

# Environmental Planning and Assessment Regulation 2000

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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**
  - [Water Industry Competition Amendment \(Review\) Act 2014 No 57](#) (not commenced)
  - [Environmental Planning and Assessment Amendment \(Modification of Consent\) Regulation 2020 \(367\)](#) (not commenced — to commence on 1.8.2020)
- **See also**
  - [Planning Legislation Amendment Bill 2019](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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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)

(1) In this Regulation—

**accredited practitioner** means the holder of an accreditation under the *Building and Development Certifiers Act 2018* that authorises the holder to exercise the functions of an accredited practitioner.

**accredited practitioner (fire safety)** means an accredited practitioner whose class of accreditation authorises the holder to exercise the functions of an accredited practitioner (fire safety) who is acting in respect of matters to which the accreditation applies.

**Apartment Design Guide** has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

**approval body** has the same meaning as in section 4.45 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).

**authorised fire officer** means a person who is authorised by section 9.35(1)(d) of the Act to give fire safety orders.

**BASIX affected building** means any building that contains one or more dwellings,

but does not include a hotel or motel.

**BASIX affected development** means any of the following development that is not BASIX excluded development—

- (a) development that involves the erection (but not the relocation) of a BASIX affected building,
- (b) development that involves a change of building use by which a building becomes a BASIX affected building,
- (c) development that involves the alteration, enlargement or extension of a BASIX affected building, where the estimated construction cost of the development is—
  - (i) \$100,000 or more—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 October 2006 and before 1 July 2007, or
  - (ii) \$50,000 or more—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 July 2007,
- (d) development for the purpose of a swimming pool or spa, or combination of swimming pools and spas, that services or service only one dwelling and that has a capacity, or combined capacity, of 40,000 litres or more.

**BASIX certificate** means a certificate issued by the Planning Secretary under clause 164A.

**BASIX excluded development** means any of the following development—

- (a) development for the purpose of a garage, storeroom, car port, gazebo, verandah or awning,
- (b) alterations, enlargements or extensions to a building listed on the State Heritage Register under the [Heritage Act 1977](#),
- (c) alterations, enlargements or extensions that result in a space that cannot be fully enclosed (for example, a verandah that is open or enclosed by screens, mesh or other materials that permit the free and uncontrolled flow of air), other than a space can be fully enclosed but for a vent needed for the safe operation of a gas appliance,
- (d) alterations, enlargements or extensions that the Planning Secretary has declared, by order published in the Gazette, to be BASIX excluded development.

**BASIX optional development** means any of the following development that is not BASIX excluded development—

- (a) development that involves the alteration, enlargement or extension of a BASIX affected building, where the estimate of the construction cost of the development is—
  - (i) less than \$100,000—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 October 2006 and before 1 July 2007, or
  - (ii) less than \$50,000—in the case of development for which a development application or an application for a complying development certificate is made on or after 1 July 2007,
- (b) development for the purpose of a swimming pool or spa, or combination of swimming pools and spas, that services or service only one dwelling and that has a capacity, or combined capacity, of less than 40,000 litres.

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

**capital investment value** of a development or project includes all costs necessary to establish and operate the project, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment, other than the following costs—

- (a) amounts payable, or the cost of land dedicated or any other benefit provided, under a condition imposed under Division 7.1 or 7.2 of the Act or a planning agreement under that Division,
- (b) costs relating to any part of the development or project that is the subject of a separate development consent or project approval,
- (c) land costs (including any costs of marketing and selling land),
- (d) GST (within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth).

**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 or part of 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 or part of a building belongs, as ascertained in accordance with the *Building Code of Australia*.

**Class 1 aquaculture development** means development that is categorised as Class 1 under Part 5 of *State Environmental Planning Policy (Primary Production and Rural Development) 2019*.

**coastal council** means a local council to which the *Coastal Management Act 2016* applies.

**concurrence authority** means a person whose concurrence is, by the Act or an environmental planning instrument or by Part 7 of the *Biodiversity Conservation Act 2016*, required by the consent authority before determining a development application.

**contributions plan** means a contributions plan referred to in section 7.18 of the Act.

**Dark Sky Planning Guideline** means the *Dark Sky Planning Guideline* prepared by the Planning Secretary and published in the Gazette.

**Note—**

The Guideline is available on the website of the Department.

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

**design quality principles** has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

**design review panel** has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

**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.

**entertainment venue** means a building used as a cinema, theatre or concert hall or an indoor sports stadium.

**environmental impact statement** means an environmental impact statement referred to in section 4.12, 5.7 or 5.16 of the Act.

**existing use right** means a right conferred by Division 4.11 of the Act.

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

**external combustible cladding**, in relation to a building, means—

- (a) any cladding or cladding system comprising metal composite panels, including aluminium, zinc and copper, that is applied to any of the building's external walls or to any other external area of the building, or
- (b) any insulated cladding system, including a system comprising polystyrene, polyurethane or polyisocyanurate, that is applied to any of the building's external walls or to any other external area of the building.

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

**fire alarm communication link works** means the installation or conversion of a fire alarm communication link to connect with the fire alarm monitoring network of a private service provider, but does not include works that are associated with the alteration, enlargement, extension or change of use of an existing building.

**Fire Commissioner** means the Commissioner of Fire and Rescue NSW.

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

**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 engineer** means a person registered under the [Building and Development Certifiers Act 2018](#) whose registration authorises the person to exercise the functions of a fire safety engineer.

**fire safety order** means an order of the kind referred to in item 6 of the table to section 121B(1) of the Act and includes, if an order is subsequently made under section 121R of the Act, an order under that section.

**fire safety requirement** means a requirement under the *Building Code of Australia* relating to—

- (a) a fire safety system, as defined in the *Building Code of Australia*, and components of a fire safety system, or

- (b) the safety of persons in the event of fire, or
- (c) the prevention, detection or suppression of fire.

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

**fire sprinkler system** means a system designed to automatically control the growth and spread of fire that may include components such as sprinklers, valves, pipework, pumps, boosters and water supplies.

**gateway certificate** means a gateway certificate issued under Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

**Gateway Panel** means the Mining and Petroleum Gateway Panel constituted under Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

**Lord Howe Island Board** means the corporation constituted under section 4 of the *Lord Howe Island Act 1953*.

**manor house** has the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**multi dwelling housing (terraces)** has the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**nominated integrated development** means integrated development (not being threatened species development or Class 1 aquaculture development) that requires an approval (within the meaning of section 4.45 of the Act) under—

- (a) a provision of the *Heritage Act 1977* specified in section 4.46(1) of the Act, or
- (b) a provision of the *Water Management Act 2000* specified in section 4.46(1) of the Act, or
- (c) a provision of the *Protection of the Environment Operations Act 1997* specified in section 4.46(1) of the Act.

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

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

**planning agreement** means an agreement referred to in section 7.4 of the Act.

**Planning Assessment Commission or Commission** means the Independent Planning Commission.

**private service provider** means a person or body that has entered into an agreement with Fire and Rescue NSW to monitor fire alarm systems.

**proprietor**, in relation to a registered non-government school, has the same meaning as in the [Education Act 1990](#).

**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.

**regional panel** means a Sydney district or regional planning panel.

**registered body corporate** has the same meaning as in the [Building and Development Certifiers Act 2018](#).

**registered non-government school** means a registered non-government school within the meaning of the [Education Act 1990](#), other than one to which a current certificate of exemption applies under that Act.

**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 4.55 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 4.30 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) (Repealed)
- (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) (Repealed)
- (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 apartment development** has the same meaning as in [State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development](#).

**section 7.11 condition** means a condition under section 7.11 of the Act requiring the dedication of land or the payment of a monetary contribution, or both.

**section 7.11 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 7.11 of the Act.

**section 7.12 condition** means a condition under section 7.12 of the Act requiring the payment of a levy.

**section 7.12 levy** means the payment of a levy, as referred to in section 7.12 of the Act.

**Siding Spring Observatory** means the land owned by the Australian National University at Siding Spring and the buildings and equipment on that land.

**site compatibility certificate** means the following—

- (a) site compatibility certificate (affordable rental housing),
- (b) site compatibility certificate (infrastructure),
- (c) site compatibility certificate (seniors housing),

(d) site compatibility certificate (schools or TAFE establishments).

**site compatibility certificate (affordable rental housing)** means a certificate issued under clause 37(5) of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

**site compatibility certificate (infrastructure)** means a certificate issued under clause 19(5) of *State Environmental Planning Policy (Infrastructure) 2007*.

**site compatibility certificate (schools or TAFE establishments)** means a certificate issued under clause 15(5) of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

**site compatibility certificate (seniors housing)** means a certificate issued under clause 25(4) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

**site verification certificate** means a site verification certificate issued under Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

**Standard Instrument** means the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

**temporary building** means—

- (a) a temporary structure, or
- (b) a building that is stated to be a temporary building in a 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 to which section 7.7(2) of the *Biodiversity Conservation Act 2016* or section 221ZW of the *Fisheries Management Act 1994* applies.

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) A reference in this Regulation to building work does not include a reference to any physical activity involved in the erection of a temporary structure.

**Note—**

**Building work** is defined by the Act to mean any physical activity involved in the erection of a building.

- (3) A reference in this Regulation to an existing building does not include a reference to a temporary structure.

- (4) A reference in this Regulation to a consent authority's website means—
- (a) if the consent authority is a council, local planning panel or regional panel—the website of the council or councils of the area in which the development concerned is to be carried out, or
  - (b) if the consent authority is the Minister, the Independent Planning Commission or a public authority—the NSW planning portal.

**3A Exclusion from definition of “development”**

For the purposes of the definition of **development** in section 1.5 of the Act, the demolition of a temporary structure is prescribed as not being such development.

**3B Extension of meaning of “work”**

For the purposes of the definition of **work** in section 1.4(1) of the Act, the deposit of material on a beach or land within a beach fluctuation zone (within the meaning of the [Coastal Management Act 2016](#)) is specified to be a work.

**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, 6 (Repealed)**

**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 1.4 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.
- (2A), (3) (Repealed)

**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**

**8A-8P (Repealed)**

**Part 2 Environmental planning instruments**

**9 (Repealed)**

**10 Public authorities must concur in proposed reservation of land by LEP**

A planning proposal for a proposed LEP may not contain a proposed reservation of land for a purpose referred to in section 3.14(1)(c) of the Act unless the public authority that is to be designated for the purposes of section 3.15 of the Act as the authority required to acquire the land has notified the relevant planning authority of its concurrence to the reservation of the land for that purpose.

**10A Notification when council does not support request to prepare planning proposal**

When a council does not support a written request made to the council by a person for the preparation of a planning proposal under Part 3 of the Act, the council is required to notify the person as soon as practicable in writing that the proposal is not supported.

**11 Fee payable for costs and expenses of studies etc by relevant planning authority**

- (1) The relevant planning authority may enter into an agreement with a person who requests the preparation of a planning proposal under Part 3 of the Act for the payment of the costs and expenses incurred by the authority in undertaking studies

and other matters required in relation to the planning proposal.

- (2) The fee payable to the relevant planning authority for the payment of those costs and expenses is—
  - (a) if the authority is a council—the fee set out or determined in accordance with the agreement, or
  - (b) in any other case—an amount (not exceeding \$25,000) determined by the authority to cover the costs and expenses reasonably incurred by the authority in undertaking the studies or other matters, or such greater amount as may be agreed in the particular case.
- (3) A fee payable by a person under this clause is due and payable at the time notified in writing to the person by the relevant planning authority.
- (4) If the relevant planning authority is the Commission or a Sydney district or regional planning panel, the functions of the relevant planning authority under this clause are exercisable by the Planning Secretary.
- (5) A reference in this clause to an agreement includes a reference to an arrangement.

## **12 Planning proposal authority—Lord Howe Island Board**

For the purposes of section 3.32(1)(b) of the Act, the Lord Howe Island Board is prescribed as a body that the Minister may direct is the planning proposal authority for a proposed instrument under section 3.32(2) of the Act.

## **12A-15A (Repealed)**

## **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 Public exhibition of draft development control plans**

Following the preparation of a draft development control plan, the council must publish the following on its website—

- (a) the draft development control plan,
- (b) any relevant local environmental plan or deemed environmental planning instrument,
- (c) the period during which submissions about the draft plan may be made to the council.

### **19 (Repealed)**

### **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 publish notice of its decision on its website 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 notice of the council's decision to approve the plan is published on its website, or on a later date specified in the notice.

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

- (1) The council must not approve a draft development control plan (including an amending plan) containing provisions that apply to residential apartment 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 local government area (or for 2 or more local government areas that include the council's area), and
  - (b) has taken into consideration—
    - (i) any comments made by the design review panel concerning those provisions, and
    - (ii) the matters specified in Parts 1 and 2 of the Apartment Design Guide.
- (2) This clause extends to a plan the preparation of which commenced before the constitution of the design review panel.

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

### **22 Amendment or repeal of development control plan** (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 publishing notice of the decision to repeal the plan on its website.
- (3) At least 14 days before repealing a development control plan under subclause (2)(b), the council must publish notice of its intention to repeal the plan, and its reasons for the repeal, on its website.
- (4) The repeal of a development control plan under subclause (2)(b) takes effect on the date on which the notice is published on the council's website.

### **22A Amendment or revocation of development control plan at Minister's direction**

- (1) This clause applies if the Minister directs a council under section 3.46 of the Act—
  - (a) to revoke a development control plan, or
  - (b) to amend a development control plan and the direction specifies that the amending plan is not required to be exhibited.
- (2) The council may amend or revoke the development control plan by making a development control plan.
- (3) The council must, not later than 14 days after making a development control plan, publish notice of the making of the plan on its website.

- (4) Notice of a development control plan to revoke a development control plan must specify the following—
  - (a) the date the council made the plan and when the plan takes or took effect,
  - (b) the name of the plan that is to be revoked.
- (5) Notice of a development control plan to amend a development control plan must specify the following—
  - (a) the date the council made the plan and when the plan takes or took effect,
  - (b) the name of the plan that is to be amended,
  - (c) that the amendment is in accordance with a direction under section 3.46 of the Act.
- (6) The development control plan comes into effect on the date that the notice is given, or 14 days after the council makes the development control plan, whichever occurs first.
- (7) Clauses 18, 21, 21A, 22 and 23 do not apply to a development control plan made under this clause.

## **23 (Repealed)**

## **Division 5 Development control plans made by the Planning Secretary**

### **24 Application of Part to development control plans made by Planning Secretary** (cf clause 23 of EP&A Regulation 1994)

This Part applies to a development control plan prepared by the Planning Secretary, as the relevant planning authority, under section 3.43 of the Act, subject to the following modifications—

- (a) a reference to a council is taken to be a reference to the Planning Secretary,
- (b) a reference to a local environmental plan or deemed environmental planning instrument is taken to be a reference to a State environmental planning policy,
- (c) a reference to a council's website is taken to be a reference to the NSW planning portal.

## **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 3.44 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 3.44(6) of the Act, the 60-day period referred to in section 3.44(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 3.44 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 3.44(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 3.44(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 Planning Secretary**

A council must, within 28 days of making a development control plan, provide the Planning Secretary 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 3.45(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 10.8 of the Act on payment of a prescribed fee. The fee for a certified copy is prescribed by clause 262.

#### **25AD (Repealed)**

### **Part 4 Development contributions**

#### **Division 1 Preliminary**

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

Pursuant to paragraph (e) of the definition of **planning authority** in section 7.1 of the Act, all public authorities are declared to be planning authorities for the purposes of Division 7.1 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 7.4(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 Planning Secretary may from time to time issue practice notes to assist parties in the preparation of planning agreements.

**Note—**

Under section 7.9 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 7.5 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 development application, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation is given—
- (a) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of the development application that is required to be given by a consent authority for a development application by or under the Act, or
  - (b) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of the development application that is required to be given by a consent authority for a development application by or under the Act and in the manner determined by the planning authorities that are parties to the agreement.
- (1A) 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, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation is given—

- (a) if practicable, as part of and contemporaneously with, and in the same manner as, any public notice of the relevant planning proposal that is required under Part 3 of the Act, or
- (b) if it is not practicable for notice to be given contemporaneously, as soon as possible after any public notice of the relevant planning proposal that is required under Part 3 of the Act and in the manner determined by the planning authorities that are parties to the agreement.

(2) (Repealed)

(2A) In the case of a planning agreement of a kind other than an agreement referred to in subclause (1), (1A) or (2) of which public notice is required to be given under section 7.5 of the Act, the Planning Secretary is to ensure that public notice of the proposed agreement, amendment or revocation is given not less than 28 days before the agreement is entered into or amended or revoked and in the manner determined by the planning authorities that are parties to the agreement.

(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.

(4) In this clause—

**project application** has the same meaning as it has in Part 1A.

**Note—**

Section 7.5 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), and
  - (g) state whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.
- (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 7.5(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 Planning Secretary to facilitate public inspection of relevant planning agreements**

- (1) The Planning Secretary must keep a planning agreement register.
- (2) The Planning Secretary 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 Planning Secretary 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 Planning Secretary,
  - (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 7.11 contribution—recoupment of costs**

For the purposes of section 7.11(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 7.12 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 7.12 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,
  - (j) the costs of enabling access by disabled persons in respect of the development,
  - (k) the costs of energy and water efficiency measures associated with the development,
  - (l) the cost of any development that is provided as affordable housing,
  - (m) the costs of any development that is the adaptive reuse of a heritage item.
- (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 7.12 levy—maximum percentage**

- (1) The maximum percentage of the proposed cost of carrying out development that may be imposed by a levy under section 7.12 of the Act is—
- (a) in the case of development other than development specified in paragraph (b)—
    - (i) if the proposed cost of carrying out the development is up to and including \$100,000—nil, or
    - (ii) if the proposed cost of carrying out the development is more than \$100,000 and up to and including \$200,000—0.5 per cent of that cost, or
    - (iii) if the proposed cost of carrying out the development is more than \$200,000—1 per cent of that cost, or
  - (b) in the case of development on land specified in the Table to this paragraph—the percentage specified in Column 2 of the Table opposite the relevant proposed cost of carrying out the development listed in Column 1 of the Table.

**Table**

**Column 1**

**Column 2**



<b>Proposed cost of carrying out the development</b>	<b>Maximum percentage of the levy</b>
<b>Land within the Neighbourhood Centre, Commercial Core, Mixed Use or Enterprise Corridor zone under <i>Liverpool City Centre Local Environmental Plan 2007</i></b>	
Less than \$1,000,000	Nil
\$1,000,000 or more	3 per cent
<b>Land within the High Density Residential or Light Industrial zone under <i>Liverpool City Centre Local Environmental Plan 2007</i></b>	
Less than \$1,000,000	Nil
\$1,000,000 or more	2 per cent
<b>Land within the Commercial Core zone under <i>Wollongong City Centre Local Environmental Plan 2007</i></b>	
Up to and including \$250,000	Nil
More than \$250,000	2 per cent
<b>Land identified on the Land Application Map under the <i>Gosford City Centre Local Environmental Plan 2007</i></b>	
Up to and including \$250,000	Nil
More than \$250,000	4 per cent
<b>Land identified on the Land Application Map under <i>Parramatta City Centre Local Environmental Plan 2007</i></b>	
Up to and including \$250,000	Nil
More than \$250,000	3 per cent
<b>Land identified on the Land Application Map under <i>Newcastle City Centre Local Environmental Plan 2008</i></b>	
Up to and including \$100,000	Nil
More than \$100,000, up to and including \$200,000	0.5 per cent
More than \$200,000, up to and including \$250,000	1 per cent
More than \$250,000	3 per cent
<b>Land identified on the Land Application Map under <i>Burwood Local Environmental Plan (Burwood Town Centre) 2010</i></b>	

Up to and including \$250,000	Nil
More than \$250,000	4 per cent

**Land identified in map 1 to the Chatswood Central Business District (CBD) Section 94A Development Contributions Plan 2011, as adopted by Willoughby City Council on 21 November 2011**

Up to and including \$100,000	Nil
More than \$100,000, up to and including \$200,000	0.5 per cent
More than \$200,000, up to and including \$250,000	1 per cent
More than \$250,000	3 per cent

- (2) This clause is subject to any direction given by the Minister under section 7.17(1)(d) of the Act.

## **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 Planning Secretary, 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.
- (2A) Despite subclause (2), a contributions plan may be made for land outside the council's area for the purposes of a condition referred to in section 7.15 of the Act.
- (3) The council must not approve a contributions plan that is inconsistent with any direction given to it under section 7.17 of the Act.
- (4) (Repealed)

### **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 to which the plan applies and the demand for additional public amenities and services to

meet that development,

- (d) the formulas to be used for determining the section 7.11 contributions required for different categories of public amenities and services,
- (e) the section 7.11 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 7.12 condition—
  - (i) the percentage of the section 7.12 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 7.11 contributions, section 7.12 levies and the imposition of section 7.11 conditions or section 7.12 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 7.11 contributions or section 7.12 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.

(1A) Despite subclause (1)(g), a contributions plan made after the commencement of this subclause that makes provision for the imposition of conditions under section 7.11 or 7.12 of the Act in relation to the issue of a complying development certificate must provide that the payment of monetary section 7.11 contributions and section 7.12 levies in accordance with those conditions is to be made before the commencement of any building work or subdivision work authorised by the certificate.

**Note—**

Clause 136K imposes a condition on a complying development certificate in relation to the timing of payment of monetary section 7.11 contributions and section 7.12 levies.

(2) In determining the section 7.11 contribution rates or section 7.12 levy percentages for different types of development, the council must take into consideration the conditions that may be imposed under section 4.17(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 7.11 contributions or section 7.12 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 Public exhibition of draft contributions plans**

Following the preparation of a draft contributions plan, the council must publish the following on its website—

- (a) the draft contributions plan and any supporting documents,
- (b) the period during which submissions about the draft plan may be made to the council.

### **29 (Repealed)**

### **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 publish notice of its decision on its website 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 notice of the council's decision to approve the plan is published on its website, or on a later date specified in the notice.

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

### **32 Amendment or repeal of contributions plan** (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 publishing notice of the decision to repeal the plan on its website.
- (2A) At least 14 days before repealing a contributions plan under subclause (2)(b), the council must publish notice of its intention to repeal the plan, and its reasons for the repeal, on its website.
- (2B) The repeal of a contributions plan under subclause (2)(b) takes effect on the date on which the notice is published on the council's website.
- (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 7.11 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 (Repealed)**

### **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 7.11 conditions or section 7.12 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 7.11 contribution or section 7.12 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 7.11 contribution or section 7.12 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 7.11 contributions, section 7.12 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 7.11 contributions or section 7.12 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 7.11 contributions or section 7.12 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 7.1 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 7.11 contributions or section 7.12 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 7.11 contributions or section 7.12 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 10.8 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—

**relevant date** means—

- (a) in relation to an existing use referred to in section 4.65(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 4.65(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**

The object of this Part is to regulate existing uses under section 4.67(1) of 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, but only if that other use is a use that may be carried out with or without development consent under the Act, or
  - (e) if it is a commercial use—be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or
  - (f) if it is a light industrial use—be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).
- (2) However, an existing use must not be changed under subclause (1)(e) or (f) unless that change—
  - (a) involves only alterations or additions that are minor in nature, and
  - (b) does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and
  - (c) does not involve the rebuilding of the premises associated with the existing use,



and

(d) does not involve a significant intensification of that existing use.

(e) (Repealed)

(3) In this clause—

**commercial use** means the use of a building, work or land for the purpose of office premises, business premises or retail premises (as those terms are defined in the Standard Instrument).

**light industrial use** means the use of a building, work or land for the purpose of light industry (within the meaning of the standard instrument set out in the [Standard Instrument \(Local Environmental Plans\) Order 2006](#)).

**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 and 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 and 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 and 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.

**46A (Repealed)**

## **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 1.4 of the Act, this Part does not apply to complying development or to applications for complying development certificates.

**48 Development application information** (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.
- (c) (Repealed)

**49 Persons who can make development applications** (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 of the owner of that land.
- (2) The consent of the owner of the land is not required for a development application made by a public authority, or for a development application for public notification development, if the applicant instead gives notice of the application—
- (a) to the owner of the land before the application is made, or
  - (b) by publishing a notice no later than 14 days after the application is made—
    - (i) in a newspaper circulating in the area in which the development is to be carried out, and
    - (ii) in the case of an application made by a public authority, on the public authority's website, or, in the case of public notification development, on the NSW planning portal.
- (3) Despite subclause (1), a development application made by a lessee of Crown land may only be made with the consent given by or on behalf of the Crown.
- (3A) Despite subclause (1), a development application made in respect of land owned by a Local Aboriginal Land Council may be made by a person referred to in that subclause only with the consent of the New South Wales Aboriginal Land Council.
- (4) Subclause (3) does not require the consent of the Crown if the development application is for State significant development made by a public authority or public notification development.
- (4A) The consent of an owner or other person under this clause is not required to be in writing.
- (5) 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.

**public notification development** means—

- (i) State significant development set out in clause 5 (Mining) or 6 (Petroleum (oil and gas)) of Schedule 1 to [State Environmental Planning Policy \(State and Regional Development\) 2011](#) but it does not include development to the extent that it is carried out on land that is a state conservation area reserved under the [National Parks and Wildlife Act 1974](#), or
- (ii) State significant development on land with multiple owners designated by the

Planning Secretary for the purposes of this clause by notice in writing to the applicant for the State significant development.

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

(1) A development application must—

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

(1A) If a development application that relates to residential apartment development is made on or after the commencement of the *Environmental Planning and Assessment Amendment (Residential Apartment Development) Regulation 2015*, the application must be accompanied by a statement by a qualified designer.

(1AB) The statement by the qualified designer must—

- (a) verify that he or she designed, or directed the design, of the development, and
- (b) provide an explanation that verifies how the development—
  - (i) addresses how the design quality principles are achieved, and
  - (ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.

(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.

(2A) A development application that relates to development in respect of which a site compatibility certificate is required by a State Environmental Planning Policy must be

accompanied by such a certificate.

(2B), (3) (Repealed)

- (4) In the case of a development application under section 4.12(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 Planning Secretary (where the Minister or the Planning Secretary 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.

- (7) In determining whether an alteration, enlargement or extension of a BASIX affected building is BASIX affected development, the consent authority must make its determination by reference to a genuine estimate of the construction costs of the work the subject of the development application, including any part of the work that is BASIX excluded development. 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.
- (8) The applicant must be notified, by means of the NSW planning portal, that the development application has been lodged.
- (9) A development application is taken not to have been lodged until the fees notified to the applicant by means of the NSW planning portal have been paid.

**Note—**

The amount of a fee payable by an applicant for a development application is determined in accordance with Part 15.

**50A Special provisions relating to development applications relating to mining or petroleum development on strategic agricultural land**

- (1) This clause applies to a development application that relates to mining or petroleum development (within the meaning of Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*) on the following land—
  - (a) land shown on the Strategic Agricultural Land Map,

- (b) any other land that is the subject of a site verification certificate.
- (2) A development application to which this clause applies must be accompanied by—
  - (a) in relation to proposed development on land shown on the Strategic Agricultural Land Map as critical industry cluster land—a current gateway certificate in respect of the proposed development, or
  - (b) in relation to proposed development on any other land—
    - (i) a current gateway certificate in respect of the proposed development, or
    - (ii) a site verification certificate that certifies that the land on which the proposed development is to be carried out is not biophysical strategic agricultural land.
- (3) This clause does not apply to or with respect to a development application if the relevant environmental assessment requirements under Part 2 of Schedule 2 of this Regulation were notified by the Planning Secretary on or before 10 September 2012.
- (3A) In addition to subclause (3), this clause does not apply to or with respect to a development application if—
  - (a) the land to which the application relates was not shown (whether in whole or in part) on the Strategic Agricultural Land Map before 28 January 2014, and
  - (b) the relevant environmental assessment requirements under Part 2 of Schedule 2 for the development were notified by the Planning Secretary on or before 3 October 2013.
- (3B) However, the Minister or the Planning Secretary, in dealing with an application referred to in subclause (3) or (3A), may seek the advice of the Gateway Panel.
- (4) In this clause, **biophysical strategic agricultural land**, **critical industry cluster land** and **Strategic Agricultural Land Map** have the same meanings as they have in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

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

- (1) This clause applies to a development application for—
  - (a) development for which the concurrence of a concurrence authority is required, or
  - (b) integrated development.
- (2) A development application to which this clause applies is not to be accompanied by any fees (**additional fees**) payable by the applicant under clause 252A or 253.
- (3) The applicant must pay any additional fees that are notified, by means of the NSW

planning portal, to the applicant.

- (4) The development application is taken not to have been lodged until any additional fees notified to the applicant have been paid in accordance with the notice.

**Note—**

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

**50C Special provision relating to development applications for land within Activation Precincts**

- (1) A development application that relates to proposed development on land within an Activation Precinct under *State Environmental Planning Policy (Activation Precincts) 2020* must be accompanied by a current Activation Precinct certificate.
- (2) This clause does not apply to or with respect to a development application made by a public authority (other than the Development Corporation within the meaning of that Policy).

**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 14 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 all of the information that is specified in the approved form or required by the Act or this Regulation, or is not accompanied by all of the documents and information specified in Part 1 of Schedule 1 or required by the Act or this Regulation, or
  - (c) being an application referred to in section 4.12(8) of the Act, the application is not accompanied by an environmental impact statement referred to in that subsection.

**Note—**

Schedule 2 sets out requirements in relation to environmental impact statements.

- (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 4.46 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 that is required under Part 7 of the *Biodiversity Conservation Act 2016* to be accompanied by a biodiversity development assessment report, the application is not accompanied by such a report, or
  - (c) being an application that is required under 221ZW of the *Fisheries Management Act 1994* to be accompanied by a species impact statement, the application is not accompanied by such a statement.
- (3) An application is taken for the purposes of the Act never to have been made if the application is rejected under this clause and the determination to reject the application is not changed following any review.
- (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 and must notify the applicant in writing of the reasons for the rejection of the application.
- (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) An applicant may withdraw a development application at any time prior to its determination by lodging notice of the withdrawal of the application on the NSW planning portal.
- (2) An application that is withdrawn is taken for the purposes of the Act (Schedule 1 to 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 (Repealed)**

**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 made by means of the NSW planning portal, 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 4.15(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, by means of the NSW planning portal, 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, by lodging the amendment or variation on the NSW planning portal.
- (2) If an amendment or variation results in a change to the proposed development, the application to amend or vary the development application must include 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 4.13 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 or to a development application in relation to BASIX optional development that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied).
- (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 State significant development, designated development 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 on the NSW planning portal.

**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.

**56A Planning functions subject to community participation requirements**

For the purposes of section 2.21(2)(f) of the Act, environmental impact assessment functions under Division 5.1 of the Act are prescribed if a species impact statement or a biodiversity development assessment report is required under section 7.8 of the [Biodiversity Conservation Act 2016](#).

**56B Planning authorities subject to community participation requirements**

- (1) For the purposes of section 2.23(3)(c) of the Act, the community participation plan of a council applies to the exercise of the council's relevant planning functions by the following planning authorities—
  - (a) a Sydney district or regional planning panel,
  - (b) a local planning panel.
- (2) For the purposes of section 2.23(3)(c) of the Act, a Sydney district or regional planning panel, or a local planning panel is not required to prepare its own community participation plan.

**Division 1A**

**57-57B (Repealed)**

**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.
- (1A) This Division extends to a development application under Part 4 or environmental assessment that relates to development or an activity for which concurrence is required under section 7.12 of the *Biodiversity Conservation Act 2016* or under section 221ZZ of the *Fisheries Management Act 1994*. This Division applies with such modifications as are necessary for that purpose.
- (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 Schedule 1 to the Act.
- (2) The development application must be forwarded to the relevant concurrence authority within 14 days after the application is lodged, except as otherwise provided by this clause.
- (3) If the concurrence of the Environment Agency Head may be required under Part 7 of the *Biodiversity Conservation Act 2016* because the development application indicates on its face that a discount is being sought in the biodiversity credits required under the report to be retired—
  - (a) the development application must be forwarded to the Environment Agency Head within 10 days (instead of 14 days) after the application is lodged, and
  - (b) the consent authority must notify the Environment Agency Head within 30 days

after the application is lodged whether it proposes to reduce the number of biodiversity credits required to be retired and, if it proposes to do so, the amount of (and reasons for) the reduction, as referred to in section 7.13(4) of the *Biodiversity Conservation Act 2016*.

If concurrence is required because the consent authority proposes to reduce the number of biodiversity credits, the reference in clause 62(1)(a) to notice to the consent authority of the decision of the Environment Agency Head being given within 40 days after the receipt of the application by the Environment Agency Head is to be construed as a reference to notice being given within 50 days after the application is lodged.

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

**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 Schedule 1 to 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 (or a lesser period, if any, provided for in an environmental planning instrument) after receipt of the copy of the application, or
  - (b) in the case of development that is required to be advertised or notified under Schedule 1 to 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) (Repealed)

**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 Schedule 1 to the Act.

- (2) The application must be forwarded to the relevant approval body within 14 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 Chief Executive of the Office of Environment and Heritage 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 Chief Executive can make a decision concerning the general terms of approval in relation to such a consent (including whether or not the Chief Executive will grant consent),

the Planning Secretary 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 Schedule 1 to 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 Schedule 1 to 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).

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

- (1) The Planning Secretary is authorised to act on behalf of an approval body as referred to in section 4.47(4A) of the Act where—
  - (a) the approval body has failed to inform the consent authority under section 4.47 of the Act, within the GTA assessment period, whether or not the approval body will grant the approval or of the general terms of its approval, or
  - (b) there is an inconsistency that has been identified by the consent authority in the general terms of approval of 2 or more approval bodies (being an inconsistency in which it would not be possible for a general term of approval of an approval body to be complied with without breaching a general term of approval of another approval body).
- (2) The **GTA assessment period** is the period of 21 or 40 days, as the case may be, prescribed by clause 70(1) as the period within which the approval body must notify its decision to the consent authority.

**Note—**

This period may be extended by operation of Division 11.

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

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

- (1) If the Planning Secretary decides to act on behalf of an approval body as referred to in section 4.47(4A) of the Act, the Planning Secretary may request the applicant for development consent to provide the Planning Secretary with such additional information about the proposed development as the Planning Secretary considers necessary to the Planning Secretary's proper consideration of the general terms of approval.
- (2) The request—
  - (a) must be in writing, and

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

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

(4) If the applicant notifies the Planning Secretary that the information will not be provided, or fails to provide it by the end of any period specified as referred to in subclause (2)(b) or such further period as the Planning Secretary may allow, the Planning Secretary may deal with the request for general terms of approval without that information.

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

(1) Within 21 days after giving written notice under clause 70AA(3), the Planning Secretary must give written notice to the consent authority and each approval body concerned of the Planning Secretary's decision concerning the general terms of approval (including whether or not approval will be given).

(2) If the consent authority determines the development application concerned by refusing to grant consent before the expiration of the relevant period under subclause (1)—

(a) the consent authority must notify the Planning Secretary, in writing, as soon as possible after the determination, and

(b) subclause (1) ceases to apply in relation to the development application.

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

### **Division 3A Special provisions relating to concept development applications**

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

Despite clause 50(1)(b) and (c), the information required to be provided in a concept 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 Concept development applications—residential apartment development**

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

## **Division 4**

### **71-76 (Repealed)**

## **Division 5 Public participation—designated development, State significant development, nominated integrated development, threatened species development and Class 1 aquaculture development**

### **77 Notice of development applications**

- (1) As soon as practicable after a development application is lodged with the consent authority, the consent authority must—
  - (a) publish notice of the application on the consent authority’s website, and
  - (b) give notice of the application to—
    - (i) the public authorities (other than relevant concurrence authorities or approval bodies) that, in the opinion of the consent authority, may have an interest in the determination of the application, and
    - (ii) in the case of a development application other than designated development—the persons that, in the opinion of the consent authority, own or occupy the land adjoining the land to which the application relates (unless the notice is in respect of an application for public notification development).
- (2) The notice 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 the consent authority,
  - (c) a description of the proposed development,
  - (d) whether or not the development is designated development, nominated integrated development, threatened species development, Class 1 aquaculture development or State significant development,
  - (e) a statement that the development application and the documents accompanying the application, including any environmental impact statement, are publicly available on the consent authority’s website for the period specified in Schedule 1 to the Act for that kind of development,
  - (f) a statement that any person, during the submission period specified in Schedule 1 to the Act for that kind of development, may make submissions to the consent authority concerning the development application and that the submissions must

specify the grounds of objection (if any),

- (g) 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,
- (h) in the case of State significant development—whether the Minister has directed that a public hearing should be held,
- (i) in the case of designated development—a statement that, unless the Independent Planning Commission has conducted a public hearing, a person may appeal to the Land and Environment Court if the person makes a submission by way of objection and is dissatisfied with the determination of the consent authority to grant development consent,
- (j) in the case of designated development—a statement that, if the Independent Planning Commission conducts a public hearing, the Commission’s determination of the application is final and not subject to appeal.

(3) For the purposes of this clause—

- (a) if land is a lot in a strata scheme (within the meaning of the *Strata Schemes Development Act 2015*), a notice to the owners corporation is taken to be notice to the owner or occupier of each lot within the strata scheme, and
- (b) if land is a lot in a leasehold strata scheme (within the meaning of the *Strata Schemes Development Act 2015*), a notice to the lessor under the leasehold strata scheme and to the owners corporation is taken to be notice to the owner or occupier of each lot within the leasehold strata scheme, and
- (c) if land is owned or occupied by more than one person, a notice to one owner or one occupier is taken to be notice to all the owners and occupiers of that land.

### **78 Notice of designated development application must be exhibited on relevant land**

A notice for a development application for designated development must be exhibited on the land to which the development application relates and must—

- (a) be displayed on a signpost or board, and
- (b) be clear and legible, and
- (c) be headed in capital letters and bold type “**DEVELOPMENT PROPOSAL**”, and
- (d) contain the following information—

- (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) a statement that the development application and the documents accompanying the application, including any environmental impact statement, are publicly available on the consent authority's website for the period specified in Schedule 1 to the Act for designated development, and
- (e) if practicable, be capable of being read from a public place.

**79, 80 (Repealed)**

**81 Forwarding of submissions to Planning Secretary** (cf clause 62 of EP&A Regulation 1994)

For the purposes of section 4.16(9)(b) of the Act, the consent authority must, immediately after the relevant submission period, forward to the Planning Secretary (if the Minister or the Planning Secretary 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 Planning Secretary has waived the requirement under section 4.16(10)(b) of the Act.

**Division 6 Additional requirements for State significant development**

**82 Additional requirements for State significant development**

- (1) The Planning Secretary is to provide to an applicant for State significant development the submissions, or a summary of the submissions, received in relation to the application during the submission period.
- (2) The Planning Secretary may, by notice in writing, require the applicant to provide a written response to any issues raised in those submissions as the Planning Secretary considers necessary.
- (3) For the purposes of section 4.39(d) of the Act, the Planning Secretary is to make the following documents that relate to a development application for State significant development available on the NSW planning portal—
  - (a) the Planning Secretary's environmental assessment requirements under Part 2 of Schedule 2,
  - (b) the development application, including any accompanying documents or information and any amendments made to the development application,

- (c) any submissions received during the submission period and any response provided under subclause (2),
- (d) any environmental assessment report prepared by the Planning Secretary,
- (e) any development consent or modification to a development consent,
- (f) any application made for a modification to a development consent, including any accompanying documents or information,
- (g) any documents or information provided to the Planning Secretary by the applicant in response to submissions.

**83-85B (Repealed)**

**Division 7 Additional requirements for nominated integrated development, threatened species development and Class 1 aquaculture development**

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

- (1) This Division applies to nominated integrated development, threatened species development and Class 1 aquaculture development.
- (2) This Division does not apply to development on land to which clause 36 of [Newcastle Local Environmental Plan 2003](#) applies.

**87-89 (Repealed)**

**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 4.18 of the Act.

**91 (Repealed)**

**Division 8 Determination of development applications**

**92 Additional matters that consent authority must consider** (cf clause 66 of EP&A Regulation 1994)

- (1) For the purposes of section 4.15(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) (Repealed)
  - (b) in the case of a development application for the demolition of a building, the provisions of AS 2601,
  - (c) in the case of a development application for the carrying out of development on land that is subject to a subdivision order made under Schedule 7 to the Act, the provisions of that order and of any development plan prepared for the land by a relevant authority under that Schedule,
  - (d) in the case of the following development, the *Dark Sky Planning Guideline*—
    - (i) any development on land within the local government area of Coonamble, City of Dubbo, Gilgandra or Warrumbungle Shire,
    - (ii) development of a class or description included in Schedule 4A to the Act, State significant development or designated development on land less than 200 kilometres from the Siding Spring Observatory,
  - (e) in the case of a development application for development for the purposes of a manor house or multi dwelling housing (terraces), the *Medium Density Design Guide for Development Applications* published by the Department of Planning and Environment on 6 July 2018, but only if the consent authority is satisfied that there is not a development control plan that adequately addresses such development.

