



New South Wales

Environmental Planning and Assessment Further Amendment Regulation 2008

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, M.P.,
Minister for Planning

Explanatory note

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

- (a) to make amendments consequential on the establishment of the Planning Assessment Commission and the exercise by it of powers to assess aspects of projects under Part 3A of the *Environmental Planning and Assessment Act 1979*,
- (b) to provide for matters relating to the procedure of the Planning Assessment Commission, including the appointment by the chairperson of persons to preside at meetings, the constitution of the Commission, conferring powers on the Commission to require evidence to be given or documents produced, the matters for which public hearings must be held, special procedures where water approvals are needed in relation to a matter, notice of reviews and the provision of information by the Commission to the Minister for Planning,
- (c) to provide for matters relating to the procedure of independent hearing and assessment panels established by councils, including the provision of information by councils to the Director-General of the Department of Planning relating to independent hearing and assessment panels,
- (d) to prescribe further requirements in relation to the information to be contained in certain certificates under Part 4A of that Act, complying development certificates and determinations of applications for subdivision certificates,
- (e) to prescribe further requirements in relation to the information to be included in records relating to mandatory critical stage inspections,

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- (f) to change the notification requirements in relation to a change of principal certifying authority for development,
- (g) to prescribe provisions of a savings and transitional nature consequent on the enactment of the *Environmental Planning and Assessment Amendment Act 2008*.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 23E, 23J, 75Z, 79 (1) (b), 81 (1), 82 (1), 109E, 109Q and 157 (the general regulation-making power) and clause 1 of Schedule 6.

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Further Amendment Regulation 2008*.

2 Commencement

This Regulation commences on 3 November 2008.

3 Amendment of Environmental Planning and Assessment Regulation 2000

The *Environmental Planning and Assessment Regulation 2000* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

accredited body corporate has the same meaning as in the
Building Professionals Act 2005.

[2] Clause 8A Definitions

Omit “, 75G” from clause 8A (3).

[3] Clause 8G Public information about documents relating to projects

Omit clause 8G (4) (e). Insert instead:

- (e) reports of panels under section 75G of the Act (as in force before its repeal) or of reviews by the Planning Assessment Commission,

[4] Clause 78 What information must a written notice of designated development contain?

Omit “for which a Commission of Inquiry has been held” from clause 78 (1) (i).

Insert instead “about which the Planning Assessment Commission has conducted a review”.

[5] Clause 78 (1) (j)

Omit “a Commission of Inquiry is held”.

Insert instead “the Planning Assessment Commission conducts a review”.

[6] Clause 83 What must a written notice under section 79 (1) (b) of the Act contain?

Omit clause 83 (1) (h). Insert instead:

- (h) a statement that the Minister will determine the application,

[7] Part 6, Division 9

Omit the Division.

[8] Clause 100 Notice of determination

Omit clause 100 (1) (h). Insert instead:

- (h) whether the Planning Assessment Commission has conducted a review of the application,

[9] Clause 103 Notice under section 81A of the Act of appointment of principal certifying authority

Omit “his or her” from clause 103 (f) (i). Insert instead “his, her or its”.

[10] Clause 103 (f) (iii) and (iv)

Omit “he or she” wherever occurring. Insert instead “he, she or it”.

[11] Clause 113 When is an application taken to be refused?

Omit clause 113 (2) (b). Insert instead:

- (b) the date the Commission complies with clause 268V (3), if a review has been conducted by the Planning Assessment Commission into development that is not designated development, or part of any such development.

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

Omit clause 122 (2) (b). Insert instead:

- (b) must state that the Act gives a right of appeal against the determination, unless the development consent was granted by the Court.

[13] Clause 134 Form of complying development certificate

Omit “information” from clause 134 (1).

[14] Clause 134 (1) (a)–(b2)

Omit clause 134 (1) (a) and (b). Insert instead:

- (a) the identity of the certifying authority that issued it, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,

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- (b1) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (b2) if an individual issued the certificate on behalf of the certifying authority, the signature of the individual who issued the certificate,

[15] Clause 138 Compliance certificate

Omit “information” from clause 138 (1).

[16] Clause 138 (1) (a)–(b2)

Omit clause 138 (1) (a) and (b). Insert instead:

- (a) the identity of the certifying authority that issued it, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,
- (b1) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (b2) if an individual issued the certificate on behalf of the certifying authority, the signature of the individual who issued the certificate,

[17] Clause 138 (1) (h)

Omit “, signed by or on behalf of the certifying authority,”.

