
  - (b) a description of the development to be carried out under the consent (as previously modified),
  - (c) the address, and formal particulars of title, of the land on which the development is to be carried out,
  - (d) a description of the proposed modification to the development consent,
  - (e) a statement that indicates either:
    - (i) that the modification is merely intended to correct a minor error, misdescription or miscalculation, or
    - (ii) that the modification is intended to have some other effect, as specified in the statement,
  - (f) a description of the expected impacts of the modification,
  - (g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,
  - (h) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application,
  - (i) a statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA),

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

- (1A) In addition, an application for the modification of a development consent under section 96 (2) or 96AA (1) of the Act, if it relates to residential flat development for which the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A), must be accompanied by a design verification from a qualified designer, being a statement in which the qualified designer verifies that:
  - (a) he or she designed, or directed the design, of the modification of the residential flat development, and



(b) the residential flat development, as modified, achieves the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*, and

(c) the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.

(1AA) If an application referred to in subclause (1A) is also accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in that subclause need not be verified to the extent to which they aim:

(a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or

(b) to improve the thermal performance of the building.

(1B) The consent authority may refer the proposed modification to the relevant design review panel.

(1C) An application for the modification of a development consent under section 96 (1A) or (2) of the Act, if it relates to development for which the development application was required to be accompanied by a BASIX certificate, must also be accompanied by the appropriate BASIX certificate.

(1D) The appropriate BASIX certificate for the purposes of subclause (1C) is:

(a) if the current BASIX certificate remains consistent with the proposed development, the current BASIX certificate, and

(b) if the current BASIX certificate is no longer consistent with the proposed development, a new BASIX certificate to replace the current BASIX certificate.

(2) The application must be accompanied by the fee prescribed by clause 258.

(3) A development consent may not be modified by the Land and Environment Court under section 96 of the Act if an application for modification of the consent has been made to the consent authority under section 96AA of the Act and has not been withdrawn.

**116 Applications for modification of development consents granted by the Land and Environment Court or the Minister** (cf clause 72 of EP&A Regulation 1994)

(1) The object of this clause is to vary the requirements of the Act in relation to the modification of development consents granted by the Land and Environment Court or by the Minister.

- (2) (Repealed)
- (3) A copy of an application for the modification of such a development consent is not to be lodged with the Court, but with the consent authority that dealt with the original development application from which that consent arose.
- (4) A copy of the application for modification of a development consent granted by the Minister under section 80 (7) of the Act is to be lodged with the council.

**117 Public participation—applications for modification of development consents involving minimal environmental impact**

- (1) This clause applies to an application under section 96 (1A) of the Act or under section 96AA of the Act in respect of a modification which, in the opinion of the consent authority, is of minimal environmental impact.
- (2) If an application to which this clause applies is required by a development control plan to be notified or advertised and the development consent was granted by the Court on appeal, the application must be so notified or advertised by the consent authority to which the original development application was made.
- (3) A consent authority referred to in subclause (2) must, in the case of an application under section 96 (1A) of the Act, notify the Court of:
  - (a) the manner in which the application was notified or advertised, and
  - (b) any submission period required by the development control plan, and
  - (c) the date (or dates) on which the application was notified or advertised.
- (4) If a development control plan provides for a period for notification or advertising of an application, any person during that period may inspect the application and any accompanying information and make extracts from or copies of them.

**118 Public participation—application under sections 96 (2) and 96AA for modification of certain development consents** (cf clause 72A of EP&A Regulation 1994)

- (1) This clause applies to an application under section 96 (2) or 96AA (1) of the Act to modify a development consent if the original development application for the consent was an application to carry out any of the following:
  - (a) designated development,
  - (b) State significant advertised development,
  - (c) any other advertised development where the application was made to a consent authority other than a council.
- (2) Notice of the application must be published in a local newspaper by the relevant

consent authority, that is:

- (a) by the consent authority that granted the development consent, or
  - (b) by the consent authority to which the original development application was made, if development consent was granted by the Court on appeal.
- (3) The relevant consent authority must also cause notice of the application to be given to each person who made a submission in relation to the original development application.
- (4) A consent authority referred to in subclause (2) (b) must, in the case of an application under section 96 (2) of the Act, notify the Court of the date on which notice of the application is published under subclause (2).
- (5) The notice published under subclause (2) must contain the following information:
- (a) a brief description of the development consent, the land to which it relates and the details of the modification sought,
  - (b) a statement that written submissions concerning the proposed modification may be made to the consent authority that publishes the notice within the period specified in accordance with paragraph (c),
  - (c) the period during which the application may be inspected at the principal office of the consent authority that publishes the notice,
  - (d) a statement that, if the application is approved, there is no right of appeal to the Court by an objector.
- (6) For the purposes of sections 96 (2) (d) and 96AA (1) (d) of the Act, the period referred to in subclause (5) (c) must be a period of at least 14 days commencing on the day after which notice of the application for modification is first published in a local newspaper.
- (7) During the period referred to in subclause (5) (c), any person may inspect the application and any accompanying information and make extracts from or copies of them.

**119 Public participation—application under sections 96 (2) and 96AA for modification of other development consents**

- (1) This clause applies to an application under section 96 (2) of the Act to which clause 118 does not apply or under section 96AA (1) of the Act to which clauses 117 and 118 do not apply.
- (2) An application to which this clause applies must be notified or advertised for a period not exceeding 14 days but otherwise in the same manner as the original development

application was notified or advertised.

- (3) However, if the application is made to a council that has provided in a development control plan for the notification or advertising of such an application (or has provided that such an application is not required to be notified or advertised), the application is to be notified or advertised in accordance with the development control plan.
- (4) If an application to which this clause applies is required by this clause or a development control plan to be notified or advertised and the development consent was granted by the Court on appeal, the application must be so notified or advertised by the council to which the original development application was made.
- (5) A council referred to in subclause (4) must, in the case of an application under section 96 (2) of the Act, notify the Court of:
  - (a) the manner in which the application was notified or advertised, and
  - (b) any submission period required by the development control plan, and
  - (c) the date (or dates) on which the application was notified or advertised.
- (6) During the period referred to in subclause (2) or, if a development control plan provides for a period for notification or advertising of an application, during that period, any person may inspect the application and any accompanying information and make extracts from or copies of them.

#### **120 Notification of concurrence authorities and approval bodies**

As soon as practicable after receiving an application for the modification of a development consent, a consent authority must cause a copy of the application to be given to each concurrence authority and approval body for the development to which the application relates.

#### **121 Applications for modifications of development consents to be kept available for public inspection** (cf clause 73 of EP&A Regulation 1994)

- (1) An application for the modification of a development consent must be made available for inspection by the consent authority that published the notice of the application.
- (2) The application:
  - (a) must be available at the consent authority's principal office, free of charge, during the consent authority's ordinary office hours, and
  - (b) must be available for the period specified in the notice referred to in subclause (1).

#### **122 Notice of determination of application to modify development consent** (cf clause 73A of

EP&A Regulation 1994)

- (1) Notice in writing of the determination of an application for the modification of a development consent must be given to the applicant as soon as practicable after the determination is made.
- (1A) A notice of determination of an application granted for the modification of a development consent must include a copy of any relevant plans endorsed by the consent authority.
- (2) If the determination is made subject to conditions or by refusing the application, the notice:
  - (a) must indicate the consent authority's reasons for the imposition of the conditions or the refusal, and
  - (b) must state that the Act gives a right of appeal against the determination, unless:
    - (i) the development is State significant development that has been determined following a public inquiry under section 119 of the Act, or
    - (ii) the development consent was granted by the Court.

**123 Persons to be informed of proposed revocation or modification of consent under section 96A (3) of the Act** (cf clause 73B of EP&A Regulation 1994)

- (1) For the purposes of section 96A (3) (a) (ii) of the Act, the Director-General of the Department of Fair Trading is a prescribed person if the proposed revocation or modification affects:
  - (a) the transfer, alteration, repair or extension of water service pipes, or
  - (b) the carrying out of sanitary plumbing work, sanitary drainage work or stormwater drainage work.
- (2) The notification of the proposed revocation or modification of a consent or a complying development certificate must include the reasons for the proposed revocation or modification.

**123A Effect of amendments made by [Land and Environment Court Amendment Act 2002](#)**

- (1) The Act, as in force immediately before the commencement of the [Land and Environment Court Amendment Act 2002](#), continues to apply to and in respect of:
  - (a) a review of a determination requested under section 82A of the Act, but not completed, before that commencement, and
  - (b) an appeal made under section 97 of the Act, but not finally determined, before that commencement.

- (2) The Act, as in force immediately before the commencement of the *Land and Environment Court Amendment Act 2002*, continues to apply to and in respect of the modification of a development consent the application for which was made, but not finally determined, before that commencement.

## **Division 13 Validity of development consents**

### **124 What are the public notification procedures for the purposes of section 101 of the Act?** (cf clause 74 of EP&A Regulation 1994)

- (1) The granting of a development consent is publicly notified for the purposes of section 101 of the Act if:
- (a) public notice in a local newspaper is given:
    - (i) by the consent authority, or
    - (ii) if the consent authority is not the council, by the consent authority or the council, and
  - (b) the notice describes the land and the development the subject of the development consent, and
  - (c) the notice contains a statement that the development consent is available for public inspection, free of charge, during ordinary office hours:
    - (i) at the consent authority's principal office, or
    - (ii) if the consent authority is not the council, at the consent authority's office or the council's principal office.
- (2) Nothing in this clause confers a right or entitlement to inspect, make copies of or take extracts from so much of a document that, because of section 12 (1A) of the *Local Government Act 1993*, a person does not have the right to inspect.

## **Part 7 Procedures relating to complying development certificates**

### **Division 1 Applications for complying development certificates**

#### **125 Application of Part** (cf clause 75 of EP&A Regulation 1994)

This Part applies to complying development.

#### **126 How must an application for a complying development certificate be made?** (cf clause 75A of EP&A Regulation 1994)

- (1) An application for a complying development certificate:
- (a) must contain the information, and be accompanied by the documents, specified in Part 2 of Schedule 1, and

(b) if the certifying authority so requires, must be in the form approved by that authority, and

(c) must be delivered by hand, sent by post or transmitted electronically to the principal office of the council or the accredited certifier, but may not be sent by facsimile transmission.

(2) Immediately after it receives an application for a complying development certificate, the council or accredited certifier must endorse the application with the date of its receipt.

**127 Council or accredited certifier may require additional information** (cf clause 76 of EP&A Regulation 1994)

(1) A council or accredited certifier may require the applicant for a complying development certificate to give the council or accredited certifier any additional information concerning the proposed development that is essential to the council's or accredited certifier's proper consideration of the application.

(2) Nothing in this clause affects the council's or accredited certifier's duty to determine an application for a complying development certificate.

**128 Council or accredited certifier to supply application form for complying development certificates** (cf clause 76A of EP&A Regulation 1994)

If the council or accredited certifier requires an application for a complying development certificate to be in a particular form, it must provide any person intending to make such an application with blank copies of that form.

**129 Copyright in documents forming part of or accompanying applications for complying development certificates—applicant's indemnification** (cf clause 76B of EP&A Regulation 1994)

Upon an application being made under section 85A (1) of the Act for a complying development certificate, the applicant (not being entitled to copyright) is taken to have indemnified all persons using the application and any accompanying documents in accordance with the Act against any claim or action in respect of breach of copyright.

**129A Amendments with respect to BASIX commitments**

(1) This clause applies to an application for a complying development certificate that has been accompanied by a BASIX certificate pursuant to clause 4A of Schedule 1.

(2) An application for a complying development certificate may be amended or varied by the lodging of:

(a) a new BASIX certificate to replace a BASIX certificate that accompanied the application, or to replace any subsequent BASIX certificate lodged under this

clause, and

- (b) if any new accompanying document is required or any existing accompanying document requires amendment, a new or amended accompanying document.
- (3) If an amendment or variation of an application for a complying development certificate, or of any accompanying document, results in the proposed development differing in any material respect from the description contained in a current BASIX certificate for the development, the application to amend or vary the application for the complying development certificate must have annexed to it a replacement BASIX certificate whose description takes account of the amendment or variation.
- (4) In this clause, a reference to the **accompanying document** is a reference to any document required to accompany an application for a complying development certificate pursuant to clause 4 of Schedule 1.

## **Division 2 Determination of applications and commencement of complying development**

### **130 Procedure for determining application for complying development certificate** (cf clause 77 of EP&A Regulation 1994)

- (1) A certifying authority must not issue a complying development certificate for building work unless it is satisfied that the proposed building (not being a temporary building) will comply with the relevant requirements of the *Building Code of Australia* (as in force at the time the application for the certificate was made).
- (2) In the case of complying development that is required to comply with the deemed-to-satisfy provisions of Volume One, or Section 3 of Volume Two, of the *Building Code of Australia*, a complying development certificate cannot authorise compliance with an alternative solution to the performance requirements corresponding to those deemed-to-satisfy provisions.
- (3) Evidence of the issue of a complying development certificate must be endorsed by the council or the accredited certifier on any plans, specifications and any other documents that were lodged with the application for the certificate or submitted to the accredited certifier in accordance with clause 126.
- (4) For the purposes of section 85A (11) (b) of the Act, the accredited certifier must cause notice of his or her determination of an application for a complying development certificate to be given 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 endorsed plans, specifications or other documents that were lodged with the application or submitted to the accredited certifier in accordance with clause 127,



and

- (c) any complying development certificate issued as a result of the determination, together with any associated fire safety schedule or fire link conversion schedule.

**131 Development standards for building work associated with a change of building use**

- (1) This clause applies to development for which a complying development certificate is sought comprising a change of building use of an existing building.
- (2) The development standards applicable to such development include the following requirements:
  - (a) that, on completion of any building work, the fire protection and structural capacity of the building will be appropriate to the proposed new use, and
  - (b) that, whether or not any building work is carried out, the building will comply with such of the Category 1 fire safety provisions as are applicable to the proposed new use,

assuming that any building work is carried out in accordance with the plans and specifications to which the complying development certificate relates and any conditions to which the complying development certificate is subject.

**132 Development standards for building work involving the alteration, enlargement or extension of an existing building**

- (1) This clause applies to development for which a complying development certificate is sought comprising building work that involves the alteration, enlargement or extension of an existing building in circumstances in which no change of building use is proposed.
- (2) The development standards applicable to such development include the requirement that, on completion of the building work, the fire protection and structural capacity of the building will not be reduced.
- (3) That requirement assumes that the building work is carried out in accordance with the plans and specifications to which the complying development certificate relates and any conditions to which the complying development certificate is subject.

**133** (Renumbered as clause 136A)

**134 Form of complying development certificate**

- (1) A complying development certificate must contain the following information:
  - (a) the identity of the certifying authority by which it is granted,
  - (b) if the certifying authority is an accredited certifier:

- (i) his or her accreditation number, and
  - (ii) the name of the accreditation body by which he or she is accredited,
  - (c) the date of the certificate,
  - (d) the date on which the certificate lapses,
  - (e) a statement to the effect that the development is complying development and (if carried out as specified in the certificate) will comply with all development standards applicable to the development and with such other requirements prescribed by this regulation concerning the issue of the certificate,
  - (f) if the development involves the erection of a building, the class of the building under the *Building Code of Australia*,
  - (g) any conditions imposed on the development under this Regulation.
- (2) A complying development certificate for the erection of a building must be accompanied by a fire safety schedule for the building.
- (2A) A complying development certificate for any development must include a copy of any relevant plans endorsed by the consent authority.
- (3) Subclause (2) does not apply to:
- (a) a class 1a or class 10 building within the meaning of clause 167, or
  - (b) a complying development certificate that relates only to fire link conversion.

**Note—**

The documents that must be issued with and accompany a complying development certificate that relates only to fire link conversion are set out in clause 168A.

**135 Notice under section 86 of the Act of appointment of principal certifying authority** (cf clause 77A of EP&A Regulation 1994)

A notice given under or for the purposes of section 86 (1) (a1) (i) or (2) (a1) of the Act must contain the following information:

- (a) (Repealed)
- (b) a description of the work to be carried out,
- (c) the address of the land on which the work is to be carried out,
- (d) the registered number and date of issue of the relevant complying development certificate,
- (e) the name and address of the principal certifying authority, and of the person by whom

the principal certifying authority was appointed,

(f) if the principal certifying authority is an accredited certifier:

(i) his or her accreditation number, and

(ii) the name of the accreditation body by which he or she is accredited, and

(iii) a statement signed by the accredited certifier to the effect that he or she consents to being appointed as principal certifying authority, and

(iv) a telephone number on which he or she may be contacted for business purposes,

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

**135A Notice under section 86 of the Act of critical stage inspections**

A notice given under section 86 (1) (a1) (ii) of the Act must contain the following information:

(a) the name and address of the principal certifying authority by whom the notice is given,

(b) a telephone number on which the principal certifying authority can be contacted for business purposes,

(c) the registered number of the complying development certificate,

(d) a description of the work to be carried out,

(e) the address of the land at which the work is to be carried out,

(f) a list of the critical stage inspections and other inspections required to be carried out in respect of the work.

**136 Notice under section 86 of the Act of intention to commence subdivision work or erection of building** (cf clause 77A of EP&A Regulation 1994)

A notice given under or for the purposes of section 86 (1) (b) or (2) (b) of the Act must contain the following information:

(a) the name and address of the person by whom the notice is being given,

(b) a description of the work to be carried out,

(c) the address of the land on which the work is to be carried out,

(d) the registered number and date of issue of the relevant complying development certificate,

(e) the date on which the work is intended to commence,

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

## **Division 2A Conditions of complying development certificate**

### **136A Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989** (cf clauses 78 and 78A of EP&A Regulation 1994)

- (1) A complying development certificate for development that involves any building work must be issued subject to the following conditions:
  - (a) that the work must be carried out in accordance with the requirements of the *Building Code of Australia*,
  - (b) in the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance must be entered into and be in force before any building work authorised to be carried out by the certificate commences.
- (2) This clause does not limit any other conditions to which a complying development certificate may be subject, as referred to in section 85A (6) (a) of the Act.
- (3) This clause does not apply:
  - (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4),  
or
  - (b) to the erection of a temporary building.
- (4) In this clause, a reference to the *Building Code of Australia* is a reference to that Code as in force on the date the application for the relevant complying development certificate is made.

### **136B Erection of signs**

- (1) A complying development certificate for development that involves any building work, subdivision work or demolition work must be issued subject to a condition that the requirements of subclauses (2) and (3) are complied with.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
  - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

- (c) stating that unauthorised entry to the site is prohibited.
- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building, that does not affect the external walls of the building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.
- (6) This clause applies to a complying development certificate issued before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

**Note—**

Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

**136C Notification of [Home Building Act 1989](#) requirements**

- (1) A complying development certificate for development that involves any residential building work within the meaning of the [Home Building Act 1989](#) must be issued subject to a condition that the work is carried out in accordance with the requirements of this clause.
- (2) Residential building work within the meaning of the [Home Building Act 1989](#) must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - (a) in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and licence number of the principal contractor, and
    - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
  - (b) in the case of work to be done by an owner-builder:
    - (i) the name of the owner-builder, and
    - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date,

further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

### **136D Fulfilment of BASIX commitments**

- (1) This clause applies:
  - (a) on and from 1 July 2004, to all land within the initial BASIX area, and
  - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) This clause applies to all development:
  - (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or
  - (b) that involves a change of building use by which a building becomes a BASIX affected building.
- (3) A complying development certificate for development to which this clause applies must be issued subject to a condition that the commitments listed in the relevant BASIX certificate for the development must be fulfilled.

## **Division 3 Validity of complying development certificates**

### **137 What are the public notification procedures for the purposes of section 101 of the Act?** (cf clause 77B of EP&A Regulation 1994)

- (1) The determination of an application for a complying development certificate is publicly notified for the purposes of section 101 of the Act:
  - (a) if public notice in a local newspaper is given by the council or an accredited certifier, and
  - (b) if the notice describes the land and the development the subject of the complying development certificate, and
  - (c) if the notice contains a statement that the determination of the application for a complying development certificate is available for public inspection, free of charge, during ordinary office hours at the council's offices.
- (2) If the public notification is given by an accredited certifier, the accredited certifier must send a copy of the page of the newspaper in which notice of the complying certificate was published to the council within 7 days after the notice is published.

- (3) Nothing in this clause confers a right or entitlement to inspect, make copies of or take extracts from so much of a document that, because of section 12 (1A) of the *Local Government Act 1993*, a person does not have the right to inspect.

## **Part 8 Certification of development**

### **Division 1 Compliance certificates**

#### **138 Compliance certificates** (cf clause 79 of EP&A Regulation 1994)

- (1) A compliance certificate must contain the following information:
- (a) the identity of the certifying authority by which it is granted,
  - (b) if the certifying authority is an accredited certifier:
    - (i) his or her accreditation number,
    - (ii) the name of the accreditation body by which he or she is accredited,
  - (c) a description of the development being carried out,
  - (d) the registered number and date of issue of any relevant development consent or complying development certificate,
  - (e) the address, and formal particulars of title, of the land on which the development is being carried out,
  - (f) the date of the certificate,
  - (g) a description of any work that has been inspected, how the work has been inspected and the date and time when the work was inspected,
  - (h) a statement, signed by or on behalf of the certifying authority, as to the matters in respect of which the certificate is given.

**Note—**

Section 109C of the Act identifies the various matters in respect of which a compliance certificate may be given.

- (2) A compliance certificate must be accompanied by any documents referred to in the certificate, being documents concerning matters in respect of which the certificate is given.
- (3) A copy of each compliance certificate relied on in issuing an occupation certificate must be forwarded to the consent authority and the council when a certifying authority notifies them of the issue of an occupation certificate.

## **Division 2 Construction certificates**

### **139 How must an application for a construction certificate be made?** (cf clause 79A of EP&A Regulation 1994)

- (1) An application for a construction certificate:
  - (a) must contain the information, and be accompanied by the documents, specified in Part 3 of Schedule 1, and
  - (b) if the certifying authority so requires, must be in the form approved by that authority, and
  - (c) must be delivered by hand, sent by post or transmitted electronically to the principal office of the certifying authority, but may not be sent by facsimile transmission.
- (2) Immediately after it receives an application for a construction certificate, the certifying authority must endorse the application with the date of its receipt.

### **139A Withdrawal of application for construction certificate**

- (1) An application for a construction certificate may be withdrawn at any time prior to its determination by service on the certifying authority to which it was made of a notice to that effect signed by the applicant.
- (2) The certifying authority 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.

### **140 Certifying authority may require additional information** (cf clause 79B of EP&A Regulation 1994)

- (1) A certifying authority may require the applicant for a construction certificate to give the certifying authority any additional information concerning the proposed building or subdivision work that is essential to the certifying authority's proper consideration of the application.
- (2) Nothing in this clause affects the certifying authority's duty to determine an application for a construction certificate.

### **141 Certifying authority to supply application form for construction certificates** (cf clause 79C of EP&A Regulation 1994)

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

### **142 Procedure for determining application for construction certificate** (cf clause 79D of



EP&A Regulation 1994)

- (1) The determination of an application for a construction 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 certifying authority is a consent authority, of the applicant's right of appeal under the Act against the refusal,
  - (d) if a construction certificate has been issued subject to conditions of the kind referred to in clause 187 or 188:
    - (i) the reasons for the conditions, and
    - (ii) if the certifying authority is a consent authority, of the applicant's right of appeal under the Act against any such conditions.
- (2) The certifying authority 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 construction certificate issued as a result of the determination, and
  - (c) any plans and specifications in relation to which such a construction certificate has been issued, and
  - (d) any fire safety schedule or fire link conversion schedule attached to such a construction certificate, and
  - (e) 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 certifying authority under clause 140.

**Note—**

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

- (3) In this Part, a reference to the issuing of a construction certificate includes a reference to the endorsement of the construction certificate on any relevant plans and specifications, as referred to in section 109C (1) (b) of the Act.

**143 Fire protection and structural capacity** (cf clause 79E of EP&A Regulation 1994)

- (1) A certifying authority must not issue a construction certificate for building work under a development consent that authorises a change of building use unless:

- (a) it is satisfied that the fire protection and structural capacity of the building will be appropriate to its new use, and
- (b) it is satisfied that the building will comply with such of the Category 1 fire safety provisions as are applicable to the new use,

assuming that the building work is carried out in accordance with the plans and specifications to which the construction certificate relates and any conditions to which the construction certificate is subject.

- (2) Subclause (1) (b) does not apply to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4).
- (3) In the case of building work that involves the alteration, enlargement or extension of an existing building in circumstances in which no change of building use is proposed, a certifying authority must not issue a construction certificate for the work unless it is satisfied that, on completion of the building work, the fire protection and structural capacity of the building will not be reduced, assuming that the building work is carried out in accordance with the plans and specifications to which the construction certificate relates and any conditions to which the construction certificate is subject.
- (4) This clause does not apply to building work required by a consent authority as a condition of a development consent that authorises a change of building use.

**143A Special requirements for construction certificates for residential flat development**

- (1) This clause applies to residential flat development for which the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A).
- (2) A certifying authority must not issue a construction certificate for residential flat development unless the certifying authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

- (3) If the development application referred to in subclause (1) was also required to be accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in subclause (2) need not be verified to the extent to which they aim:
- (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
  - (b) to improve the thermal performance of the building.

**144 Referral of certain plans and specifications to New South Wales Fire Brigades** (cf clause 79F of EP&A Regulation 1994)

(1) This clause applies to:

- (a) a class 9a building that is proposed to have a total floor area of 2,000 square metres or more, or
- (b) a building (other than a class 9a building) that is proposed to have:
  - (i) a fire compartment with a total floor area of more than 2,000 square metres, or
  - (ii) a total floor area of more than 6,000 square metres,

where:

- (c) the building is the subject of an application for erection, rebuilding, alteration, enlargement or extension, and
  - (d) the plans and specifications for the erection, rebuilding, alteration, enlargement or extension provide for an alternative solution to meet the performance requirements contained in any one or more of the Category 2 fire safety provisions.
- (2) As soon as practicable after receiving an application for a construction certificate for a building to which this clause applies, the certifying authority must forward to the Fire Commissioner:
- (a) a copy of the application, and
  - (b) a copy of the plans and specifications for the building, and
  - (c) details of the performance requirements that the alternative solution is intended to meet, and
  - (d) details of the assessment methods to be used to establish compliance with those performance requirements,

which may be delivered by hand, forwarded by post or transmitted electronically, but

may not be sent by facsimile transmission.

- (3) The Fire Commissioner must furnish the certifying authority with an initial fire safety report for the building.
- (4) An initial fire safety report may recommend conditions to be imposed on the erection, rebuilding, alteration, enlargement or extension of the building to which the report relates.
- (5) The certifying authority must not issue a construction certificate for a building to which this clause applies unless:
  - (a) it has received an initial fire safety report for the building and has taken the report into consideration, or
  - (b) at least 23 days have elapsed since the plans and specifications were forwarded to the Fire Commissioner but no such report has been received by the certifying authority.
- (6) If the certifying authority does not adopt any recommendation in an initial fire safety report:
  - (a) because the report had not been received when the construction certificate was issued, or
  - (b) because the certifying authority does not agree with the recommendation,the certifying authority must cause written notice to be given to the Fire Commissioner of the fact that it has not adopted the recommendation and of the reasons why it has not adopted the recommendation.
- (7) If the certifying authority adopts any condition recommended by an initial fire safety report:
  - (a) it must ensure that the terms of the recommended condition have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
  - (b) it must attach to the construction certificate a condition in the same terms as those of the recommended condition, in the case of a condition whose terms are not capable of being so included.
- (8) Compliance with the requirement that the terms of a recommended condition be included in the plans and specifications for building work is sufficiently complied with:
  - (a) if the plans and specifications are redrawn so as to accord with those terms, or
  - (b) if those terms are included by way of an annotation (whether by way of insertion, deletion or alteration) marked on the relevant part of those plans and

specifications.

(9) In this clause:

**initial fire safety report** means a written report specifying whether or not the Fire Commissioner is satisfied, on the basis of the documents referred to in subclause (2):

- (a) that the alternative solution will meet such of the performance requirements as it is intended to meet, and
- (b) that the fire hydrants in the proposed fire hydrant system will be accessible for use by New South Wales Fire Brigades, and
- (c) that the couplings in the system will be compatible with those of the fire appliances and equipment used by New South Wales Fire Brigades.

**145 Compliance with development consent and Building Code of Australia** (cf clause 79G of EP&A Regulation 1994)

(1) A certifying authority must not issue a construction certificate for building work unless it is satisfied of the following matters:

- (a1) that the plans and specifications for the building include such matters as the relevant BASIX certificate requires,
- (a) that the design and construction of the building (as depicted in the plans and specifications and as described in any other information furnished to the certifying authority under clause 140) are not inconsistent with the development consent,
- (b) that the proposed building (not being a temporary building) will comply with the relevant requirements of the *Building Code of Australia* (as in force at the time the application for the construction certificate was made).

(2) A certifying authority must not issue a construction certificate for subdivision work unless it is satisfied that the design and construction of the work (as depicted in the plans and specifications and as described in any other information furnished to the certifying authority under clause 140) are not inconsistent with the development consent.

(3) Subclause (1) (b) does not apply to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4).

**146 Compliance with conditions of development consent** (cf clause 79H of EP&A Regulation 1994)

A certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it is satisfied that 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 consent (as referred to in section 80A (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 consent (as referred to in section 94 or 94A of the Act),
- (c) each other condition of the development consent that must be complied with before a construction certificate may be issued in relation to the building work or subdivision work.

**147 Form of construction certificate** (cf clause 79I of EP&A Regulation 1994)

- (1) A construction certificate must contain the following information:
  - (a) the identity of the certifying authority by which it is granted,
  - (b) if the certifying authority is an accredited certifier:
    - (i) his or her accreditation number, and
    - (ii) the name of the accreditation body by which he or she is accredited,
  - (c) the registered number and date of issue of any relevant development consent,
  - (d) the date of the certificate,
  - (e) a statement to the effect that work completed in accordance with documentation accompanying the application for the certificate (with such modifications verified by the certifying authority as may be shown on that documentation) will comply with the requirements of this Regulation as are referred to in section 81A (5) of the Act,
  - (f) the classification (in accordance with the *Building Code of Australia*) of the building to which the certificate relates.
- (1A) A construction certificate may indicate different classifications for different parts of the same building.
- (2) A construction certificate for a building must be accompanied by a fire safety schedule for the building.
- (3) Subclause (2) does not apply to:
  - (a) a class 1a or class 10 building within the meaning of clause 167, or
  - (b) a construction certificate that relates only to fire link conversion.

**Note—**

The documents that must be issued with and accompany a construction certificate that relates only to fire link conversion are set out in clause 168A.

**148 Modification of construction certificate** (cf clause 79IA of EP&A Regulation 1994)

- (1) A person who has made an application for a construction certificate and a person having the benefit of a construction 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.
- (3) As soon as practicable after granting an application to modify development in respect of which an application for a construction certificate has previously been referred to the Fire Commissioner under clause 144, but for which (in its modified form) an application for a construction certificate for a building would no longer be required to be so referred, a certifying authority must notify the Fire Commissioner that the building to which the construction certificate relates is no longer a building to which clause 144 applies.

