



Environmental Planning and Assessment Amendment (Paper Subdivisions) Regulation 2013

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*.

BRAD HAZZARD, MP
Minister for Planning and Infrastructure

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* in connection with the commencement of Schedule 5 to the *Environmental Planning and Assessment Act 1979* (relating to “paper subdivisions”) as follows:

- (a) to require a consent authority determining a development application for land to consider any applicable subdivision order under that Schedule and any development plan under that Schedule that relates to the land,
- (b) to prescribe matters to be included in a development plan for land that is to be the subject of a subdivision order under that Schedule that will enable its consolidation and subsequent development,
- (c) to set out requirements for the preparation, notification, adoption and amendment of any such development plan,
- (d) to set out the ballot procedure for determining whether the requisite number of owners of land to which a proposed development plan is subject consent to the plan,
- (e) to specify other matters relating to contributions by owners of the land,
- (f) to set out the circumstances when land subject to a proposed development plan may be entered without the owner’s consent,
- (g) to require notice to be given to local councils of subdivision orders and the completion of subdivision works on land within their areas,
- (h) to set out annual and final reporting requirements for authorities responsible for implementation of development plans under subdivision orders,

2013 No 91

Environmental Planning and Assessment Amendment (Paper Subdivisions) Regulation 2013

Explanatory note

- (i) to require information about development plans and proposed consent ballots for proposed plans to be specified on planning certificates.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 79C, 149 and 157 (the general regulation-making power) of, and clauses 6 (2) (g) and (3), 9 (5), 15 (1) and 20 of Schedule 5 to, that Act.

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Paper Subdivisions) Regulation 2013*.

2 Commencement

This Regulation commences on 8 March 2013 and is required to be published on the NSW legislation website.

2013 No 91

Environmental Planning and Assessment Amendment (Paper Subdivisions)
Regulation 2013

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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[1] **Clause 92 What additional matters must a consent authority take into consideration in determining a development application?**

Insert after clause 92 (1) (b):

- (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 5 to the Act, the provisions of that order and of any development plan prepared for the land by a relevant authority under that Schedule.

[2] **Part 16C**

Insert after Part 16B:

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 5 to the Act.

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 5 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:
 - (a) not less than 14 days before the ballot papers are issued for the consent ballot, publish a notice that complies with this clause in a local newspaper and a daily newspaper circulating generally in New South Wales, and
 - (b) give a written notice that complies with this clause 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 this clause for not less than 28 days before the ballot closes, and
 - (d) make the proposed development plan publicly available.
- (2) The notice must specify the following:
 - (a) that the authority proposes to adopt a development plan,
 - (b) 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) 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.

2013 No 91

Environmental Planning and Assessment Amendment (Paper Subdivisions)
Regulation 2013

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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 Director-General.
- (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 Director-General.

- (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 5 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 Director-General.
- (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

2013 No 91

Environmental Planning and Assessment Amendment (Paper Subdivisions)
Regulation 2013

Schedule 1

Amendment of Environmental Planning and Assessment Regulation 2000

- (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 Director-General written notice of the result of the consent ballot, together with a copy of the voting roll.

2013 No 91

Environmental Planning and Assessment Amendment (Paper Subdivisions)
Regulation 2013

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

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 Director-General 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 causes a notice of the adoption of the plan to be published in a local newspaper and a daily newspaper circulating generally in New South Wales 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 5 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 5 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) in a local newspaper and a daily newspaper circulating generally in New South Wales, 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.

2013 No 91

Environmental Planning and Assessment Amendment (Paper Subdivisions)
Regulation 2013

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

(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 5 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 5 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 5 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,

2013 No 91

Environmental Planning and Assessment Amendment (Paper Subdivisions)
Regulation 2013

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- (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.

[3] Schedule 4 Planning certificates

Insert at the end of the Schedule with appropriate clause numbering:

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.