



New South Wales

Environmental Planning and Assessment Amendment (Community Participation Plans) Regulation 2019

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*.

ROBERT STOKES, MP
Minister for Planning and Public Spaces

Explanatory note

The objects of this Regulation are to amend—

- (a) the *Environmental Planning and Assessment Act 1979* (***the Act***) for the following purposes—
 - (i) to set out the minimum public exhibition periods for certain development consent applications and certain modification of development consent applications,
 - (ii) to set out the mandatory notification or advertising period for the review of certain determinations and decisions of consent authorities,
 - (iii) to insert definitions for the purposes of the new provisions,
 - (iv) to make related law revision amendments, and
- (b) the *Environmental Planning and Assessment Regulation 2000* for the following purposes—
 - (i) to omit community participation requirements that are no longer required to be included in the Regulation as a consequence of the insertion of community participation requirements in Schedule 1 to the Act,
 - (ii) to remove certain notification and advertising requirements and to refer instead to the equivalent requirements set out in Schedule 1 to the Act or in the relevant community participation plan,
 - (iii) to prescribe the Lord Howe Island Board as a body that the Minister for Planning and Public Spaces may direct to be a planning proposal authority,
 - (iv) to permit Sydney district, regional and local planning panels to rely on the relevant council's community participation plan when exercising that council's functions,
 - (v) to establish public exhibition requirements for nominated integrated development, threatened species development and Class 1 aquaculture development,
 - (vi) to prescribe deemed refusal periods for construction certificates, subdivision works certificates, occupation certificates and subdivision certificates issued under Part 6 of the Act,
 - (vii) to prescribe activities under Division 5.1 of the Act as planning functions, and
- (c) the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* for the following purposes—

- (i) to permit Transport for NSW (TfNSW) to issue subdivision certificates under Part 6 of the Act in relation to subdivisions carried out by or on behalf of TfNSW until 1 December 2020,
- (ii) to clarify the meaning of **former building and subdivision provisions** for the purposes of a transitional arrangement relating to certain interim occupation certificates, final occupation certificates and development consents.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 2.21(2)(f), 2.23(2)(c), 3.32(1)(b), 8.17(1) and 10.13 (the general regulation-making power), and clause 21 of Schedule 1.

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Community Participation Plans) Regulation 2019*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203

[1] Schedule 1 Community participation requirements

Omit Divisions 1 and 2 of Part 1 of Schedule 1. Insert instead—

Division 1 Minimum public exhibition periods for plans

1 Draft community participation plans (Division 2.6)

Minimum public exhibition period for draft community participation plans—
28 days.

2 Draft regional or district strategic plans (Division 3.1)

(cf previous s 75AH)

Minimum public exhibition period for draft regional or district strategic
plans—45 days.

3 Draft local strategic planning statements (Division 3.1)

Minimum public exhibition period for draft local strategic planning
statements—28 days.

4 Planning proposals for local environmental plans subject to a gateway determination (Division 3.4)

(cf previous s 57)

Minimum public exhibition period for planning proposals for local
environmental plans subject to a gateway determination—

- (a) if the gateway determination for the proposal specifies a period of
public exhibition—the period so specified, or
- (b) if the gateway determination for the proposal specifies that no public
exhibition is required because of the minor nature of the proposal—no
public exhibition, or
- (c) otherwise—28 days.

5 Draft development control plans (Division 3.6)

(cf previous cl 18(2) of EPA Reg)

Minimum public exhibition period for draft development control plans—28
days.

6 Draft contribution plans (Division 7.1)

(cf previous cl 26(4) of EPA Reg)

Minimum public exhibition period for draft contribution plans—28 days.

Division 2 Minimum public exhibition periods for development applications and other matters

7 Application for development consent (other than for a complying development certificate, for designated development, for nominated integrated development, for threatened species development or for State significant development)

- (1) Minimum public exhibition period for an application for development consent
(other than for a complying development certificate, for designated

development, for nominated integrated development, for threatened species development or for State significant development)—

- (a) if the relevant community participation plan specifies a period of public exhibition for the application—the period so specified, or
- (b) if the relevant community participation plan specifies that no public exhibition is required for the application—no public exhibition, or
- (c) otherwise—14 days.

