New South Wales

Environmental Planning and Assessment Regulation 2021

under the

Environmental Planning and Assessment Act 1979

[*The following enacting formula will be included if the Regulation is made*—]

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

Minister for Planning and Public Spaces

Explanatory note

The object of this Regulation is to remake, with amendments, certain provisions of the *Environmental Planning and Assessment Regulation 2000*, which will be repealed on 1 March 2022 under the *Subordinate Legislation Act 1989*, Schedule 5, clause 12.

This Regulation deals with the following matters—

(a) planning instruments, including local environmental plans and development control plans,

(b) development applications, including for State significant development,

(c) modification of development applications,

(d) complying development,

(e) existing uses,

(f) State significant infrastructure,

(g) environmental impact assessment,

(h) infrastructure contributions and finance,

(i) paper subdivisions,

(j) registers of development consents and other certificates kept by councils,

(k) reviews and appeals,

(l) fees payable by applicants and other persons.

Note—

This Regulation does not include provisions of the *Environmental Planning and Assessment Regulation 2000* that are made under the *Environmental Planning and Assessment Act 1979*, Part 6 and section 10.13(1)(d). Those provisions will be included in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, which has not yet been made.

This Regulation includes references to the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, on the basis that it will be made before 1 March 2022.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Regulation 2021*.

2 Commencement

(1) This Regulation commences on 1 March 2022, except as provided by subclause (2), and is required to be published on the NSW legislation website.

Note— This Regulation replaces the *Environmental Planning and Assessment Regulation 2000*, which is repealed on 1 March 2022 by the *Subordinate Legislation Act 1989*.

(2) Schedule 6 commences on 1 July 2022.

3 Definitions

(1) The Dictionary defines words used in this Regulation.

Note— The *Environmental Planning and Assessment Act 1979* and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) For the purposes of the Act, section 1.4(1), definition of ***public authority***, paragraph (g), the persons specified in Schedule 1 of this Regulation are prescribed.

(3) For the purposes of the Act, section 1.4(1), definition of ***work***, the deposit of material on a beach or land in a beach fluctuation zone, within the meaning of the *Coastal Management Act 2016*, is specified to be a work.

(4) For the purposes of the Act, section 1.5, definition of ***development***, the demolition of a temporary structure is not development.

(5) In this Regulation, a reference to the consent authority's website means—

(a) if the consent authority is a council, a local planning panel or a Sydney district or regional planning panel—the website of the council or councils of the area in which the development will be carried out, or

(b) if the consent authority is the Minister, the Independent Planning Commission or a public authority—the NSW planning portal.

4 Building Code of Australia

(cl 7 2000 Reg)

(1) For the purposes of the Act, section 1.4(1), definition of ***Building Code of Australia***, Volumes 1 and 2 of the *National Construction Code*, referred to as the *Building Code of Australia*, published by the Australian Building Codes Board, as in force from time to time, is prescribed.

(2) All amendments and variations of the Code that are from time to time made or approved by the Australian Building Codes Board in relation to New South Wales are prescribed.

(3) An amendment or variation comes into effect on the date specified by the Australian Building Codes Board for New South Wales.

(4) The Code is varied in relation to small live music or arts venues as follows—

(a) Schedule 3 of Volume 1 applies as if paragraph (c)(iii) of the definition of ***Assembly building*** were omitted and replaced with—

(iii) a sports stadium, sporting or other club—but not including a small live music or arts venue; or

(b) Schedule 3 of Volume 1 applies as if the following definition were inserted after the definition of ***Sitework***—

small live music or arts venue means the whole or part of a Class 6 building that has a rise in storeys of no more than 2 storeys—

(a) in which live music or arts are provided to the public, and

(b) that has a floor area of no more than 300 square metres.

(c) clause A6.6 of Volume 1 applies as if the following were inserted at the end of the definition of ***Class 6***—

A Class 6 building or part of a Class 6 building in which people assemble for entertainment remains a Class 6 building or part of a Class 6 building if it is a small live music or arts venue—see the definition of Assembly building in Volume 1 of the Code.

5 Abbreviations for building materials

(cl 7 of Sch 1 2000 Reg)

The abbreviations for building materials specified in the following Table must be used in a development application or application for a complying development certificate—

Walls	Code	Roof	Code	Floor	Code	Frame	Code
Brick (double)	11	Tiles	10	Concrete or slate	20	Timber	40
Brick (veneer)	12	Concrete or slate	20	Timber	40	Steel	60
Concrete or stone	20	Fibre cement	30	Other	80	Aluminium	70
Fibre cement	30	Steel	60	Not specified	90	Other	80
Timber	40	Aluminium	70			Not specified	90
Curtain glass	50	Other	80				
Steel	60	Not specified	90				
Aluminium	70						
Other	80						
Not specified	90						

6 Determination of BASIX development

(cl 50(7) and 126(3) 2000 Reg)

(1) In determining if an alteration, enlargement or extension of a BASIX building is BASIX development, a consent authority or registered certifier must use a genuine

estimate of the construction costs of the work, including a part of the work that is BASIX excluded development.

(2) The estimate must be the estimate indicated in the development application or application for a complying development certificate, unless the consent authority or registered certifier is not satisfied that the estimated cost is genuine or accurate.

7 Designated development—the Act, s 4.10

(1) Development described in Schedule 2, Part 2 is declared to be designated development unless it is not designated development under Schedule 2, Part 3.

(2) If Schedule 2 is amended after a development application is made—

(a) Schedule 2, as in force when the development application was made, continues to apply to the development application, and

(b) the development application is not affected by the amendment.

(3) A reference in subclause (2) to Schedule 2 includes a reference to the *Environmental Planning and Assessment Regulation 2000*, Schedule 3.

Part 2 Planning instruments

Division 1 Local environmental plans—the Act, Division 3.4

8 Concurrence of public authorities for proposed reservation of land

(cl 10 2000 Reg)

(1) A planning proposal for a proposed local environmental plan must not contain a proposed reservation of land for a purpose referred to in the Act, section 3.14(1)(c) without the concurrence of the relevant authority to the reservation of the land for that purpose.

(2) In this clause—

relevant authority means an authority that will be specified in the proposed local environmental plan as the relevant authority to acquire the land for the purposes of the Act, section 3.15.

9 Notification of refusal to prepare planning proposal

(cl 10A 2000)

If a council refuses a request made to the council by a person for the preparation of a planning proposal under the Act, section 3.33, the council must, as soon as practicable, give the person written notice of the refusal.

10 Fee payable for costs and expenses of studies by planning proposal authority

(cl 11 2000 Reg)

(1) A planning proposal authority may enter into an agreement or arrangement with a person who requests the preparation of a planning proposal under the Act, section 3.32(3) 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.

(2) The amount payable to the planning proposal authority for the costs and expenses is—

(a) if the authority is a council—the amount set out in, or calculated in accordance with, the agreement or arrangement, or

(b) otherwise—the amount, not exceeding $25,000, determined by the authority to cover the costs and expenses reasonably incurred by the authority in undertaking the studies or other matters.

(3) Despite subclause (2)(b), the planning proposal authority and a person who requests the preparation of a planning proposal may agree on a greater amount in a particular case.

(4) An amount payable by a person under this clause is payable at the time specified in a written notice to the person from the planning proposal authority.

(5) If the planning proposal authority is the Independent Planning Commission or a Sydney district or regional planning panel, the Planning Secretary may exercise the relevant planning authority's functions under this clause.

11 Planning proposal authority for Lord Howe Island

(cl 12 2000 Reg)

For the purposes of the Act, section 3.32(1)(b), the Lord Howe Island Board under the *Lord Howe Island Act 1953* is prescribed for a proposed instrument that applies to Lord Howe Island.

Division 2 Development control plans—the Act, Division 3.6

12 Form of development control plan

(cl 16 2000 Reg)

(1) A development control plan must—

(a) be written, and

(b) describe the land to which it applies, and

(c) identify the local environmental plan or deemed environmental planning instrument that applies to the land.

(2) A development control plan may include supporting maps, plans, diagrams, illustrations and other materials.