**Division 3 Occupation certificates**

**149 Applications for occupation certificates** (cf clause 79J of EP&A Regulation 1994)

- (1) An application for an occupation certificate must contain the following information:
  - (a) the name and address of the applicant,
  - (b) a description of the building to which the application relates, including the existing and new classifications of the building under the *Building Code of Australia*, as identified by the development consent,
  - (c) the address, and formal particulars of title, of the land on which the building to which the application relates is situated,
  - (d) the type of occupation certificate applied for (that is, interim or final),
  - (e) a list of the documents accompanying the application,and, if the certifying authority so requires, must be in the form approved by that authority.
- (2) The application must be accompanied by the following documents:
  - (a) a copy of the relevant development consent or complying development certificate,
  - (b) a copy of any relevant construction certificate,
  - (c) a copy of any relevant fire safety certificate,

(d) a copy of any relevant compliance certificate.

- (2A) In the case of an application with respect to development the subject of a condition requiring commitments listed in a BASIX certificate to be fulfilled, the application must also be accompanied by a copy of the relevant BASIX certificate for the development.
- (3) The application must be delivered by hand, sent by post or transmitted electronically to the principal office of the certifying authority, but may not be sent by facsimile transmission.
- (4) Immediately after it receives an application for an occupation certificate, the certifying authority must endorse the application with the date of its receipt.

**150 Certifying authorities to supply application form for occupation certificates** (cf clause 79K of EP&A Regulation 1994)

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

**151 Procedure for determining application for occupation certificate** (cf clause 79L of EP&A Regulation 1994)

- (1) The determination of an application for an occupation certificate must be in writing and must contain the following information:
- (a) the date on which the application was determined, and
  - (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 certifying authority is a consent authority and the application relates to a final occupation certificate, of the applicant's right of appeal under the Act against the refusal.
- (2) The certifying authority must notify the consent authority and the council of the determination by forwarding the following documents to the council within 2 days after the date of the determination:
- (a) a copy of the determination,
  - (b) copies of any documents that were lodged with the application for the certificate,



- (c) if an occupation certificate was issued, a copy of the certificate,
- (d) a copy of the record required to be made of each of the following:
  - (i) all critical stage inspections and any other inspections carried out because they were required by the principal certifying authority under section 109E (3) (d) of the Act,
  - (ii) any inspection carried out under clause 162A (4A) (a),
  - (iii) any missed inspection to which clause 162C applies,
- (e) a copy of any compliance certificate and of any other documentary evidence, whether or not of a kind referred to in Part A2, clause A2.2, of the *Building Code of Australia*, relied on in issuing the occupation certificate.

**152 Reports of Fire Commissioner: section 109H** (cf clause 79M of EP&A Regulation 1994)

- (1) This clause applies to a building to which clause 144 applies.
- (2) Unless it has already refused such an application, a certifying authority must request the Fire Commissioner to furnish it with a final fire safety report for a building as soon as practicable after receiving an application for an occupation certificate for the building.
- (3) If it refuses the application after making such a request but before receiving a final fire safety report, the certifying authority must cause notice of the refusal to be given to the Fire Commissioner.
- (4) Unless it has received a notice referred to in subclause (3), the Fire Commissioner must furnish the certifying authority with a final fire safety report for the building within 7 days after receiving a request for the report.
- (5) The certifying authority must not issue an occupation certificate for the building unless it has taken into consideration any final fire safety report for the building that has been furnished to it within the 7-day period.
- (6) In this clause:
  - final fire safety report** for a building means a written report specifying whether or not the Fire Commissioner is satisfied:
    - (a) that the building complies with the Category 2 fire safety provisions, and
    - (b) that the fire hydrants in the fire hydrant system will be accessible for use by New South Wales Fire Brigades, and
    - (c) that the couplings in the fire hydrant system will be compatible with those of the fire appliances and equipment used by New South Wales Fire Brigades.

**153 Fire safety certificates: section 109H** (cf clause 79N of EP&A Regulation 1994)

- (1) In the case of a final occupation certificate to authorise a person:
  - (a) to commence occupation or use of a new building, or
  - (b) to commence a change of building use for an existing building,a certifying authority must be satisfied that a final fire safety certificate has been issued for the building.
- (1A) If the need for the final occupation certificate arises solely from fire link conversion, the final fire safety certificate referred to in subclause (1) need only deal with the new fire alarm communication link.
- (2) In the case of an interim occupation certificate to authorise a person:
  - (a) to commence occupation or use of a partially completed new building, or
  - (b) to commence a change of building use for part of an existing building,a certifying authority must be satisfied that a final fire safety certificate or an interim fire safety certificate has been issued for the relevant part of the building.
- (3) This clause does not apply to a class 1a or class 10 building within the meaning of clause 167.
- (4) In this clause:

***interim fire safety certificate*** has the same meaning as it has in Part 9.

***final fire safety certificate*** has the same meaning as it has in Part 9.

***new building*** has the same meaning as it has in section 109H of the Act.

**154 Health and safety: section 109H** (cf clause 79O of EP&A Regulation 1994)

- (1) In the case of an interim occupation certificate to authorise a person:
  - (a) to commence occupation or use of a partially completed new building, or
  - (b) to commence a change of building use for part of an existing building,a certifying authority must be satisfied that the building will not constitute a hazard to the health or safety of the occupants of the building.
- (2) In this clause, ***new building*** has the same meaning as it has in section 109H of the Act.

**154A Special requirements for occupation certificates for residential flat development**

- (1) This clause applies to residential flat development for which the development application was required to be accompanied by a design verification from a qualified designer under clause 50 (1A).
- (2) A certifying authority must not issue an occupation certificate to authorise a person to commence occupation or use of residential flat development unless the certifying authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.
- (3) If the development application referred to in subclause (1) was also required to be accompanied by a BASIX certificate with respect to any building, the design quality principles referred to in subclause (2) need not be verified to the extent to which they aim:
  - (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
  - (b) to improve the thermal performance of the building.

**154B Fulfilment of BASIX commitments**

- (1) This clause applies to a BASIX affected building in respect of which a relevant BASIX certificate requires a certifying authority to monitor fulfilment of any of the commitments listed in the certificate.
- (2) A certifying authority must not issue an occupation certificate (whether interim or final) for a BASIX affected building to which this clause applies, or for any part of such a building, unless it is satisfied that each of the commitments whose fulfilment it is required to monitor in relation to the building or part has been fulfilled.
- (3) For the purpose of satisfying itself as to the fulfilment of any such commitment, a certifying authority may rely on the advice of any properly qualified person.

**155 Form of occupation certificate** (cf clause 79P of EP&A Regulation 1994)

- (1) An occupation certificate must contain the following information:
  - (a) the identity of the certifying authority by which it is granted,
  - (b) if the certifying authority is an accredited certifier:
    - (i) his or her accreditation number, and

- (ii) the name of the accreditation body by which he or she is accredited,
- (c) the date of the certificate,
- (d) indicate the type of certificate being issued (that is, interim or final),
- (e) a statement to the effect that:
  - (i) the health and safety of the occupants of the building have been taken into consideration where an interim occupation certificate is being issued, and
  - (ii) a current development consent or complying development certificate is in force for the building, and
  - (iii) if any building work has been carried out, a current construction certificate (or complying development certificate) has been issued with respect to the plans and specifications for the building, and
  - (iv) the building is suitable for occupation or use in accordance with its classification under the *Building Code of Australia*, and
  - (v) a fire safety certificate has been issued for the building, and
  - (vi) a report from the Fire Commissioner has been considered (if required).
- (2) Except as provided by subclause (3), the certificate must be accompanied by a fire safety certificate and fire safety schedule for the building.
- (3) If the need for the occupation certificate arises solely from fire link conversion, the certificate need only be accompanied by a fire safety certificate of the kind referred to in section 153 (1A) and the relevant fire link conversion schedule or fire safety schedule issued under clause 168A.

**156 Occupation and use of new buildings: section 109M (2)** (cf clause 79Q of EP&A Regulation 1994)

- (1) For the purposes of section 109M (2) (c) of the Act, the fact that a building is a class 1a or class 10 building, the construction certificate or complying development certificate for which was issued before the commencement of Schedule 2.1 [32] to the [Environmental Planning and Assessment Amendment \(Quality of Construction\) Act 2003](#) is a prescribed circumstance.
- (2) A person who is prescribed for the purposes of section 116G of the Act (as referred to in section 116B (a) of the Act) in relation to Crown building work involving the erection of a new building is prescribed for the purposes of section 109M (2) (d) of the Act in relation to that building.

**Note—**

Section 109M of the Act prohibits the occupation or use of a new building unless an occupation certificate has been issued for the building.

Section 109M (2) (c) provides for the disapplication of that section in circumstances prescribed by the regulations. Subclause (1) of this clause prescribes such circumstances.

Section 109M (2) (d) provides for the disapplication of that section 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.

## **Division 4 Subdivision certificates**

### **157 Applications for subdivision certificates** (cf clause 79R of EP&A Regulation 1994)

(1) An application for a subdivision certificate must contain the following information:

- (a) the name and address of the applicant,
- (b) the address, and formal particulars of title, of the land to which the application relates,
- (c) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application,
- (d) a list of the documents accompanying the application,

and, if the certifying authority so requires, must be in the form approved by that authority.

(2) The application must be accompanied by the following documents:

- (a) a plan of subdivision,
- (b) a copy of the relevant development consent or complying development certificate,
- (c) a copy of any relevant construction certificate,
- (d) a copy of detailed subdivision engineering plans,
- (e) for a deferred commencement consent, evidence that the applicant has satisfied the consent authority on all matters of which the consent authority must be satisfied before the consent can operate,
- (f) evidence that the applicant has complied with all conditions of consent that it is required to comply with before a subdivision certificate can be issued, where relevant,
- (g) a certificate of compliance from the relevant water supply authority, where relevant,

- (h) if a subdivision is the subject of an order of the Land and Environment Court under section 40 of the *Land and Environment Court Act 1979*, evidence that required drainage easements have been acquired by the relevant council,
- (i) for subdivision involving subdivision work, evidence that:
  - (i) the work has been completed, or
  - (ii) agreement has been reached with the relevant consent authority as to payment of the cost of the work and as to the time for carrying out the work, or
  - (iii) agreement has been reached with the relevant consent authority as to security to be given to the consent authority with respect to the completion of the work.

**Note—**

See section 1090 of the Act and clause 161 which provide that a requirement for a consent authority to be satisfied as to certain matters may be met if a certifying authority is satisfied as to those matters.

- (3) The application must be delivered by hand, sent by post or transmitted electronically to the principal office of the certifying authority, but may not be sent by facsimile transmission.
- (4) The plan of subdivision to which the application relates must be accompanied by a certificate on the plan in the relevant form required by the regulations in force under the *Surveying Act 2002*.
- (5) Immediately after it receives an application for a subdivision certificate, the certifying authority must endorse the application with the date of its receipt.

**158 Certifying authority may require additional information** (cf clause 79S of EP&A Regulation 1994)

- (1) A certifying authority may require the applicant for a subdivision certificate to give the certifying authority any additional information concerning the proposed subdivision that is essential to the certifying authority's proper consideration of the application.
- (2) Nothing in this clause affects the certifying authority's duty to determine an application for a subdivision certificate.

**159 Certifying authorities to supply application form for subdivision certificates** (cf clause 79T of EP&A Regulation 1994)

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

**160 Procedure for determining application for subdivision certificate** (cf clause 79U of EP&A Regulation 1994)

- (1) The determination of an application for a subdivision 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,
  - (c) if the application has been determined by refusal:
    - (i) the reasons for the refusal, and
    - (ii) if the certifying authority is a consent authority, of the applicant's right of appeal under the Act against the refusal.
- (2) The certifying authority must notify the consent authority and the council of the determination by forwarding the following documents to the council within 2 days after the date of the determination:
  - (a) a copy of the determination,
  - (b) copies of any documents that were lodged with the application for the certificate,
  - (c) if a subdivision certificate was issued, a copy of the endorsed plan of subdivision.

**Note—**

The form of the subdivision certificate is regulated under the [Conveyancing Act 1919](#).

**160A Prescribed persons: subdivision certificates**

The following persons are prescribed for the purposes of section 109D (1) (d) (iii) of the Act:

- (a) Newcastle Port Corporation,
- (b) Port Kembla Port Corporation,
- (c) Sydney Ports Corporation,
- (d) Rail Corporation New South Wales,
- (e) Transport Infrastructure Development Corporation.

## **Division 5 General**

### **161 Certifying authorities may be satisfied as to certain matters: section 1090** (cf clause 79V of EP&A Regulation 1994)

(1) This clause applies to the following matters:

(a) any matter that relates to the form or content of the plans and specifications for the following kind of work to be carried out in connection with the erection of a building or the subdivision of land:

(i) earthwork,

(ii) road work, including road pavement and road finishing,

(iii) stormwater drainage work,

(iv) landscaping work,

(v) erosion and sedimentation control work,

(vi) excavation work,

(vii) mechanical work,

(viii) structural work,

(ix) hydraulic work,

(x) work associated with driveways and parking bays, including road pavement and road finishing,

(b) any matter that relates to the external finish of a building.

(2) Any requirement of the conditions of a development consent that a consent authority or council is to be satisfied as to a matter to which this clause applies is taken to have been complied with if a certifying authority is satisfied as to that matter.

### **162 Notice of replacement of principal certifying authority**

(1) A principal certifying authority appointed to replace another principal certifying authority 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 of the appointment.

(2) Nothing in this clause requires any notice to be given to a council that approved the new appointment.



**162A Critical stage inspections required by section 109E (3) (d)**

- (1) For the purposes of section 109E (3) (d) of the Act, the occasions on which building work must be inspected are as set out in this clause.

**Note—**

These inspections are the *critical stage inspections*.

- (2) Except as provided by subclause (3), the critical stage inspections may be carried out by the principal certifying authority or, if the principal certifying authority agrees, by another certifying authority.
- (3) The last critical stage inspection required to be carried out for the class of building concerned must be carried out by the principal certifying authority.
- (4) In the case of a class 1 or 10 building, the occasions on which building work for which a principal certifying authority is first appointed on or after 1 July 2004 must be inspected are:
- (a) at the commencement of the building work, and
  - (b) after excavation for, and prior to the placement of, any footings, and
  - (c) prior to pouring any in-situ reinforced concrete building element, and
  - (d) prior to covering of the framework for any floor, wall, roof or other building element, and
  - (e) prior to covering waterproofing in any wet areas, and
  - (f) prior to covering any stormwater drainage connections, and
  - (g) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- (4A) However, in the case of a class 1 or 10 building, an inspection on an occasion described in subclause (4) (a)–(f) that occurs before 1 July 2005 is not prescribed for the purposes of section 109E (3) (d) of the Act if:
- (a) the inspection is carried out by a person considered by the principal certifying authority to be suitably qualified to carry out the inspection (but who is not necessarily an accredited certifier) and employed, or nominated for the purpose of carrying out the inspection, by the principal certifying authority, and
  - (b) the person would not be disqualified by section 109ZG of the Act (except by subsection (1) (d) or (1A) of that section) from issuing a Part 4A certificate in relation to any aspect of the development concerned.
  - (c) the person makes a record of each inspection carried out by him or her, and

provides a copy of that record to the principal certifying authority, as required by clause 162B for a critical stage inspection or any other inspection required by the principal certifying authority.

- (5) In the case of a class 2, 3 or 4 building, the occasions on which building work must be inspected are:
  - (a) at the commencement of the building work, and
  - (b) prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
  - (c) prior to covering any stormwater drainage connections, and
  - (d) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- (6) In the case of a class 5, 6, 7, 8 or 9 building, the occasions on which building work for which a principal certifying authority is first appointed on or after 1 July 2004 must be inspected are:
  - (a) at the commencement of the building work, and
  - (b) prior to covering any stormwater drainage connections, and
  - (c) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- (7) Any inspection required by this clause to be carried out at the commencement of building work may be carried out at the same time as the earlier of the next occasion prescribed by subclause (4) (b), (5) (b) or (6) (b) for an inspection of a building of the class concerned or the next inspection (if any) required by the principal certifying authority under section 109E (3) (d) of the Act, but only if the principal certifying authority agrees.
- (8) This clause does not prescribe any occasion on which a manufactured home or dwelling built off the site in sections and transported to the site for assembly is required to be inspected.

**162B Record of inspections conducted under section 109E (3)**

- (1) A principal certifying authority and each other certifying authority must make a record of each critical stage inspection and any other inspection carried out because it was required by the principal certifying authority under section 109E (3) (d) of the Act carried out by the principal certifying authority or other certifying authority.
- (2) Any certifying authority who is required to make such a record but is not the principal certifying authority for the work concerned must forthwith provide a copy of the

record to the principal certifying authority for the work.

**Note—**

Copies of these records must be kept for at least 15 years (see clause 205).

- (3) Each record of an inspection required by this clause must be made as soon as practicable after the inspection is carried out.
- (4) The record must include details of:
  - (a) the registered number of the development application and of the construction certificate or complying development certificate, and
  - (b) the address of the property at which the inspection was carried out, and
  - (c) the type of inspection, and
  - (d) the date on which it was carried out, and
  - (e) the name and accreditation number of the certifying authority by whom the inspection was carried out, and
  - (f) whether or not the inspection was satisfactory in the opinion of the certifying authority who carried it out.

**162C Progress inspection unavoidably missed**

- (1) If the circumstances described in subclause (2) apply:
  - (a) an inspection, other than a final inspection, that would be prescribed for the purposes of section 109E (3) (d) of the Act in the absence of this clause, is not prescribed for the purposes of that paragraph, and
  - (b) an inspection that is not prescribed for the purposes of that paragraph, but is required to be carried out by the principal certifying authority under that paragraph, need not be carried out.
- (2) The circumstances are:
  - (a) the inspection was missed because of circumstances that the principal certifying authority considers were unavoidable, and
  - (b) the principal certifying authority is satisfied that the work that would have been the subject of the missed inspection was satisfactory, and
  - (c) the principal certifying authority, as soon as practicable after becoming aware of the circumstances that caused the inspection to be missed, makes a record in accordance with subclause (3).
- (3) The record of a missed inspection must include the following:

- (a) a description of the development to which the record relates and of the class of the building concerned,
  - (b) the address and land title particulars (such as the Lot and DP numbers) of the property concerned,
  - (c) the registered number of the development consent and the construction certificate or of the complying development certificate,
  - (d) the name and accreditation number of the principal certifying authority,
  - (e) the name, address and telephone number of the principal contractor or owner builder and, if that person is required to be the holder of a licence or permit, the number of that licence or permit,
  - (f) particulars of the inspection that was missed and of the circumstances that the principal certifying authority considers were unavoidable that caused it to be missed,
  - (g) a statement that the principal certifying authority is satisfied that the work that would have been the subject of the missed inspection was satisfactory,
  - (h) the documentary evidence that was relied on to satisfy the principal certifying authority that the work that would have been the subject of the missed inspection was satisfactory, including (but not limited to) documentary evidence of a kind referred to in Part A2, clause A2.2, of the *Building Code of Australia*.
- (4) As soon as practicable after a person who is not the principal certifying authority becomes aware that an inspection described in subclause (1) that was required to be carried out by him or her has been missed, he or she must inform the principal certifying authority of that fact and of the circumstances causing the inspection to be missed.
- (5) As soon as practicable after becoming aware that an inspection, other than a final inspection, has been missed, the principal certifying authority must notify that fact to:
- (a) the person by whom the principal certifying authority was appointed, and
  - (b) in the case of work for which a principal contractor is required to be appointed, the principal contractor or, in the case of work being done by an owner builder, the owner builder,
- and must send a copy of the record made under this clause to the accreditation body that accredited, and the person who appointed, the principal certifying authority.
- (6) In this clause, **final inspection** means an inspection described in clause 162A (4) (g), (5) (d) or (6) (c).

### **163 Notice to allow inspections**

To allow a principal certifying authority or another certifying authority time to carry out critical stage inspections or any other inspections required by the principal certifying authority, the principal contractor for a building site, or the owner-builder, must notify the principal certifying authority at least 48 hours before each required inspection needs to be carried out.

### **164 No need for duplicate notices** (cf clause 79Y of EP&A Regulation 1994)

Nothing in this Part requires a certifying authority to give a copy of a document to itself just because it is also a consent authority or council or to give more than one copy of a document to any other person just because that other person is both a consent authority and a council.

### **164A BASIX certificates**

- (1) The Director-General may issue certificates (***BASIX certificates***) in relation to the sustainability of any proposed development that involves the erection of a building or a change of building use.
- (2) Without limiting subclause (1), a BASIX certificate may be issued by means of a computerised system, as approved from time to time by the Director-General, being a system to which members of the public are given on-line access, whether over the internet or otherwise.
- (3) The relevant application need only be accompanied by one BASIX certificate.
- (4) A BASIX certificate must contain the following:
  - (a) a description of the proposed development, corresponding in all relevant respects with the description contained in:
    - (i) the relevant application, and
    - (ii) any relevant accompanying documents,
  - (b) a detailed list of the commitments that the applicant has made as to the manner in which the development will be carried out (being commitments as to the measures, such as design and fit-out, that the applicant proposes to implement in order to promote the sustainability of the development),
  - (c) a statement to the effect that the proposed development will meet the Government's requirements for sustainability if the applicant's commitments are fulfilled.
- (4A) In the case of a development that involves the erection of a building for both residential and non-residential purposes, or the change of use of a building to both

residential and non-residential purposes, the description referred to in subclause (4) (a) need only include information concerning the part of the development that is intended to be used for residential purposes.

(5) In this clause:

**accompanying document** means any document required to accompany an application pursuant to clause 2, 4 or 6 of Schedule 1.

**application** means:

- (a) a development application, application for a complying development certificate or application for a construction certificate, or
- (b) an application for modification of a development consent, complying development certificate or construction certificate.

**sustainability**, in relation to proposed development, means the capacity of the development:

- (a) to reduce consumption of mains-supplied potable water, and
- (b) to reduce emissions of greenhouse gases, and
- (c) to perform in a thermally efficient manner.

## **Part 9 Fire safety and matters concerning the Building Code of Australia**

### **Division 1 Preliminary**

#### **165 Definitions** (cf clause 80 of EP&A Regulation 1994)

In this Part:

**annual fire safety statement** means a statement referred to in clause 175.

**critical fire safety measure** means a fire safety measure that is identified in a fire safety schedule or fire link conversion schedule as a critical fire safety measure, being a measure that is of such a nature, or is implemented in such an environment or in such circumstances, that the measure requires periodic assessment and certification at intervals of less than 12 months.

**essential fire safety measure**, in relation to a building, means a fire safety measure that is included:

- (a) in the fire safety schedule for the building, or
- (b) in the essential services (within the meaning of *Ordinance No 70* under the [Local](#)

*Government Act 1919*) attached to an approval or order referred to in Part 59 of that Ordinance, being an approval or order that was in force immediately before 1 July 1993, or

- (c) in the essential services (within the meaning of the *Local Government (Approvals) Regulation 1993*) attached to an approval referred to in clause 22 of that Regulation, being the latest such approval granted during the period from 1 July 1993 to 30 June 1997, or
- (d) in the essential services (within the meaning of the *Local Government (Orders) Regulation 1993*) attached to an order referred to in clause 6 (1) of that Regulation, being the latest such order given during the period from 1 July 1993 to 30 June 1997.

**final fire safety certificate** means a certificate referred to in clause 170.

**fire exit**, in relation to a building, means any exit to the building that has been provided in compliance with any requirement imposed by or under the Act or this Regulation or by or under any other law, whether or not that law is currently in force.

**fire safety certificate** means an interim fire safety certificate or a final fire safety certificate.

**fire safety measure** means any measure (including any item of equipment, form of construction or fire safety strategy) that is, or is proposed to be, implemented in a building to ensure the safety of persons using the building in the event of fire.

**fire safety order** means an order of the kind referred to in item 6 of the Table to section 121B of the Act and includes, if an order is subsequently made under section 121R of the Act, an order under that section.

**fire safety statement** means an annual fire safety statement or a supplementary fire safety statement.

**fire-isolated**, when used in connection with the words “stairway, passageway or ramp”, means a fire-isolated stairway, fire-isolated passageway or fire-isolated ramp, as the case may be, within the meaning of the *Building Code of Australia*.

**interim fire safety certificate** means a certificate referred to in clause 173.

**statutory fire safety measure** means a fire safety measure of a kind referred to in the Table to clause 166.

**supplementary fire safety statement** means a statement referred to in clause 178.

#### **166 Statutory fire safety measures** (cf clause 80A of EP&A Regulation 1994)

The fire safety measures listed in the Table to this clause are **statutory fire safety measures** for the purposes of this Part.

**Table**

Access panels, doors and hoppers to fire-resisting shafts	Fire shutters
Automatic fail-safe devices	Fire windows
Automatic fire detection and alarm systems	Hose reel systems
Automatic fire suppression systems	Lightweight construction
Emergency lifts	Mechanical air handling systems
Emergency lighting	Perimeter vehicle access for emergency vehicles
Emergency warning and intercommunication systems	Portable fire extinguishers
Exit signs	Safety curtains in proscenium openings
Fire control centres and rooms	Smoke and heat vents
Fire dampers	Smoke dampers
Fire doors	Smoke detectors and heat detectors
Fire hydrant systems	Smoke doors
Fire seals protecting openings in fire-resisting components of the building	Solid core doors
	Standby power systems
	Wall-wetting sprinkler and drencher systems
	Warning and operational signs

**167 Application of Part** (cf clause 80B of EP&A Regulation 1994)

- (1) This Part applies to all buildings other than class 1a and class 10 buildings.
- (2) In this clause, a reference to a class 1a or class 10 building:
  - (a) in the case of the erection of a new building, is a reference to a building that will be a class 1a or class 10 building when completed, and
  - (b) in the case of the rebuilding, alteration, enlargement or extension of an existing building, is a reference to an existing class 1a or class 10 building, and
  - (c) in the case of the change of building use for a building, is a reference to a building that will be a class 1a or class 10 building as a result of the change of building use.

**Division 2 Fire safety schedules**

**168 Fire safety schedules** (cf clause 80C of EP&A Regulation 1994)

- (1) When:
  - (a) granting a development consent for a change of building use (other than a complying development certificate) in circumstances in which no building work is proposed by the applicant for the consent and no building work is required by the consent authority, or
  - (b) issuing a complying development certificate for the erection of a building (other than a certificate that relates only to fire link conversion) or for a change of building use, or



(c) issuing a construction certificate for proposed building work (other than a certificate that relates only to fire link conversion), or

(d) giving a fire safety order in relation to building premises,

the person doing so must issue a schedule (a **fire safety schedule**) specifying the fire safety measures (both current and proposed) that should be implemented in the building premises.

(2) In the case of a fire safety order in respect of which a further order is made under section 121R of the Act, the fire safety schedule is to be issued when the further order is given.

(3) A fire safety schedule:

(a) must deal with the whole of the building, not merely the part of the building to which the development consent, complying development certificate, construction certificate or fire safety order relates, and

(b) must include:

(i) such of the fire safety measures currently implemented in the building premises, and

(ii) such of the fire safety measures proposed or required to be implemented in the building premises,

as are statutory fire safety measures, and

(c) must distinguish between:

(i) the fire safety measures currently implemented in the building premises, and

(ii) the fire safety measures proposed or required to be implemented in the building premises, and

(d) must identify each measure that is a critical fire safety measure and the intervals (being intervals of less than 12 months) at which supplementary fire safety statements must be given to the council in respect of each such measure, and

(e) must specify the minimum standard of performance for each fire safety measure included in the schedule.

(4) A copy of the fire safety schedule must be attached to (and is taken to form part of) the relevant development consent, complying development certificate, construction certificate or fire safety order and for the purposes of an appeal forms part of the development consent or construction certificate.

(5) An earlier fire safety schedule is superseded by a later fire safety schedule, and

ceases to have effect when the later fire safety schedule is issued.

#### **168A Conversion of fire alarm communication links**

- (1) This clause applies to a complying development certificate or a construction certificate that relates only to fire link conversion.
- (2) A person issuing such a certificate must also issue:
  - (a) if there is a current fire safety schedule for the building concerned, a schedule (a **fire link conversion schedule**) for the new fire alarm communication link, or
  - (b) in any other case, a fire safety schedule dealing only with the new fire alarm communication link.
- (3) A fire link conversion schedule or fire safety schedule issued under this clause:
  - (a) must specify the minimum standard of performance for the new fire alarm communication link, and
  - (b) if the new fire alarm communication link is a critical fire safety measure, must identify the link as such and specify the intervals (being intervals of less than 12 months) at which supplementary fire safety statements must be given to the council.
- (4) If a fire link conversion schedule is issued, a copy of the schedule must be attached to the current fire safety schedule for the building concerned and the copy is taken, for the purposes of this Regulation, to form part of the fire safety schedule.

**Note—**

This means that when the current fire safety schedule is updated, the updated fire safety schedule must incorporate not only the current fire safety schedule but also the fire link conversion schedule.

- (5) Clause 168 (4) applies to a fire link conversion schedule and a fire safety schedule issued under this clause.

### **Division 3 Fire safety orders**

#### **169 Fire safety schedules and fire safety certificates** (cf clause 80D of EP&A Regulation 1994)

- (1) As soon as practicable after making a fire safety order, a person must cause copies of the fire safety schedule required by clause 168 to be given to the council and to the Fire Commissioner.
- (2) A person to whom a fire safety order is given in relation to any building must, within the time specified in the order, cause copies of a final fire safety certificate for the building (being a certificate issued after the requirements of the order have been complied with) to be given to the person by whom the order was given (and, if that person was not the council, to the council).

**Note—**

See also clause 172 which requires a copy of the ensuing fire safety certificate to be given to the Fire Commissioner.

## **Division 4 Fire safety certificates**

### **170 What is a final fire safety certificate?** (cf clause 80E of EP&A Regulation 1994)

A final fire safety certificate is a certificate issued by or on behalf of the owner of a building to the effect that each essential fire safety measure specified in the current fire safety schedule for the building to which the certificate relates:

- (a) has been assessed by a properly qualified person, and
- (b) was found, when it was assessed, to be capable of performing to at least the standard required by the current fire safety schedule for the building for which the certificate is issued.

**Note—**

A final fire safety certificate must be provided before a final occupation certificate can be issued for a building under clause 153 (1), and must also be provided if a fire safety order is made in relation to building premises.

Under clause 153 (1A), a final fire safety certificate that relates solely to a final occupation certificate for fire link conversion need only deal with the new fire alarm communication link and not with other essential fire safety measures.

### **171 Issue of final fire safety certificates**

- (1) The assessment of essential fire safety measures must have been carried out within the period of 3 months prior to the date on which a final fire safety certificate is issued.
- (2) The choice of person to carry out an assessment is up to the owner of the building.
- (3) A person who carries out an assessment:
  - (a) must inspect and verify the performance of each fire safety measure being assessed, and
  - (b) must test the operation of each new item of equipment installed in the building premises that is included in the current fire safety schedule for the building.
- (4) A final fire safety certificate issued in relation to work that has been authorised or required by a development consent, construction certificate or fire safety order need not deal with any essential fire safety measure the subject of some other final fire safety certificate or fire safety statement issued within the previous 6 months, unless the person by whom the development consent, construction certificate or fire safety order is issued or given otherwise determines.

- (5) The person by whom the development consent, construction certificate or fire safety order is issued or given may make such a determination only if:
- (a) the person is of the opinion that the measure will be affected by the work, and
  - (b) the person has specified in the fire safety schedule attached to the development consent, construction certificate or fire safety order that the final fire safety certificate issued in relation to the work must deal with that measure.

**172 Final fire safety certificate to be given to Fire Commissioner and prominently displayed in building**

- (1) As soon as practicable after a final fire safety certificate is issued, the owner of the building to which it relates:
- (a) must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be given to the Fire Commissioner, and
  - (b) must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.
- (2) Subclause (1) (b) ceases to apply to a final fire safety certificate only when every essential fire safety measure with which it deals has become the subject of a later fire safety certificate or fire safety statement.