[18] Clause 147 Form of construction certificate

Omit “information” from clause 147 (1).

[19] Clause 147 (1) (a)–(b2)

Omit clause 147 (1) (a) and (b). Insert instead:

- (a) the identity of the certifying authority that issued it, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited

body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,

- (b1) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (b2) if an individual issued the certificate on behalf of the certifying authority, the signature of the individual who issued the certificate,

[20] Clause 155 Form of occupation certificate

Omit “information” from clause 155 (1).

[21] Clause 155 (1) (a)–(b2)

Omit clause 155 (1) (a) and (b). Insert instead:

- (a) the identity of the certifying authority that issued it, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who issued the certificate on behalf of the body corporate,
- (b) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who issued the certificate on behalf of the body corporate,
- (b1) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (b2) if an individual issued the certificate on behalf of the certifying authority, the signature of the individual who issued the certificate,

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

Insert after clause 160 (1) (c):

- (d) the identity of the certifying authority determining the application, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who dealt with the application on behalf of the body corporate,
- (e) if the certifying authority is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who dealt with the application on behalf of the body corporate,

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- (f) if the certifying authority is an accredited certifier who is an individual, the signature of the accredited certifier,
- (g) if an individual dealt with the application on behalf of the certifying authority, the signature of the individual who dealt with the application.

[23] Clause 162 Notice of replacement of principal certifying authority

Omit “within 2 days of” from clause 162 (1).

Insert instead “within 2 days after”.

[24] Clause 162 (2)–(4)

Omit clause 162 (2). Insert instead:

- (2) Nothing in this clause requires any notice to be given to a person who has agreed to, or been notified of, the proposed appointment under section 109EA of the Act.
- (3) Clause 103 applies to a notice given for the purposes of this clause in the same way as it applies to a notice given under or for the purposes of section 81A (2) (b1) (i) or (4) (b1) (i) of the Act.
- (4) In addition to the information required by subclause (3) to be included in a notice under this clause, the following information is to be included:
 - (a) the name of the former principal certifying authority who has been replaced,
 - (b) a statement that the former principal certifying authority agreed to be replaced.

[25] Clause 162B Record of inspections conducted under section 109E (3)

Omit clause 162B (4) (e). Insert instead:

- (e) the identity of the certifying authority by whom the inspection was carried out, including, in a case where the certifying authority is an accredited body corporate, the identity of the individual who carried out the inspection on behalf of the body corporate, and
- (e1) if the certifying authority by whom the inspection was carried out is an accredited certifier, the accreditation number of the certifying authority, including, in a case where the certifying authority is an accredited body corporate, the accreditation number of the individual who carried out the inspection on behalf of the body corporate, and

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- [26] **Clause 243 Report to be prepared for activities to which an environmental impact statement relates**
Omit clause 243 (3) (e) (iii). Insert instead:
(iii) any review by the Planning Assessment Commission,
- [27] **Clause 243 (6) (a)**
Omit “section 120 (5) (b) of the Act”. Insert instead “clause 268U”.
- [28] **Clause 245L Fee for review by Planning Assessment Commission**
Omit clause 245L (1). Insert instead:
(1) The fee payable to the Director-General in respect of the review of any aspect of a project, or a concept plan for a project, by the Planning Assessment Commission pursuant to section 23D (1) (b) (ii) of the Act is to be determined by the Director-General in accordance with this clause. Any such review includes the giving of public notice in connection with a public hearing.
- [29] **Clause 245L (2)**
Omit “constituting the panel”.
Insert instead “the Commission undertaking the review”.
- [30] **Clause 245L (4)**
Omit “panel is constituted and the”.
- [31] **Clause 260 What is the fee for a building certificate?**
Insert “, or the person on whose behalf the application is made,” after “applicant for the certificate” in clause 260 (3A).
- [32] **Part 16B, Division 1, heading**
Insert before clause 268C:
Division 1 General
- [33] **Clause 268C Definitions**
Insert in alphabetical order:
Commission means the Planning Assessment Commission.
- [34] **Clause 268F Presiding member**
Insert “(other than the Commission)” after “planning body” in clause 268F (1).

