



New South Wales

Environmental Planning and Assessment Further Amendment Regulation 2010

under the

Environmental Planning and Assessment Act 1979

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

TONY KELLY, MLC
Minister for Planning

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* as follows:

- (a) to permit existing commercial and light industrial uses of 1,000m² or more to be changed to certain other uses,
- (b) to revoke provisions that would have made it a requirement after 1 March 2011 that all building work involving an alternative solution in respect of a fire safety requirement would need a fire safety engineer to certify that the alternative solution complied with the Building Code of Australia,
- (c) to require an application for a BASIX completion receipt to be made before the issuing of an occupation certificate,
- (d) to require the installation of smoke alarms in campervans, caravans, holiday vans, park vans, annexes and associated structures in which persons sleep,
- (e) to increase a number of existing fees and to create a new fee for the issuing of BASIX certificates,
- (f) to provide for the form of a compliance cost notice and to specify that such a notice cannot require the payment of certain costs and expenses,
- (g) to make transitional arrangements for the repeal of existing development control plans on the making of a standard instrument that applies to the land to which those plans apply.

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Explanatory note

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 105, 108, 121CA, 127A, 137, 146A, 149B and 157 (the general regulation-making power) and clause 1 (1) of Schedule 6.

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Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Further Amendment Regulation 2010*.

2 Commencement

- (1) This Regulation commences on 25 February 2011 except as provided by subclauses (2) and (3) and is required to be published on the NSW legislation website.
- (2) Schedule 1 [16]–[62] and [64] commence on 1 July 2011.
- (3) Schedule 1 [66] commences on 1 January 2011.

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[1] Clause 41 Certain development allowed

Omit “use, and” from clause 41 (2) (d). Insert instead “use.”.

[2] Clause 41 (2) (e)

Omit the paragraph.

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

Omit “Until 28 February 2011, subclause” from clause 130 (2B).

Insert instead “Subclause”.

[4] Clause 130 (2C)

Omit the subclause.

**[5] Clause 144A Compliance certificate required for certain fire safety
aspects of building work**

Omit “Until 28 February 2011, this” from clause 144A (2).

Insert instead “This”.

[6] Clause 144A (3)

Omit the subclause.

[7] Clause 154C BASIX completion receipt

Omit clause 154C (1A). Insert instead:

- (1A) This clause applies to BASIX affected development in respect of which one or more relevant BASIX certificates require a certifying authority to monitor fulfilment of any of the commitments listed in the certificate.

[8] Clause 154C (1)

Omit “Within 2 days after issuing”. Insert instead “Before issuing”.

[9] Clause 154C (2) (c)

Omit the paragraph. Insert instead:

- (c) the date of the final inspection,

[10] Clause 186AA

Insert after clause 186A:

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 capable of being registered under the *Road Transport (Vehicle Registration) Act 1997*.
- (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,

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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.

[11] **Clause 186B Specifications for smoke alarms**

Insert after clause 186B (1):

- (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).

[12] **Clause 186B (3)**

Insert “, other than in a moveable dwelling to which clause 186AA applies” at the end of the subclause.

[13] **Clause 186B (6)**

Insert after subclause (5):

- (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.

[14] **Clause 186C Persons must not remove or interfere with smoke alarms**

Insert after clause 186C (1):

- (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.

[15] Clause 186G

Insert after clause 186F:

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.

[16] Clause 245B Determination of fees payable for Part 3A application

Omit "\$750" from section 245B (5). Insert instead "\$850".

[17] Clause 245E Maximum fee—marinas

Omit "\$5,000, plus \$500" from section 245E (1).

Insert instead "\$5,660, plus \$565".

[18] Clause 245F Maximum fee—extractive industries

Omit "\$5,000, plus \$0.05" from section 245F (1) (a).

Insert instead "\$5,660, plus \$0.06".

[19] Clause 245G Maximum fee—subdivision of land

Omit "\$5,000 plus \$300" from section 245G (1) (a).

Insert instead "\$5,660, plus \$340".

[20] Clause 245G (1) (a)

Omit "\$30,000". Insert instead "\$34,000".

[21] Clause 245G (1) (b) and (c)

Omit "\$750" wherever occurring. Insert instead "\$850".

[22] Clause 245H

Omit the clause. Insert instead:

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

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additional fee is payable within 14 days after the
Director-General notifies the proponent that the additional fee is
payable.

**[23] Clause 245I Additional application fee for making environmental
assessment publicly available**

Omit "\$2,500". Insert instead "\$2,830".

[24] Clause 245K Fee for request for modification of Minister's approval

Omit clause 245K (2). Insert instead:

(2) The maximum fee for a request for modification that the
Director-General 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
Director-General considers will involve a minor environmental
assessment is \$5,000.

[25] Clause 245K (3) (b)

Omit "\$2,000". Insert instead "\$5,000".

[26] Clause 245K (4)

Omit "\$2,500". Insert instead "\$2,830".

[27] Clause 245L Fee for review by Planning Assessment Commission

Omit "\$50,000" from clause 245L (2), wherever occurring.

Insert instead "\$56,600".

[28] Clause 245M Fee for investigation of potential State significant site

Omit "\$20,000 plus an additional fee of \$1,000" from clause 245M (2).

Insert instead "\$22,650 plus an additional fee of \$1,130".

[29] Clause 246 Fee for development application

Omit "\$215, plus \$70" from clause 246 (2) (a).