**Note—**

A copy of the Guide is available on the website of the Department.

- (f) in the case of a development application for development for the erection of a building for residential purposes on land in Penrith City Centre, the *Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre* published by the Department of Planning and Environment on 28 June 2019.



**Note—**

A copy of the Guideline is available on the website of the Department.

(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.

**Penrith City Centre** means the City Centre as defined in [Penrith Local Environmental Plan 2010](#).

**92A (Repealed)**

**93 Fire safety and other 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 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 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 4.15(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 involving 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.

(c) (Repealed)

(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*.

(2A), (2B) (Repealed)

(3) The matters prescribed by this clause are prescribed for the purposes of section 4.15(1)(a)(iv) of the Act.

#### **94A Fire safety and other considerations applying to erection of temporary structures**

(1) This clause applies to a development application for the erection of a temporary structure.

(2) In determining a development application to which this clause applies, a consent authority is to take into consideration—

(a) whether the fire protection and structural capacity of the structure will be appropriate to the proposed use of the structure, and

(b) whether the ground or other surface on which the structure is to be erected will be sufficiently firm and level to sustain the structure while in use.

(3) The matters prescribed by this clause are prescribed for the purposes of section 4.15(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 4.16(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 8.7 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 6.29 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 4.17(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 4.17(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.

**96A Imposition of conditions—conditions limited to State significant development**

A development consent may only be granted subject to a condition referred to in section 4.17(4A) or (4B) of the Act if the development is State significant development.

**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 4.17(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 to the following development—
- (a) BASIX affected development,
  - (b) any BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied).
- (2) For the purposes of section 4.17(11) of the Act, fulfilment of the commitments listed in each 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 4.17(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.
- (1A) For the purposes of section 4.17(11) of the Act, it is prescribed as a condition of a development consent for a temporary structure that is used as an entertainment

venue, that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia*.

- (2) This clause does not apply—
  - (a) to the extent to which an exemption is in force under clause 164B, 187 or 188, subject to the terms of any condition or requirement referred to in clause 164B(4), 187(6) or 188(4), or
  - (b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) applies.
- (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 is made for the relevant—
  - (a) development consent, in the case of a temporary structure that is an entertainment venue, or
  - (b) construction certificate, in every other case.

**Note—**

There are no relevant provisions in the *Building Code of Australia* in respect of temporary structures that are not entertainment venues.

**98A Erection of signs**

- (1) For the purposes of section 4.17(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 certifier 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 6.28 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 certifiers 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 4.17(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 certifier 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 certifier 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 6.28 of the Act, to comply with the technical provisions of the State's building laws.

**98C Conditions relating to entertainment venues**

For the purposes of section 4.17(11) of the Act, the requirements set out in Schedule 3A

are prescribed as conditions of development consent for the use of a building as an entertainment venue.

**98D Condition relating to maximum capacity signage**

- (1) For the purposes of section 4.17(11) of the Act, the requirement set out in subclause (2) is prescribed as a condition of development consent (including an existing development consent) for the following uses of a building, if the development consent for the use contains a condition specifying the maximum number of persons permitted in the building—
  - (a) entertainment venue,
  - (b) function centre,
  - (c) pub,
  - (d) registered club,
  - (e) restaurant.
- (2) From 26 January 2010, a sign must be displayed in a prominent position in the building stating the maximum number of persons, as specified in the development consent, that are permitted in the building.
- (3) Words and expressions used in this clause have the same meanings as they have in the Standard Instrument.

**98E Condition relating to shoring and adequacy of adjoining property**

- (1) For the purposes of section 4.17(11) of the Act, it is a prescribed condition of development consent that if the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense—
  - (a) protect and support the building, structure or work from possible damage from the excavation, and
  - (b) where necessary, underpin the building, structure or work to prevent any such damage.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**Division 9**

**99 (Repealed)**



## Division 10 Post-determination notifications

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

- (1) For the purposes of section 4.18(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 4.17(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 4.17(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 8.3 of the Act,
  - (c2) in the case of a consent for a concept 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 the Independent Planning Commission has conducted a public hearing in respect of the application,
  - (i) which approval bodies have given general terms of approval in relation to the development, as referred to in section 4.50 of the Act,
  - (j) whether the Act gives a right of appeal or a right to make an application for a review 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 was one for which concurrence was required under Part 7 of the *Biodiversity Conservation Act 2016* or under Part 7A of the *Fisheries Management Act 1994*, a copy of the notice of determination must be given to the Environment Agency Head or the Secretary of the Department of Industry, as the case requires.
- (7) For the purposes of section 4.18(1) of the Act, a notice of the determination of a development application relating to land owned by a Local Aboriginal Land Council must also be given to the New South Wales Aboriginal Land Council.
- (8) For the purposes of section 4.18(1) of the Act, a notice of the determination of a development application to which clause 19 of *State Environmental Planning Policy (Three Ports) 2013* applies must also be given to the chief executive of the applicable Port Operator (within the meaning of that Policy) not later than 7 days after the determination is made.

**101 Additional particulars with respect to section 7.11 and 7.12 conditions** (cf clause 69A of EP&A Regulation 1994)

- (1) The notice to an applicant concerning a development consent the subject of a section 7.11 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 7.12 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) For the purposes of section 4.18(1) of the Act, the consent authority must—
  - (a) publish the notice of determination of a development application on the NSW planning portal within 14 days after the date of the determination, and
  - (b) send the notice of determination to the following persons within 14 days after the date of determination—
    - (i) a person to whom section 4.18(1)(b) of the Act requires the notice to be given,
    - (ii) a person who made a submission under the Act in relation to the development application (whether or not it involved designated development).
- (2) (Repealed)
- (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 sections 6.6 and 6.12 of the Act of appointment of principal certifier** (cf clause 70 of EP&A Regulation 1994)

- (1) A notice given under or for the purposes of section 6.6(2)(a) or 6.12(2)(a) 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 certifier, and of the person by whom the principal certifier was appointed,
  - (f) if the principal certifier is a registered certifier—
    - (i) his, her or its registration number, and
    - (ii) (Repealed)
    - (iii) a statement signed by the registered certifier to the effect that he, she or it consents to being appointed as principal certifier, and
    - (iv) a telephone number on which he, she or it may be contacted for business purposes.

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

**103A Notice under section 6.6 of the Act of critical stage inspections**

(1) A notice given under section 6.6(2)(b) of the Act must contain the following information—

- (a) the name and registration number of the principal certifier by whom the notice is given,
- (b) a telephone number on which the principal certifier 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.

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

**104 Notice under sections 6.6 and 6.12 of the Act of intention to commence subdivision work or erection of building** (cf clause 70 of EP&A Regulation 1994)

(1) A notice given under or for the purposes of section 6.6(2)(e) or 6.12(2)(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 certifier 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.

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

**105 Notice under section 4.47(6) 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 4.47(6) 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 Definition of “assessment period”**

In this Division, *assessment period* means—

- (a) the period prescribed by clause 62(1) (or the period of 50 days prescribed by clause 59(3)) 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

**Note—**

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

- (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, 60 or 90 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 on the NSW planning portal nor the following day are to be taken into consideration in calculating the number of days in any of the assessment periods.

### **108 (Repealed)**

### **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 on the NSW planning portal.

**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.

(3) Subclause (1) does not apply in relation to a request for additional information that is made by the Planning Secretary under—

(a) clause 60 (in circumstances in which the Planning Secretary is a concurrence authority due to the operation of *State Environmental Planning Policy (Concurrences) 2018*), or

(b) clause 70AA.

**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 Chief Executive of the Office of Environment and Heritage 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 Chief Executive can make a decision concerning the general terms of approval in relation to such a consent (including whether or not the Chief Executive 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 on the NSW planning portal) 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 Chief Executive of the Office of Environment and Heritage.

**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 Chief Executive of the Office of Environment and Heritage 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 Applications taken to be refused** (cf clause 70B of EP&A Regulation 1994)

- (1) For the purposes of section 8.11(1) of the Act, a development application is taken to

be refused if a consent authority has not determined the application within the **deemed refusal period**, being—

- (a) 40 days, except in the case of development referred to in paragraph (b) or (c), or
- (b) 60 days, in the case of—
  - (i) designated development, or
  - (ii) integrated development (other than integrated development that, pursuant to Part 5 of *State Environmental Planning Policy (Primary Production and Rural Development) 2019*, is Class 1 aquaculture development), or
  - (iii) development for which the concurrence of a concurrence authority is required, or
  - (iv) a development application that is accompanied by a biodiversity development assessment report and that proposes a discount in the biodiversity credits required under the report to be retired, or
- (c) 90 days, in the case of State significant development.

(2) The deemed refusal period is measured from—

- (a) the date the development application is lodged on the NSW planning portal, or
- (b) the date the Commission complies with clause 6 of Schedule 2 to the Act, if a public hearing has been conducted by the Independent Planning Commission into development other than development the subject of a development application to which section 8.7 of the Act does not apply, or part of any such development.

(3) In the case of nominated integrated development, threatened species development or Class 1 aquaculture development for which the relevant submission period exceeds the minimum period specified in clause 8A of Schedule 1 to the Act, the deemed refusal period is to be increased by that part of the submission period that exceeds the minimum period specified in clause 8A of Schedule 1 to the Act, despite subclause (1).

(3A) Despite subclause (1), if the relevant submission period for an application for designated development exceeds the minimum period specified in clause 8 of Schedule 1 to the Act, the deemed refusal period is to be increased by that part of the submission period that exceeds that minimum period.

(4) If the relevant submission period for a development application for designated development is more than the minimum period specified in clause 8 of Schedule 1 to the Act, 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 8.11 of the Act.



- (5) In the case of State significant development for which the relevant submission period exceeds the minimum period specified in clause 9 of Schedule 1 to the Act, the deemed refusal period is to be increased by that part of the submission period that exceeds the minimum period specified in clause 9 of Schedule 1 to the Act, despite subclause (1).
- (6) If the relevant submission period for a development application for State significant development is more than the minimum period specified in clause 9 of Schedule 1 to the Act, the Minister 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 8.11 of the Act.
- (7) In the case of State significant development, any day that occurs between the date of the Planning Secretary's request for a written response to submissions under clause 82(2) and the date on which that response is provided to the Planning Secretary is not to be taken into consideration in calculating the number of days in the deemed refusal period.

**Note—**

This clause does not apply in respect of a development application if section 8.7 of the Act does not apply to the application.

**113A Public participation— application under section 8.3 of the Act for review of council's determination**

- (1) This clause applies to an application under section 8.3 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 the period specified in clause 20A of Schedule 1 to the Act, but otherwise in the same manner as the original development application was notified or advertised.
- (3) (Repealed)
- (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 8.5(1)(b) of the Act.
- (6) (Repealed)

- (7) During the period referred to in subclause (2), any person may inspect the application and any accompanying information and make extracts from or copies of them.

**113B Period after which Crown development applications may be referred to Minister or regional panel**

- (1) For the purposes of section 4.33(2) of the Act, the prescribed period is 70 days after the Crown development application is lodged with the consent authority.
- (2) For the purposes of section 4.33(5) of the Act, the prescribed period is 50 days after the Crown development application is referred to the applicable regional panel under section 4.33(2)(b) of the Act.

**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)

- (1) An application under section 4.54 of the Act for the extension of time to commence development—
  - (a) (Repealed)
  - (b) must identify the development consent to which it relates, and
  - (c) must indicate why the consent authority should extend the time.
- (2) The application may be lodged on the NSW planning portal if the Planning Secretary determines that applications may be so lodged.

**114A (Repealed)**

**115 Application for modification of development consent** (cf clause 71A of EP&A Regulation 1994)

- (1) An application for modification of a development consent under section 4.55(1), (1A) or (2) or 4.56(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,
- (g1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the *Biodiversity Conservation Act 2016*,
- (h) if the applicant is not the owner of the land, a statement that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner),
- (i) a statement as to whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56).

(1A) An application for modification of development consent must—

- (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
- (b) be accompanied by the information and documents specified in the approved form and information or documents required by the Act or this Regulation, and
- (c) be lodged on the NSW planning portal.

**Note—**

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

- (2) The notification requirements of clause 49 apply in respect of an application if the consent of the owner of the land would not be required were the application an application for development consent rather than an application for the modification of such consent.
- (3) In addition, if an application for the modification of a development consent under section 4.55(2) or section 4.56(1) of the Act relates to residential apartment development and the development application was required to be accompanied by a

design verification from a qualified designer under clause 50(1A), the application must be accompanied by a statement by a qualified designer.

(3A) The statement by the qualified designer must—

- (a) verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and
- (b) provide an explanation of how—
  - (i) the design quality principles are addressed in the development, and
  - (ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and
- (c) verify that 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.

(3B) If the qualified designer who gives the design verification under subclause (3) for an application for the modification of development consent (other than in relation to State significant development) does not verify that he or she also designed, or directed the design of, the development for which the consent was granted, the consent authority must refer the application to the relevant design review panel (if any) for advice as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.

(4) If an application referred to in subclause (3) 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.

(5) The consent authority may refer the proposed modification to the relevant design review panel but not if the application is for modification of a development consent for State significant development.

(6) An application for the modification of a development consent under section 4.55(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 or BASIX certificates, or if it relates to BASIX optional development in relation to which a person has made a development application that has been accompanied by a BASIX certificate or BASIX

certificates (despite there being no obligation under clause 2A of Schedule 1 for it to be so accompanied), must also be accompanied by the appropriate BASIX certificate or BASIX certificates.

- (7) The appropriate BASIX certificate for the purposes of subclause (6) 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.
- (8) An application for modification of a development consent under section 4.55(1), (1A) or (2) or 4.56(1) of the Act relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council.
- (9) (Repealed)
- (10) A development consent may not be modified by the Land and Environment Court under section 4.55 of the Act if an application for modification of the consent has been made to the consent authority under section 4.56 of the Act and has not been withdrawn.
- (11) In the case of an application for modification of a Penrith Lakes Development Corporation development consent where the proposed modification relates only to part of the land to which the development consent applies, the requirement to include the owner's consent in the application under subclause (1)(h) is a requirement to include the consent of the owner of the part of the land to which the modification relates only.
- (12) In subclause (11), **Penrith Lakes Development Corporation development consent** means the development consents DA2, DA3 and DA4 granted to the Penrith Lakes Development Corporation Limited in respect of land to which [State Environmental Planning Policy \(Penrith Lakes Scheme\) 1989](#) applies on 24 February 1987, 27 June 1995 and 9 September 1998 respectively.

#### **115A Application fee for modification of development consent**

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

#### **116 (Repealed)**

**117 Modification of consent involving minimal environmental impact**

- (1) This clause applies to an application under section 4.55(1A) of the Act or under section 4.56 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 community participation 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 4.56 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 community participation plan, and
  - (c) the date (or dates) on which the application was notified or advertised.
- (3A) If an application to which this clause applies relates to a development consent that was originally granted or deemed to have been refused by a regional panel, the council or councils of the area in which the development concerned is to be carried out are to notify or advertise the application, and are to notify the Court (if applicable), in accordance with this clause instead of the regional panel.
- (3B) Subclauses (2)–(3A) do not apply if the application to which this clause applies is in respect of State significant development.
- (4) If a community participation 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 Applications under sections 4.55(2) and 4.56 for modification of certain development consents** (cf clause 72A of EP&A Regulation 1994)

- (1) This clause applies to an application under section 4.55(2) or 4.56(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 development,
  - (c) nominated integrated development, threatened species development or Class 1 aquaculture development where the application was made to a consent authority other than a council.
- (2) Notice of the application must be published on the website of the relevant consent

authority, that is—

- (a) the website of the consent authority that granted the development consent, or
  - (b) the website of the consent authority to which the original development application was made, if development consent was granted by the Court on appeal, or
  - (c) the website of the council or councils of the area in which the development concerned is to be carried out, if the development consent was granted by a regional panel or if the development consent was granted by the Court on appeal and the original development consent was granted or was deemed to have been refused by a regional panel.
- (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) or a council referred to in subclause (2)(c) (if development consent was granted by the Court) must, in the case of an application under section 4.56 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 minimum period specified in clause 10 of Schedule 1 to the Act,
  - (d) a statement that, if the application is approved, there is no right of appeal to the Court by an objector.
- (6) (Repealed)
- (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—applications under sections 4.55(2) and 4.56 for modification of other development consents**

- (1) This clause applies to an application under section 4.55(2) of the Act to which clause 118 does not apply or under section 4.56(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 the minimum period specified in clause 10 of Schedule 1 to the Act but otherwise in the same manner as the original development application was notified or advertised.
- (3) (Repealed)
- (4) If an application to which this clause applies is required by this clause 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 4.56 of the Act, notify the Court of—
  - (a) the manner in which the application was notified or advertised, and
  - (b) the minimum public exhibition period required by clause 10 of Schedule 1 to the Act, and
  - (c) the date (or dates) on which the application was notified or advertised.
- (5A) If an application to which this clause applies is made about a development consent granted, or deemed to have been refused, by a regional panel, the council or councils of the area in which the development concerned is to be carried out are to notify or advertise the application, and are to notify the Court (if applicable), in accordance with this clause instead of the regional panel.
- (6) During the period referred to in clause 10 of Schedule 1 to the Act, any person may inspect the application and any accompanying information and make extracts from or copies of them.

**119A Special provisions relating to applications under section 4.55(2) relating to strategic agricultural land**

- (1) This clause applies to an application to modify a development consent under section 4.55(2) of the Act that relates to mining or petroleum development (within the meaning of Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*) on the following land—
  - (a) land shown on the Strategic Agricultural Land Map,
  - (b) any other land that is the subject of a site verification certificate.
- (2) An application to which this clause applies must be accompanied by—
  - (a) in relation to land shown on the Strategic Agricultural Land Map as critical industry cluster land—a current gateway certificate in respect of the proposed development to be carried out under the modified consent, or



- (b) in relation to any other land—
  - (i) a current gateway certificate in respect of the proposed development to be carried out under the modified consent, or
  - (ii) a site verification certificate that certifies that the land concerned is not biophysical strategic agricultural land.
- (3) For the avoidance of doubt, Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (other than Divisions 2 and 5) applies (with all necessary changes) to an application to which this clause applies as if it were an application for development consent.
- (4) For the avoidance of doubt, a site verification certificate or a gateway certificate for the purposes of this clause may be issued with respect to the part of land or the part of the proposed development to which the modification relates (rather than the whole of the land or the whole development to which the consent relates).
- (5) This clause does not apply to or with respect to an application under section 4.55(2) of the Act that was made, but not determined, on or before 10 September 2012.
- (5A) In addition to subclause (5), this clause does not apply to or with respect to an application under section 4.55(2) of the Act if—
  - (a) the land to which the application relates was not shown (whether in whole or in part) on the Strategic Agricultural Land Map before 28 January 2014, and
  - (b) the application was made, but not determined, on or before 3 October 2013.
- (5B) However, the Minister or the Planning Secretary, in dealing with an application referred to in subclause (5) or (5A), may seek the advice of the Gateway Panel.
- (6) In this clause, **biophysical strategic agricultural land**, **critical industry cluster land** and **Strategic Agricultural Land Map** have the same meanings as they have in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

## 120 Notification of concurrence authorities and approval bodies

- (1) 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.
- (2) If an application to which this clause applies is made about a development consent granted by a regional panel, the council or councils of the area in which the development concerned is to be carried out are to comply with subclause (1) instead of the regional panel.

**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, by means of the NSW planning portal, 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 specify any right of the applicant to seek a review or make an appeal against the determination under the Act.
- (3) If an application for the modification of a development consent applies to land owned by a Local Aboriginal Land Council, notice under subclause (1) must also be given to the New South Wales Aboriginal Land Council.

**122A Effect of failure to determine modification applications**

- (1) For the purposes of sections 4.55(6) and 4.56(3) of the Act—
  - (a) a consent authority is taken to have refused an application under section 4.55 or 4.56 if it fails to determine the application within 40 days after the application is made, and
  - (b) a later determination does not prejudice or affect the continuance or determination of an appeal made under section 8.9 of the Act in respect of a determination that is taken by this clause to have been made.

- (2) If a later determination is made by granting consent, the consent authority is entitled, with the consent of the applicant and without prejudice to costs, to have an appeal (being an appeal made under section 8.9 of the Act in respect of a determination that is taken to have been made by this clause) withdrawn at any time prior to the determination of that appeal.

**123 Persons to be informed of proposed revocation or modification of consent under section 4.57(3) of the Act** (cf clause 73B of EP&A Regulation 1994)

- (1) For the purposes of section 4.57(3)(a)(ii) of the Act, the Secretary of the Department of Finance, Services and Innovation 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 (Repealed)**

**Division 12A Additional provisions where regional panel is exercising consent authority functions**

**123B Application of Division**

- (1) This Division applies to development for which a regional panel has the function of determining the development application or an application to modify a development consent.
- (2) In this Division, a reference to a development application includes a reference to an application to modify a development consent.

**123BA Functions exercisable by council on behalf of regional panel**

The following consent authority functions of a Sydney district or regional planning panel are prescribed under section 4.7(2)(h) of the Act as functions to be exercised on behalf of a panel by the council of the area concerned—

- (a) the determination of applications to modify a development consent under section 4.55(1) of the Act,
- (b) the determination of applications to modify a development consent under section 4.55(1A) of the Act.

**123C Development applications where land is in 2 or more local government areas**

- (1) This clause applies to development applications for development located in 2 or more local government areas.
- (2) A separate development application for the proposed development must be lodged with each council for an area in which the proposed development is situated.

**123D (Repealed)**

**123E Procedural matters related to determination of development applications**

- (1) A regional panel may, for the purpose of determining a development application—
  - (a) obtain assessment reports, in addition to any assessment report or other information provided by a relevant council in dealing with the application, and
  - (b) obtain other technical advice or assistance as the panel thinks fit.
- (2) If a development consent is granted by a regional panel subject to a condition referred to in section 4.16(3) or 4.17(2) of the Act, the regional panel is taken to be satisfied as to a matter specified in the condition if the council for the area in which the land on which the development is to be carried out notifies the chairperson of the panel in writing that the matter specified in the condition has been satisfied.

**123F Procedural matters relating to determination of applications to modify consents**

A regional panel may carry out consultation for the purposes of section 4.55(2)(b) of the Act by directing the general manager of a council for an area in which the development the subject of the consent is to be carried out to consult with the relevant Minister, public authority or approval body on behalf of the regional panel.

**Division 12B Applications for review under Division 2 of Part 4 of the Act**

**123G Review of determination of development application**

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

### **123H Review of decision to reject development application**

- (1) An application for a review under section 8.3 of the Act by a council must be made not later than 14 days after the applicant is given notice by the council of its decision to reject and not to determine the application.
- (2) A council must, as soon as practicable after the review is determined, notify the applicant of the result of the review by means of the NSW planning portal.
- (3) A council is taken to have refused an application for a review if it fails to determine the application within 14 days after the application is made.

### **123I Review of modification decision**

- (1) An application for a review under section 8.3 of the Act is to be made not later than 28 days after the date on which the application for the modification of the development consent was determined.
- (2) An application must be notified or advertised for the period required by clause 20A of Schedule 1 to the Act.
- (3) The notice or advertisement must contain the following information—
  - (a) a brief description of the original modification 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 notification period.
- (4) Submissions may be made in relation to such an application during the notification period and during that period any person may inspect the application and any accompanying information and make extracts from or copies of them.
- (5) The council must, as soon as practicable after the review is determined—
  - (a) notify the applicant of the result of the review by means of the NSW planning portal, and
  - (b) if the application applies to land owned by a Local Aboriginal Land Council—notify the New South Wales Aboriginal Land Council of the result of the review (but not if the review confirms the determination).
- (6) In this clause—

**notification period** means the period during which the application is required to be advertised or notified under subclause (2).

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

### **124 Validity of development consents**

For the purposes of section 4.59 of the Act, a notice relating to the granting of a development consent must be published on the consent authority's website and must describe the land and the development the subject of the development consent.

#### **124AA When work is physically commenced**

- (1) For the purposes of section 4.53(7) of the Act, work is not taken to have been physically commenced merely by the doing of any one or more of the following—
  - (a) creating a bore hole for soil testing,
  - (b) removing water or soil for testing,
  - (c) carrying out survey work, including the placing of pegs or other survey equipment,
  - (d) acoustic testing,
  - (e) removing vegetation as an ancillary activity,
  - (f) marking the ground to indicate how land is to be developed.
- (2) This clause does not apply to a development consent granted before the commencement of this clause.

## **Division 14 Review conditions**

### **124A Application of Division**

This Division applies to a further condition imposed under section 4.17(10B) of the Act in relation to a development consent condition that permits extended hours of operation or increases the maximum number of persons permitted in a building (in this Division called a **review condition**).

#### **124B Development for which review condition may be imposed**

- (1) Development consent for the following uses of a building may be the subject of a review condition—
  - (a) entertainment venue,
  - (b) function centre,
  - (c) pub,
  - (d) registered club,

(e) restaurant.

(2) Words and expressions used in this clause have the same meanings as they have in the Standard Instrument.

#### **124C Matters to be included in consent**

A consent that is subject to a review condition must include the following—

- (a) a statement that the consent is subject to the condition and the purpose of the condition,
- (b) that the consent authority is to carry out the reviews,
- (c) when, or at what intervals, the reviews are to be carried out.

#### **124D Review procedures**

- (1) The consent authority must give the operator of a development subject to a review condition not less than 14 days written notice that a review is to be carried out under the condition.
- (2) The consent authority may notify such other persons as it thinks fit of the review.
- (3) The consent authority must take into account any submissions made by a person that are received within 14 days after notice is given to the person of a review.

#### **Note—**

Under section 4.17(10D) of the Act, a decision to change a review condition of a development consent is taken to be a determination of a development consent and is subject to the notification and appeal provisions under the Act in relation to such a determination.

### **Division 15 Calling in development as State significant development**

#### **124E Advice of Independent Planning Commission**

- (1) In providing its advice under section 4.36(3) of the Act, the Independent Planning Commission is to consider any general issues relating to State or regional planning significance that the Minister has requested the Commission to consider.
- (2) If the Minister considers that the advice of the Commission does not adequately address any such issue, the Minister may request the Commission to reconsider the issue.
- (3) Nothing in this clause affects the validity of any advice given or decision made under section 4.36(3) of the Act.

#### **124F Calling in existing development applications**

- (1) This clause applies to development that is declared to be State significant

development by order of the Minister under section 4.36(3) of the Act and which is the subject of a development application made and not finally determined before that declaration.

- (2) On making the declaration, the Minister may in writing direct the relevant consent authority—
  - (a) to complete any steps in relation to the development application, and
  - (b) to forward to the Minister the development application and any other relevant documents and information in relation to the development, and
  - (c) to pay to the Planning Secretary a specified proportion of any fees paid in relation to the development application, and
  - (d) to notify the applicant, relevant authorities and any other persons or classes of persons specified in the direction that the Minister is now the consent authority for the development.
- (3) On the making of the declaration—
  - (a) the development application is taken to be a development application for State significant development, and
  - (b) any amount payable under clauses 256F–256L in relation to the development is to be reduced by the amount (if any) payable to the Planning Secretary under subclause (2)(c), and
  - (c) any steps taken by the relevant consent authority in respect of the development application are taken to be steps taken by the Planning Secretary or the Minister in relation to the application for State significant development.

**124G Planning Secretary’s functions with respect to proposed orders under section 4.36(3) of the Act**

The Planning Secretary may exercise the following functions in relation to the making of an order under section 4.36(3) of the Act declaring specified development on specified land to be State significant development—

- (a) the receipt of a request made by the proponent for the making of the proposed order,
- (b) the preparation and provision of a report to the Independent Planning Commission to assist the Commission to advise the Minister on the State or regional planning significance of the proposed development,
- (c) consultation with councils and other relevant agencies for the purpose of preparing that report.

**Division 16 Provisions relating to local planning panels exercising**



## **consent authority functions**

### **124H Development applications where land is in 2 or more local government areas**

If a single local planning panel has been established for 2 or more councils, a separate development application for proposed development situated in the areas of more than 1 of those councils must be lodged with each council for an area in which the proposed development is situated.

### **124I Procedural matters related to determination of development applications**

- (1) A local planning panel may, for the purpose of determining a development application (or an application to modify a development consent)—
  - (a) obtain assessment reports, in addition to any assessment report or other information provided by a relevant council in dealing with the application, and
  - (b) obtain other technical advice or assistance as the panel thinks fit.
- (2) If a development consent is granted by a local planning panel subject to a condition referred to in section 4.16(3) or 4.17(2) of the Act, the panel is taken to be satisfied as to a matter specified in the condition if the council for the area in which the land on which the development is to be carried out notifies the chairperson of the panel in writing that the matter specified in the condition has been satisfied.

### **124J Procedural matters relating to determination of applications to modify consents**

A local planning panel may carry out consultation for the purposes of section 4.55(2)(b) of the Act by directing the general manager of a council for an area in which the development the subject of the consent is to be carried out to consult with the relevant Minister, public authority or approval body on behalf of the panel.

## **Division 17 Council of local government area to constitute local planning panel**

### **124K Council of Central Coast local government area to constitute local planning panel**

For the purposes of section 2.17(2)(c) of the Act, the council of the Central Coast local government area is prescribed as a council that must constitute a single local planning panel for the whole of the area of the council.

## **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 Making application for complying development certificate** (cf clause 75A of EP&A Regulation 1994)

- (1) An application for a complying development certificate must—
  - (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
  - (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
  - (c) be accompanied by the documents that are specified in Part 2 of Schedule 1 or required by the Act and this Regulation, and
  - (d) be lodged on the NSW planning portal.
- (2) The applicant must be notified, by means of the NSW planning portal, that the application for a complying development certificate has been lodged.
- (2A) If the application is made in relation to development for the purposes of a new building, or the alteration of or addition to an existing building, to which Part 5A of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* applies, the application must also contain information on whether the land on which the development is to be carried out—
  - (a) is used, or was formerly used, for a purpose listed in Table 1 to clause 3.2.1 of the document entitled *Managing Land Contamination Planning Guidelines, SEPP 55—Remediation of Land* and published in 1998 by the Department of Urban Affairs and Planning and the Environment Protection Authority, or
  - (b) is on the list of sites notified under section 60 of the *Contaminated Land Management Act 1997*.
- (2B) Subclause (2A) does not apply to complying development carried out under the complying development provisions of *State Environmental Planning Policy (Three Ports) 2013* in the Lease Area within the meaning of that Policy.
- (3) In determining whether an alteration, enlargement or extension of a BASIX affected building is BASIX affected development, the certifier must make its determination by reference to a genuine estimate of the construction costs of the work, including any part of the work that is BASIX excluded development. The estimate must, unless the certifier is satisfied that the estimated cost indicated in the application for a complying development certificate is neither genuine nor accurate, be the estimate so indicated.
- (4) A single application for a complying development certificate may be made for complying development comprising—

- (a) the erection of a dual occupancy, manor house or multi dwelling housing (terraces) on a lot and the subsequent subdivision of that lot, or
- (b) the concurrent erection of any of the following on existing adjoining lots—
  - (i) new single storey or two storey dwelling houses,
  - (ii) dual occupancies,
  - (iii) manor houses,
  - (iv) multi dwelling housing (terraces).

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

- (1) A council or registered certifier may require the applicant for a complying development certificate to give the council or registered certifier any additional information concerning the proposed development that is essential to the council's or registered certifier's proper consideration of the application.
- (1A) A council or a registered certifier may require that the additional information under subclause (1) be obtained by or on behalf of the applicant from a properly qualified person.
- (2) Nothing in this clause affects the council's or registered certifier's duty to determine an application for a complying development certificate.

**128 (Repealed)**

**129 Special provision relating to complying development certificates for development on land within Activation Precincts**

- (1) An application for a complying development certificate for proposed development on land within an Activation Precinct under *State Environmental Planning Policy (Activation Precincts) 2020* must be accompanied by a current Activation Precinct certificate.
- (2) This clause does not apply to or with respect to an application for a complying development certificate made by a public authority (other than the Development Corporation within the meaning of that Policy).

**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 or certificates pursuant to clause 4A of Schedule 1 or to an application for a complying development certificate for BASIX optional development that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A of Schedule 1 for it to

be so accompanied).

- (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.

**129AA Restriction on issue of complying development certificate for certain development for the purpose of schools or school-based child care**

A certifier must not issue a complying development certificate for proposed development for a purpose specified in clause 39(1) (Existing schools—complying development) or 40(2)(e) (School-based child care—complying development) of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* that involves—

- (a) the construction of a new building with a building height (within the meaning of the Standard Instrument) of more than 12 metres, or
- (b) an alteration or addition to an existing building that will result in its building height being more than 12 metres,

unless the certifier has been provided with a written statement by a qualified designer that verifies that the development applies the design quality principles set out in Schedule 4 to that Policy.

**129AB Restriction on issue of complying development certificate for certain development related to educational establishments**

A certifier must not issue a complying development certificate for proposed development that is identified as complying development under *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* unless—

- (a) the relevant roads authority has given its written consent, if required by the *Roads Act 1993*—
  - (i) for each opening of a public road required by the development, and
  - (ii) to operate or store machinery, materials or waste required by the development on a road or footpath reserve, and
- (b) if the development involves the alteration or erection of improvements on land in a mine subsidence district within the meaning of the *Mine Subsidence Compensation Act 1961*, the Mines Subsidence Board has approved of the development in writing.

**Note—**

Information about mine subsidence is information that is a prescribed matter for the purpose of a planning certificate under section 10.7(2) of the Act.

**129B Restriction on issue of complying development certificate**

- (1) A certifier must not issue a complying development certificate for development unless a council or a registered certifier has carried out an inspection of the site of the development.
- (1A) If the development affects an existing building that is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, an inspection of the site of the development must include an inspection of—
  - (a) the parts of the building affected by the development, and
  - (b) the egress routes from those parts of the building.
- (2) Subclause (1) does not apply in respect of a complying development certificate that relates only to fire alarm communication link works.

**129C Record of site inspections**

- (1) A council or registered certifier must make a record of each inspection carried out by the council or registered certifier for the purposes of clause 129B.
- (2) Any council or registered certifier who is required to make such a record but is not the certifier in relation to the issue of the complying development certificate concerned must, within 2 days after the carrying out of the inspection, provide a copy of the record to the certifier, by means of the NSW planning portal.
- (3) The record must include the following—
  - (a) the date of the application for the complying development certificate,
  - (b) the address of the property at which the inspection was carried out,
  - (c) the type of inspection,

- (d) the date on which the inspection was carried out,
- (e) if the inspection was carried out by a council, the name of the council and the identity and signature of the individual who carried out the inspection on behalf of the council,
- (f) if the inspection was carried out by a registered certifier, the identity of the registered certifier, including, in a case where the registered certifier is a registered body corporate, the identity of the individual who carried out the inspection on behalf of the body corporate,
- (g) if the inspection was carried out by a registered certifier, the registration number of the registered certifier, including, in a case where the registered certifier is a registered body corporate, the registration number of the individual who carried out the inspection on behalf of the body corporate,
- (h) details of the current fire safety measures in the existing buildings on the site that will be affected by the proposed development concerned,
- (i) details as to whether or not the plans and specifications accompanying the application for the complying development certificate adequately and accurately depict the existing site conditions,
- (j) details of any features of the site, or of any building on the site, that would result in the proposed development the subject of the application for the complying development certificate—
  - (i) not being complying development, or
  - (ii) not complying with the *Building Code of Australia*.

**129D Council to be notified of significant fire safety issues**

- (1) A certifier is required to give written notice to the council in accordance with this clause if—
  - (a) an application has been made to the certifier for a complying development certificate affecting an existing building, and
  - (b) the building is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, and
  - (c) at any time between the application being received and the issue of the complying development certificate, the certifier becomes aware (when carrying out an inspection or otherwise) of a significant fire safety issue with any part of the building.
- (2) The notice—
  - (a) must describe the fire safety issue and the parts of the building affected by the

issue, and

(b) must be made within 2 days after the certifier becomes aware of the fire safety issue.

(3) However, the certifier is not required to give notice if the fire safety issue is being addressed—

(a) by the proposed development, or

(b) by a fire safety order, or

(c) by some other development consent (including a complying development certificate) that affects the building.

(4) To avoid doubt, this clause extends to a council that is a certifier.

#### **129E Application form to modify complying development**

(1) The Planning Secretary is to determine the form of an application under section 4.30 of the Act to modify the development the subject of a complying development certificate or application.

(2) This Part applies to an application to modify complying development in the same way as it applies to the original application.

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

#### **130AA Time limit for determining application for complying development certificate**

For the purposes of section 4.28(8) of the Act, the period prescribed by the regulations is—

(a) for development that requires a notice to be given under clause 130AB—20 days, or

(b) in any other case—10 days.

#### **130AB Requirement to advise of applications for certain complying development certificates**

(1) This clause applies to a complying development certificate in relation to any of the following development on land in an applicable local government area, other than on land within a residential release area, if the development is to be carried out on a lot that has a boundary within 20 metres of the boundary of another lot on which a dwelling is located—

(a) development specified under any environmental planning instrument that involves any of the following—

- (i) a new dwelling,
  - (ii) an addition to an existing dwelling,
  - (b) development specified in Part 7 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Demolition Code),
  - (c) development specified in Division 2 or 7 of Part 2 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.
- (2) A certifier for an application for a complying development certificate to which this clause applies must not determine the application by issuing a complying development certificate until at least 14 days after the certifier has given a notice that complies with this clause to—
- (a) if the development will be on land in a rural or residential zone—the occupier of each dwelling referred to in subclause (1) that is on land in a rural or residential zone, and
  - (b) if the certifier is not the council for the area in which the development is to be carried out—the council.
- (3) The notice must be in writing and must include the following—
- (a) the name and contact details of the certifier,
  - (b) a statement that the certifier has received an application for a complying development certificate and will determine the application in accordance with the *Environmental Planning and Assessment Act 1979*,
  - (c) the name, address and contact details of the applicant for the complying development certificate,
  - (d) the address of the land on which the development is to be carried out,
  - (e) a description of the development to which the application relates,
  - (f) the date on which the application was received by the certifier,
  - (g) a statement that, once the application is determined, the council is required to make a copy of the determination available for inspection.

- (4) In this clause—

**applicable local government area** means any of the local government areas of Ashfield, City of Auburn, City of Bankstown, City of Blacktown, City of Blue Mountains, City of Botany Bay, Burwood, Camden, City of Campbelltown, Canada Bay, City of Canterbury, City of Fairfield, City of Hawkesbury, City of Holroyd, Hornsby, Hunter's Hill, City of Hurstville, City of Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, City of



Liverpool, Manly, Marrickville, Mosman, North Sydney, City of Parramatta, City of Penrith, Pittwater, City of Randwick, City of Rockdale, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Warringah, Waverley, City of Willoughby, Wingecarribee, Wollondilly or Woollahra.

**residential release area** means any land within—

- (a) an urban release area identified within a local environmental plan that adopts the applicable mandatory provisions of the Standard Instrument, or
- (b) a land release area identified under the *Eurobodalla Local Environmental Plan 2012*, or
- (c) any land subject to *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*, or
- (d) any area included in Parts 6, 26, 27, 28 and 29 of Schedule 3 to *State Environmental Planning Policy (Major Development) 2005*.