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[35] Clause 268F (1A)

Insert after clause 268F (1):

- (1A) The chairperson of the Commission or a person appointed by the chairperson is to preside at a meeting of the Commission. In the absence of the chairperson or a person appointed by the chairperson, a person elected by the members is to preside at a meeting of the Commission.

[36] Part 16B, Division 2, heading

Insert before clause 268K:

Division 2 Planning arbitrators

[37] Part 16B, Division 3, heading

Insert before clause 268L:

Division 3 Committees

[38] Part 16B, Divisions 4 and 5

Insert after clause 268N:

Division 4 Planning Assessment Commission

268O Interpretation

In this Division, a reference to a review of the Commission includes a reference to a public hearing referred to in section 56 (2) (e) of the Act.

268P Constitution of Commission for particular matters

The Commission may be constituted by more than 3 members or less than 3 members if directed to be so constituted by the Minister.

268Q Attendance of witnesses and production of documents

- (1) The chairperson of the Commission may require a person:
- (a) to attend a public hearing of the Commission to give evidence, or
 - (b) to produce to the Commission a document that is relevant to a review conducted by the Commission,
- at a time, date and place specified in a notice given to the person.

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- (2) A person must not, without reasonable excuse, fail to comply with a requirement to attend a public hearing, or to produce a document.
 - (3) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering a written statement.

268R Public hearings of Commission

- (1) The Commission must conduct a public hearing in the following circumstances:
 - (a) if requested to do so by the Minister,
 - (b) if the review concerns a development under Part 4 of the Act or an activity under Part 5 of the Act that, in the opinion of the Commission, may involve the need for an approval under the *Water Management Act 2000*.
- (2) Subclauses (3)–(5) apply to any public hearing held by the Commission.
- (3) The Commission must give reasonable notice of a public hearing:
 - (a) by advertisement published in such newspapers as the Commission thinks fit, to the public, and
 - (b) by notice in writing to any public authorities that the Commission thinks are likely to have an interest in the subject-matter of the hearing.
- (4) The notice of a public hearing must contain the following matters:
 - (a) the subject-matter of the hearing,
 - (b) the time, date and place of the hearing,
 - (c) a statement that submissions may be made to the Commission in relation to the subject-matter of the hearing not later than the date specified in the notice (being a date not less than 14 days after the notice is given).
- (5) If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that part of a public hearing is to take place in private and give directions as to the persons who may be present.

268S Notice of reviews and recommendations relating to development applications

- (1) This clause applies to a review by the Commission of all or any of the environmental aspects of proposed development the subject of a development application or a part of any such proposed development.
- (2) The consent authority for the proposed development must cause to be given to each concurrence authority and approval body for that development:
 - (a) as soon as practicable after the Commission is requested to hold the review, notice of the fact that a review is to be held, and
 - (b) as soon as practicable after the findings and recommendations of the review have been made public, copies of those findings and recommendations and (in the case of development other than designated development) any comments made by the Minister on them.
- (3) At any time within 14 days after receiving a copy of the findings and recommendations arising from the review:
 - (a) a concurrence authority may vary any conditions that it may previously have imposed in relation to its concurrence to the development, and
 - (b) an approval body may vary any general terms of approval that it may previously have given in relation to the development.

268T Special provisions relating to water approvals

- (1) The Commission must cause notice to be given to the Minister for Water if, before or at any time up to the conclusion of a review held by it into:
 - (a) the environmental aspects of any proposed development the subject of a development application, whether or not it is designated development, or
 - (b) the environmental aspects of any activity referred to in section 112 (1) of the Act,it is of the opinion that the development or activity may involve the need for an approval under the *Water Management Act 2000*.
- (2) For the purposes of this clause, a review is concluded when the Commission provides its final report on the inquiry to the Minister under clause 268V.

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- (3) The Commission must also cause notice to be given to the applicant for the development, or the proponent of the activity, advising that the application for an approval should be made promptly if it has not already been made.
 - (4) The Commission must defer concluding its review for sufficient time to enable:
 - (a) the applicant or proponent to apply for an approval, and
 - (b) any objectors to object to the granting of an approval, under the *Water Management Act 2000*.
 - (5) As soon as practicable after the applicant's or proponent's application for an approval is referred to it under section 94 of the *Water Management Act 2000*, the Commission must give notice of the public hearing in accordance with this Division.
 - (6) In addition to considering any submissions that are made to it in the course of its review, the Commission must consider:
 - (a) the application for an approval, and
 - (b) any objection to the granting of an approval that has been referred to it under section 94 of the *Water Management Act 2000*.
 - (7) In any report prepared by it, the Commission must include findings and recommendations with respect to:
 - (a) the question of whether or not an approval should be granted, and
 - (b) the period, term, limitations and conditions of any such approval.
 - (8) The Commission must cause a copy of any such report to be given to the Minister for Water.