13 Public exhibition of draft development control plans

(cl 18–20 2000 Reg)

After a draft development control plan is prepared, the council must publish the following on its website—

(a) the draft development control plan,

(b) the relevant local environmental plan or deemed environmental planning instrument,

(c) the period during which submissions about the draft plan may be made to the council.

14 Approval of development control plans

(cl 21 2000 Reg)

(1) After considering any submissions about the draft development control plan that have been duly made, the council may—

(a) approve the plan in the form in which it was publicly exhibited, or

(b) approve the plan with any alterations the council considers appropriate, or

(c) decide not to proceed with the plan.

(2) The council must publish notice of its decision on its website within 28 days after the decision is made.

(3) Notice of a decision not to proceed with a development control plan must contain the council's reasons for the decision.

(4) A development control plan comes into effect on—

(a) the date on which the notice of the council's decision to approve the plan is published on its website, or

(b) a later date specified in the notice.

15 Approval of development control plans for residential apartment development

(cl 21A 2000 Reg)

(1) The council must not approve a draft development control plan containing provisions that apply to residential apartment development unless the council—

(a) has referred the provisions that relate to design quality to a design review panel constituted for—

(i) the council's local government area, or

(ii) 2 or more local government areas that include the council's area, and

(b) has considered the following—

(i) the comments made by the design review panel about the provisions,

(ii) the matters specified in Parts 1 and 2 of the Apartment Design Guide.

(2) This clause extends to—

(a) a draft amending development control plan, and

(b) a draft development control plan that the council began preparing before a design review panel was constituted.

16 Amendment or repeal of development control plan

(cl 22 and 23 2000 Reg)

(1) A council may amend a development control plan by a subsequent development control plan.

(2) A council may repeal a development control plan—

(a) by a subsequent development control plan, or

(b) by publishing notice of a decision to repeal the plan on its website.

(3) At least 14 days before repealing a development control plan under subclause (2)(b), the council must publish notice of its intention to repeal the plan, and the reasons for the repeal, on its website.

(4) The repeal of a development control plan under subclause (2)(b) takes effect on the date on which the notice under subclause (2)(b) is published on the council's website.

17 Amendment or revocation of development control plan at Minister's direction

(cl 22A 2000 Reg)

(1) This clause applies if, under the Act, section 3.46, the Minister directs a council—

(a) to amend a development control plan and the direction specifies that the amending plan is not required to be exhibited, or

(b) to revoke a development control plan.

(2) The council may amend or revoke the development control plan by making a subsequent development control plan.

(3) The council must, within 14 days after making a subsequent development control plan, publish notice of the making of the plan on its website.

(4) The notice must specify the following—

(a) the date on which the council made the plan,

(b) the date on which the plan takes effect under subclause (5),

(c) the name of the plan being amended or revoked,

(d) for an amendment—that the amendment is in accordance with a direction under the Act, section 3.46.

(5) The subsequent development control plan takes effect on the earlier of—

(a) the date on which the notice is given, or

(b) 14 days after the council makes the development control plan.

(6) Clauses 13–16 do not apply to a development control plan made under this clause.

18 Draft development control plans submitted by owners

(cl 25 2000 Reg)

(1) This clause applies if an environmental planning instrument requires or permits a development control plan to be prepared and submitted to the relevant planning authority, as referred to in the Act, section 3.44.

(2) The relevant planning authority may request information from the owners of the land to which the development control plan relates that—

(a) the planning authority considers necessary for the purposes of making the development control plan, and

(b) relates to a relevant matter referred to in an environmental planning instrument.

(3) For the purposes of the Act, section 3.44(6), the 60-day period is extended by the number of days between—

(a) the date on which the relevant planning authority requests additional information from the owners under subclause (2), and

(b) the date on which the owners give or refuse to give the information to the relevant planning authority.

(4) If the owners refuse to give the information to the relevant planning authority, the development control plan is taken not to have been submitted to the relevant planning authority.

19 Fees for draft development control plans prepared by owners

(cl 25AA 2000 Reg)

(1) If a draft development control plan is prepared and submitted to the relevant planning authority by the owners of the land to which it applies, the owners must pay the authority an assessment fee determined by the authority.

(2) If a draft development control plan is prepared by the relevant planning authority at the request of the owners, the owners must pay the authority a preparation fee determined by the authority.

(3) The assessment fee or preparation fee must not exceed the reasonable cost to the relevant planning authority of—

(a) assessing or preparing the draft development control plan, and

(b) carrying out associated studies, and

(c) publicly exhibiting the draft plan.

(4) If there is more than one owner, the relevant planning authority must apportion the fee between the owners.

(5) If the Minister makes a development control plan under the Act, section 3.44(5)(b), the council must pay to the Minister any assessment or preparation fee that was paid to the council in relation to the plan, if the Minister directs.

20 Publication of development control plans

(cl 25AB and 25AC 2000 Reg)

(1) A council must, within 28 days of making a development control plan, give a copy of the plan to the Planning Secretary.

(2) For the purposes of the Act, section 3.45(4)(b), a council must publish a development control plan on its website, including any document, map, plan, diagram or other material referred to in the plan.

21 Development control plans made by Planning Secretary

(cl 24 2000 Reg)

This Part applies to a development control plan prepared by the Planning Secretary as the relevant planning authority under the Act, section 3.43 subject to the following modifications—

(a) a reference to a council is taken to be a reference to the Planning Secretary,

(b) a reference to a council's website is taken to be a reference to the NSW planning portal,

(c) a reference to a local environmental plan or deemed environmental planning instrument is taken to be a reference to a State environmental planning policy.

Part 3 Development applications

Division 1 Making development applications

22 Application of Part

(cl 47 2000 Reg)

This Part applies to all development applications.

Note— This Part does not apply to applications for complying development certificates. See the Act, section 1.4, definition of ***development application***.

23 Persons who may make development applications

(cl 49 2000 Reg)

(1) A development application may be made by—

(a) the owner of the land to which the development application relates, or

(b) another person, with the consent of the owner of the land.

(2) The consent of the owner of the land is not required for a development application made by a public authority, or for a development application for public notification development, if the applicant instead gives notice of the application—

(a) to the owner of the land before the application is made, or

(b) by publishing a notice no later than 14 days after the application is made—

(i) in a newspaper circulating in the area in which the development will be carried out, and

(ii) for an application made by a public authority, on the public authority's website or, for public notification development, on the NSW planning portal.

(3) A development application relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council.

(4) A lessee of Crown land may make a development application relating to Crown land only with the consent of the Crown.

(5) The consent of the Crown is not required under subclause (4) for a development application for—

(a) public notification development, or

(b) other State significant development if the development application is made by a public authority.

(6) In this clause—

public authority includes an irrigation corporation, within the meaning of the *Water Management Act 2000*, that the Minister administering that Act has, by written order, declared to have the status of a public authority for the purposes of this clause in relation to development of a kind specified in the order.

24 Content of development applications

(cl 50(1), (3) and (5)–(7) and 50B 2000 Reg)

(1) A development application must—

(a) be in the approved form, and

(b) contain all the information and documents specified in the approved form or required by the Act or this Regulation, and

(c) be submitted on the NSW planning portal.

(2) The development application is taken to be lodged—

(a) on the day on which the fees the applicant is required to pay under this Regulation are paid, or

(b) if the applicant is notified under Part 13 that no fee is required—on the day the applicant submitted the application on the NSW planning portal.

Note— The fees payable are determined in accordance with Part 13 and Schedule 4.

(3) The applicant must be notified, by means of the NSW planning portal, that the development application has been lodged.

(4) If the council is not the consent authority, the consent authority must give the council a copy of—

(a) the development application, and

(b) for designated development—the environmental impact statement.

25 Information about concurrence or approvals

(cl 1 of Sch 1 2000 Reg)

A development application must contain the following information—

(a) a list of the authorities —

(i) from which concurrence must be obtained before the development may lawfully be carried out, and

(ii) from which concurrence would have been required but for the Act, section 4.13(2A) or 4.41,

(b) a list of the approvals of the kind referred to in the Act, section 4.46(1) that must be obtained before the development may lawfully be carried out.