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

- (1) A certifier must not issue a complying development certificate for building work unless 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 a performance solution to the performance requirements corresponding to those deemed-to-satisfy provisions.
- (2A) A certifier must not issue a complying development certificate for building work that involves a performance solution under the *Building Code of Australia* in respect of a fire safety requirement unless the certifier—
  - (a) has obtained or been provided with a performance solution report that—
    - (i) was prepared by or on behalf of a person with the qualifications required by this clause, and
    - (ii) includes a statement that the performance solution complies with the relevant performance requirements of the *Building Code of Australia*, and
    - (iii) where relevant, identifies the deemed-to-satisfy provisions of the *Building Code of Australia* being varied, and

- (iv) describes and justifies the performance solution, including the acceptance criteria and parameters on which the justification is based and any restrictions or conditions of the performance solution, and
    - (v) includes a copy of the brief on which the justification of the performance solution was based, and
  - (b) is satisfied that—
    - (i) the report correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*, and
    - (ii) the plans show, and the specifications describe, the physical elements of the performance solution (where they are capable of being shown and described).
- (2B) Subclause (2A) clause does not apply to building work relating to a class 1a or 10 building, as defined in the *Building Code of Australia*.
- (2C), (2D) (Repealed)
- (2E) A certifier must not issue a complying development certificate for proposed development comprising internal alterations to, or a change of use of, an existing building that is subject to a performance solution relating to a fire safety requirement under the *Building Code of Australia* unless—
- (a) the certifier has obtained or been provided with a written report by another registered certifier, who is a registered certifier for the purpose of issuing a complying development certificate for a building of that kind, and
  - (b) the written report includes a statement that the proposed development is consistent with that performance solution.
- (3) Evidence of the issue of a complying development certificate must be endorsed by the council or the registered certifier on any plans, specifications and any other documents that were lodged with the application for the certificate or submitted to the registered certifier in accordance with clause 126.
- (4) For the purposes of section 4.28(11) of the Act, the registered certifier must, within 2 days after the date of the determination, by means of the NSW planning portal—
- (a) notify the applicant of the determination, and
  - (b) notify the council of the determination and provide the council with the following—
    - (i) the determination, together with the application to which it relates,
    - (ii) any endorsed plans, specifications or other documents that were lodged with the application or submitted to the registered certifier in accordance with clause 127,

- (iii) any complying development certificate issued as a result of the determination, together with any associated fire safety schedule,
  - (iv) the record of any inspection made for the purposes of clause 129B in relation to the issue of the complying development certificate unless the inspection was carried out by the council.
- (5) A person has the **qualifications required by this clause** if—
- (a) the person is an accredited practitioner (fire safety) who is also a fire safety engineer and the report is about a performance solution under the *Building Code of Australia* in respect of the requirements set out in EP1.4, EP2.1, EP2.2, DP4 and DP5 in Volume 1 for—
    - (i) a class 9a building, as defined in the *Building Code of Australia*, that is proposed to have a total floor area of 2,000 square metres or more, or
    - (ii) any building (other than a class 9a building so defined) that is proposed to have a fire compartment, as defined in the *Building Code of Australia*, with a total floor area of more than 2,000 square metres, or
    - (iii) any building (other than a class 9a building so defined) that is proposed to have a total floor area of more than 6,000 square metres, or
  - (b) the person is an accredited practitioner (fire safety), in the case of any other report.
- (6) (Repealed)

### **130A Copy of particular documents to be given to NSW Rural Fire Service and council**

- (1) If a certifier issues a complying development certificate for development on bush fire prone land, the certifier must send a copy of the following to the NSW Rural Fire Service—
  - (a) the complying development certificate, and
  - (b) any associated documentation (including a copy of the application and any certification referred to in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* that is required to carry out the complying development on bush fire prone land).
- (2) If the certifier is not a council, the certifier must also send a copy of the documents mentioned in subclause (1) to the council.

### **131 Development standards for change of building use**

- (1) This clause applies to development for which a complying development certificate is sought involving a change of building use of an existing building.

- (2) The development standards applicable to such development include the following requirements—
- (a1) that, whether or not any building work is carried out, the building will contain measures that are adequate, in the event of fire, to facilitate the safe egress of persons from the part of the building affected by the change of building use,
  - (a) that, on completion of any building work, the fire protection and structural capacity of the building will be appropriate to the proposed use,
  - (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 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 involving the alteration, enlargement or extension of an existing building, otherwise than in connection with a change of building use of an existing building.
- (2) The development standards applicable to such development include the requirements that on completion of the building work—
- (a) if the building work involves the reconfiguration of any internal part of the building (being a part that is to be occupied)—the building will contain measures that are adequate, in the event of fire, to facilitate the safe egress of persons from the reconfigured part of the building, and
  - (b) 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.

**132A (Repealed)**

**133 Development standards for erection of temporary structure**

- (1) This clause applies to development for which a complying development certificate is sought involving the erection of a temporary structure.
- (2) The development standards applicable to such development include the following requirements—
- (a) the fire protection and structural capacity of the structure will, when the structure

is erected, be appropriate to the proposed use of the structure,

- (b) the ground or other surface on which the structure is to be erected will be sufficiently firm and level to sustain the structure while in use.

### **134 Form of complying development certificate**

(1) A complying development certificate must contain the following—

- (a) the identity of the certifier that issued it, including, in a case where the certifier is a registered body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifier is a registered certifier, the registration number of the certifier, including, in a case where the certifier is a registered body corporate, the registration number of the individual who issued the certificate on behalf of the body corporate,
- (b1) if the certifier is a registered certifier who is an individual, the signature of the registered certifier,
- (b2) if an individual issued the certificate on behalf of the certifier, the signature of the individual who issued the certificate,
- (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*,
- (f1) the following details of a performance solution report about the building work that is required to be obtained or provided under clause 130(2A)—
  - (i) the title of the report,
  - (ii) the date on which the report was made,
  - (iii) the reference number and version number of the report,
  - (iv) the name of the accredited practitioner (fire safety) who prepared the report or on whose behalf the report was prepared,
  - (v) if the accredited practitioner (fire safety) who prepared the report or on whose

behalf the report was prepared is a registered certifier—the registration number of that practitioner,

(f2) if any of the building work is exempt from compliance with the *Building Code of Australia* because of clause 164B—the details of that exemption,

(g) any conditions imposed on the development under this Regulation.

(1A) A complying development certificate for development that is complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* must also specify—

(a) the land use zone within which the land is situated, and

(b) if the land is not zoned under an environmental planning instrument made as provided by section 3.20(2) of the Act, the equivalent named land use zone applicable to the land for the purposes of that Policy, and

(c) if the development is carried out under a complying development code under that Policy, the name of the code.

(2) A complying development certificate for the erection of a building must be accompanied by a fire safety schedule for the building (if a fire safety schedule is required under Part 9).

(2A) A complying development certificate for any development must include a copy of any relevant plans endorsed by the certifier.

(3) Subclause (2) does not apply to—

(a) a class 1a or class 10 building within the meaning of clause 167, or

(b) (Repealed)

(c) the erection of a temporary structure.

**135 Notice under section 86 of the Act of appointment of principal certifier** (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 certifier, and of the person by whom the principal certifier was appointed,
  - (f) if the principal certifier is a registered certifier—
    - (i) his or her registration number, and
    - (ii) (Repealed)
    - (iii) a statement signed by the registered certifier to the effect that he or she consents to being appointed as principal certifier, 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 certifier by whom the notice is given,
- (b) a telephone number on which the principal certifier 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,

- (f) a statement signed by or on behalf of the principal certifier to the effect that all conditions of the relevant complying development certificate that are required to be satisfied before the work commences have been satisfied,

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.
- (1A) A complying development certificate for a temporary structure that is used as an entertainment venue must be issued subject to the condition that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia* (as in force on the date the application for the relevant complying development certificate is made).
- (2) This clause does not limit any other conditions to which a complying development certificate may be subject, as referred to in section 4.28(6)(a) of the Act.
- (3) This clause does not apply—
- (a) to the extent to which an exemption is in force under clause 164B, 187 or 188, subject to the terms of any condition or requirement referred to in clause 164B(4), 187(6) or 188(4), or
  - (b) to the erection of a temporary building, other than a temporary structure that is used as an entertainment venue.
- (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.

#### **Note—**

There are no relevant provisions in the *Building Code of Australia* in respect of temporary structures that are not entertainment venues.



**136AA Condition relating to fire safety systems in class 2-9 buildings**

- (1) A complying development certificate for building work involving the installation, extension or modification of any relevant fire safety system in a class 2, 3, 4, 5, 6, 7, 8 or 9 building, as defined in the *Building Code of Australia*, must be issued subject to the condition required by this clause.
- (2) The condition required by this clause is that the building work involving the installation, modification or extension of the relevant fire safety system cannot commence unless—
  - (a) plans have been submitted to the principal certifier that show—
    - (i) in the case of building work involving the installation of the relevant fire safety system—the layout, extent and location of key components of the relevant fire safety system, or
    - (ii) in the case of building work involving the modification or extension of the relevant fire safety system—the layout, extent and location of any new or modified components of the relevant fire safety system, and
  - (b) specifications have been submitted to the principal certifier that—
    - (i) describe the basis for design, installation and construction of the relevant fire safety system, and
    - (ii) identify the provisions of the *Building Code of Australia* upon which the design of the system is based, and
  - (c) those plans and specifications—
    - (i) have been certified by a compliance certificate referred to in section 6.4(e) of the Act as complying with the relevant provisions of the *Building Code of Australia*, or
    - (ii) unless they are subject to an exemption under clause 164B, have been endorsed by an accredited practitioner (fire safety) as complying with the relevant provisions of the *Building Code of Australia*, and
  - (d) if those plans and specifications were submitted before the complying development certificate was issued—each of them was endorsed by the certifier with a statement that the certifier is satisfied that it correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*, and
  - (e) if those plans and specifications were not submitted before the complying development certificate was issued—each of them was endorsed by the principal certifier with a statement that the principal certifier is satisfied that it correctly

identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*.

(3) In this clause—

**relevant fire safety system** means any of the following—

- (a) a hydraulic fire safety system within the meaning of clause 165,
- (b) a fire detection and alarm system,
- (c) a mechanical ducted smoke control system.

### **136AB Notice to neighbours**

(1) A complying development certificate for development on land that is in a category 1 local government area and that is not in a residential release area and that involves—

- (a) a new building, or
- (b) an addition to an existing building, or
- (c) the demolition of a building,

must be issued subject to a condition that the person having the benefit of the complying development certificate must give at least 7 days' notice in writing of the person's intention to commence the work authorised by the certificate to the occupier of each dwelling that is located on a lot that has a boundary within 20 metres of the boundary of the lot on which the work is to be carried out.

(2) A complying development certificate for development on land that is in a category 2 local government area or a residential release area and that involves—

- (a) a new building, or
- (b) an addition to an existing building, or
- (c) the demolition of a building,

must be issued subject to a condition that the person having the benefit of the complying development certificate must give at least 2 days' notice in writing of the person's intention to commence the work authorised by the certificate to the occupier of each dwelling that is located on a lot that has a boundary within 20 metres of the boundary of the lot on which the work is to be carried out.

(3) In this clause—

**category 1 local government area** means any of the local government areas of Ashfield, City of Auburn, City of Bankstown, City of Blacktown, City of Blue Mountains, City of Botany Bay, Burwood, Camden, City of Campbelltown, Canada Bay, City of

Canterbury, City of Fairfield, City of Hawkesbury, City of Holroyd, Hornsby, Hunter's Hill, City of Hurstville, City of Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, City of Liverpool, Manly, Marrickville, Mosman, North Sydney, City of Parramatta, City of Penrith, Pittwater, City of Randwick, City of Rockdale, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Warringah, Waverley, City of Willoughby, Wingecarribee, Wollondilly or Woollahra.

**category 2 local government area** means any local government area that is not a category 1 local government area.

**residential release area** means any land within—

- (a) an urban release area identified within a local environmental plan that adopts the applicable mandatory provisions of the Standard Instrument, or
- (b) a land release area identified under the *Eurobodalla Local Environmental Plan 2012*, or
- (c) any land subject to *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*, or
- (d) any area included in Parts 6, 26, 27, 28 and 29 of Schedule 3 to *State Environmental Planning Policy (Major Development) 2005*.

### **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 certifier 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 6.28 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 certifiers 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 certifier 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 certifier 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 6.28 of the Act, to comply with the technical provisions of the State's building laws.

**136D Fulfilment of BASIX commitments**

- (1) This clause applies to the following development—
  - (a) BASIX affected development,
  - (b) any BASIX optional development in relation to which a person has made an application for a complying development certificate that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A of Schedule 1 for it to be so accompanied).
- (2) A complying development certificate for development to which this clause applies must be issued subject to a condition that the commitments listed in each relevant BASIX certificate for the development must be fulfilled.

**136E Development involving bonded asbestos material and friable asbestos material**

- (1) A complying development certificate for development that involves building work or demolition work must be issued subject to the following conditions—
  - (a) work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the *Work Health and Safety Regulation 2011*,
  - (b) the person having the benefit of the complying development certificate must provide the principal certifier with a copy of a signed contract with such a person before any development pursuant to the complying development certificate commences,
  - (c) any such contract must indicate whether any bonded asbestos material or friable asbestos material will be removed, and if so, must specify the landfill site (that may lawfully receive asbestos) to which the bonded asbestos material or friable asbestos material is to be delivered,
  - (d) if the contract indicates that bonded asbestos material or friable asbestos material will be removed to a specified landfill site, the person having the benefit of the complying development certificate must give the principal certifier a copy of a receipt from the operator of the landfill site stating that all the asbestos material referred to in the contract has been received by the operator.
- (2) This clause applies only to a complying development certificate issued after the commencement of this clause.
- (3) In this clause, ***bonded asbestos material***, ***bonded asbestos removal work***, ***friable asbestos material*** and ***friable asbestos removal work*** have the same meanings as in clause 317 of the *Occupational Health and Safety Regulation 2001*.

**Note 1—**

Under clause 317 removal work refers to work in which the bonded asbestos material or friable asbestos material is removed, repaired or disturbed.

**Note 2—**

The effect of subclause (1)(a) is that the development will be a workplace to which the *Occupational Health and Safety Regulation 2001* applies while removal work involving bonded asbestos material or friable asbestos material is being undertaken.

**Note 3—**

Information on the removal and disposal of asbestos to landfill sites licensed to accept this waste is available from the Office of Environment and Heritage.

**Note 4—**

Demolition undertaken in relation to complying development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* must be carried out in accordance with Australian Standard AS 2601—2001, *Demolition of structures*.

**136F, 136G (Repealed)**

**136H Condition relating to shoring and adequacy of adjoining property**

- (1) A complying development certificate for development must be issued subject to a condition that if the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the certificate must at the person's own expense—
  - (a) protect and support the building, structure or work from possible damage from the excavation, and
  - (b) where necessary, underpin the building, structure or work to prevent any such damage.
- (2) The condition referred to in subclause (1) does not apply if the person having the benefit of the complying development certificate owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

**136I Traffic generating development**

If an application for a complying development certificate is required to be accompanied by a certificate of Roads and Maritime Services as referred to in clause 4(1)(j1) or (k) of Schedule 1, the complying development certificate must be issued subject to a condition that any requirements specified in the certificate of Roads and Maritime Services must be complied with.

**136J Development on contaminated land**

- (1) If an application for a complying development certificate is required to be accompanied by a statement of a qualified person as referred to in clause 4(1)(l) of Schedule 1, the complying development certificate must be issued subject to a condition that any requirements specified in the statement must be complied with.
- (2) Subclause (1) does not apply to complying development carried out under the complying development provisions of *State Environmental Planning Policy (Three Ports) 2013* in the Lease Area within the meaning of clause 4 of that Policy.

**136K When complying development certificates must be subject to section 4.28(9) condition**

- (1) This clause applies if a council's contributions plan provides for the payment of a monetary section 7.11 contribution or section 7.12 levy in relation to development for a particular purpose (whether or not it is classed as complying development under the contributions plan).
- (2) The certifier must issue the relevant complying development certificate authorising development for that purpose subject to a condition requiring payment of such contribution or levy, as required by section 4.28(9) of the Act.
- (3) Subclause (2) applies despite any provision to the contrary in the council's contributions plan.

**136L Contributions and levies payable under section 4.28(9) must be paid before work commences**

- (1) A complying development certificate issued subject to a condition required by section 4.28(9) of the Act must be issued subject to a condition that the contribution or levy must be paid before any work authorised by the certificate commences.
- (2) Subclause (1) applies despite any provision to the contrary in the council's contributions plan.

**136M Condition relating to payment of security**

- (1) This clause applies to a complying development certificate authorising the carrying out of development if—
  - (a) the development is demolition of a work or building, erection of a new building or an addition to an existing building and the estimated cost of the development (as specified in the application for the certificate) is \$25,000 or more, and
  - (b) the development is to be carried out on land adjacent to a public road, and
  - (c) at the time the application for the certificate is made, there is specified on the website of the council for the area in which the development is to be carried out

an amount of security determined by the council that must be paid in relation to—

- (i) development of the same type or description, or
- (ii) development carried out in the same circumstances, or
- (iii) development carried out on land of the same size or description.

- (2) A complying development certificate to which this clause applies must be issued subject to a condition that the amount of security referred to in subclause (1) is to be provided, in accordance with this clause, to the council before any building work or subdivision work authorised by the certificate commences.
- (3) The security may be provided, at the applicant's choice, by way of—
  - (a) deposit with the council, or
  - (b) a guarantee satisfactory to the council.
- (4) The funds realised from a security may be paid out to meet the cost of making good any damage caused to any property of the council as a consequence of doing anything (or not doing anything) authorised or required by the complying development certificate, including the cost of any inspection to determine whether damage has been caused.
- (5) Any balance of the funds realised from a security remaining after meeting the costs referred to in subclause (4) is to be refunded to, or at the direction of, the person who provided the security.

**136N Principal certifier to be satisfied that preconditions met before commencement of work**

- (1) This clause applies to building work or subdivision work that is the subject of a complying development certificate.
- (2) A principal certifier for building work or subdivision work to be carried out on a site, and over which the principal certifier has control, is required to be satisfied that any preconditions in relation to the work and required to be met before the work commences have been met before the work commences.

**Division 3 Validity of complying development certificates**

**137 Validity of complying development certificates**

For the purposes of section 4.59 of the Act, a notice relating to the issue of a complying development certificate (including a certificate that is issued by a registered certifier) that describes the land and the development the subject of the certificate must be published on the relevant council's website.



## **Part 8 Certification of development**

### **Division 1 Compliance certificates**

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

- (1) A compliance certificate must contain the following—
- (a) the identity of the certifier that issued it, including, in a case where the certifier is a registered body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
  - (b) if the certifier is a registered certifier, the registration number of the certifier, including, in a case where the certifier is a registered body corporate, the registration number of the individual who issued the certificate on behalf of the body corporate,
  - (b1) if the certifier is a registered certifier who is an individual, the signature of the registered certifier,
  - (b2) if an individual issued the certificate on behalf of the certifier, the signature of the individual who issued the certificate,
  - (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 as to the matters in respect of which the certificate is given.

**Note—**

Section 6.4(e) 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 certifier notifies

them of the issue of an occupation certificate.

**138A Restriction on issue of compliance certificates**

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

**Division 2 Construction certificates**

**139 Applications for construction certificates** (cf clause 79A of EP&A Regulation 1994)

- (1) An application for a construction certificate must—
  - (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
  - (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
  - (c) be accompanied by documents that are specified in Part 3 of Schedule 1 or required by the Act and this Regulation, and
  - (d) be lodged on the NSW planning portal.
- (1A) The application may only be made by a person who is eligible to appoint a principal certifier for the relevant development.
- (2) The applicant must be notified, by means of the NSW planning portal, that the application for a construction certificate has been lodged.

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

- (1) An applicant may withdraw an application for a construction certificate at any time prior to its determination by lodging notice of the withdrawal of the application on the NSW planning portal.
- (2) The certifier may (but is not required to) refund to the applicant the whole or any part of the application fee paid in connection with an application that has been withdrawn.

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

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

- (3) A planning authority that is a party to a planning agreement may, at the request of an applicant for a construction certificate that is made for the purposes of obtaining information required under this clause, certify that specified requirements of the agreement have been complied with.

**141 (Repealed)**

**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 contain the following information—
- (a) the date on which the application was determined,
  - (b) whether the application has been determined—
    - (i) by approval, or
    - (ii) by refusal, and
  - (c) if the application has been determined by refusal—
    - (i) the reasons for the refusal, and
    - (ii) if the certifier is a consent authority, of the applicant's right of appeal under the Act against the refusal,
  - (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 certifier is a consent authority, of the applicant's right of appeal under the Act against any such conditions.
- (2) Within 2 days of the date of the determination, the certifier must, by means of the NSW planning portal—
- (a) notify the applicant of the determination, and
  - (b) notify the consent authority and the council of the determination and provide them with the following—
    - (i) the determination, together with the application to which it relates,
    - (ii) any construction certificate issued as a result of the determination,
    - (iii) any plans and specifications in relation to which such a construction certificate has been issued,

- (iv) any fire safety schedule attached to such a construction certificate,
- (v) any other documents that were lodged with the application for the certificate (such as any relevant decision on an objection under clause 187 or 188) or given to the certifier under clause 140,
- (vi) the record of any inspection made for the purposes of clause 143B in relation to the issue of the construction certificate.

**Note—**

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

- (2A) A copy of a record of inspection referred to in subclause 2(b)(iv) need not be given to a consent authority or council that carried out the inspection.
- (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 6.4(a) of the Act.

**142A Deemed refusal period for application for construction certificate**

- (1) For the purposes of section 8.17(1) of the Act, a council is taken to have made a decision to refuse to issue a construction certificate if, following an application for the certificate, the council fails to issue the certificate within the period that ends on the day that is—
  - (a) if the application is made on or before the day on which the council determines the associated development application for the application—the last day of the period referred to in section 8.11(1) of the Act at the end of which the council is taken to have determined the associated development application by refusing development consent (or refusing to modify development consent), or
  - (b) otherwise—28 days after the day on which the application was made.

- (2) In this clause—

***associated development application***, for an application for a construction certificate, means the development application for the development to which the application for the construction certificate relates.

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

- (1) A certifier must not issue a construction certificate for building work under a development consent that authorises a change of building use unless—
  - (a) the fire protection and structural capacity of the building will be appropriate to its new use, and

(b) 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 164B, 187 or 188, subject to the terms of any condition or requirement referred to in clause 164B(4), 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 certifier must not issue a construction certificate for the work unless, 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 apartment development**

- (1) This clause applies to residential apartment development for which the development application was required to be accompanied by a statement by a qualified designer under clause 50(1A).
- (2) A certifier must not issue a construction certificate for the development unless the certifier has received the statement by the qualified designer verifying 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.
- (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.

**143B Restriction on issue of construction certificate without inspection**

- (1) A certifier must not issue a construction certificate for development on a site which

affects an existing building unless a certifier has carried out an inspection of the building.

- (2) If the development affects an existing building that is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, an inspection of the site of the development must include an inspection of—
- (a) the parts of the building affected by the development, and
  - (b) the egress routes from those parts of the building.

**143C Record of site inspections**

- (1) A certifier must make a record of each inspection carried out by the certifier for the purposes of clause 143B.
- (2) Any certifier who is required to make such a record but is not the certifier in relation to the issue of the construction certificate concerned must, within 2 days after the carrying out of the inspection, provide a copy of the record to the certifier in relation to the issue of the certificate, by means of the NSW planning portal.
- (3) The record must include the following—
- (a) the registered number of the relevant development application,
  - (b) the address of the property at which the inspection was carried out,
  - (c) the type of inspection,
  - (d) the date on which the inspection was carried out,
  - (e) if the inspection was carried out by a council, the name of the council and the identity and signature of the individual who carried out the inspection on behalf of the council,
  - (f) if the inspection was carried out by a registered certifier, the identity of the registered certifier, including, in a case where the registered certifier is a registered body corporate, the identity of the individual who carried out the inspection on behalf of the body corporate,
  - (g) if the inspection was carried out by a registered certifier, the registration number of the registered certifier, including, in a case where the registered certifier is a registered body corporate, the registration number of the individual who carried out the inspection on behalf of the body corporate,
  - (h) details of the current fire safety measures in the existing building the subject of the inspection,
  - (i) details as to whether or not the plans and specifications accompanying the application for the construction certificate adequately and accurately depict the

condition of the existing building the subject of the inspection,

- (j) details as to whether or not any building work authorised by the relevant development consent has commenced on the site.

**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 the following buildings, or parts of buildings, that are the subject of an application for erection, rebuilding, alteration, enlargement or extension—
  - (a) a class 9a building that is proposed to have a total floor area of 2,000 square metres or more, where the plans and specifications for the work provide for a performance solution to meet the performance requirements contained in any one or more of the Category 2 fire safety provisions,
  - (b) a building (other than a class 9a building) that is proposed to have a fire compartment with a total floor area of more than 2,000 square metres, where the plans and specifications for the work provide for a performance solution to meet the performance requirements contained in any one or more of the Category 2 fire safety provisions,
  - (c) a building (other than a class 9a building) that is proposed to have a total floor area of more than 6,000 square metres, where the plans and specifications for the work provide for a performance solution to meet the performance requirements contained in any one or more of the Category 2 fire safety provisions,
  - (d) a class 2, class 3 or class 9 building of 2 or more storeys, or the class 4 part of any class 9 building of 2 or more storeys, where—
    - (i) the plans and specifications for the work provide for a performance solution to meet performance requirement CP2 in Volume 1 of the *Building Code of Australia*, to the extent that it relates to external combustible cladding, and
    - (ii) the performance solution does not apply the verification method CV3 in Volume 1 of the *Building Code of Australia* in its entirety,
  - (e) a class 5, class 6, class 7 or class 8 building of 3 or more storeys, or the class 4 part of any class 5, class 6, class 7 or class 8 building of 3 or more storeys, where—
    - (i) the plans and specifications for the work provide for a performance solution to meet performance requirement CP2 in Volume 1 of the *Building Code of Australia*, to the extent that it relates to external combustible cladding, and
    - (ii) the performance solution does not apply the verification method CV3 in Volume 1 of the *Building Code of Australia* in its entirety.

- (2) Within 7 days after receiving an application for a construction certificate for a building to which this clause applies, the certifier 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 performance 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 notify the certifier of the date of receipt of documents under subclause (2) (the **document receipt date**) within 2 days after receiving those documents and must, within 10 days after receiving those documents, notify the certifier whether or not an initial fire safety report for the building will be provided.
- (4) The Fire Commissioner may provide the certifier with an initial fire safety report for the building, but only if notice has been given to the certifier in accordance with subclause (3) that an initial fire safety report will be provided.
- (5) 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.
- (6) The certifier must not issue a construction certificate for a building to which this clause applies unless it has taken into consideration an initial fire safety report for the building issued in accordance with this clause.
- (6A) The certifier may issue a construction certificate without taking an initial fire safety report into consideration if—
- (a) the Fire Commissioner has notified the certifier in accordance with subclause (3) that an initial fire safety report will not be provided, or
  - (b) the Fire Commissioner has failed to notify the certifier within 10 days after the document receipt date whether or not an initial fire safety report will be provided, or
  - (c) the Fire Commissioner has given notice in accordance with subclause (3) that an initial fire safety report will be provided, but such a report is not provided within 28 days after the document receipt date.
- (6B) If the certifier does not adopt any recommendation in an initial fire safety report that



it is required to take into consideration because the certifier does not agree with the recommendation, the certifier 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.

- (6C) If the Fire Commissioner has notified the certifier within 10 days after the document receipt date that an initial fire safety report will be provided but has failed to provide the report within 28 days after the document receipt date, the certifier must notify the Fire Commissioner in writing if a construction certificate is issued.
- (7) If the certifier 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.
- (8A) An application for a construction certificate made, but not finally determined, before the substitution of subclause (1) by the *Environmental Planning and Assessment Amendment (Identification of Buildings with External Combustible Cladding) Regulation 2018* is to be dealt with as if that subclause had not been substituted.
- (8B) A certifier or the Fire Commissioner may provide any document, information or notice required under this clause by means of the NSW planning portal if the Planning Secretary determines that the document, information or notice may be so lodged.
- (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 performance 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 Fire and Rescue NSW, and

- (c) that the couplings in the system will be compatible with those of the fire appliances and equipment used by Fire and Rescue NSW.

**144A Performance solution report required for certain fire safety aspects of building work**

- (1) A certifier must not issue a construction certificate for building work that involves a performance solution under the *Building Code of Australia* in respect of a fire safety requirement unless the certifier—
- (a) has obtained or been provided with a performance solution report that—
- (i) was prepared by or on behalf of a person with the qualifications required by this clause, and
  - (ii) includes a statement that the performance solution complies with the relevant performance requirements of the *Building Code of Australia*, and
  - (iii) where relevant, identifies the deemed-to-satisfy provisions of the *Building Code of Australia* being varied, and
  - (iv) describes and justifies the performance solution, including the acceptance criteria and parameters on which the justification is based and any restrictions or conditions on the performance solution, and
  - (v) includes a copy of the brief on which the justification of the performance solution is based, and
- (b) is satisfied that—
- (i) the report correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*, and
  - (ii) the plans show, and the specifications describe, the physical elements of the performance solution (where they are capable of being shown and described).
- (2) This clause does not apply to building work relating to a class 1a or 10 building, as defined in the *Building Code of Australia*.
- (3) A person has the **qualifications required by this clause** if—
- (a) the person is an accredited practitioner (fire safety) who is also a fire safety engineer and the report is about a performance solution under the *Building Code of Australia* in respect of the requirements set out in EP1.4, EP2.1, EP2.2, DP4 and DP5 in Volume 1 for—
- (i) a class 9a building, as defined in the *Building Code of Australia*, that is proposed to have a total floor area of 2,000 square metres or more, or

- (ii) any building (other than a class 9a building so defined) that is proposed to have a fire compartment, as defined in the *Building Code of Australia*, with a total floor area of more than 2,000 square metres, or
  - (iii) any building (other than a class 9a building so defined) that is proposed to have a total floor area of more than 6,000 square metres, or
- (b) the person is an accredited practitioner (fire safety), in the case of any other report.

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

- (1) A certifier must not issue a construction certificate for building work unless—
- (a1) the plans and specifications for the building include such matters as each relevant BASIX certificate requires, and
  - (a) the design and construction of the building (as depicted in the plans and specifications and as described in any other information furnished to the certifier under clause 140) is consistent with the development consent, and
  - (b) 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) (Repealed)
- (3) Subclause (1)(b) does not apply to the extent to which an exemption is in force under clause 164B, 187 or 188, subject to the terms of any condition or requirement referred to in clause 164B(4), 187(6) or 188(4).

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

A certifier must not issue a construction certificate for building work under a development consent unless each of the following have been complied with—

- (a) each condition or agreement requiring the provision of security before work is carried out in accordance with the consent (as referred to in section 4.17(6) of the Act),
- (b) each condition requiring the payment of a monetary contribution or levy before work is carried out in accordance with the consent (as referred to in section 7.11 or 7.12 of the Act),
- (c) each other condition of the development consent that must be complied with before a construction certificate may be issued in relation to the building work.

**146A Restriction on issue of construction certificates without compliance with planning**

**agreement**

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

**146B Condition relating to fire safety systems in class 2-9 buildings**

- (1) A construction certificate for building work involving the installation, extension or modification of any relevant fire safety system in a class 2, 3, 4, 5, 6, 7, 8 or 9 building, as defined in the *Building Code of Australia*, must be issued subject to the conditions required by this clause.
- (2) The condition required by this clause is that the building work involving the installation, modification or extension of the relevant fire safety system cannot commence unless—
  - (a) plans have been submitted to the principal certifier that show—
    - (i) in the case of building work involving the installation of the relevant fire safety system—the layout, extent and location of key components of the relevant fire safety system, or
    - (ii) in the case of building work involving the modification or extension of the relevant fire safety system—the layout, extent and location of any new or modified components of the relevant fire safety system, and
  - (b) specifications have been submitted to the principal certifier that—
    - (i) describe the basis for design, installation and construction of the relevant fire safety system, and
    - (ii) identify the provisions of the *Building Code of Australia* upon which the design of the system is based, and
  - (c) those plans and specifications—
    - (i) have been certified by a compliance certificate referred to in section 6.4(e) of the Act as complying with the relevant provisions of the *Building Code of Australia*, or
    - (ii) unless they are subject to an exemption under clause 164B, have been endorsed by an accredited practitioner (fire safety) as complying with the relevant provisions of the *Building Code of Australia*, and
  - (d) if those plans and specifications were submitted before the construction certificate was issued—each of them was endorsed by the certifier with a statement that the certifier is satisfied that it correctly identifies both the performance requirements

and the deemed-to-satisfy provisions of the *Building Code of Australia*, and

(e) if those plans and specifications were not submitted before the construction certificate was issued—each of them was endorsed by the principal certifier with a statement that the principal certifier is satisfied that it correctly identifies both the performance requirements and the deemed-to-satisfy provisions of the *Building Code of Australia*.

(3) In this clause—

**relevant fire safety system** means any of the following—

- (a) a hydraulic fire safety system within the meaning of clause 165,
- (b) a fire detection and alarm system,
- (c) a mechanical ducted smoke control system.

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

(1) A construction certificate must contain the following—

- (a) the identity of the certifier that issued it, including, in a case where the certifier is a registered body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifier is a registered certifier, the registration number of the certifier, including, in a case where the certifier is a registered body corporate, the registration number of the individual who issued the certificate on behalf of the body corporate,
- (b1) if the certifier is a registered certifier who is an individual, the signature of the registered certifier,
- (b2) if an individual issued the certificate on behalf of the certifier, the signature of the individual who issued the certificate,
- (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 certifier as may be shown on that documentation) will comply with the requirements of this Regulation as are referred to in section 6.6(2)(f) of the Act,
- (f) the classification (in accordance with the *Building Code of Australia*) of the building to which the certificate relates.

- (g) the following details of a performance solution report about the building work that is required to be obtained or provided under clause 144A(1)—
    - (i) the title of the report,
    - (ii) the date on which the report was made,
    - (iii) the reference number and version number of the report,
    - (iv) the name of the accredited practitioner (fire safety) who prepared the report or on whose behalf the report was prepared,
    - (v) if the accredited practitioner (fire safety) who prepared the report or on whose behalf the report was prepared is a registered certifier—the registration number of that practitioner,
  - (h) if any of the building work is exempt from compliance with the *Building Code of Australia* because of clause 164B—the details of that exemption.
- (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 (if a fire safety schedule is required under Part 9). If any of the building work is exempt from compliance with the *Building Code of Australia* because of clause 164B, that fire safety schedule must include details of that exemption.
- (3) Subclause (2) does not apply to a class 1a or class 10 building within the meaning of clause 167.

**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 certifier 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 2A Subdivision works certificates**

**148A Application for subdivision works certificate**

- (1) An application for a subdivision works certificate must—
  - (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
  - (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
  - (c) be accompanied by documents that are specified in Part 3A of Schedule 1 or required by the Act and this Regulation, and
  - (d) be lodged on the NSW planning portal.
- (2) The application may only be made by a person who is eligible to appoint a principal certifier for the relevant development.
- (3) The applicant must be notified, by means of the NSW planning portal, that the application for a subdivision works certificate has been lodged.

**148B Withdrawal of application**

- (1) An applicant may withdraw an application for a subdivision works certificate at any time prior to its determination by lodging notice of the withdrawal of the application on the NSW planning portal.
- (2) The certifier may (but is not required to) refund to the applicant the whole or any part of the application fee paid in connection with an application that has been withdrawn.

**148C Certifier may require additional information**

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

**148D (Repealed)**

**148E Procedure for determining application**

- (1) The determination of an application for a subdivision works certificate must contain the following information—
  - (a) the date on which the application was determined,
  - (b) whether the application has been determined—
    - (i) by approval, or
    - (ii) by refusal, and
  - (c) if the application has been determined by refusal—
    - (i) the reasons for the refusal, and
    - (ii) if the certifier is a consent authority, of the applicant's right of appeal under the Act against the refusal.
- (2) Within 2 days after the date of the determination, the certifier must, by means of the NSW planning portal—
  - (a) notify the applicant of the determination, and
  - (b) notify the consent authority and the council of the determination and provide them with the following—
    - (i) the determination, together with the application to which it relates,
    - (ii) any subdivision works certificate issued as a result of the determination,
    - (iii) any plans and specifications in relation to which the subdivision works certificate has been issued,
    - (iv) any other documents that were lodged with the application for the certificate or given to the certifier under clause 148C.
- (3) In this Part, a reference to the issuing of a subdivision works certificate includes a reference to the endorsement of the subdivision work on any relevant plans and specifications, as referred to in section 6.4(b) of the Act.

**148F Compliance with development consent**

- (1) A certifier must not issue a subdivision works certificate for subdivision work unless the design and construction of the work (as depicted in the plans and specifications and as described in any other information furnished to the certifier under clause 148C) is consistent with the development consent.
- (2) A certifier must not issue a subdivision works certificate for subdivision work under a



development consent unless each of the following have been complied with—

- (a) each condition or agreement requiring the provision of security before work is carried out in accordance with the development consent (as referred to in section 4.17(6) of the Act),
- (b) each condition requiring the payment of a monetary contribution or levy before work is carried out in accordance with the development consent (as referred to in section 7.11 or 7.12 of the Act),
- (c) each other condition of the development consent that must be complied with before a subdivision works certificate may be issued in relation to the subdivision work.

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

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

**148H Form of certificate**

A subdivision works certificate must contain the following—

- (a) the identity of the certifier that issued it, including, in a case where the certifier is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifier is an accredited certifier, the accreditation number of the certifier, including, in a case where the certifier is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,
- (c) if the certifier is an accredited certifier who is an individual, the signature of the accredited certifier,
- (d) if an individual issued the certificate on behalf of the certifier, the signature of the individual who issued the certificate,
- (e) the registered number and date of issue of any relevant development consent,
- (f) the date of the certificate,
- (g) a statement to the effect that work completed in accordance with documentation accompanying the application for the certificate (with such modifications verified by the certifier as may be shown on that documentation) will comply with the requirements referred to in section 6.12 of the Act.

#### **148I Modification of certificate**

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

#### **148J Deemed refusal period for application for subdivision works certificate**

- (1) For the purposes of section 8.17(1) of the Act, a council is taken to have made a decision to refuse to issue a subdivision works certificate if, following an application for the certificate, the council fails to issue the certificate within the period that ends on the day that is—
  - (a) if the application is made on or before the day on which the council determines the associated development application for the application—the last day of the period referred to in section 8.11(1) of the Act at the end of which the council is taken to have determined the associated development application by refusing development consent (or refusing to modify development consent), or
  - (b) otherwise—28 days after the day on which the application was made.
- (2) In this clause—

***associated development application***, for an application for a subdivision works certificate, means the development application for the development to which the application for the subdivision works certificate relates.

### **Division 3 Occupation certificates**

#### **149 Applications** (cf clause 79J of EP&A Regulation 1994)

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

(2AA) In the case of an application with respect to development with a proposed cost (as indicated in the development application) of \$10,000,000 or more, the application must also be accompanied by the following documents—

- (a) if the certifier determining the application is an accredited certifier—a copy of a document from the relevant council certifying that a section 7.11 contribution or section 7.12 levy—
  - (i) is not required at any time before the issue of an occupation certificate, or
  - (ii) is required and the requirement has been met,
- (b) if the building resulting from the development is on land within a special contributions area (within the meaning of Division 7.1 of the Act)—a copy of a document from the Planning Secretary certifying that a contribution under section 7.24 of the Act—
  - (i) is not required at any time before the issue of an occupation certificate, or
  - (ii) is required and the requirement has been met.

(2A) In the case of an application with respect to development the subject of a condition requiring commitments listed in a BASIX certificate or in BASIX certificates to be fulfilled, the application must also be accompanied by a copy of each relevant BASIX certificate for the development.

(2B) The application may only be made by a person who is eligible to appoint a principal certifier for the relevant development.

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

(4) (Repealed)

#### **149A Certifier may require additional information**

- (1) A certifier may require the applicant for an occupation certificate to give the certifier any additional information concerning the building to which the application relates (including any work that may have been carried out on the building) or a planning agreement that is essential to the certifier's proper consideration of the application.
- (2) Nothing in this clause affects the certifier's duty to determine an application for an occupation certificate.
- (3) A planning authority that is a party to a planning agreement may, at the request of an

applicant for an occupation certificate that is made for the purposes of obtaining information required under this clause, certify that specified requirements of the agreement have been complied with.

**150 (Repealed)**

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

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

**151A Deemed refusal period for application for occupation certificate**

For the purposes of section 8.17(1) of the Act, a council is taken to have made a decision to refuse to issue an occupation certificate if, following an application for the certificate, the council fails to issue the certificate within 14 days after the day on which the application was made.