(2) In this clause—

nominated integrated development means integrated development that requires an approval (within the meaning of section 4.45) under—

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

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.

8 Application for development consent for designated development

(cf previous s 79)

Minimum public exhibition period for an application for development consent for designated development—28 days.

8A Application for development consent for nominated integrated development or threatened species development

(1) Minimum public exhibition period for an application for development consent for nominated integrated development or threatened species development—28 days.

(2) In this clause—

nominated integrated development means integrated development that requires an approval (within the meaning of section 4.45) under—

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

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.

9 Application for development consent for State significant development

(cf previous s 89F)

Minimum public exhibition period for an application for development consent for State significant development—28 days.

9A Application for development consent for category 1 remediation work under State Environmental Planning Policy No 55—Remediation of Land

Minimum public exhibition period for an application for development consent for category 1 remediation work under *State Environmental Planning Policy No 55—Remediation of Land*—28 days.

10 Application for modification of development consent that is required to be publicly exhibited by the regulations

Minimum public exhibition period for an application for modification of development consent that is required to be publicly exhibited by the regulations—

- (a) if the relevant community participation plan specifies a period of public exhibition for the application—the period so specified, or
- (b) otherwise—14 days.

11 Environmental impact statement obtained under Division 5.1

(cf previous s 113)

Minimum public exhibition period for an environmental impact statement obtained under Division 5.1—28 days.

12 Environmental impact statement for State significant infrastructure under Division 5.2

(cf previous s 115Z)

Minimum public exhibition period for an environmental impact statement for State significant infrastructure under Division 5.2—28 days.

13 Re-exhibition of any amended application or matter referred to above required by or under this Schedule

Minimum public exhibition period for re-exhibition of any amended application or matter referred to above required by or under this Schedule—the period (if any) determined by the person or body responsible for publicly exhibiting the application or matter.

[2] Schedule 1

Insert after clause 20—

20A Mandatory notification or advertising period (Division 8.2)

The mandatory notification or advertising period for an application for the review of a determination or decision of a consent authority under sections 8.2 and 8.3 is—

- (a) if the relevant community participation plan specifies a mandatory notification or advertising period for the application—the period so specified, or
- (b) otherwise—14 days.

Schedule 2 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 3 Definitions

Omit the definition of *other advertised development* from clause 3(1).

Insert in alphabetical order—

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

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.

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.

[2] Clause 12

Insert after clause 11—

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.

[3] Clause 18 Draft development control plan must be publicly exhibited

Omit clause 18(2).

[4] Clause 26 In what form must a contributions plan be prepared?

Omit clause 26(4).

[5] Clauses 56A and 56B

Insert after clause 56—

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.

[6] Clause 78 Information to be contained in notice for designated development

Omit “for a period specified in the notice” from clause 78(1)(e).

Insert at the end of clause 78(1)(e) “for the minimum period specified in clause 8 of Schedule 1 to the Act”.

[7] Clause 78(2)

Omit the subclause.

[8] Part 6, Division 7

Omit the Division heading. Insert instead—

**Division 7 Public participation—nominated integrated
development, threatened species development and
Class 1 aquaculture development**

[9] Clause 86 Application of Division

Omit “other advertised development” from clause 86(1).

Insert instead “nominated integrated development, threatened species development and Class 1 aquaculture development”.

[10] Clause 87 How must a development application be publicly notified?

Omit “other advertised development” from clause 87.

Insert instead “nominated integrated development, threatened species development or Class 1 aquaculture development”.

[11] Clause 89 What information must be contained in a written notice and a published notice?

Omit “the period of 28 days” from clause 89(3)(a).

Insert instead “the minimum period specified in clause 8A of Schedule 1 to the Act”.

[12] Clause 89(3)(b)

Omit “the period of 14 days”.

Insert instead “the minimum period specified in clause 7 of Schedule 1 to the Act”.

[13] Clause 89(4)

Omit the subclause.

[14] Clause 113 Applications taken to be refused

Omit “designated development or other advertised development” from clause 113(3).

Insert instead “nominated integrated development, threatened species development or Class 1 aquaculture development”.