26 Development applications relating to Biodiversity Conservation Act 2016

(cl 1 of Sch 1 2000 Reg)

(1) A development application for biodiversity compliant development must contain the reason the development is biodiversity compliant development.

(2) A development application that is accompanied by a biodiversity development assessment report under the *Biodiversity Conservation Act 2016* must contain the biodiversity credits information.

(3) A development application relating to land that is subject to a private land conservation agreement under the *Biodiversity Conservation Act 2016* must contain a description of the kind of agreement and the area to which it applies.

(4) In this clause—

biodiversity compliant development means—

(a) development proposed to be carried out on biodiversity certified land under the *Biodiversity Conservation Act 2016*, or

(b) development proposed to be carried out on land to which a biodiversity stewardship agreement under the *Biodiversity Conservation Act 2016* applies, or

(c) development to which the biodiversity certification conferred by the *Threatened Species Conservation Act 1995, Schedule 7, Part 7* applies, or

(d) development for which development consent is required under a biodiversity certified EPI, within the meaning of the *Threatened Species Conservation Act 1995*, Schedule 7, Part 8.

Note— The *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, clause 43 provides that the repeal of the *Threatened Species Conservation Act 1995* does not affect the operation of that Act, Schedule 7, Part 7 or 8.

biodiversity credits information, in relation to a development application, means the reasonable steps taken to obtain like-for-like biodiversity credits required to be retired under the biodiversity development assessment report, if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the *Biodiversity Conservation Act 2016*.

27 Development applications for residential apartment development

(cl 50(1A)–(1B) 2000 Reg)

(1) A development application that relates to residential apartment development must be accompanied by a statement by a qualified designer.

(2) The statement must—

(a) verify that the qualified designer designed, or directed the design of, the development, and

(b) explain how the development addresses—

(i) the design quality principles, and

(ii) the objectives in Parts 3 and 4 of the Apartment Design Guide.

(3) If the development application is accompanied by a BASIX certificate for a building, the design quality principles do not need to be addressed to the extent to which they aim—

(a) to reduce consumption of mains-supplied potable water or greenhouse gas emissions in the use of the building or the land on which the building is located, or

(b) to improve the thermal performance of the building.

(4) If a development application that relates to residential apartment development is referred to the relevant design review panel for advice, the applicant must pay the fee specified in Schedule 4.

28 Development applications for certain mining or petroleum development

(cl 50A 2000 Reg)

(1) This clause applies to a development application that relates to mining or petroleum development on land—

(a) shown on the Strategic Agricultural Land Map, or

(b) subject to a site verification certificate.

(2) The development application must be accompanied by—

(a) for development on land shown on the Strategic Agricultural Land Map as critical industry cluster land—a current gateway certificate that applies to the development, or

(b) for development on other land—

(i) a current gateway certificate that applies to the development, or

(ii) a site verification certificate that certifies that the land on which the development will be carried out is not biophysical strategic agricultural land.

29 Other documents required for certain development applications

(cl 50(2), (2A) and (4) and 50C 2000 Reg)

(1) A development application that relates to development for which consent under the *Wilderness Act 1987* is required must be accompanied by a copy of the consent.

(2) A development application that relates to development for which a site compatibility certificate is required by a SEPP must be accompanied by a site compatibility certificate.

(3) A development application made under the Act, section 4.12(3) must be accompanied by the matters that would be required under the *Local Government Act 1993*, section 81 if approval were sought under that Act.

(4) A development application that relates to development on land in an Activation Precinct under *State Environmental Planning Policy (Activation Precincts) 2020* must be accompanied by a current Activation Precinct certificate, except if the development application is made by a public authority, other than the Development Corporation within the meaning of that Policy.

30 Extract of development application for erection of building

(cl 56 2000 Reg)

(1) If a development application relates to the erection of a building, an extract of the application must be published on the NSW planning portal.

(2) The extract must—

(a) identify the applicant and the land to which the application relates, and

(b) contain a plan of the building that indicates the proposed height and external configuration of the site, if relevant for the development.

(3) This clause does not apply to the following—

(a) designated development,

(b) nominated integrated development,

(c) threatened species development,

(d) Class 1 aquaculture development,

(e) State significant development.

31 Concept development applications

(cl 70A and 70B 2000 Reg)

(1) The information about the various stages of development, required by this Regulation to be included in a concept development application, may be deferred to a subsequent development application, with the approval of the consent authority.

(2) Clause 27 applies in relation to a concept development application only if the application sets out detailed proposals for the development or part of the development.

32 Urban development under Growth Centres SEPP

(cl 276 2000 Reg)

(1) For the purposes of the Growth Centres SEPP, the Minister may, by order published in the Gazette, declare a precinct or part of a precinct to be released for urban development.

(2) The Minister must arrange for a development code to be prepared that contains guidelines that, together with the relevant growth centre structure plan under the

Growth Centres SEPP, will assist environmental planning in precincts released for urban development.

(3) The Minister must consult—

(a) relevant councils about the making of declarations, and

(b) relevant councils and the public authorities the Minister considers appropriate about the preparation of a development code.

33 Additional requirements for development applications in certain areas of Sydney

(cl 274, 275, 275A, 275B and 275C 2000 Reg)

(1) A person must not apply to a consent authority for consent to carry out development on land zoned "Employment" or "Urban" under *Sydney Regional Environmental Plan No 30—St Marys*, other than development referred to in that Plan, clause 20(3) or (4) or 48, unless the Minister has declared the land, or land that includes the land, to be a release area in accordance with that Plan, clause 7.

(2) A person must not apply to a consent authority for consent to carry out development on the following land unless the application is accompanied by an assessment of the consistency of the development with the relevant plan—

(a) land in the North Wilton Precinct under the Growth Centres SEPP,

(b) land in the South East Wilton Precinct under the Growth Centres SEPP,

(c) declared land,

(d) land in the Mamre Road Precinct, identified as Precinct 12 on the Land Application Map under *State Environmental Planning Policy (Western Sydney Employment Area) 2009*,

(e) land in the Western Sydney Aerotropolis under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*.

(3) Subclause (2)(c) applies to the following development, other than development for the purposes of a single residential dwelling, on declared land only—

(a) development with a capital investment value of more than $500,000,

(b) development that relates to an area of land of more than 2 hectares,

(c) development that is a subdivision of land that creates 2 or more lots.

(4) In this clause—

declared land means land—

(a) in a precinct of a growth centre declared by the Minister under clause 32 to be released for urban development, and

(b) to which the Growth Centres SEPP, clause 17 applies.

relevant plan means—

(a) for land in the North Wilton Precinct—the North Wilton structure plans under the Growth Centres SEPP, Appendix 15, and

(b) for land in the South East Wilton Precinct—the South East Wilton structure plans under the Growth Centres SEPP, Appendix 14, and

(c) for declared land—the growth centre structure plan under the Growth Centres SEPP that applies to the land, and

(d) for land in the Mamre Road Precinct—the *Mamre Road Precinct Structure Plan* dated June 2020 and published on the NSW planning portal, and

(e) for land in the Western Sydney Aerotropolis—the Western Sydney Aerotropolis Plan and any precinct plan that applies to the land under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*.

34 Consent authority may request additional information from applicant

(cl 54 2000 Reg)

(1) A consent authority that receives a development application may request additional information about the development from the applicant.

(2) A consent authority may not request additional information in relation to building work or subdivision work if the information is required to accompany an application for a construction certificate.

(3) A consent authority's request must—

(a) be made by means of the NSW planning portal, and

(b) specify a reasonable period within which the additional information must be given to the consent authority, and

(c) specify the number of days in the assessment period that have elapsed, and

(d) inform the applicant that the assessment period ceases to run, in accordance with Part 4, Division 4, during the period between—

(i) the request, and

(ii) the date on which the applicant provides the additional information or notifies, or is taken to have notified, the consent authority that the information will not be provided.

(4) The applicant may, by means of the NSW planning portal, notify the consent authority that the applicant will not provide the additional information.