**152 Reports of Fire Commissioner** (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 certifier 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 certifier must cause notice of the refusal to be given to the Fire Commissioner.
- (4) If a request has been made to the Fire Commissioner under this clause and no notice of the refusal of the application has been received by him or her, the Fire Commissioner may furnish the certifier with a final fire safety report for the building.
- (5) The certifier 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 10 days after the Fire Commissioner receives the request for the report.
- (5A) If the Fire Commissioner furnished a report for a building under clause 152A, the Fire Commissioner is not required to also prepare a separate report under this clause.
- (5B) A certifier or the Fire Commissioner may provide any document, information or notice required under this clause by means of the NSW planning portal if the Planning Secretary determines that the document, information or notice may be so lodged.
- (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 work complies with a performance solution in respect of a Category 2 fire safety provision that was the subject of the construction certificate, and
- (b) that all of the fire hydrants in the fire hydrant system will be accessible for use by Fire and Rescue NSW, and
- (c) that all of the couplings in the fire hydrant system will be compatible with those of

the fire appliances and equipment used by Fire and Rescue NSW.

**152A Reports of the Fire Commissioner for class 2 or 3 buildings containing certain fire safety systems**

- (1) A certifier must request the Fire Commissioner to furnish it with a fire safety system report as soon as practicable after receiving any application for an occupation certificate for a class 2 or 3 building for building work, as defined in the *Building Code of Australia*, that involved installing, extending or modifying a relevant fire safety system in the building.
- (2) The certifier is not required to make such a request—
  - (a) if it has already refused such an application, or
  - (b) if clause 144 applies to the building work and the Fire Commissioner has furnished a report for the building under clause 152.
- (3) If the certifier refuses the application after making such a request but before receiving a fire safety system report, the certifier must cause notice of the refusal to be given to the Fire Commissioner.
- (4) If a request has been made to the Fire Commissioner under this clause and no notice of the refusal of the application has been received from the certifier, the Fire Commissioner may furnish the certifier with a fire safety system report for the building.
- (5) The certifier must not issue an occupation certificate for the building unless it has taken into consideration any fire safety system report for the building that has been furnished to it within 10 days after the Fire Commissioner receives the request for the report.
- (6) A fire safety system report must be in writing and must specify whether or not the Fire Commissioner is satisfied that the relevant fire safety system is capable of performing to at least the standard in the current fire safety schedule for the building.
- (6A) A certifier or the Fire Commissioner may provide any document, information or notice required under this clause by means of the NSW planning portal if the Planning Secretary determines that the document, information or notice may be so lodged.
- (7) In this clause—

**relevant fire safety system** means any of the following—

  - (a) a hydraulic fire safety system within the meaning of clause 165,
  - (b) a fire detection and alarm system,
  - (c) a mechanical ducted smoke control system.

**152B Performance solution report must be considered before issuing occupation certificate**

A certifier must not issue an occupation certificate for a building for which building work that involves a performance solution under the *Building Code of Australia* in respect of a fire safety requirement that was carried out unless—

- (a) the certifier is satisfied that the relevant building work was constructed or installed in accordance with the performance solution report that accompanied the complying development certificate or construction certificate, if such a certificate was required by clause 130 or 144A, and
- (b) if a fire safety engineer was required by clause 130 or 144A to be involved in the preparation of the performance solution report—the certifier has obtained a compliance certificate or written report prepared by a fire safety engineer that includes a statement that the building work relating to the performance solution that was the subject of the first certificate or report has been completed and is consistent with that performance solution.

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

(1) An occupation certificate authorising a person—

- (a) to commence occupation or use of a new building, or
- (b) to commence a change of use for an existing building,

must not be issued unless a final fire safety certificate has been issued for the building (if a fire safety schedule is required under Part 9).

(1A) (Repealed)

(1B) If the need for the occupation certificate arises solely from the installation of a fire sprinkler system that is required to be installed under Division 7B of Part 9 of this Regulation, the final fire safety certificate referred to in subclause (1) need only deal with the new fire sprinkler system.

(2) An occupation certificate authorising a person—

- (a) to commence occupation or use of a partially completed new building, or
- (b) to commence a change of use for part of an existing building,

must not be issued unless 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 or to a temporary structure.

(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.

**153A (Repealed)**

**154 Health, safety and other issues** (cf clause 79O of EP&A Regulation 1994)

(1) An occupation certificate authorising a person—

(a) to commence occupation or use of a partially completed new building, or

(b) to commence a new use of a part of an existing building,

must not be issued unless the building will not constitute a hazard to the health or safety of the occupants of the building.

(1A) An occupation certificate authorising a person to commence occupation or use of a temporary structure as an entertainment venue must not be issued unless—

(a) the certifier has inspected the temporary structure, and

(b) the temporary structure is suitable for its proposed use as an entertainment venue, including for the number of persons proposed to occupy or use the temporary structure.

(1B) An occupation certificate authorising a person to commence occupation or use of a new building, or a partially completed new building, must not be issued unless the design and construction of the new building, or any part of the new building that is completed, is consistent with the development consent in force with respect to the new building. This subclause applies only if the development consent (excluding any construction certificate forming part of the consent) was issued on or after 1 March 2013.

**Note—**

A complying development certificate is a form of development consent.

(2) (Repealed)

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

(1) This clause applies to residential apartment development for which the development application was required to be accompanied by a statement by a qualified designer under clause 50(1A).

(2) A certifier must not issue an occupation certificate to authorise a person to commence occupation or use of the development unless the certifier has received the statement



by the qualified designer verifying that the 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.

- (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 BASIX affected development in respect of which, and BASIX optional development in respect of which, a relevant BASIX certificate requires a certifier to monitor fulfilment of any of the commitments listed in the certificate.
- (2) A certifier must not issue an occupation certificate for any building resulting from, or any building that becomes a BASIX affected building because of, BASIX affected development or BASIX optional development to which this clause applies, or for any part of such a building, unless 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 certifier may rely on the advice of any properly qualified person.

#### **154C BASIX completion receipt**

- (1A) This clause applies to BASIX affected development in respect of which one or more relevant BASIX certificates require a certifier to monitor fulfilment of any of the commitments listed in the certificate.
- (1AA) This clause does not apply in relation to an application for an occupation certificate to commence occupation or use of part of a partially completed building.
- (1) Before issuing an occupation certificate for a building the subject of development to which this clause applies, or for part of such a building, the certifier must apply to the Planning Secretary for a BASIX completion receipt with respect to that building or part.
- (2) An application for a BASIX completion receipt must be made in the manner notified in writing to certifiers by the Planning Secretary and must contain the following information—
  - (a) the number of each relevant BASIX certificate for the building or part of a building,

- (b) the postcode of the address of the building,
  - (c) the date of the final inspection,
  - (d) such other information (if any) as the Planning Secretary may determine and is notified in writing to certifiers.
- (3) The Planning Secretary may issue a BASIX completion receipt—
- (a) by means of a computerised system, as approved from time to time by the Planning Secretary, being a system to which certifiers are given on-line access, whether over the internet or otherwise, or
  - (b) by such other means as the Planning Secretary may approve from time to time.
- (4) A BASIX completion receipt is to confirm that the information required to be provided by a certifier under this clause has been provided.
- (5) A BASIX completion receipt is to be in such form, and contain such other information, as the Planning Secretary may approve from time to time.

#### **154D Lighting affecting observing conditions at Siding Spring Observatory**

- (1) The principal certifier for complying development must not issue an occupation certificate for a dwelling house, dual occupancy or secondary dwelling on land in the local government area of—
- (a) Coonamble, City of Dubbo, Gilgandra or Warrumbungle Shire, if any dwelling in the dwelling house, dual occupancy or secondary dwelling has an outside light fitting other than a shielded light fitting, or
  - (b) Coonamble, Gilgandra or Warrumbungle Shire, if any dwelling in the dwelling house, dual occupancy or secondary dwelling has more than 7 shielded outside light fittings or more than 5 such light fittings that are not automatic light fittings.
- (2) In this clause—

**automatic light fitting** means a light fitting that is activated by a sensor and switches off automatically after a period of time.

**dwelling house, dual occupancy** and **secondary dwelling** have the same meanings as they have in the Standard Instrument.

**outside light fitting** means a light fitting that is attached or fixed outside, including on the exterior of, a building.

**shielded light fitting** means a light fitting that does not permit light to shine above the horizontal plane.

**154E Restriction on issue of certificates without compliance with planning agreement**

If a planning agreement specifies requirements of the agreement that are required to be complied with before an occupation certificate relating to the occupation or use of a new building or a change of building use for an existing building is issued, a certifier must not issue an occupation certificate for the building unless the certifier is satisfied that those requirements have been complied with.

**154F Restriction on issue of certificates unless contributions paid**

- (1) This clause applies to development with a proposed cost (as indicated in the development application) of \$10,000,000 or more.
- (2) An accredited certifier must not issue an occupation certificate for a building resulting from the development unless the certifier—
  - (a) has received a copy of a document from the relevant council certifying that a section 7.11 contribution or section 7.12 levy—
    - (i) is not required at any time before the issue of an occupation certificate, or
    - (ii) is required and the requirement has been met, and
  - (b) has confirmed with the relevant council that—
    - (i) the council issued the document referred to in paragraph (a), and
    - (ii) no contributions or levies have been required since the document was issued.
- (3) A certifier must not issue an occupation certificate for a building resulting from the development on land within a special contributions area (within the meaning of Division 7.1 of the Act) unless the certifier—
  - (a) has received a copy of a document from the Planning Secretary certifying that a contribution under section 7.24 of the Act—
    - (i) is not required at any time before the issue of an occupation certificate, or
    - (ii) is required and the requirement has been met, and
  - (b) has confirmed with the Planning Secretary that—
    - (i) the Planning Secretary issued the document referred to in paragraph (a), and
    - (ii) no contributions have been required since the document was issued.
- (4) To avoid doubt, this clause does not limit the restrictions on the issue of occupation certificates set out in section 6.10 of the Act.

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

- (1) An occupation certificate must contain the following—
- (a) the identity of the certifier that issued it, including, in a case where the certifier is a registered body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
  - (b) if the certifier is a registered certifier, the registration number of the certifier, including, in a case where the certifier is a registered body corporate, the registration number of the individual who issued the certificate on behalf of the body corporate,
  - (b1) if the certifier is a registered certifier who is an individual, the signature of the registered certifier,
  - (b2) if an individual issued the certificate on behalf of the certifier, the signature of the individual who issued the certificate,
  - (c) the date of the certificate,
  - (d) whether the certificate relates to the occupation or use of a new building or a change of building use for an existing building (and whether it is for the whole building or part of the building or for a partially completed building),
  - (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 occupation certificate for a part of a new building (or partially completed building) 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 (if a fire safety schedule is required under Part 9), and
    - (vi) a report from the Fire Commissioner has been considered (if required).
  - (f) the following details of a performance solution report about the building work involved that is required for the purposes of either clause 130(2A) or 144A(1)—

- (i) the title of the report,
  - (ii) the date on which the report was made,
  - (iii) the reference number and version number of the report,
  - (iv) the name of the accredited practitioner (fire safety) who prepared the report or on whose behalf the report was prepared,
  - (v) if the accredited practitioner (fire safety) who prepared the report or on whose behalf the report was prepared is a registered certifier—the registration number of that practitioner.
- (2) The occupation certificate must be accompanied by a fire safety certificate and a fire safety schedule for the building (if a fire safety schedule is required under Part 9).
- (3), (4) (Repealed)

**156 Circumstances when occupation certificate not required** (cf clause 79Q of EP&A Regulation 1994)

- (1) For the purposes of section 6.9(2)(a)(iii) and (b)(ii) of the Act, the following are prescribed circumstances—
- (a) the fact that a building is a class 1a or class 10 building for which a construction certificate or complying development certificate was issued before 1 March 2004 (being the date on which Schedule 2.1 [32] to the *Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003* commenced),
  - (b) the fact that the building is a temporary structure (other than a temporary structure that is an entertainment venue),
  - (c) the fact that the building is a structure resulting from building work to which clause 162AB applies.
- (2) A person who is prescribed for the purposes of section 4.32(2)(a) of the Act in relation to Crown building work involving the erection of a new building is prescribed for the purposes of section 6.9(2)(a)(iv) and (b)(iii) of the Act in relation to that building.

**Note—**

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

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

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

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

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

## **Division 4 Subdivision certificates**

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

- (1) An application for a subdivision certificate must—
  - (a) be in the form that is approved by the Planning Secretary and made available on the NSW planning portal, and
  - (b) contain all of the information that is specified in the approved form or required by the Act and this Regulation, and
  - (c) be lodged on the NSW planning portal.
- (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 subdivision works 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 6.29 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 certifier is satisfied as to those matters.

(2A) The application may only be made—

- (a) by the owner of the land to which the application relates, or
- (b) by any other person, with the consent of the owner of that land.

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

(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 and Spatial Information Act 2002*.

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

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

- (1) A certifier may require the applicant for a subdivision certificate to give the certifier any additional information concerning the proposed subdivision or a planning agreement that is essential to the certifier's proper consideration of the application.
- (2) Nothing in this clause affects the certifier's duty to determine an application for a subdivision certificate.
- (3) A planning authority that is a party to a planning agreement may, at the request of an applicant for a subdivision certificate that is made for the purposes of obtaining information required under this clause, certify that specified requirements of the agreement have been complied with.

**159 (Repealed)**

**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 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 certifier is a consent authority, of the applicant's right of appeal under the Act against the refusal,
  - (d) the identity of the certifier determining the application, including, in a case where the certifier is a registered body corporate, the identity of the individual who dealt with the application on behalf of the body corporate,
  - (e) if the certifier is a registered certifier, the registration number of the certifier, including, in a case where the certifier is a registered body corporate, the registration number of the individual who dealt with the application on behalf of the body corporate,
  - (f) if the certifier is a registered certifier who is an individual, the signature of the registered certifier,
  - (g) if an individual dealt with the application on behalf of the certifier, the signature of the individual who dealt with the application.
- (2) Within 2 days after the date of the determination, the certifier must, by means of the NSW planning portal—
- (a) notify the applicant of the determination, and
  - (b) notify the consent authority and the council of the determination and provide them with the following—
    - (i) a copy of the determination,
    - (ii) copies of any documents that were lodged with the application for the certificate,
    - (iii) if a subdivision certificate was issued, a copy of the endorsed plan of subdivision.

**Note—**

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



**160A (Repealed)**

**160B Deemed refusal period for application for subdivision certificate**

- (1) For the purposes of section 8.17(1) of the Act, a council is taken to have made a decision to refuse to issue a subdivision certificate in relation to a subdivision if, following an application for the certificate, the council fails to issue the certificate within—
  - (a) for an application for a subdivision certificate in relation to a subdivision that is State significant development or designated development, the longer of the following—
    - (i) 14 days after the day on which the application was made,
    - (ii) 14 days after the day on which the appeal period for the associated development consent for the application ends,
    - (iii) if an appeal against the granting of the associated development consent for the application is made—14 days after the day on which the appeal is determined, or
  - (b) otherwise—
    - (i) if the subdivision to which the application relates requires development consent—14 days after the day on which the application was made, or
    - (ii) otherwise—7 days after the day on which the application was made.

- (2) In this clause—

***appeal period***, for an associated development consent, means the period within which an appeal against the granting of the associated development consent may be made under section 8.8 of the Act.

***associated development consent***, for an application for a subdivision certificate, means the development consent for the subdivision to which the application relates.

**Division 5 General**

**161 Certifiers may be satisfied as to certain matters** (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 certifier is satisfied as to that matter.

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

- (1) Section 6.31 of the Act applies in relation to the carrying out of works otherwise than in accordance with a development consent or complying development certificate, including any approved plans and development consent conditions.
- (2) However, section 6.31 of the Act does not apply in relation to non-compliance identified during a critical stage inspection or during an inspection under this clause.
- (3) Any notice containing a direction by a principal certifier under section 6.31 of the Act is to be in the form approved by the Planning Secretary and be issued within 2 business days of the certifier becoming aware of the non-compliance concerned.
- (4) The notice is to specify a period in which the direction must be complied with (the **compliance period**).
- (5) A principal certifier who issues a direction under section 6.31 of the Act must, at the end of the compliance period, inspect the site to which the direction relates to assess whether the direction has been complied with.
- (6) The principal certifier must make a record of the inspection and provide a copy of the record to the person responsible for carrying out the aspect of the development to which the non-compliance relates.

- (7) The inspection record must include the following information—
- (a) the address of the site at which the inspection was carried out,
  - (b) the date on which the inspection was carried out,
  - (c) if the inspection was carried out by a council, the name of the council and the identity and signature of the individual who carried out the inspection on behalf of the council,
  - (d) if the inspection was carried out by an accredited certifier, the identity of the accredited certifier, including, in a case where the accredited certifier is a body corporate, the identity of the individual who carried out the inspection on behalf of the body corporate,
  - (e) if the inspection was carried out by an accredited certifier, the accreditation number of the accredited certifier, including, in a case where the accredited certifier is a body corporate, the accreditation number of the individual who carried out the inspection on behalf of the body corporate,
  - (f) details as to whether or not the direction has been complied with.
- (8) The period prescribed for the purposes of section 6.31(2) of the Act is the period of 2 days after the inspection is carried out.

**Note—**

Under section 6.31(2) of the Act, the principal certifier who issues a direction is to notify the consent authority if the direction has not been complied with.

- (9) A copy of any notification under section 6.31(2) of the Act that a direction has not been complied is to be given to the owner of the land (including an owners corporation) to which the direction relates.

**161B General duties of principal certifiers**

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

- (a) before the work commences on the site—that a construction certificate or complying development certificate has been issued for such of the building work or subdivision work as requires development consent and over which the principal certifier has control, and
- (b) before any residential building work over which the principal certifier has control commences on the site—that the principal contractor for the work is, if required by the [Home Building Act 1989](#), the holder of the appropriate licence and is covered by the appropriate insurance (unless the work is to be carried out by an owner-builder), and
- (c) before an owner-builder commences on the site any residential building work over

which the principal certifier has control—that the owner-builder is the holder of any owner-builder permit required under the *Home Building Act 1989*, and

- (d) before the principal certifier issues an occupation certificate or subdivision certificate for the building or work—that building work or subdivision work on the site has been inspected by the principal certifier or another certifier on such occasions as are required by this Regulation and on such other occasions as may be required by the principal certifier, and
- (e) before the principal certifier issues an occupation certificate or subdivision certificate for the work—that any preconditions required by a development consent or complying development certificate to be met for the work before the issue of the occupation certificate or subdivision certificate have been met.

## **162 Replacement of principal certifier**

- (1) In this clause and in clause 162AA—

**Registration Authority** means the Building Professionals Board or, following the commencement of the *Building and Development Certifiers Act 2018*, the Secretary within the meaning of that Act.

- (2) A person may not be appointed to replace another person as the principal certifier for building work or subdivision work unless—
  - (a) the Registration Authority so approves in writing and the relevant council and consent authority are notified before the replacement occurs, or
  - (b) the current principal certifier, the proposed principal certifier and a person who is eligible to appoint a principal certifier for the work agree.
- (3) An application to the Registration Authority for approval under subclause (2), or a notification under that subclause, is to be accompanied by the fee (if any) prescribed by the regulations under the *Building Professionals Act 2005* or the *Building and Development Certifiers Act 2018* and is to be in a form approved by that Authority.
- (4) If the Registration Authority approves the appointment of the relevant council to replace another person as the principal certifier under subclause (2)(a), the council must accept that appointment.
- (5) A principal certifier for building work or subdivision work appointed to replace another certifier for the work must ensure that notice of the appointment and of the approval of that appointment is given to the consent authority (and, if the consent authority is not the council, to the council) within 2 days after the appointment.
- (6) Clause 103 applies to a notice given for the purposes of this clause in the same way as it applies to a notice given for the purposes of section 6.6(2)(a) or 6.12(2)(a) of the Act.

- (7) In addition to the information required by subclause (6) to be included in a notice under this clause, the following information is to be included—
- (a) the name of the former certifier who has been replaced,
  - (b) a statement that the former certifier agreed to be replaced.
- (8) A person is not required to give a notice under this clause to a person who has agreed to, or been notified of, the proposed appointment.

**162AA Provision of information to replacement principal certifiers**

- (1) This clause applies when a principal certifier (***the new principal certifier***) has been appointed to replace another principal certifier (***the old principal certifier***).
- (2) The new principal certifier may request the Registration Authority in writing to give a direction under this clause if the new principal certifier is unable to obtain the prescribed information from the old principal certifier in relation to the matter for which the new principal certifier has been appointed.
- (3) The Registration Authority may give a direction in writing to any of the following persons to provide the prescribed information, or a copy of that information, to the new principal certifier within the period specified in the notice—
- (a) the old principal certifier,
  - (b) a person whom the Registration Authority reasonably believes has possession of that information.
- (4) A person must not, without reasonable excuse, fail to comply with a direction given to the person by the Registration Authority under this clause.
- (5) It is not a reasonable excuse for the purposes of subclause (4) that any person has a claim to a lien over any document or record that is prescribed information or any other right to keep such a document or record as security for payment.
- (6) In this clause, ***prescribed information*** means the following—
- (a) if the old principal certifier is not a council, the documents and records required to be kept under section 60 of the *Building Professionals Act 2005* by an accreditation holder, or required to be kept under the *Building and Development Certifiers Act 2018* by a registration holder, in relation to the matter concerned,
  - (b) if the old principal certifier is a council, the information required to be provided to the Registration Authority under section 74B of the *Building Professionals Act 2005*, or under a provision of the *Building and Development Certifiers Act 2018*, in relation to the person who performed the certification work concerned on behalf of the council and the records required to be kept under that section or provisions by

the council in relation to the matter concerned.

**162A Critical stage inspections for building work**

- (1) Building work must be inspected on the occasions set out in this clause. Those inspections are **critical stage inspections** for the purposes of this Regulation.
- (2) Except as provided by subclause (3), the critical stage inspections may be carried out by the principal certifier or, if the principal certifier agrees, by another certifier.
- (3) The last critical stage inspection required to be carried out for the class of building concerned must be carried out by the principal certifier.
- (4) In the case of a class 1 or 10 building, the occasions on which building work for which a principal certifier is first appointed on or after 1 July 2004 must be inspected are—
  - (a) (Repealed)
  - (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) (Repealed)
- (5) In the case of a class 2, 3 or 4 building, the occasions on which building work must be inspected are—
  - (a) prior to covering of fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread, inspection of a minimum of one of each type of protection method for each type of service, on each storey of the building comprising the building work, and
    - (a1) prior to covering the junction of any internal fire-resisting construction bounding a sole-occupancy unit, and any other building element required to resist internal fire spread, inspection of a minimum of 30% of sole-occupancy units on each storey of the building containing sole-occupancy units, 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 certifier is first appointed on or after 1 July 2004 must be inspected are—
- (a) in relation to a critical stage inspection of a class 9a and 9c building, as defined in the *Building Code of Australia*—prior to covering of fire protection at service penetrations to building elements that are required to resist internal fire or smoke spread, inspection of a minimum of one of each type of protection method for each type of service, on each storey of the building comprising 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) (Repealed)
- (7A) Inspections of building work must be made on the following occasions in addition to those required by the other provisions of this clause for the building work—
- (a) in the case of a swimming pool, as soon as practicable after the barrier (if one is required under the *Swimming Pools Act 1992*) has been erected,
  - (b) in the case of a class 2, 3, 4, 5, 6, 7, 8 or 9 building, after the commencement of the excavation for, and before the placement of, the first footing.
- (8) This clause does not apply in relation to 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.

**162AB Critical stage inspections and other matters for certain structures at Ports Botany and Kembla and Port of Newcastle**

- (1) This clause applies to any building work on land to which *State Environmental Planning Policy (Three Ports) 2013* applies if that work results in a structure that—
- (a) does not have a classification under the *Building Code of Australia*, or
  - (b) is, or is of a kind, declared by the Planning Secretary (by notice published in the *Gazette*) to be a structure to which this paragraph applies.
- (2) A principal certifier (**PC**) for building work to which this clause applies is required to carry out (or to be satisfied that another certifier has carried out) inspections in

respect of that work on the occasions specified by this clause (and on such other occasions as may be required by the PC) before the use of the structure may commence.

- (3) The occasions on which inspections (***critical stage inspections***) must be carried out are—
  - (a) after excavation for, and prior to the placement of, any footings, and
  - (b) prior to pouring any in-situ reinforced concrete building element, and
  - (c) on completion of the building work.
- (4) Except as provided by subclause (5), the critical stage inspections may be carried out by the PC or, if the PC agrees, by another certifier.
- (5) The critical stage inspection required to be carried out on completion of the building work must be carried out by the PC.
- (6) Before carrying out that critical stage inspection, the PC is required to be satisfied that the PC has been provided with all certificates that the PC is required to be provided with as a condition, under *State Environmental Planning Policy (Three Ports) 2013*, of any complying development certificate authorising the building work.

#### **162B Record of critical stage and other inspections**

- (1) A certifier (whether or not a principal certifier) must make a record of each of the following inspections carried out by the certifier—
  - (a) each critical stage inspection under clause 162A or 162AB, and
  - (b) each inspection carried out because it was required by the principal certifier under clause 162AB.
- (2) Any certifier who is required to make such a record but is not the principal certifier for the work concerned must, within 2 days after the record is made, provide a copy of the record to the principal certifier for the work.

#### **Note—**

Copies of these records must be kept for at least 15 years (see the regulations made under the *Building Professionals Act 2005*).

- (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 identity of the certifier by whom the inspection was carried out, including, in a case where the certifier is a registered body corporate, the identity of the individual who carried out the inspection on behalf of the body corporate, and
- (e1) if the certifier by whom the inspection was carried out is a registered certifier, the registration number of the certifier, including, in a case where the certifier is a registered body corporate, the registration number of the individual who carried out the inspection on behalf of the body corporate, and
- (f) whether or not the inspection was satisfactory in the opinion of the certifier who carried it out.

**162C Progress inspection unavoidably missed**

- (1) If the circumstances described in subclause (2) apply, an inspection (other than a final inspection) that is required to be carried out under this Part need not be carried out.
- (1A) (Repealed)
- (2) The circumstances are—
  - (a) the inspection was missed because of circumstances that the principal certifier considers were unavoidable, and
  - (b) the principal certifier is satisfied that the work that would have been the subject of the missed inspection was satisfactory, and
  - (c) the principal certifier, 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 registration number of the principal certifier,

- (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 certifier considers were unavoidable that caused it to be missed,
  - (g) a statement that the principal certifier 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 certifier 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 A5, clause A5.2, of the *Building Code of Australia*.
- (4) Within 2 days after a person who is not the principal certifier 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 certifier of that fact and of the circumstances causing the inspection to be missed.
- (5) Within 2 days after becoming aware that an inspection, other than a final inspection, has been missed, the principal certifier—
- (a) must notify that fact to the person who appointed the principal certifier and 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
  - (b) must send a copy of the record made under this clause to the person who appointed the principal certifier.
- (6) In this clause, **final inspection** means an inspection described in clause 162A(4)(g), (5)(d) or (6)(c) or 162AB(3)(c).

**162D Council to be notified of significant fire safety issues**

- (1) A certifier is required to give written notice to the council in accordance with this clause if—
- (a) an application has been made to the certifier for a certificate under Part 6 of the Act affecting an existing building, and
  - (b) the building is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, and
  - (c) at any time between the application being received and the issue of the certificate, the certifier becomes aware (when carrying out an inspection or otherwise) of a significant fire safety issue with any part of the building.

- (2) A principal certifier is required to give written notice to the council in accordance with this clause if—
- (a) the principal certifier has been appointed under section 6.6(1) of the Act in relation to building work affecting an existing building, and
  - (b) the building is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, and
  - (c) at any time between the appointment under section 6.6(1) and the issue of an occupation certificate in respect of the building work, the principal certifier becomes aware (when carrying out an inspection or otherwise) of a significant fire safety issue with the building.
- (3) The notice—
- (a) must describe the fire safety issue and the parts of the building affected by the issue, and
  - (b) must be made within 2 days after the certifier or principal certifier becomes aware of the fire safety issue.
- (4) However, the certifier or principal certifier is not required to give notice if the fire safety issue is being addressed—
- (a) by a fire safety order, or
  - (b) by development that affects the building, being development that is the subject of a development consent (including a complying development certificate) or a construction certificate.
- (5) To avoid doubt, this clause extends to a council that is a certifier or principal certifier.

### **163 Notice to allow inspections**

To allow a principal certifier or another certifier time to carry out critical stage inspections or any other inspections required by the principal certifier, the principal contractor for a building site, or the owner-builder, must notify the principal certifier 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 certifier 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 Planning Secretary may issue certificates (***BASIX certificates***) in relation to the sustainability of any proposed BASIX affected development and any proposed BASIX

optional development.

- (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 Planning Secretary, 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.
- (3A) Subclause (3) does not apply to development that involves the alteration, enlargement or extension of a BASIX affected building that contains more than one dwelling.

**Note—**

See Schedule 1, clauses 2A, 4A and 6A which require separate certificates for each dwelling.

- (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.

**164B Certain building work on fire safety systems may be exempt from compliance with the BCA standards**

- (1) A person may lodge with the certifier an objection that compliance with any specified provision of the *Building Code of Australia* that relates to the operational performance of a relevant fire safety system is unreasonable or unnecessary in the particular circumstances of the case.
- (2) A person may lodge an objection under this clause only if the person has, or will have, the benefit of—
  - (a) a complying development certificate subject to a condition under clause 136AA in relation to building work involving the minor modification or extension of any relevant fire safety system, or
  - (b) a construction certificate subject to a condition under clause 146B in relation to building work involving the minor modification or extension of any relevant fire safety system.
- (3) The objection must specify the grounds of the objection and must furnish the certifier with a copy of the plans and specifications for the building work.
- (4) If the certifier is satisfied that an objection is well founded, it may exempt the building work, either conditionally or unconditionally, from any specified provision of the *Building Code of Australia*.
- (5) A certifier may only exempt the building work if—
  - (a) the non-compliance with the *Building Code of Australia* relates only to the operational performance of the relevant fire safety system, and
  - (b) the certifier is satisfied that the non-compliance will not reduce the operational performance of the relevant fire safety system, and
  - (c) an accredited practitioner (fire safety) (other than the accredited practitioner (fire safety) who prepared the plans and specifications) has endorsed the non-compliance, and

- (d) a fire safety certificate or fire safety statement that relates to or includes the fire safety system being modified or extended was issued for the building no more than 6 months before the objection was made.

**Note—**

If the certifier exempts compliance with the *Building Code of Australia* under this clause, the exemption must be detailed in the terms of the complying development certificate or construction certificate (see clauses 134 and 147, respectively).

- (6) This clause does not apply to building work that is required by a fire safety order.

- (7) In this clause—

**relevant fire safety system** means any of the following—

- (a) a hydraulic fire safety system within the meaning of clause 165,
- (b) a fire detection and alarm system,
- (c) a mechanical ducted smoke control system.

## **164C Interpretation**

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

## **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 and Schedule 1—

**alteration to a hydraulic fire safety system** means a permanent alteration to a hydraulic fire safety system that modifies or enables the modification of the pressure or flow characteristics of the hydraulic fire safety system and that is not associated with—

- (a) an alteration, enlargement or extension of an existing building, unless the alteration, enlargement or extension relates solely and directly to the alteration to the hydraulic fire safety system, or
- (b) a change of use of a building.

**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 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 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*.

**hydraulic fire safety system** means—

- (a) a fire hydrant system, or
- (b) a fire hose reel system, or

- (c) a sprinkler system (including a wall-wetting sprinkler or drencher system), or
- (d) any type of automatic fire suppression system of a hydraulic nature,

that is installed in accordance with a requirement of, or under, the Act or any other Act or law (including an order or a condition of an approval or some other sort of authorisation).

**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	Lightweight construction
Automatic fire suppression systems	Mechanical air handling systems
Emergency lifts	Perimeter vehicle access for emergency vehicles
Emergency lighting	Portable fire extinguishers
Emergency warning and intercommunication systems	Safety curtains in proscenium openings
Exit signs	Smoke alarms and heat alarms
Fire control centres and rooms	Smoke and heat vents
Fire dampers	Smoke dampers
Fire doors	Smoke detectors and heat detectors
Fire hose reel systems	Smoke doors
Fire hydrant systems	Solid core doors
Fire seals protecting openings in fire-resisting components of the building	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 except as follows—
  - (a) only Division 7A applies to class 1a and class 10 buildings,
  - (b) only Division 8 applies to temporary structures,
  - (c) Division 7C applies only to—
    - (i) class 2, class 3 and class 9 buildings of 2 or more storeys, and



(ii) any class 4 part of a class 9 building of 2 or more storeys.

(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.

**167A (Repealed)**

**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 or for a change of building use, or
- (c) issuing a construction certificate for proposed building work, 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.

(2A) Despite subclause (1)(b), (c) and (d), a fire safety schedule is not required to be issued if—

- (a) the work for which a complying development certificate or construction certificate is to be issued relates only to—
  - (i) an alteration to a hydraulic fire safety system, or
  - (ii) the installation of a fixed on-site pumpset and the construction of a new

external pumphouse to accommodate that pumpset, and

- (b) the carrying out of that work does not result in a permanent reduction of the fire protection provided by the existing hydraulic fire safety system that will be the subject of that work, and
- (c) there is notice, in respect of the premises on which the works are to be carried out, of a past, current or proposed action by or on behalf of a water utility to install mains pressure reduction capability or to implement mains pressure reduction.

**Note—**

Pursuant to clause 167, a fire safety schedule is also not required in relation to a class 1a building, a class 10 building or a temporary structure.

(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 (Repealed)**

**168B Installation of fire sprinkler systems in certain residential aged care facilities**

- (1) This clause applies to a complying development certificate or a construction certificate that relates only to the installation of a fire sprinkler system that is required to be installed under Division 7B of Part 9 of this Regulation.
- (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 sprinkler system installation schedule***) for the new fire sprinkler system, or
  - (b) in any other case, a fire safety schedule dealing only with the new fire sprinkler system.
- (3) A fire sprinkler system installation schedule or fire safety schedule issued under this clause—
  - (a) must specify the minimum standard of performance for the new fire sprinkler system, and
  - (b) if the new fire sprinkler system is a critical fire safety measure, must identify the system 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 sprinkler system installation 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 sprinkler system installation schedule.

- (5) Clause 168(4) applies to a fire sprinkler system installation 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 an 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.

### **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 occupation certificate can be issued for a building under clause 153(1) or for part of a partially completed new building under clause 153(2).

**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 be made in the form approved by the Planning Secretary and 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 an accredited practitioner (fire safety) 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 an accredited practitioner (fire safety) 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 consent authority 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.
- (5) In relation to land to which the *State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007* applies, a reference in this clause to the provision

of fire safety statements for premises in ski resort areas to the council is taken to be a reference to the Minister.

**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 an accredited practitioner (fire safety) 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 be made in the form approved by the Planning Secretary and 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.
  - (i) the name and contact details of the person who issued the statement,
  - (j) the name and contact details of the accredited practitioner (fire safety) who endorsed the statement.
- (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.

(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.

**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.

**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.

**Division 7A Smoke Alarms**

**186A Owners of existing buildings and dwellings must ensure smoke alarms are installed**

- (1) Despite any other provision of this clause, this clause does not apply to any of the following—
  - (a) those buildings or parts of a building in which smoke alarms or smoke detection and alarm systems are installed, or are required to be installed, in accordance with a requirement under the Act or any other Act or law (including an order or a condition of an approval),

**Note—**  
An example of a requirement under the Act is an order under section 9.34 of the Act requiring the installation of smoke alarms or smoke detection and alarm systems.
  - (b) those buildings or parts of buildings occupied by a public authority, but only if the Minister responsible for the public authority has determined, by order published in the Gazette, that those buildings or parts of buildings are not to be subject to this clause,
  - (c) buildings in which no person sleeps.
- (2) The owner of a class 1a building or relocatable home must ensure that the building or home is equipped with smoke alarms that are located, on or near the ceiling—
  - (a) in any storey of the building or home containing bedrooms—in every corridor or hallway associated with a bedroom, and if there is no such corridor or hallway associated with a bedroom, between that part of the building or home containing the bedroom and the remainder of the building or home, and
  - (b) in any other storey of the building not containing bedrooms.
- (3) The owner of a class 1b building must ensure that the building is equipped with smoke alarms that are located, on or near the ceiling—
  - (a) in any storey of the building containing bedrooms—
    - (i) in every bedroom, and
    - (ii) in every corridor or hallway associated with a bedroom, and if there is no such corridor or hallway associated with a bedroom, between each part of the building containing the bedroom and the remainder of the building, and
  - (b) in any other storey of the building not containing bedrooms.
- (4) The owner of a dwelling within a class 2 building or, that is a class 4 part of a building, must ensure that the dwelling is equipped with smoke alarms that are located, on or near the ceiling—
  - (a) in any storey of the dwelling containing bedrooms—in every corridor or hallway

associated with a bedroom, and if there is no such corridor or hallway associated with a bedroom, between each part of the dwelling containing the bedroom and the remainder of the dwelling, and

(b) in any other storey of the dwelling not containing bedrooms.

(5) The owner of a class 3 building must ensure that—

(a) each sole-occupancy unit, in any storey of the unit containing bedrooms, is equipped with smoke alarms that are located, on or near the ceiling in every corridor or hallway associated with a bedroom, and if there is no such corridor or hallway associated with a bedroom, between each part of the unit containing the bedroom and the remainder of the unit, and

(b) each sole-occupancy unit, in any storey of the unit not containing bedrooms, is equipped with smoke alarms that are located on or near the ceiling, and

(c) if the building does not have a functioning sprinkler system, each habitable room not within a sole-occupancy room, each public corridor and any other internal public space is equipped with smoke alarms that are located in those places where AS 1670.1 requires smoke detectors to be located.

(6) The owner of a class 9a building that is a health care building must ensure that each patient care area, each public corridor and any other internal public space associated with a patient care area, are equipped with smoke alarms that are located in those places where AS 1670.1 requires smoke detectors to be located.

(7) Despite subclauses (2), (4) and (5), the owner of a dwelling or unit that consists substantially of a single room (containing sleeping facilities and other facilities) satisfies the requirements of subclauses (2), (4) and (5)(a) and (b) if he or she ensures that the dwelling or unit is equipped with a smoke alarm that is located on or near the ceiling between the sleeping facilities and the rest of the dwelling or unit.

(8) An order under subclause (1)(b) may specify a particular building or part of a building or a class of buildings or parts of buildings.

(9) In this clause—

**approval** means any consent, licence, permit, permission or authorisation that is required, under an Act or law, to be obtained before development may be carried out.

**AS 1670.1** means AS 1670.1—2004, *Fire detection, warning, control and intercom systems—System design, installation and commissioning—Part 1: Fire* as in force from time to time.

**class 1a building** means, in relation to a building that forms part of a strata scheme, the lot containing a dwelling within the building.

**health care building** means a building (other than a clinic, day surgery, day procedure unit or medical centre) occupied by persons receiving full-time care or patients undergoing medical treatment, being persons of a kind who generally require physical assistance to evacuate the building in an emergency, and includes the following—

- (a) a nursing home,
- (b) a facility under the control of a public health organisation within the meaning of the *Health Services Act 1997*,
- (c) a private health facility licensed under the *Private Health Facilities Act 2007*.

**nursing home** means a facility at which a high level of residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) is provided.

**order** means an order made under the Act or any other Act or law.

**patient care area** has the same meaning as it has in the *Building Code of Australia* but does not include any bathroom, ensuite bathing area or toilet area.

**relocatable home** means—

- (a) a manufactured home, or
- (b) any other moveable dwelling (whether or not self-contained) that comprises one or more major sections, including any associated structure that forms part of the dwelling,

but does not include a tent, caravan or campervan or any moveable dwelling that is a vehicle of a kind that is capable of being registered within the meaning of the *Road Transport Act 2013*.

**sole-occupancy unit** has the same meaning as it has in the *Building Code of Australia*.

#### **186AA Owners of moveable dwellings must ensure smoke alarms are installed**

- (1) This clause does not apply to any of the following—
  - (a) a moveable dwelling in which no person sleeps,
  - (b) a moveable dwelling to which clause 186A applies.
- (2) The owner of a moveable dwelling must ensure—
  - (a) that the dwelling is equipped with a smoke alarm that is located on or near the ceiling between that part of the dwelling in which persons sleep and the remainder of the dwelling, and

(b) that the smoke alarm installed in the dwelling is repaired or replaced as soon as reasonably practicable after the owner becomes aware that the smoke alarm is not functioning properly.