Insert instead "\$285, plus \$93".

[30] Clause 247 Fee for dwelling-house—construction cost under \$100,000

Omit "\$364". Insert instead "\$455".

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- [31] **Clause 248 Additional fee—residential flat development**
Omit “\$600”. Insert instead “\$760”.
- [32] **Clause 249 Maximum fee—subdivision of land**
Omit “\$500 plus \$50” from clause 249 (a) (i).
Insert instead “\$665, plus \$65”.
- [33] **Clause 249 (a) (ii)**
Omit “\$250 plus \$40”. Insert instead “\$330, plus \$53”.
- [34] **Clause 249 (b)**
Omit “\$250 plus \$50”. Insert instead “\$330, plus \$65”.
- [35] **Clause 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**
Omit “\$220”. Insert instead “\$285”.
- [36] **Clause 251 Additional fee—designated development**
Omit “\$715”. Insert instead “\$920”.
- [37] **Clause 252 Additional fees—development requiring advertising**
Omit “\$1,665” from clause 252 (1) (a). Insert instead “\$2,220”.
- [38] **Clause 252 (1) (b), (c) and (d)**
Omit “\$830” wherever occurring. Insert instead “\$1,105”.
- [39] **Clause 252A Additional fees—development requiring concurrence**
Omit “\$110” from clause 252A (1). Insert instead “\$140”.
- [40] **Clause 252A (5)**
Omit “\$250”. Insert instead “\$320”.
- [41] **Clause 253 Additional fees—integrated development**
Omit “\$110” from clause 253 (1). Insert instead “\$140”.
- [42] **Clause 253 (4)**
Omit “\$250”. Insert instead “\$320”.
- [43] **Clause 257 Fee for request for review of determination**
Omit “\$150” from clause 257 (b). Insert instead “\$190”.

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[44] Clause 257

Omit “not more than \$500”. Insert instead “not more than \$620”.

[45] Clause 258 Fee for application for modification of consent for local development

Omit “\$55” from clause 258 (1). Insert instead “\$71”.

[46] Clause 258 (1A)

Omit “\$500”. Insert instead “\$645”.

[47] Clause 258 (2) (b) (ii)

Omit “\$150”. Insert instead “\$190”.

[48] Clause 258 (2)

Omit “\$500”. Insert instead “\$665”.

[49] Clause 258 (2A)

Omit “\$600”. Insert instead “\$760”.

[50] Clause 259 Fee for planning certificate

Omit “\$40” from clause 259 (1). Insert instead “\$53”.

[51] Clause 259 (2)

Omit “\$60”. Insert instead “\$80”.

[52] Clause 260 Fee for building certificate

Omit “\$210” from clause 260 (1) (a) and (c) and the Table to the clause, wherever occurring.

Insert instead “\$250”.

[53] Clause 260 (2)

Omit “\$75”. Insert instead “\$90”.

[54] Clause 260, Table

Omit “42 cents”. Insert instead “\$0.50”.

[55] Clause 260, Table

Omit “\$966, plus an additional 6.3 cents”.

Insert instead “\$1,165, plus an additional \$0.075”.

[56] Clause 261 Fee for copy of building certificate

Omit "\$10". Insert instead "\$13".

[57] Clause 262 Fee for certified copy of document, map or plan held by Department or council

Omit "\$40". Insert instead "\$53".

[58] Clause 262A Fee for site compatibility certificate

Omit "\$250 plus an additional \$40" from clause 262A (1).

Insert instead "\$265, plus \$42".

[59] Clause 262A (2)

Omit "\$250 plus an additional \$250". Insert instead "\$265, plus \$265".

[60] Clause 262A (3)

Omit "\$250 plus an additional". Insert instead "\$280, plus".

[61] Clause 262A (3) (a) and (b)

Omit "\$40" wherever occurring. Insert instead "\$45".

[62] Clause 262A (4)

Omit "\$5,000". Insert instead "\$5,580".

[63] Clause 262B

Insert after clause 262A:

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.

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Table

Type of development	Maximum fee \$
New BASIX affected buildings	
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
Alterations and additions to BASIX affected buildings	
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 Director-General.

[64] Clause 263 Other fees

Omit "\$30" from clause 263 (2). Insert instead "\$36".

[65] Clauses 281B and 281C

Insert after clause 281A:

281B Form of compliance cost notices

- (1) For the purposes of section 121CA (5) (b) of 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,

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- (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 121ZKA 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 not to include certain costs and expenses

For the purposes of section 121CA (5) (c) of the Act, a compliance cost notice must not require the payment of the following:

- (a) any costs or expenses relating to an investigation that lead to the giving of an order to which the notice relates,
- (b) any costs or expenses relating to the preparation or serving of the notice.

[66] Clause 289A Transitional provisions relating to development control plans

Omit clause 289A (2). Insert instead:

- (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.

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[67] Schedule 5 Penalty notice offences

Insert in appropriate order under the heading “**Offences under the Act**” in Columns 1 and 2, respectively:

Section 146A (3) of the Act in relation to contravention of	\$200
clause 186AA (2) of this Regulation	

[68] Schedule 5

Insert “or (1A)” after “clause 186C (1)” in Column 1 under the heading “**Offences under the Act**”.

[69] Schedule 7 Savings and transitional provisions

Insert after clause 21:

21A Compliance cost notices

A compliance cost notice may only be served on a person if the order to which it relates is given to the person on or after the commencement of section 121CA of the Act.