(5) The applicant is taken to have notified the consent authority that the applicant will not provide the additional information if the applicant has not provided the information by the end of—

(a) the period specified under subclause (3)(b), or

(b) a further period allowed by the consent authority.

(6) In this clause—

additional information, in relation to a development application, means information the consent authority considers necessary to properly consider the development application.

Division 2 Amendment, rejection and withdrawal of development applications

35 Amendment of development application

(cl 55 and 55A 2000 Reg)

(1) An applicant may, by means of the NSW planning portal, apply to the consent authority for an amendment to the applicant's development application.

(2) The application may be made at any time before the development application is determined.

(3) The consent authority may, by means of the NSW planning portal, approve or reject the application.

(4) If the amendment relates to a BASIX certificate that accompanied the original development application only, the development application may instead be amended by lodging on the NSW planning portal—

(a) a new BASIX certificate to replace the current BASIX certificate for the original development application, or

(b) if a new document is required or a document that accompanied the original development application requires amendment—the new or amended document.

(5) If the proposed amendment will result in a change to the development, the application must contain details of the change, including the name, number and date of any plans that have changed, to enable the consent authority to compare the development with the development originally proposed.

(6) If the proposed amendment will result in the development differing materially from the description contained in the BASIX certificate that accompanied the original development application, the application must be accompanied by a new BASIX certificate that takes account of the amendment.

(7) A development application that is amended is taken to be lodged on the day on which the applicant applied for the amendment if the consent authority—

(a) considers the amendment not to be minor, and

(b) notifies the applicant, by means of the NSW planning portal, that the later day applies.

(8) If the development application is for integrated development or development requiring concurrence, the consent authority must immediately give a copy of the amended development application to the approval body or concurrence authority.

36 Rejection of development applications

(cl 51 2000 Reg)

(1) A consent authority may reject a development application within 14 days after receiving the application if—

(a) the application is illegible or unclear about the development consent sought, or

(b) the application does not contain the information and documents specified in the approved form or required by the Act or this Regulation, or

(c) for an application for State significant development or designated development—the application is not accompanied by an environmental impact statement, or

(d) for an application for integrated development or development requiring concurrence—the application is not accompanied by the approval fees or concurrence fees required for each relevant approval or concurrence, or

(e) for an application for integrated development—the application does not identify all of the approvals required to be obtained, as referred to in the Act, section 4.46, before the development may be carried out,

(f) for an application required to be accompanied by a biodiversity development assessment report under the *Biodiversity Conservation Act 2016*—the application is not accompanied by a report, or

(g) for an application required to be accompanied by a species impact statement under the *Fisheries Management Act 1994*, section 221ZW—the application is not accompanied by a statement.

(2) For the purposes of the Act, a development application is taken never to have been made if—

(a) the application is rejected by a consent authority under this clause, and

(b) the determination to reject the application is not changed following a review.

(3) Immediately after rejecting a development application, the consent authority must notify, by means of the NSW planning portal—

(a) the applicant of the reasons for the rejection, and

(b) if the development application is for integrated development or development requiring concurrence—each relevant approval body or concurrence authority.

(4) Subclause (3)(b) applies only if the consent authority has already notified the approval body under clause 39 or the concurrence authority under clause 47.

37 Withdrawal of development applications

(cl 52 2000 Reg)

(1) An applicant may, by means of the NSW planning portal, withdraw a development application at any time before the application is determined.

(2) An application that is withdrawn is taken never to have been made, except for the purposes of this Regulation, clause 54(4) or the Act, Schedule 1.

(3) Immediately after a development application for integrated development or development requiring concurrence is withdrawn, the consent authority must notify, by means of the NSW planning portal, each relevant approval body or concurrence authority.

(4) Subclause (3) applies only if the consent authority has already notified the approval body under clause 39 or the concurrence authority under clause 47.

Division 3 Development applications for integrated development

38 Application of Division

(cl 65 2000 Reg)

(1) This Division applies to all development applications for integrated development.

(2) This Division ceases to apply to a development application for integrated development if the development application is rejected or withdrawn.

39 Consent authority to seek general terms of approval

(cl 66 and 69 2000 Reg)

(1) Within 14 days after a development application for integrated development is lodged, the consent authority must—

(a) give a copy of the application and all accompanying documents to each approval body whose approval is required, and

(b) give written notice to the approval body of—

(i) the basis on which its approval is required, and

(ii) the date on which the development application was lodged, and

(iii) if known, when the application will be publicly exhibited for the purposes of the Act.

(2) The consent authority is not required to comply with subclause (1) if within 14 days after the application is lodged—

(a) the consent authority rejects the application, or

(b) the application is withdrawn.

(3) Immediately after the end of the public exhibition period, the consent authority must give a copy of all submissions received during the public exhibition period to each approval body.

40 Approval body may request additional information from consent authority
(cl 67 2000 Reg)

(1) An approval body whose approval has been sought in relation to development may request additional information about the development from the consent authority.

(2) The approval body's request must—

(a) be written, and

(b) specify a reasonable period within which the additional information must be given to the approval body.

(3) Immediately after receiving a request for additional information from an approval body, a consent authority must request the additional information from the applicant.

(4) The consent authority's request must—

(a) be made by means of the NSW planning portal, and

(b) specify the period within which the additional information must be given to the approval body, and

(c) specify the number of days in the assessment period that have elapsed, and

(d) inform the applicant that the assessment period ceases to run, in accordance with Part 4, Division 4, during the period between—

(i) the request, and

(ii) the date on which the applicant provides the additional information or notifies, or is taken to have notified, the consent authority, that the information will not be provided.

(5) Immediately after receiving the additional information from the applicant, the consent authority must give the information to the approval body.

(6) An applicant to whom a request is made may, by means of the NSW planning portal, notify the consent authority that the applicant will not provide the additional information.

(7) An applicant is taken to have notified the consent authority that the applicant will not provide the additional information if the applicant has not provided the information by the end of—

(a) the period specified under subclause (2)(b), or

(b) a further period allowed by the approval body.

(8) In this clause—

additional information, in relation to a development application, means information the approval body considers necessary to properly consider the general terms of approval.

41 Notice of proposed consultations about Aboriginal heritage impact under National Parks and Wildlife Act 1974
(cl 68 2000 Reg)

(1) If a development application relates to development that requires an Aboriginal heritage impact permit under the *National Parks and Wildlife Act 1974*, the Planning Secretary must notify the consent authority that Aboriginal community consultation is required under that Act.

(2) Immediately after being notified by the Planning Secretary under this clause, the consent authority must give notice to the applicant that—

(a) specifies the number of days in the assessment period for the development application that have elapsed, and

(b) informs the applicant that the assessment period ceases to run, in accordance with Part 4, Division 4, during a period of Aboriginal community consultation required under the *National Parks and Wildlife Act 1974*.

42 Notification of general terms of approval

(cl 70 2000 Reg)

(1) An approval body that receives a development application from a consent authority must give written notice to the consent authority of its decision about the general terms of approval in relation to the development application, including whether it will grant an approval—

(a) within 40 days after receiving the development application from the consent authority, or

(b) if the development must be publicly exhibited under the Act—within 21 days after—

(i) receiving from the consent authority the submissions made during the public exhibition period, or

(ii) being notified by the consent authority that no submissions were made.

(2) If the consent authority determines a development application by refusing to grant consent before the end of the period under subclause (1)—

(a) the consent authority must notify the approval body as soon as possible after the determination, and

(b) this clause ceases to apply to the development application.

(3) This clause does not prevent a consent authority from considering the general terms of approval notified to the consent authority by an approval body after the end of the period under subclause (1).

43 Planning Secretary may act on behalf of approval body—the Act, s 4.47(4A)

(cl 70AA 2000 Reg)

(1) The Planning Secretary is authorised to act on behalf of an approval body if—

(a) the approval body has not given written notice to the consent authority under the Act, section 4.47, within the relevant assessment period, of—

(i) whether the approval body will grant the approval, or

(ii) the general terms of its approval, or

(b) the consent authority identifies an inconsistency in the general terms of approval of 2 or more approval bodies that means a general term of approval of an approval body could not be complied with without breaching a general term of approval of another approval body.