(3) This clause applies whether or not the moveable dwelling is a vehicle of a kind that is capable of being registered within the meaning of the *Road Transport Act 2013*.

(4) In this clause—

**annexe, campervan, caravan, holiday van,** and **park van** have the same meanings as they have in the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*.

**associated structure** has the same meaning as in the *Local Government Act 1993*.

**moveable dwelling** includes the following—

(a) campervans,

(b) caravans,

(c) holiday vans,

(d) park vans,

(e) annexes,

(f) associated structures,

(g) any other type of van or portable device used for human habitation,

but does not include—

(h) a tent or structure that has two or more walls and a roof or ceiling primarily constructed of flexible fabric or plastic material, or

(i) a manufactured home, or

(j) a relocatable home.

**relocatable home** has the same meaning as in clause 186A(9) of this Regulation.

#### **186B Specifications for smoke alarms**

(1) A smoke alarm installed under this Division is to be functioning and is to comply with the requirements of AS 3786.

(1A) A smoke alarm installed in a moveable dwelling under clause 186AA must be fitted with a hush button (being a button designed to silence false alarms).

(2) Despite the requirements of AS 3786, a smoke alarm that is required under clause

186A to be installed in a class 1b, class 3 or class 9a building is to be powered—

- (a) from the mains electricity supply, or
- (b) by a non-removable battery with a minimum life expectancy of 10 years that is connected to the smoke alarm.

**Note—**

AS 3786 permits smoke alarms to be powered by batteries or mains electricity supply. Smoke alarms in buildings that are relocatable homes or class 1a or class 2 buildings or class 4 parts of buildings will be able to use any of the power sources specified by AS 3786.

- (3) Despite any other provision of this Division, a heat alarm may be used in the place of a smoke alarm in any kitchen or other area where it is likely to be inappropriately activated, other than in a moveable dwelling to which clause 186AA applies.
- (4) In this clause—  
**AS 3786** means AS 3786—1993, *Smoke alarms* as in force from time to time.
- (5) A functioning smoke alarm installed in a class 1a or class 2 building, a relocatable home or a class 4 part of a building before the commencement of this clause is taken to comply with the requirements of this clause until such time as the alarm is removed or ceases to function.
- (6) A functioning smoke alarm installed in a moveable dwelling to which clause 186AA applies before the commencement of that clause is taken to comply with the requirements of this clause until such time as the alarm is removed or ceases to function.

**186C Persons must not remove or interfere with smoke alarms**

- (1) A person must not, without reasonable excuse, remove or interfere with the operation of a smoke alarm or heat alarm that has been installed in a building in which persons sleep.
- (1A) A person must not, without reasonable excuse, remove or interfere with the operation of a smoke alarm that has been installed in a moveable dwelling to which clause 186AA applies.
- (2) Without limiting subclause (1), a person does not commit an offence under this clause if the person removes or interferes with the operation of a smoke alarm or heat alarm to repair, maintain or replace the smoke alarm or heat alarm.
- (3) This clause applies to alarms installed before or after the commencement of this Division.

**186D No development consent or consent of owners corporation required to install smoke**



### **alarms**

- (1) Development consent under Part 4 of the Act and the consent of an owners corporation is not required to install a smoke alarm or heat alarm.
- (2) Subclause (1) is subject to the condition that, in circumstances where the installation of a smoke alarm or heat alarm causes damage to any part of common property, the person who installs the alarm must repair the damage.
- (3) In this clause—

**common property** and **owners corporation** have the same meanings that they have in the *Strata Schemes Management Act 1996*.

### **186E Smoke alarms and heat alarms in certain existing buildings taken to be essential fire services**

- (1) This clause applies to a building for which a fire safety schedule is issued before the commencement of this clause.
- (2) A smoke alarm or heat alarm installed under this Division is taken to be an essential fire safety measure that is specified in the fire safety schedule for the building for the purposes of this Part (other than clauses 175(a)(i) and 182(1)(a)).
- (3) Clauses 175(a)(ii) and 182(1)(b) apply to a smoke alarm or heat alarm taken to be an essential fire safety measure under this clause.

### **186F Transitional provisions relating to obligations under this Division**

- (1) A legal obligation under clause 186A to install a smoke alarm does not arise until 6 months after the commencement of this Division.
- (2) A person is not liable for an offence under this Division (other than an offence under clause 186C) in respect of any act or omission that occurs within 6 months after the commencement of this Division.
- (3) However, subclause (2) does not apply to any failure to comply with the requirements of this Division that continues after 6 months after that commencement.

### **186G Transitional provisions relating to obligations under clause 186AA**

A legal obligation under clause 186AA to install a smoke alarm does not arise until 6 months after the commencement of that clause.

#### **Note—**

This provides the owner of an existing moveable dwelling with a 6 month grace period before being legally obliged to install a smoke alarm in the dwelling.

## **Division 7B Fire sprinklers in certain residential aged care facilities**

## 186H Definitions

(1) In this Division—

**approved provider** means a person who is an approved provider within the meaning of the *Aged Care Act 1997* of the Commonwealth on 1 January 2013 (whether or not the person ceases to be such an approved provider after that date).

**Fire Sprinkler Standard** means the technical standard entitled Fire Sprinkler Standard dated as in force from time to time and approved by the Planning Secretary.

**Implementation Committee** means the Fire Sprinkler System Implementation Committee constituted under clause 186Q.

**nominated completion date**, for a facility—see clause 186K.

**required completion date**, for a facility, means the date by which a person who operates the facility is required by this Division to install a fire sprinkler system in the facility.

(2) The Fire Sprinkler Standard is to be made publicly available on the website of the Department.

## 186I Application

This Division applies to a facility at which residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) was provided immediately before 1 January 2013, but does not apply to—

- (a) a facility in which a fire sprinkler system was installed before 1 January 2013, or
- (b) a facility in which a fire sprinkler system is required to be installed in accordance with the Act or any other Act or law (including an order or a condition of a development consent), where the requirement arose before 1 January 2013.

## 186J Requirement to install fire sprinkler systems

- (1) An approved provider that operates a facility to which this Division applies must install a fire sprinkler system in the facility before—
  - (a) the nominated completion date for the facility, or
  - (b) if the required completion date has been postponed to a later date under clause 186L—that later date.
- (2) A person who begins to operate a facility to which this Division applies after 1 January 2013 must install the fire sprinkler system in the facility before—
  - (a) the earlier of the following dates—

- (i) the nominated completion date for the facility (if any),
  - (ii) the date that is 12 months after the person begins operating the facility, or
- (b) if the required completion date has been postponed to a later date under clause 186L—that later date.

**186K Nominated completion date**

- (1) An approved provider that operates a facility to which this Division applies must, before 1 March 2013, nominate one of the following dates as the date by which the approved provider will install the fire sprinkler system in the facility (***the nominated completion date***)—
- (a) 1 September 2014,
  - (b) 1 March 2016.
- (2) A nomination under this clause is to be made by giving notice in writing of the nominated completion date to the Implementation Committee. That notice is to—
- (a) state the nominated completion date, and
  - (b) include—
    - (i) the name of the approved provider, and
    - (ii) the name and address of the facility, and
    - (iii) details of the residential care provided at the facility, and
  - (c) in relation to a nomination of 1 September 2014 as the nominated completion date—
    - (i) describe any work completed for the purposes of the installation, and
    - (ii) provide an estimate of the date by which the installation will be completed, and
  - (d) otherwise be in the form approved by the Planning Secretary.
- (3) A notice under subclause (2) may relate to more than one facility.

**186L Postponement of required completion date for installation**

- (1) A person who operates a facility to which this Division applies may apply once to the Implementation Committee for a postponement of the facility's required completion date.
- (2) An application under this clause made by an approved provider must be made before—

- (a) in relation to a facility for which the nominated completion date is 1 September 2014—1 March 2014, and
  - (b) in relation to a facility for which the nominated completion date is 1 March 2016—1 March 2015.
- (3) An application under this clause made by a person who began operating the facility concerned after 1 January 2013 must be made before the existing required completion date for the facility.
- (4) An application under this clause is to be in the form approved by the Implementation Committee.
- (5) The Implementation Committee may postpone the required completion date for the installation of the fire sprinkler system in the facility by a period of—
- (a) in relation to a facility for which the nominated completion date is 1 September 2014 (other than a facility to which clause 186J(2) applies)—up to 6 months, and
  - (b) in any other case—up to 1 year.
- (6) In determining whether to grant such a postponement, the Implementation Committee is to consider—
- (a) whether the applicant has substantially complied with the implementation plan for the facility (if any), and
  - (b) whether, if the application were to be refused, the requirement under this Division to complete the installation by the existing required completion date would create such a significant financial burden on the applicant that the provision of residential care at the facility may suffer, and
  - (c) any other matter that the Committee considers relevant.
- (7) A postponement may be granted unconditionally or subject to conditions (including conditions requiring that other fire safety measures be implemented and maintained until the fire sprinkler system is installed).

**186M Fire sprinkler systems to be installed in accordance with the Fire Sprinkler Standard**

A fire sprinkler system must be installed in accordance with the Fire Sprinkler Standard.

**186N Occupation certificate to be provided to Implementation Committee**

A person who is required by this Division to install a fire sprinkler system in a facility must, before the relevant required completion date, provide the Implementation Committee with an occupation certificate to show that the fire sprinkler system has been installed in the facility.

**186O Installation of fire sprinkler systems in facilities with 1 March 2016 as nominated completion date**

- (1) If an approved provider of a facility nominated 1 March 2016 as the nominated completion date for the facility, the approved provider must—
  - (a) before 1 September 2013, provide an implementation plan to the Implementation Committee, and
  - (b) before 1 March 2014 (and every 1 September and 1 March after that date unless the fire sprinkler system has been installed), provide a progress report to the Implementation Committee.
- (2) An implementation plan is to—
  - (a) specify details of the proposed installation of the fire sprinkler system (including any approvals required for the installation), and
  - (b) describe any work completed for the purposes of the installation, and
  - (c) provide an estimate of the date by which the installation will be completed, and
  - (d) specify the capital investment value of installing the fire sprinkler system, and
  - (e) be in a form approved by the Implementation Committee, and
  - (f) include any other information that the Implementation Committee directs (in its approved form) is to be included in the plan.
- (3) A progress report is to—
  - (a) specify any changes to information provided to the Implementation Committee in the implementation plan or an earlier progress report, and
  - (b) be in a form approved by the Implementation Committee.
- (4) In this clause, **approval** means an approval under the Act and includes a development consent, a complying development certificate or any other certificate under Part 6 of the Act.

**186P Notices relating to residential aged care facilities without fire sprinkler systems**

- (1) A person who is required by this Division to install a fire sprinkler system in a facility must, until that fire sprinkler system is installed, display a notice in accordance with this clause.
- (2) The notice must—
  - (a) state that the facility does not have a fire sprinkler system installed, and

- (b) specify the date by which this Division requires that a fire sprinkler system be installed in the facility, and
  - (c) be in the form approved by the Planning Secretary.
- (3) The notice must be displayed—
- (a) in a prominent position at the principal pedestrian entrance to the facility, and
  - (b) on the website (if any) of the person, or of any related body corporate of the person (within the meaning of the *Corporations Act 2001* of the Commonwealth), that relates to the facility.
- (4) This clause has effect from 30 April 2013.

### **186Q Implementation Committee**

- (1) The Planning Secretary is to constitute a Fire Sprinkler System Implementation Committee (the **Implementation Committee**).
- (2) The Implementation Committee is to consist of not more than 6 persons appointed by the Planning Secretary, of whom—
  - (a) one is to be appointed as Chairperson of the Committee, and
  - (b) one is to be a person employed in the Department, and
  - (c) one is to be a person employed in Fire and Rescue NSW, nominated by the Commissioner of Fire and Rescue NSW, and
  - (d) one is to have expertise or experience in the aged care industry, and
  - (e) one is to have expertise or experience in fire protection system design and installation, and
  - (f) one is to have expertise or experience in representing seniors in community organisations.
- (3) The Implementation Committee has the following functions—
  - (a) determining the form of implementation plans and progress reports under this Division,
  - (b) reviewing those implementation plans and progress reports,
  - (c) publishing those implementation plans and progress reports (but excluding statements of the capital investment value of installing a fire sprinkler system) on the Department's website,
  - (d) determining applications for the postponement of the required completion dates

for the installation of fire sprinkler systems in residential care facilities,

- (e) monitoring the progress of the installation of fire sprinkler systems in accordance with this Division,
  - (f) any other function conferred or imposed on the Committee by this Regulation or any other law.
- (4) A member of the Implementation Committee—
- (a) holds office for such term as is determined by the Planning Secretary, and
  - (b) ceases to hold office in such circumstances as are determined by the Planning Secretary, and
  - (c) is entitled to such remuneration, if any, and to the payment of such expenses, if any, as are determined by the Planning Secretary, and
  - (d) holds office subject to such conditions as are determined by the Planning Secretary.
- (5) The procedure at meetings of the Implementation Committee is to be determined by the Planning Secretary or, in the absence of any such determination, by the Committee.
- (6) The quorum at a meeting of the Implementation Committee is a majority of the members for the time being of the Committee.
- (7) The Implementation Committee is to provide the Planning Secretary with the following—
- (a) an annual report of the Committee's operations during the preceding year by 1 March in every calendar year,
  - (b) any other information or report that is requested by the Planning Secretary.
- (8) The Planning Secretary must, as soon as is reasonably practical after receiving the Implementation Committee's annual report—
- (a) provide a copy of that report to the Minister and the Minister for Ageing, and
  - (b) publish a copy of that report on the Department's website.

**186R Applications for complying development certificates and construction certificates for installation of fire sprinkler systems**

An application for a complying development certificate or a construction certificate for the installation of a fire sprinkler system in a facility to which this Division applies must contain the following information and be accompanied by the following documents—

- (a) building work plans that show—
  - (i) the location of the key components of the system (including sprinkler heads, valves, pumps, boosters and test connections) and associated alarm signalling equipment, and
  - (ii) the layout of pipework associated with the system, and
  - (iii) any other building work that is necessary to install the fire sprinkler system (including fire separation works),
- (b) the specifications of—
  - (i) the fire sprinkler system to be installed (including the flow and pressure of the water supply), and
  - (ii) any other building work that is necessary to install the fire sprinkler system.

## **Division 7C Identification of certain buildings with external combustible cladding**

### **Note—**

Clause 167(1)(c) provides that this Division applies only to class 2, class 3 and class 9 buildings of 2 or more storeys and to any class 4 part of a class 9 building of 2 or more storeys.

### **186S Certain building owners must provide registration details of building and its cladding**

- (1) The owner of a building that has external combustible cladding must provide the Planning Secretary with details about the building and its cladding.
- (2) The following details are required to be provided under this clause—
  - (a) the name and address of the owner of the building,
  - (b) the address of the building,
  - (c) the classification of the building under the *Building Code of Australia*,
  - (d) the number of storeys in the building, above and below ground,
  - (e) a description of any external combustible cladding applied to the building, including the materials comprising the cladding,
  - (f) a description of the extent of application of external combustible cladding to the building and the parts of the building to which it is applied.
- (3) Those details must be provided—
  - (a) in the case of a building that was or had been occupied before this clause



commenced—on or before 22 February 2019, or

(b) in any other case—within 4 months after the building is first occupied.

- (4) Those details must be provided through the NSW planning portal, unless the Planning Secretary agrees in writing that they may be provided in another manner.
- (5) Despite subclause (1), if the owner of the building has been given a direction under clause 186T that requires details to be provided, the owner is not required to comply with this clause.

**186T Building owner may be directed to provide registration details of building and its cladding**

- (1) The owner of a building may be directed in writing to provide the Planning Secretary with details about the building and any external combustibile cladding that has been applied to it.
- (2) Such a direction may be given only by—
- (a) the Minister or the Planning Secretary, but only in connection with a building the erection of which was State significant development, State significant infrastructure or any other development for which the Minister, the Planning Secretary or the Independent Planning Commission is or was the consent authority, or
  - (b) an authorised fire officer, or
  - (c) the council for the area in which the building is located.
- (3) The following details are required to be provided under this clause—
- (a) the name and address of the owner of the building,
  - (b) the address of the building,
  - (c) the classification of the building under the *Building Code of Australia*,
  - (d) the number of storeys in the building, above and below ground,
  - (e) a description of the external combustibile cladding applied to the building, including the materials comprising the cladding,
  - (f) a description of the extent of application of external combustibile cladding to the building and the parts of the building to which it is applied.
- (4) A person who has been directed to provide details under this clause must ensure that the details are provided before the date specified in the direction, which must be at least 14 days after the direction is given.

- (5) Those details must be provided through the NSW planning portal, unless the Planning Secretary agrees in writing that they may be provided in another manner.
- (6) An authorised fire officer or council must notify the Planning Secretary of any direction given by the officer or council under this clause.

**186U Register of buildings that have external combustible cladding**

- (1) The Planning Secretary may establish and maintain a register of buildings that have external combustible cladding.
- (2) The register may contain—
  - (a) any details provided to the Planning Secretary by the owner of a building under this Division, and
  - (b) any other information that the Planning Secretary considers appropriate.
- (3) The Planning Secretary may do any or all of the following—
  - (a) make the register, or any part of it, available to Fire and Rescue NSW, any council, or any other person,
  - (b) make the register, or any part of it, available to the public,
  - (c) publish the register, or any part of it, on a website maintained by the Department.

**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 or an application for a complying development certificate 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
  - (a1) (Repealed)
  - (a2) a development application or an application for a complying development certificate for the use of a building as an entertainment venue, or
  - (a3) (Repealed)
  - (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 certifier an objection—

- (a) that the *Building Code of Australia* (as applied by or under clause 98 or 136A) does not make appropriate provision with respect to—
  - (i) the building in relation to which the change of building use is sought, or
  - (ia) the building proposed to be used as an entertainment venue, or
  - (ib) (Repealed)
  - (ii) the proposed building work, or
- (b) that compliance with any specified provision of the *Building Code of Australia* (as applied by or under clause 98 or 136A) 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 136A. 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 136A) 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 or under clause 98 or 136A), 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 or under clause 98 or 136A) by an applicant in relation to development the subject of an application referred to in subclause (1)(a) or (a2) 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 certifier with a copy of the plans and specifications for the building work.
- (6) If the consent authority or certifier 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 or under clause

98 or 136A),

(b) it may direct that specified requirements are to apply to the proposed building work.

- (7) A consent authority or certifier may not take action under this clause except with the concurrence of the Planning Secretary.
- (8) The Planning Secretary—
- (a) may give the consent authority or certifier 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 certifier.
- (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 certifier had obtained the concurrence of the Planning Secretary.
- (10) Concurrence is to be assumed if at least 40 days have passed since concurrence was sought and the Planning Secretary has not, within that period, expressly refused concurrence.
- (11) Any exemption or direction given by the consent authority or certifier under this clause must be given subject to, and must not be inconsistent with, any conditions to which the concurrence of the Planning Secretary is subject.
- (12) When granting development consent for development the subject of an application referred to in subclause (1)(a) or (a2), 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 or temporary structure, 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 certifier 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 or a temporary structure 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 or an application for a complying development certificate 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

(a1) (Repealed)

(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 136A. 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 136A) 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 136A) 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 136A).

- (5) When granting development consent for development the subject of an 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 certifier 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 Fire brigades inspection powers** (cf clause 80J of EP&A Regulation 1994)

For the purposes of section 9.32(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,
- (d) such of the provisions of Division 7B as relate to the installation of fire sprinkler systems.

**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 Crown managed land within the meaning of the *Crown Land Management Act 2016*, 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 Land Management Act 2016*.

**190A Complying development certificates and construction certificates for installation of fire sprinkler systems in residential care facilities for seniors**

(1) A certifier must not issue a complying development certificate or a construction certificate for building work that involves the installation of a fire sprinkler system in a residential care facility for seniors unless the certifier is satisfied that the system will comply with the Fire Sprinkler Standard within the meaning of Division 7B as in force when the application for the certificate was made.

(2) In this clause, **residential care facility for seniors** has the same meaning as in *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

**190B Plans and specifications for certain fire safety systems must be kept on site**

(1) The principal contractor for building work must ensure that the most recently endorsed copy of the plans and specifications for any relevant fire safety system for the building that were required, by conditions under clause 136AA or 146B, to be submitted to the principal certifier—

(a) are kept on the site of the building work, and

(b) are made available for inspection on request by the certifier, consent authority, council and Fire and Rescue NSW at the times during which the building work is carried out.

(2) In this clause—

**relevant fire safety system** means any of the following—

(a) a hydraulic fire safety system within the meaning of clause 165,

(b) a fire detection and alarm system,

(c) a mechanical ducted smoke control system.

**Part 10 State significant infrastructure**

**191 Interpretation**

(1) Words and expressions used in this Part have the same meaning as they have in

Division 5.2 of the Act.

- (2) For the purposes of the definition of **infrastructure** in section 5.11 of the Act, if a single proposed development comprises development that is only partly infrastructure, the remainder of the development (for whatever purposes) is also infrastructure.

### **192 Applications for approval**

- (1) An application for approval of the Minister to carry out State significant infrastructure must include—
- (a) details of any approvals that would, but for section 5.23 of the Act, be required for the carrying out of the State significant infrastructure, and
  - (b) details of any authorisations that must be given under section 5.24 of the Act if the application is approved, and
  - (c) a statement as to the basis on which the proposed infrastructure is State significant infrastructure including, if relevant, the capital investment value of the proposed infrastructure.
- (2) An application may, with the approval of the Planning Secretary, be amended at any time before the application is determined.
- (3) The Planning Secretary is not to approve any such amendment unless satisfied that written particulars have been provided that sufficiently identify the nature of any proposed amendments to the State significant infrastructure.

### **193 Owner's consent or notification**

- (1) **Consent of land owner** The consent of the owner of the land on which State significant infrastructure is to be carried out is required for an infrastructure application or modification request unless the application or request relates to any of the following—
- (a) State significant infrastructure proposed to be carried out by a proponent that is a public authority,
  - (b) critical State significant infrastructure,
  - (c) State significant infrastructure comprising any one or more of the following—
    - (i) linear transport infrastructure,
    - (ii) utility infrastructure,
    - (iii) infrastructure on land with multiple owners designated by the Planning Secretary for the purposes of this clause by notice in writing to the person making the application or request.



- (2) Consent may be obtained at any time before the determination of the application or request.
- (3) The consent of the New South Wales Aboriginal Land Council is required for an infrastructure application or modification request relating to land owned by a Local Aboriginal Land Council if the application requires the consent of the Local Aboriginal Land Council as owner of the land.
- (4) **Notification if consent not required** If the consent of the owner of the land is not required for an infrastructure application or modification request under this clause, the proponent is required to publish notice of the application or request on the NSW planning portal and by—
  - (a) written notice to the owner of the land before, or no later than 14 days after, the application or request is made, or
  - (b) advertisement published in a newspaper circulating in the area in which the infrastructure is to be carried out—
    - (i) in the case of an infrastructure application—at least 14 days before the environmental impact statement that relates to the infrastructure is placed on public exhibition, or
    - (ii) in the case of a modification request—no later than 14 days after the request is made.
- (5) In this clause—

**modification request** means a request under section 5.25 of the Act for the modification of the Minister's approval.

### **193A EIS for infrastructure on land within 200km of Siding Spring Observatory**

For the purposes of section 5.29(e) of the Act, a proponent must, when preparing an environmental impact statement for State significant infrastructure on land less than 200 kilometres from the Siding Spring Observatory, take into consideration the *Dark Sky Planning Guideline*.

### **194 (Repealed)**

### **195 Planning Secretary's environmental assessment report**

- (1) The Planning Secretary is to complete the report under section 5.18 of the Act in relation to State significant infrastructure within 90 days after the end of the public exhibition period for the environmental impact statement to which the report relates.
- (2) The 90-day period does not include time during which the Planning Secretary, after having issued a requirement to the proponent under section 5.17(6), is awaiting a response or a preferred infrastructure report.

### **196 Publicly available documents**

- (1) For the purposes of section 5.28(1) of the Act, the documents are to be made publicly available on the NSW planning portal.
- (2) For the purposes of section 5.28(1)(i) of the Act, submissions made under section 5.17 or the report of the issues raised in those submissions provided under section 5.17(5), are prescribed.

### **197 Surrender of approvals or existing use rights**

- (1) For the purposes of section 5.28(4) of the Act, a surrender of an approval for State significant infrastructure or of a right conferred by Division 10 of Part 4 of the Act is to be made by giving to the Planning Secretary a notice in writing of the surrender of the approval or right.
- (2) The notice must contain 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 approval or right relates,
  - (c) a description of the approval or right to be surrendered,
  - (d) if the person giving notice is not the owner of the land, a statement by the owner of the land to the effect that the owner consents to the surrender of the approval or right.
- (3) A duly signed and delivered notice of surrender of an approval or right conferred by Division 10 of Part 4 of the Act takes effect on the date determined by the Planning Secretary and operates, according to its terms, to surrender the approval or right to which it relates.

### **198 Erection and occupation of buildings and subdivision of land**

- (1) In this clause, a **relevant provision** means section 6.6, 6.12 or 6.9 or any other provision of the Act relating to the issue of subdivision certificates.
- (2) For the purposes of section 5.22(5) of the Act, a relevant provision applies to approved State significant infrastructure in the same way as it applies to development subject to a development consent, subject to any necessary modifications. For that purpose, a reference in section 6.6, section 6.12 or Part 6 of the Act to a development consent is taken to include a reference to an approval of State significant infrastructure under Division 5.2 of the Act.
- (3) However, a relevant provision—
  - (a) does not apply unless that provision would have applied if the development was

not State significant infrastructure, and

- (b) applies to critical State significant infrastructure only if the Minister, when giving approval to the infrastructure under Division 5.2 of the Act, makes it a condition of that approval that the provision applies.

**199-205 (Repealed)**

**Part 11**

**206-223 (Repealed)**

**Part 12 Accreditation of building products and systems**

**224 Building products and systems certified under CodeMark scheme**

- (1) For the purposes of sections 4.15(4), 4.28(4) and 6.8(1)(a) of the Act, a building product or system is accredited if—
  - (a) a certificate of conformity issued in accordance with the CodeMark scheme is in force with respect to the building product or system, and
  - (b) use of the building product or system is not prohibited under the *Building Products (Safety) Act 2017*.

**Note—**

This clause also applies in relation to accreditation for the purposes of the issue of construction certificates. Section 109F of the Act (as in force immediately before the repeal of that section by the *Environmental Planning and Assessment Amendment Act 2017*) continues to apply pursuant to clause 18 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

- (2) In this clause, **CodeMark scheme** means the CodeMark scheme for the certification of building products and systems managed by the Australian Building Codes Board, in which the certification bodies are accredited and monitored by the Joint Accreditation System of Australia and New Zealand established on 30 October 1991.

**225 Savings provisions**

- (1) Any building product or system (however described) in respect of which a certificate of conformity under the ABCB scheme was issued before the commencement is taken to have been accredited in accordance with clause 224 as in force after the commencement, subject to the same limitations as to time as those to which the certificate of conformity is subject.
- (2) Any building product or system (however described)—
  - (a) that was the subject of an application for a certificate of conformity that was lodged under the ABCB scheme before the commencement but had not been determined at the commencement, and

(b) in respect of which such a certificate of conformity is issued in accordance with that scheme after the commencement,

is taken to have been accredited in accordance with clause 224 as in force after the commencement, subject to the same limitations as to time as those to which the certificate of conformity is subject.

(3) In this clause—

**ABCB scheme** has the same meaning as in clause 224 as in force before the commencement.

**commencement** means the commencement of the *Environmental Planning and Assessment Amendment (CodeMark) Regulation 2006*.

## Part 13 Development by the Crown

### 226 Prescribed persons: section 4.32 (cf clause 81MM of EP&A Regulation 1994)

- (1) The following persons are prescribed for the purposes of Division 4 of Part 4 of the Act (as referred to in section 4.32(2)(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*,
  - (e) without limiting paragraph (a), a Crown cemetery operator within the meaning of the *Cemeteries and Crematoria Act 2013*.
- (2) The following persons are prescribed under section 4.32(2)(a) of the Act (as modified by section 6.28(1) of the Act) for the purposes of section 6.28 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 under section 4.32(2)(a) of the Act (as modified by section 6.28(1) of the Act) for the purposes of section 6.28 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 6.28 of the Act, all of the provisions of the *Building Code of Australia* and the Fire Sprinkler Standard (within the meaning of Division 7B of Part 9) 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 certifier 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.
- (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 1A Preliminary**

#### **227AA Demolition of temporary structure not “activity”**

Pursuant to paragraph (k) of the definition of **activity** in section 5.1(1) of the Act, the demolition of a temporary structure is prescribed not to be such an activity for the purposes of that definition.

### **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 animals (within the meaning of the [Biodiversity Conservation Act 2016](#)),
  - (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,
  - (p) any impact on coastal processes and coastal hazards, including those under projected climate change conditions.
- (3) For the purposes of this clause, the Planning Secretary 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 Planning Secretary may vary or revoke any guidelines in force under this clause.

## **Division 2**

### **229-232 (Repealed)**

## **Division 3 Public participation**

### **233 Publication of environmental impact statements**

- (1) For the purposes of section 5.8 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 5.8(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) the website on which the environmental impact statement will be publicly available,

(e) a statement that any person may, before the specified closing date, make written representations to the determining authority about the proposed activity.

(2) The notice is to be published on the NSW planning portal.

(3) The period within which the notice may be inspected (as referred to in section 5.8(1) of the Act) begins on the date on which the notice is first published on the NSW planning portal.

(4) An environmental impact statement is to be made publicly available on the website of the determining authority for the activity concerned and on the website of the council of each area affected by the activity.

### **234, 235 (Repealed)**

## **Divisions 4, 5**

### **236-242 (Repealed)**

## **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 Planning Secretary under section 5.8 of the Act, and

(ii) any advice given to it by the Minister under section 5.9 of the Act, and

(iii) any public hearing by the Independent Planning Commission,



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 clause 268U, 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 (Repealed)**

### **Division 7 Fisheries management**

#### **244A Definitions**

In this Division—

**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](#).

**shark meshing** means the placing of nets by the Fisheries Minister around beaches and other waters to protect the public from sharks.

#### **244B Fishing activities and shark meshing**

- (1) For the purposes of the definition of **activity** in section 5.1(1) of the Act, a fishing activity carried out pursuant to a fisheries approval that is issued or renewed before 31 August 2009 for a period of not more than 12 months is prescribed not to be such an activity.
- (2) For the purposes of the definition of **activity** in section 5.1(1) of the Act, shark meshing carried out at any time before 31 August 2009 is prescribed not to be such an activity.
- (3) This clause does not apply to or in respect of aquaculture, within the meaning of the [Fisheries Management Act 1994](#).

#### **244C (Repealed)**

## **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 (ACN 081 455 754).

**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 (within the meaning of Part 8A of the [Transport Administration Act 1988](#)) 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 Division 15 of Part 3 of [State Environmental Planning Policy \(Infrastructure\) 2007](#).

### **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 Planning Secretary 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, or development that is a Part 3A project.
- (2) The Planning Secretary 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 Planning Secretary,
  - (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 Planning Secretary and the public,
- (i) protocols for auditing the performance of and compliance with the Code,
- (j) any other matters required by the Minister.

**244G, 244H (Repealed)**

**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.

**Division 9 Special provisions relating to electricity distributors and transmission operators**

**244J Definitions**

In this Division—

**activity for the purposes of a transacted electricity transmission or distribution network** 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 a transacted electricity transmission or distribution network,
- (b) geotechnical investigations relating to a transacted electricity transmission or distribution network,
- (c) environmental management and pollution control relating to a transacted electricity transmission or distribution network,
- (d) access for the purpose of the construction, maintenance or operation of a transacted electricity transmission or distribution network,
- (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 approved by the Minister under this Division.

**authorised network operator** means an authorised network operator under the [Electricity Network Assets \(Authorised Transactions\) Act 2015](#).

**electricity transmission or distribution network** has the same meaning as it has in Division 5 of Part 3 of *State Environmental Planning Policy (Infrastructure) 2007*.

**transacted electricity transmission or distribution network** means a transacted distribution system or transacted transmission system under the *Electricity Network Assets (Authorised Transactions) Act 2015*.

#### **244K Approved Code**

- (1) An approved Code may make provision for or with respect to the exercise by an authorised network operator of its functions under section 5.5 of the Act in respect of an activity for the purposes of a transacted electricity transmission or distribution network.
- (2) An approved Code is not to apply to activities for the purposes of a transacted electricity transmission or distribution network for which the operator is required under Part 5 of the Act to furnish or obtain an environmental impact statement.
- (3) Without limitation, an approved Code may include provision for or with respect to any of the matters listed in section 5.6(2) of the Act.
- (4) An approved Code may specify the period for which the approved Code is in force.
- (5) The Minister may by notice in writing to an authorised network operator exempt a specified activity of the operator from the operation of an approved Code. Such an exemption may be made subject to conditions and may be revoked or varied at any time by notice in writing to the operator.

#### **244L Procedure for approval of Code**

- (1) The Minister may approve a Code for the purposes of this Division and may vary or revoke an approved Code.
- (2) An approval of a Code, or a variation or revocation of an approved Code, takes effect when notice of it is published in the Gazette or on such later date as is specified in the approval, variation or revocation.
- (3) The Minister must, before varying or revoking a Code or approving a Code as a replacement for an existing Code, give each authorised network operator who will be affected by it notice of the proposal and an opportunity to make submissions on the proposal. The Minister must take into account any submission made by an authorised network operator within 20 business days after the operator was given notice of the proposal.

### **Division 10 Special provisions relating to proprietors of registered non-government schools**

#### **244M Definitions**

In this Division—

**activities for the purposes of an existing school** means activities (within the meaning of Part 5 of the Act) for the purpose of development that is permitted without consent under clause 36 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

**approved Code** means a Code approved by the Minister under this Division.

#### **244N Approved Code must be complied with**

- (1) An approved Code may make provision for or with respect to the exercise by a proprietor of a registered non-government school of its functions under section 5.5 of the Act in respect of activities for the purposes of an existing school.
- (2) An approved Code is not to apply to activities for the purposes of an existing school for which the proprietor is required under Part 5 of the Act to furnish or obtain an environmental impact statement.
- (3) Without limitation, an approved Code may include provision for or with respect to any of the matters listed in section 5.6(2) of the Act.
- (4) An approved Code may specify the period for which the approved Code is in force.
- (5) The Minister may, by notice in writing to a proprietor of a registered non-government school, exempt a specified activity from the operation of an approved Code. An exemption may be made subject to conditions and may be revoked or varied at any time by notice in writing to the proprietor.

#### **244O Procedure for approval of Code**

- (1) The Minister may approve a Code for the purposes of this Division and may vary or revoke an approved Code.
- (2) An approval of a Code, or a variation or revocation of an approved Code, takes effect when notice of it is published in the Gazette or on such later date as is specified in the approval, variation or revocation.

#### **244P Offences against specified approved Code**

- (1) A proprietor of a registered non-government school must comply with the following requirements of the *NSW Code of Practice for Part 5 Activities for registered non-government schools* in respect of activities for the purposes of an existing school (other than an activity that is the subject of an exemption in relation to the proprietor under clause 244N(5))—
  - (a) the mandatory requirements for consultation in clause 3.3.3 of the Code,

- (b) the mandatory requirements relating to assessment documentation in clause 3.4.1 of the Code,
- (c) the mandatory requirements relating to determination documentation in clause 3.5.1 of the Code,
- (d) the mandatory requirements relating to record keeping in clause 5.1 of the Code,
- (e) the mandatory requirements relating to public access to records in clause 5.2 of the Code,
- (f) the mandatory requirements relating to self-reporting of breaches of the Code in clause 6.2 of the Code,
- (g) the mandatory requirements relating to audits in clause 6.3.1 of the Code.

(2) In this clause—

***NSW Code of Practice for Part 5 Activities for registered non-government schools*** means the approved Code of that name, notice of the making of which was published in the Gazette on 1 September 2017.

## **Part 15 Fees and charges**

### **Division 1A Fees for transitional Part 3A projects**

#### **245A Definitions**

In this Division—

***Part 3A application*** means an application for approval under Part 3A of the Act to carry out a project or for the concept plan for a project.

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

***public notice***, of an environmental assessment or other matter, means the publication of a notice of the assessment or other matter in accordance with Part 3A of the Act.

#### **245B Determination of fees payable for Part 3A application**

- (1) The fee for a Part 3A application is to be determined by the Planning Secretary and is not to exceed the total maximum fee determined in accordance with the provisions of this Division relating to any such application.
- (2) Separate fees are payable for an application for approval of the concept plan for a project and for an application for approval to carry out that project (including where a single application is made for approval of the concept plan and for approval to carry out a part or aspect of that project).

- (3) If two or more fees are applicable to a single Part 3A application (such as an application relating to the subdivision of land and the erection of a building on one or more lots created by the subdivision), the maximum fee payable is the sum of those fees.
- (4) The total maximum fee payable for a Part 3A application for approval for part only of a project, and for any subsequent Part 3A applications for approval for any remaining part of the project, is the maximum fee that would otherwise be payable if only a single application for approval for the project was made.
- (5) A maximum fee of \$850 is payable for a Part 3A application for which no other fee is provided under this Division.

**245C Payment of fees for Part 3A applications**

- (1) The fee payable under this Division for a Part 3A application is payable by the proponent within 14 days after the Planning Secretary makes the environmental assessment in relation to the application publicly available under section 75H(3) or 75N of the Act and notifies the proponent of the amount of the fee.

**Note—**

For critical infrastructure projects—see also clause 245H(2).

- (2) The Minister may refuse to consider a Part 3A application if the fee payable for the application remains unpaid.

**245D Maximum fee for application involving erection of building, carrying out of work or demolition (other than for marinas or extractive industries)**

- (1) The maximum fee for a Part 3A application in respect of a project involving the erection of a building, the carrying out of a 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) The fees determined under this clause do not apply to development for which a fee is payable under clause 245E or 245F.

**Table**

<b>Estimated cost</b>	<b>Maximum fee payable</b>
Up to \$5,000	\$750
\$5,001–\$50,000	\$750, plus an additional \$23.33 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$5,000.
\$50,001–\$100,000	\$1,800, plus an additional \$70.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$50,000.



\$100,001-\$200,000	\$5,300, plus an additional \$4.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$100,000.
\$200,001-\$500,000	\$5,750, plus an additional \$5.83 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$200,000.
\$500,001-\$1,000,000	\$7,500, plus an additional \$5.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$500,000.
\$1,000,001-\$2,000,000	\$10,000, plus an additional \$1.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$1,000,000.
\$2,000,001-\$3,000,000	\$11,000, plus an additional \$0.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$2,000,000.
\$3,000,001-\$4,000,000	\$11,500, plus an additional \$0.70 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$3,000,000.
\$4,000,001-\$5,000,000	\$12,200, plus an additional \$0.80 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$4,000,000.
\$5,000,001-\$8,000,000	\$13,000, plus an additional \$1.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$5,000,000.
\$8,000,001-\$9,000,000	\$16,000, plus an additional \$1.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$8,000,000.
\$9,000,001-\$10,000,000	\$17,500, plus an additional \$2.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$9,000,000.
\$10,000,001-\$50,000,000	\$20,000, plus an additional \$1.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$10,000,000.
\$50,000,001-\$100,000,000	\$60,000, plus an additional \$0.60 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$50,000,000.
\$100,000,001-\$200,000,000	\$90,000, plus an additional \$0.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$100,000,000.

\$200,000,001-\$300,000,000	\$140,000, plus an additional \$0.35 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$200,000,000.
\$300,000,001-\$400,000,000	\$175,000, plus an additional \$0.81 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$300,000,000.
More than \$400,000,000	\$256,000, plus an additional \$0.64 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$400,000,000.

#### **245E Maximum fee—marinas**

- (1) The maximum fee payable for a Part 3A application in respect of a project involving the erection of a building or the carrying out of work for the purposes of a marina is \$5,660, plus \$565 for each vessel that can be moored, berthed or stored at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles in hardstand areas.
- (2) In the case of a project involving the extension of an existing marina, the number of vessels referred to in subclause (1) is to be calculated on the basis of the additional number of vessels that can be moored, berthed or stored as a result of the extension of the marina.
- (3) In this clause, a **vessel** does not include a dinghy or other small craft.