**173 What is an interim fire safety certificate?** (cf clause 80F of EP&A Regulation 1994)

- (1) An interim fire safety certificate is a certificate issued by the owner of a building to the effect that each essential fire safety measure specified in the current fire safety schedule for the part of the building to which the certificate relates:
- (a) has been assessed by a properly qualified person, and
  - (b) was found, when it was assessed, to be capable of performing to at least the standard required by the current fire safety schedule for the building for which the certificate is issued.
- (2) The provisions of clause 171 and 172 apply to an interim fire safety certificate in the same way as they apply to a final fire safety certificate.

**Note—**

An interim fire safety certificate (or a final fire safety certificate) must be provided before an interim occupation certificate can be issued for a building under clause 153 (2).

**174 Form of fire safety certificates** (cf clause 80G of EP&A Regulation 1994)

- (1) A fire safety certificate for a building or part of a building must contain the following information:

- (a) the name and address of the owner of the building or part,
  - (b) a description of the building or part (including its address),
  - (c) a list identifying each essential fire safety measure in the building or part, together with the minimum standard of performance specified in the relevant fire safety schedule in relation to each such measure,
  - (d) the date or dates on which the essential fire safety measures were assessed,
  - (e) the type of certificate being issued (that is, final or interim),
  - (f) a statement to the effect referred to in clause 170 (for a final certificate) or clause 173 (for an interim certificate),
  - (g) the date on which the certificate is issued.
- (2) A fire safety certificate for a building or part of a building must be accompanied by a fire safety schedule for the building or part.

## **Division 5 Fire safety statements**

### **175 What is an annual fire safety statement?** (cf clause 80GA of EP&A Regulation 1994)

An annual fire safety statement is a statement issued by or on behalf of the owner of a building to the effect that:

- (a) each essential fire safety measure specified in the statement has been assessed by a properly qualified person and was found, when it was assessed, to be capable of performing:
  - (i) in the case of an essential fire safety measure applicable by virtue of a fire safety schedule, to a standard no less than that specified in the schedule, or
  - (ii) in the case of an essential fire safety measure applicable otherwise than by virtue of a fire safety schedule, to a standard no less than that to which the measure was originally designed and implemented, and
- (b) the building has been inspected by a properly qualified person and was found, when it was inspected, to be in a condition that did not disclose any grounds for a prosecution under Division 7.

### **176 Issue of annual fire safety statements**

- (1) The assessment and inspection of an essential fire safety measure or building must have been carried out within the period of 3 months prior to the date on which the annual fire safety statement is issued.
- (2) The choice of person to carry out an assessment or inspection is up to the owner of

the building.

- (3) The person who carries out an assessment must inspect and verify the performance of each fire safety measure being assessed.

**177 Annual fire safety statement to be given to council and Fire Commissioner and prominently displayed in building** (cf clause 80GB of EP&A Regulation 1994)

- (1) Each year, the owner of a building to which an essential fire safety measure is applicable must cause the council to be given an annual fire safety statement for the building.
- (2) An annual fire safety statement for a building:
  - (a) must deal with each essential fire safety measure in the building premises, and
  - (b) must be given:
    - (i) within 12 months after the date on which an annual fire safety statement was previously given, or
    - (ii) if a fire safety certificate has been issued within the previous 12 months, within 12 months after the fire safety certificate was issued,whichever is the later.
- (2A) Failure to give an annual fire safety statement to the council within the time prescribed by subclause (2) (b) constitutes a separate offence for each week beyond the expiry of that time for which the failure continues.
- (3) As soon as practicable after an annual fire safety statement is issued, the owner of the building to which it relates:
  - (a) must cause a copy of the statement (together with a copy of the current fire safety schedule) to be given to the Fire Commissioner, and
  - (b) must cause a further copy of the statement (together with a copy of the current fire safety schedule) to be prominently displayed in the building.
- (4) Subclause (3) (b) ceases to apply to an annual fire safety statement only when every essential fire safety measure with which it deals has become the subject of a later fire safety certificate or fire safety statement.

**178 What is a supplementary fire safety statement?** (cf clause 80GC of EP&A Regulation 1994)

A supplementary fire safety statement is a statement issued by the owner of a building to the effect that each critical fire safety measure specified in the statement has been assessed by a properly qualified person and was found, when it was assessed, to be capable of performing to at least the standard required by the current fire safety schedule

for the building for which the statement is issued.

**179 Issue of supplementary fire safety statements**

- (1) The assessment of a critical fire safety measure must have been carried out within the period of one month prior to the date on which the supplementary fire safety statement is issued.
- (2) The choice of person to carry out the assessment is up to the owner of the building.
- (3) The person who carries out the assessment must inspect and verify the performance of each fire safety measure being assessed.

**180 Supplementary fire safety statement to be given to council and Fire Commissioner and prominently displayed in building** (cf clause 80GD of EP&A Regulation 1994)

- (1) The owner of building premises in which a critical fire safety measure is implemented must cause the council to be given periodic supplementary fire safety statements for that measure.
- (2) A supplementary fire safety statement for a critical fire safety measure must be given at such intervals (being intervals of less than 12 months) as is specified in respect of that measure in the current fire safety schedule for the building.
- (2A) Failure to give a supplementary fire safety statement to the council within the time required by the current fire safety schedule for the building constitutes a separate offence for each week beyond the expiry of that time for which the failure continues.
- (3) As soon as practicable after a supplementary fire safety statement is issued, the owner of the building to which it relates:
  - (a) must cause a copy of the statement (together with a copy of the current fire safety schedule) to be given to the Fire Commissioner, and
  - (b) must cause a further copy of the statement (together with a copy of the current fire safety schedule) to be prominently displayed in the building.
- (4) Subclause (3) (b) ceases to apply to a supplementary fire safety statement only when every critical fire safety measure with which it deals has become the subject of a later fire safety certificate or fire safety statement.

**181 Form of fire safety statements** (cf clause 80GE of EP&A Regulation 1994)

- (1) A fire safety statement for a building or part of a building must contain the following information:
  - (a) the name and address of the owner of the building or part,
  - (b) a description of the building or part (including its address),

(c) a list identifying:

- (i) each essential fire safety measure in the building or part (for an annual statement), or
- (ii) each critical fire safety measure in the building or part (for a supplementary statement),

together with the minimum standard of performance specified in the relevant fire safety schedule in relation to each such measure,

- (d) the date or dates on which the essential fire safety measures were assessed,
- (e) the date on which the building or part was inspected,
- (f) the type of statement being issued (that is, annual or supplementary),
- (g) a statement to the effect referred to in clause 175 (for an annual statement) or clause 178 (for a supplementary statement),
- (h) the date on which the statement is issued.

(2) A fire safety statement for a building or part of a building must be accompanied by a fire safety schedule for the building or part.

## **Division 6 Fire safety maintenance**

### **182 Essential fire safety measures to be maintained** (cf clause 80GF of EP&A Regulation 1994)

- (1) The owner of a building to which an essential fire safety measure is applicable must not fail to maintain each essential fire safety measure in the building premises:
  - (a) in the case of an essential fire safety measure applicable by virtue of a fire safety schedule, to a standard no less than that specified in the schedule, or
  - (b) in the case of an essential fire safety measure applicable otherwise than by virtue of a fire safety schedule, to a standard no less than that to which the measure was originally designed and implemented.
- (2) As soon as practicable after receiving a request in that regard from the owner of a building to which an essential fire safety measure is applicable otherwise than by virtue of a fire safety schedule, the council must provide the owner with a schedule of the essential fire safety measures for the building premises.

## **Division 7 Miscellaneous fire safety offences**

### **183 Fire safety notices** (cf clause 80GG of EP&A Regulation 1994)

- (1) If:



- (a) a building's fire exit includes any fire-isolated stairway, passageway or ramp, and
- (b) a notice in the form at the end of this clause is not at all times displayed in a conspicuous position adjacent to a doorway providing access to, but not within, that stairway, passageway or ramp,

the occupier of the part of the premises adjacent to the stairway, passageway or ramp is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) The words "OFFENCE RELATING TO FIRE EXITS" in the notice referred to in subclause (1) (b) must be in letters at least 8 millimetres high, and the remaining words must be in letters at least 2.5 millimetres high.
- (3) A notice in the form prescribed under the *Local Government Act 1919* or the *Local Government Act 1993* for the purposes of a provision corresponding to this clause is taken to comply with the requirements of this clause.

#### **OFFENCE RELATING TO FIRE EXITS**

It is an offence under the *Environmental Planning and Assessment Act 1979*:

- (a) to place anything in or near this fire exit that may obstruct persons moving to and from the exit, or
- (b) to interfere with or obstruct the operation of any fire doors, or
- (c) to remove, damage or otherwise interfere with this notice.

#### **184 Fire exits** (cf clause 80GH of EP&A Regulation 1994)

A person must not:

- (a) place anything that may impede the free passage of persons:
  - (i) in a stairway, passageway or ramp serving as or forming part of a building's fire exit, or
  - (ii) in a path of travel leading to a building's fire exit, or
- (b) interfere with, or cause obstruction or impediment to, the operation of any fire doors providing access to a stairway, passageway or ramp serving as or forming part of a building's fire exit, or
- (c) remove, damage or otherwise interfere with a notice referred to in clause 183.

Maximum penalty: 100 penalty units.

**185 Doors relating to fire exits** (cf clause 80GI of EP&A Regulation 1994)

A person must not:

- (a) without lawful excuse, interfere with, or cause obstruction or impediment to, the operation of any door that:
  - (i) serves as or forms part of a building's fire exit, or
  - (ii) is situated in a path of travel leading to a building's fire exit, or
- (b) without lawful excuse, obstruct any doorway that:
  - (i) serves as or forms part of a building's fire exit, or
  - (ii) is situated in a path of travel leading to a building's fire exit.

Maximum penalty: 100 penalty units.

**186 Paths of travel to fire exits** (cf clause 80GJ of EP&A Regulation 1994)

The owner of a building:

- (a) must ensure that:
  - (i) any stairway, passageway or ramp serving as or forming part of a building's fire exit, and
  - (ii) any path of travel leading to a building's fire exit,is kept clear of anything that may impede the free passage of persons, and
- (b) must ensure that the operation of any door that:
  - (i) serves as or forms part of a building's fire exit, or
  - (ii) is situated in a path of travel leading to a building's fire exit,is not interfered with, or otherwise obstructed or impeded, except with lawful excuse, and
- (c) must ensure that any notice required by clause 183 to be displayed is so displayed.

Maximum penalty: 100 penalty units.

**Division 8 Miscellaneous**

**187 Modification and supplementation of Building Code of Australia standards** (cf clause 80H of EP&A Regulation 1994)

- (1) This clause applies to development the subject of:

- (a) a development application for the change of building use of an existing building where the application does not seek any alteration, enlargement or extension of the building, or
  - (b) an application for a construction certificate for building work, other than building work associated with a change of building use referred to in paragraph (a).
- (2) The applicant in relation to development to which this clause applies may lodge with the consent authority or certifying authority an objection:
- (a) that the *Building Code of Australia* (as applied by clause 98 or 133) does not make appropriate provision with respect to:
    - (i) the building in relation to which the change of building use is sought, or
    - (ii) the proposed building work, or
  - (b) that compliance with any specified provision of the *Building Code of Australia* (as applied by clause 98 or 133) is unreasonable or unnecessary in the particular circumstances of the case.

**Note—**

This clause does not authorise the making of an objection to a condition imposed on a development consent otherwise than by operation of clause 98 or 133. So if a consent authority requires the provision of specified fire safety equipment, an objection to that requirement cannot be made merely because the requirement happens to be the same as a requirement imposed by the *Building Code of Australia*. Nor can it be made if the consent authority requires the development to be carried out in accordance with the *Building Code of Australia*, as the requirement then arises not from the *Building Code of Australia* (as applied by clause 98 or 133) but from the *Building Code of Australia* (as applied by the terms of the condition).

- (3) In the case of an objection with respect to a Category 3 fire safety provision (as applied by clause 98 or 133), the objection:
- (a) must indicate that a similar objection has been made to the Fire Commissioner, and
  - (b) must be accompanied by a copy of the Fire Commissioner's determination of the objection.
- (4) An objection may not be made with respect to a Category 1 fire safety provision (as applied by clause 98 or 133) by an applicant in relation to development the subject of a development application referred to in subclause (1) (a) if the application has already been determined by the granting of development consent.
- (5) The applicant must specify the grounds of the objection and (in the case of proposed building work) must furnish the consent authority or certifying authority with a copy of the plans and specifications for the building work.
- (6) If the consent authority or certifying authority is satisfied that the objection is well

founded, it may do either or both of the following:

- (a) it may exempt the development, either conditionally or unconditionally, from any specified provision of the *Building Code of Australia* (as applied by clause 98 or 133),
  - (b) it may direct that specified requirements are to apply to the proposed building work.
- (7) A consent authority or certifying authority may not take action under this clause except with the concurrence of the Director-General.
- (8) The Director-General:
- (a) may give the consent authority or certifying authority notice that concurrence may be assumed, in relation to any particular class of objections, subject to such conditions as are specified in the notice, and
  - (b) may amend any such notice by a further notice given to that consent authority or certifying authority.
- (9) Action taken in accordance with a notice referred to in subclause (8) is as valid as it would be if the consent authority or certifying authority had obtained the concurrence of the Director-General.
- (10) Concurrence is to be assumed if at least 40 days have passed since concurrence was sought and the Director-General has not, within that period, expressly refused concurrence.
- (11) Any exemption or direction given by the consent authority or certifying authority under this clause must be given subject to, and must not be inconsistent with, any conditions to which the concurrence of the Director-General is subject.
- (12) When granting development consent for development the subject of a development application referred to in subclause (1) (a), the consent authority must ensure that the terms of any condition referred to in subclause (6) (a) and any requirement referred to in subclause (6) (b):
- (a) have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
  - (b) are included in the conditions attached to the development consent, in the case of a condition whose terms are not capable of being so included.
- (13) When issuing a construction certificate for building work the subject of an application referred to in subclause (1) (b), the certifying authority must ensure that the terms of any condition referred to in subclause (6) (a) and any requirement referred to in subclause (6) (b):

- (a) have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
  - (b) are included in the conditions attached to the certificate, in the case of a condition whose terms are not capable of being so included.
- (14) Compliance with the requirement that the terms of a condition be included in the plans and specifications for building work is sufficiently complied with:
- (a) if the plans and specifications are redrawn so as to accord with those terms, or
  - (b) if those terms are included by way of an annotation (whether by way of insertion, deletion or alteration) marked on the relevant part of those plans and specifications.

**188 Exemption from fire safety standards** (cf clause 80I of EP&A Regulation 1994)

- (1) This clause applies to development the subject of:
- (a) a development application for the change of building use of an existing building where the application does not seek any alteration, enlargement or extension of the building, or
  - (b) an application for a construction certificate for building work, other than building work associated with a change of building use referred to in paragraph (a).

**Note—**

This clause does not authorise the making of an objection to a condition imposed on a development consent otherwise than by operation of clause 98 or 133. So if a consent authority requires the provision of specified fire safety equipment, an objection to that requirement cannot be made merely because the requirement happens to be the same as a requirement imposed by the *Building Code of Australia*. Nor can it be made if the consent authority requires the development to be carried out in accordance with the *Building Code of Australia*, as the requirement then arises not from the *Building Code of Australia* (as applied by clause 98 or 133) but from the *Building Code of Australia* (as applied by the terms of the condition).

- (2) The applicant in relation to development to which this clause applies may lodge with the Fire Commissioner an objection that compliance with any specified Category 3 fire safety provision (as applied by clause 98 or 133) is unreasonable or unnecessary in the particular circumstances of the case.
- (3) The applicant must specify the grounds of the objection and (in the case of proposed building work) must furnish the Fire Commissioner with a copy of the plans and specifications for the building work.
- (4) If the Fire Commissioner is satisfied that the objection is well founded, the Fire Commissioner may exempt the development, either conditionally or unconditionally, from any specified Category 3 fire safety provision (as applied by clause 98 or 133).
- (5) When granting development consent for development the subject of a development

application referred to in subclause (1) (a), a consent authority must ensure that the terms of any condition referred to in subclause (4):

- (a) have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
- (b) are included in the conditions attached to the development consent, in the case of a condition whose terms are not capable of being so included.

(6) When issuing a construction certificate for building work the subject of an application referred to in subclause (1) (b), a certifying authority must ensure that the terms of any condition referred to in subclause (4):

- (a) have been included in the plans and specifications for the building work, in the case of a condition whose terms are capable of being so included, or
- (b) are included in the conditions attached to the certificate, in the case of a condition whose terms are not capable of being so included.

(7) Compliance with the requirement that the terms of a condition be included in the plans and specifications for building work is sufficiently complied with:

- (a) if the plans and specifications are redrawn so as to accord with those terms, or
- (b) if those terms are included by way of an annotation (whether by way of insertion, deletion or alteration) marked on the relevant part of those plans and specifications.

**189 Prescribed matters for inspection by NSW Fire Brigades: section 118L (1) (b) of the Act** (cf clause 80J of EP&A Regulation 1994)

For the purposes of section 118L (1) (b) of the Act, the following provisions are prescribed:

- (a) such of the provisions of Division 2A of Part 6 of the Act as relate to compliance with a fire safety order,
- (b) such of the provisions of clauses 172 (1) (b), 177 (3) (b), 180 (3) (b) and 182 (2) as relate to the implementation, maintenance or certification of essential fire safety measures for building premises,
- (c) such of the provisions of Division 7 as relate to fire safety notices, fire exits, doors relating to fire exits and paths of travel to fire exits.

**190 Offences relating to certain Crown property** (cf clause 80K of EP&A Regulation 1994)

No proceedings may be taken for an offence under this Part with respect to a building:

- (a) that is situated on a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*, or

(b) that is a School of Arts or Mechanics Institute,

except with the consent of the Minister given after consultation with the Minister administering the *Crown Lands Act 1989*.

## **Part 10 Accreditation bodies and accredited certifiers**

### **Division 1 Accreditation bodies**

#### **191 Definition**

In this Division, **Ministerial guidelines** means guidelines in force under clause 198.

#### **192 Application for authorisation** (cf clause 81 of EP&A Regulation 1994)

- (1) A professional association may apply to the Minister to be authorised as an accreditation body with respect to any specified class of matters.
- (2) An application:
  - (a) must be in writing, and
  - (b) must be delivered by hand, sent by post or transmitted electronically to the offices of the Department, but may not be sent by facsimile transmission, and
  - (c) must indicate the class of matters in relation to which the association seeks to be authorised, and
  - (d) must address each of the matters in respect of which the Minister must be satisfied (as referred to in clause 194) before the association may be authorised as an accreditation body, and
  - (e) must comply with such requirements (if any) as are contained in the Ministerial guidelines.

#### **193 Public notice of applications** (cf clause 81A of EP&A Regulation 1994)

- (1) The Minister must ensure that an application for authorisation as an accreditation body is publicly notified in a daily newspaper circulating throughout New South Wales and, together with any accompanying information, is available for inspection during the period, and at the place or places, specified in the notice.
- (2) The notice:
  - (a) must indicate where a copy of the application may be inspected or obtained, and
  - (b) must indicate that any person may make submissions to the Minister with respect to the application, and
  - (c) must indicate the period of time (being at least 28 days) within which any such

submission must be made.

- (3) During the relevant submission period:
  - (a) any person may inspect the application and any accompanying information and make extracts from or copies of them, and
  - (b) any person may make written submissions to the Minister with respect to the application.
- (4) In determining an application, the Minister must have regard to any submissions duly made in response to the notice.

**194 Matters to be demonstrated by proposed accreditation body** (cf clause 81B of EP&A Regulation 1994)

- (1) A professional association is not to be authorised as an accreditation body unless the Minister is satisfied that the association:
  - (a) has sufficient resources and expertise to exercise the functions of an accreditation body, and
  - (b) in the exercise of those functions, will comply with the requirements of the Act, this Regulation and the Ministerial guidelines,in relation to the class of matters in respect of which it is to be authorised.
- (2) For the purposes of this clause, the Minister must have particular regard to the following functions of an accreditation body:
  - (a) the annual accreditation of certifiers, including procedures for establishing that applicants for accreditation:
    - (i) have the qualifications or expertise to exercise the functions of an accredited certifier, and
    - (ii) are covered by the required insurance (within the meaning of section 109ZN of the Act) for the whole of the period for which the certifier is to be accredited,
  - (b) the monitoring of the conduct of accredited certifiers,
  - (c) the taking of disciplinary proceedings against accredited certifiers,
  - (d) the implementation of the decisions of the Administrative Decisions Tribunal with respect to accredited certifiers,
  - (e) the maintenance of records and the provision of information concerning accredited certifiers,
  - (f) such other functions of an accreditation body as the Ministerial guidelines may



specify.

**195 Authorisations** (cf clause 81C of EP&A Regulation 1994)

- (1) As soon as practicable after authorising a professional association as an accreditation body, the Minister must cause notice of that fact to be published in the Gazette.
- (2) The notice must indicate the name of the association, the fact that it is authorised as an accreditation body, the class of matters in relation to which it is authorised and the terms of the authorisation or the place at which the terms of the authorisation may be inspected.
- (3) The authorisation takes effect on the date on which the notice is published in the Gazette.

**196 Variation of authorisations** (cf clause 81D of EP&A Regulation 1994)

- (1) The Minister may from time to time vary the terms of an accreditation body's authorisation.
- (2) The proposal to vary the terms of an authorisation may be made by the Minister or by the accreditation body.
- (3) Clause 193 applies to a proposal to vary the terms of an accreditation body's authorisation (whether made by the Minister or by the accreditation body) in the same way as it applies to an application for authorisation as an accreditation body.
- (4) The terms of an accreditation body's authorisation may not be varied unless the Minister is satisfied (having regard to the functions referred to in clause 194) that the accreditation body:
  - (a) has sufficient resources and expertise to exercise the functions of an accreditation body, and
  - (b) in the exercise of those functions, will comply with the requirements of the Act, this Regulation and the Ministerial guidelines,in relation to the class of matters in respect of which the accreditation body is, or (if the variation affects that class of matters) is to be, authorised.
- (5) As soon as practicable after deciding to vary the terms of an accreditation body's authorisation, the Minister must cause notice of that fact to be published in the Gazette.
- (6) The notice must indicate the name of the association, the fact that the terms of its authorisation have been varied and the terms of its authorisation (as so varied) or the place at which the terms of its authorisation (as so varied) may be inspected.
- (7) A variation of the terms of an accreditation body's authorisation takes effect on the

date on which the notice is published in the Gazette.

**197 Withdrawal of authorisations** (cf clause 81E of EP&A Regulation 1994)

(1) If satisfied that an accreditation body:

- (a) is in breach of its authorisation, or
- (b) does not have sufficient resources or expertise to exercise the functions of an accreditation body, or
- (c) has failed to comply with the requirements of the Act, this Regulation or the Ministerial guidelines,

the Minister may withdraw its authorisation by means of a notice published in the Gazette.

(2) Before taking any action under this clause, the Minister:

- (a) must notify the accreditation body of the action proposed by the Minister, and
- (b) must give the accreditation body a reasonable opportunity to make submissions to the Minister with respect to the action proposed, and
- (c) must have due regard to any submissions made by the accreditation body with respect to the action proposed.

(3) Withdrawal of an accreditation body's authorisation takes effect on the date on which the notice is published in the Gazette.

(4) On withdrawing an accreditation body's authorisation, the Minister must cause a copy of the notice to be given to the accreditation body.

**198 Ministerial guidelines** (cf clause 81F of EP&A Regulation 1994)

(1) The Minister may from time to time establish guidelines for the purposes of this Part and may from time to time amend or revoke any guidelines so established.

(2) The guidelines may deal with:

- (a) the form and content of applications made by professional associations for authorisation as accreditation bodies, and
- (b) any aspect of the exercise of an accreditation body's functions, and
- (c) any other matter relating to accreditation bodies with respect to which the Minister considers that it is appropriate to establish guidelines,

whether generally or in relation to particular accreditation bodies or particular classes of matters.

**199 Savings and transitional provisions where authorisation ceases** (cf clause 81G of EP&A Regulation 1994)

(1) This clause applies to:

- (a) an accreditation body that ceases to exist or whose authorisation as an accreditation body is withdrawn, and
- (b) an accreditation body that ceases to be authorised in respect of a class of matters because of a variation in the terms of its authorisation,

(referred to in either case as a **defunct accreditation body**) but, in relation to an accreditation body that ceases to be authorised in respect of a class of matters, applies only in relation to the class of matters in respect of which the accreditation body has ceased to be authorised.

(2) Subject to action taken under the Act or this Regulation, as applied by this clause, any accreditation granted by a defunct accreditation body continues to have effect according to its terms.

(3) If an accreditation body becomes defunct:

- (a) the functions of the defunct accreditation body (including the commencement and maintenance of any proceedings before the Administrative Decisions Tribunal under Division 3 of Part 4B of the Act) are to be exercised by the Minister, or by such other person as the Minister may appoint to exercise those functions, and
- (b) the Act and this Regulation apply to the Minister, or to the person so appointed, in the same way as they previously applied to the accreditation body before it became defunct.

(4) Without limiting subclause (3) (a), another accreditation body may be appointed to exercise the functions of a defunct accreditation body.

(5) Neither the Minister, nor any person appointed to exercise the functions of a defunct accreditation body, is liable for any act or omission done or omitted to be done in good faith in the exercise of those functions.

## **Division 2 Registers and records**

**200 Accreditation bodies' registers** (cf clause 81H of EP&A Regulation 1994)

(1) Each accreditation body must keep a register in relation to all accredited certifiers accredited by it.

(2) The register must contain the following particulars for each person who is, or has at any time been, accredited by the accreditation body as a certifier:

- (a) the person's name and the address of the person's place of business,

- (a1) a telephone number or telephone numbers for contacting the person for business purposes,
  - (b) the class of matters for which the person is or has been accredited,
  - (c) the date on which the person was first accredited, and the date of each occasion on which the person's accreditation has been renewed,
  - (d) the name of each insurer with whom the person has effected the required insurance within the meaning of section 109ZN of the Act, the identifying number of each relevant insurance contract and the dates between which the indemnity (other than the run-off cover) provided by the relevant insurance contract has or has had effect,
  - (e) the terms of any conditions to which the person's accreditation is or has been subject, and the dates between which any such condition has or has had effect,
  - (f) in the case of a person whose accreditation is or has been suspended, the dates between which the suspension has or has had effect,
  - (g) in the case of a person whose accreditation as an accredited certifier has been withdrawn or has otherwise ceased to have effect, the date on which the accreditation was withdrawn or ceased to have effect, as the case requires,
  - (h) a list of the projects in connection with which the person has issued complying development certificates or Part 4A certificates, indicating:
    - (i) the kinds of certificates issued by the person in relation to each such project, and
    - (ii) the classification of any building involved in each such project, and
    - (iii) the local government area in which each such project was carried out, and
    - (iv) except in the case of a subdivision certificate, the person's estimate of the cost of each project, and
    - (v) in the case of a subdivision certificate, the number of lots that will be created by the subdivision.
- (3) An accreditation body must make its register available for inspection, free of charge, during the accreditation body's ordinary office hours.
- (4) A copy of any extracts from the register may be made on payment of a reasonable copying charge set by the accreditation body.
- (5) An accreditation body must furnish the Director-General with copies of all entries it makes in its register.

- (6) An accredited certifier must ensure that the relevant accreditation body is notified immediately of any event or circumstance that requires any alteration to be made to the information contained in the register in relation to the certifier.

**201 Other documents to be kept by accreditation bodies** (cf clause 81I of EP&A Regulation 1994)

- (1) An accreditation body must keep copies of the following documents:
- (a) all applications for accreditation under the Act,
  - (b) all notices and records, and all copies of notices and records, received by it under the Act or this Regulation,
  - (c) all records made by it, under the Act or under this Regulation, in relation to complaints made to it under the Act,
  - (d) all reports received by it under section 109U of the Act,
  - (e) all copies of documents given to it as referred to in clause 205 (4).
- (2) Subclause (1) (e) does not require an accreditation body to keep copies of any certificate, or of any ancillary application, determination, plan, specification or other document, for more than 15 years from the date on which the certificate was issued.
- (3) An accreditation body must cause a copy of any document referred to in subclause (1) to be given to the Director-General if the Director-General so requests by notice in writing served on the accreditation body.

**202 Central register** (cf clause 81J of EP&A Regulation 1994)

- (1) The Director-General must cause a register to be kept in relation to all accredited certifiers (a **central register**).
- (2) The central register must contain the following particulars for each person who is, or has at any time been, an accredited certifier:
- (a) the person's name and the address of the person's place of business,
    - (a1) a telephone number or telephone numbers for contacting the person for business purposes,
  - (b) the class of matters for which the person is or has been accredited,
  - (c) the name of the accreditation body by which the person is or has been accredited,
  - (d) the date on which the person was first accredited, and the date of each occasion on which the person's accreditation has been renewed,
  - (e) the name of each insurer with whom the person has effected the required

insurance within the meaning of section 109ZN of the Act, the identifying number of each relevant insurance contract and the dates between which the indemnity (other than the run-off cover) provided by the relevant insurance contract has or has had effect,

- (f) the terms of any conditions to which the person's accreditation is or has been subject, and the dates between which any such condition has or has had effect,
- (g) in the case of a person whose accreditation is or has been suspended, the dates between which the suspension has or has had effect,
- (h) in the case of an accredited certifier whose accreditation has been withdrawn or has otherwise ceased to have effect, the date on which the accreditation was withdrawn or ceased to have effect, as the case requires.

**203 Annual reports** (cf clause 81K of EP&A Regulation 1994)

- (1) As soon as practicable after 30 June, but before 31 December, in each year, an accreditation body must prepare and forward to the Minister a report of the accreditation body's work and activities under the Act for the period of 12 months ending on 30 June in that year (the **reporting year**).
- (2) An accreditation body's report must include particulars as to the following:
  - (a) the number of persons accredited by the accreditation body during the reporting year,
  - (b) the number of complaints against accredited certifiers made to the accreditation body during the reporting year,
  - (c) the action taken by the accreditation body with respect to each such complaint, including details as to:
    - (i) the number of complaints that it has dismissed, and
    - (ii) the number of complaints in respect of which it has instituted proceedings in the Administrative Decisions Tribunal, and
    - (iii) the number of complaints that it has dealt with otherwise than as referred to in subparagraphs (i) and (ii),
  - (d) the action taken by the Administrative Decisions Tribunal with respect to each complaint in respect of which it has instituted proceedings in the Tribunal,
  - (e) the number of persons whose accreditation has been suspended or withdrawn during the reporting year, including details as to:
    - (i) the number of persons whose accreditation has been suspended as a consequence of action taken by the Administrative Decisions Tribunal with

- respect to a complaint, and
- (ii) the number of persons whose accreditation has been withdrawn as a consequence of action taken by the Administrative Decisions Tribunal with respect to a complaint, and
  - (iii) the number of persons whose accreditation has been withdrawn otherwise than as a consequence of action taken by the Administrative Decisions Tribunal with respect to a complaint,
- (f) such particulars as are required by the terms of its authorisation to be included in its report.
- (3) The Minister must cause each such report to be laid before both Houses of Parliament as soon as practicable after receiving the report.