(2) As soon as practicable after deciding to act on behalf of an approval body, the Planning Secretary must give written notice to the consent authority and approval body.

(3) The assessment requirements set out in the *Secretary's Assessment Requirements for Development Requiring General Terms of Approval*, published on the NSW planning portal, are prescribed as State assessment requirements.

(4) In this clause—

relevant assessment period means the period of 21 or 40 days specified in clause 42(1) as the period within which the approval body must notify its decision to the consent authority.

44 Planning Secretary may request additional information from applicant

(cl 70AB 2000 Reg)

(1) This clause applies if the Planning Secretary decides to act on behalf of an approval body as referred to in the Act, section 4.47(4A).

(2) The Planning Secretary may request additional information from the applicant.

(3) The request must—

(a) be written, and

(b) specify a reasonable period within which the additional information must be given to the Planning Secretary.

(4) An applicant to whom a request is made may give the Planning Secretary written notice that the applicant will not provide the additional information.

(5) The Planning Secretary may deal with a request for general terms of approval without the additional information from an applicant if the applicant—

(a) notifies the Planning Secretary that the additional information will not be provided, or

(b) has not provided the additional information by the end of—

(i) the period specified under subclause (3)(b), or

(ii) a further period allowed by the Planning Secretary.

(6) In this clause—

additional information, in relation to a development application, means information the Planning Secretary considers necessary to properly consider the general terms of approval.

45 Notification of general terms of approval by Planning Secretary

(cl 70AC 2000 Reg)

(1) If the Planning Secretary decides to act on behalf of an approval body as referred to in the Act, section 4.47(4A), the Planning Secretary must, within 21 days after giving notice under clause 43(2), give written notice of the Planning Secretary's decision about the general terms of approval, including whether approval will be given, to—

(a) the consent authority, and

(b) each approval body.

(2) If the consent authority determines the development application by refusing to grant consent before the end of the period under subclause (1)—

(a) the consent authority must, as soon as possible after the determination, give written notice to the Planning Secretary, and

(b) subclause (1) ceases to apply in relation to the development application.

(3) This clause does not prevent a consent authority from considering the general terms of approval notified to the consent authority by the Planning Secretary after the end of the period under subclause (1).

Division 4 Development applications for development requiring concurrence

46 Application of Division

(cl 58 2000 Reg)

(1) This Division applies to all development applications that relate to development requiring the concurrence of a concurrence authority.

(2) This Division extends, with necessary modifications, to a development application or environmental assessment that relates to development or an activity for which concurrence is required under—

(a) the *Biodiversity Conservation Act 2016*, section 7.12, or

(b) the *Fisheries Management Act 1994*, section 221ZZ.

(3) This Division, other than clause 52, does not apply if a concurrence authority's concurrence may be assumed under clause 52.

(4) This Division ceases to apply to a development application if the development application is rejected or withdrawn.

47 Consent authority to seek concurrence

(cl 59 2000 Reg)

(1) Within 14 days after a development application for development requiring concurrence is lodged, the consent authority must give each concurrence authority whose concurrence is required—

(a) a copy of the application and all accompanying documents, and

(b) written notice of the following—

(i) the basis on which its concurrence is required,

(ii) the date on which the development application was lodged,

(iii) if known, when the application will be publicly exhibited.

(2) The consent authority is not required to comply with subclause (1) if within 14 days after the application is lodged—

(a) the consent authority rejects the application, or

(b) the application is withdrawn.

(3) If the Planning Secretary has made an election under *State Environmental Planning Policy (Concurrences and Consents) 2018* in relation to the development, the consent authority must give the development application to the Planning Secretary as soon as possible after receiving notice of the election.

(4) Immediately after the end of the public exhibition period for a development application for development requiring concurrence, the consent authority must give a copy of all submissions received during the public exhibition period to each concurrence body.

48 Concurrence under Biodiversity Conservation Act 2016

(cl 59(3) 2000 Reg)

(1) This clause applies if concurrence may be required under the *Biodiversity Conservation Act 2016*, Part 7 from a person (the ***biodiversity concurrence authority***) because the development application indicates that a reduction is being sought in the number of biodiversity credits required to be retired under the biodiversity development assessment report.

(2) The development application must be given to the biodiversity concurrence authority within 10 days, instead of 14 days, after the application is lodged.

(3) The consent authority must, within 30 days after the application is lodged, notify the biodiversity concurrence authority—

(a) whether it proposes to reduce the number of biodiversity credits required to be retired, and

(b) if so, the amount of and the reasons for the reduction, as referred to in the *Biodiversity Conservation Act 2016*, section 7.13(4).

(4) If the concurrence of the biodiversity concurrence authority is required because the consent authority proposes to reduce the number of biodiversity credits, the reference in clause 50(1)(a) to a concurrence authority giving notice of its decision to a consent authority within 40 days after receiving the development application is taken to be a reference to giving notice within 50 days after the development application is lodged.

49 Concurrence authority may request additional information from consent authority
(cl 60 2000 Reg)

(1) A concurrence authority whose concurrence has been sought in relation to development may request additional information about the development from the consent authority.

(2) The request must—

(a) be written, and

(b) specify a reasonable period within which the additional information must be given to the concurrence authority.

(3) Immediately after receiving a request for additional information from a concurrence authority, a consent authority must request the additional information from the applicant.

(4) The consent authority's request must—

(a) be written, and

(b) specify the period within which the additional information must be given to the concurrence authority, and

(c) specify the number of days in the assessment period that have elapsed, and

(d) inform the applicant that the assessment period ceases to run, in accordance with Part 4, Division 4, during the period between—

(i) the request, and

(ii) the date on which the applicant provides the information or notifies, or is taken to have notified, the consent authority, that the information will not be provided.

(5) Immediately after receiving the additional information from the applicant, the consent authority must give the information to the concurrence authority.

(6) The applicant to whom a request is made may, by means of the NSW planning portal, notify the consent authority that the applicant will not provide the additional information.

(7) The applicant is taken to have notified the consent authority that the applicant will not provide the additional information if the applicant has not provided the information by the end of—

(a) the period specified under subclause (2)(b), or

(b) a further period allowed by the concurrence authority.

(8) In this clause—

additional information, in relation to development, means information the concurrence authority considers necessary to properly consider whether concurrence should be granted.

50 Notification of decision

(cl 62 2000 Reg)

(1) A concurrence authority that receives a development application from a consent authority must give written notice to the consent authority of its decision on the development application—

(a) within 40 days after receiving the development application from the consent authority, or a lesser period, if any, provided for in an environmental planning instrument, or

(b) if the development must be publicly exhibited under the Act—within 21 days after —

(i) receiving from the consent authority the submissions made during the public exhibition period, or

(ii) being notified by the consent authority that no submissions were made.

(2) If the consent authority determines a development application by refusing to grant consent before the end of the period under subclause (1)—

(a) the consent authority must notify the concurrence authority as soon as possible after the determination, and

(b) this clause ceases to apply to the development application.

(3) This clause does not prevent a consent authority from considering a concurrence authority's decision on a development application that is notified to the consent authority after the end of the relevant period under subclause (1).

51 Notice of reasons for concurrence decisions

(cl 63 2000 Reg)

If the concurrence authority grants concurrence subject to a condition, or refuses concurrence, the concurrence authority must give written notice to the consent authority of the reasons for the imposition of the condition or the refusal.

52 Circumstances in which concurrence may be assumed

(cl 64 2000 Reg)

(1) A concurrence authority may, by written notice given to the consent authority—

(a) inform the consent authority that concurrence may be assumed, subject to the qualifications or conditions specified in the notice, and

(b) amend or revoke an earlier notice under this clause.

(2) A consent granted by a consent authority that has assumed concurrence in accordance with a notice under this clause is as valid and effective as if concurrence had been given.

Division 5 Development applications for designated development, nominated integrated development, threatened species development, Class 1 aquaculture development and State significant development

53 Notice of development applications

(cl 77, 78, 79, 82, 84, 85, 86, 87, 88, 89 and 91 2000 Reg)

(1) This clause applies to development applications for the following only—

(a) designated development,

(b) nominated integrated development,

(c) threatened species development,

(d) Class 1 aquaculture development,

(e) State significant development.