#### **245F Maximum fee—extractive industries**

- (1) The maximum fee payable for a Part 3A application in respect of a project involving extractive industry (not being mining) is the sum of the following—
  - (a) \$5,660, plus \$0.06 for each tonne of material that is to be extracted annually,
  - (b) if the project involves the erection of a building—the maximum fee calculated in accordance with clause 245D in relation to the erection of a building.
- (2) For the purposes of subclause (1), the Planning Secretary is to determine the weight of material that is to be extracted annually by reference to a genuine estimate of the average annual weight of material intended to be extracted.

#### **245G Maximum fee—subdivision of land**

- (1) The maximum fee payable for a Part 3A application in respect of a project involving the subdivision of land is as follows—
  - (a) subdivision (other than minor subdivision and strata subdivision)—\$5,660, plus \$340 for each hectare (or part of a hectare) of the land being subdivided, up to a maximum of \$34,000,

(b) minor subdivision—\$850,

(c) strata subdivision—\$850.

(2) In this clause, **minor subdivision** means subdivision for the purpose only of any one or more of the following—

(a) widening a public road,

(b) making an adjustment to a boundary between lots, being an adjustment that does not involve the creation of a greater number of lots,

(c) a minor realignment of boundaries that does not create additional lots or the opportunity for additional dwellings,

(d) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,

(e) rectifying an encroachment on a lot,

(f) creating a public reserve,

(g) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public conveniences.

#### **245H Additional fee for critical infrastructure projects**

(1) The maximum additional fee payable for a Part 3A application in respect of a critical infrastructure project is \$50,000.

(2) If a project is declared to be a critical infrastructure project after the fee for the Part 3A application is paid or due for payment, the additional fee is payable within 14 days after the Planning Secretary notifies the proponent that the additional fee is payable.

#### **245I Additional application fee for making environmental assessment publicly available**

In addition to any other fees payable under this Division, the maximum fee payable for a Part 3A application includes a maximum fee of \$2,830 for giving public notice of the environmental assessment in relation to the application under section 75H(3) or 75N of the Act.

#### **245J Additional application fee for planning reform**

In addition to any other fees payable under this Division, the maximum fee payable for a Part 3A application (other than an application for approval of a concept plan) includes a maximum fee for planning reform calculated as follows (but only if the estimated cost of the project exceeds \$50,000)—

$$P = \frac{0.64 \times E}{1,000} - 5$$

where—

**P** represents the amount payable, expressed in dollars rounded down to the nearest dollar.

**E** represents the estimated cost of the project, expressed in dollars rounded up to the nearest thousand dollars.

**245K Fee for request for modification of Minister's approval**

- (1) The fee payable for consideration of a request for modification of any of the following is to be determined by the Planning Secretary in accordance with this clause—
  - (a) the approval of the Minister for a project under Part 3A of the Act,
  - (b) the approval of a concept plan under that Part,
  - (c) a development consent that is taken to be an approval under that Part.
- (2) The maximum fee for a request for modification that the Planning Secretary considers will relate only to a minor matter such as a minor error, a misdescription or a miscalculation (but not a minor environmental assessment) is \$850.
- (2A) The maximum fee for a request for modification that the Planning Secretary considers will involve a minor environmental assessment is \$5,000.
- (3) The maximum fee in any other case is—
  - (a) 50% of the fee paid for the Part 3A application in respect of the approval for the project or concept plan that is proposed to be modified, or
  - (b) \$5,000,whichever is the greater.
- (4) If there is public notice of a request for modification, an additional fee of \$2,830 is payable.
- (5) The fee payable under this clause is payable by the person making the request and must be paid within 14 days after the Planning Secretary notifies that person of the amount of the fee.
- (6) The Minister may refuse to consider any such request if the fee remains unpaid.

**245L Fee for review by Independent Planning Commission**

- (1) The fee payable to the Planning Secretary in respect of the review of any aspect of a project, or a concept plan for a project, by the Independent Planning Commission pursuant to section 23D(1)(b)(ii) of the Act is to be determined by the Planning Secretary in accordance with this clause. Any such review includes the giving of public notice in connection with a public hearing.
- (2) The fee is \$56,600, plus an additional amount (being the estimated costs of the Commission undertaking the review) of not more than \$56,600.
- (3) A fee is not payable under this clause if the Planning Secretary determines that a fee is not appropriate in the circumstances of the case.
- (4) The fee payable under this clause is payable by the relevant Part 3A proponent and must be paid within 14 days after the Planning Secretary notifies the proponent of the amount of the fee.

**245M Fee for investigation of potential State significant site**

- (1) In this clause, **State significant site investigation** means an investigation initiated by the Minister under clause 8 of the [State Environmental Planning Policy \(Major Development\) 2005](#) into a proposed State significant site.
- (2) The fee payable for a State significant site investigation requested by a person who has or proposes to acquire an interest in all or any part of the proposed site is \$22,650 plus an additional fee of \$1,130 for each hectare (or part of a hectare) of the area of the proposed site.
- (3) The additional fee is not payable if the investigation is carried out in conjunction with the assessment of an application for approval of a concept plan under Part 3A in relation to the site.
- (4) The fee is payable by the person requesting the investigation within 14 days after the Planning Secretary notifies the person of the fee payable.

**245N Meaning of “estimated cost” for determining fee under this Division**

- (1) In determining the fee in relation to a project involving the erection of a building, the Planning Secretary must make his or her determination by reference to a genuine estimate of the capital investment value of the project.
- (2) In determining the fee in relation to a project involving the carrying out of a work, the Planning Secretary must make his or her determination by reference to a genuine estimate of the construction costs of the work.
- (3) In determining the fee in relation to a project involving the demolition of a building or work, the Planning Secretary must make his or her determination by reference to a

genuine estimate of the costs of demolition.

(4) In determining the fee in relation to a concept plan for a project, the Planning Secretary may make any necessary assumptions about the detail of the future project that is the subject of the concept plan.

(5) (Repealed)

## **Division 1 Fees for development applications (other than for State significant development)**

**245** (Renumbered as clause 245AA)

**245AA** (Renumbered as clause 246A)

### **246 Definition**

In this Division—

***development application*** does not include a development application for State significant development.

**246A 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 4.15 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 Planning Secretary 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 Planning Secretary 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,
- (i) (Repealed)
- (j) the online delivery of planning services and information by the Planning Secretary, including—
  - (i) the compilation and maintenance of the NSW planning database, and
  - (ii) the operation of the NSW planning portal, and
  - (iii) the enhancement of the NSW planning database and the NSW planning portal.

**Note—**

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

**246B Fee for 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) \$285, plus \$93 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 Fee for dwelling-house—construction cost under \$100,000** (cf clause 94 of EP&A Regulation 1994)

A maximum fee of \$455 is payable for development involving the erection of a dwelling-house with an estimated cost of construction of \$100,000 or less.

**248 Additional fee—residential apartment development**

An additional fee, not exceeding \$3,000, is payable for development involving an application for development consent, or an application for the modification of the development consent, that is referred to a design review panel for advice.

**249 Maximum fee—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, \$665, plus \$65 for each additional lot created by the subdivision, or

(ii) not involving the opening of a public road, \$330, plus \$53 for each additional lot created by the subdivision,



(b) strata subdivision, \$330, plus \$65 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 \$665 or \$330, as the case requires, together with a further amount of \$65 or \$53, 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 \$285 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 Additional fee—designated development**

In addition to any other fees payable under this Division, a maximum fee of \$920 is payable for designated development.

**252 Additional fees—development requiring 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) \$2,220, in the case of designated development,
- (b) \$1,105, in the case of nominated integrated development, threatened species development or Class 1 aquaculture development,
- (c) \$1,105, in the case of prohibited development,
- (d) \$1,105, in the case of development for which a community participation 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 Additional fees—development requiring concurrence**

- (1) An additional processing fee of \$140, 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 concurrence fee is to be paid to the concurrence authority.

- (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 waived the payment of the fee.
- (3A) A concurrence authority may determine to repay the whole or any part of a concurrence fee paid to it under this clause, in which case the whole or part of the concurrence fee must be repaid to the applicant.
- (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 \$320.
- (6) A concurrence authority may waive or reduce the concurrence fee payable to it generally, in relation to a particular application or in relation to a class of applications by giving written notice to—
  - (a) a consent authority for concurrence fees collected by the consent authority, or
  - (b) the Planning Secretary for concurrence fees collected by means of the NSW planning portal.

**253 Additional fees—integrated development** (cf clause 100 of EP&A Regulation 1994)

- (1) An additional processing fee of \$140, plus an approval fee for payment to each approval body, are payable in respect of an application for integrated development.
- (2) The approval fee is to be paid to the approval body.
- (2A) The approval fee for a development application is not payable to any approval body that has waived the payment of the fee.
- (2B) An approval body may determine to repay the whole or any part of an approval fee paid to it under this clause, in which case the whole or part of the approval fee must be repaid to the applicant.
- (3) The additional processing fee is payable in respect only of applications made on or after 1 July 2002.
- (4) (Repealed)
- (5) For the purposes of this clause, the **approval fee** payable to an approval body for a

development application is \$320.

- (6) An approval body may waive or reduce the approval fee payable to it generally, in relation to a particular application or in relation to a class of applications by giving written notice to—
- (a) a consent authority for approval fees collected by the consent authority, or
  - (b) the Planning Secretary for approval fees collected by means of the NSW planning portal.

**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 for development applications** (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 on the NSW planning portal.

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

- (1) For each development application lodged with a consent authority for development referred to in clause 246B(1) having an estimated cost exceeding \$50,000, an amount calculated as follows is to be set aside for payment to the Planning Secretary for the services referred to in clause 246A(2)(g), (h) and (j)—

$$P = \frac{0.64 \times E}{1,000} - 5$$

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.

- (1A) The amount referred to in subclause (1) is to be applied by the Secretary to the services referred to in clause 246A(2)(g), (h) and (j).
- (2) The consent authority must forward to the Planning Secretary—
  - (a) on or before the 14th day of each month, a report in relation to development applications lodged with it during the previous month containing such information, and being prepared in such form, as the Planning Secretary may determine, and
  - (b) on or before the 28th day of each month, the total amount set aside under subclause (1) in relation to those development applications.
- (3) The Planning Secretary may at any time reduce or waive (unconditionally or subject to conditions) the amount to be paid under this clause.

**256B Concept development applications**

The maximum fee payable for a concept 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 1AA Fees for State significant development and State significant infrastructure**

### **256C Definitions**

In this Division—

**application** means a development application for State significant development or an application for approval of State significant infrastructure.

**concept component of a staged application** means that part of a staged application that sets out concept proposals for the development of a site or for proposed infrastructure.

**staged application** means an application that is a concept development application or a staged infrastructure application.

**Note—**

Section 4.22 of the Act sets out the meaning of concept development application.

**staged infrastructure application** has the same meaning as it has in section 5.20 of the Act.

### **256D Determination of fees payable for application**

- (1) The fee for an application is to be determined by the Planning Secretary and is not to exceed the total maximum fee determined in accordance with the provisions of this Division relating to any such application.
- (2) If two or more fees are applicable to a single application (such as an application relating to the subdivision of land and the erection of a building on one or more lots created by the subdivision), the maximum fee payable is the sum of those fees.
- (3) (Repealed)

### **256E Determination of fees**

- (1) The determination of a fee to accompany an application for State significant development or State significant infrastructure must be made before, or within 14 days after, the application is lodged on the NSW planning portal.
- (2) A determination has no effect until notice of the determination is given to the applicant by means of the NSW planning portal.
- (3) The Minister may refuse to consider an application for which a fee has been duly determined and notified to the applicant but remains unpaid.

### **256F Maximum fee—buildings, works or demolition (other than marinas or extractive industries)**

- (1) The maximum fee for an application involving the erection of a building, the carrying out of a 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) The fees determined under this clause do not apply to development or infrastructure for which a fee is payable under clause 256G or 256H.

**Table**

<b>Estimated cost</b>	<b>Maximum fee payable</b>
Up to \$5,000	\$750.
\$5,001-\$50,000	\$750, plus an additional \$23.33 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$5,000.
\$50,001-\$100,000	\$1,800, plus an additional \$70.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$50,000.
\$100,001-\$200,000	\$5,300, plus an additional \$4.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$100,000.
\$200,001-\$500,000	\$5,750, plus an additional \$5.83 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$200,000.
\$500,001-\$1,000,000	\$7,500, plus an additional \$5.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$500,000.
\$1,000,001-\$2,000,000	\$10,000, plus an additional \$1.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$1,000,000.
\$2,000,001-\$3,000,000	\$11,000, plus an additional \$0.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$2,000,000.
\$3,000,001-\$4,000,000	\$11,500, plus an additional \$0.70 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$3,000,000.
\$4,000,001-\$5,000,000	\$12,200, plus an additional \$0.80 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$4,000,000.
\$5,000,001-\$8,000,000	\$13,000, plus an additional \$1.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$5,000,000.
\$8,000,001-\$9,000,000	\$16,000, plus an additional \$1.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$8,000,000.

\$9,000,001-\$10,000,000	\$17,500, plus an additional \$2.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$9,000,000.
\$10,000,001-\$50,000,000	\$20,000, plus an additional \$1.00 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$10,000,000.
\$50,000,001-\$100,000,000	\$60,000, plus an additional \$0.60 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$50,000,000.
\$100,000,001-\$200,000,000	\$90,000, plus an additional \$0.50 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$100,000,000.
\$200,000,001-\$300,000,000	\$140,000, plus an additional \$0.35 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$200,000,000.
\$300,000,001-\$400,000,000	\$175,000, plus an additional \$0.81 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$300,000,000.
More than \$400,000,000	\$256,000, plus an additional \$0.64 for each \$1,000 (or part of \$1,000) by which the estimated cost exceeds \$400,000,000.

**256G Maximum fee—marinas**

- (1) The maximum fee payable for an application involving the erection of a building or the carrying out of work for the purposes of a marina is \$5,660, plus \$565 for each vessel that can be moored, berthed or stored at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles in hardstand areas.
- (2) In the case of an application involving the extension of an existing marina, the number of vessels referred to in subclause (1) is to be calculated on the basis of the additional number of vessels that can be moored, berthed or stored as a result of the extension of the marina.
- (3) In this clause, a **vessel** does not include a dinghy or other small craft.

**256H Maximum fee—extractive industries**

- (1) The maximum fee payable for an application involving extractive industry (not being mining) is the sum of the following—
  - (a) \$5,660, plus \$0.06 for each tonne of material that is to be extracted annually,

(b) if the application involves the erection of a building—the maximum fee calculated in accordance with clause 256F in relation to the erection of a building.

- (2) For the purposes of subclause (1), the Planning Secretary is to determine the weight of material that is to be extracted annually by reference to a genuine estimate of the average annual weight of material intended to be extracted.

**256I Maximum fee—subdivision of land**

- (1) The maximum fee payable for an application involving the subdivision of land is as follows—
- (a) subdivision (other than minor subdivision and strata subdivision)—\$5,660, plus \$340 for each hectare (or part of a hectare) of the land being subdivided, up to a maximum of \$34,000,
  - (b) minor subdivision—\$850,
  - (c) strata subdivision—\$850.
- (2) In this clause, **minor subdivision** means subdivision for the purpose only of any one or more of the following—
- (a) widening a public road,
  - (b) making an adjustment to a boundary between lots, being an adjustment that does not involve the creation of a greater number of lots,
  - (c) a minor realignment of boundaries that does not create additional lots or the opportunity for additional dwellings,
  - (d) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,
  - (e) rectifying an encroachment on a lot,
  - (f) creating a public reserve,
  - (g) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public conveniences.

**256J Additional fee for critical State significant infrastructure**

- (1) The maximum additional fee payable for an application in respect of critical State significant infrastructure is \$50,000.
- (2) If State significant infrastructure is declared to be critical State significant infrastructure after the fee for the State significant infrastructure application is paid or



due for payment, the additional fee under this clause is payable within 14 days after the Planning Secretary notifies the proponent that the additional fee is payable.

**256K Additional fee for making environmental impact statement publicly available**

In addition to any other fees payable under this Division, the maximum fee payable for an application includes a maximum fee of \$2,830 for making an environmental impact statement in relation to the application publicly available under the Act.

**256KA Additional fee for assessing concept component of staged application**

- (1) In addition to any other fees payable under this Division, a fee is payable for assessing the concept component of a staged application.
- (2) The maximum fee payable under this clause is the maximum fee that would be payable in respect of all the proposed development, or all the proposed State significant infrastructure, to which the concept component of the staged application relates.
- (3) For the avoidance of doubt, the payment of a fee under this clause does not remove the need to pay any fee under this Division (or reduce any such fee) in relation to—
  - (a) in the case of a concept development application—the concept development application insofar as it sets out detailed proposals for the first stage of development, or
  - (b) in the case of a staged infrastructure application—the staged infrastructure application insofar as it sets out detailed proposals for the first stage, or
  - (c) any other application, including a subsequent application that relates to the staged application.

**256L Additional fee for planning reform**

- (1) In addition to any other fees payable under this Division, the maximum fee payable for an application includes (if the estimated cost of the development or infrastructure exceeds \$50,000) a maximum fee for the services to which this clause applies, calculated as follows—

$$P = \frac{0.64 \times E}{1,000}$$

where—

**P** represents the amount payable, expressed in dollars rounded down to the nearest dollar.

**E** represents the estimated cost of the development or infrastructure, expressed in dollars rounded up to the nearest thousand dollars.

- (2) This clause applies to the following services—
- (a) the monitoring and reviewing by the Planning Secretary of the practices and procedures followed by consent authorities in dealing with 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,
  - (b) the monitoring and reviewing by the Planning Secretary of the provisions of environmental planning instruments—
    - (i) that control development or infrastructure, or
    - (ii) that are required to be taken into consideration by consent authorities when dealing with applications,for the purposes of assessing the effectiveness of those provisions in achieving their intended effect and making recommendations for their improvement,
  - (c) (Repealed)
  - (d) the online delivery of planning services and information by the Planning Secretary, including—
    - (i) the compilation and maintenance of the NSW planning database, and
    - (ii) the operation of the NSW planning portal, and
    - (iii) the enhancement of the NSW planning database and the NSW planning portal.
- (3) This clause does not apply to the concept component of a staged application.

**256M Fees for modifications**

- (1) The fee payable for consideration of an application or request for modification of any of the following is to be determined by the Planning Secretary in accordance with this clause—
- (a) a consent granted by the Minister for State significant development, or
  - (b) an approval of the Minister for State significant infrastructure.
- (2) The maximum fee is \$850 for—
- (a) an application under section 4.55(1) of the Act, or
  - (b) a request under section 5.25 of the Act, if the Planning Secretary considers that the modification will relate only to a minor matter such as a minor error, a

misdescription or a miscalculation (but not a modification referred to in subclause (3)(b)).

- (3) The maximum fee is \$5,000 for—
  - (a) an application under section 4.55(1A) of the Act, or
  - (b) a request under section 5.25 of the Act, if the Planning Secretary considers that the modification will involve minor environmental assessment.
- (4) The maximum fee in any other case is whichever is the greater of—
  - (a) 50% of the fee paid for the application or request in respect of the development or infrastructure that is proposed to be modified, or
  - (b) \$5,000.
- (5) If there is public notice of an application or request for modification (other than public notice on the website of the Department), an additional fee of \$2,830 is payable.
- (6) The fee payable under this clause is payable by the person making the application or request and must be paid within 14 days after the Planning Secretary notifies that person of the amount of the fee.
- (7) The Minister may refuse to consider any such application or request if the fee remains unpaid.

**256N Fee for public hearing by Independent Planning Commission**

- (1) The fee payable to the Planning Secretary in respect of a public hearing by the Independent Planning Commission pursuant to section 2.9(1)(d) of the Act in respect of an application is to be determined by the Planning Secretary in accordance with this clause.
- (2) The fee is \$56,600, plus an additional amount (being the estimated costs of the Commission undertaking the public hearing) of not more than \$56,600.
- (3) A fee is not payable under this clause if the Planning Secretary determines that a fee is not appropriate in the circumstances of the case.
- (4) The fee payable under this clause is payable by the person making the application to which the hearing relates and must be paid within 14 days after the Planning Secretary notifies the person of the amount of the fee.

**256O Fee for planning proposal with application**

- (1) The fee payable for considering a proposed environmental planning instrument in conjunction with an application under section 4.38(5) of the Act is \$22,650 plus an additional fee of \$1,130 for each hectare (or part of a hectare) of the area of the

proposed development site.

- (2) The fee is payable by the person making the application within 14 days after the Planning Secretary notifies the person of the fee payable.

**256P Meaning of “estimated cost” for determining fee under this Division**

- (1) In determining the fee in relation to an application involving the erection of a building, the Planning Secretary must make his or her determination by reference to a genuine estimate of the capital investment value of the application.
- (2) In determining the fee in relation to an application involving the carrying out of a work, the Planning Secretary must make his or her determination by reference to a genuine estimate of the construction costs of the work.
- (3) In determining the fee in relation to an application involving the demolition of a building or work, the Planning Secretary must make his or her determination by reference to a genuine estimate of the costs of demolition.
- (4) In determining the fee in relation to the concept component of a staged application, the Planning Secretary may make any necessary assumptions about the detail of the future stages of the development or infrastructure.

**Division 2 Other fees and charges**

**257 Fee for request for review of determination**

The maximum fee for a request for a review of a determination under section 82A 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, \$190, 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 \$620 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.

**257A Fee for review of decision to reject a development application**

The fee for an application under section 8.2(1)(c) for a review of a decision is as follows—

- (a) \$55—if the estimated cost of the development is less than \$100,000,
- (b) \$150—if the estimated cost of the development is \$100,000 or more and less than or equal to \$1,000,000,
- (c) \$250—if the estimated cost of the development is more than \$1,000,000.

**258 Fee for application for modification of consent for local development** (cf clause 105 of EP&A Regulation 1994)

- (1) The maximum fee for an application under section 4.55(1) of the Act is \$71.
- (1A) The maximum fee for an application under section 4.55(1A) of the Act, or under section 4.56(1) of the Act in respect of a modification which, in the opinion of the consent authority, is of minimal environmental impact, is \$645 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 4.55(2) of the Act, or under section 4.56(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, \$190, 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 \$665 if notice of the application is required to be given under section 4.55(2) or 4.56(1) of the Act.

- (2A) An additional fee, not exceeding \$760, is payable for development to which clause 115(3) applies.
- (3) The consent authority must refund so much of the additional amount as is not spent in giving the notice under section 4.55(2) or 4.56(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.
- (4A) A reference in the Table to this clause to an estimated cost is a reference to the estimated cost of the development for which development consent was granted.
- (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.

### **258A Fee for review of modification application**

The fee for an application under section 8.9 for a review of a decision is 50 per cent of the fee that was payable in respect of the application that is the subject of the review.

### **259 Fee for planning certificate** (cf clause 106 of EP&A Regulation 1994)

- (1) The prescribed fee for the issue of a certificate under section 10.7(2) of the Act is \$53.
- (2) A council may charge one additional fee of not more than \$80 for any advice given under section 10.7(5) of the Act.

### **260 Fee for building certificate** (cf clause 107 of EP&A Regulation 1994)

- (1) For the purposes of section 6.23(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, \$250 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, \$250.
- (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 \$90) for the issue of the certificate.
- (3) However, the council may not charge an additional fee for any initial inspection.
- (3A) An additional fee determined in accordance with subclause (3B) may be charged for an application for a building certificate in relation to a building where the applicant for the certificate, or the person on whose behalf the application is made, is the person who erected the building or on whose behalf the building was erected and any of the following circumstances apply—

- (a) where a development consent, complying development certificate or construction certificate was required for the erection of the building and no such consent or certificate was obtained,
- (b) where a penalty notice has been issued for an offence under section 4.2(1) of the Act in relation to the erection of the building and the person to whom it was issued has paid the penalty required by the penalty notice in respect of the alleged offence (or if the person has not paid the penalty and has not elected to have the matter dealt with by a court, enforcement action has been taken against the person under Division 4 of Part 4 of the *Fines Act 1996*),
- (c) where order No 2, 3, 10, 11 or 14 in Part 1 of Schedule 5 to the Act has been given in relation to the building unless the order has been revoked on appeal,
- (d) where a person has been found guilty of an offence under the Act in relation to the erection of the building,
- (e) where the court has made a finding that the building was erected in contravention of a provision of the Act.

(3B) The additional fee payable under subclause (3A) is the total of the following amounts—

- (a) the amount of the maximum fee that would be payable if the application were an application for development consent, or a complying development certificate (if appropriate), authorising the erection or alteration of any part of the building to which the application relates that has been erected or altered in contravention of the Act in the period of 24 months immediately preceding the date of the application,
- (b) the amount of the maximum fee that would be payable if the application were an application to the council for a construction certificate relating to the erection or alteration of any part of the building to which the application relates that has been erected or altered in contravention of the Act in the period of 24 months immediately preceding the date of the application.

(3C) If an application for a building certificate is made in relation to part only of a building, a reference in subclause (3A) to a building is taken to be a reference to the part of a building that is the subject of the application.

(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	\$250



Exceeding 200 square metres but not exceeding 2,000 square metres	\$250, plus an additional \$0.50 per square metre over 200
Exceeding 2,000 square metres	\$1,165, plus an additional \$0.075 per square metre over 2,000

### **261 Fee for copy of building certificate**

For the purposes of section 6.26(10) of the Act, the prescribed fee for a copy of a building certificate is \$13.

### **262 Fee for certified copy of document, map or plan held by Department or 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 10.8(2) of the Act is \$53.

### **262A Fee for site compatibility certificate**

- (1) The maximum fee for an application to the Planning Secretary for a site compatibility certificate (affordable rental housing) is \$265, plus \$42 for each dwelling in the development in respect of which the certificate was issued.
- (2) The maximum fee for an application to the Planning Secretary for a site compatibility certificate (infrastructure) or a site compatibility certificate (schools or TAFE establishments) is \$265, plus \$265 for each hectare (or part of a hectare) of the area of the land in respect of which the certificate was issued.
- (3) The maximum fee for an application to the Planning Secretary for a site compatibility certificate (seniors housing) is \$280, plus—
  - (a) in the case where the proposed development is for the purposes of a residential care facility (within the meaning of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*)—\$45 per bed in the proposed facility, or
  - (b) in any other case—\$45 per dwelling in the proposed development.
- (4) Despite any other provision of this clause, the fee for an application to the Planning Secretary for a site compatibility certificate must not exceed \$5,580.

### **262B Fee for BASIX certificate**

- (1) The prescribed fee for the issue of a BASIX certificate is the fee set out in the Table to this clause.
- (2) Despite subclause (1), if the BASIX certificate is not issued under the computerised system referred to in clause 164A, the prescribed fee for the issue of the certificate is—

- (a) the fee set out in the Table to this clause plus, whichever is the lesser of—
  - (i) 50 per cent of that fee, or
  - (ii) \$250, or
- (b) if the development is not development that is set out in the Table to this clause—\$50.

**Table**

<b>Type of development</b>	<b>Maximum fee \$</b>
<b>New BASIX affected buildings</b>	
Single detached dwellings	50
Dual occupancies, multi dwelling housing (other than residential flat buildings) and attached dwellings—	
(a) for the first 2 dwellings, and	80
(b) for each dwelling more than 2 dwellings	35
Residential flat buildings—	
(a) for the first 3 dwellings, and	120
(b) for each dwelling more than 3 dwellings	20
<b>Alterations and additions to BASIX affected buildings</b>	
For each dwelling	25

- (3) Any fee prescribed under this clause is a maximum fee and may be waived or reduced in such circumstances as are approved by the Planning Secretary.

**262C Fee for strategic agricultural land site verification certificate**

The fee for the issue of a site verification certificate is \$3,900.

**263 Other fees** (cf clause 109 of EP&A Regulation 1994)

- (1) The maximum charge or fee that may be imposed under section 7.44(1) of the Act is—
  - (a) the amount determined by the Planning Secretary (either generally or in any particular case or class of cases), having regard to the cost to the Minister, corporation, Department or Planning Secretary 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 Planning Secretary of doing anything referred to in that subsection.
- (2) A consent authority or council may impose a fee of not more than \$36 for the lodging of any of the following certificates on the NSW planning portal—
    - (a) a complying development certificate,
    - (b) a Part 6 certificate, if it is—
      - (i) a construction certificate, or
      - (ia) a subdivision works certificate, or
      - (ii) an occupation certificate, or
      - (iii) a subdivision certificate.
  - (3) The Planning Secretary may, under section 7.44(1A) of the Act, require a proponent who has made a request referred to in clause 124G for an order that specified development be declared State significant development under section 4.36(3) of the Act to pay a fee of an amount determined by the Planning Secretary that does not exceed the reasonable costs incurred by the Department in exercising the functions under clause 124G in respect of that request.
  - (4) The Planning Secretary may, under section 7.44(1A) of the Act, require the payment of an initial fee of not more than \$5,000 for consideration of a request that the Minister or the Planning Secretary refer a matter to the Commission or to a regional panel.

**Note—**

The Commission and a regional panel may advise the Minister or Planning Secretary as to planning matters under sections 2.9(1)(c) and 2.15(c) of the Act, respectively.

- (5) If the Minister or the Planning Secretary determines to refer any such matter to the Commission or a regional panel, the Planning Secretary may, under section 7.44(1A) of the Act, require the payment by the person who requested the referral of a fee of not more than \$15,000 for the costs and expenses incurred by the Minister or Planning Secretary in preparing a report about the matter (including any necessary consultation with councils and other relevant agencies) or incurred by the Commission or the regional panel in providing advice to the Minister or the Planning Secretary.
- (6) A fee is not payable under subclause (4) or (5) in respect of a request referred to in subclause (3).

**263A Charge by way of re-imburement for certain local planning panel costs paid by**

### **Department**

- (1) This clause applies where the Minister, under section 2.17(5) of the Act, constitutes a local planning panel because the council has failed to do so and the costs of the panel are paid from the funds of the Department.
- (2) The Planning Secretary may, from time to time, impose a charge under section 7.44 of the Act on the council in connection with the constitution and operation of the panel not exceeding the amount of the costs of the panel that have been paid from the funds of the Department.
- (3) For the purposes of this clause, the costs of a local planning panel are the amounts paid in connection with the appointment and remuneration of members of the panel and for other expenses reasonable incurred by the panel in connection with its operation.

## **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 4.59 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 registration number of the principal certifier 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,
  - (ma) in the case of a consent subject to a condition under section 4.17(10B) of the Act, the outcome of any review carried out under the condition,
  - (n) the date of issue of any related subdivision or occupation certificate,
  - (o) any approvals taken, by section 4.12 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 4.58 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 application for a complying development certificate whether or not the council is the certifier—
  - (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 a registered certifier, the name and registration number of the registered certifier,
  - (f) the date of commencement of building or subdivision work the subject of the certificate,
  - (g) the name and registration number of the principal certifier 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 4.59 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 4.58 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 4.18 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) (Repealed)
  - (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) a copy of any notice published on the council's website in respect of the development consent as referred to in section 4.59 of the Act,
  - (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 certifier 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 performance solutions relating to construction certificates or compliance certificates together with details of the assessment methods used to establish compliance with the relevant performance requirements,
- (p) a copy of the record of any inspection made for the purposes of clause 143B in respect of the proposed development concerned.

- (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 certifier in those cases where the council is not the consent authority or certifier.

**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) a copy of any notice published on the council's website in respect of the complying development certificate as referred to in section 4.59 of the Act,
- (c) a copy of the notification of the appointment of the principal certifier 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 performance solutions relating to compliance certificates, together with details of the assessment methods used to establish compliance with the relevant performance requirements,
- (i) a copy of the record of any inspection made for the purposes of clause 129B in respect of the proposed development concerned,
- (j) a copy of each notice given to, or given by, the council under clause 130AB.

**267A Records relating to complaints**

- (1) A principal certifier for development must keep a written record of each complaint received by the certifier in relation to the development and any action taken by the certifier or response made in relation to the complaint.
- (2) The record must be kept for a period of 10 years from the date on which the complaint was received by the principal certifier.

**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 16A Provisions arising from commencement of [Local Government and Environmental Planning and Assessment Amendment \(Transfer of Functions\) Act 2001](#)**

**268A Development for temporary structures that are entertainment venues**

- (1) Except as otherwise provided by this clause, sections 6.6(2) and 6.10(2)(b) of the Act do not apply to the erection of a temporary structure in accordance with a development consent.
- (2) Sections 6.6(1), (2)(a) and (e) of the Act apply in relation to the erection of a temporary structure that is an entertainment venue.

**268B (Repealed)**

**Part 16B**

**268C-268X (Repealed)**

**Part 16C Paper subdivisions**

**Division 1 Preliminary**

**268Y Interpretation**

- (1) In this Part—

**consent ballot**—see clause 268ZC.

**co-owner** of a lot means a person who owns a lot jointly with 1 or more other persons.

- (2) Words and expressions used in this Part have the same meaning as they have in Schedule 7 to the Act.

**268YA Subdivision works**

- (1) For the purposes of the definition of **subdivision works** in Schedule 7 to the Act, works for the following purposes are prescribed—

(a) gas supply,

(b) remediation of contaminated land,

(c) demolition of a building or work if the demolition is required to carry out other subdivision works.

- (2) In this clause—

**contaminated land** has the same meaning as in Part 7A of the Act.

**remediation** has the same meaning as in [State Environmental Planning Policy No 55—Remediation of Land](#).

## **Division 2 Preparation and notice of proposed development plans**

### **268Z Additional matters to be included in development plans**

For the purposes of clause 6(2)(g) of Schedule 7 to the Act, a development plan is to include the following matters—

- (a) the land value of the land as determined by the Valuer-General under the *Valuation of Land Act 1916*,
- (b) if the development of the land is to be staged, a description of the proposed stages,
- (c) a proposed timetable for the subdivision of the land and the carrying out of the subdivision works.

### **268ZA Preparation of development plans**

- (1) An authority that proposes to prepare a development plan on its own initiative must notify the Minister in writing that it proposes to do so.
- (2) Any authority that prepares a development plan must consult with any public authorities likely to be affected by the proposed development plan and any council in whose area the land concerned is situated.
- (3) An authority must consider any submissions made by the public authorities or a council when preparing the proposed development plan.

### **268ZB Notice of proposed development plans and consent ballots**

- (1) An authority that proposes to adopt a development plan must, not less than 14 days before the ballot papers are issued for the consent ballot, publish on the NSW planning portal a notice containing the following information—
  - (a) that the authority proposes to adopt a development plan,
  - (b) the website on which the proposed development plan is published,
  - (c) the date by which a vote in the ballot to approve the development plan must be received and the address to which it must be sent,
  - (d) the name, contact phone number and email address of the authority.
- (2) The authority must also—
  - (a) give a copy of the notice to each council in whose area the land is situated, and
  - (b) display, on or in the vicinity of the land to which the development plan applies, a copy of the notice for not less than 28 days before the ballot closes, and
  - (c) publish the proposed development plan on a public website.

## **Division 3 Consent by owners**

### **268ZC Consent ballot to be held**

- (1) Consent to a proposed development plan by owners of the land subject to the plan is to be determined by the authority proposing the plan by holding a postal ballot (a **consent ballot**).
- (2) The authority must—
  - (a) determine the form of the ballot paper, and
  - (b) fix the dates for forwarding of ballots to owners and the closing of the ballot, and
  - (c) appoint a returning officer for the ballot.
- (3) The form of the ballot paper must be approved by the Planning Secretary.
- (4) Without limiting subclause (2), the ballot paper must specify, or require the owner to specify the following—
  - (a) the name of the owner and the lot and deposited plan particulars of all land held by the owner that is subject to the proposed development plan,
  - (b) the name of any other co-owner of a lot so specified.
- (5) The returning officer may be assisted by a person or persons approved by the authority.

### **268ZD Voting roll and ballot papers**

- (1) The returning officer must prepare a voting roll containing the following matters—
  - (a) the names and addresses of all of the owners of each lot of land subject to the proposed development plan,
  - (b) a unique identifier for each group of co-owners of land subject to the proposed development plan,
  - (c) the lot and deposited plan numbers, and area, of the lots of land owned by each owner (other than as a co-owner),
  - (d) the lot and deposited plan numbers, and area, of the lots of land owned by each group of co-owners (identified by the unique identifier for each group).
- (2) The returning officer must cause ballot papers to be prepared in the form determined by the authority and approved by the Planning Secretary.
- (3) Each ballot paper must—

- (a) be initialled by the returning officer or an appointed assistant, and
  - (b) bear a mark that identifies it as a genuine ballot paper.
- (4) Each owner of land subject to the proposed development plan is entitled to one ballot paper, whether or not the land consists of one or more lots and whether or not it is owned with other co-owners or the same co-owners.

**Note—**

For the purposes of determining the consent of an owner of land to a development order, 2 or more owners of the same lot of land are to be treated as one owner (see clause 3(3) of Schedule 7 to the Act and clause 268ZG(4)).

- (5) The returning officer must, at least 28 days before the date fixed for the closing of the ballot, send by post or otherwise deliver to every owner entitled to a ballot paper one set of the following material—
- (a) one ballot paper,
  - (b) a statement as to the place, date and time at which the proposed development plan is available for inspection or the address of a website where it may be found,
  - (c) an envelope (the **outer envelope**) addressed to the returning officer and the reverse side of which is noted or printed with the name and address of the owner and the lots and deposited plan numbers of the land to which the ballot paper relates,
  - (d) a small envelope (the **inner envelope**) in which the ballot paper is to be enclosed,
  - (e) a statement relating to the ballot in a form approved by the Planning Secretary.
- (6) The returning officer may send a duplicate ballot paper to any owner if the returning officer is satisfied that the owner has not received a ballot paper or that the ballot paper received by the owner has been lost, spoilt or destroyed and that the owner has not already voted.
- (7) If a duplicate ballot paper is sent, the relevant outer envelope is to be marked with the word “Duplicate”.

**268ZE Voting**

An owner casts a vote in a consent ballot by—

- (a) completing the ballot paper according to the instructions on the ballot paper, and
- (b) sending the ballot paper, in the envelopes provided, to the returning officer.

**268ZF Safe keeping of ballot papers**

- (1) The returning officer must provide a ballot box that must be secured immediately before the ballot papers are delivered to the owners in accordance with this Division and must remain secured until the close of the ballot.
- (2) The returning officer must place the outer envelopes in the ballot box not later than the time and date fixed on the ballot paper for the closing of the ballot.

**268ZG Counting of votes**

- (1) As soon as practicable after the date fixed for the closing of the consent ballot, the returning officer must, in the presence of such scrutineers as are appointed by the authority conducting the ballot, open the ballot box and deal with the contents in accordance with this clause.
- (2) The returning officer must—
  - (a) examine the outer envelopes, and
  - (b) if a duplicate outer envelope has been issued and the original outer envelope is received, reject the original envelope and mark it “rejected”, and
  - (c) mark the owner’s name on the roll by drawing a line through the name and the lots of land to which the envelope relates, and
  - (d) remove the inner envelopes from the outer envelopes, and
  - (e) when all the inner envelopes have been dealt with in the above manner, open all unrejected inner envelopes and take the ballot papers from them.
- (3) The ballot papers must be scrutinised by the returning officer who must count as informal any ballot paper that—
  - (a) is not duly initialled by the returning officer or appointed assistant or does not bear a mark that identifies it as a genuine ballot paper, or
  - (b) is so imperfectly completed that the intention of the voter cannot be ascertained by the returning officer, or
  - (c) has not been completed as prescribed on the ballot paper itself.
- (4) If a lot of land is owned by a group of co-owners, the votes are to be counted as follows—
  - (a) if all the co-owners or a majority of the co-owners of the lot cast a formal vote in favour of the development plan, the vote in respect of the lot is taken to be one formal vote consenting to the development plan for the lot,

- (b) in any other case, the vote is taken not to be a formal vote in favour of consent to the development plan in respect of the lot.

#### **268ZH Result of ballot**

- (1) The returning officer must count all votes cast and make out and sign a statement of—
  - (a) the total number of owners who are eligible to vote, and
  - (b) the number of formal votes by those owners consenting to the development plan, and
  - (c) the number of formal votes by those owners against consent to the development plan, and
  - (d) the number of informal votes by those owners, and
  - (e) the number of envelopes marked “rejected”, and
  - (f) the number of lots of land in respect of which no votes were cast, and
  - (g) the proportion of the total number of owners of lots subject to the proposed development plan who cast formal votes in favour of consent to the plan, and
  - (h) the proportion of the total area of the land subject to the proposed development plan that is owned by sole owners and groups of co-owners who have cast formal votes in favour of consent to the plan.