[15] Clause 113(3)

Omit “28 days” wherever occurring.

Insert instead “the minimum period specified in clause 8A of Schedule 1 to the Act”.

[16] Clause 113(3A)

Insert after clause 113(3)—

- (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.

[17] Clause 113(4)

Omit “28 days”.

Insert instead “the minimum period specified in clause 8 of Schedule 1 to the Act”.

[18] Clause 113(5) and (6)

Omit “28 days” wherever occurring.

Insert instead “the minimum period specified in clause 9 of Schedule 1 to the Act”.

[19] Clause 113A Public participation—application under section 8.3 of the Act for review of council’s determination

Omit “not exceeding 14 days” from clause 113A(2).

Insert instead “the period specified in clause 20A of Schedule 1 to the Act”.

[20] Clause 113A(3) and (6)

Omit the subclauses.

[21] Clause 113A(7)

Omit “or, if a development control plan provides for a period for notification or advertising of an application, during that period”.

[22] Clause 117 Modification of consent involving minimal environmental impact

Omit “development control plan” wherever occurring in clause 117(2), (3)(b) and (4).

Insert instead “community participation plan”.

[23] Clause 118 Applications under sections 4.55(2) and 4.56 for modification of certain development consents

Omit “any other advertised development” from clause 118(1)(c).

Insert instead “nominated integrated development, threatened species development or Class 1 aquaculture development”.

[24] Clause 118(5)(c)

Omit the paragraph. Insert instead—

- (c) the minimum period specified in clause 10 of Schedule 1 to the Act,

[25] Clause 118(6)

Omit the subclause.

[26] Clause 119 Public participation—applications under sections 4.55(2) and 4.56 for modification of other development consents

Omit “for a period not exceeding 14 days” from clause 119(2).

Insert instead “for the minimum period specified in clause 10 of Schedule 1 to the Act”.

[27] Clause 119(3)

Omit the subclause.

[28] Clause 119(4)

Omit “or a development control plan”.

[29] Clause 119(5)(b)

Omit the paragraph. Insert instead—

- (b) the minimum public exhibition period required by clause 10 of Schedule 1 to the Act, and

[30] Clause 119(6)

Omit “subclause (2) or, if a development control plan provides for a period for notification or advertising of an application, during that period”.

Insert instead “clause 10 of Schedule 1 to the Act”.

[31] Clause 123I Review of modification decision

Omit clause 123I(2). Insert instead—

- (2) An application must be notified or advertised for the period required by clause 20A of Schedule 1 to the Act.

[32] Clause 142A

Insert after clause 142—

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.

[33] Clause 148J

Insert after clause 148I —

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.

[34] Clause 151A

Insert after clause 151—

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.

[35] Clause 160B

Insert after clause 160A—

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.

[36] Clause 234 In what manner must a section 5.8 notice be given?

Omit “of 30 days referred to in section 5.8(1) of” from clause 234(2).

Insert instead “specified in clause 11 of Schedule 1 to”.

[37] Clause 252 Additional fees—development requiring advertising

Omit “advertised development” from clause 252(1)(b).

Insert instead “nominated integrated development, threatened species development or Class 1 aquaculture development”.

[38] Clause 252(1)(d)

Omit “an environmental planning instrument or development control plan”.

Insert instead “a community participation plan”.

Schedule 3 Amendment of Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017

[1] Clause 4 Definitions—Part 2

Insert in alphabetical order—

former building and subdivision provisions means—

- (a) sections 81A(2)–(6) and 86 of the Act, as in force immediately before the substitution of those provisions by the amending Act, and
- (b) Part 4A of the Act, as in force immediately before the repeal of that Part by the amending Act, and the regulations made under that Part as so in force.

[2] Clause 18 Postponement of revised building and subdivision certification provisions

Omit clause 18(1).

[3] Clause 18BA

Insert after clause 18B—

18BA Subdivision certificates issued by Transport for NSW

Until 1 December 2020, a subdivision certificate under Part 6 of the Act may be issued in relation to a subdivision carried out by or on behalf of Transport for NSW by—

- (a) Transport for NSW, or
- (b) a person acting on behalf of Transport for NSW.