### **Division 3 Accredited certifiers**

#### **204 Grounds for refusing, withdrawing or suspending accreditation** (cf clause 81L of EP&A Regulation 1994)

- (1) For the purposes of section 109T (2) (c) of the Act, an accreditation body may withdraw a person's accreditation as an accredited certifier if:
- (a) the person dies, or
  - (b) the person is a mentally incapacitated person, or
  - (c) the person makes a written request to the accreditation body for the withdrawal of that person's accreditation, or
  - (d) the person's accreditation as a certifier (in whatever terms expressed) is suspended (otherwise than at that person's request) under a corresponding law, or
  - (e) the person has been accredited on the basis of an error of fact (whether or not arising from a misrepresentation made by the person), or
  - (f) the accreditation body is satisfied that the person is not a fit and proper person to be an accredited certifier.
- (1A) Without limiting any other grounds on which a person may be found not to be fit and proper, an accreditation body may be satisfied that a person is not a fit and proper person to be an accredited certifier on the ground that the person:
- (a) has contravened a law, whether or not a New South Wales law, and whether or not the contravention is an offence, or
  - (b) has failed to comply with a statutory or other duty, or a contractual obligation, imposed on the person by or in accordance with a law, whether or not a New

South Wales law, or

- (c) is an undischarged bankrupt, or
  - (d) has represented himself or herself as being an accredited certifier when the person was not an accredited certifier, or
  - (e) has contravened any code of conduct of an accreditation body.
- (2) For the purposes of section 109T (2) (c) of the Act, an accreditation body may suspend a person's accreditation as an accredited certifier if:
- (a) the person makes a written request to the accreditation body for the suspension of that person's accreditation, or
  - (b) the person's accreditation as a certifier (in whatever terms expressed) is suspended (otherwise than at that person's request) under a corresponding law.
- (3) For the purposes of section 109T (2) (c) of the Act, an accreditation body may refuse to accredit a person as an accredited certifier on any of the grounds on which it could (otherwise than at that person's request) withdraw or suspend that person's accreditation under subclause (1) or (2).
- (4) In this clause, **corresponding law** means:
- (a) the *Building Act 1975* of Queensland,
  - (b) the *Building Act 1993* of Victoria,
  - (c) the *Building Act 1993* of the Northern Territory,
  - (d) the *Development Act 1993* of South Australia,
  - (e) the *Construction Practitioners Registration Act 1998* of the Australian Capital Territory.

**205 Record keeping by accredited certifiers** (cf clause 81M of EP&A Regulation 1994)

- (1) An accredited certifier must cause copies of the following documents to be kept at his or her business premises at all times:
- (a) any application for a certificate that has been made to the accredited certifier under this Act,
  - (b) any written determination that has been made by the accredited certifier in relation to an application for a certificate under this Act,
  - (c) any certificate or other document that the accredited certifier has relied on for the purpose of issuing a certificate under this Act,



- (d) any certificate issued by the accredited certifier under this Act,
  - (e) any plans and specifications in respect of which the accredited certifier has issued a certificate under this Act,
  - (f) a list of the projects in connection with which the accredited certifier has issued complying development certificates or Part 4A certificates, indicating:
    - (i) the kinds of certificates issued by the accredited certifier in relation to each such project, and
    - (ii) the classification of any building involved in each such project, and
    - (iii) the local government area in which each such project was carried out, and
    - (iv) except in the case of a subdivision certificate, the person's estimate of the cost of each project, and
    - (v) in the case of a subdivision certificate, the number of lots that will be created by the subdivision,
  - (g) any record of a critical stage inspection required to be made by the accredited certifier,
  - (h) if the accredited certifier is a principal certifying authority, any copy of a record of a critical stage inspection provided to the principal certifying authority by another certifying authority.
- (2) This clause does not require an accredited certifier to keep copies of any such certificate, or of any ancillary application, determination, plan, specification or other document, for more than 15 years from the date on which the certificate was issued or, in the case of a record of a critical stage inspection, from the time of the inspection.
- (3) An accredited certifier must cause a copy of any document referred to in subclause (1) to be given to the Director-General if the Director-General so requests by notice in writing served on the accredited certifier.
- (4) On ceasing to be an accredited certifier, a person must cause copies of all documents referred to in subclause (1) to be given to the relevant accreditation body.

## **Part 11 Insurance**

### **Division 1 Preliminary**

#### **206 Definitions** (cf clause 81N of EP&A Regulation 1994)

In this Part:

**approved professional indemnity contract** means an insurance contract that indemnifies an individual, a company or a partnership against an accredited certifier's statutory liability.

**associate** has the same meaning as it has in the [Corporations Act 2001](#) of the Commonwealth.

**company contract** means an approved professional indemnity contract issued to a company.

**expiry date**, for an approved professional indemnity contract, means the date specified in the contract as the contract's expiry date.

**individual contract** means an approved professional indemnity contract issued to an individual.

**partnership contract** means an approved professional indemnity contract issued to a partnership.

**person covered by the contract**, in relation to a company contract or partnership contract, means an accredited certifier to whom the indemnity provided by the contract extends.

**statutory liability** means a person's liability to pay compensatory damages for breach of professional duty as an accredited certifier (whether actual or alleged) arising from:

- (a) any act or omission of the person, or
- (b) any misleading or deceptive conduct by the person (including conduct that is likely to mislead or deceive) within the meaning of:
  - (i) section 52, 53, 53A or 74 of the [Trade Practices Act 1974](#) of the Commonwealth, or
  - (ii) any provision of the legislation of this or any other State or Territory that corresponds to a section referred to in subparagraph (i),

while acting in the capacity of an accredited certifier, whether as an individual, as a director or employee of a company or as a partner or employee of a partnership.

## **Division 2 Approved professional indemnity contracts**

### **207 Required insurance: section 109ZN** (cf clause 81O of EP&A Regulation 1994)

For the purposes of section 109ZN (2) of the Act:

- (a) an insurance contract that an accredited certifier is required to be indemnified by is an approved professional indemnity contract, and
- (b) the liability against which an accredited certifier is required to be indemnified by such

a contract is the accredited certifier's statutory liability for the whole of the period during which he or she has been an accredited certifier.

**208 Individual contracts** (cf clause 81P of EP&A Regulation 1994)

- (1) An approved professional indemnity contract may provide indemnity to an individual accredited certifier.
- (2) The indemnity provided by an individual contract must extend to all acts and omissions of the person covered by the contract that have occurred at any time since the insured first became an accredited certifier.
- (3) The indemnity provided by an individual contract may be limited to those acts and omissions in respect of which a claim is made against the insured, and notified to the insurer, before the contract's expiry date.
- (4) Nothing in this clause requires an individual contract to provide indemnity for acts or omissions that occur after the contract's expiry date.
- (5) (Repealed)
- (6) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

**209 Company contracts** (cf clause 81Q of EP&A Regulation 1994)

- (1) An approved professional indemnity contract may provide indemnity to a company, including such of the directors or employees of the company as are accredited certifiers.
- (2) The indemnity provided by a company contract must extend to:
  - (a) all persons who, at any time during the term of the contract, are or become:
    - (i) accredited certifiers, and
    - (ii) directors or employees of the company,whether or not they cease to be accredited certifiers, or cease to be directors or employees of the company, during the term of the contract, and
  - (b) all persons who, at any time before the beginning of the term of the contract, had been:
    - (i) accredited certifiers, and
    - (ii) directors or employees of the company,but who had ceased to be accredited certifiers, or had ceased to be directors or employees of the company, before the beginning of that term.

- (3) Each person covered by a company contract must be named in the contract.
- (4) The indemnity provided by a company contract must extend to all acts and omissions of the persons covered by the contract that have occurred, while those persons were directors or employees of the company, in the course of work carried out on behalf of the company.

**Note—**

A company contract does not cover an accredited certifier for any period before he or she became a director or employee of the company. Consequently the person will need to obtain separate indemnity for that period in order to comply with the requirements of section 109ZN of the Act.

- (5) The indemnity provided by a company contract may be limited to those acts and omissions in respect of which a claim is made against the insured, and notified to the insurer, before the contract's expiry date.
- (6) Nothing in this clause requires a company contract to provide indemnity for acts or omissions that occur after the contract's expiry date.
- (7) (Repealed)
- (8) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

**210 Partnership contracts** (cf clause 81R of EP&A Regulation 1994)

- (1) An approved professional indemnity contract may provide indemnity to a partnership, including such of the partners or employees of the partnership as are accredited certifiers.
- (2) The indemnity provided by a partnership contract must extend to:
  - (a) all persons who, at any time during the term of the contract, are or become:
    - (i) accredited certifiers, and
    - (ii) partners or employees of the partnership,whether or not they cease to be accredited certifiers, or cease to be partners or employees of the partnership, during the term of the contract, and
  - (b) all persons who, at any time before the beginning of the term of the contract, had been:
    - (i) accredited certifiers, and
    - (ii) partners or employees of the partnership,but who had ceased to be accredited certifiers, or had ceased to be partners or employees of the partnership, before the beginning of that term.

- (3) Each person covered by a partnership contract must be named in the contract.
- (4) The indemnity provided by a partnership contract must extend to all acts and omissions of the persons covered by the contract that have occurred, since those persons first became partners or employees of the partnership, in the course of work carried out on behalf of the partnership.

**Note—**

A company contract does not cover an accredited certifier for any period before he or she became a director or employee of the company. Consequently the person will need to obtain separate indemnity for that period in order to comply with the requirements of section 109ZN of the Act.

- (5) The indemnity provided by a partnership contract may be limited to those acts and omissions in respect of which a claim is made against the insured, and notified to the insurer, before the contract's expiry date.
- (6) Nothing in this clause requires a partnership contract to provide indemnity for acts or omissions that occur after the contract's expiry date.
- (7) (Repealed)
- (8) The requirements of this clause are subject to the exceptions and exclusions allowed by the other provisions of this Part.

**211-213 (Repealed)**

**214 Limit of indemnity as to compensation** (cf clause 81V of EP&A Regulation 1994)

- (1) An approved professional indemnity contract may limit the indemnity provided to an insured (being an individual), with respect to all claims made by the insured under the contract in any one year, to an amount of at least \$1,000,000.
- (2) For an insured that is a company, an approved professional indemnity contract must indemnify the company, with respect to all claims made by the company under the contract in any one year, for not less than the amount calculated by multiplying \$1,000,000 by:
  - (a) the number of accredited certifiers who are directors or employees of the company as at the date on which the contract is issued, or
  - (b) if the contract is the fourth or subsequent contract issued to the company, whether by the same or by another insurer, the average number of accredited certifiers who have been directors or employees of the company at any one time during the previous 3 years.
- (3) For an insured that is a partnership, an approved professional indemnity contract must indemnify the partnership, with respect to all claims made by the partnership in any one year under the contract, for not less than the amount calculated by multiplying \$1,000,000 by:

- (a) the number or accredited certifiers who are partners or employees of the partnership as at the date on which the contract is issued, or
  - (b) if the contract is the fourth or subsequent contract issued to the partnership, whether by the same or by another insurer, the average number of accredited certifiers who have been partners or employees of the partnership at any one time during the previous 3 years.
- (4) Nothing in subclause (2) or (3) requires the indemnity provided by an approved professional indemnity contract, with respect to all claims made by a company or partnership in any one year under the contract, to be for an amount greater than \$10,000,000.
- (5) An approved professional indemnity contract must contain at least one automatic reinstatement of the indemnity provided by it.

**215 (Repealed)**

**Division 3 Exceptions and exclusions**

**216, 217 (Repealed)**

**218 Buildings for which no occupation certificate issued** (cf clause 81Z of EP&A Regulation 1994)

An approved professional indemnity contract may provide that the indemnity provided by the contract does not apply to any claim made against the insured in relation to building work in respect of which no occupation certificate has been issued unless the claim is made against the insured, and notified to the insurer, before the expiration of 10 years from:

- (a) the last date on which the building work was inspected by a certifying authority, or
- (b) if no such inspection has been conducted, the date on which that part of the building in relation to which the building work was carried out is first occupied or used.

**Note—**

Section 109M (2) of the Act provides that, in certain circumstances, a building in respect of which building work has been carried out may be occupied and used without an occupation certificate having been issued in relation to that work. In these circumstances, section 109ZK of the Act does not bar the taking of legal action in relation to that work in the way it bars the taking of legal action in relation to other building work.

**219 Standard exclusions** (cf clause 81AA of EP&A Regulation 1994)

Nothing in this Part prevents an approved professional indemnity contract from containing exceptions and exclusions (not inconsistent with this Part) of a kind that, in accordance with standard practice, are generally included in insurance contracts of the same kind.

## Divisions 4, 5

### 220-223 (Repealed)

## Part 12 Accreditation of components, processes and designs

### 224 Components, processes and designs certified under the Australian Building Products and Systems Certification Scheme

- (1) For the purposes of sections 79C (4), 85A (4) and 109F (2) of the Act, a component, process or design is accredited if and only if a certificate of conformity issued in accordance with the ABCB scheme is in force with respect to the component, process or design.
- (2) Subclause (1) does not apply if the certificate of conformity is limited in its application to jurisdictions outside New South Wales.
- (3) In this clause, **ABCB scheme** means the *Australian Building Products and Systems Certification Scheme* administered by the Australian Building Codes Board.

### 225 Transitional provisions

- (1) Any application under clause 81GG or 81KK of the *Environmental Planning and Assessment Regulation 1994*, as in force immediately before 1 January 2001, is to be determined in accordance with Part 7E of that Regulation, as then in force, as if that Regulation had not been repealed.
- (2) Subject to subclause (4), any component, process or design:
  - (a) that, immediately before 1 January 2001, was accredited under Part 7E of the *Environmental Planning and Assessment Regulation 1994*, as then in force, or
  - (b) that is accredited, or has its accreditation extended, under subclause (1),is taken to be accredited under this Part.
- (3) In the case of a component, process or design accredited for a limited period of time, accreditation under this clause ceases to have effect at the end of that period unless it is sooner revoked under subclause (4).
- (4) The Director-General may at any time, by order published in the Gazette, revoke the accreditation under this clause of any component, process or design.

## Part 13 Development by the Crown

### 226 Prescribed persons: section 116B (cf clause 81MM of EP&A Regulation 1994)

- (1) The following persons are prescribed for the purposes of sections 116C, 116F and 116G of the Act (as referred to in section 116B (a) of the Act):

- (a) a public authority (not being a council),
  - (b) a public utility,
  - (c) an Australian university within the meaning of the *Higher Education Act 2001*,
  - (d) a TAFE establishment within the meaning of the *Technical and Further Education Commission Act 1990*.
- (2) The following persons are prescribed for the purposes of section 116G of the Act (as referred to in section 116B (a) of the Act) in relation to Crown building work for which development consent is required under Part 4 of the Act:
- (a) the Luna Park Reserve Trust,
  - (b) the Sydney Light Rail Company (ACN 064 062 933),
  - (c) the Pyrmont Light Rail Company Pty Ltd (ACN 065 183 913),
  - (d) the Light Rail Construction Company Pty Ltd (ACN 067 246 897).
- (3) The following persons are prescribed for the purposes of section 116G of the Act (as referred to in section 116B (a) of the Act) in relation to Crown building work that constitutes an activity within the meaning of Part 5 of the Act:
- (a) a determining authority that is a proponent of the activity within the meaning of Part 5 of the Act,
  - (b) a company SOC, within the meaning of the *State Owned Corporations Act 1989*, that is the subject of a certificate under section 37A of that Act in respect of that activity.

**227 Technical provisions of the State's building laws** (cf clause 81NN of EP&A Regulation 1994)

For the purposes of section 116G of the Act, all of the provisions of the *Building Code of Australia* are prescribed as technical provisions of the State's building laws.

**Part 13A Supplementary provisions for development requiring consent**

**227A Signs on development sites**

- (1) This clause applies if there is a person who is the principal certifying authority or the principal contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate.
- (2) Each such person must ensure that a rigid and durable sign showing the person's identifying particulars so that they can be read easily by anyone in any public road or



other public place adjacent to the site:

- (a) is erected in a prominent position on the site before the commencement of the work, and
- (b) is maintained on the site at all times while this clause applies until the work has been carried out.

Maximum penalty: 10 penalty units.

- (3) In this clause, the ***identifying particulars*** for a person means:
  - (a) the name, address and telephone number of the person, and
  - (b) in the case of a principal contractor, a telephone number on which the principal contractor may be contacted at any time for business purposes.
- (4) Nothing in this clause requires the erection of more than one sign on a site or prevents the use of an appropriate sign that has already been erected on a site.
- (5) This clause does not require a sign to be erected or maintained on a site before 1 July 2004.

**Note—**

See clauses 98A and 136B which require such a sign on a site as a condition of development consent or complying development certificate.

## **Part 14 Environmental assessment under Part 5 of the Act**

### **Division 1 Circumstances requiring an environmental impact statement**

#### **228 What factors must be taken into account concerning the impact of an activity on the environment?** (cf clause 82 of EP&A Regulation 1994)

- (1) For the purposes of Part 5 of the Act, the factors to be taken into account when consideration is being given to the likely impact of an activity on the environment include:
  - (a) for activities of a kind for which specific guidelines are in force under this clause, the factors referred to in those guidelines, or
  - (b) for any other kind of activity:
    - (i) the factors referred to in the general guidelines in force under this clause, or
    - (ii) if no such guidelines are in force, the factors referred to subclause (2).
- (2) The factors referred to in subclause (1) (b) (ii) are as follows:

- (a) any environmental impact on a community,
  - (b) any transformation of a locality,
  - (c) any environmental impact on the ecosystems of the locality,
  - (d) any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,
  - (e) any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations,
  - (f) any impact on the habitat of protected fauna (within the meaning of the *National Parks and Wildlife Act 1974*),
  - (g) any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air,
  - (h) any long-term effects on the environment,
  - (i) any degradation of the quality of the environment,
  - (j) any risk to the safety of the environment,
  - (k) any reduction in the range of beneficial uses of the environment,
  - (l) any pollution of the environment,
  - (m) any environmental problems associated with the disposal of waste,
  - (n) any increased demands on resources (natural or otherwise) that are, or are likely to become, in short supply,
  - (o) any cumulative environmental effect with other existing or likely future activities.
- (3) For the purposes of this clause, the Director-General may establish guidelines for the factors to be taken into account when consideration is being given to the likely impact of an activity on the environment, in relation to activities generally or in relation to any particular kind of activity.
- (4) The Director-General may vary or revoke any guidelines in force under this clause.

## **Division 2 Environmental impact statements**

### **229 What is the form for an environmental impact statement?** (cf clause 83 of EP&A Regulation 1994)

For the purposes of section 112 of the Act, the prescribed form for an environmental impact statement under that section is a form that contains the following information:

- (a) the name, address and professional qualifications of the person by whom the statement is prepared,
- (b) the name and address of the proponent of the activity to which the statement relates,
- (c) the address of the land on which the activity to which the statement relates is to be carried out,
- (d) a description of the activity to which the statement relates,
- (e) an assessment by the person by whom the statement is prepared of the environmental impact of the activity to which the statement relates, dealing with the matters referred to in clause 230,
- (f) a declaration by the person by whom the statement is prepared to the effect that:
  - (i) the statement has been prepared in accordance with clauses 230 and 231, and
  - (ii) the statement contains all available information that is relevant to the environmental assessment of the activity to which the statement relates, and
  - (iii) that the information contained in the statement is neither false nor misleading.

**230 What must an environmental impact statement contain?** (cf clause 84 of EP&A Regulation 1994)

- (1) The contents of an environmental impact statement must include:
  - (a) for activities of a kind for which specific guidelines are in force under this clause, the matters referred to in those guidelines, or
  - (b) for any other kind of activity:
    - (i) the matters referred to in the general guidelines in force under this clause, or
    - (ii) if no such guidelines are in force, the matters referred to in Schedule 2.
- (2) The Director-General:
  - (a) may establish guidelines for the preparation of environmental impact statements, in relation to activities generally or in relation to any specific kind of activity, and
  - (b) may vary or revoke any guidelines so established.
- (3) An environmental impact statement prepared in accordance with this clause before the date on which any of the following events occur:
  - (a) the amendment of Schedule 2,
  - (b) the establishment of new guidelines under this clause,

(c) the variation or revocation of existing guidelines under this clause,

is taken to have been prepared in accordance with this clause, for the purposes of any relevant notice under section 113 (1) of the Act given within 3 months after that date, as if the relevant event had not occurred.

**231 Director-General may make requirements concerning preparation of environmental impact statements** (cf clause 85 of EP&A Regulation 1994)

- (1) For the purposes of section 112 of the Act, the prescribed manner in which an environmental impact statement under that section is to be prepared is as follows:
  - (a) the proponent responsible for preparing the statement must consult with the Director-General, and have regard to the Director-General's requirements concerning:
    - (i) the form and content of the statement, and
    - (ii) the availability of the statement for public comment,
  - (b) for the purposes of the consultation, the proponent must give the Director-General written particulars of the location, nature and scale of the activity,
  - (c) written notice of the Director-General's requirements must be given to the proponent within 28 days after the consultations are completed or within such further time as is agreed between the Director-General and the proponent,
  - (d) written notice of the Director-General's requirements must also be given to the relevant determining authority at the same time as it is given to the proponent,
  - (e) if the environmental impact statement is not exhibited within 2 years after the notice is given, the applicant must consult further with the Director-General in relation to the preparation of the statement.
- (2) For the purposes of subclause (1), any requirements outstanding under clause 85 of the *Environmental Planning and Assessment Regulation 1994* immediately before 1 January 2001 are taken to have been notified on 1 January 2001.
- (3) The Director-General may waive the requirement for consultation under this clause in relation to any particular activity or any particular kind of activity.

**232 Determining authority may require additional copies of environmental impact statement** (cf clause 86 of EP&A Regulation 1994)

The determining authority may require the proponent of an activity to give it as many additional copies of the environmental impact statement as are reasonably required for the purposes of the Act.

## Division 3 Public participation

### 233 What is the form for a section 113 notice?

For the purposes of section 113 of the Act, the prescribed form in which a notice under that section is to be prepared is a form that, in addition to the matters required by section 113 (1) of the Act, includes the following matters:

(a) the following heading in capital letters and bold type:

**“ASSESSMENT OF ENVIRONMENTAL IMPACT OF** *(a title description of the proposed activity and its location)***—PUBLIC EXHIBITION”**

(b) a brief description of the proposed activity and its locality,

(c) the name of the proponent,

(d) a statement of the places, dates and times for inspection of the environmental impact statement,

(e) a statement that any person may, before the specified closing date, make written representations to the determining authority about the proposed activity.

### 234 In what manner must a section 113 notice be given? (cf clause 87 of EP&A Regulation 1994)

(1) For the purposes of section 113 of the Act, the prescribed manner in which a notice under that section is to be given in relation to an environmental impact statement is by causing notice of the places, dates and times where the statement may be inspected to be published on at least 2 separate occasions:

(a) in a daily newspaper circulating generally throughout the State, and

(b) in a local newspaper,

so as to appear across 2 or 3 columns in the display section of those newspapers.

(2) The period of 30 days referred to in section 113 (1) of the Act begins on:

(a) the date on which the notice is first published in the daily newspaper circulating generally throughout the State, or

(b) the date on which the notice is first published in the local newspaper,

whichever is the later.

### 235 Where may an environmental impact statement be inspected? (cf clause 88 of EP&A Regulation 1994)

In addition to the places referred to in section 113 (1) of the Act, a determining authority

must make copies of the relevant environmental impact statement available for public inspection, on the same dates and during the same times, at the following places:

- (a) the principal office of the council in whose area the proposed activity is to be carried out,
- (b) at least one of the offices of the Government Information Service of New South Wales,
- (c) the Sydney office of the Environment Centre (New South Wales) Pty Ltd.

## **Division 4 Public access**

### **236 Determining authority may sell copies of environmental impact statement to the public** (cf clause 89 of EP&A Regulation 1994)

- (1) Copies of an environmental impact statement may be sold by a determining authority to any member of the public for not more than \$25 per copy.
- (2) A determining authority:
  - (a) must pay the proceeds of sale to the proponent responsible for the preparation of the statement, and
  - (b) must return to the proponent any unsold copies of the statement.

### **237 Documents adopted or referred to by environmental impact statement** (cf clause 90 of EP&A Regulation 1994)

- (1) Any document adopted or referred to by an environmental impact statement is taken to form part of the statement.
- (2) Nothing in this Part requires the proponent responsible for the preparation of an environmental impact statement to supply any person with a document that is publicly available.

## **Division 5 Public participation—modification of Minister’s approval where no environmental impact statement required**

### **237A Application**

This Division applies in relation to the provisions of Division 4 of Part 5 of the Act, as in force immediately before their repeal, to the extent that those provisions continue to apply to an activity by the operation of a transitional provision made by or under the Act.

### **238 Particulars of proposed modification to be publicly exhibited** (cf clause 90A of EP&A Regulation 1994)

- (1) For the purposes of section 115BA (5) (b) of the Act, particulars of a proposed modification of an approved activity must be publicly exhibited in accordance with this

Division.

- (2) In this Division, **particulars** of a proposed modification include a description of the modification to be made to the approved activity and the locality of the proposed modified activity.

**239 Notice to be given of the public exhibition of the proposed modification** (cf clause 90B of EP&A Regulation 1994)

- (1) Notice of the period during which the particulars of the proposed modification may be inspected and the places and times for inspection:
- (a) must be published in a local newspaper circulating in the locality of the proposed modified activity, and
  - (b) must be published in the newspaper on at least 2 separate occasions before the start of that inspection period, and
  - (c) must appear in the display section of the newspaper.
- (2) The notice must include the following matters:
- (a) the following heading in capital letters and bold type:  
**“PROPOSED MODIFICATION TO** (*a title description of approved activity and its location*)**—PUBLIC EXHIBITION”**
  - (b) brief particulars of the proposed modification,
  - (c) the name of the proponent,
  - (d) a statement of the period during which the particulars of the proposed modification may be inspected and the places and times for inspection,
  - (e) a statement that any person may, before the end of that inspection period, make written representations to the proponent about the proposed modification.

**240 Where may the proposed modification be inspected?** (cf clause 90C of EP&A Regulation 1994)

The particulars of the proposed modification are to be available for inspection during the inspection period specified in the notice under clause 241:

- (a) at the principal office of the proponent and the Department, and
- (b) at the office of the proponent and the Department closest to the locality in which the proposed modified activity is to be carried out, and
- (c) at the principal office of the council for the area in which the proposed modified activity is to be carried out, and

(d) at the Sydney office of the Environment Centre (New South Wales) Pty Ltd.

**241 Period of exhibition of proposed modification** (cf clause 90D of EP&A Regulation 1994)

The particulars of the proposed modification are to be available for inspection for a period of at least 14 days beginning on the day following the second occasion on which the relevant notice is published under clause 239.

**242 Representations on proposed modification** (cf clause 90E of EP&A Regulation 1994)

- (1) Any person may, during the inspection period specified in the notice under clause 239, inspect the particulars of the proposed modification and may, before the end of that inspection period, make written representations to the proponent about the proposed modification.
- (2) The proponent must include, in the request to the Minister for the modification of the relevant approval, a copy of any written representations made to the proponent in accordance with this clause.

## **Division 6 General**

**243 Report to be prepared for activities to which an environmental impact statement relates** (cf clause 91 of EP&A Regulation 1994)

- (1) A determining authority for an activity must prepare a report on any activity for which an environmental impact statement has been prepared.
- (2) The report must be prepared as soon as practicable after a decision is made by the determining authority to carry out or refrain from carrying out the activity or to approve or disapprove the carrying out of the activity.
- (3) The report must comment on, and have regard to, each of the following matters:
  - (a) the environmental impact statement,
  - (b) any representations duly made to it about the proposed activity,
  - (c) the effects of the proposed activity on the environment,
  - (d) the proponent's proposals to mitigate any adverse effects of the activity on the environment,
  - (e) the findings and recommendations of:
    - (i) any report given to it by the Director-General under section 113 of the Act, and
    - (ii) any advice given to it by the Minister under section 114 of the Act, and
    - (iii) any inquiry under section 119 of the Act,



with respect to the proposed activity.

- (4) The report must also give full particulars of the determining authority's decision on the proposed activity and, if the authority has granted approval to the carrying out of the activity, any conditions or modifications imposed or required by the authority in connection with the carrying out of the activity.
- (5) The determining authority must make the report public as soon as practicable after it has been completed and must send a copy of the report to the council of each area that is, or would have been, affected by the activity.
- (6) The requirements of subclause (5):
  - (a) are subject to any prohibition or restriction arising from a direction under section 120 (5) (b) of the Act, but to the extent only of the prohibition or restriction, and
  - (b) do not apply to an activity to which Division 4 of Part 5 of the Act applies.

**244 Concurrence or consultation with Director-General of National Parks and Wildlife** (cf clause 91B of EP&A Regulation 1994)

For the purposes of section 112C (3) of the Act, the provisions of Division 2 of Part 6 of this Regulation apply (with such modifications as may be necessary) to and in respect of the granting of concurrence under section 112C of the Act in the same way as they apply to and in respect of the granting of concurrence under section 79B of the Act.

## **Division 7 Fisheries management**

### **244A Definitions**

In this Division:

**designated fishing activity** has the same meaning as in Division 5 of Part 5 of the Act.

**fisheries approval** has the same meaning as in Division 5 of Part 5 of the Act.

**Fisheries Minister** has the same meaning as in Division 5 of Part 5 of the Act.

**fishing activity** has the same meaning as in the [Fisheries Management Act 1994](#).

### **244B Non-designated fishing activities**

- (1) For the purposes of the definition of **activity** in section 110 (1) of the Act, the carrying out of a fishing activity (not being a designated fishing activity) pursuant to a fisheries approval issued or renewed for a period of not more than 12 months, being a fishing activity that is carried out at any time before 30 June 2006, is prescribed not to be such an activity.
- (2) This clause does not apply to or in respect of aquaculture within the meaning of the

*Fisheries Management Act 1994.*

**244C Designated fishing activities**

For the purposes of section 115R (2) (b) of the Act, 30 June 2006 is the prescribed date for all designated fishing activities.

**Division 8 Special provisions relating to Australian Rail Track Corporation Ltd**

**244D Definitions**

In this Division:

**activities for the purposes of ARTC rail infrastructure facilities** includes activities (within the meaning of Part 5 of the Act) for any one or more of the following purposes:

- (a) development for the purposes of the construction, maintenance or operation of ARTC rail infrastructure facilities,
- (b) geotechnical investigations relating to ARTC rail infrastructure facilities,
- (c) environmental management and pollution control relating to ARTC rail infrastructure facilities,
- (d) access for the purpose of the construction, maintenance or operation of ARTC rail infrastructure facilities,
- (e) temporary construction sites and storage areas, including temporary batching plants, the storage of plant and equipment and the stockpiling of excavated material.

**approved Code** means a Code prepared by ARTC and approved by the Minister under this Division.

**ARTC** means the Australian Rail Track Corporation Ltd.

**ARTC arrangement** means a lease, licence or other arrangement under Part 8A of the *Transport Administration Act 1988*.

**ARTC lease or licence** means a lease or licence under Part 8A of the *Transport Administration Act 1988*.

**ARTC rail infrastructure facilities** means rail infrastructure facilities owned by ARTC or a rail authority that are:

- (a) situated on land subject to an ARTC arrangement, or
- (b) subject to an ARTC arrangement.

**rail infrastructure facilities** has the same meaning as it has in Part 8A of the *Transport*

*Administration Act 1988.*

**wetlands affected activity** means a project for the purposes of ARTC rail infrastructure facilities (other than a project listed in Schedule 1 to *State Environmental Planning Policy (ARTC Rail Infrastructure) 2004*) that, but for clause 5 (2) (b) of that Policy, would include designated development under *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests*.