#### **Note—**

See clause 268ZG(4) for how the vote of groups of co-owners of the same lot is determined.

- (2) For the purposes of this clause, the **total number of owners** means the sum of—
  - (a) the total number of sole owners of lots (whether or not they are also the co-owners of other lots), and
  - (b) the total number of groups of co-owners of lots.
- (3) The returning officer must give the authority and the Planning Secretary written notice of the result of the consent ballot, together with a copy of the voting roll.

#### **268ZI Retention of ballots**

The returning officer must retain—

- (a) all ballot papers (whether formal or otherwise), and
- (b) all rejected outer envelopes, and

(c) the voting roll,

used in connection with the consent ballot, locked in the ballot box, for a period of not less than 3 months unless directed by the Planning Secretary to retain those items for a longer period.

## **Division 4 Adoption and amendment of development plans**

### **268ZJ Adoption of development plans**

- (1) A development plan is adopted by an authority if—
  - (a) the authority resolves to adopt the plan or takes such other action as is necessary to take the decision to adopt the plan, and
  - (b) the authority publishes notice of the adoption of the plan on the NSW planning portal within 28 days after the decision of the authority to adopt the plan.
- (2) An authority must not adopt a development plan unless it is satisfied that the consent of the owners, as referred to in clause 3(2)(g) of Schedule 7 to the Act, has been obtained in relation to that plan.
- (3) A development plan that is adopted by an authority is taken to be in force in relation to the subdivision land for the purposes of clause 4(5) of Schedule 7 to the Act.

### **268ZK Amendment of development plans**

A proposed amendment to a development plan is adopted by the relevant authority if—

- (a) the authority resolves to adopt the amendment or takes such other action as is necessary to take the decision to adopt the amendment, and
- (b) the authority gives written notice of the amendment to the Minister, the owners of the land to which the development plan applies and each council in whose area the land is situated within 28 days after the decision of the authority to adopt the amendment.

### **268ZL Additional requirements for amendments other than minor amendments**

- (1) An authority that proposes to adopt a major amendment to a development plan—
  - (a) must give notice of the proposed amendment in accordance with the requirements of clause 268ZB for proposed development plans, and
  - (b) must not adopt the proposed amendment unless at least 60% of the total owners of the land subject to the development plan, and the owners of at least 60% of the total area of that land, have consented to the amendment.
- (2) For the purposes of subclause (1)(b), a ballot is to be held in accordance with Division 3 and that Division applies in respect of the proposed amendment in the same way



that it applies to a proposed development plan.

- (3) An authority that proposes to adopt an amendment to a development plan that is not a major amendment or a minor amendment must—
- (a) publish a notice that complies with subclause (4) on the NSW planning portal, and
  - (b) give a written notice complying with subclause (4) to any council in whose area the land is situated, and
  - (c) display, on or in the vicinity of the land to which the development plan applies, a notice complying with subclause (4) during the submission period specified in the notice, and
  - (d) make the proposed amendment publicly available, and
  - (e) before adopting the amendment, consider any submissions received within the submission period specified in a notice given under this subclause.
- (4) The notice must specify the following—
- (a) the place, date and time at which the proposed amendment is available for inspection or the address of a website where it may be found,
  - (b) the period (being not less than 28 days) during which submissions may be made to the authority about the proposed amendment,
  - (c) the name, contact phone number and email address of the authority.
- (5) In this clause—

**major amendment** means an amendment to a development plan that is not a minor amendment and that—

- (a) in the opinion of the Minister, if adopted, would require an amendment to be made to the subdivision order relating to the land to which the development plan applies, or
- (b) amends provisions of the development plan that modify or disapply the provisions of Division 4 of Part 3 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).

**minor amendment** means an amendment to a development plan that—

- (a) corrects an error or misdescription, or
- (b) consists of a minor realignment of the boundaries of lots in the proposed plan of subdivision that will not create additional lots or the opportunity for additional dwellings, or
- (c) alters to a minor extent the location of roads or services to be provided, or

- (d) varies the proportion of costs to be borne by one or more owners of the land by not more than 5% in any particular case.

## **Division 5 Miscellaneous**

### **268ZM Contributions by owners**

- (1) A notice given under clause 9(1) of Schedule 7 to the Act must specify the following—
  - (a) the amount of the contribution sought,
  - (b) the period within which the contribution is to be paid (being a period of not less than 90 days).
- (2) For the purposes of clause 9(5) of Schedule 7 to the Act, the value of land dedicated or traded to the relevant authority in accordance with a development plan is the land value of the land, as at the date the land is dedicated or traded, as determined by the Valuer-General under the *Valuation of Land Act 1916*.

### **268ZN Powers of entry**

- (1) This clause applies to entry onto land under clause 15 of Schedule 7 to the Act.
- (2) Entry may be made only at any reasonable hour in the daytime or at any hour during which business is in progress or is usually carried on at the land.
- (3) At least 24 hours notice must be given to the owner or occupier of the land of the intention to enter the land.
- (4) An authorised person must not enter any part of premises being used for residential premises without the consent of the owner or occupier.

### **268ZO Notice to council of subdivision action**

A relevant authority must give written notice of the following matters to a council—

- (a) the adoption by the authority of a development plan relating to land within the area of the council,
- (b) the making of a subdivision order or an amendment to a subdivision order relating to land within the area of the council,
- (c) the completion of subdivision works carried out by or on behalf of the authority on land within the area of the council.

### **268ZP Reporting requirements for relevant authorities**

- (1) A relevant authority under a subdivision order must, not later than 3 months after the end of each financial year, report to the Minister in writing as to the following—

- (a) actions taken during that year by the authority for the purposes of implementing the development plan for the subdivision land,
  - (b) particulars of any purchases and sale or other acquisition or disposal of subdivision land by the authority during that year, including particulars of compensation and other amounts paid or received by the authority,
  - (c) particulars of contributions required to be made, and made or not made, by owners of subdivision land during that year under the subdivision order,
  - (d) particulars of amounts paid by the authority during that year from funds received for carrying out subdivision works,
  - (e) any other matter specified by the Minister by notice in writing to the authority relating to the subdivision order,
  - (f) any other matter the relevant authority thinks relevant to its functions as a relevant authority.
- (2) The relevant authority under a subdivision order must, as soon as practicable after it considers that the planning purpose of the order has been achieved and the development plan for the subdivision land implemented, or at the request of the Minister, provide the following to the Minister—
- (a) a schedule of completed subdivision works under the development plan for the subdivision land,
  - (b) the audited accounts of the authority in relation to its activities under the subdivision order,
  - (c) particulars of any unspent funds collected by the authority under the subdivision order,
  - (d) particulars of a proposed scheme for distribution of the unspent funds and of consultation with owners of the subdivision land as to that scheme,
  - (e) particulars of any purchases and sale or other acquisition or disposal of subdivision land by the authority for the purposes of the subdivision order, including particulars of amounts paid or received by the authority,
  - (f) particulars of any subdivision land owned by the authority,
  - (g) particulars of the notification by the authority of owners of the subdivision land of the completion of implementation of the development plan.

## **Part 17 Miscellaneous**

### **269 Notice of proposal to constitute development area** (cf clause 110 of EP&A Regulation

1994)

A notification under section 7.38(4) of the Act of the Planning Secretary'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 Contributions plans for Western Sydney Employment Area**

- (1) Pursuant to section 4.16(11) of the Act, a development application in relation to any land zoned IN1 General Industrial under *State Environmental Planning Policy (Western Sydney Employment Area) 2009* must not be determined by the consent authority unless a contributions plan under section 7.18 of the Act has been approved for the land to which the application relates.
- (2) Despite subclause (1), a consent authority may dispense with the need for a contributions plan 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 developer has entered into a planning agreement with a planning authority (within the meaning of section 7.1 of the Act) with respect to the matters that may be the subject of a contributions plan.

## **270A Contributions plans for Sydney Region Growth Centres**

- (1) This clause applies to land within a residential, business or industrial zone, Zone E4 Environmental Living or Zone 1 Urban Development under a Precinct Plan in *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.
- (2) Pursuant to section 4.16(11) of the Act, a development application in relation to any land to which this clause applies must not be determined by the consent authority unless a contributions plan under section 7.18 of the Act, authorising the imposition of conditions under section 7.11 of the Act, is in force in relation to the land to which the application relates.
- (3) Despite subclause (2), a consent authority may dispense with the need for a contributions plan 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 developer has entered into a planning agreement with a planning authority (within the meaning of section 7.1 of the Act) with respect to the matters that may be the subject of a contributions plan.
- (4) The application of this clause extends to a development application made to a consent authority but not finally determined before the commencement of this clause.

**271-271B (Repealed)**

**272 Planning for Bush Fire Protection**

For the purposes of section 4.14(1)(a) of the Act, the version of the document entitled *Planning for Bush Fire Protection* with ISBN 978 0 646 99126 9 and dated November 2019 is prescribed.

**273 Development excluded from application of requirements relating to bush fire prone land**

- (1) Development comprising the erection, on land in an urban release area, of a building that is, or is ancillary to, a dual occupancy, dwelling house or secondary dwelling is excluded from the application of section 4.14 of the Act if—
  - (a) the consent authority has been provided with a bush fire safety authority for the subdivision of the land that—
    - (i) was in force on the date on which the development application for the development was duly lodged, and
    - (ii) was issued no more than 5 years before that date, and
  - (b) the consent authority is satisfied that the proposed development complies with standards (concerning setbacks, asset protection zones, provision of water supply or other matters) specified in the bush fire safety authority that are relevant to that development, and
  - (c) the consent authority has been provided with a copy of a plan of subdivision that—
    - (i) shows bush fire attack levels for the land, and
    - (ii) contains a notation from the NSW Rural Fire Service showing that the plan was considered when the application for the bush fire safety authority was determined under the *Rural Fires Act 1997*, and
    - (iii) accompanies a certificate (a ***post-subdivision bush fire attack level certificate***) to the effect that, when the certificate was issued, the bush fire attack level of the part of the land on which the development is proposed to be carried out corresponded to the bush fire attack level shown on the plan and that part of the land was not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ).
- (2) The post-subdivision bush fire attack level certificate must—
  - (a) specify the address and formal particulars of title of the land to which it relates, and

- (b) specify the date on which it was issued, and
  - (c) contain identifying particulars of the bush fire safety authority, and
  - (d) if the subdivision to which the bush fire safety authority relates required development consent—contain identifying particulars of that development consent (such as the name of the applicable consent authority or certifier, the date on which the consent was granted or issued and any registered number of the consent).
- (3) A post-subdivision bush fire attack level certificate may only be issued by the NSW Rural Fire Service or a recognised consultant.
- (4) If an application for a post-subdivision bush fire attack level certificate is made to the NSW Rural Fire Service, it must be accompanied by the fee determined by the NSW Rural Fire Service.
- (5) The maximum fee that the NSW Rural Fire Service may charge for the application is as follows—
- (a) if the application relates to a single lot or proposed lot—\$500, or
  - (b) if the application relates to 2 to 10 lots or proposed lots—\$500, plus \$300 for each lot or proposed lot exceeding 1 lot, or
  - (c) if the application relates to 11 or more lots or proposed lots—\$3,200, plus \$150 for each lot or proposed lot exceeding 10 lots.
- (6) A recognised consultant must, within 7 days after issuing a post-subdivision bush fire attack level certificate, forward it to the Commissioner of the NSW Rural Fire Service.
- (7) The methodology for determining bush fire attack levels, for the purposes of this clause, is the methodology specified in *Planning for Bush Fire Protection* ISBN 978 0 646 99126 9 dated November 2019.
- (8) In this clause—

**AS 3959:2018** means the Australian Standard AS 3959:2018, *Construction of buildings in bushfire-prone areas*.

**bush fire attack level** has the same meaning as in AS 3959:2018.

**bush fire attack level-40 (BAL-40)** and **flame zone (BAL-FZ)** have the same meanings as in Appendix G to AS 3959:2018.

**Note—**

More information about bush fire attack levels, including the flame zone, can be found in Table A1.7 of *Planning for Bush Fire Protection* ISBN 978 0 646 99126 9 dated November 2019.

**bush fire safety authority** has the same meaning as in Division 8 of Part 4 of the *Rural Fires Act 1997*.

**dual occupancy, dwelling house** and **secondary dwelling** have the same meanings as in the Standard Instrument.

**recognised consultant** means a person recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment.

**urban release area** means land that is shown as being within an urban release area on the series of maps marked “*Bush Fire Planning—Urban Release Area Map*” (approved by the Planning Secretary, by notice published in the Gazette, and held in the head office of the Department), as amended by the maps (or specified sheets of maps) that are—

- (a) approved by the Planning Secretary, by notice published in the Gazette, and
- (b) marked as specified in that notice, and
- (c) held in the head office of the Department.

#### **273A Bush fire prone land map**

- (1) For the purposes of section 10.3(2A) of the Act, the Commissioner of the NSW Rural Fire Service may review the designation of land on a bush fire prone land map, and revise the map accordingly, if the land is in an urban release area (within the meaning of clause 273) and the Commissioner is of the opinion that the map needs to be revised—
  - (a) so that land on which the risk of bush fire is low is no longer recorded on the map as bush fire prone land, or
  - (b) so that land on which the bush fire risk is not low is recorded on the map as bush fire prone land, or
  - (c) to correct, or to record changes to, other information relating to land that is shown on the map.
- (2) For the purposes of forming an opinion under this clause, the Commissioner of the NSW Rural Fire Service may have regard to a post-subdivision bush fire attack level certificate applying in relation to the land or any other evidence that the Commissioner considers to be relevant.

#### **273B Transitional provision—Planning for Bush Fire Protection**

An amendment made to clause 272 or 273 by the *Environmental Planning and Assessment Amendment (Planning for Bush Fire Protection) Regulation 2020* does not apply to a development application made (but not determined) before 1 March 2020.

### **274 Release areas under SREP 30**

- (1) Pursuant to section 4.12(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, 274B (Repealed)**

### **275 Development assessment during precinct planning in North West and South West growth centres of Sydney Region**

- (1) Terms and expressions used in this clause and clause 276 have the same meaning they have in [State Environmental Planning Policy \(Sydney Region Growth Centres\) 2006](#) (the **Growth Centres SEPP**).
- (2) Pursuant to section 4.12(1) of the Act, a person cannot apply to a consent authority for consent to carry out development of a kind referred to in subclause (3) on land within a precinct of a growth centre that the Minister has declared under clause 276 to be released for urban development unless the application is accompanied by an assessment of the consistency of the proposed development with the relevant growth centre structure plan.
- (3) Subclause (2) applies to the carrying out of development (not being for a single residential dwelling)—
  - (a) with a capital investment value of more than \$500,000, or
  - (b) in respect of an area of land of more than 2 hectares, or
  - (c) that is a subdivision of land (being a subdivision that creates 2 or more lots).
- (4) This clause does not apply to land to which clause 17 of the [State Environmental Planning Policy \(Sydney Region Growth Centres\) 2006](#) does not apply.

#### **Note—**

After the release of a precinct for urban development and the completion of the planning process for the precinct, detailed land use and other development controls for the land will be included in the Growth Centres SEPP. A draft of those detailed provisions placed on public exhibition will be a draft amending environmental planning instrument and, accordingly, will be required by section 79C of the Act to be taken into consideration by a consent authority in determining any development application relating to the land concerned.

### **275A Development assessment in North and South East Wilton Precincts**

- (1) For the purposes of section 4.12 of the Act, a person cannot apply to a consent



authority for consent to carry out development on land within the North Wilton Precinct or the South East Wilton Precinct unless the application is accompanied by an assessment of the consistency of the proposed development with the relevant structure plans.

(2) In this clause—

**North Wilton Precinct** and **South East Wilton Precinct** have the same meanings as in *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

**relevant structure plans** means—

- (a) in relation to the North Wilton Precinct—the North Wilton structure plans within the meaning of Appendix 15 (North Wilton Precinct Plan) to *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*, and
- (b) in relation to the South East Wilton Precinct—the South East Wilton structure plans within the meaning of Appendix 14 (South East Wilton Precinct Plan) to *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

#### **275B Development assessment in Mamre Road Precinct**

(1) For the purposes of section 4.12(1) of the Act, a person cannot apply to a consent authority for consent to carry out development on land within the Mamre Road Precinct unless the application is accompanied by an assessment of the consistency of the proposed development with the Mamre Road Precinct Structure Plan.

(2) In this clause—

**Mamre Road Precinct** means the land identified as Mamre Road Precinct on the *Land Application Map* under the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*.

**Mamre Road Precinct Structure Plan** means the *Mamre Road Precinct Structure Plan* dated June 2020 and published on the Department's website.

#### **276 Growth Centres SEPP—release of precinct for urban development and planning process for the precinct**

(1) The Minister may, for the purposes of the Growth Centres SEPP, declare any precinct (or part of a precinct) to be released for urban development. The declaration is to be published in the Gazette and in such other manner as the Minister determines.

**Editorial note—**

For declarations under this subclause, see Gazettes No 1 of 5.1.2007, p 4; No 76 of 27.6.2008, p 6368; No 13 of 16.1.2009, p 331; No 50 of 6.3.2009, p 1318; No 152 of 23.10.2009, p 5479; No 105 of 20.8.2010, p 3919; No 79 of 5.8.2011, p 5130; No 124 of 23.11.2012, p 4808; No 57 of 10.5.2013, p 1662; No 97 of 2.8.2013, p 3613; No 76 of 12.9.2014, p 3053; No 88 of 9.10.2015, p 3180; No 70 of 2.9.2016, p 2383; No 56 of 26.5.2017, p 1782 and No 126 of 24.11.2017, p 7207.

- (2) The Minister is to make arrangements for the preparation of a development code that provides guidelines (in conjunction with the relevant growth centre structure plan) to assist environmental planning in precincts released for urban development.
- (3) The Minister is to consult—
  - (a) relevant councils about the making of declarations under this clause, and
  - (b) relevant councils and such public authorities as the Minister considers appropriate about the making of arrangements under this clause.

### 277 Public authorities

- (1) For the purpose of the definition of **public authority** in section 1.4(1) of the Act, Australian Rail Track Corporation Ltd is prescribed, but only so as—
  - (a) to enable the corporation to be treated as a public authority within the meaning of Part 3A of the Act in relation to development for the purposes of rail and related transport facilities that is declared to be a project to which Part 3A applies under *State Environmental Planning Policy (Major Development) 2005*, and
  - (b) to allow the corporation to be a determining authority within the meaning of Part 5 of the Act for—
    - (i) development for the purposes of rail infrastructure facilities, development in or adjacent to rail corridors and development for prescribed railways or railway projects that is permitted without consent by a public authority under *State Environmental Planning Policy (Infrastructure) 2007*, and
    - (ii) any other development for the purposes of rail infrastructure facilities and development in or adjacent to rail corridors within the meaning of that Policy that is permitted without consent under any other environmental planning instrument.
- (2) (Repealed)
- (3) For the purpose of the definition of **public authority** in section 1.4(1) of the Act, a Port Operator (within the meaning of *State Environmental Planning Policy (Three Ports) 2013*) is prescribed, but only so as to allow the Port Operator to be a determining authority within the meaning of Part 5 of the Act for development that is permitted without consent under that Policy on unzoned land or land in the Lease Area (within the meaning of that Policy) of the port concerned.
- (4) For the purpose of the definition of **public authority** in section 1.4(1) of the Act, the following universities are prescribed, but only so as to allow each university to be a determining authority within the meaning of Part 5 of the Act for development that is permitted without consent on land vested in, leased by or otherwise under the control or management of the university, under a provision of *State Environmental Planning*

*Policy (Infrastructure) 2007* or *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*—

- (a) Charles Sturt University,
  - (b) Macquarie University,
  - (c) Southern Cross University,
  - (d) University of New England,
  - (e) University of New South Wales,
  - (f) University of Newcastle,
  - (g) University of Sydney,
  - (h) University of Technology Sydney,
  - (i) Western Sydney University,
  - (j) University of Wollongong.
- (5) For the purpose of the definition of **public authority** in section 1.4(1) of the Act, an authorised network operator under the *Electricity Network Assets (Authorised Transactions) Act 2015* is prescribed, but only so as to allow the authorised network operator to be a determining authority within the meaning of Part 5 of the Act for development for the purposes of an electricity transmission or distribution network (within the meaning of *State Environmental Planning Policy (Infrastructure) 2007*) operated or to be operated by the authorised network operator and that is—
- (a) permitted without consent by a public authority under that Policy, or
  - (b) permitted without consent under any other environmental planning instrument.
- (6) For the purpose of the definition of **public authority** in section 1.4(1) of the Act, the proprietor of a registered non-government school is prescribed as a public authority (subject to subclause (7)), but only so as—
- (a) to enable the proprietor to be treated as a public authority in relation to development in connection with the school that is exempt development under clause 18 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, and
  - (b) to allow the proprietor to be a determining authority within the meaning of Part 5 of the Act for development that is permitted without consent under clause 36 of that Policy on land in a prescribed zone (within the meaning of clause 33 of that Policy).

- (7) Subclause (6) does not apply to a proprietor of a registered non-government school that the Planning Secretary determines is a school to which that subclause does not apply.
- (8) The Planning Secretary may vary or revoke a determination under subclause (7).
- (9) A determination under subclause (7), or a variation or revocation of a determination, takes effect when notice of it is published in the Gazette or on such later date as is specified in the determination, variation or revocation.
- (10) For the purpose of the definition of **public authority** in section 1.4(1) of the Act, the Regulatory Authority for New South Wales under the *Children (Education and Care Services) National Law (NSW)* (as declared by section 9 of the *Children (Education and Care Services National Law Application) Act 2010*) is prescribed as a public authority, but only for the purposes of section 3.18(2) of the Act.

**Note—**

Section 3.18(2) of the Act allows an environmental planning instrument to provide that a development application must not be determined by the granting of consent except with the concurrence of a Minister or public authority specified in the instrument.

- (11) To avoid doubt, a Minister of the Government of New South Wales is, for the purposes of the definition of **public authority** in section 1.4(1) of the Act, prescribed as a public authority in relation to section 4.5(c) of the Act.

**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 7.42(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 7.42(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 7.42(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)

- (1) The prescribed matters to be specified in a certificate under section 10.7(2) of the Act are the matters set out in Schedule 4.
- (2) A certificate under section 10.7(2) of the Act may be issued containing only the information set out in clause 3 of 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 6.25(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 6.25 of the Act,
- (e) the date on which the certificate is issued.

**281A Notice of orders under Schedule 5 to the Act**

- (1) If a consent authority (other than a council) proposes to give an order under Division 2A of Part 6 of the Act in relation to building work or subdivision work for which the consent authority is not the principal certifier, the consent authority must give the principal certifier notice of its intention to give the order.
- (2) A notice required to be given under subclause (1) by a consent authority or under clause 9(2) of Schedule 5 to the Act by a council must be given within 7 days after the notice of intention to give the order concerned is given under section 121H(1) of the Act.

**281B Form of compliance cost notices**

- (1) For the purposes of clause 37(6)(b) of Schedule 5 to the Act, a compliance cost notice must contain the following—
  - (a) details of the development to which the notice relates (including the address of the development),
  - (b) the name of the person to whom the notice is issued,
  - (c) the amount required to be paid under the notice,
  - (d) the period within which the amount is to be paid,
  - (e) the person to whom payment is to be made,
  - (f) the method by which payment is to be made,
  - (g) details of the costs and expenses claimed under the notice, including details of the relevant tasks undertaken, the hours spent completing those tasks, the relevant salary rates of the persons who have undertaken those tasks and any relevant out of pocket expenses,
  - (h) information setting out how a person may appeal against the notice under section 8.24 of the Act,
  - (i) details of the action that may be taken against a person to recover the amount specified in the notice if it is not paid before the end of the period allowed for payment.

- (2) The notice must be accompanied by a copy of the order to which the notice relates.

**281C Compliance cost notices—maximum amounts that may be required to be paid**

- (1) The maximum amount that may be required to be paid under a compliance cost notice in respect of any costs or expenses relating to an investigation that leads to the giving of an order is \$1,000.
- (2) The maximum amount that may be required to be paid under a compliance cost notice in respect of any costs or expenses relating to the preparation or serving of the notice of the intention to give an order is \$500.

**282 Planning Secretary may certify certain documents** (cf clause 113 of EP&A Regulation 1994)

The Planning Secretary is a prescribed officer for the certification of documents under section 10.8(1) of the Act.

**283 (Repealed)**

**283A Offences against this Regulation**

- (1) In this clause—

**offence provision** means a provision of this Regulation that is prescribed in Schedule 5 as a penalty notice offence in relation to an offence under this clause.

- (2) A person who contravenes an offence provision is guilty of an offence.

Maximum penalty—\$110,000.

**284 Penalty notice offences** (cf clause 115A of EP&A Regulation 1994)

- (1) For the purposes of section 9.58 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—

(i) if the person alleged to have committed the offence is an individual—Column 2 of Schedule 5, or

(ii) if the person alleged to have committed the offence is a corporation—Column 3 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 9.58 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 person employed in the Department) who is generally or specially authorised by the Planning Secretary 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,
  - (e) any **authorised fire officer** (being an authorised fire officer within the meaning of section 9.35(1)(d) of the Act).
- (4) Despite subclause (3), only the persons referred to in subclause (3)(a) and (b) are declared to be authorised persons for the purposes of section 9.58 of the Act for the following offences—
- (a) an offence under the Act in relation to a contravention of section 109D(2) or (3), 109E(3)(d), 109F(1)(b), 109H(3)(a) or (b), (4)(a), (5)(a) or (b) or (6)(a), 109J(1)(a), (b), (e), (f) or (g), or (2)(a), 5.14(1) or (2) or 10.4(11), or
  - (b) an offence under clause 283A in relation to a contravention of clause 130(3) or (4), 134(1), (2) or (2A), 138(1), (2) or (3), 142(1) or (2), 143A(2), 144(2), (5), (6) or (7), 146, 147(1) or (2), 151(1) or (2), 152(3), 153(1) or (2), 154A(2), 154B(2), 154C(1), 155(1) or (2), 157(5), 160(1) or (2), 162(1), 162B(1) or (2), 162C(4) or (5)(a) or (b), 227A(2) or 244P(1)(d).
- (5) Despite subclause (3), an authorised fire officer is declared to be an authorised person for the purposes of section 9.58 of the Act only in respect of the following—
- (a) an offence under section 9.37 of the Act in relation to a contravention of an order under Part 2 of Schedule 5 to the Act, where the order was given by an authorised fire officer,
  - (b) an offence under clause 283A in relation to a contravention of clause 183(1), 184(a), (b) or (c), 185(b), 186(a), (b) or (c), 186S or 186T,
  - (c) an offence referred to in section 6.34 of the Act in relation to a contravention of clause 186A(2), (3), (4), (5) or (6), 186AA(2) or 186C(1) or (1A).

### **285 Enforcement of orders by cessation of utilities**

- (1) For the purposes of clause 35(1)(b) of Schedule 5 to the Act, backpackers'



accommodation and boarding houses are prescribed.

- (2) For the purposes of clause 35(10) of Schedule 5 to the Act, the making of utilities orders for premises used as boarding houses is authorised.
- (3) In this clause, **backpackers' accommodation** and **boarding house** have the same meaning as they have in the Standard Instrument.

**285A Modification of Part 8.3 of the [Protection of the Environment Operations Act 1997](#)**

For the purposes of section 9.56(2A) of the Act, Part 8.3 (Court orders in connection with offences) of the [Protection of the Environment Operations Act 1997](#) applies subject to the following modifications—

- (a) references in that Part to preventing, controlling, abating or mitigating any harm to the environment caused by the commission of the offence are taken to include a reference to reversing or rectifying any unlawful development or activity related to the commission of the offence,
- (b) the terms **environment** and **public authority**, when used in that Part, have the same meaning as they have in the [Environmental Planning and Assessment Act 1979](#),
- (c) references in that Part to a “regulatory authority” or “the EPA” are to be read as references to a “public authority”,
- (d) the reference to the Environment Trust established under the [Environmental Trust Act 1998](#) in section 250(1)(e) is to be disregarded,
- (e) the maximum penalty for an offence under section 251 of failing to comply with an order is—
  - (i) in the case of a corporation—“\$50,000”, and
  - (ii) in the case of an individual—“\$10,000”.

**285B Provision of false or misleading information in connection with a planning matter**

- (1) The matters specified in this clause are declared to be the provision of information in connection with a planning matter for the purposes of section 10.6 of the Act.
- (2) The provision of information in response to a requirement imposed by any of the following conditions (except a condition imposed under section 9.40 of the Act)—
  - (a) a condition of development consent,
  - (b) a condition of an approval to carry out a project that is a transitional Part 3A project (as defined in clause 2 of Schedule 2 to the [Environmental Planning and Assessment \(Savings, Transitional and Other Provisions\) Regulation 2017](#)),

- (c) a condition of an approval to carry out State significant infrastructure under Division 5.2 of the Act.
- (3) The provision of information in or for the purposes of a submission in response to the public exhibition of any of the following documents—
  - (a) a draft strategic plan,
  - (b) a planning proposal,
  - (c) an environmental impact statement,
  - (d) a development application, an application for approval to carry out State significant infrastructure or any request or application to modify or amend an approval or development consent,
  - (e) any other plan, policy, strategy or document publicly exhibited for a planning purpose by the Department or a local council.

**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: staged introduction of 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).
- (4) The amendments to this Regulation made by the *Environmental Planning and Assessment Further Amendment (Building Sustainability Index: BASIX) Regulation 2006* do not apply to—
- (a) a development application, or application for a complying development certificate, that has been made before 1 October 2006, 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).

**286AA Savings and transitional provision: introduction of BASIX completion receipt**

The amendments to this Regulation made by the *Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulation 2006* apply only in respect of the issuing of a final occupation certificate for a BASIX affected building, or for part of such a building, on or after 1 July 2006.

**Note—**

An existing building may become a BASIX affected building by a change of building use. Under the Act, a final occupation certificate can be issued to authorise a person to commence a new use of an existing building resulting from a change of building use.

**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 (Repealed)**

**286D Savings and transitional provisions: existing uses**

- (1) Subject to subclause (2), the amendments to this Regulation made by the amending Regulation extend to and in respect of an existing use that was an existing use before the commencement of the amending Regulation (including a use that was taken to be an existing use for the purposes of the Act).

**Note—**

Before the commencement of the *Environmental Planning and Assessment Amendment (Existing Uses) Regulation 2006* clause 41 of this Regulation enabled an existing use to be changed to, among other uses, a use that would otherwise be prohibited under the Act and provided that a use to which an existing use was changed was itself taken to be an existing use.

- (2) The amendments to this Regulation made by the amending Regulation do not affect any—
  - (a) application for development consent in respect of an existing use—
    - (i) made before the commencement of the amending Regulation, or
    - (ii) made on or after the commencement of the amending Regulation that relates to—

- (A) the use of a building, work or land if that application arises from, or is consequential to, a development consent for subdivision that was granted before the commencement of the amending Regulation (or after that commencement by virtue of the operation of this clause), or
  - (B) the internal fitout, landscaping or other related development of a building, work or land if that application arises from, or is consequential to, a development consent relating to the building, work or land that was granted before the commencement of the amending Regulation (or after that commencement by virtue of the operation of this clause), 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 a development carried out under the authority of a development consent or complying development certificate arising from an application referred to in paragraph (a).
- (3) In this clause, **amending Regulation** means the *Environmental Planning and Assessment Amendment (Existing Uses) Regulation 2006*.

### **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 4.15(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 Planning Secretary'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 Planning Secretary'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 Development) 2005*.

### **288A Special provision for major events**

(1) This clause applies to the XI Federation of International Polo World Polo Championship Sydney 2017, which is declared to be a major event under the *Major Events Act 2009*.

**Note—**

See clause 6 of the *Major Events Regulation 2017*, which declares the XI Federation of International Polo World Polo Championship Sydney 2017 to be a major event and specifies that the declaration is in force from 9 October 2017 until 5 November 2017.

(2) Development for the purposes of a major event to which this clause applies during the period for which the declaration of the major event is in force—

(a) is not development for the purposes of the definition of **development** in section 4(1) of the Act, and

(b) is not an activity for the purposes of paragraph (k) of the definition of **activity** in section 110(1) of the Act.

(3) Subclause (2) extends to car parking required by, or associated with, the major event referred to in subclause (1) on the contingency parking site.

(4) In this clause, **contingency parking site** means the land shown edged heavy black on the *XI FIP World Polo Championship Contingency Parking Site Map*.

(5) A reference in this clause to a named map is a reference to a map of that name in force on the commencement of this clause and held in the Department of Planning and Environment.

### **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 Planning Secretary, 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 Planning Secretary under section 68(4) of the Act before 31 December 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—

- (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, or
- (b) in the case of a provision that is not inconsistent with, and capable of operating in conjunction with, the principal local environmental planning instrument—6 months after that day.

(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.

### **291 Savings and transitional provisions**

- (1) Clause 130(2A) applies to a complying development certificate only if the application for the certificate was made after 1 March 2008.
- (2) Clause 144A applies to a construction certificate only if the application for the certificate was made after 1 March 2008.
- (3) Clause 153A applies to an occupation certificate only if the application for the certificate was made after 1 March 2008 and the certificate is for a building resulting from building work in respect of which a compliance certificate under clause 130(2A) or 144A is required.
- (4) In relation to building work or a building to which clause 130(2A), 144A or 153A does not apply immediately before 1 March 2011 because of the operation of clause 130(2B) or 144A(2), subclauses (1)–(3) have effect as if a reference to 1 March 2008 were a reference to 1 March 2011.
- (5) Any requirement to issue a fire safety schedule that arose under clause 168 before its amendment by the *Environmental Planning and Assessment Amendment (Complying Development and Fire Safety) Regulation 2013* continues to apply as if that Regulation had not been made.



**291A Transitional provisions relating to Part 4A certificates and planning agreements**

- (1) The amendment made to clause 25E by the *Environmental Planning and Assessment Amendment (Part 4A Certificates and DCPs) Regulation 2011* applies only in relation to planning agreements for which public notice is given under clause 25D on or after 25 February 2011.
- (2) The amendments made to this Regulation by the *Environmental Planning and Assessment Amendment (Part 4A Certificates and DCPs) Regulation 2011* apply only in relation to an application for a construction certificate, occupation certificate or subdivision certificate made on or after 25 February 2011.

**291B Savings and transitional provision—abolition of Wagga Wagga Interim Joint Planning Panel**

- (1) This clause applies on the repeal of the *Environmental Planning and Assessment (Wagga Wagga Interim Joint Planning Panel) Order 2009*, which constitutes the Wagga Wagga Interim Joint Planning Panel.
- (2) Any function that the Wagga Wagga Interim Joint Planning Panel had under a direction made under section 54 of the Act is taken, on the repeal, to be a function of the Southern Region Joint Planning Panel, subject to any further direction by the Minister.
- (3) Anything done or omitted by the Wagga Wagga Interim Joint Planning Panel in relation to an unresolved matter that, on the repeal, becomes a matter that can be determined by the Southern Region Joint Planning Panel, is taken to have been done or omitted by the Southern Region Joint Planning Panel.
- (4) In this clause an **unresolved matter** means a matter that has not been finally determined by the Wagga Wagga Interim Joint Planning Panel.

**291C Transitional provision relating to CodeMark scheme**

The amendment made to clause 224 by the *Environmental Planning and Assessment Further Amendment (Miscellaneous) Regulation 2018* applies to any of the following applications made, but not determined, on or before 1 September 2018—

- (a) development applications,
- (b) applications for a complying development certificate,
- (c) applications for a construction certificate.

**292 (Repealed)**

**293 Deemed refusal period for Court appeals**

- (1) For the purposes of section 8.22(2) of the Act, the period of 40 days after the date of the application to extend the period after which a development consent expires is

prescribed.

- (2) For the purposes of section 8.25(1)(b) of the Act, the period of 40 days after the following (whichever last occurs) is prescribed—
  - (a) the date of the application for the building information certificate,
  - (b) if the applicant receives a notice under section 6.26(2) of the Act to supply information—the date on which the information is supplied.

**294 Special provisions for public hearings or public meetings of planning bodies during COVID-19 pandemic**

- (1) This clause applies to public hearings or public meetings of planning bodies held during the prescribed period.
- (2) The public hearing or public meeting must—
  - (a) be held by means of an audio link or audio visual link, and
  - (b) be able to be heard or viewed by electronic means by a member of the public at the time it is held.
- (3) A notice of the public hearing or public meeting must include information about how a member of the public may hear or view the hearing or meeting.
- (4) During the public hearing or public meeting, the planning body may adjourn the hearing or meeting to a specified time or date if the planning body considers the adjournment necessary.
- (5) To avoid doubt, any notice required to be given of the public hearing or public meeting is not required to be given in respect of the adjournment.
- (6) A requirement that a person attend the public hearing or public meeting is taken to be satisfied if the person participates by means of an audio link or audio visual link.
- (7) Clause 25(3) of Schedule 2 to the Act applies to a public hearing of a planning body in the same way it applies to a public meeting of a planning body.
- (8) This clause extends to all public hearings or public meetings of planning bodies held during the prescribed period regardless of whether the requirement to hold the hearing or meeting arose before the prescribed period.
- (9) Despite subclause (8), a notice given before the commencement of this clause is not invalid because it does not include the matter required by subclause (3).
- (10) In this clause—

***planning body*** has the same meaning as it has in Schedule 2 to the Act.

**prescribed period** has the same meaning as it has in section 10.17 of the Act.

### 295 Use of NSW planning portal

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

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

**relevant authority** means a consent authority, a concurrence authority, an approval body, a council, a registered certifier or the Planning Secretary.

### 296 Transitional provision relating to phasing in of NSW planning portal

- (1) Despite amendments made by the *Environmental Planning and Assessment Amendment (Planning Portal) Regulation 2020*, the consent authority or certifier, as the case requires, may require an application for any of the following to be made in accordance with this Regulation as if the amendments had not been made—
  - (a) development consent,
  - (b) modification of a development consent under section 4.55 or 4.56 of the Act,
  - (c) review of a determination under section 8.3 of the Act,
  - (d) a construction certificate,
  - (e) a subdivision works certificate,
  - (f) an occupation certificate,
  - (g) a subdivision certificate.

- (2) This clause ceases to have effect on—
- (a) for an application made in respect of land in a relevant local government area—31 December 2020, and
  - (b) for an application made in respect of any other land—1 July 2021.
- (3) In this clause—

**relevant local government area** means the local government areas of Bayside, Blacktown, Blue Mountains, Burwood, Camden, Campbelltown, Canada Bay, Canterbury-Bankstown, Central Coast, Cessnock, Coffs Harbour, Cumberland, Fairfield, Georges River, Hawkesbury, Hornsby, Hunters Hill, Inner West, Kiama, Ku-ring-gai, Lake Macquarie, Lane Cove, Liverpool, Maitland, Mid Coast, Mosman, Newcastle, North Sydney, Northern Beaches, Parramatta, Penrith, Port Macquarie-Hastings, Port Stephens, Randwick, Ryde, Shellharbour, Shoalhaven, Strathfield, Sutherland, City of Sydney, The Hills, Tweed, Waverley, Wingecarribee, Willoughby, Woollahra, Wollondilly or Wollongong.

#### **297 Savings and transitional provision—occupation certificates**

- (1) The amendments to this Regulation made by the amending Regulation do not apply to an application for an occupation certificate made before the commencement of the amending Regulation.
- (2) In this clause, **amending Regulation** means the *Environmental Planning and Assessment Amendment (Occupation Certificates) Regulation 2020*.

### **Schedule 1 Forms**

(Clauses 50, 126 and 139)

## **Part 1 Development applications**

### **1 Information to be included in development application**

- (1) A development application must contain the following information—
- (a)–(e) (Repealed)
  - (ea) for biodiversity compliant development, an indication of the reason why the development is biodiversity compliant development,
  - (f) a list of any authorities from which concurrence must be obtained before the development may lawfully be carried out or from which concurrence would have been required but for section 4.13(2A) or 4.41,
  - (f1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like

biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the *Biodiversity Conservation Act 2016*,

- (f2) if the land is subject to a private land conservation agreement under the *Biodiversity Conservation Act 2016*, a description of the kind of agreement and the area to which it applies,
- (g) a list of any approvals of the kind referred to in section 4.46(1) of the Act that must be obtained before the development may lawfully be carried out.
- (g1)-(j) (Repealed)

(2) In this Schedule, **biodiversity compliant development** means—

- (a) development proposed to be carried out on biodiversity certified land within the meaning of Part 7AA of the *Threatened Species Conservation Act 1995*, or
- (b) development in respect of which a biobanking statement has been issued in respect of the development under Part 7A of the *Threatened Species Conservation Act 1995*, or
- (c) development to which the biodiversity certification conferred by Part 7 of Schedule 7 to the *Threatened Species Conservation Act 1995* applies, or
- (d) development for which development consent is required under a biodiversity certified EPI (within the meaning of Part 8 of Schedule 7 to the *Threatened Species Conservation Act 1995*).