(2) As soon as practicable after a development application is lodged on the NSW planning portal, the consent authority must—

(a) publish notice of the application on the consent authority's website, and

(b) give notice of the application to—

(i) the public authorities that, in the consent authority's opinion, may have an interest in the determination of the application, and

(ii) the persons that own or occupy the land adjoining the land to which the application relates.

(3) Subclause (2)(b)(i) does not require notice to be given to relevant concurrence authorities or approval bodies.

(4) Subclause (2)(b)(ii) does not apply to a notice that relates to an application for public notification development or designated development.

(5) The notice under subclause (2)(a) and (b) must contain the following information—

(a) a description and address of the land on which the development is proposed to be carried out,

(b) the name of the applicant and the consent authority,

(c) a description of the proposed development,

(d) whether the development is designated development, nominated integrated development, threatened species development, Class 1 aquaculture development or State significant development,

(e) a statement that the application and the documents accompanying the application, including any environmental impact statement, are available on the consent authority's website for the minimum period required under the Act,

(f) a statement that a person may, during the submission period, make submissions to the consent authority about the application and that the submissions must specify the grounds of objection, if any,

(g) for development that is also integrated development—a statement of the required approvals and the approval bodies for the approvals,

(h) for State significant development—whether the Minister has directed that the Independent Planning Commission must hold a public hearing,

(i) for designated development—

(i) a statement that, unless the Independent Planning Commission has held a public hearing, a person who objected to the development by making a submission and who is dissatisfied with the determination of the consent authority to grant development consent, may appeal to the Court, and

(ii) a statement that, if the Independent Planning Commission holds a public hearing, the Commission's determination of the application is final and not subject to appeal.

(6) For the purposes of this clause—

(a) if land is a lot in a freehold strata scheme—a notice to the owners corporation is taken to be a notice to the owner or occupier of each lot in the strata scheme, and

(b) if land is a lot in a leasehold strata scheme—a notice to the lessor under the leasehold strata scheme and to the owners corporation is taken to be a notice to the owner or occupier of each lot in the strata scheme, and

(c) if land is owned or occupied by more than one person—a notice to one owner or one occupier is taken to be a notice to all owners and occupiers of the land.

(7) In this clause—

freehold strata scheme and ***leasehold strata scheme*** have the same meaning as in the *Strata Schemes Development Act 2015*.

54 Notice not required in certain circumstances

(cl 90 2000 Reg)

(1) This clause applies to a development application for the following that has been lodged but not determined by the consent authority—

(a) nominated integrated development, or

(b) threatened species development, or

(c) Class 1 aquaculture development.

(2) The consent authority may decide not to comply with clause 53 in relation to an amended development application if the consent authority—

(a) complied with clause 53 in relation to the development application (the ***original development application***) before it was amended, and

(b) considers that the amended development application differs from the original development application in minor ways only.

(3) Compliance with clause 53 in relation to the original development application is taken to be compliance in relation to the amended development application.

(4) The consent authority must give written notice to the applicant of its decision under this clause no later than the notice of the determination of the amended development application is given under the Act, section 4.18.

(5) In this clause—

amended for a development application means—

(a) amended, or

(b) substituted, or

(c) withdrawn and replaced.

55 Exhibition of notice of designated development application

(cl 78 2000 Reg)

A notice for a development application for designated development must be exhibited on the land to which the development application relates and must—

(a) be displayed on a signpost or board, and

(b) be clear and legible, and

(c) have the heading "**DEVELOPMENT PROPOSAL**" in capital letters and bold type, and

(d) contain the following information—

(i) a statement that the application has been lodged,

(ii) the name of the applicant,

(iii) a brief description of the development application,

(iv) a statement that the application and the documents accompanying the application, including any environmental impact statement, are available on the consent authority's website for the minimum period required under the Act for designated development, and

(e) if practicable, be able to be read from a public place.

56 Additional requirements for State significant development—the Act, s 4.39

(cl 85A and 85B 2000 Reg)

(1) The Planning Secretary must give an applicant for State significant development a copy of the submissions, or a summary of the submissions, received in relation to the application during the submission period.

(2) If the Planning Secretary considers it necessary, the Planning Secretary may, by written notice, require the applicant to give a written response to an issue raised in the submissions.

(3) The Planning Secretary must make the following documents relating to a development application for State significant development available on the NSW planning portal—

(a) the Planning Secretary's environmental assessment requirements under Part 8, Division 2,

(b) the application, including accompanying documents and information and any amendments made to the application,

(c) submissions received during the submission period and responses given under subclause (2),

(d) any environmental assessment report prepared by the Planning Secretary,

(e) any development consent or modification to a development consent,

(f) any application made for a modification to development consent, including accompanying documents and information,

(g) documents or information given to the Planning Secretary by the applicant in response to submissions.

57 Submissions about designated development to be given to Planning Secretary

(cl 81 2000 Reg)

The consent authority must, immediately after a period of public exhibition of a development application for designated development, give a copy of any submissions to the Planning Secretary, unless the Minister is the consent authority.

Part 4 Determination of development applications

Division 1 Determination of development applications

58 Additional matters that consent authority must consider—the Act, s 4.15(1)(a)(iv)

(cl 92 2000 Reg)

(1) In determining a development application for the demolition of a building, the consent authority must consider the Australian Standard AS 2601—2001: *The Demolition of Structures*.

(2) In determining a development application for the carrying out of development on land that is subject to a subdivision order under the Act, Schedule 7, the consent authority must consider—

(a) the subdivision order, and

(b) any development plan prepared for the land by a relevant authority under that Schedule.

(3) In determining a development application for development on the following land, the consent authority must consider the *Dark Sky Planning Guideline*, prepared by the Planning Secretary and published in the Gazette—

(a) land in the local government area of Coonamble, City of Dubbo, Gilgandra or Warrumbungle Shire,

(b) land less than 200 kilometres from the Siding Spring Observatory, if the development is—

(i) State significant development, or

(ii) designated development, or

(iii) development specified in *State Environmental Planning Policy (State and Regional Development) 2011*, Schedule 7.

(4) In determining a development application for development for the purposes of a manor house or multi dwelling housing (terraces), the consent authority must consider the *Low Rise Housing Diversity Design Guide for Development Applications* published by the Department in July 2020.

(5) Subclause (4) applies only if the consent authority is satisfied there is not a development control plan that adequately addresses the development.

(6) In determining a development application for development for the erection of a building for residential purposes on land in Penrith City Centre, within the meaning of *Penrith Local Environmental Plan 2010*, the consent authority must consider the *Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre* published by the Department on 28 June 2019.

(7) In determining a development application for development on land to which *Wagga Wagga Local Environmental Plan 2010* applies, the consent authority must consider whether the development is consistent with the *Wagga Wagga Special Activation Precinct Master Plan* published by the Department in April 2021.

(8) Subclause (7) does not apply to a development application made on or after 31 December 2021.

59 Consideration of fire safety—the Act, s 4.15(1)(a)(iv)
(cl 93 2000 Reg)

(1) This clause applies to the determination of a development application for a change of building use for an existing building if the applicant does not seek the rebuilding, alteration, enlargement or extension of the building.

(2) The consent authority must—

(a) consider whether the fire protection and structural capacity of the building will be appropriate to the building's proposed use, and

(b) not grant consent to the change of building use unless the consent authority is satisfied that the building complies, or will, when the development is completed, comply, with the Category 1 fire safety provisions that are applicable to the building's proposed use.

(3) Subclause (2)(b) does not apply to the extent to which an exemption from a provision of the *Building Code of Australia* or a fire safety standard is in force under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

60 Considerations for erection of temporary structures—the Act, s 4.15(1)(a)(iv)
(cl 94A 2000 Reg)

In determining a development application for the erection of a temporary structure, the consent authority must consider whether—

(a) the fire protection and structural capacity of the structure will be appropriate to the proposed use of the structure, and

(b) the ground or other surface on which the structure will be erected will be sufficiently firm and level to sustain the structure while in use.

