



New South Wales

# Environmental Planning and Assessment Amendment (Plan Making) Regulation 2009

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*.

KRISTINA KENEALLY, MP  
Minister for Planning

## Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* to make provision relating to the commencement, on 1 July 2009, of the environmental plan-making reforms in Schedule 1 to the *Environmental Planning and Assessment Amendment Act 2008*.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including section 157 (the general regulation-making power) and clause 1 of Schedule 6.

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**Environmental Planning and Assessment Amendment  
(Plan Making) Regulation 2009**

under the

Environmental Planning and Assessment Act 1979

**1 Name of Regulation**

This Regulation is the *Environmental Planning and Assessment Amendment (Plan Making) Regulation 2009*.

**2 Commencement**

This Regulation commences on 1 July 2009 and is required to be published on the NSW legislation website.

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## Schedule 1      **Amendment of Environmental Planning and Assessment Regulation 2000**

[1] **Part 2**

Omit the Part. Insert instead:

### **Part 2      Environmental planning instruments**

**9      Joint regional planning panel—eligible relevant planning authority**

For the purposes of Part 3 of the Act, a joint regional planning panel is prescribed under section 54 of the Act as a body that may be directed by the Minister to be the relevant planning authority for a proposed LEP.

**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 26 (1) (c) of the Act unless the public authority that is to be designated for the purposes of section 27 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.

**11     Recovery of costs of studies etc by relevant planning authority**

The relevant planning authority may enter into an agreement with a person who requests the authority to prepare 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.

**12     Continuation of former provisions for making LEPs**

(1) In this clause:

***amending LEP*** means a LEP that (apart from provisions for citation, commencement, definitions, purpose, land to which it applies and similar ancillary provisions) contains only direct amendments to other environmental planning instruments. Any other LEP is a principal LEP even if it also contains direct amendments to other environmental planning instruments.

***former LEP plan-making provisions*** means the provisions of:

- (a) Part 3 of the Act and the regulations under the Act, and
- (b) Part 5 of the *Heritage Act 1977*, and

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(c) sections 28 and 29 of the *Local Government Act 1993*, relating to the making of LEPs, as in force immediately before 1 July 2009 (the date of commencement of Schedule 1 to the *Environmental Planning and Assessment Amendment Act 2008*).

**pending LEP** means:

- (a) a draft principal LEP received by the Director-General from the council under section 54 of the Act before 1 July 2009, or
  - (b) a draft amending LEP received by the Director-General from the council under section 54 of the Act before 1 July 2009, but only until 1 July 2010 (or if the Director-General had not issued a certificate under section 65 for public exhibition of the draft before 1 July 2009, until 1 January 2011).
- (2) The former LEP plan-making provisions continue to apply to the making of a pending LEP unless the Director-General notifies the council that they cease to apply. In that case, the Minister may, under clause 122 (2) of Schedule 6 to the Act, dispense with any conditions precedent to the making of the LEP (subject to compliance with such other requirements, if any, as are imposed by the Minister).
- (3) Despite subclause (2), section 25 of the Act, as in force immediately before 1 July 2009, does not continue to apply to the making of a pending LEP that is an amending LEP.
- (4) A pending LEP made under the former LEP plan-making provisions is taken to be a LEP made by the Minister under Division 4 of Part 3 of the Act, as amended by Schedule 1 to the *Environmental Planning and Assessment Amendment Act 2008*.
- (5) In any Act or instrument, a reference in relation to a pending LEP:
- (a) to a planning proposal includes a reference to a draft local environmental plan, and
  - (b) to community consultation includes a reference to the public exhibition of any such draft plan.

### 13 Saving of previous threatened species consultation under section 34A

Any consultation undertaken in relation to a proposed environmental planning instrument before 1 July 2009 under section 34A of the Act, as in force immediately before that date,

is (if the instrument is not made before that date) taken to be consultation undertaken under that section as in force after that date.

**14 Saving of actions taken for preparation of SEPP**

Anything done in relation to a proposed SEPP before 1 July 2009 under Division 2 of Part 3 of the Act, as in force immediately before that date, is (if the SEPP is not made before that date) taken to have been done under that Division as in force after that date.

**15 REPs deemed to be SEPPs—interpretation**

- (1) A provision of a regional environmental plan that becomes a SEPP on 1 July 2009 does not prevail over any other environmental planning instrument because the plan becomes a SEPP on that date if it would not have prevailed over that instrument before that date.
- (2) A provision of a regional environmental plan that becomes a SEPP on 1 July 2009 does not have the same effect as a provision of a SEPP for the purposes of Part 3A of the Act if it would not have had that effect before 1 July 2009.

**15A Transitional provision relating to affordable housing**

Until the commencement of Part 5B of the Act (to be inserted by Schedule 3 to the *Environmental Planning and Assessment Amendment Act 2008*), section 94F (3) (b) of the Act is to be construed as if the reference to a condition authorised to be imposed by a LEP (which before the commencement of Schedule 1 to that Act included a reference to a condition authorised to be imposed by a regional environmental plan) were a reference to a condition authorised to be imposed by a SEPP or a LEP.

**[2] Clause 24 Application of Part to development control plans made by the Director-General**

Omit “a regional environmental plan or” from clause 24 (b).

**[3] Clause 25D Public notice of planning agreements**

Omit “draft local environmental plan that is required to be given under section 66 (1)” wherever occurring in clause 25D (1A).

Insert instead “planning proposal that is required under Part 3”.

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**[4] Clause 25D (2)**

Omit the subclause.

**[5] Schedule 4 Planning certificates**

Omit clause 1. Insert instead:

**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 Director-General 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.

**[6] Schedule 4, clause 2 Zoning and land use under relevant LEPs**

Omit “For each local environmental plan, deemed environmental planning instrument and draft local environmental plan applying to the land”.

Insert instead “For each environmental planning instrument or proposed instrument referred to in clause 1 (other than a SEPP or proposed SEPP)”.

**[7] Schedule 4, clause 2 (b)–(d)**

Omit “plan or” wherever occurring.

**[8] Schedule 4, clause 8**

Omit the clause. Insert instead:

**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 27 of the Act.