268U Commission may restrict publication of evidence

- (1) If the Commission is satisfied that it is desirable to do so in the public interest because of the confidential nature of any evidence or matter or for any other reason, the Commission may direct that evidence given before the Commission or contained in documents lodged with the Commission not be published or may only be published subject to restrictions.
- (2) A person must not, without reasonable excuse, fail to comply with a direction given by the Commission under this clause.

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268V Reports by Commission

- (1) The Commission must provide a copy of its findings and recommendations on a review conducted by it (a *final report*) to the Minister, or such other person or body as the Minister may direct, and may provide a copy to such other persons as the Commission thinks fit.
- (2) A final report must contain a summary of any submissions received by it in relation to the subject-matter of the review.
- (3) The Commission must also provide a copy of a final report on a review relating wholly or partly to development the subject of a development application to:
 - (a) the consent authority, and
 - (b) any public authority whose concurrence is required to the development.
- (4) A final report is to be made publicly available on the website of the Department within a reasonable time after it has been provided to the Minister.

268W Information to be provided by Commission

- (1) The Commission must provide the following to the Minister:
 - (a) an annual report on its operations and reviews in the preceding year,
 - (b) any other information and reports requested by the Minister.
- (2) An annual report is to be made publicly available on the website of the Department within a reasonable time after it has been provided to the Minister.

Division 5 Independent hearing and assessment panels

268X Information to be provided by councils about independent hearing and assessment panels

A council must provide an annual report to the Director-General as to the following:

- (a) the number of independent hearing and assessment panels appointed by the council in the preceding year,
- (b) the matters referred to the panels in the preceding year,
- (c) the persons appointed to the panels,

- (d) decisions made by the council relating to matters referred to the panels, including the reasons for any decision not in accordance with an assessment by a panel,
- (e) any other matters relating to the exercise of functions by panels as directed by the Director-General.

[39] Schedule 7 Savings and transitional provisions

Insert after clause 6:

7 Existing independent hearing and assessment panels

Sections 75G, 75I, 75K, 75L, 75N, 75Q and 75X of the Act, and the provisions of any regulations made under or for the purposes of, or referring to, those provisions, as in force immediately before the repeal of section 75G by the amending Act, continue in force in relation to any panel established under section 75G immediately before that repeal.

8 Existing committees

Section 158 (f) of the Act, as in force before its repeal by the amending Act, continues to apply in respect of a member of a committee established under section 22 of the Act before that repeal.

9 Application of obligation to assist planning assessment panel

Section 118AD (2A) of the Act, as inserted by the amending Act, does not apply in respect of a direction given before the commencement of that provision by a panel established under Division 1AA of Part 6 of the Act.

10 Existing planning assessment panels

Division 1 of Part 16B of this Regulation applies to a panel in existence under Division 1AA of Part 6 of the Act immediately before the commencement of Schedule 2.2 [61] to the amending Act, despite any provision of an order establishing the panel.

11 Notification of commencement of certain building work and subdivision work

- (1) The amendment of section 81A (2) (c) of the Act by the amending Act does not apply to the erection of a building if the notice required by that paragraph in relation to the erection of the building had been given before the commencement of that amendment.

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- (2) The amendment of section 81A (4) (c) of the Act by the amending Act does not apply to subdivision work if the notice required by that paragraph in relation to the subdivision work had been given before the commencement of that amendment.
- (3) The amendment of section 86 (1) (b) of the Act by the amending Act does not apply to the erection of a building if the notice required by that paragraph in relation to the erection of the building had been given before the commencement of that amendment.
- (4) The amendment of section 86 (2) (b) of the Act by the amending Act does not apply to subdivision work if the notice required by that paragraph in relation to the subdivision work had been given before the commencement of that amendment.

12 Action following investigation into council activities

Section 117B of the Act does not apply to an investigation under section 45 of the *Building Professionals Act 2005* commenced before the commencement of section 117B.

BY AUTHORITY