**244E Code required for rail infrastructure facilities must be complied with by ARTC**

- (1) ARTC must comply with the requirements of an approved Code in respect of an activity for the purposes of ARTC rail infrastructure facilities if a Code is in force under this Part in relation to the activity.
- (2) However, ARTC is not required to comply with subclause (1) if the Minister gives written notice to ARTC that the activity is not required to be covered by, or dealt with in accordance with, an approved Code.
- (3) An exemption under subclause (2) may be made subject to conditions and may be revoked or varied at any time.
- (4) (Repealed)

**244F Approved Code**

- (1) ARTC must prepare a Code and make an application to the Director-General for approval of the Code.
  - (1A) The Code is to apply to activities for the purposes of ARTC rail infrastructure facilities, other than activities for which ARTC is required to furnish or obtain an environmental impact statement.
- (2) The Director-General is to assess an application for approval of a Code and to provide a report to the Minister on any such application as soon as practicable after receiving an application.
- (3) The Minister may approve a Code prepared by ARTC for the purposes of this Part and may specify the period for which the approval is in force.
- (4) The Minister must give ARTC written notice of any approval or refusal to approve a Code. In the case of a refusal, the notice is to set out reasons for the refusal.
- (5) An approval may be made subject to conditions and may be revoked or varied at any time.
- (6) A Code approved for the purposes of this clause must contain the following matters:
  - (a) classes of activities for the purposes of the application of the Code,

- (b) assessment requirements for specified activities or classes of activities,
- (c) procedures for carrying out assessments,
- (d) protocols for consultation,
- (e) requirements for consideration of any advice by the Director-General,
- (f) requirements for consideration of environmental management procedures in relation to effects on the environment of activities,
- (g) requirements for documentation,
- (h) protocols for the availability of documentation to the Minister, the Director-General and the public,
- (i) protocols for auditing the performance of and compliance with the Code,
- (j) any other matters required by the Minister.

**244G Circumstances in which an environmental impact statement is or is not required for ARTC rail infrastructure facilities (other than wetlands affected activities)**

- (1) This clause takes effect on 1 September 2005 or on such later date as the Minister may approve.
- (2) For the purposes of section 112 (1) of the Act, an activity for the purposes of ARTC rail infrastructure facilities (other than an activity for which an environmental impact statement must be obtained under section 244H) is a prescribed activity for which an environmental impact statement must be furnished or obtained.
- (3) However, an activity for those purposes is not a prescribed activity for the purposes of section 112 (1) of the Act if:
  - (a) the Minister gives written notice to ARTC that the activity is not an activity covered by subclause (2), or
  - (b) an approved Code is in force in relation to the activity, or
  - (c) an exemption is in force under clause 244E (2) in relation to the activity.
- (4) An exemption under subclause (3) may be made subject to conditions and may be revoked or varied at any time.
- (5) This Division does not affect any requirement (other than a requirement arising under this Division) arising under Part 5 of the Act in relation to an activity for the purposes of ARTC rail infrastructure facilities.

#### **244H Wetlands affected activities that require environmental impact statements**

- (1) For the purposes of section 112 (1) of the Act, a wetlands affected activity is a prescribed activity for which an environmental impact statement must be furnished or obtained.
- (2) Subclause (1) does not apply to a wetlands affected activity if the only part of the project concerned that relates to land and development affected by *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* concerns the maintenance or operation of rail infrastructure facilities.

#### **244I Existing environmental impact statements and assessments**

To avoid doubt, the preparation of an environmental impact statement and any other thing done under Part 5 of the Act before the commencement of this clause in connection with rail infrastructure facilities or a wetlands affected activity are taken to have been done for the purposes of the preparation of an environmental impact statement or other thing under that Part as a result of the operation of this Division.

#### **244J Continuing application of Division 4 of Part 5 of Act to Sandgate rail project**

- (1) This clause is made under clause 1 of Schedule 6 to the Act, as a consequence of the enactment of the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.
- (2) The clause relating to pending or previous matters under Division 4 of Part 5 of the Act, as inserted in Schedule 6 to the Act by Schedule 1 [33] to the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*, applies to the Sandgate rail project in the same way as it applies to an activity for which the Minister's approval was sought under Division 4 of Part 5 of the Act before its repeal.
- (3) To avoid doubt, an application for the Minister's approval in relation to the Sandgate rail project may be made under Division 4 of Part 5 of the Act, and that Division continues to apply to any such application, as if the Division had not been repealed.
- (4) In this clause:

**Sandgate rail project** means the proposed project relating to a grade separation of the rail lines at Sandgate, as described in the environmental impact statement for the Sandgate Rail Grade Separation, prepared by GHD Pty Ltd and dated 18 March 2005 (as modified by the Representations Report for the Sandgate Rail Grade Separation prepared by GHD Pty Ltd and dated July 2005).

## **Part 15 Fees and charges**

### **Division 1 Fees for development applications**

#### **245 What is the maximum fee?** (cf clause 92 of EP&A Regulation 1994)

- (1) The fee for a development application must not exceed the maximum amount determined in accordance with this Division.
- (2) The services covered by the fee for a development application include the following:
  - (a) the receipt of the application, and any internal referrals of the application,
  - (b) consideration of the application for the purpose of determining whether any further information is required in relation to the proposed development,
  - (c) inspection of the land to which the proposed development relates,
  - (d) evaluation of the proposed development under section 79C of the Act, including discussion with interested parties,
  - (e) preparation of internal reports on the application,
  - (f) preparation and service of notices of the consent authority's determination of the application,
  - (g) the monitoring and reviewing by the Director-General of the practices and procedures followed by consent authorities in dealing with development applications:
    - (i) for the purpose of assessing the efficiency and effectiveness of those practices and procedures, and
    - (ii) for the purpose of ensuring that those practices and procedures comply with the provisions of the Act and this Regulation,
  - (h) the monitoring and reviewing by the Director-General of the provisions of environmental planning instruments:
    - (i) that control development, or
    - (ii) that are required to be taken into consideration by consent authorities when dealing with development applications,for the purposes of assessing the effectiveness of those provisions in achieving their intended effect and making recommendations for their improvement.

#### **246 What is the fee for a development application?** (cf clause 93 of EP&A Regulation 1994)

- (1) The maximum fee for development involving the erection of a building, the carrying

out of work or the demolition of a work or a building, and having an estimated cost within the range specified in the Table to this clause is calculated in accordance with that Table.

- (2) Despite subclause (1), the maximum fee payable for development for the purpose of one or more advertisements is:
- (a) \$215, plus \$70 for each advertisement in excess of one, or
  - (b) the fee calculated in accordance with the Table,
- whichever is the greater.
- (3) The fees determined under this clause do not apply to development for which a fee is payable under clause 247.

**Table**

<b>Estimated cost</b>	<b>Maximum fee payable</b>
Up to \$5,000	\$110
\$5,001-\$50,000	\$170, plus an additional \$3 for each \$1,000 (or part of \$1,000) of the estimated cost.
\$50,001-\$250,000	\$352, plus an additional \$3.64 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$50,000.
\$250,001-\$500,000	\$1,160, plus an additional \$2.34 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$250,000.
\$500,001-\$1,000,000	\$1,745, plus an additional \$1.64 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$500,000.
\$1,000,001-\$10,000,000	\$2,615, plus an additional \$1.44 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$1,000,000.
More than \$10,000,000	\$15,875, plus an additional \$1.19 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$10,000,000.

**247 Development involving the erection of a dwelling-house with an estimated construction cost of \$100,000 or less** (cf clause 94 of EP&A Regulation 1994)

A maximum fee of \$364 is payable for development involving the erection of a dwelling-house with an estimated cost of construction of \$100,000 or less.

#### **248 Residential flat development**

An additional fee, not exceeding \$600, is payable for development which is required to be referred to a design review panel under *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

#### **249 Development involving the subdivision of land** (cf clause 96 of EP&A Regulation 1994)

The maximum fee payable for development involving the subdivision of land is calculated as follows:

- (a) subdivision (other than strata subdivision):
  - (i) involving the opening of a public road, \$500 plus \$50 for each additional lot created by the subdivision, or
  - (ii) not involving the opening of a public road, \$250 plus \$40 for each additional lot created by the subdivision,
- (b) strata subdivision, \$250 plus \$50 for each additional lot created by the subdivision.

**Note—**

For example, a plan of subdivision that provides for 5 lots over land that has previously comprised 2 lots will result in the creation of 3 additional lots, and so attract a fee that includes a base amount of \$500 or \$250, as the case requires, together with a further amount of \$50 or \$40, as the case requires, for each of the 3 additional lots.

#### **250 Development not involving the erection of a building, the carrying out of a work, the subdivision of land or the demolition of a building or work** (cf clause 97 of EP&A Regulation 1994)

A maximum fee of \$220 is payable for development that does not involve the erection of a building, the carrying out of a work, the subdivision of land or the demolition of a building or work.

#### **251 Designated development**

In addition to any other fees payable under this Division, a maximum fee of \$715 is payable for designated development.

#### **252 What additional fees are payable for development that requires advertising?** (cf clause 99 of EP&A Regulation 1994)

- (1) In addition to any other fees payable under this Division, a consent authority may charge up to the following maximum fees for the giving of the notice required for the development:
  - (a) \$1,665, in the case of designated development,
  - (b) \$830, in the case of advertised development,



(c) \$830, in the case of prohibited development,

(d) \$830, in the case of development for which an environmental planning instrument or development control plan requires notice to be given otherwise than as referred to in paragraph (a), (b) or (c).

(2) The consent authority must refund so much of the fee paid under this clause as is not spent in giving the notice.

**252A What additional fees are payable for development that requires concurrence?**

(1) An additional processing fee up to a maximum of \$110, plus a concurrence fee for payment to each concurrence authority, are payable in respect of an application for development that requires concurrence under the Act or an environmental planning instrument.

(2) The consent authority must forward each concurrence fee to the concurrence authority concerned at the same time at which it forwards a copy of the development application to the concurrence authority under clause 59.

(3) The concurrence fee for a development application is not payable:

(a) to any concurrence authority whose concurrence may be assumed in accordance with clause 64, or

(b) to any concurrence authority that has notified the consent authority in writing that payment of the fee is waived, whether generally, in relation to that application or in relation to a class of development applications to which that application belongs.

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

(4) The additional processing fee is not payable:

(a) for any application in respect of which concurrence may be assumed in accordance with clause 64 for all of the concurrence authorities concerned, or

(b) for any application made before 1 July 2002.

(5) For the purposes of this clause, the **concurrence fee** payable to a concurrence authority for a development application is \$250 or such lesser amount as is notified to the consent authority in writing by the concurrence authority, whether generally, in relation to that application or in relation to a class of development applications to which that application belongs.

**253 What additional fees are payable for integrated development?** (cf clause 100 of EP&A

Regulation 1994)

- (1) An additional processing fee up to a maximum of \$110, plus an approval fee for payment to each approval body, are payable in respect of an application for integrated development.
- (2) The consent authority must forward each approval fee to the approval body concerned at the same time at which it forwards a copy of the development application to the approval body under clause 66.
- (2A) The approval fee for a development application is not payable to any approval body that has notified the consent authority in writing that payment of the fee is waived, whether generally, in relation to that application or in relation to a class of development applications to which that application belongs.
- (2B) An approval body may repay to the consent authority the whole or any part of an approval fee paid to it under this clause, in which case the consent authority must remit the amount repaid to the applicant.
- (3) The additional processing fee is payable in respect only of applications made on or after 1 July 2002.
- (4) For the purposes of this clause, the **approval fee** payable to an approval body for a development application is \$250 or such lesser amount as is notified to the consent authority in writing by the approval body, whether generally, in relation to that application or in relation to a class of development applications to which that application belongs.

**254 What if two or more fees are applicable to a single development application?** (cf clause 101 of EP&A Regulation 1994)

If two or more fees are applicable to a single development application (such as an application to subdivide land and erect a building on one or more lots created by the subdivision), the maximum fee payable for the development is the sum of those fees.

**255 How is a fee based on estimated cost determined?** (cf clause 102 of EP&A Regulation 1994)

- (1) In determining the fee for development involving the erection of a building, the consent authority must make its determination by reference to a genuine estimate of:
  - (a) the costs associated with the construction of the building, and
  - (b) the costs associated with the preparation of the building for the purpose for which it is to be used (such as the costs of installing plant, fittings, fixtures and equipment).
- (1A) In determining the fee for development involving the carrying out of a work, the

consent authority must make its determination by reference to a genuine estimate of the construction costs of the work.

- (1B) In determining the fee for development involving the demolition of a building or work, the consent authority must make its determination by reference to a genuine estimate of the costs of demolition.
- (2) The estimate must, unless the consent authority is satisfied that the estimated cost indicated in the development application is neither genuine nor accurate, be the estimate so indicated.

**256 Determination of fees after development applications have been made** (cf clause 103 of EP&A Regulation 1994)

- (1) The determination of a fee to accompany a development application must be made before, or within 14 days after, the application is lodged with the consent authority.
- (2) A determination made after the lodging of a development application has no effect until notice of the determination is given to the applicant.
- (3) A consent authority may refuse to consider a development application for which a fee has been duly determined and notified to the applicant but remains unpaid.

**256A Proportion of development application fees to be remitted to Director-General**

- (1) For each development application lodged with a consent authority for development referred to in clause 246 (1) having an estimated cost exceeding \$50,000, an amount calculated as follows is to be set aside for payment to the Director-General for the services referred to in clause 245 (2) (g) and (h):

$$P = \frac{0.64 \times E}{1,000} - 5$$

where:

**P** represents the amount to be set aside, expressed in dollars rounded down to the nearest dollar, and

**E** represents the estimated cost of the development, expressed in dollars rounded up to the nearest thousand dollars.

- (2) On or before the 14th day of each month, the consent authority must forward to the Director-General the total amount set aside under subclause (1) in relation the development applications lodged with it during the previous month, together with a report in relation to those applications.
- (3) The report referred to in subclause (2) must contain such information, and be prepared in such form, as the Director-General may determine.

### **256B Staged development applications**

The maximum fee payable for a staged development application in relation to a site, and for any subsequent development application for any part of the site, is the maximum fee that would be payable as if a single development application only was required for all the development on the site.

## **Division 2 Other fees and charges**

### **257 What is the fee for a request for a review of a determination?**

The maximum fee for a request for a review of a determination under section 82A (3) of the Act is:

- (a) in the case of a request with respect to a development application that does not involve the erection of a building, the carrying out of a work or the demolition of a work or building, 50 per cent of the fee for the original development application, and
- (b) in the case of a request with respect to a development application that involves the erection of a dwelling-house with an estimated cost of construction of \$100,000 or less, \$150, and
- (c) in the case of a request with respect to any other development application, as set out in the Table to this clause,

plus an additional amount of not more than \$500 if notice of the application is required to be given under section 82A of the Act.

#### **Table**

<b>Estimated cost</b>	<b>Maximum fee payable</b>
Up to \$5,000	\$55
\$5,001-\$250,000	\$85, plus an additional \$1.50 for each \$1,000 (or part of \$1,000) of the estimated cost.
\$250,001-\$500,000	\$500, plus an additional \$0.85 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$250,000.
\$500,001-\$1,000,000	\$712, plus an additional \$0.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$500,000.
\$1,000,001-\$10,000,000	\$987, plus an additional \$0.40 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$1,000,000.

More than \$10,000,000	\$4,737, plus an additional \$0.27 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$10,000,000.
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**258 What is the fee for an application for modification of a consent for local development or State significant development?** (cf clause 105 of EP&A Regulation 1994)

- (1) The maximum fee for an application under section 96 (1) of the Act is \$55.
- (1A) The maximum fee for an application under section 96 (1A) of the Act, or under section 96AA (1) of the Act in respect of a modification which, in the opinion of the consent authority, is of minimal environmental impact, is \$500 or 50 per cent of the fee for the original development application, whichever is the lesser.
- (2) The maximum fee for an application under section 96 (2) of the Act, or under section 96AA (1) of the Act in respect of a modification which, in the opinion of the consent authority, is not of minimal environmental impact, is:
- (a) if the fee for the original application was less than \$100, 50 per cent of that fee, or
  - (b) if the fee for the original application was \$100 or more:
    - (i) in the case of an application with respect to a development application that does not involve the erection of a building, the carrying out of a work or the demolition of a work or building, 50 per cent of the fee for the original development application, and
    - (ii) in the case of an application with respect to a development application that involves the erection of a dwelling-house with an estimated cost of construction of \$100,000 or less, \$150, and
    - (iii) in the case of an application with respect to any other development application, as set out in the Table to this clause,
- plus an additional amount of not more than \$500 if notice of the application is required to be given under section 96 (2) or 96AA (1) of the Act.
- (2A) An additional fee, not exceeding \$600, is payable for development to which clause 115 (1A) applies.
- (3) The consent authority must refund so much of the additional amount as is not spent in giving the notice under section 96 (2) or 96AA (1) of the Act.
- (3A) The consent authority must refund the additional fee paid under subclause (2A) if the development is not referred to a design review panel.
- (4) In this clause:

- (a) a reference to an original development application is a reference to the development application that resulted in the granting of the consent to be modified, and
  - (b) a reference to the fee for the original development application does not include a reference to any fee under clause 252 that was payable for the giving of notice.
- (5) This clause does not apply to an application for the modification of a development consent granted by the Land and Environment Court on appeal from some other consent authority.

**Table**

<b>Estimated cost</b>	<b>Maximum fee payable</b>
Up to \$5,000	\$55
\$5,001-\$250,000	\$85, plus an additional \$1.50 for each \$1,000 (or part of \$1,000) of the estimated cost.
\$250,001-\$500,000	\$500, plus an additional \$0.85 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$250,000.
\$500,001-\$1,000,000	\$712, plus an additional \$0.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$500,000.
\$1,000,001-\$10,000,000	\$987, plus an additional \$0.40 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$1,000,000.
More than \$10,000,000	\$4,737, plus an additional \$0.27 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$10,000,000.

**259 What is the fee for a planning certificate?** (cf clause 106 of EP&A Regulation 1994)

- (1) The prescribed fee for the issue of a certificate under section 149 (2) of the Act is \$40.
- (2) A council may charge one additional fee of not more than \$60 for any advice given under section 149 (5) of the Act.

**260 What is the fee for a building certificate?** (cf clause 107 of EP&A Regulation 1994)

- (1) For the purposes of section 149B (2) of the Act, the fee for an application for a building certificate in relation to a building is:
  - (a) in the case of a class 1 building (together with any class 10 buildings on the site) or a class 10 building, \$210 for each dwelling contained in the building or in any other building on the allotment, or

- (b) in the case of any other class of building, as set out in the Table to this clause, or
  - (c) in any case where the application relates to a part of a building and that part consists of an external wall only or does not otherwise have a floor area, \$210.
- (2) If it is reasonably necessary to carry out more than one inspection of the building before issuing a building certificate, the council may require the payment of an additional fee (not exceeding \$75) for the issue of the certificate.
- (3) However, the council may not charge an additional fee for any initial inspection.
- (4) In this clause, a reference to a class 1 building includes a reference to a class 2 building that comprises 2 dwellings only.

**Table**

<b>Floor area of building or part</b>	<b>Fee</b>
Not exceeding 200 square metres	\$210
Exceeding 200 square metres but not exceeding 2,000 square metres	\$210, plus an additional 42 cents per square metre over 200
Exceeding 2,000 square metres	\$966, plus an additional 6.3 cents per square metre over 2,000

**261 What is the fee for a copy of a building certificate?**

For the purposes of section 149G (3) of the Act, the prescribed fee for a copy of a building certificate is \$10.

**262 What is the fee for a certified copy of a document, map or plan held by the department or a council?** (cf clause 108 of EP&A Regulation 1994)

The prescribed fee for a certified copy of a document, map or plan referred to in section 150 (2) of the Act is \$40.

**263 What other fees may be imposed?** (cf clause 109 of EP&A Regulation 1994)

- (1) The maximum charge or fee that may be imposed under section 137 (1) of the Act is:
- (a) the amount determined by the Director-General (either generally or in any particular case or class of cases), having regard to the cost to the Minister, corporation, Department or Director-General of doing anything referred to in that subsection, or
  - (b) if there is not a relevant determination in force, 120 per cent of the cost to the Minister, corporation, Department or Director-General of doing anything referred to in that subsection.
- (2) A consent authority or council may impose a fee of not more than \$30 for the lodging

with it of any of the following certificates:

- (a) a complying development certificate,
- (b) a Part 4A certificate, if it is:
  - (i) a construction certificate, or
  - (ii) an occupation certificate, or
  - (iii) a subdivision certificate.

## **Part 16 Registers and other records**

### **264 Council to maintain a register of development applications and consents** (cf clause 109A of EP&A Regulation 1994)

- (1) A council must maintain a register containing details of the following matters for each development application that is either made to it as the consent authority or furnished to it in cases where it is not the consent authority:
  - (a) the registered number of the application,
  - (b) the date when the application was made,
  - (c) the amount of any fee payable in connection with the application,
  - (d) the date or dates when any such fee, or any part of such fee, was paid,
  - (e) the date when the application was determined.
- (2) The register must also contain details of the following matters for each development consent:
  - (a) the name and address of the person to whom the consent was granted,
  - (b) the address, and formal particulars of title, of the land to which the consent relates,
  - (c) the date when the consent was granted,
  - (d) a brief description of the subject-matter of the consent, including a statement as to the nature of the development (residential, commercial, industrial or other),
  - (e) any conditions to which the consent is subject,
  - (f) the duration of the consent,
  - (g) the date when the consent became effective,
  - (h) whether the consent has been revoked, modified or surrendered,



- (i) the date when any notice was published in respect of the consent as referred to in section 101 of the Act,
  - (j) the date of issue of any related construction certificates,
  - (k) the date of commencement of building or subdivision work the subject of the consent,
  - (l) the name and accreditation number of the principal certifying authority appointed in relation to a consent involving building or subdivision work,
  - (m) in the case of a consent concerning residential building work (within the meaning of the *Home Building Act 1989*):
    - (i) the names of licensees and owner-builders, and
    - (ii) the names of the approved insurers (where relevant) of the licensees under Part 6 of the *Home Building Act 1989*, and
    - (iii) the numbers endorsed on contractor licences and permits of which the council is informed under the requirements of this Regulation,
  - (n) the date of issue of any related subdivision or occupation certificate,
  - (o) any approvals taken, by section 78A of the Act, to have been granted under the *Local Government Act 1993*,
  - (p) any approvals under an Act that were considered as part of the integrated development process.
- (3) The register must contain the following indexes of the development consents referred to in subclause (2):
- (a) an index prepared by reference to the address of the land to which each development relates,
  - (b) an index prepared by reference to the chronological order of the granting of each development consent.
- (4) For the purposes of section 100 of the Act, the prescribed form for the register is a book, in loose-leaf form, or an electronic data retrieval system.

**265 Council to maintain a register of complying development applications** (cf clause 109B of EP&A Regulation 1994)

- (1) A council must maintain a register containing details of the following matters for each complying development certificate whether or not the council is the certifying authority:

- (a) the date when the application was made,
  - (b) the name and address of the person making the application,
  - (c) the address, and formal particulars of title, of the land to which the certificate relates,
  - (d) the date when the certificate was granted or refused,
  - (e) if the certificate was granted or refused by an accredited certifier, the name and accreditation number of the accredited certifier,
  - (f) the date of commencement of building or subdivision work the subject of the certificate,
  - (g) the name and accreditation number of the principal certifying authority appointed in relation to the building or subdivision work the subject of the certificate,
  - (h) in the case of a certificate concerning residential building work (within the meaning of the *Home Building Act 1989*):
    - (i) the names of licensees and owner-builders, and
    - (ii) the names of the approved insurers (where relevant) of the licensees under Part 6 of the *Home Building Act 1989*, and
    - (iii) the numbers endorsed on contractor licences and permits of which the council is informed under the requirements of this Regulation,
  - (i) the date of issue of any related subdivision or occupation certificate,
  - (j) the date on which notice of the granting of the certificate was published under section 101 of the Act.
- (2) The register must contain the following indexes of the complying development certificates referred to in subclause (1):
- (a) an index prepared by reference to the address of the land to which each certificate relates,
  - (b) an index prepared by reference to the chronological order of the granting of each certificate.
- (3) The register is to be kept in the form of a book, in loose-leaf form, or in the form of an electronic data retrieval system.
- (4) The register under this clause is the register prescribed for the purposes of section 100 of the Act.

**266 Council to keep certain documents relating to development applications and**

**consents** (cf clause 109C of EP&A Regulation 1994)

- (1) A council must keep the following documents for each development application made to it and each development consent resulting from a development application made to it:
  - (a) a copy of the development application,
  - (b) a copy of the relevant section 81 notice to the applicant,
  - (c) a copy of any instrument by which some other development consent or existing use right has been modified or surrendered,
  - (d) a copy of the decision of the Land and Environment Court, in the case of a development consent granted by the Court on appeal from the determination of the council,
  - (e) a copy of the Minister's determination of the application, in the case of an application determined by the Minister for State significant development or an application determined by the Minister under section 80 (7) of the Act,
  - (f) a copy of any recommendations made by relevant employees of the council with respect to the determination of the application,
  - (g) if the development consent has been revoked, modified or surrendered, a copy of the instrument of revocation, modification or surrender,
  - (h) if a notice has been published in respect of the development consent as referred to in section 101 of the Act, a copy of the page of the newspaper in which the notice was published,
  - (i) a copy of the notification of the determination to issue a construction certificate relating to the consent and a copy of the certificate and any related plans, specifications and any other documents that were forwarded to the council,
  - (j) a copy of the notification of the appointment of the principal certifying authority and the notification of the commencement of building or subdivision work relating to the development the subject of the consent,
  - (k) a copy of the notification of the determination of an application for an occupation certificate relating to any building the subject of the consent,
  - (l) a copy of the notification of the determination of an application for a subdivision certificate relating to any subdivision the subject of the consent and the endorsed plan of subdivision,
  - (m) a copy of the notification of the determination of any application for a compliance certificate relating to the development the subject of the consent and any relevant

plans and specifications and other documents relating to the compliance certificate,

- (n) a copy of a decision of the Land and Environment Court in the case of an occupation certificate, subdivision certificate or construction certificate issued by the Court on appeal from a determination of the council,
- (o) details of approved alternative solutions relating to construction certificates or compliance certificates together with details of the assessment methods used to establish compliance with the relevant performance requirements.

(2) A council must keep the documents referred to in subclause (1) that are furnished to it in accordance with this Regulation by any other consent authority or certifying authority in those cases where the council is not the consent authority or certifying authority.

**267 Council to keep certain documents relating to complying development certificates** (cf clause 109D of EP&A Regulation 1994)

A council must keep the following documents for each application for a complying development certificate whether or not the application is made to the council and each complying development certificate whether or not the certificate is issued by the council:

- (a) a copy of the determination of the application for a complying development certificate including any related plans and specifications,
- (b) if a notice has been published in respect of the complying development as referred to in section 101 of the Act, a copy of the page of the newspaper in which the notice was published,
- (c) a copy of the notification of the appointment of the principal certifying authority and the notification of the commencement of building or subdivision work relating to the development the subject of the complying development certificate,
- (d) a copy of the notification of the determination of an application for an occupation certificate relating to any building the subject of the complying development certificate,
- (e) a copy of the notification of the determination of an application for a subdivision certificate relating to any subdivision the subject of the complying development certificate and the endorsed plan of subdivision,
- (f) a copy of the notification of the determination of any application for a compliance certificate relating to the development the subject of the complying development certificate,
- (g) a copy of a decision of the Land and Environment Court in the case of an occupation certificate or subdivision certificate issued by the Court on appeal from a

determination of the council,

- (h) details of approved alternative solutions relating to compliance certificates, together with details of the assessment methods used to establish compliance with the relevant performance requirements.

**268 Council to keep certain records available for public inspection** (cf clause 109E of EP&A Regulation 1994)

- (1) A council must make the following documents available for inspection at its principal office, free of charge, during the council's ordinary office hours:
  - (a) the registers kept under clauses 264 and 265,
  - (b) the documents kept under clauses 266 and 267.
- (2) A copy of any extracts from the registers or a copy of any of the other documents may be made on payment of a reasonable copying charge set by the council.
- (3) Nothing in this clause confers a right or entitlement to inspect, make copies of or take extracts from so much of a document that, because of section 12 (1A) of the *Local Government Act 1993*, a person does not have the right to inspect.

## Part 17 Miscellaneous

**269 Notice of proposal to constitute development area** (cf clause 110 of EP&A Regulation 1994)

A notification under section 132 (4) of the Act of the Director-General's proposal to include the whole or any part of a council's area in a development area must be given by instrument in writing posted or delivered to the councils concerned.

**270 Release areas under SEPP 59** (cf clause 110A of EP&A Regulation 1994)

- (1) Pursuant to section 78A (1) of the Act, a person cannot apply to a consent authority for consent to carry out development on land zoned "Employment" or "Residential" under *State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area* unless the Minister has, in accordance with clause 11 of that Policy, declared the land to be, or to be part of, a release area.
- (2) Subclause (1) does not apply to development referred to in clause 271 (2) (d) or (e).
- (3) Subclause (1) does not apply to a development application that is, in the opinion of the consent authority, of a minor nature.

**271 Precinct plans etc under SEPP 59** (cf clause 110B of EP&A Regulation 1994)

**Note—**

Precinct plans as referred to in this clause are taken to be development control plans under the Act—see clause

25AD and clause 95 of Schedule 6 to the Act.

- (1) Pursuant to section 80 (11) of the Act, a development application in respect of land within a Precinct within the meaning of *State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area* must not be determined by the consent authority unless the following plans have been prepared for the land:
  - (a) a Precinct plan within the meaning of that Policy, and
  - (b) a contributions plan under section 94EA of the Act.
- (2) Despite subclause (1), a consent authority may dispense with the need for the plans referred to in that subclause if:
  - (a) the development application is, in the opinion of the consent authority, of a minor nature, or
  - (b) the development application relates to quarrying or associated activities within the Greystanes Precinct within the meaning of *State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area*, and the development the subject of the application will not, in the opinion of the consent authority, prevent the attainment of the zoning objectives under that Policy for the land, or
  - (c) the developer has entered into an agreement with the consent authority that makes adequate provision with respect to the matters that may be the subject of those plans, or
  - (d) the development application relates to land zoned “Employment” under *State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area* and the proposed development consists of:
    - (i) the erection of a building or the carrying out of a work on the land for the purpose of any land use that was being lawfully carried out on the land immediately before the commencement of this Regulation, or
    - (ii) the enlargement, expansion or intensification of any such land use, or
  - (e) the development application relates to land zoned “Employment” under *State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area* and the proposed development consists of a subdivision:
    - (i) that relates to a single lot that existed at the commencement of this Regulation, and
    - (ii) that does not result in more than one additional lot being created, and
    - (iii) that does not dedicate land as a public road, or

- (f) the development is in the St Bartholomews Precinct as shown by distinctive colouring on Sheet 3 of the map referred to in *State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area*.

**272-273A (Repealed)**

**274 Release areas under SREP 30**

- (1) Pursuant to section 78A (1) of the Act, a person cannot apply to a consent authority for consent to carry out development on land zoned “Employment” or “Urban” under *Sydney Regional Environmental Plan No 30—St Marys* unless the Minister has, in accordance with clause 7 of that plan, declared the land, or land that includes the land, to be a release area.
- (2) Subclause (1) does not apply to development referred to in clause 20 (3) or (4) or 48 of *Sydney Regional Environmental Plan No 30—St Marys*.