## 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 or State significant 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 or State significant 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), but not if the development application is for State significant development,
- (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 and other than a temporary structure)—
    - (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,
  - (k1) in the case of development comprising mining for coal (within the meaning of section 380AA of the *Mining Act 1992*)—documentary evidence that the applicant holds an authority under the *Mining Act 1992* in respect of coal and the land concerned or has the written consent of the holder of such an authority to make the development application,
  - (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,
  - (m) in the case of BASIX optional development—if the development application is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A for it to be so accompanied), such other documents as any BASIX certificate for the development requires to accompany the application,
  - (n) if the development involves the erection of a temporary structure, the following documents—

- (i) documentation that specifies the live and dead loads the temporary structure is designed to meet,
  - (ii) a list of any proposed fire safety measures to be provided in connection with the use of the temporary structure,
  - (iii) in the case of a temporary structure proposed to be used as an entertainment venue—a statement as to how the performance requirements of Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia* are to be complied with (if a performance solution, to meet the performance requirements, is to be used),
  - (iv) documentation describing any accredited building product or system sought to be relied on for the purposes of section 4.15(4) of the Act,
  - (v) copies of any compliance certificates to be relied on,
- (o) in the case of a development involving the use of a building as an entertainment venue or a function centre, pub, registered club or restaurant—a statement that specifies the maximum number of persons proposed to occupy, at any one time, that part of the building to which the use applies.
- (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 (other than temporary structures),
  - (c1) elevations and sections showing heights of any proposed temporary structures and the materials of which any such structures are proposed to be made (using the abbreviations set out in clause 7 of this Schedule),

- (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,
  - (i) in the case of BASIX optional development—if the development application is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A for it to be so accompanied), 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 Planning Secretary for the purposes of this clause.
- (5) In addition, a statement of environmental effects referred to in subclause (1)(c) or an environmental impact statement in respect of State significant development must include the following, if the development application relates to residential apartment development to which [State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development](#) applies—
- (a) an explanation of how—
    - (i) the design quality principles are addressed in the development, and
    - (ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the 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.

(5A) The species impact statement referred to in subclause (1)(f) is not required in relation to the effect of the development on any threatened species, populations or ecological communities, or their habitats, if the development is taken to be development that is not likely to significantly affect those threatened species, populations or ecological communities, or their habitats, because it is biodiversity compliant development.

- (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) In addition to the documents required by clause 2, a development application for any BASIX affected development must also be accompanied by a BASIX certificate or BASIX certificates for the development, being a BASIX certificate or BASIX certificates that has or have been issued no earlier than 3 months before the date on which the application is made.
- (2) If the proposed development involves the alteration, enlargement or extension of a BASIX affected building that contains more than one dwelling, a separate BASIX certificate is required for each dwelling concerned.

## **Part 2 Complying development certificates**

### **3 (Repealed)**

#### **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 and other than a temporary structure)—
    - (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,
  - (f1) if the development involves the erection of a wall to a boundary that has a wall less than 0.9m from the boundary, a report by a professional engineer, within the meaning of the *Building Code of Australia*, outlining the proposed method of supporting the adjoining wall,
  - (f2) if the development involves the demolition or removal of a wall to a boundary that has a wall less than 0.9m from the boundary, a report by a professional

- engineer, within the meaning of the *Building Code of Australia*, outlining the proposed method of maintaining support for the adjoining wall after the demolition or removal,
- (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,
  - (h) in the case of BASIX optional development—if the application for a complying development certificate is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A for it to be so accompanied), such other documents as any BASIX certificate for the development requires to accompany the application,
  - (i) if the development involves the erection of a temporary structure, the following documents—
    - (i) documentation that specifies the live and dead loads the temporary structure is designed to meet,
    - (ii) a list of any proposed fire safety measures to be provided in connection with the use of the temporary structure,
    - (iii) in the case of a temporary structure proposed to be used as an entertainment venue—a statement as to how the performance requirements of Part B1 and NSW Part H102 of Volume One of the *Building Code of Australia* are to be complied with (if a performance solution, to meet the performance requirements, is to be used),
    - (iv) documentation describing any accredited building product or system sought to be relied on for the purposes of section 4.28(4) of the Act,
    - (v) copies of any compliance certificates to be relied on,
  - (j) in the case of a development involving the use of a building as an entertainment venue or a function centre, pub, registered club or restaurant—a statement that specifies the maximum number of persons proposed to occupy, at any one time, that part of the building to which the use applies,
  - (j1) if the development—
    - (i) is for a purpose specified in clause 39(1) (Existing schools—complying development) of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, and
    - (ii) will result in the school being able to accommodate 50 or more additional students,
- a certificate issued by Roads and Maritime Services certifying that any impacts on

- the surrounding road network as a result of the development are acceptable or will be acceptable if specified requirements are met,
- (k) a certificate issued by Roads and Maritime Services certifying that any impacts on the surrounding road network as a result of the development are acceptable or will be acceptable if specified requirements are met, but only in a case where—
- (i) the development is for the purposes of a new building, or the alteration of or addition to an existing building, to which Part 5A of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* applies, and
  - (ii) the total gross floor area of the new building or the existing building as altered or added to will be 5,000 square metres or more, and
  - (iii) the site on which the development is to be carried out has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90 metres of the connection,
- (l) if the development is proposed to be carried out on land referred to in clause 126(2), a statement issued by a qualified person certifying that—
- (i) the land is suitable for the intended purpose of the development having regard to the contamination status of the land, or
  - (ii) the land would be so suitable if the remediation works specified in the statement were carried out,
- (m) if a development standard applying to the development requires that development must be set back from any registered easement—
- (i) a copy of the certificate of title for the lot on which the development is to be carried out, and
  - (ii) if the land is subject to a registered easement—a title diagram for the lot and any adjoining lot that benefits from the easement,
- (n) if the development involves the erection or alteration of, or an addition to, a dual occupancy, manor house or multi dwelling housing (terraces)—a statement (in the form approved by the Planning Secretary) by a qualified designer or a person accredited as a building designer by the Building Designers Association of Australia that—
- (i) verifies that he or she designed, or directed the design of, the development, and
  - (ii) addresses how the design is consistent with the relevant design criteria set out

in the Medium Density Design Guide (within the meaning of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*).

- (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 (other than temporary structures),
  - (c1) elevations and sections showing heights of any proposed temporary structures and the materials of which any such structures are proposed to be made (using the abbreviations set out in clause 7 of this Schedule),
  - (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,
  - (i) in the case of BASIX optional development—if the application for a complying development certificate is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A for it to be so

accompanied), 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 a performance solution, to meet the performance requirements, is to be used),
  - (d) a description of any accredited building product or system sought to be relied on for the purposes of section 4.28(4) of the Act,
  - (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,
  - (h) in the case of BASIX optional development—if the application for a complying development certificate is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 4A for it to be so accompanied), 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 alarm communication link work must be accompanied by—
- (a) a plan that indicates the location of the new fire alarm communication link and any associated works, and
  - (b) a document that describes the design, construction and mode of operation of the new fire alarm communication link and any associated works.
- (5B) An application for a complying development certificate that relates only to an alteration to a hydraulic fire safety system must be accompanied by—
- (a) a plan that indicates the location of the hydraulic fire safety system alteration and any associated works, and
  - (b) a document that describes—
    - (i) the required pressure and flow characteristics of the hydraulic fire safety system that is to be altered, and

- (ii) the pressure and flow characteristics that will be available from the town main following mains pressure reduction by or on behalf of the relevant water utility, and
  - (iii) the design, construction and performance of the hydraulic fire safety system alteration and any associated works.
- (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.
- (7) In subclause (1)(l), **qualified person** means a person who has the competencies that are essential to contaminated site assessment and investigation as set out in the document entitled *Schedule B9 Guideline on Competencies and Acceptance of Environmental Auditors and Related Professionals* published by the National Environment Protection Council in 2013.

#### **4A BASIX certificate required for certain development**

- (1) In addition to the documents required by clause 4, an application for a complying development certificate for any BASIX affected development must also be accompanied by a BASIX certificate or BASIX certificates for the development, being a BASIX certificate or BASIX certificates that has or have been issued no earlier than 3



months before the date on which the application is made.

- (2) If the proposed development involves the alteration, enlargement or extension of a BASIX affected building that contains more than one dwelling, a separate BASIX certificate is required for each dwelling concerned.

**4B Relationship with [State Environmental Planning Policy \(Port Botany and Port Kembla\) 2013](#)**

Clause 4(1)(l) of this Schedule does not apply to complying development carried out under the complying development provisions of [State Environmental Planning Policy \(Three Ports\) 2013](#) in the Lease Area within the meaning of clause 4 of that Policy.

## **Part 3 Construction certificates**

### **5 (Repealed)**

### **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)—
    - (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) (Repealed)
  - (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 a performance solution, to meet the performance requirements, is to be used),

- (d) a description of any accredited building product or system sought to be relied on for the purposes of section 4.15(4) of the Act,
- (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 alarm communication link works must be accompanied by—

- (a) a plan that indicates the location of the new fire alarm communication link and any associated works, and
- (b) a document that describes the design, construction and mode of operation of the new fire alarm communication link and describes any associated works.

(3B) An application for a construction certificate that relates only to an alteration to a hydraulic fire safety system must be accompanied by—

- (a) a plan that indicates the location of the hydraulic fire safety system alteration and any associated works, and
- (b) a document that describes—
  - (i) the required pressure and flow characteristics of the hydraulic fire safety system that is to be altered, and
  - (ii) the pressure and flow characteristics that will be available from the town main following mains pressure reduction by or on behalf of the relevant water utility, and
  - (iii) the design, construction and performance of the hydraulic fire safety system alteration and any associated works.

(4) (Repealed)

#### **6A BASIX certificate required for certain development**

(1) This clause applies to—

- (a) BASIX affected development, and

- (b) BASIX optional development in relation to which a person made a development application that has been accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A for it to be so accompanied).
- (2) In addition to the documents required by clause 6, an application for a construction certificate for any development to which this clause applies must also be accompanied by a BASIX certificate or BASIX certificates for the development, being either the BASIX certificate applicable to the development when the relevant development consent was granted or some other BASIX certificate or BASIX certificates that has or have been issued no earlier than 3 months before the date on which the application is made.
- (3) If the proposed development involves the alteration, enlargement or extension of a BASIX affected building that contains more than one dwelling, a separate BASIX certificate is required for each dwelling concerned.

## **Part 3A Subdivision works certificates**

### **6AA (Repealed)**

### **6AB Documents to accompany application for subdivision works certificate**

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

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

(ix) erosion control works,

(d) copies of any compliance certificates to be relied on.

## 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

### Part 1 Definitions

#### 1 Definitions

In this Schedule—

***environmental assessment requirements*** means the requirements of the Planning

Secretary under Part 2.

**infrastructure** means State significant infrastructure.

**responsible authority** means the relevant consent authority or determining authority or, in the case of State significant infrastructure, the Minister.

**responsible person** means the applicant or proponent responsible for preparing an environmental impact statement.

## Part 2 Requirements of Planning Secretary and approval bodies

### 2 Application of Part

This Part applies to an environmental impact statement prepared under section 4.12(8) or 5.7 of the Act.

### 3 Environmental assessment requirements

- (1) Before preparing an environmental impact statement, the responsible person must make a written application to the Planning Secretary for the environmental assessment requirements with respect to the proposed statement.
  - (2) The application is to be in a form approved by the Planning Secretary and must include particulars of the location, nature and scale of the development or activity.
  - (3) The Planning Secretary may require the responsible person to provide further particulars.
  - (4) In preparing the environmental assessment requirements with respect to an application for State significant development, the Planning Secretary must consult relevant public authorities and have regard to the need for the requirements to assess any key issues raised by those public authorities.
- (4A) Without limiting subclause (4)—
- (a) if a gateway certificate has been issued in relation to State significant development to which an application for environmental assessment requirements relates, the Planning Secretary, in preparing the requirements, must address any recommendations of the Gateway Panel set out in the certificate, and
  - (b) if a gateway certificate has been issued by operation of clause 17I(3) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* in relation to the State significant development to which an application for environmental assessment requirements relates, the Planning Secretary, in preparing the requirements, must consult with the Gateway Panel and have regard to the need for the requirements to assess any key issues raised by that Panel.

- (4B) If a gateway certificate in respect of proposed State significant development is issued after environmental assessment requirements for that proposed development have been notified under this clause, the Planning Secretary—
- (a) must have regard to any recommendations of the Gateway Panel set out in the gateway certificate, and
  - (b) may modify the requirements in accordance with subclause (5).
- (5) The Planning Secretary is to notify the responsible person and (where relevant) the responsible authority in writing within the required time of the environmental assessment requirements. The Planning Secretary may modify those requirements by further notice in writing.
- (6) The Planning Secretary may impose environmental assessment requirements by reference to specified publications.
- (7) If the development application or application for approval to which the environmental impact statement relates is not made within 2 years after notice is last given under subclause (5), the responsible person must consult further with the Planning Secretary in relation to the preparation of the statement.
- (8) The responsible person must ensure that an environmental impact statement complies with any environmental assessment requirements that have been provided in writing to the person in accordance with this clause.
- (9) The Planning Secretary may at any time waive (unconditionally or subject to conditions) the requirement for an application under this clause in relation to any particular development or activity or any particular class or description of development or activity other than the following—
- (a) integrated development,
  - (b) State significant development that, but for section 4.41 of the Act, would require an authorisation specified in that section,
  - (c) State significant development in respect of which an authorisation (other than a consent under section 138 of the [Roads Act 1993](#)) must be given under section 4.42 of the Act.
  - (d) (Repealed)
- (10) In this clause, **required time** means—
- (a) within 28 days after the application is made under subclause (1), or
  - (b) if the Planning Secretary has requested further particulars, within 28 days after those particulars have been provided to the Planning Secretary, or

- (c) within such further time as is agreed between the Planning Secretary and the applicant.

#### **4 Integrated development—requirements of approval bodies**

- (1) An application for environmental assessment requirements must, in the case of a development application for integrated development, also include particulars of the approvals that are required.
- (2) Following any such application, the Planning Secretary must request, in writing, each relevant approval body to provide the Planning Secretary with that approval body's requirements in relation to the environmental impact statement.
- (3) The Planning Secretary is to notify an approval body of the environmental assessment requirements and of any modification to those requirements but only if the approval body has provided the Planning Secretary with written notice of its requirements within 14 days after receipt of the Planning Secretary's request under subclause (2).
- (4) If the approval body's requirements have not been provided within that time, the Planning Secretary must inform the responsible person in writing and the responsible person—
  - (a) must apply to the approval body for its requirements in relation to the environmental impact statement, and
  - (b) in completing the environmental impact statement must have regard to those requirements if they are provided to the responsible person.
- (5) In this clause—

***approval body's requirements*** means the approval body's requirements in relation to an 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).

### **Part 3 General provisions**

#### **5 Application of Part**

This Part applies to an environmental impact statement prepared under section 4.12(8), 5.7 or 5.16(2) of the Act.

#### **6 Form of environmental impact statement**

An environmental impact statement must contain 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 responsible person,
- (c) the address of the land—
  - (i) in respect of which the development application is to be made, or
  - (ii) on which the activity or infrastructure to which the statement relates is to be carried out,
- (d) a description of the development, activity or infrastructure to which the statement relates,
- (e) an assessment by the person by whom the statement is prepared of the environmental impact of the development, activity or infrastructure to which the statement relates, dealing with the matters referred to in this Schedule,
- (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 this Schedule, and
  - (ii) the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates, and
  - (iii) that the information contained in the statement is neither false nor misleading.

## **7 Content of environmental impact statement**

- (1) An environmental impact statement must also include each of the following—
  - (a) a summary of the environmental impact statement,
  - (b) a statement of the objectives of the development, activity or infrastructure,
  - (c) an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure,
  - (d) an analysis of the development, activity or infrastructure, including—
    - (i) a full description of the development, activity or infrastructure, and
    - (ii) a general description of the environment likely to be affected by the development, activity or infrastructure, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and
    - (iii) the likely impact on the environment of the development, activity or infrastructure, and

- (iv) a full description of the measures proposed to mitigate any adverse effects of the development, activity or infrastructure on the environment, and
- (v) a list of any approvals that must be obtained under any other Act or law before the development, activity or infrastructure may lawfully be carried out,
- (e) a compilation (in a single section of the environmental impact statement) of the measures referred to in item (d)(iv),
- (f) the reasons justifying the carrying out of the development, activity or infrastructure in the manner proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development set out in subclause (4).

**Note—**

A cost benefit analysis may be submitted or referred to in the reasons justifying the carrying out of the development, activity or infrastructure.

- (2) Subclause (1) is subject to the environmental assessment requirements that relate to the environmental impact statement.
- (3) Subclause (1) does not apply if—
  - (a) the Planning Secretary has waived (under clause 3(9)) the need for an application for environmental assessment requirements in relation to an environmental impact statement in respect of State significant development, and
  - (b) the conditions of that waiver specify that the environmental impact statement must instead comply with requirements set out or referred to in those conditions.
- (4) The principles of ecologically sustainable development are as follows—
  - (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.

#### **8 Sale of copies of environmental impact statement**

A responsible authority—

- (a) may sell copies of an environmental impact statement to any member of the public for not more than \$25 per copy, and
- (b) must pay the proceeds of any sale to the responsible person, and
- (c) must return to the responsible person any unsold copies of the environmental impact statement.

#### **9 Documents forming part of environmental impact statement**

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

#### **10 Responsible authority may require additional copies**

The responsible authority may require a responsible person to give it as many additional copies of an environmental impact statement as are reasonably required for the purposes of the Act.

### **Part 4 Special provisions for State significant infrastructure**

#### **11 Application of Part**

This Part applies to environmental assessment requirements and environmental impact

statements under Division 5.2 of the Act.

## **12 Environmental assessment requirements for State significant infrastructure**

In preparing the environmental assessment requirements with respect to an application for State significant infrastructure, the Planning Secretary—

- (a) may require the responsible person to provide further particulars, and
- (b) may impose environmental assessment requirements by reference to specified publications.

## **13 Environmental assessment requirements of Planning Secretary**

The responsible person must ensure that an environmental impact statement complies with the environmental assessment requirements that have been notified to the proponent by the Planning Secretary under section 5.16 of the Act.

## **14 Environmental impact statement submitted 2 years after requirements notified**

If an environmental impact statement is not submitted to the Planning Secretary under section 5.17 of the Act within 2 years after notice is last given under section 5.16(4) of the Act, the responsible person must consult further with the Planning Secretary in relation to the preparation of the statement.

# **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) (Repealed)
  - (b) aquaculture development to which Part 5 of *State Environmental Planning Policy (Primary Production and Rural Development) 2019* applies, or
  - (c) artificial waterbodies located on relevant irrigation land.

**Note—**

The term **relevant irrigation land** is defined in clause 38.

**Note—**

Part 5 of *State Environmental Planning Policy (Primary Production and Rural Development) 2019* 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 storage capacity of more than 800 megalitres, or
  - (c) from which more than 30,000 cubic metres per year of material is to be removed.
- (1A) Artificial waterbodies located on relevant irrigation land—
- (a) that have a storage capacity of 100 megalitres or more and are in an environmentally sensitive area, or
  - (b) that have a storage capacity of 800 megalitres or more.
- (2) This clause does not apply to artificial waterbodies located on land to which [State Environmental Planning Policy \(Penrith Lakes Scheme\) 1989](#) applies.
- (3) Subclause (1) does not apply to artificial waterbodies located on relevant irrigation land.

**Note—**

The term **relevant irrigation land** is defined in clause 38.

**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 under 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 Planning Secretary 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
- (e1) artificial waterbodies located on relevant irrigation land, or

**Note—**

The term **relevant irrigation land** is defined in clause 38.

- (f) (Repealed)
- (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 Planning Secretary and published in the Gazette, as amended by the Planning Secretary 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 under 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 Intensive livestock agriculture**

- (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 or 4,000 sheep (excluding facilities for drought or similar emergency relief).
- (1A) A facility or confined area operated on a commercial basis for the keeping or breeding of horses that accommodates more than 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) Pig farms—
  - (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 for egg production 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 under 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 and sewer mining systems**

- (1) Sewerage systems or works (not being development for the purpose of sewer mining 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 flood plain, or
    - (ii) within a coastal dune field, or
    - (iii) within a drinking water catchment, or
    - (iv) within 100 metres of a natural waterbody or wetland, or
    - (v) within 250 metres of a dwelling not associated with the development.
- (2) Sewerage systems or works that incinerate sewage or sewage products.
- (3) Sewer mining systems or works that extract and treat more than 1,500 kilolitres of sewage per day.
- (4) This clause does not apply to—
  - (a) the pumping out of sewage from recreational vessels, or
  - (b) sewer mining systems or works that distribute treated water that is intended to be used solely for industrial purposes.

## **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
- (a1) artificial waterbodies located on relevant irrigation land, or

**Note—**

The term **relevant irrigation land** is defined in clause 38.

- (b) development comprising or involving waste management facilities or works specifically referred to elsewhere in this Schedule, or
- (c) (Repealed)

### **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.

**Note—**

Development referred to in this clause is not designated development for the purposes of section 4.10 of the Act. This means that section 8.8 of the Act (Appeal by an objector) will not extend to any such development even if it is State significant 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 Planning Secretary 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 Planning Secretary 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.

### **37A Ancillary development**

- (1) Development of a kind specified in Part 1 is not designated development if—
  - (a) it is ancillary to other development, and
  - (b) it is not proposed to be carried out independently of that other development.
- (2) Subclause (1) does not apply to development of a kind specified in clause 29(1)(a).

### **37B Development in Parkes Activation Precinct**

The following development is not designated development if it is carried out on land within the Regional Enterprise Zone in the Parkes Activation Precinct under [State Environmental Planning Policy \(Activation Precincts\) 2020](#)—

- (a) development for the purposes of thermal electricity generating works,
- (b) development of a kind specified in clause 4, 6, 8, 13, 16, 21, 22, 26 or 28.

## **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) a declared catchment area within the meaning of the [Water NSW Act 2014](#), 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 5 of the [Marine Estate Management Act 2014](#), or
- (d) land reserved or dedicated within the meaning of the [Crown Land Management Act 2016](#) 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).

**relevant irrigation land** means—

- (a) land in the area of operations of any irrigation corporation (within the meaning of Part 1 of Chapter 4 of the [Water Management Act 2000](#)), or
- (b) land shown edged heavy black on the [East Cadell Map](#) under [State Environmental Planning Policy \(Primary Production and Rural Development\) 2019](#).

**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).

**sewer mining systems or works** means systems or works for—

- (a) the extraction of sewage from a sewerage system (whether before or after the sewage has been through the system's sewage treatment plant), and
- (b) the treatment of the sewage (using physical, chemical or biological processes) to produce treated water that is suitable for its intended end use, and
- (c) the distribution of the treated water for that use, and
- (d) the return of any waste to a sewerage system that is the subject of a licence under the [Protection of the Environment Operations Act 1997](#).

**sludge** means semi-liquid particulate matter produced as a by-product of agricultural

produce industries, aquaculture, breweries or distilleries, intensive livestock agriculture, 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, sedgelands, 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, sedgelands 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 3A Entertainment venues**

(Clause 98C)

#### **1 Nitrate film**

An entertainment venue must not screen a nitrate film.

#### **2 Stage management**

During a stage performance, there must be at least one suitably trained person in attendance in the stage area at all times for the purpose of operating, whenever necessary, any proscenium safety curtain, drencher system and smoke exhaust system.

#### **3 Proscenium safety curtains**

If a proscenium safety curtain is installed at an entertainment venue—

- (a) there must be no obstruction to the opening or closing of the safety curtain, and
- (b) the safety curtain must be operable at all times.

#### **4 Projection suites**

- (1) (Repealed)

- (2) When a film is being screened at an entertainment venue, at least one person trained in the operation of the projectors being used and in the use of the fire fighting equipment provided in the room where the projectors are installed (the **projection room**) must be in attendance at the entertainment venue.
- (3) If the projection room is not fitted with automatic fire suppression equipment and a smoke detection system, in accordance with the *Building Code of Australia*, the person required by subclause (2) to be in attendance must be in the projection suite in which the projection room is located during the screening of a film.
- (4) No member of the public is to be present in the projection suite during the screening of a film.

#### **5-10 (Repealed)**

#### **11 Emergency evacuation plans**

- (1) An emergency evacuation plan must be prepared, maintained and implemented for any building (other than a temporary structure) used as an entertainment venue.
- (2) An **emergency evacuation plan** is a plan that specifies the following—
  - (a) the location of all exits, and fire protection and safety equipment, for any part of the building used as an entertainment venue,
  - (b) the number of any fire safety officers that are to be present during performances,
  - (c) how the audience are to be evacuated from the building in the event of a fire or other emergency.
- (3) Any fire safety officers appointed to be present during performances must have appropriate training in evacuating persons from the building in the event of a fire or other emergency.

#### **12, 13 (Repealed)**

### **Schedule 4 Planning certificates**

(Clause 279)

#### **1 Names of relevant planning instruments and DCPs**

- (1) The name of each environmental planning instrument that applies to the carrying out of development on the land.
- (2) The name of each proposed environmental planning instrument that will apply to the carrying out of development on the land and that is or has been the subject of community consultation or on public exhibition under the Act (unless the Planning Secretary has notified the council that the making of the proposed instrument has

been deferred indefinitely or has not been approved).

- (3) The name of each development control plan that applies to the carrying out of development on the land.
- (4) In this clause, proposed environmental planning instrument includes a planning proposal for a LEP or a draft environmental planning instrument.

## **2 Zoning and land use under relevant LEPs**

For each environmental planning instrument or proposed instrument referred to in clause 1 (other than a SEPP or proposed SEPP) 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 instrument provides that development may be carried out within the zone without the need for development consent,
- (c) the purposes for which the instrument provides that development may not be carried out within the zone except with development consent,
- (d) the purposes for which the 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.

### **2A Zoning and land use under [State Environmental Planning Policy \(Sydney Region Growth Centres\) 2006](#)**

To the extent that the land is within any zone (however described) under—

- (a) Part 3 of the [State Environmental Planning Policy \(Sydney Region Growth Centres\) 2006](#) (**the 2006 SEPP**), or
- (b) a Precinct Plan (within the meaning of the 2006 SEPP), or
- (c) a proposed Precinct Plan that is or has been the subject of community consultation or on public exhibition under the Act,

the particulars referred to in clause 2(a)–(h) in relation to that land (with a reference to “the instrument” in any of those paragraphs being read as a reference to Part 3 of the 2006 SEPP, or the Precinct Plan or proposed Precinct Plan, as the case requires).

### **3 Complying development**

- (1) The extent to which the land is land on which complying development may be carried out under each of the codes for complying development because of the provisions of clauses 1.17A(1)(c) to (e), (2), (3) and (4), 1.18(1)(c3) and 1.19 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.
- (2) The extent to which complying development may not be carried out on that land because of the provisions of clauses 1.17A(1)(c) to (e), (2), (3) and (4), 1.18(1)(c3) and 1.19 of that Policy and the reasons why it may not be carried out under those clauses.
- (3) If the council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land, a statement that a restriction applies to the land, but it may not apply to all of the land, and that council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land.

### **4, 4A (Repealed)**

#### **4B Annual charges under *Local Government Act 1993* for coastal protection services that relate to existing coastal protection works**

In relation to a coastal council—whether the owner (or any previous owner) of the land has consented in writing to the land being subject to annual charges under section 496B of the *Local Government Act 1993* for coastal protection services that relate to existing coastal protection works (within the meaning of section 553B of that Act).

**Note—**

“Existing coastal protection works” are works to reduce the impact of coastal hazards on land (such as seawalls, revetments, groynes and beach nourishment) that existed before the commencement of section 553B of the *Local Government Act 1993*.

### **5 Mine subsidence**

Whether or not the land is proclaimed to be a mine subsidence district within the meaning of the *Coal Mine Subsidence Compensation Act 2017*.

### **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, tidal inundation, subsidence, acid sulphate soils or any other risk (other than flooding).

## **7A Flood related development controls information**

- (1) Whether or not development on that land or part of the land for the purposes of dwelling houses, dual occupancies, multi dwelling housing or residential flat buildings (not including development for the purposes of group homes or seniors housing) is subject to flood related development controls.
- (2) Whether or not development on that land or part of the land for any other purpose is subject to flood related development controls.
- (3) Words and expressions in this clause have the same meanings as in the Standard Instrument.

## **8 Land reserved for acquisition**

Whether or not any environmental planning instrument or proposed environmental planning instrument referred to in clause 1 makes provision in relation to the acquisition of the land by a public authority, as referred to in section 3.15 of the Act.

## **9 Contributions plans**

The name of each contributions plan applying to the land.

## **9A Biodiversity certified land**

If the land is biodiversity certified land under Part 8 of the *Biodiversity Conservation Act 2016*, a statement to that effect.

### **Note—**

Biodiversity certified land includes land certified under Part 7AA of the *Threatened Species Conservation Act 1995* that is taken to be certified under Part 8 of the *Biodiversity Conservation Act 2016*.

## **10 Biodiversity stewardship sites**

If the land is a biodiversity stewardship site under a biodiversity stewardship agreement under Part 5 of the *Biodiversity Conservation Act 2016*, a statement to that effect (but only if the council has been notified of the existence of the agreement by the Chief

Executive of the Office of Environment and Heritage).

**Note—**

Biodiversity stewardship agreements include biobanking agreements under Part 7A of the *Threatened Species Conservation Act 1995* that are taken to be biodiversity stewardship agreements under Part 5 of the *Biodiversity Conservation Act 2016*.

**10A Native vegetation clearing set asides**

If the land contains a set aside area under section 60ZC of the *Local Land Services Act 2013*, a statement to that effect (but only if the council has been notified of the existence of the set aside area by Local Land Services or it is registered in the public register under that section).

**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 approved under Part 4 of the *Native Vegetation Act 2003* (and that continues in force) 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).

**13 Orders under *Trees (Disputes Between Neighbours) Act 2006***

Whether an order has been made under the *Trees (Disputes Between Neighbours) Act 2006* to carry out work in relation to a tree on the land (but only if the council has been notified of the order).

**14 Directions under Part 3A**

If there is a direction by the Minister in force under section 75P(2)(c1) of the Act that a provision of an environmental planning instrument prohibiting or restricting the carrying out of a project or a stage of a project on the land under Part 4 of the Act does not have effect, a statement to that effect identifying the provision that does not have effect.

**15 Site compatibility certificates and conditions for seniors housing**

If the land is land to which *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* applies—

- (a) a statement of whether there is a current site compatibility certificate (seniors housing), of which the council is aware, in respect of proposed development on the land and, if there is a certificate, the statement is to include—

- (i) the period for which the certificate is current, and
  - (ii) that a copy may be obtained from the head office of the Department, and
- (b) a statement setting out any terms of a kind referred to in clause 18(2) of that Policy that have been imposed as a condition of consent to a development application granted after 11 October 2007 in respect of the land.

**16 Site compatibility certificates for infrastructure, schools or TAFE establishments**

A statement of whether there is a valid site compatibility certificate (infrastructure) or site compatibility certificate (schools or TAFE establishments), of which the council is aware, in respect of proposed development on the land and, if there is a certificate, the statement is to include—

- (a) the period for which the certificate is valid, and
- (b) that a copy may be obtained from the head office of the Department.

**17 Site compatibility certificates and conditions for affordable rental housing**

- (1) A statement of whether there is a current site compatibility certificate (affordable rental housing), of which the council is aware, in respect of proposed development on the land and, if there is a certificate, the statement is to include—
- (a) the period for which the certificate is current, and
  - (b) that a copy may be obtained from the head office of the Department.
- (2) A statement setting out any terms of a kind referred to in clause 17(1) or 38(1) of [State Environmental Planning Policy \(Affordable Rental Housing\) 2009](#) that have been imposed as a condition of consent to a development application in respect of the land.

**18 Paper subdivision information**

- (1) The name of any development plan adopted by a relevant authority that applies to the land or that is proposed to be subject to a consent ballot.
- (2) The date of any subdivision order that applies to the land.
- (3) Words and expressions used in this clause have the same meaning as they have in Part 16C of this Regulation.

**19 Site verification certificates**

A statement of whether there is a current site verification certificate, of which the council is aware, in respect of the land and, if there is a certificate, the statement is to include—

- (a) the matter certified by the certificate, and

**Note—**

A site verification certificate sets out the Planning Secretary's opinion as to whether the land concerned is or is not biophysical strategic agricultural land or critical industry cluster land—see Division 3 of Part 4AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

- (b) the date on which the certificate ceases to be current (if any), and
- (c) that a copy may be obtained from the head office of the Department.

## 20 Loose-fill asbestos insulation

If the land includes any residential premises (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*) that are listed on the register that is required to be maintained under that Division, a statement to that effect.

## 21 Affected building notices and building product rectification orders

- (1) A statement of whether there is any affected building notice of which the council is aware that is in force in respect of the land.
- (2) A statement of—
  - (a) whether there is any building product rectification order of which the council is aware that is in force in respect of the land and has not been fully complied with, and
  - (b) whether any notice of intention to make a building product rectification order of which the council is aware has been given in respect of the land and is outstanding.
- (3) In this clause—

**affected building notice** has the same meaning as in Part 4 of the *Building Products (Safety) Act 2017*.

**building product rectification order** has the same meaning as in the *Building Products (Safety) Act 2017*.

### Note—

The following matters are prescribed by section 59(2) of the *Contaminated Land Management Act 1997* as additional matters to be specified in a planning certificate—

- (a) that the land to which the certificate relates is significantly contaminated land within the meaning of that Act—if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,
- (b) that the land to which the certificate relates is subject to a management 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 an approved voluntary management proposal within the meaning of that Act—if it is the subject of such an approved proposal at the date when the certificate is issued,
- (d) that the land to which the certificate relates is subject to an ongoing maintenance order within the meaning of that Act—if it



is subject to such an order at the date when the certificate is issued,

- (e) that the land to which the certificate relates is the subject of a site audit statement within the meaning of that Act—if a copy of such a statement has been provided at any time to the local authority issuing the certificate.

## Schedule 5 Penalty notice offences

(Clause 284)

Column 1	Column 2	Column 3
Offence	Individual \$	Corporation \$
<b>The following provisions of the Act</b>		
section 75D (as applying to a transitional Part 3A project under Schedule 2 to the <i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i> )—		
(a) in the case of a penalty notice served by a person referred to in clause 284(3)(c) or (d), or	3,000	6,000
(b) in any other case	7,500	15,000
section 4.2—		
(a) in the case of a class 1a or class 10 building	1,500	3,000
(b) in the case of development that, at the time of the alleged offence, is designated development or state significant development that is not a class 1a or a class 10 building—		
(i) in the case of a penalty notice served by a person referred to in clause 284(3)(c) or (d), or	3,000	6,000
(ii) in any other case	7,500	15,000
(b1) in the case of a contravention of clause 27A(2) of <i>State Environmental Planning Policy No 64—Advertising and Signage</i>	1,500	3,000
(c) in any other case	3,000	6,000
section 4.3		
(a) in the case of a contravention of clause 27A(1) of <i>State Environmental Planning Policy No 64—Advertising and Signage</i>	1,500	3,000
(b) in any other case	3,000	6,000
section 81A(2)—		

(a) in the case of the erection of a class 1a or class 10 building	1,500	3,000
(b) in any other case	3,000	6,000
section 81A(4)	1,500	3,000
section 85A(10A)	1,500	3,000
section 86(1)—		
(a) in the case of the erection of a class 1a or class 10 building	1,500	3,000
(b) in any other case	3,000	6,000
section 86(2)	1,500	3,000
section 109D(2) or (3)	3,000	6,000
section 109E(3)(d)	1,500	3,000
section 109F(1)(b)	1,500	3,000
section 109H(3)(a) or (b), (4)(a), (5)(a) or (b) or (6)(a)	3,000	6,000
section 109J(1)(a), (b), (e), (f) or (g) or (2)(a)	3,000	6,000
section 109M(1)—		
(a) in the case of a class 1a or class 10 building	1,500	3,000
(b) in any other case	3,000	6,000
section 109N(1)—		
(a) in the case where the change of building use results in a class 1a or class 10 building	1,500	3,000
(b) in any other case	3,000	6,000
section 5.14(1)	7,500	15,000
section 5.14(2)	7,500	15,000
section 9.25(1)	3,000	6,000
section 9.37 for failure to comply with development control order (except an order referred to in item 6, 10, 12 or 13 of Schedule 5)	3,000	6,000
section 9.42(3)	3,000	6,000
section 10.4(11)	1,500	3,000
Section 10.6(1) of the Act in the case where the person ought reasonably to have known that the information provided was false or misleading	1,500	3,000

**Clause 283A of this Regulation in relation to contravention of the following provisions of this Regulation**

clause 130(3) or (4)	1,500	3,000
clause 134(1) or (2A)	1,500	3,000
clause 134(2)	3,000	6,000
clause 138(1), (2) or (3)	1,500	3,000
clause 142(1) or (2)	1,500	3,000
clause 143A(2)	3,000	6,000
clause 144(2), (5), (6) or (7)	3,000	6,000
clause 146	1,500	3,000
clause 147(1)	1,500	3,000
clause 147(2)	3,000	6,000
clause 151(1) or (2)	1,500	3,000
clause 152(2), (3) or (5)	1,500	3,000
clause 153(1) or (2)	3,000	6,000
clause 154A(2)	1,500	3,000
clause 154B(2)	1,500	3,000
clause 154C(1)	500	1,000
clause 155(1)	1,500	3,000
clause 155(2)	3,000	6,000
clause 157(5)	500	1,000
clause 160(1) or (2)	1,500	3,000
clause 162(1)	1,500	3,000
Clause 162AA(4)	200	200
clause 162B(1)	1,500	3,000
clause 162B(2)	500	1,000
clause 162C(4) or (5)(a) or (b)	1,500	3,000
clause 163	1,500	3,000
clause 169(2)	3,000	6,000
clause 172(1)(b)	1,500	3,000
clause 177(1)—		

(a) 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	1,000	1,000
(b) 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	2,000	2,000
(c) 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	3,000	3,000
(d) 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	4,000	4,000
clause 177(3)(b)	580	580
clause 180(1)—		
(a) 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	1,000	1,000
(b) 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	2,000	2,000
(c) 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	3,000	3,000
(d) 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	4,000	4,000
clause 180(3)(b)	580	580
clause 182(1)	3,000	6,000
clause 183(1)	1,500	1,500
clause 184(a), (b) or (c)	1,500	1,500
clause 185(b)	1,500	1,500
clause 186(a), (b) or (c)	1,500	1,500
clause 186N	3,000	6,000
clause 186O(1)	3,000	6,000
clause 186P	580	580

clause 186S	1,500	3,000
clause 186T	3,000	6,000
clause 227A(2)	580	580
clause 244P(1)(d)	3,000	6,000

**Section 6.34 of the Act in relation to contravention of the following provisions of this Regulation**

clause 186A(2) or (4)	200	200
clause 186A(3), (5) or (6)	300	300
clause 186AA(2)	200	200
clause 186C(1) or (1A)	200	200

**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 4.16(3) of the Act or a development consent for staged development pursuant to section 4.16(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 4.19 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 Certifier**

For the purposes of the Act, the Minister—

(a) is taken to have been appointed as the principal certifier for development authorised by a converted Part 5 approval, and

(b) is the only certifier 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 4.18(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 6.6(2)(c) 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 6.6(2)(e) or 6.12(2)(c) and 4.58(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 4.58(1) to a council is to be read as a reference to the Director-General.
- (7) The reference in section 4.58(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 6.31(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 9.34(1) is to be read as authorising only the Minister to make an order referred to in that subsection.
- (15) A reference in Schedule 5 (other than Parts 1, 2, and 3) 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 6.22–6.26 and 8.25 (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) Section 6.25(1)(a)(iii), (3)(b) and (4)(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](#).

## **Schedule 7 (Repealed)**