61 Consent authority may require upgrade of buildings—the Act, s 4.15(1)(a)(iv)
(cl 94 2000 Reg)

(1) This clause applies to the determination of a development application that involves the rebuilding, alteration, enlargement or extension of an existing building if—

(a) the proposed building work and previous building work together represent more than half of the total volume of the building, or

(b) the measures contained in the building are inadequate—

(i) to protect persons using the building, if there is a fire, or

(ii) to facilitate the safe egress of persons using the building from the building, if there is a fire, or

(iii) to restrict the spread of fire from the building to other buildings nearby.

(2) The consent authority must consider whether it is appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*.

(3) In this clause—

previous building work means building work completed or authorised within the previous 3 years.

total volume of a building means the volume of the building before the previous building work commenced and measured over the building's roof and external walls.

62 Consideration of conservation plan for development at Sydney Opera House—the Act, s 4.15(1)(a)(iv)

(cl 288 2000 Reg)

(1) In determining a development application involving development at the Sydney Opera House to which the Act, Part 4 applies, the consent authority must consider the provisions of the Sydney Opera House Conservation Plan.

(2) In this clause—

Sydney Opera House has the same meaning as ***Opera House*** in the *Sydney Opera House Trust Act 1961*.

Sydney Opera House Conservation Plan means the conservation management plan for the Sydney Opera House entitled "Respecting the Vision", 4th edition, published in July 2017 on the Sydney Opera House Trust's website.

63 Contributions plans for certain areas in Sydney

(cl 270, 270A and 271 2000 Reg)

(1) For the purposes of the Act, section 4.16(11), a development application in relation to the following land must not be determined by the consent authority unless a contributions plan has been approved for the land to which the application relates—

(a) land in Zone IN1 General Industrial under *State Environmental Planning Policy (Western Sydney Employment Area) 2009*,

(b) land in a residential, business or industrial zone, Zone E4 Environmental Living or Zone 1 Urban Development under a Precinct Plan in the Growth Centres SEPP,

(c) land shown on the Land Application Map under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*.

(2) The consent authority may dispense with the requirement for a contributions plan if—

(a) the consent authority considers the development application is of a minor nature, or

(b) the developer has entered into a planning agreement for the matters that may be the subject of a contributions plan.

(3) This clause applies to a development application in relation to land referred to in subclause (1)(b) that was made but not finally determined before 25 January 2019.

64 Modification or surrender of development consent or existing use right

(cl 97 2000 Reg)

(1) For the purposes of the Act, section 4.17(5), a development consent or existing use right may be modified or surrendered by written notice to the consent authority.

(2) The notice must contain the following information—

(a) the name and address of the person giving the notice,

(b) the address and folio identifier number of the land to which the consent or right relates,

(c) a description of the consent or right to be modified or surrendered,

(d) whether the consent or right is to be modified, including details of the modification, or surrendered,

(e) if the person giving the notice is not the owner of the land—a statement signed by the owner of the land that the owner consents to the modification or surrender of the consent or right.

(3) The notice takes effect when it is received by the consent authority.

(4) The notice operates, according to its terms, to modify or surrender the development consent or existing use right to which it relates.

(5) The consent of the owner is not required under subclause (2)(e) if the consent of the owner of the land was not required to make the application for the development consent.

(6) In this clause—

existing use right means a right conferred by the Act, Division 4.11.

65 Voluntary surrender of development consent

(cl 97 2000 Reg)

(1) For the purposes of the Act, section 4.63, a development consent may be voluntarily surrendered by written notice to the consent authority.

(2) The notice must contain the following information—

(a) the name and address of the person giving the notice,

(b) the address and folio identifier number of the land to which the development consent relates,

(c) a description of the development consent to be surrendered,

(d) if the person giving the notice is not the owner of the land—a statement signed by the owner of the land that the owner consents to the surrender of the development consent,

(e) whether or not any part of the development to which the development consent relates has commenced.

(3) If any part of the development to which the development consent relates has commenced (the ***commenced development***), the notice must also set out the circumstances that indicate—

(a) the commenced development was carried out in compliance with—

(i) each condition of the development consent that is relevant to the commencement development, or

(ii) an agreement with the consent authority relating to the development consent that is relevant to the commenced development, and

(b) the surrender of the development consent will not have an adverse impact on a third party or the locality.

(4) The notice takes effect when the consent authority notifies the person that the consent authority is satisfied that—

(a) no part of the development to which the development consent relates has commenced, or

(b) if there is commenced development—

(i) it was carried out in compliance with each condition of the development consent, or an agreement with the consent authority relating to the development consent, that is relevant to the commenced development, and

(ii) the surrender of the development consent will not have an adverse impact on a third party or the locality.

(5) The notice operates, according to its terms, to surrender the development consent to which it relates.

(6) The consent of the owner is not required under subclause (2)(d) if the consent of the owner of the land was not required to make the development application for the development consent.

Division 2 Conditions of development consent—the Act, s 4.17(11)

66 Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989

(cl 98 2000 Reg)

(1) It is a condition of a development consent for development that involves building work that the work must be carried out in accordance with the requirements of the *Building Code of Australia*.

(2) It is a condition of a development consent for development that involves residential building work for which a contract of insurance is required under the *Home Building Act 1989*, Part 6 that a contract of insurance is in force before building work authorised to be carried out by the consent commences.

(3) It is a condition of a development consent for a temporary structure used as an entertainment venue that the temporary structure must comply with Part B1 and NSW Part H102 in Volume 1 of the *Building Code of Australia*.

(4) In subclause (1), a reference to the *Building Code of Australia* is a reference to the Code as in force on the date on which the application for the construction certificate was made.

(5) In subclause (3), a reference to the *Building Code of Australia* is a reference to the Code as in force on the date on which the application for development consent was made.

(6) This clause does not apply—

(a) to the extent to which an exemption from a provision of the *Building Code of Australia* or a fire safety standard is in force under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, or

(b) to the erection of a temporary building, other than a temporary structure to which subclause (3) applies.

67 Erection of signs

(cl 98A 2000 Reg)

(1) This clause applies to a development consent for development involving building work, subdivision work or demolition work.

(2) It is a condition of the development consent that a sign must be erected in a prominent position on a site on which building work, subdivision work or demolition work is being carried out—

(a) showing the name, address and telephone number of the principal certifier for the work, and

(b) showing the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside working hours, and

(c) stating that unauthorised entry to the work site is prohibited.

(3) The sign must be—

(a) maintained while the building work, subdivision work or demolition work is being carried out, and

(b) removed when the work has been completed.

(4) This clause does not apply in relation to—

(a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or

(b) Crown building work certified to comply with the *Building Code of Australia* under the Act, Part 6.

68 Notification of Home Building Act 1989 requirements

(cl 98B 2000 Reg)

(1) This clause applies to a development consent for development involving residential building work if the principal certifier is not the council.

(2) It is a condition of the development consent that residential building work must not be carried out unless the principal certifier for the development to which the work relates has given the council written notice of the following—

(a) for work that requires a principal contractor to be appointed—

(i) the name and licence number of the principal contractor, and

(ii) the name of the insurer of the work under the *Home Building Act 1989*, Part 6,

(b) for work to be carried out by an owner-builder—

(i) the name of the owner-builder, and

(ii) if the owner-builder is required to hold an owner-builder permit under the *Home Building Act 1989*— the number of the owner-builder permit.

(3) If the information notified under subclause (2) is no longer correct, it is a condition of the development consent that further work must not be carried out unless the principal certifier has given the council written notice of the updated information.

(4) This clause does not apply in relation to Crown building work certified to comply with the *Building Code of Australia* under the Act, Part 6.

69 Entertainment venues

(cl 98C and Sch 3A 2000 Reg)

(1) The requirements specified in this clause are conditions of development consent for the use of a building as an entertainment venue.

(2) During a stage performance at an entertainment venue, there must be at least one suitably trained person in attendance in the stage area at all times for the purpose of operating, if necessary, a proscenium safety curtain, drencher system and smoke exhaust system.

(3) If a proscenium safety curtain is installed at an entertainment venue, there must be no obstruction to the opening or closing of the curtain and the curtain must be operable at all times.