**274A-276 (Repealed)**

**277 Public authorities** (cf clause 110E of EP&A Regulation 1994)

- (1) For the purposes of the definition of **public authority** in section 4 (1) of the Act, a class 2 irrigation corporation established under the *Irrigation Corporations Act 1994* is prescribed, but only so as to allow such a corporation to be a determining authority within the meaning of Part 5 of the Act.
- (2) For the purposes of the definition of **public authority** in section 4 (1) of the Act, the Australian Rail Track Corporation Ltd is prescribed, but only so as to allow the corporation to be a determining authority within the meaning of Part 5 of the Act in relation to:
- (a) development permitted without consent under *State Environmental Planning Policy (ARTC Rail Infrastructure) 2004*, and
- (b) any other development for the purposes of rail infrastructure facilities within the meaning of that Policy that is permitted without consent under any other environmental planning instrument.

**278 Assessment of loan commitments of councils in development areas** (cf clause 111 of EP&A Regulation 1994)

- (1) Any assessment to be made on a council under section 143 (1) of the Act is to be made in accordance with the following formula:

$$\text{Contribution} = \text{Total assessment} \times \frac{\text{Rateable value of council}}{\text{Rateable value of all councils}}$$

where:

**Contribution** represents the amount to be contributed by the council.

**Total assessment** represents the total assessment for the development area, as referred to in section 143 (1) of the Act.

**Rateable value of council** represents the value shown in the statement given by the council in relation to the assessment payable during the calendar year ending 31 December 1990 in respect of rateable land in the area or part of the area of the council.

**Rateable value of all councils** represents the total of the values shown in the statements given by all councils in the development area in relation to the assessment payable during the calendar year ending 31 December 1990 in respect of all rateable land in the areas or parts of the areas of all such councils.

- (2) The corporation is not obliged to notify a council of its intention to make an assessment, but (if an assessment is made) must serve notice of the assessment on each relevant council.
- (3) The notice must be served on or before 1 April before the financial year in which the assessed amount is to be paid.
- (4) For the purposes of section 143 (4) of the Act, the prescribed day is the day occurring 3 months after notice of the assessment is served on the council.

**279 What matters must be specified in a planning certificate?** (cf clause 112 of EP&A Regulation 1994)

The prescribed matters to be specified in a certificate under section 149 (2) of the Act are the matters set out in Schedule 4.

**280 Application for building certificate** (cf clause 112A of EP&A Regulation 1994)

- (1) An application for a building certificate in relation to the whole or a part of a building may be made to the council by:
  - (a) the owner of the building or part or any other person having the owner's consent to make the application, or
  - (b) the purchaser under a contract for the sale of property, which comprises or includes the building or part, or the purchaser's solicitor or agent, or
  - (c) a public authority that has notified the owner of its intention to apply for the certificate.
- (2) An application must be accompanied by the fee payable under clause 260.
- (3) Despite subclause (1) (a), the consent in writing of the owner of the building or part is not required if the applicant is a public authority and the public authority has, before



making the application, served a copy of the application on the owner.

**281 Form of building certificate**

A building certificate must contain the following information:

- (a) a description of the building or part of the building being certified (including the address of the building),
- (b) the date on which the building or part of the building was inspected,
- (c) a statement to the effect that the council is satisfied as to the matters specified in section 149D (1) of the Act,
- (d) a statement that describes the effect of the certificate in the same terms as, or in substantially similar terms to, section 149E of the Act,
- (e) the date on which the certificate is issued.

**282 Director-General may certify certain documents** (cf clause 113 of EP&A Regulation 1994)

The Director-General is a prescribed officer for the certification of documents under section 150 (1) of the Act.

**283 False or misleading statements** (cf clause 115 of EP&A Regulation 1994)

A person is guilty of an offence if the person makes any statement, knowing it to be false or misleading in an important respect, in or in connection with any document lodged with the Director-General or a consent authority or certifying authority for the purposes of the Act or this Regulation.

**284 Penalty notice offences: section 127A** (cf clause 115A of EP&A Regulation 1994)

- (1) For the purposes of section 127A of the Act:
  - (a) each offence created by a provision specified in Column 1 of Schedule 5 is a prescribed offence, and
  - (b) the prescribed penalty for such an offence is the amount specified in Column 2 of Schedule 5.
- (2) If the reference to a provision in Column 1 of Schedule 5 is qualified by words that restrict its operation to specified kinds of offence or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.
- (3) The following persons are declared to be authorised persons for the purposes of section 127A of the Act:
  - (a) any person who is generally or specially authorised by the Minister to be an

authorised person for those purposes,

- (b) any person (including a member of staff of the Department) who is generally or specially authorised by the Director-General to be an authorised person for those purposes,
- (c) any person (including an employee of a council) who is generally or specially authorised by a council to be an authorised person for those purposes,
- (d) any police officer.

(4) Despite subclause (3), the following persons only are declared to be authorised persons for the purposes of section 127A of the Act for an offence referred to in section 125 (2) of the Act in relation to a contravention of clause 130 (4), 138 (3), 142 (2), 151 (2) or 160 (2) of this Regulation:

- (a) any person who is generally or specially authorised by the Minister to be an authorised person for those purposes,
- (b) any person (including a member of staff of the Department) who is generally or specially authorised by the Director-General to be an authorised person for those purposes.

**285 (Repealed)**

**286 Repeal, savings and transitional** (cf clause 116 of EP&A Regulation 1994)

- (1) The *Environmental Planning and Assessment Regulation 1994* is repealed.
- (2) Anything begun under a provision of the *Environmental Planning and Assessment Regulation 1994* before the repeal of that Regulation may be continued and completed under that Regulation as if that Regulation had not been repealed.
- (3) Subject to subclause (2), anything done under a provision of the *Environmental Planning and Assessment Regulation 1994* for which there is a corresponding provision in this Regulation (including anything arising under subclause (2)) is taken to have been done under the corresponding provision of this Regulation.
- (4) Any instrument (including a schedule attached to a building approval or to a fire safety order) in force under the *Environmental Planning and Assessment Regulation 1994* immediately before its repeal is taken to have been issued under this Regulation, and may be amended or revoked accordingly.

**286A Savings and transitional provisions: introduction of BASIX scheme**

- (1) The amendments to this Regulation made by the *Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2004* do not apply to:

- (a) a development application, or application for a complying development certificate, that has been made before 1 July 2004, or
  - (b) a development application, or application for a complying development certificate that is made on or after 1 July 2004, but before 1 January 2005, in relation to a building to be constructed:
    - (i) pursuant to a building agreement entered into before 1 July 2004, or
    - (ii) pursuant to a building agreement entered into on or after 1 July 2004 as a consequence of an offer made, or deposit paid, before 1 July 2004, or
  - (c) a development consent or complying development certificate arising from an application referred to in paragraph (a) or (b), or
  - (d) an application for a construction certificate or occupation certificate that is made in relation to development carried out under the authority of a development consent or complying development certificate arising from an application referred to in paragraph (a) or (b).
- (2) The amendments to this Regulation made by the regulation referred to in subclause (1) do not apply, in relation to land outside the initial BASIX area, to:
- (a) a development application, or application for a complying development certificate, that has been made before 1 July 2005, or
  - (b) a development consent or complying development certificate arising from an application referred to in paragraph (a), or
  - (c) an application for a construction certificate or occupation certificate that is made in relation to development carried out under the authority of a development consent or complying development certificate arising from an application referred to in paragraph (a).
- (3) The amendments to this Regulation made by the *Environmental Planning and Assessment Further Amendment (Building Sustainability Index: BASIX) Regulation 2005* do not apply to:
- (a) a development application, or application for a complying development certificate, that has been made before 1 October 2005, or
  - (b) a development consent or complying development certificate arising from an application referred to in paragraph (a), or
  - (c) an application for a construction certificate or occupation certificate that is made in relation to development carried out under the authority of a development consent or complying development certificate arising from an application referred to in paragraph (a).

**286B Savings and transitional provision: changes to development contributions scheme**

Section 93E (2) of the Act, as inserted by the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005*, extends to money paid under Division 6 of Part 4 of the Act before its substitution by that Act.

**286C Transitional—species impact statements and determination of significant effect**

- (1) An amendment made to section 110 (Content of species impact statement) of the *Threatened Species Conservation Act 1995* by the *Threatened Species Conservation Amendment Act 2002* does not apply to or in respect of a species impact statement:
  - (a) that accompanies a development application lodged under Part 4 of the Act before or within 6 months after the commencement of the amendment, or
  - (b) that is submitted to a determining authority in connection with a Part 5 approval if the application for that approval (or for any of the Part 5 approvals required for that activity if the activity requires more than one Part 5 approval) is made before or within 6 months after the commencement of the amendment, or
  - (c) that is considered by a determining authority in connection with the carrying out of an activity by or on behalf of the determining authority if the determining authority makes its determination to carry out the activity (or to have it carried out on its behalf) before or within 6 months after the commencement of the amendment.
- (2) The substitution of section 5A (Significant effect on threatened species, populations or ecological communities, or their habitats) of the *Environmental Planning and Assessment Act 1979* by the *Threatened Species Conservation Amendment Act 2002* does not apply to or in respect of:
  - (a) development that is the subject of a development application lodged under Part 4 of the Act before or within 6 months after the substitution of that section (but not so as to affect the application of that section as substituted in respect of any part or aspect of that development that is the subject of a subsequent development application lodged more than 6 months after the substitution of that section), or
  - (b) an activity that is the subject of an application for a Part 5 approval made before or within 6 months after the substitution of that section, or
  - (c) an activity carried out by or on behalf of a determining authority if the determining authority makes its determination to carry out the activity (or to have it carried out on its behalf) before or within 6 months after the substitution of that section.
- (3) Subclause (2) does not apply in the case of a development application or application for a Part 5 approval lodged or made within 6 months after the substitution of section

5A of the *Environmental Planning and Assessment Act 1979* if the applicant advises the consent authority or determining authority in writing at the time of making or lodging the application that section 5A as substituted is to apply (in which case that section as substituted applies to and in respect of the development or activity concerned).

(4) In this clause:

**activity** and **determining authority** have the same meanings as in Part 5 of the Act.

**Part 5 approval** means an approval of an activity by a determining authority that is required to enable the activity to be carried out.

### **287 Special provisions relating to ski resort areas**

Schedule 6 has effect.

### **288 Special provision relating to Sydney Opera House**

- (1) To the extent that any development that is to be carried out at the Sydney Opera House is development to which Part 4 of the Act applies, the provisions of the Management Plan for the Sydney Opera House are prescribed for the purposes of section 79C (1) (a) (iv) of the Act as a matter that must be taken into consideration by the consent authority in determining a development application in respect of that development.
- (2) To the extent that any development that is to be carried out at the Sydney Opera House is a project to which Part 3A of the Act applies, the Director-General's report under section 75I of the Act in relation to the project must include:
  - (a) the provisions of the Management Plan for the Sydney Opera House that are relevant to the carrying out of the development, and
  - (b) advice as to the extent to which the project is consistent with the objectives of that Management Plan.

#### **Note—**

Section 75J (2) of the Act requires the Minister to consider the Director-General's report (and the reports, advice and recommendations contained in it) when deciding whether or not to approve the carrying out of a project.

(3) In this clause:

**Management Plan for the Sydney Opera House** means the management plan that relates to Sydney Opera House that has been approved by the Minister administering the *Sydney Opera House Trust Act 1961* and published in the Gazette.

**Sydney Opera House** means the land identified on Map 1 to Schedule 3 to *State Environmental Planning Policy (Major Projects) 2005*.

## **289 Miscellaneous savings and transitional provisions: 2005 Amending Act**

(1) In this clause and clause 289A:

**2005 Amending Act** means the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Act 2005*.

- (2) **Adoption of model provisions** An environmental planning instrument made after the commencement of the repeal of section 33 of the Act by Schedule 2 to the 2005 Amending Act (but initiated before that commencement) may, despite the repeal of that section, adopt model provisions made under that section as in force immediately before its repeal. Accordingly, those model provisions continue in force for the purposes of any environmental planning instrument that adopts them and clause 93 (2) of Schedule 6 to the Act extends to those provisions.
- (3) For the purposes of subclause (2), an environmental planning instrument is taken to have been initiated if the relevant council (or the Director-General, as the case requires) has resolved to make the instrument.
- (4) **Pending development control plans** Clause 94 (1) of Schedule 6 to the Act extends to a development control plan that was approved before 30 September 2005 but did not take effect until after that date.
- (5), (5A) (Repealed)
- (6) **Existing section 117 (2) directions continue to apply to draft plans** Despite clause 96 (2) of Schedule 6 to the Act, a direction given under section 117 (2) of the Act before the commencement of Schedule 2 to the 2005 Amending Act continues in force in relation to a draft local environmental plan only if the draft plan:
- (a) is submitted to the Director-General under section 68 (4) of the Act before 31 January 2006, or
  - (b) is the subject of a report under section 69 of the Act that is furnished before that date.
- (7) **Master plans under epis made before 31 December 2005** A reference in clause 95 (2) of Schedule 6 to the Act to a provision of an environmental planning instrument that requires, before the grant of development consent, a master plan for the land concerned extends to a provision of that kind in an environmental planning instrument that is made before 31 December 2005.

### **289A Transitional provisions relating to development control plans**

- (1) This clause applies to a development control plan:
- (a) that was made before 30 September 2005 and in force immediately before that date, or

- (b) that was approved before 30 September 2005 (but did not take effect until after that date), or
  - (c) that is approved after 30 September 2005 (regardless of when it takes effect).
- (2) Section 74C of the Act (as inserted by the 2005 Amending Act) does not render invalid any provision of a development control plan to which this clause applies until whichever of the following happens first:
- (a) the principal local environmental planning instrument applying to the land to which the development control plan applies adopts the provisions of a standard instrument as referred to in section 33A of the Act,
  - (b) a development control plan is, after 30 April 2006, made under section 74C of the Act in respect of that land.
- (3) This clause has effect despite clause 94 (2) of Schedule 6 to the Act.

**290 Savings and transitional provision: references to “comprehensive development applications”**

- (1) A reference in an environmental planning instrument to a comprehensive development application (as referred to in clause 92A immediately before the repeal of that clause by the *Environmental Planning and Assessment Amendment (Planning Instruments and Development Consents) Regulation 2005*) is taken to be a reference to a staged development application within the meaning of the Act.
- (2) Section 83C (1) of the Act does not apply to any provision of an environmental planning instrument (as in force as at the commencement of this clause) that requires the making of a comprehensive development application that is taken to be a staged development application.

## Schedule 1 Forms

(Clauses 50, 126 and 139)

### Part 1 Development applications

#### 1 Information to be included in development application

A development application must contain the following information:

- (a) the name and address of the applicant,
- (b) a description of the development to be carried out,
- (c) the address, and formal particulars of title, of the land on which the development is to be carried out,

- (d) an indication as to whether the land is, or is part of, critical habitat,
- (e) an indication as to whether the development is likely to significantly affect threatened species, populations or ecological communities, or their habitats,
- (f) a list of any authorities from which concurrence must be obtained before the development may lawfully be carried out,
- (g) a list of any approvals of the kind referred to in section 91 (1) of the Act that must be obtained before the development may lawfully be carried out,
- (h) the estimated cost of the development,
- (i) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application,
- (j) a list of the documents accompanying the application.

## **2 Documents to accompany development application**

- (1) A development application must be accompanied by the following documents:
  - (a) a site plan of the land,
  - (b) a sketch of the development,
  - (c) a statement of environmental effects (in the case of development other than designated development),
  - (d) in the case of development that involves the erection of a building, an A4 plan of the building that indicates its height and external configuration, as erected, in relation to its site (as referred to in clause 56 of this Regulation),
  - (e) an environmental impact statement (in the case of designated development),
  - (f) a species impact statement (in the case of land that is, or is part of, critical habitat or development that is likely to significantly affect threatened species, populations or ecological communities, or their habitats),
  - (g) if the development involves any subdivision work, preliminary engineering drawings of the work to be carried out,
  - (h) if an environmental planning instrument requires arrangements for any matter to have been made before development consent may be granted (such as arrangements for the provision of utility services), documentary evidence that such arrangements have been made,
  - (i) if the development involves a change of use of a building (other than a dwelling-house or a building or structure that is ancillary to a dwelling-house):



- (i) a list of the Category 1 fire safety provisions that currently apply to the existing building, and
  - (ii) a list of the Category 1 fire safety provisions that are to apply to the building following its change of use,
  - (j) if the development involves building work to alter, expand or rebuild an existing building, a scaled plan of the existing building,
  - (k) if the land is within a wilderness area and is the subject of a wilderness protection agreement or conservation agreement within the meaning of the *Wilderness Act 1987*, a copy of the consent of the Minister for the Environment to the carrying out of the development,
  - (l) in the case of development to which clause 2A applies, such other documents as any BASIX certificate for the development requires to accompany the application.
- (2) The site plan referred to in subclause (1) (a) must indicate the following matters:
- (a) the location, boundary dimensions, site area and north point of the land,
  - (b) existing vegetation and trees on the land,
  - (c) the location and uses of existing buildings on the land,
  - (d) existing levels of the land in relation to buildings and roads,
  - (e) the location and uses of buildings on sites adjoining the land.
- (3) The sketch referred to in subclause (1) (b) must indicate the following matters:
- (a) the location of any proposed buildings or works (including extensions or additions to existing buildings or works) in relation to the land's boundaries and adjoining development,
  - (b) floor plans of any proposed buildings showing layout, partitioning, room sizes and intended uses of each part of the building,
  - (c) elevations and sections showing proposed external finishes and heights of any proposed buildings,
  - (d) proposed finished levels of the land in relation to existing and proposed buildings and roads,
  - (e) proposed parking arrangements, entry and exit points for vehicles, and provision for movement of vehicles within the site (including dimensions where appropriate),
  - (f) proposed landscaping and treatment of the land (indicating plant types and their height and maturity),

- (g) proposed methods of draining the land,
  - (h) in the case of development to which clause 2A applies, such other matters as any BASIX certificate for the development requires to be included on the sketch.
- (4) A statement of environmental effects referred to in subclause (1) (c) must indicate the following matters:
- (a) the environmental impacts of the development,
  - (b) how the environmental impacts of the development have been identified,
  - (c) the steps to be taken to protect the environment or to lessen the expected harm to the environment,
  - (d) any matters required to be indicated by any guidelines issued by the Director-General for the purposes of this clause.
- (5) In addition, a statement of environmental effects referred to in subclause (1) (c) must include the following, if the development application relates to residential flat development to which *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* applies:
- (a) an explanation of the design in terms of the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*,
  - (b) drawings of the proposed development in the context of surrounding development, including the streetscape,
  - (c) development compliance with building heights, building height planes, setbacks and building envelope controls (if applicable) marked on plans, sections and elevations,
  - (d) drawings of the proposed landscape area, including species selected and materials to be used, presented in the context of the proposed building or buildings, and the surrounding development and its context,
  - (e) if the proposed development is within an area in which the built form is changing, statements of the existing and likely future contexts,
  - (f) photomontages of the proposed development in the context of surrounding development,
  - (g) a sample board of the proposed materials and colours of the facade,
  - (h) detailed sections of proposed facades,
  - (i) if appropriate, a model that includes the context.

- (6) In the case of development to which clause 2A applies, the explanation referred to in subclause (5) (a) need not deal with the design quality principles referred to in that paragraph to the extent to which they aim:
- (a) to reduce consumption of mains-supplied potable water, or reduce emissions of greenhouse gases, in the use of the building or in the use of the land on which the building is situated, or
  - (b) to improve the thermal performance of the building.

## **2A BASIX certificate required for certain development**

- (1) This clause applies:
- (a) on and from 1 July 2004, to all land within the initial BASIX area, and
  - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) In addition to the documents required by clause 2, a development application for any development:
- (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or
  - (b) that involves a change of building use by which a building becomes a BASIX affected building,

must also be accompanied by a BASIX certificate for the development, being a BASIX certificate that has been issued no earlier than 3 months before the date on which the application is made.

## **Part 2 Complying development certificates**

### **3 Information to be included in application for complying development certificate**

An application for a complying development certificate must contain the following information:

- (a) the name and address of the applicant,
- (b) a description of the development to be carried out,
- (c) the address, and formal particulars of title, of the land on which the development is to be carried out,
- (d) the estimated cost of the development,
- (e) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application,

- (f) a list of the documents accompanying the application.

#### **4 Documents to accompany application for complying development certificate**

- (1) An application for a complying development certificate must be accompanied by the following documents:
  - (a) a site plan of the land,
  - (b) a sketch of the development,
  - (c) if the development involves a change of use of a building (other than a dwelling-house or a building or structure that is ancillary to a dwelling-house or work that relates only to fire link conversion):
    - (i) a list of the Category 1 fire safety provisions that currently apply to the existing building,
    - (ii) a list of the Category 1 fire safety provisions that are to apply to the building following its change of use,
  - (d) if the development involves building work (including work in relation to a dwelling-house or a building or structure that is ancillary to a dwelling-house):
    - (i) a detailed description of the development, and
    - (ii) appropriate building work plans and specifications,
  - (e) if the development involves building work (other than work in relation to a dwelling-house or a building or structure that is ancillary to a dwelling-house):
    - (i) a list of any existing fire safety measures provided in relation to the land or any existing building on the land, and
    - (ii) a list of the proposed fire safety measures to be provided in relation to the land and any building on the land as a consequence of the building work,
  - (f) if the development involves subdivision work, appropriate subdivision work plans and specifications,
  - (g) in the case of development to which clause 4A applies, such other documents as any BASIX certificate for the development requires to accompany the application.
- (2) The site plan referred to in subclause (1) (a) must indicate the following matters:
  - (a) the location, boundary dimensions, site area and north point of the land,
  - (b) existing vegetation and trees on the land,
  - (c) the location and uses of existing buildings on the land,

- (d) existing levels of the land in relation to buildings and roads,
  - (e) the location and uses of buildings on sites adjoining the land.
- (3) The sketch referred to in subclause (1) (b) must indicate the following matters:
- (a) the location of any proposed buildings or works (including extensions or additions to existing buildings or works) in relation to the land's boundaries and adjoining development,
  - (b) floor plans of any proposed buildings showing layout, partitioning, room sizes and intended uses of each part of the building,
  - (c) elevations and sections showing proposed external finishes and heights of any proposed buildings,
  - (d) proposed finished levels of the land in relation to existing and proposed buildings and roads,
  - (e) proposed parking arrangements, entry and exit points for vehicles, and provision for movement of vehicles within the site (including dimensions where appropriate),
  - (f) proposed landscaping and treatment of the land (indicating plant types and their height and maturity),
  - (g) proposed methods of draining the land,
  - (h) in the case of development to which clause 4A applies, such other matters as any BASIX certificate for the development requires to be included on the sketch.
- (4) A detailed description of the development referred to in subclause (1) (d) (i) must indicate the following matters:
- (a) for each proposed new building:
    - (i) the number of storeys (including underground storeys) in the building,
    - (ii) the gross floor area of the building (in square metres),
    - (iii) the gross site area of the land on which the building is to be erected (in square metres),
  - (b) for each proposed new residential building:
    - (i) the number of existing dwellings on the land on which the new building is to be erected,
    - (ii) the number of those existing dwellings that are to be demolished in connection with the erection of the new building,

- (iii) the number of dwellings to be included in the new building,
  - (iv) whether the new building is to be attached to any existing building,
  - (v) whether the new building is to be attached to any other new building,
  - (vi) whether the land contains a dual occupancy,
  - (vii) the materials to be used in the construction of the new building (using the abbreviations set out in clause 7 of this Schedule).
- (5) Appropriate building work plans and specifications referred to in subclause (1) (d) (ii) include the following:
- (a) detailed plans, drawn to a suitable scale and consisting of a block plan and a general plan, that show:
    - (i) a plan of each floor section, and
    - (ii) a plan of each elevation of the building, and
    - (iii) the levels of the lowest floor and of any yard or unbuilt on area belonging to that floor and the levels of the adjacent ground, and
    - (iv) the height, design, construction and provision for fire safety and fire resistance (if any),
  - (b) specifications for the development:
    - (i) that describe the construction and materials of which the building is to be built and the method of drainage, sewerage and water supply, and
    - (ii) that state whether the materials to be used are new or second-hand and (in the case of second-hand materials) give particulars of the materials to be used,
  - (c) a statement as to how the performance requirements of the *Building Code of Australia* are to be complied with (if an alternative solution, to meet the performance requirements, is to be used),
  - (d) a description of any accredited components, processes or design sought to be relied on,
  - (e) copies of any compliance certificate to be relied on,
  - (f) if the development involves building work to alter, expand or rebuild an existing building, a scaled plan of the existing building,
  - (g) in the case of development to which clause 4A applies, such other matters as any BASIX certificate for the development requires to be included in the plans and

specifications.

- (5A) An application for a complying development certificate that relates only to fire link conversion need only be accompanied by a document that describes the design and construction, and mode of operation, of the new fire alarm communication link.
- (6) Appropriate subdivision work plans and specifications referred to in subclause (1) (f) include 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.

#### **4A BASIX certificate required for certain development**

- (1) This clause applies:
- (a) on and from 1 July 2004, to all land within the initial BASIX area, and
  - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) In addition to the documents required by clause 4, an application for a complying development certificate for any development:
- (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or

- (b) that involves a change of building use by which a building becomes a BASIX affected building,

must also be accompanied by a BASIX certificate for the development, being a BASIX certificate that has been issued no earlier than 3 months before the date on which the application is made.

## **Part 3 Construction certificates**

### **5 Information to be included in application for construction certificate**

An application for a construction certificate must contain the following information:

- (a) the name and address of the applicant,
- (b) a description of the building work or subdivision work to be carried out,
- (c) the address, and formal particulars of title, of the land on which the building work or subdivision work is to be carried out,
- (d) in the case of building work, the class of the building under the *Building Code of Australia*,
- (e) the registered number and date of issue of the relevant development consent, if consent has already been granted for the proposed development,
- (f) the estimated cost of the development,
- (g) if the applicant is not the owner of the land and the owner of the land has not previously consented to the making of the application, a statement signed by the owner of the land to the effect that the owner consents to the making of the application,
- (h) a list of the documents accompanying the application.

### **6 Documents to accompany application for construction certificate**

- (1) An application for a construction certificate must be accompanied by the following documents:
  - (a) if the development involves building work (including work in relation to a dwelling-house or a building or structure that is ancillary to a dwelling-house):
    - (i) a detailed description of the development, and
    - (ii) appropriate building work plans and specifications,
  - (b) if the development involves building work (other than work in relation to a dwelling-house or a building or structure that is ancillary to a dwelling-house or work that relates only to fire link conversion):



- (i) a list of any existing fire safety measures provided in relation to the land or any existing building on the land, and
    - (ii) a list of the proposed fire safety measures to be provided in relation to the land and any building on the land as a consequence of the building work,
  - (c) if the development involves subdivision work, appropriate subdivision work plans and specifications,
  - (d) in the case of development to which clause 6A applies, such other documents as any BASIX certificate for the development requires to accompany the application.
- (2) A detailed description of the development referred to in subclause (1) (a) (i) must indicate the following matters:
- (a) for each proposed new building:
    - (i) the number of storeys (including underground storeys) in the building,
    - (ii) the gross floor area of the building (in square metres),
    - (iii) the gross site area of the land on which the building is to be erected (in square metres),
  - (b) for each proposed new residential building:
    - (i) the number of existing dwellings on the land on which the new building is to be erected,
    - (ii) the number of those existing dwellings that are to be demolished in connection with the erection of the new building,
    - (iii) the number of dwellings to be included in the new building,
    - (iv) whether the new building is to be attached to any existing building,
    - (v) whether the new building is to be attached to any other new building,
    - (vi) whether the land contains a dual occupancy,
    - (vii) the materials to be used in the construction of the new building (using the abbreviations set out in clause 7 of this Schedule).
- (3) Appropriate building work plans and specifications referred to in subclause (1) (a) (ii) include the following:
- (a) detailed plans, drawn to a suitable scale and consisting of a block plan and a general plan, that show:
    - (i) a plan of each floor section, and

- (ii) a plan of each elevation of the building, and
  - (iii) the levels of the lowest floor and of any yard or unbuilt on area belonging to that floor and the levels of the adjacent ground, and
  - (iv) the height, design, construction and provision for fire safety and fire resistance (if any),
- (b) specifications for the development:
- (i) that describe the construction and materials of which the building is to be built and the method of drainage, sewerage and water supply, and
  - (ii) that state whether the materials to be used are new or second-hand and (in the case of second-hand materials) give particulars of the materials to be used,
- (c) a statement as to how the performance requirements of the *Building Code of Australia* are to be complied with (if an alternative solution, to meet the performance requirements, is to be used),
- (d) a description of any accredited components, processes or design sought to be relied on,
- (e) copies of any compliance certificate to be relied on,
- (f) if the development involves building work to alter, expand or rebuild an existing building, a scaled plan of the existing building,
- (g) in the case of development to which clause 6A applies, such other matters as any BASIX certificate for the development requires to be included in the plans and specifications.
- (3A) An application for a construction certificate that relates only to fire link conversion need only be accompanied by a document that describes the design and construction, and mode of operation, of the new fire alarm communication link.
- (4) Appropriate subdivision work plans and specifications referred to in subclause (1) (c) include 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.

#### **6A BASIX certificate required for certain development**

- (1) This clause applies:
- (a) on and from 1 July 2004, to all land within the initial BASIX area, and
  - (b) on and from 1 July 2005, to all land within New South Wales.
- (2) In addition to the documents required by clause 6, an application for a construction certificate for any development:
- (a) that involves the erection (but not the alteration, enlargement, extension or relocation) of a BASIX affected building, or
  - (b) that involves a change of building use by which a building becomes a BASIX affected building,

must also be accompanied by a BASIX certificate for the development, being either the BASIX certificate applicable to the development when the relevant development consent was granted or some other BASIX certificate that has been issued no earlier than 3 months before the date on which the application is made.

## **Part 4 Abbreviations for building materials**

### **7 Abbreviations for building materials**

The following abbreviations are to be used in any development application or application for a complying development certificate:

<b>Walls</b>	<b>Code</b>	<b>Roof</b>	<b>Code</b>
Brick (double)	11	Tiles	10

Brick (veneer)	12	Concrete or Slate	20
Concrete or Stone	20	Fibre cement	30
Fibre cement	30	Steel	60
Timber	40	Aluminium	70
Curtain glass	50	Other	80
Steel	60	Not specified	90
Aluminium	70		
Other	80		
Not specified	90		

<b>Floor</b>	<b>Code</b>	<b>Frame</b>	<b>Code</b>
Concrete or Slate	20	Timber	40
Timber	40	Steel	60
Other	80	Aluminium	70
Not specified	90	Other	80
		Not specified	90

## Schedule 2 Environmental impact statements

(Clauses 72 and 230)

### 1 Summary

A summary of the environmental impact statement.

### 2 Statement of objectives

A statement of the objectives of the development or activity.

### 3 Analysis of alternatives

An analysis of any feasible alternatives to the carrying out of the development or activity, having regard to its objectives, including the consequences of not carrying out the development or activity.

### 4 Environmental assessment

An analysis of the development or activity, including:

(a) a full description of the development or activity, and

- (b) a general description of the environment likely to be affected by the development or activity, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and
- (c) the likely impact on the environment of the development or activity, and
- (d) a full description of the measures proposed to mitigate any adverse effects of the development or activity on the environment, and
- (e) a list of any approvals that must be obtained under any other Act or law before the development or activity may lawfully be carried out.

## 5 Compilation of measures to mitigate adverse effects

A compilation (in a single section of the environmental impact statement) of the measures referred to in item 4 (d).

## 6 Justification of development

(1) The reasons justifying the carrying out of the development or activity in the manner proposed, having regard to biophysical, economic and social considerations, including the following principles of ecologically sustainable development:

- (a) the **precautionary principle**, namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
  - (ii) an assessment of the risk-weighted consequences of various options,
- (b) **inter-generational equity**, namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
  - (c) **conservation of biological diversity and ecological integrity**, namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
  - (d) **improved valuation, pricing and incentive mechanisms**, namely, that environmental factors should be included in the valuation of assets and services, such as:
    - (i) polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

- (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
- (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

## **Schedule 3 Designated development**

(Clause 4)

### **Part 1 What is designated development?**

#### **1 Agricultural produce industries**

Agricultural produce industries (being industries that process agricultural produce, including dairy products, seeds, fruit, vegetables or other plant material):

- (a) that crush, juice, grind, mill, gin, mix or separate more than 30,000 tonnes of agricultural produce per year, or
- (b) that release effluent, sludge or other waste:
  - (i) in or within 100 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils.

#### **2 Aircraft facilities**

Aircraft facilities (including terminals, buildings for the parking, servicing or maintenance of aircraft, installations or movement areas) for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters:

- (a) in the case of seaplane or aeroplane facilities:
  - (i) that cause a significant environmental impact or significantly increase the environmental impacts as a result of the number of flight movements (including taking-off or landing) or the maximum take-off weight of aircraft capable of using the facilities, and
  - (ii) that are located so that the whole or part of a residential zone, a school or hospital is within the 20 ANEF contour map approved by the Civil Aviation Authority of Australia, or within 5 kilometres of the facilities if no ANEF contour map has been approved, or
- (b) in the case of helicopter facilities (other than facilities used exclusively for emergency

aeromedical evacuation, retrieval or rescue):

- (i) that have an intended use of more than 7 helicopter flight movements per week (including taking-off or landing), and
- (ii) that are located within 1 kilometre of a dwelling not associated with the facilities, or

(c) in any case, that are located:

- (i) so as to disturb more than 20 hectares of native vegetation by clearing, or
- (ii) within 40 metres of an environmentally sensitive area, or
- (iii) within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities).

### **3 Aquaculture**

(1) Aquaculture (being the commercial breeding, hatching, rearing or cultivation of marine, estuarine or fresh water organisms, including aquatic plants or animals such as fin fish, crustaceans, molluscs or other aquatic invertebrates):

(a) that involve supplemental feeding in:

- (i) tanks or artificial waterbodies located in areas of high watertable or acid sulphate soils, or
- (ii) tanks or artificial waterbodies that have a total water storage area of more than 2 hectares or total water volume of more than 40 megalitres and that are located on a floodplain or release effluent or sludge into a natural waterbody or wetland or into groundwater, or
- (iii) tanks or artificial waterbodies that have a total water storage area of more than 10 hectares or a total water volume of more than 400 megalitres, or
- (iv) natural waterbodies (except for trial projects that operate for a maximum period of 2 years and are approved by the Director of NSW Fisheries), or

(b) that involve farming of species not indigenous to New South Wales located:

- (i) in or within 500 metres of a natural waterbody or wetland, or
- (ii) on a floodplain, or

(c) that involve the establishment of new areas for lease under the [Fisheries Management Act 1994](#) with a total area of more than 10 hectares and that in the opinion of the consent authority, are likely to cause significant impacts:

- (i) on the habitat value or the scenic value, or

- (ii) on the amenity of the waterbody by obstructing or restricting navigation, fishing or recreational activities, or
- (iii) because other leases are within 500 metres, or
- (d) that involve the establishment of new areas for lease under the *Fisheries Management Act 1994* with a total area of more than 50 hectares.

(2) This clause does not apply to:

- (a) aquaculture that constitutes development for which *State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas* requires consent, or
- (b) aquaculture development to which *State Environmental Planning Policy No 62—Sustainable Aquaculture* applies.

**Note—**

*State Environmental Planning Policy No 62—Sustainable Aquaculture* declares Class 3 aquaculture (within the meaning of that Policy) to be designated development. So whereas Class 1 aquaculture and Class 2 aquaculture (within the meaning of that Policy) are not designated development because of subclause (2) (b) above, Class 3 aquaculture (within the meaning of that Policy) is designated development because of the provisions of that Policy.

#### **4 Artificial waterbodies**

(1) Artificial waterbodies:

- (a) that have a maximum aggregate surface area of water of more than 0.5 hectares located:
  - (i) in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or
  - (ii) in an area of high watertable or acid sulphate, sodic or saline soils, or
- (b) that have a maximum aggregate surface area of water of more than 20 hectares or a maximum total water volume of more than 800 megalitres, or
- (c) from which more than 30,000 cubic metres per year of material is to be removed.

(2) This clause does not apply to:

- (a) artificial waterbodies located on land to which the *Sydney Regional Environmental Plan No 11—Penrith Lakes Scheme* applies, or
- (b) artificial waterbodies that constitute development for which *State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas* requires consent.



## **5 Bitumen pre-mix and hot-mix industries**

- (1) Bitumen premix or hot-mix industries (being industries in which crushed or ground rock is mixed with bituminous materials):
  - (a) that have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year, or
  - (b) that are located:
    - (i) within 100 metres of a natural waterbody or wetland, or
    - (ii) within 250 metres of a residential zone or dwelling not associated with the development.
- (2) This clause does not apply to bitumen plants located on or adjacent to a construction site and exclusively providing material to the development being carried out on that site:
  - (a) for a period of less than 12 months, or
  - (b) for which the environmental impacts were previously assessed in an environmental impact statement prepared for the development.

## **6 Breweries and distilleries**

Breweries or distilleries producing alcohol or alcoholic products:

- (a) that have an intended production capacity of more than 30 tonnes per day or 10,000 tonnes per year, or
- (b) that are located within 500 metres of a residential zone and are likely, in the opinion of the consent authority, to significantly affect the amenity of the neighbourhood by reason of odour, traffic or waste, or
- (c) that release effluent or sludge:
  - (i) in or within 100 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils.

## **7 Cement works**

Cement works manufacturing portland or other special purpose cement or quicklime:

- (a) that burn, sinter or heat (until molten) calcareous, argillaceous or other materials, or
- (b) that grind clinker or compound cement with an intended processing capacity of more than 150 tonnes per day or 30,000 tonnes per year, or

- (c) that have an intended combined handling capacity of more than 150 tonnes per day, or 30,000 tonnes per year, of bulk cement, fly ash, powdered lime or other such dry cement product,
- (d) that are located:
  - (i) within 100 metres of a natural waterbody or wetland, or
  - (ii) within 250 metres of a residential zone or a dwelling not associated with the development.

## **8 Ceramic and glass industries**

Ceramic or glass industries (being industries that manufacture bricks, tiles, pipes, pottery, ceramics, refractories or glass by means of a firing process):

- (a) that have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year, or
- (b) that are located:
  - (i) within 40 metres of a natural waterbody or wetland, or
  - (ii) within 250 metres of a residential zone or dwelling not associated with the development.

## **9 Chemical industries and works**

- (1) Chemical industries or works for the commercial production of, or research into, chemical substances, comprising:
  - (a) chemical industries or works referred to in subclause (2), or
  - (b) chemical industries or works other than those referred to in subclause (2):
    - (i) that manufacture, blend, recover or use substances classified as explosive, poisonous or radioactive in the *Australian Dangerous Goods Code*, or
    - (ii) that manufacture or use more than 1,000 tonnes per year of substances classified (but other than as explosive, poisonous or radioactive) in the *Australian Dangerous Goods Code*, or
    - (iii) that crush, grind or mill more than 10,000 tonnes per year of chemical substances, or
  - (c) chemical industries or works that are located:
    - (i) within 40 metres of a natural waterbody or wetland, or
    - (ii) in an area of high watertable or highly permeable soil, or

(iii) in a drinking water catchment, or

(iv) on a floodplain.

(2) The chemical industries or works referred to in subclause (1) (a) are the following:

- (a) agriculture fertiliser industries that manufacture inorganic plant fertilisers in quantities of more than 20,000 tonnes per year,
- (b) battery industries that manufacture or reprocess batteries and use or recover more than 30 tonnes of metal per year,
- (c) carbon black plants that manufacture more than 5,000 tonnes of carbon black per year,
- (d) explosive and pyrotechnic industries that manufacture explosives for purposes including industrial, extractive industries and mining uses, ammunition, fireworks or fuel propellents,
- (e) paint, paint solvent, pigment, dye, printing ink, industrial polish, adhesive or sealant industries that manufacture paints, paint solvents, pigments, dyes, printing inks, industrial polishes, adhesives or sealants in quantities of more than 5,000 tonnes per year,
- (f) petrochemical industries that manufacture petrochemicals or petrochemical products in quantities of more than 2,000 tonnes per year,
- (g) pesticide, fungicide, herbicide, rodenticide, nematocide, miticide, fumigant or related products industries:
  - (i) that use or produce materials classified as poisonous in the *Australian Dangerous Goods Code*, or
  - (ii) that manufacture products in quantities (excluding simple blending) of more than 2,000 tonnes per year,
- (h) pharmaceutical or veterinary products industries that use or produce materials classified as poisonous in the *Australian Dangerous Goods Code*,
- (i) plastics industries:
  - (i) that manufacture more than 2,000 tonnes per year of synthetic plastic resins, or
  - (ii) that reprocess more than 5,000 tonnes of plastics per year otherwise than by a simple melting and reforming process,
- (j) rubber industries or works:

- (i) that manufacture more than 2,000 tonnes per year of synthetic rubber, or
- (ii) that manufacture, retread or recycle more than 5,000 tonnes per year of rubber products or rubber tyres, or
- (iii) that dump or store (otherwise than in a building) more than 10 tonnes of used rubber tyres, or
- (k) soap or detergent industries that manufacture soap or detergent (including domestic, institutional or industrial soap or detergent):
  - (i) that produce more than 100 tonnes per year of materials containing substances classified as poisonous in the *Australian Dangerous Goods Code*, or
  - (ii) that produce more than 5,000 tonnes per year of products (excluding simple blending).
- (3) This clause does not apply to:
  - (a) chemical industries or works where dangerous goods within the meaning of the *Dangerous Goods Act 1975* are stored in quantities below the licence level set out in the regulations under that Act, or
  - (b) development specifically referred to elsewhere in this Schedule.

## **10 Chemical storage facilities**

Chemical storage facilities:

- (a) that store or package chemical substances in containers, bulk storage facilities, stockpiles or dumps with a total storage capacity in excess of:
  - (i) 20 tonnes of pressurised gas, or
  - (ii) 200 tonnes of liquefied gases, or
  - (iii) 2,000 tonnes of any chemical substances, or
- (b) that are located:
  - (i) within 40 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable or highly permeable soil, or
  - (iii) in a drinking water catchment, or
  - (iv) on a floodplain.

## **11 Coal mines**

Coal mines that mine, process or handle coal, being:

- (a) underground mines, or
- (b) open cut mines:
  - (i) that produce or process more than 500 tonnes of coal or carbonaceous material per day, or
  - (ii) that disturb or will disturb a total surface area of more than 4 hectares of land (associated with a mining lease or mineral claim or subject to a notice under section 8 of the *Mining Act 1992*) by clearing or excavating, by constructing dams, ponds, drains, roads, railways or conveyors or by storing or depositing overburden, coal or carbonaceous material or tailings, or
- (c) mines that are located:
  - (i) in or within 40 metres of a natural waterbody, wetland, a drinking water catchment or an environmentally sensitive area, or
  - (ii) within 200 metres of a coastline, or
  - (iii) on land that slopes at more than 18 degrees to the horizontal, or
  - (iv) if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the mine.

## **12 Coal works**

Coal works that store and handle coal or carbonaceous material (including any coal loader, conveyor, washery or reject dump) at an existing coal mine or on a separate coal industry site, and:

- (a) that handle more than 500 tonnes per day of coal or carbonaceous material, or
- (b) that store more than 5,000 tonnes of coal, except where the storage is within a closed container or a closed building, or
- (c) that store or deposit more than 5,000 tonnes of carbonaceous reject material, or
- (d) that are located in or within 40 metres of a natural waterbody, wetland, a drinking water catchment or an environmentally sensitive area.

## **13 Composting facilities or works**

Composting facilities or works (being works involving the controlled aerobic or anaerobic biological conversion of organic material into stable cured humus-like products, including bioconversion, biodigestion and vermiculture):

- (a) that process more than 5,000 tonnes per year of organic materials, or
- (b) that are located:

- (i) in or within 100 metres of a natural waterbody, wetland, coastal dune field or environmentally sensitive area, or
- (ii) in an area of high watertable, highly permeable soils, acid sulphate, sodic or saline soils, or
- (iii) within a drinking water catchment, or
- (iv) within a catchment of an estuary where the entrance to the sea is intermittently open, or
- (v) on a floodplain, or
- (vi) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, visual impacts, air pollution (including odour, smoke, fumes or dust), vermin or traffic.

#### **14 Concrete works**

- (1) Concrete works that produce pre-mixed concrete or concrete products and:
  - (a) that have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year of concrete or concrete products, or
  - (b) that are located:
    - (i) within 100 metres of a natural waterbody or wetland, or
    - (ii) within 250 metres of a residential zone or dwelling not associated with the development.
- (2) This clause does not apply to concrete works located on or adjacent to a construction site exclusively providing material to the development carried out on that site:
  - (a) for a period of less than 12 months, or
  - (b) for which the environmental impacts were previously assessed in an environmental impact statement prepared for that development.

#### **15 Contaminated soil treatment works**

Contaminated soil treatment works (being works for on-site or off-site treatment of contaminated soil, including incineration or storage of contaminated soil, but excluding excavation for treatment at another site):

- (a) that treat or store contaminated soil not originating from the site on which the development is proposed to be carried out and are located:

- (i) within 100 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable or highly permeable soils, or
  - (iii) within a drinking water catchment, or
  - (iv) on land that slopes at more than 6 degrees to the horizontal, or
  - (v) on a floodplain, or
  - (vi) within 100 metres of a dwelling not associated with the development, or
- (b) that treat more than 1,000 cubic metres per year of contaminated soil not originating from the site on which the development is located, or
- (c) that treat contaminated soil originating exclusively from the site on which the development is located and:
- (i) incinerate more than 1,000 cubic metres per year of contaminated soil, or
  - (ii) treat otherwise than by incineration and store more than 30,000 cubic metres of contaminated soil, or
  - (iii) disturb more than an aggregate area of 3 hectares of contaminated soil.

#### **16 Crushing, grinding or separating works**

- (1) Crushing, grinding or separating works, being works that process materials (such as sand, gravel, rock or minerals) or materials for recycling or reuse (such as slag, road base, concrete, bricks, tiles, bituminous material, metal or timber) by crushing, grinding or separating into different sizes:
- (a) that have an intended processing capacity of more than 150 tonnes per day or 30,000 tonnes per year, or
  - (b) that are located:
    - (i) within 40 metres of a natural waterbody or wetland, or
    - (ii) within 250 metres of a residential zone or dwelling not associated with the development.
- (2) This clause does not apply to development specifically referred to elsewhere in this Schedule.

#### **17 Drum or container reconditioning works**

Drum or container reconditioning works that recondition, recycle or store:

- (a) packaging containers (including metal, plastic or glass drums, bottles or cylinders) previously used for the transport or storage of substances classified as poisonous or

radioactive in the *Australian Dangerous Goods Code*, or

- (b) more than 100 metal drums per day, unless the works (including associated drum storage) are wholly contained within a building.

## **18 Electricity generating stations**

- (1) Electricity generating stations, including associated water storage, ash or waste management facilities, that supply or are capable of supplying:
  - (a) electrical power where:
    - (i) the associated water storage facilities inundate land identified as wilderness under the *Wilderness Act 1987*, or
    - (ii) the temperature of the water released from the generating station into a natural waterbody is more than 2 degrees centigrade from the ambient temperature of the receiving water, or
  - (b) more than 1 megawatt of hydroelectric power requiring a new dam, weir or inter-valley transfer of water, or
  - (c) more than 30 megawatts of electrical power from other energy sources (including coal, gas, wind, bio-material or solar powered generators, hydroelectric stations on existing dams or co-generation).
- (2) This clause does not apply to power generation facilities used exclusively for stand-by power purposes for less than 4 hours per week averaged over any continuous 3-month period.

## **19 Extractive industries**

- (1) Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating):
  - (a) that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or
  - (b) that disturb or will disturb a total surface area of more than 2 hectares of land by:
    - (i) clearing or excavating, or
    - (ii) constructing dams, ponds, drains, roads or conveyors, or
    - (iii) storing or depositing overburden, extractive material or tailings, or
  - (c) that are located:



- (i) in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or
  - (ii) within 200 metres of a coastline, or
  - (iii) in an area of contaminated soil or acid sulphate soil, or
  - (iv) on land that slopes at more than 18 degrees to the horizontal, or
  - (v) if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or
  - (vi) within 500 metres of the site of another extractive industry that has operated during the last 5 years.
- (2) This clause does not apply to:
- (a) extractive industries on land to which the following environmental planning instruments apply:
    - (i) *Sydney Regional Environmental Plan No 11—Penrith Lakes Scheme*,
    - (ii) *Western Division Regional Environmental Plan No 1—Extractive Industries*, or
  - (b) maintenance dredging involving the removal of less than 1,000 cubic metres of alluvial material from oyster leases, sediment ponds or dams, artificial wetland or deltas formed at stormwater outlets, drains or the junction of creeks with rivers, provided that:
    - (i) the extracted material does not include contaminated soil or acid sulphate soil, and
    - (ii) any dredging operations do not remove any seagrass or native vegetation, and
    - (iii) there has been no other dredging within 500 metres during the past 5 years, or
  - (c) extractive industries undertaken in accordance with a plan of management (such as river, estuary, land or water management plans), provided that:
    - (i) the plan is prepared in accordance with guidelines approved by the Director-General and includes consideration of cumulative impacts, bank and channel stability, flooding, ecology and hydrology of the area to which the plan applies, approved by a public authority and adopted by the consent authority and reviewed every 5 years, and
    - (ii) less than 1,000 cubic metres of extractive material is removed from any potential extraction site that is specifically described in the plan, or

- (d) the excavation of contaminated soil for treatment at another site, or
- (e) artificial waterbodies, contaminated soil treatment works, turf farms, or waste management facilities or works, specifically referred to elsewhere in this Schedule, or
- (f) development for which *State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas* requires consent, or
- (g) maintenance dredging of alluvial material from oyster leases and adjacent areas in Wallis Lake, but only if the dredging is undertaken in accordance with the document entitled *Protocol for Wallis Lake Oyster Lease Maintenance Dredging* approved by the Director-General and published in the Gazette, as amended by the Director-General from time to time by publication of an amended Protocol in the Gazette.

## **20 Limestone mines and works**

- (1) Limestone mines or works that disturb a total surface area of more than 2 hectares of land (being land associated with a mining lease or mineral claim or subject to a notice under section 8 of the *Mining Act 1992*) by:
  - (a) clearing or excavating, or
  - (b) constructing dams, ponds, drains, roads, railways or conveyors, or
  - (c) storing or depositing overburden, limestone or its products or tailings.
- (2) Mines that mine or process limestone and are located:
  - (a) in or within 40 metres of a natural waterbody, wetland, a drinking water catchment or an environmentally sensitive area, or
  - (b) if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the mine, or
  - (c) within 500 metres of another mining site that has operated within the past 5 years.
- (3) Limestone works (not associated with a mine):
  - (a) that crush, screen, burn or hydrate more than 150 tonnes per day, or 30,000 tonnes per year, of material, or
  - (b) that are located:
    - (i) within 100 metres of a natural waterbody or wetland, or
    - (ii) within 250 metres of a residential zone or a dwelling not associated with the

development.

## **21 Livestock intensive industries**

- (1) Feedlots that accommodate in a confinement area and rear or fatten (wholly or substantially) on prepared or manufactured feed, more than 1,000 head of cattle, 4,000 sheep or 400 horses (excluding facilities for drought or similar emergency relief).
- (2) Dairies that accommodate more than 800 head of cattle for the purposes of milk production.
- (3) Piggeries:
  - (a) that accommodate more than 200 pigs or 20 breeding sows and are located:
    - (i) within 100 metres of a natural waterbody or wetland, or
    - (ii) in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils, or
    - (iii) on land that slopes at more than 6 degrees to the horizontal, or
    - (iv) within a drinking water catchment, or
    - (v) on a floodplain, or
    - (vi) within 5 kilometres of a residential zone and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, traffic or waste, or
  - (b) that accommodate more than 2,000 pigs or 200 breeding sows.
- (4) Poultry farms for the commercial production of birds (such as domestic fowls, turkeys, ducks, geese, game birds and emus), whether as meat birds, layers or breeders and whether as free range or shedded birds:
  - (a) that accommodate more than 250,000 birds, or
  - (b) that are located:
    - (i) within 100 metres of a natural waterbody or wetland, or
    - (ii) within a drinking water catchment, or
    - (iii) within 500 metres of another poultry farm, or
    - (iv) within 500 metres of a residential zone or 150 metres of a dwelling not associated with the development and, in the opinion of the consent authority,

having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

(5) Saleyards having an annual throughput of:

- (a) more than 50,000 head of cattle, or
- (b) more than 200,000 animals of any type (including cattle),

for the purposes of sale, auction or exchange or transportation by road, rail or ship.

## **22 Livestock processing industries**

Livestock processing industries (being industries for the commercial production of products derived from the slaughter of animals or the processing of skins or wool of animals):

- (a) that slaughter animals (including poultry) with an intended processing capacity of more than 3,000 kilograms live weight per day, or
- (b) that manufacture products derived from the slaughter of animals, including:
  - (i) tanneries or fellmongeries, or
  - (ii) rendering or fat extraction plants with an intended production capacity of more than 200 tonnes per year of tallow, fat or their derivatives or proteinaceous matter, or
  - (iii) plants with an intended production capacity of more than 5,000 tonnes per year of products (including hides, adhesives, pet feed, gelatine, fertiliser or meat products), or
- (c) that scour, top, carbonise or otherwise process greasy wool or fleeces with an intended production capacity of more than 200 tonnes per year, or
- (d) that are located:
  - (i) within 100 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable or highly permeable soils or acid sulphate, sodic or saline soils, or
  - (iii) on land that slopes at more than 6 degrees to the horizontal, or
  - (iv) within a drinking water catchment, or
  - (v) on a floodplain, or
  - (vi) within 5 kilometres of a residential zone and, in the opinion of the consent

authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

### **23 Marinas or other related land and water shoreline facilities**

- (1) Marinas or other related land or water shoreline facilities that moor, park or store vessels (excluding rowing boats, dinghies or other small craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles on hardstand areas:
  - (a) that have an intended capacity of 15 or more vessels having a length of 20 metres or more, or
  - (b) that have an intended capacity of 30 or more vessels of any length and:
    - (i) are located in non-tidal waters, or within 100 metres of a wetland or aquatic reserve, or
    - (ii) require the construction of a groyne or annual maintenance dredging, or
    - (iii) the ratio of car park spaces to vessels is less than 0.5:1, or
  - (c) that have an intended capacity of 80 or more vessels of any size.
- (2) Facilities that repair or maintain vessels out of the water (including slipways, hoists or other facilities) that have an intended capacity of:
  - (a) one or more vessels having a length of 25 metres or more, or
  - (b) 5 or more vessels of any length at any one time.

### **24 Mineral processing or metallurgical works**

Mineral processing or metallurgical works (being works for the commercial production or extraction of ores using methods including chemical, electrical, magnetic, gravity or physico-chemical or for the commercial refinement, processing or reprocessing of metals involving smelting, casting, metal coating or metal products recovery):

- (a) that process into ore concentrates more than 150 tonnes per day of material, or
- (b) that smelt, process, coat, reprocess or recover more than 10,000 tonnes per year of ferrous or non-ferrous metals, alloys or ore concentrates, or
- (c) that crush, grind, shred, sort or store:
  - (i) more than 150 tonnes per day, or 30,000 tonnes per year, of scrap metal and are not wholly contained within a building, or
  - (ii) more than 50,000 tonnes per year and are wholly contained within a building, or

- (d) that are located:
  - (i) within 40 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable, or
  - (iii) within 500 metres of a residential zone and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, vibration, odour, fumes, smoke, soot, dust, traffic or waste, or
  - (iv) so that, in the opinion of the consent authority, having regard to topography and local meteorological conditions, the works are likely to significantly affect the environment because of the use or production of substances classified as poisonous in the *Australian Dangerous Goods Code*.

## 25 Mines

Mines that mine, process or handle minerals (being minerals within the meaning of the [Mining Act 1992](#) other than coal or limestone) and:

- (a) that disturb or will disturb a total surface area of more than 4 hectares of land (associated with a mining lease or mineral claim or subject to a notice under section 8 of the [Mining Act 1992](#)) by:
  - (i) clearing or excavating, or
  - (ii) constructing dams, ponds, drains, roads, railways or conveyors, or
  - (iii) storing or depositing overburden, ore or its products or tailings, or
- (b) that are located:
  - (i) in a natural waterbody or wetland, or
  - (ii) in or within 40 metres of a natural waterbody, wetland, a drinking water catchment or an environmentally sensitive area, or
  - (iii) within 200 metres of a coastline, or
  - (iv) if involving blasting, within 1,000 metres of a residential zone, or within 500 metres of a dwelling not associated with the mine, or
  - (v) within 500 metres of another mining site that has operated during the past 5 years, or
  - (vi) so that, in the opinion of the consent authority, having regard to topography and local meteorological conditions, the mine is likely to significantly affect the environment because of the use or production of substances classified as

poisonous in the *Australian Dangerous Goods Code*.

## **26 Paper pulp or pulp products industries**

Paper pulp or pulp products industries:

- (a) that have an intended production capacity of more than:
  - (i) 30,000 tonnes per year, or
  - (ii) 70,000 tonnes per year if at least 90 per cent of the raw material is recycled material and if no bleaching or de-inking is undertaken, or
- (b) that release effluent or sludge:
  - (i) in or within 100 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable or highly permeable soils, or
  - (iii) in a drinking water catchment.

## **27 Petroleum works**

Petroleum works:

- (a) that produce crude petroleum or shale oil, or
- (b) that produce more than 5 petajoules per year of natural gas or methane, or
- (c) that refine crude petroleum, shale oil or natural gas, or
- (d) that manufacture more than 100 tonnes per year of petroleum products (including aviation fuel, petrol, kerosene, mineral turpentine, fuel oils, lubricants, wax, bitumen, liquefied gas and the precursors to petrochemicals, such as acetylene, ethylene, toluene and xylene), or
- (e) that store petroleum and natural gas products with an intended storage capacity in excess of:
  - (i) 200 tonnes for liquefied gases, or
  - (ii) 2,000 tonnes of any petroleum products, or
- (f) that dispose of oil or petroleum waste or process or recover more than 20 tonnes of oil or petroleum waste per year, or
- (g) that are located:
  - (i) within 40 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable or highly permeable soils, or

- (iii) within a drinking water catchment, or
- (iv) on a floodplain.

## **28 Railway freight terminals**

Railway freight terminals (including any associated spur lines, freight handling facilities, truck or container loading or unloading facilities, container storage, packaging or repackaging facilities):

- (a) that involve more than 250 truck movements per day, or
- (b) that involve the clearing of more than 20 hectares of native vegetation, or
- (c) that are located:
  - (i) within 40 metres of a natural water body, wetland or environmentally sensitive area, or
  - (ii) within 500 metres of a residential zone or dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, odour, dust, lights, traffic or waste.

## **29 Sewerage systems or works**

- (1) Sewerage systems or works:
  - (a) that have an intended processing capacity of more than 2,500 persons equivalent capacity or 750 kilolitres per day, or
  - (b) that have an intended processing capacity of more than 20 persons equivalent capacity or 6 kilolitres per day and are located:
    - (i) on a floodplain, or
    - (ii) within a coastal dune field.
- (2) Sewerage systems or works that incinerate sewage or sewage products.
- (3) Sewerage systems or works that store sewage, sludge or effluent and:
  - (a) that have a capacity of more than 1,000 tonnes of material, or
  - (b) that are located:
    - (i) within 100 metres of a natural waterbody or wetland, or
    - (ii) in an area of high watertable or highly permeable soils, or



- (iii) within a drinking water catchment, or
  - (iv) on a floodplain, or
  - (v) within 250 metres of a dwelling not associated with the development.
- (4) Sewerage systems or works that release or reuse more than 20 persons equivalent capacity or 6 kilolitres per day of sewage, effluent or sludge and that are located:
- (a) in or within 100 metres of a natural waterbody, wetland, coastal dune field or environmentally sensitive area, or
  - (b) in an area of high watertable, highly permeable soils or acid sulphate, sodic or saline soils, or
  - (c) on land that slopes at more than 6 degrees to the horizontal, or
  - (d) within a drinking water catchment, or
  - (e) within a catchment of an estuary where the entrance to the sea is intermittently open, or
  - (f) on a floodplain, or
  - (g) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development.
- (5) This clause does not apply to development for the pumping out of sewage from recreational vessels.

### **30 Shipping facilities**

Wharves or wharf-side facilities at which cargo is loaded onto vessels, or unloaded from vessels, or temporarily stored, at a rate of more than:

- (a) 150 tonnes per day, or 5,000 tonnes per year, for facilities handling goods classified in the *Australian Dangerous Goods Code*, or
- (b) 500 tonnes per day or 50,000 tonnes per year.

### **31 Turf farms**

Turf farms:

- (a) that are located:
  - (i) within 100 metres of a natural waterbody or wetland, or
  - (ii) in an area of high watertable or acid sulphate, sodic or saline soils, or
  - (iii) within a drinking water catchment, or

(iv) within 250 metres of another turf farm, and

(b) that, because of their location, are likely to significantly affect the environment.

### **32 Waste management facilities or works**

(1) Waste management facilities or works that store, treat, purify or dispose of waste or sort, process, recycle, recover, use or reuse material from waste and:

(a) that dispose (by landfilling, incinerating, storing, placing or other means) of solid or liquid waste:

(i) that includes any substance classified in the *Australian Dangerous Goods Code* or medical, cytotoxic or quarantine waste, or

(ii) that comprises more than 100,000 tonnes of “clean fill” (such as soil, sand, gravel, bricks or other excavated or hard material) in a manner that, in the opinion of the consent authority, is likely to cause significant impacts on drainage or flooding, or

(iii) that comprises more than 1,000 tonnes per year of sludge or effluent, or

(iv) that comprises more than 200 tonnes per year of other waste material, or

(b) that sort, consolidate or temporarily store waste at transfer stations or materials recycling facilities for transfer to another site for final disposal, permanent storage, reprocessing, recycling, use or reuse and:

(i) that handle substances classified in the *Australian Dangerous Goods Code* or medical, cytotoxic or quarantine waste, or

(ii) that have an intended handling capacity of more than 10,000 tonnes per year of waste containing food or livestock, agricultural or food processing industries waste or similar substances, or

(iii) that have an intended handling capacity of more than 30,000 tonnes per year of waste such as glass, plastic, paper, wood, metal, rubber or building demolition material, or

(c) that purify, recover, reprocess or process more than 5,000 tonnes per year of solid or liquid organic materials, or

(d) that are located:

(i) in or within 100 metres of a natural waterbody, wetland, coastal dune field or environmentally sensitive area, or

(ii) in an area of high watertable, highly permeable soils, acid sulphate, sodic or saline soils, or

- (iii) within a drinking water catchment, or
- (iv) within a catchment of an estuary where the entrance to the sea is intermittently open, or
- (v) on a floodplain, or
- (vi) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, visual impacts, air pollution (including odour, smoke, fumes or dust), vermin or traffic.

(2) This clause does not apply to:

- (a) development comprising or involving any use of sludge or effluent if:
  - (i) the dominant purpose is not waste disposal, and
  - (ii) the development is carried out in a location other than one listed in subclause (1) (d), above, or
- (b) development comprising or involving waste management facilities or works specifically referred to elsewhere in this Schedule, or
- (c) development for which *State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas* requires consent.

### **33 Wood or timber milling or processing works**

Wood or timber milling or processing works (being works, other than joineries, builders supply yards or home improvement centres) that saw, machine, mill, chip, pulp or compress timber or wood:

- (a) that have an intended processing capacity of more than 6,000 cubic metres of timber per year and:
  - (i) are located within 500 metres of a dwelling not associated with the milling works, or
  - (ii) are located within 40 metres of a natural waterbody or wetland, or
  - (iii) burn waste (other than as a source of fuel), or
- (b) that have an intended processing capacity of more than 50,000 cubic metres of timber per year.

### **34 Wood preservation works**

Wood preservation works that treat or preserve timber using chemical substances (containing copper, chromium, arsenic, creosote or any substance classified in the *Australian Dangerous Goods Code*) and:

- (a) that process more than 10,000 cubic metres per year of timber, or
- (b) that are located:
  - (i) within 250 metres of a natural waterbody, wetland or an environmentally sensitive area, or
  - (ii) in an area of high watertable or highly permeable soils, or
  - (iii) on land that slopes at more than 6 degrees to the horizontal, or
  - (iv) within a drinking water catchment, or
  - (v) within 250 metres of a dwelling not associated with the development.

## **Part 2 Are alterations or additions designated development?**

### **35 Is there a significant increase in the environmental impacts of the total development?**

Development involving alterations or additions to development (whether existing or approved) is not designated development if, in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development (that is the development together with the additions or alterations) compared with the existing or approved development.

### **36 Factors to be taken into consideration**

In forming its opinion as to whether or not development is designated development, a consent authority is to consider:

- (a) the impact of the existing development having regard to factors including:
  - (i) previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice, and
  - (ii) rehabilitation or restoration of any disturbed land, and
  - (iii) the number and nature of all past changes and their cumulative effects, and
- (b) the likely impact of the proposed alterations or additions having regard to factors including:
  - (i) the scale, character or nature of the proposal in relation to the development, and

- (ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality, and
  - (iii) the degree to which the potential environmental impacts can be predicted with adequate certainty, and
  - (iv) the capacity of the receiving environment to accommodate changes in environmental impacts, and
- (c) any proposals:
- (i) to mitigate the environmental impacts and manage any residual risk, and
  - (ii) to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.

### **Part 3 What is excepted from designated development?**

#### **37 Development under Newcastle LEP 1987 (Amendment No 105)**

Development that is certified in writing by the Director-General not to be designated development on the basis that:

- (a) the development is to be carried out on land to which *Newcastle Local Environmental Plan 1987 (Amendment No 105)* applies, and
- (b) the Director-General is of the opinion that a study prepared by a suitably qualified person demonstrates, without the need for further studies, that the development complies with the requirements set out in Part D—Findings of the Strategic Impact Assessment Study referred to in that local environmental plan.

### **Part 4 What do terms used in this Schedule mean?**

#### **38 Definitions**

In this Schedule:

**acid sulphate soil** means acid sulphate soil, potential acid sulphate soil, sulphidic clay or sulphidic sand with soil profiles or layers (within the material to be disturbed or impacted by the development) with more than 0.1 percent sulphide and a net acid generation potential of more than zero.

**ANEF** means Australian Noise Exposure Forecast as defined in Australian Standard 2021—2000: *Acoustics—Aircraft Noise Intrusion—Building Siting and Construction*.

**Australian Dangerous Goods Code** means the *Australian Dangerous Goods Code* prepared by the National Road Transport Commission, as in force at 1 January 2001.

**coastal dune field** means any system of wind-blown sand deposits extending landwards of the coastline, whether active or stable.

**coastline** means ocean beaches, headlands or other coastal landforms, excluding bays, estuaries or inlets.

**contaminated soil** means soil that contains a substance at a concentration above the concentration at which the substance is normally present in soil from the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment, where **harm to the environment** includes any direct or indirect alteration of the environment that has the effect of degrading the environment.

**development site**, in relation to a development application, means:

- (a) the whole of the land to which the application applies, or
- (b) if the application identifies part only of the land as the actual site of the proposed development, the part of the land so identified,

and, in relation to a development application for development involving alterations or additions to development (whether existing or approved), includes the actual site of the existing or approved development.

**drinking water catchment** means:

- (a) land within a restricted area prescribed by a controlling water authority, including:
  - (i) an inner or outer catchment area declared under the [Sydney Water Catchment Management Act 1998](#), and
  - (ii) a catchment district proclaimed under section 128 of the [Local Government Act 1993](#), or
- (b) land within 100 metres of a potable groundwater supply bore.

**dwelling** means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

**effluent** includes treated or partially treated wastewater from processes such as sewage treatment plants or from treatment plants associated with intensive livestock industries, aquaculture or agricultural, livestock, wood, paper or food processing industries.

**environmentally sensitive area** means:

- (a) land identified in an environmental planning instrument as an environment protection zone such as for the protection or preservation of habitat, plant communities, escarpments, wetland or foreshore or land protected or preserved under [State Environmental Planning Policy No 14—Coastal Wetlands](#) or [State Environmental Planning Policy No 26—Littoral Rainforests](#), or

- (b) land reserved as national parks or historic sites or dedicated as nature reserves or declared as wilderness under the *National Parks and Wildlife Act 1974*, or
- (c) an area declared to be an aquatic reserve under Division 2 of Part 7 of the *Fisheries Management Act 1994*, or
- (d) land reserved or dedicated within the meaning of the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes, or
- (e) land declared as wilderness under the *Wilderness Act 1987*.

**extractive material** means sand, soil, stone, gravel, rock, sandstone or similar substances that are not prescribed minerals within the meaning of the *Mining Act 1992*.

**floodplain** means the floodplain level nominated in a local environmental plan or those areas inundated as a result of a 1 in 100 flood event if no level has been nominated.

**high watertable** means those areas where the groundwater depth is less than 3 metres below the surface at its highest seasonal level.

**highly permeable soil** means soil profiles or layers (within the upper 2 metres of the material to be disturbed or impacted by the development) with a saturated hydraulic conductivity of more than 50 millimetres per hour.

**incinerate** includes any method of burning or thermally oxidising solids, liquids or gases.

**poisonous** means substances classified as poisonous in the *Australian Dangerous Goods Code*, including poisonous gases (Class 2.3) or poisonous (toxic), infectious and genetically modified substances (Class 6).

**residential zone** means land identified in an environmental planning instrument as being predominantly for residential use, including urban, village or living area zones, but excluding rural residential zones.

**saline soil** means soil profiles or layers (within the upper 2 metres of soil) with an electrical conductivity of saturated extracts (Ece) value of more than 4 decisiemens per metre (Ds/m).

**sludge** means semi-liquid particulate matter produced as a by-product of agricultural produce industries, aquaculture, breweries or distilleries, livestock intensive industries, livestock processing industries, paper pulp or pulp product industries or sewerage systems or works.

**sodic soil** means soil profiles or layers (within the upper 2 metres of soil) with an exchangeable sodium percentage (ESP) of more than 8 percent.

**waste** includes any matter or thing whether solid, gaseous or liquid or a combination of

any solids, gases or liquids that is discarded or is refuse from processes or uses (such as domestic, medical, industrial, mining, agricultural or commercial processes or uses). A substance is not precluded from being waste for the purposes of this Schedule merely because it can be reprocessed, re-used or recycled or because it is sold or intended for sale.

**waterbody** means:

- (a) a natural waterbody, including:
  - (i) a lake or lagoon either naturally formed or artificially modified, or
  - (ii) a river or stream, whether perennial or intermittent, flowing in a natural channel with an established bed or in a natural channel artificially modifying the course of the stream, or
  - (iii) tidal waters including any bay, estuary or inlet, or
- (b) an artificial waterbody, including any constructed waterway, canal, inlet, bay, channel, dam, pond or lake, but does not include a dry detention basin or other stormwater management construction that is only intended to hold water intermittently.

**wetland** means:

- (a) natural wetland including marshes, mangroves, backwaters, billabongs, swamps, sedgeland, wet meadows or wet heathlands that form a shallow waterbody (up to 2 metres in depth) when inundated cyclically, intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities, or
- (b) artificial wetland, including marshes, swamps, wet meadows, sedgeland or wet heathlands that form a shallow water body (up to 2 metres in depth) when inundated cyclically, intermittently or permanently with water, and are constructed and vegetated with wetland plant communities.

## **Part 5 How are distances measured for the purposes of this Schedule?**

### **39 Aquaculture**

The distance between leases is to be measured as the shortest distance between the boundary of any existing lease area and the boundary of the area to which the development application applies.

### **40 Coastline**

The distance from a coastline is to be measured as the shortest distance between the mean high water mark and the boundary of the development site (excluding access



roads).

#### **41 Dwellings**

The distance from a dwelling is to be measured as the shortest distance between the edge of the dwelling and the boundary of any development or works to which the development application applies.

#### **42 Environmentally sensitive areas**

The distance from an environmentally sensitive area is to be measured as the shortest distance between the boundary of the area and the boundary of the development site.

#### **43 Extractive industries and mines (including coal and limestone)**

The distance between extractive industries or mine sites is to be measured as the shortest distance between any area of disturbance by a mine or extractive industry that has operated within the past 5 years and the boundary of the development site (excluding access roads).

#### **44 Poultry farms**

The distance between poultry farms is to be measured as the shortest distance between the edge of any facilities or works associated with an existing poultry farm and the facilities or works to which the development application applies (excluding access roads).

#### **45 Residential zones**

The distance from a residential zone is to be measured as the shortest distance between the boundary of the residential zone and the facilities or works to which the development application applies (excluding access roads).

#### **46 Turf farms**

The distance between turf farms is to be measured as the shortest distance between the edge of an area which is growing or has previously grown turf sod within the last 5 years and the edge of the area for growing turf sod to which the development application applies.

#### **47 Waterbodies**

The distance from a waterbody is to be measured as the shortest distance between:

- (a) the top of the high bank, if present, or
- (b) if no high bank is present, then:
  - (i) the mean high water mark in tidal waters, or
  - (ii) the mean water level in non-tidal waters,

and the boundary of the development site.

#### **48 Wetlands**

The distance from a wetland is to be measured as the shortest distance between:

- (a) the top of the high bank, if present, or
- (b) if no high bank is present, then the edge of vegetation communities dominated by wetland species,

and the boundary of the development site.

### **Schedule 4 Planning certificates**

(Clause 279)

#### **1 Names of relevant SEPPs, REPS, LEPS and DCPs**

(1) The names of:

- (a) each local environmental plan and deemed environmental planning instrument applying to the land, and
- (b) each draft local environmental plan applying to the land that has been placed on exhibition under section 66 (1) (b) of the Act, and
- (c) each development control plan applying to the land that has been prepared by the council under section 72 of the Act.

(2) The names of:

- (a) each regional environmental plan applying to the land, and
- (b) each draft regional environmental plan applying to the land that has been placed on exhibition under section 47 (b) of the Act, and
- (c) each development control plan applying to the land that has been prepared by the Director-General under section 51A of the Act.

(3) The names of:

- (a) each State environmental planning policy applying to the land, and
- (b) each draft State environmental planning policy applying to the land that has been publicised as referred to in section 39 (2) of the Act.

#### **2 Zoning and land use under relevant LEPS**

For each local environmental plan, deemed environmental planning instrument and draft local environmental plan applying to the land that includes the land in any zone (however

described):

- (a) the identity of the zone, whether by reference to a name (such as “Residential Zone” or “Heritage Area”) or by reference to a number (such as “Zone No 2 (a)” ),
- (b) the purposes for which the plan or instrument provides that development may be carried out within the zone without the need for development consent,
- (c) the purposes for which the plan or instrument provides that development may not be carried out within the zone except with development consent,
- (d) the purposes for which the plan or instrument provides that development is prohibited within the zone,
- (e) whether any development standards applying to the land fix minimum land dimensions for the erection of a dwelling-house on the land and, if so, the minimum land dimensions so fixed,
- (f) whether the land includes or comprises critical habitat,
- (g) whether the land is in a conservation area (however described),
- (h) whether an item of environmental heritage (however described) is situated on the land.

### **3 (Repealed)**

### **4 Coastal protection**

Whether or not the land is affected by the operation of section 38 or 39 of the [Coastal Protection Act 1979](#), but only to the extent that the council has been so notified by the Department of Public Works.

### **5 Mine subsidence**

Whether or not the land is proclaimed to be a mine subsidence district within the meaning of section 15 of the [Mine Subsidence Compensation Act 1961](#).

### **6 Road widening and road realignment**

Whether or not the land is affected by any road widening or road realignment under:

- (a) Division 2 of Part 3 of the [Roads Act 1993](#), or
- (b) any environmental planning instrument, or
- (c) any resolution of the council.

### **7 Council and other public authority policies on hazard risk restrictions**

Whether or not the land is affected by a policy:

- (a) adopted by the council, or
- (b) adopted by any other public authority and notified to the council for the express purpose of its adoption by that authority being referred to in planning certificates issued by the council,

that restricts the development of the land because of the likelihood of land slip, bushfire, flooding, tidal inundation, subsidence, acid sulphate soils or any other risk.

## **8 Land reserved for acquisition**

Whether or not any environmental planning instrument, deemed environmental planning instrument or draft environmental planning instrument applying to the land provides for the acquisition of the land by a public authority, as referred to in section 27 of the Act.

## **9 Contributions plans**

The name of each contributions plan applying to the land.

## **10 Matters arising under the [Contaminated Land Management Act 1997](#)**

Section 59 (2) of the [Contaminated Land Management Act 1997](#) prescribes the following additional matters that are to be specified in a planning certificate:

- (a) that the land to which the certificate relates is within land declared to be an **investigation area** or **remediation site** under Part 3 of that Act (if it is within such an area or site at the date when the certificate is issued),
- (b) that the land to which the certificate relates is subject to an **investigation order** or a **remediation order** within the meaning of that Act (if it is subject to such an order at the date when the certificate is issued),
- (c) that the land to which the certificate relates is the subject of a voluntary investigation proposal (or voluntary remediation proposal) the subject of the Environment Protection Authority's agreement under section 19 or 26 of that Act (if it is the subject of such a proposal, and the proposal has not been fully carried out, at the date when the certificate is issued),
- (d) that the land to which the certificate relates is the subject of a site audit statement within the meaning of Part 4 of that Act (if a copy of such a statement has been provided at any time to the local authority issuing the certificate).

## **11 Bush fire prone land**

If any of the land is bush fire prone land (as defined in the Act), a statement that all or, as the case may be, some of the land is bush fire prone land.

If none of the land is bush fire prone land, a statement to that effect.

## 12 Property vegetation plans

If the land is land to which a property vegetation plan under the *Native Vegetation Act 2003* applies, a statement to that effect (but only if the council has been notified of the existence of the plan by the person or body that approved the plan under that Act).

### Schedule 5 Penalty notice offences

(Clauses 284 and 285)

#### Offences under the Act

Column 1	Column 2
Provision of Act	Penalty
Section 125 (1) of the Act in relation to contravention of section 76A (1)	\$600
Section 125 (1) of the Act in relation to contravention of order No 1 in Table to section 121B	\$1,500
Section 125 (1) of the Act in relation to contravention of order No 2 in Table to section 121B given in relation to an unlawfully erected building	\$1,500
Section 125 (1) of the Act in relation to contravention of order No 8 in Table to section 121B	\$1,500
Section 125 (1) of the Act in relation to contravention of order No 9 in Table to section 121B	\$1,500
Section 125 (1) of the Act in relation to contravention of order No 10 in Table to section 121B	\$1,500
Section 125 (1) of the Act in relation to contravention of order No 11 in Table to section 121B	\$1,500
Section 125 (1) of the Act in relation to contravention of order No 15 in Table to section 121B	\$1,500

#### Offences under this Regulation

Column 1	Column 2
Provision of Regulation	Penalty
Section 125 (2) of the Act in relation to contravention of clause 130 (4) of this Regulation	\$600
Section 125 (2) of the Act in relation to contravention of clause 138 (3) of this Regulation	\$600
Section 125 (2) of the Act in relation to contravention of clause 142 (2) of this Regulation	\$600

Section 125 (2) of the Act in relation to contravention of clause 151 (2) of this Regulation	\$600
Section 125 (2) of the Act in relation to contravention of clause 160 (2) of this Regulation	\$600
Section 125 (2) of the Act in relation to contravention of clause 172 (1) (b) of this Regulation	\$100
Section 125 (2) of the Act in relation to contravention of clause 177 (1) of this Regulation	<p>\$500, for the offence of failing to give an annual fire safety statement that occurs during the first week after the time for giving the statement expires.</p> <p>\$1,000, for the offence of failing to give an annual fire safety statement that occurs during the second week after the time for giving the statement expires.</p> <p>\$1,500, for the offence of failing to give an annual fire safety statement that occurs during the third week after the time for giving the statement expires.</p> <p>\$2,000, for the offence of failing to give an annual fire safety statement that occurs during the fourth or any subsequent week after the time for giving the statement expires.</p>
Section 125 (2) of the Act in relation to contravention of clause 177 (3) (b) of this Regulation	\$100
Section 125 (2) of the Act in relation to contravention of clause 180 (1) of this Regulation	<p>\$500, for the offence of failing to give a supplementary fire safety statement that occurs during the first week after the time for giving the statement expires.</p> <p>\$1,000, for the offence of failing to give a supplementary fire safety statement that occurs during the second week after the time for giving the statement expires.</p> <p>\$1,500, for the offence of failing to give a supplementary fire safety statement that occurs during the third week after the time for giving the statement expires.</p>

	\$2,000, for the offence of failing to give a supplementary fire safety statement that occurs during the fourth or any subsequent week after the time for giving the statement expires.
Section 125 (2) of the Act in relation to contravention of clause 180 (3) (b) of this Regulation	\$100
Section 125 (2) of the Act in relation to contravention of clause 182 (1) of this Regulation	\$1,500
Clause 183 (1) of this Regulation	\$300
Clause 184 (a) of this Regulation	\$300
Clause 184 (b) of this Regulation	\$300
Clause 184 (c) of this Regulation	\$300
Clause 185 (b) of this Regulation	\$300
Clause 186 (a) of this Regulation	\$300
Clause 186 (b) of this Regulation	\$300
Clause 186 (c) of this Regulation	\$300

## Schedule 6 Special provisions relating to ski resort areas

(Clause 287)

### Division 1 Preliminary

#### 1 Definitions

(1) In this Schedule:

**converted Part 5 approval** means an existing Part 5 approval that is taken to be a development consent by the operation of clause 2 (4).

**convertible Part 5 approval** means an existing Part 5 approval granted before the commencement of this clause (and in force immediately before that commencement) that authorises the carrying out of development for which development consent is required.

(2) Expressions used in this Schedule that are defined in clause 32A of Schedule 6 to the Act have the meanings set out in that clause.

**Note—**

The terms **existing Part 5 approval**, **Part 5 approval** and **ski resort area** are defined in clause 32A of Schedule 6 to the *Environmental Planning and Assessment Act 1979*.

## **Division 2 Provisions relating to existing Part 5 approvals for ski resort areas**

### **2 Conversion of convertible Part 5 approvals to development consents**

- (1) The Director-General may issue to the holder of a convertible Part 5 approval a certificate certifying that the convertible Part 5 approval is taken to be a development consent that authorises the carrying out of the development authorised by the convertible Part 5 approval.
- (2) The Director-General may, in the certificate, specify that the development consent is of a particular type because of the conditions imposed on it (for example, a deferred commencement development consent pursuant to in section 80 (3) of the Act or a development consent for staged development pursuant to section 80 (5) of the Act).
- (3) The Director-General is not to issue a certificate under this clause unless the certificate identifies the classification, in accordance with the *Building Code of Australia*, of any building or proposed building the subject of the convertible Part 5 approval concerned.
- (4) On the issue of the certificate by the Director-General, the convertible Part 5 approval the subject of the certificate is taken:
  - (a) to be a development consent and to be of the type (if any) specified in the certificate, and
  - (b) to have been granted subject to the same conditions as those to which the convertible Part 5 approval was subject.
- (5) For the avoidance of doubt, section 81A (1) of the Act applies to a converted Part 5 approval and, in so applying that subsection, a reference to a purpose specified in the development application is to be read as a reference to a purpose specified in the application for the convertible Part 5 approval concerned.
- (6) A certificate issued under this clause has effect according to its terms.

### **3 Further development consent required in certain circumstances**

If a converted Part 5 approval is expressed so as to require a further Part 5 approval to carry out any development the subject of the converted Part 5 approval, a development consent must be obtained for that development instead of a further Part 5 approval.

### **4 Conversion of certain authorisations to construction certificates**

- (1) In this clause, **building consent** means a consent granted under the *National Parks and Wildlife Act 1974* before the commencement of this Schedule for the purposes of a convertible Part 5 approval, being a consent that authorised the carrying out of building works in a ski resort area.



- (2) Without limiting the generality of clause 5, the Director-General may issue to the holder of a building consent a certificate certifying that the building consent is taken to be a construction certificate that authorises the carrying out of the building works authorised by the consent.
- (3) The certificate issued by the Director-General may provide that the construction certificate is subject to all of the conditions to which the building consent was subject or to such of those conditions as are specified in the Director-General's certificate.
- (4) The Director-General is not to issue a certificate under this clause unless:
  - (a) the Director-General is satisfied that any long service levy payable under section 34 of the *Building and Construction Industry Long Service Payments Act 1986* (or where such a levy is payable by instalments, the first instalment of the levy) has been paid, and
  - (b) the certificate identifies the classification, in accordance with the *Building Code of Australia*, of any building or proposed building the subject of the construction certificate concerned.
- (5) On the issue of the certificate by the Director-General, the building consent the subject of the certificate is taken to be a construction certificate that authorises the carrying out of the building works formerly authorised by the building consent, subject to the conditions imposed by the Director-General under subclause (3).

## 5 Conversion of certain authorisations to Part 4A certificates

- (1) In this clause, **existing authority** means any certificate, permission or other authority issued or otherwise given before the commencement of this Schedule for the purposes of a convertible Part 5 approval.
- (2) The Director-General may issue to the holder of an existing authority a certificate certifying that the authority is taken to be a Part 4A certificate that authorises the matters formerly authorised by the existing authority.
- (3) The Director-General must, in the certificate, specify the type of Part 4A certificate that the existing authority is taken to be (for example, a compliance certificate or an interim or final occupation certificate).
- (4) The certificate issued by the Director-General may provide that the Part 4A certificate is subject to all of the conditions to which the existing authority was subject or to such of those conditions as are specified in the Director-General's certificate.
- (5) On the issue of the certificate by the Director-General, the existing authority the subject of the certificate is taken to be a Part 4A certificate of the type specified in the Director-General's certificate that authorises the matters that were authorised by the existing authority, subject to the conditions imposed by the Director-General under

subclause (4).

## **6 Construction of certain references in converted Part 5 approvals and construction certificates**

(1) In any converted Part 5 approval:

- (a) a requirement to obtain a consent or other approval to the carrying out of building works is taken to be a requirement to obtain a construction certificate authorising the carrying out of those building works, and
- (b) a requirement to obtain an occupation certificate for a building, or any other certificate authorising the occupation of a building, is taken to be a requirement to obtain an occupation certificate (within the meaning of the *Environmental Planning and Assessment Act 1979*) in relation to that building.

(2) In any converted Part 5 approval, or construction certificate referred to in clause 4 (5):

- (a) a reference (however expressed) to the Director-General of National Parks and Wildlife, the National Parks and Wildlife Service or an officer of the National Parks and Wildlife Service being of the opinion or satisfied as to a matter is to be read as a reference to the Director-General of the Department of Planning being of the opinion or satisfied as to the matter, and
- (b) a reference (however expressed) to something being done or required to be done to the satisfaction of the Director-General of National Parks and Wildlife, the National Parks and Wildlife Service or an officer of the National Parks and Wildlife Service is to be read as a reference to the thing being done or required to be done to the satisfaction of the Director-General of the Department of Planning.

## **7 Certifying authority**

For the purposes of the Act, the Minister:

- (a) is taken to have been appointed as the principal certifying authority for development authorised by a converted Part 5 approval, and
- (b) is the only certifying authority for all aspects of development authorised by a converted Part 5 approval.

## **8 Pending applications for Part 5 approvals**

- (1) Anything lodged in connection with an application for a Part 5 approval in respect of development within a ski resort area (being an application that was lodged before the commencement of this Schedule but not finally determined before that commencement) is, if an application for development consent is lodged for the same development for which the Part 5 approval was sought, taken to have been lodged in connection with the application for development consent.

- (2) Despite any other provision of this Regulation, no fee is required in connection with an application for development consent referred to in subclause (1).

### **9 Register to be kept**

The Director-General is to ensure that a public register is kept of all certificates issued under this Division.

### **10 Appeals**

- (1) The holder of a convertible Part 5 approval who requests, in writing, the Director-General to issue a certificate under clause 2, 4 or 5 in relation to the convertible Part 5 approval may appeal to the Minister against a decision of the Director-General to refuse to issue the certificate.
- (2) For the purposes of this clause, the Director-General is taken to have made a decision to refuse to issue a certificate under clause 2, 4 or 5 if the Director-General has not issued the certificate before the expiration of the period of 40 days after the day on which the request for the certificate was made to the Director-General (or such longer period as is agreed to in writing by the Director-General and the holder of the approval concerned).

## **Division 3 Modification of provisions in relation to ski resort areas**

### **11 Modification of provisions of the Act in relation to ski resort areas**

- (1) The provisions of the Act are modified as set out in this clause in relation to a ski resort area.
- (2) Section 81 (2) does not require notice to be given to a council of the determination of a development application relating to a ski resort area.
- (3) Section 81A (2) (b) (ii) does not require a notification to be given to a council in respect of a development consent relating to a ski resort area.
- (4) A reference in section 81A (2) (c) or (4) (c) and 100 (1) to a council is to be read as a reference to the Minister.
- (5) Section 81A (4) (b) (ii) does not require notice to be given to a council where the development consent concerned relates to a ski resort area.
- (6) The reference in section 100 (1) to a council is to be read as a reference to the Director-General.
- (7) The reference in section 100 (2) to the office of the council is to be read as a reference to the office of the Department of Planning located at Jindabyne.
- (8) Section 109L (3) does not require copies of notices to be sent to a council where the

development concerned relates to a ski resort area.

- (9) A reference in section 118L (2) (a) to the council of the area in which the building is located is to be read as a reference to the Minister.
- (10) A reference in section 118L (3) to a council is to be read as a reference to the Director-General.
- (11) A reference in section 118L (3) to a person authorised by the council is to be read as a reference to a person authorised by the Director-General.
- (12) A reference in section 118L (4) to the council concerned is to be read as a reference to the Director-General.
- (13) A reference in section 118M to a council is to be read as a reference to the Director-General.
- (14) Section 121B (1) is to be read as authorising only the Minister to make an order referred to in that subsection.
- (15) A reference in Division 2A of Part 6 (other than section 121B) to a council is to be read as a reference to the Minister.
- (16) Sections 121F, 121H (4), 121ZH and 121ZI do not apply within a ski resort area.
- (17) Section 121ZE does not apply to a notice or order that relates to a ski resort area.
- (18) A reference in section 121ZP (2) to a form determined by the council is to be read as a reference to a form approved by the Minister.
- (19) A reference in section 121ZP (2) to a fee determined by the council under the *Local Government Act 1993* is to be read as a reference to a fee determined by the Minister.
- (20) A reference in Division 2A of Part 6 to an owner of premises, land or a building is, in relation to premises, land or a building within a ski resort area:
  - (a) if the premises, land or building are or is subject to a lease, licence or easement, to be read as a reference to the lessee, licensee or person who has the benefit of the easement, except as provided by paragraph (b), or
  - (b) if the reference relates to an order that can only be complied with by a person who is occupying premises, land or a building within a ski resort area, to be read as a reference to the occupier of the premises, land or building.
- (21) A reference in sections 149A–149G (other than in the provisions referred to in subclause (22)):
  - (a) to a council is to be read as a reference to the Minister, and

(b) to an owner of land is, if the land is subject to a lease, licence or easement, to be read as a reference to the lessee, licensee or person who has the benefit of the easement.

(22) Sections 149D (1) (a) (iii) and 149E (1) (b) and (2) (b) do not apply in respect of building certificates relating to land within a ski resort area.

## **12 Modification of provisions of this Regulation in relation to ski resort areas**

- (1) The provisions of this Regulation are modified as set out in this clause in relation to a ski resort area.
- (2) Despite clause 49 (1), a development application in relation to land within a ski resort area may be made by the lessee of the land.
- (3) Clause 49 (3) does not apply to a development application relating to a ski resort area.
- (4) Clause 138 (3) does not require a copy of a compliance certificate that relates to a ski resort area to be given to the council.
- (5) Clauses 142 (2), 151 (2) and 160 (2) do not require notice of a determination relating to a ski resort area to be given to a council.
- (6) A reference in clauses 168 (3) (d) and 169 (1) to the council is to be read as a reference to the Minister.
- (7) Clause 169 does not require copies of a final fire safety certificate, relating to a ski resort area, to be given to the council.
- (8) A reference in clause 182:
  - (a) to the council is to be read as a reference to the Minister, and
  - (b) to the owner of a building is to be read as a reference to the lessee of the building.
- (9) Clause 264 is to be read as if the words preceding subclause (1) (a) were omitted and the following words inserted:

The Director-General is to maintain a register containing details of the following matters for each development application that is made in relation to a ski resort area
- (10) Clauses 265 and 267 do not apply in relation to a ski resort area.
- (11) A reference in clauses 266 and 268 to a council is to be read as a reference to the Director-General.

- (12) Clause 2 (4) (d) of Schedule 1 does not apply to a statement of environmental effects required to accompany a development application relating to a ski resort area if the proposed development is advertised development.

### **13 Statements of environmental effects for advertised development**

- (1) A statement of environmental effects required by Schedule 1 to accompany a development application relating to a ski resort area must be prepared in accordance with guidelines issued under this clause if the proposed development is advertised development.
- (2) A person (***the proposed applicant***) intending to apply for consent to carry out development in a ski resort area that is advertised development must, before doing so, give to the Director-General written particulars of the location, nature and scale of the development.
- (3) The Director-General is to issue guidelines to the proposed applicant specifying matters that must be addressed in the statement of environmental effects required to accompany the development application.
- (4) The guidelines are to be issued within 28 days after the written particulars are given under subclause (2), or within such further time as is agreed between the Director-General and the proposed applicant.
- (5) Before issuing guidelines under this clause, the Director-General is:
- (a) to consult with the proposed applicant, and
  - (b) to request in writing the Director-General of National Parks and Wildlife, and such government agencies as the Director-General considers have an interest in the proposed development application, to provide the Director-General of the Department of Planning with their requirements in relation to the statement of environmental effects.
- (6) In preparing the guidelines, the Director-General is to consider:
- (a) in particular, the response of the Director-General of National Parks and Wildlife, and
  - (b) all responses from government agencies referred to in subclause (5) (b),
- if those responses are made during the period of 14 days after the request under subclause (5) is made.

#### **Note—**

Advertised development for the purposes of the ski resort areas is identified in clause 13 of [State Environmental Planning Policy No 73—Kosciuszko Ski Resorts](#).