(4) When a film is being screened at an entertainment venue, there must be at least one person in attendance at the entertainment venue who is trained in—

(a) the operation of the projectors being used, and

(b) the use of the fire fighting equipment in the room in which the projectors are installed (the ***projection room***).

(5) If the projection room is not fitted with automatic fire suppression equipment and a smoke detection system, in accordance with the *Building Code of Australia*, the

person required by subclause (4) to be in attendance must be in the projection suite in which the projection room is located during the screening of a film.

(6) A member of the public must not be present in the projection suite during the screening of a film.

(7) An entertainment venue must not screen a nitrate film.

(8) An emergency evacuation plan must be prepared, maintained and implemented for a building, other than a temporary structure, used as an entertainment venue.

(9) The plan must specify the following—

(a) the location of all exits, and fire protection and safety equipment, for the part of the building used as an entertainment venue,

(b) the number of fire safety officers that must be present during performances,

(c) how the audience will be evacuated from the building if there is a fire or other emergency.

(10) A fire safety officer appointed to be present during a performance must have appropriate training in evacuating persons from the building if there is a fire or other emergency.

70 Maximum capacity signage

(cl 98D 2000 Reg)

(1) This clause applies to a development consent, including an existing development consent, for the following uses of a building, if the development consent contains a condition specifying the maximum number of persons permitted in the building—

(a) an entertainment venue,

(b) a function centre,

(c) a pub,

(d) a registered club,

(e) a restaurant or cafe.

(2) It is a condition of the development consent that a sign must be displayed in a prominent position in the building stating the maximum number of persons, as specified in the development consent, that are permitted in the building.

(3) Words and expressions used in this clause have the same meaning as they have in the Standard Instrument.

71 Shoring and adequacy of adjoining property

(cl 98E 2000 Reg)

(1) This clause applies to a development consent for development that involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road or rail corridor.

(2) It is a condition of the development consent that the person having the benefit of the development consent must, at the person's own expense—

(a) protect and support the building, structure or work on adjoining land from possible damage from the excavation, and

(b) if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation.

(3) This clause does not apply if—

(a) the person having the benefit of the development consent owns the adjoining land, or

(b) the owner of the adjoining land gives written consent to the condition not applying.

72 Build-to-rent housing

(cl 98F 2000 Reg)

(1) This clause applies to a development consent for development permitted under *State Environmental Planning Policy (Affordable Rental Housing) 2009*, Part 2, Division 6A.

(2) It is a condition of the development consent that, during the relevant period—

(a) the buildings to which the development consent relates must contain at least 50 dwellings occupied, or intended to be occupied, by individuals under residential tenancy agreements, and

(b) for land in Zone B3 Commercial Core—the buildings to which the development consent relates must not be subdivided into separate lots, and

(c) for land in another zone—the tenanted component of the buildings to which the development consent relates must not be subdivided into separate lots, and

(d) the tenanted component of the buildings to which the development consent relates must—

(i) be owned and controlled by 1 person only, and

(ii) be operated by 1 managing agent only, who provides on-site management.

(3) In this clause—

relevant period has the same meaning as in *State Environmental Planning Policy (Affordable Rental Housing) 2009*, clause 41C.

tenanted component has the same meaning as in *State Environmental Planning Policy (Affordable Rental Housing) 2009*, clause 41A.

73 Fulfilment of BASIX commitments

(cl 97A 2000 Reg)

It is a condition of a development consent for the following that each commitment listed in a relevant BASIX certificate is fulfilled—

(a) BASIX development,

(b) BASIX optional development, if the development application was accompanied by a BASIX certificate.

74 Deferred commencement consent

(cl 95 2000 Reg)

(1) A development consent with a deferred commencement, as referred to in the Act, section 4.16(3), must be clearly identified as a "deferred commencement" consent, whether by using the expression, referring to that section or otherwise.

(2) A deferred commencement consent must clearly distinguish between—

(a) conditions that relate to matters about which the consent authority must be satisfied before the consent can operate (the ***relevant matters***), and

(b) other conditions.

(3) A consent authority may specify the period within which the applicant must produce sufficient evidence to the consent authority to enable it to be satisfied about the relevant matters.

(4) If the applicant produces evidence in accordance with this clause, the consent authority must notify the applicant whether it is satisfied about the relevant matters.

(5) If the consent authority does not notify the applicant within 28 days after the applicant produces the evidence, the consent authority is taken to have notified the applicant, on the date on which the period expires, that it is not satisfied about the relevant matters.

(6) Subclause (5) applies for the purposes of the Act, section 8.7 only.

75 Conditions for ancillary aspects of development

(cl 96 2000 Reg)

(1) If a consent authority grants development consent subject to a condition referred to in the Act, section 4.17(2) in relation to an ancillary aspect of the development, the consent authority may specify the period within which the ancillary aspect must be carried out to the satisfaction of the consent authority or a person specified by the consent authority.

(2) The applicant may produce evidence to the consent authority, or to the person specified by the consent authority, sufficient to enable the consent authority or the person to be satisfied in relation to the ancillary aspect of the development.

(3) For the purposes of the Act, section 4.17(3), the relevant period is the period of 28 days after the applicant's evidence is produced to the consent authority or a person specified by the consent authority.

76 Conditions for State significant development

(cl 96A 2000 Reg)

A development consent may be granted subject to a condition referred to in the Act, section 4.17(4A) or (4B) only if the development is State significant development.

77 Review conditions—the Act, s 4.17(10C)

(cl 124A–124D 2000 Reg)

(1) A development consent that is granted subject to a reviewable condition may, as referred to in the Act, section 4.17(10B), be granted subject to a further condition (a ***review condition***) if the development consent relates to the following kinds of development—

(a) an entertainment venue,

(b) a function centre,

(c) a pub,

(d) a registered club,

(e) a restaurant or cafe.

(2) A development consent that is subject to a review condition must contain the following—

(a) a statement that the development consent is subject to the review condition and the purpose of the review condition,

(b) a statement that the consent authority will carry out the reviews,

(c) when, or at what intervals, the reviews are to be carried out.

(3) The consent authority must give written notice to the operator of a development that is subject to a review condition at least 14 days before carrying out a review.

(4) The consent authority may notify other persons of the review as it considers appropriate.

(5) The consent authority must take into account submissions that are received from any person within 14 days after notice of a review is given to the person.

(6) Words and expressions used in this clause have the same meaning as in the Standard Instrument.

Division 3 Post-determination notifications—the Act, s 4.18(1)

78 Notice of determination of development application

(cl 100 and 102 2000 Reg)

(1) Within 14 days after determining a development application, the consent authority must—

(a) notify the applicant by publishing a notice of the determination on the NSW planning portal, and

(b) give notice of the determination to—

(i) a person referred to in the Act, section 4.18(b), and

(ii) each person who made a submission about the development application under the Act, whether or not the development was designated development.

(2) Failure to publish or give notice of the determination within 14 days does not affect the validity of the notice or the development consent to which it relates.

(3) Notice of the determination of a development application that required concurrence under the *Biodiversity Conservation Act 2016*, Part 7 or under the *Fisheries Management Act 1994*, Part 7A must also be given to the person whose concurrence was required under those Parts.

(4) Notice of the determination of a development application relating to land owned by a Local Aboriginal Land Council must also be given to the New South Wales Aboriginal Land Council.

(5) Notice of the determination of a development application to which *State Environmental Planning Policy (Three Ports) 2013*, clause 19 applies must also be given to the chief executive of the applicable Port Operator, within the meaning of that Policy, within 7 days after the determination is made.

79 Content of notice of determination for applicants

(cl 100 2000 Reg)

(1) The notice of the determination of a development application given to the applicant under clause 78(1)(a) must contain the following information—

(a) if the application is granted or refused,

(b) if the application is refused—the consent authority's reasons for the refusal,

(c) if the application is granted with conditions, including conditions under the Act, section 4.17(11)—

(i) the terms of the conditions, and

(ii) for conditions other than the conditions prescribed under the Act, section 4.17(11)—the consent authority's reasons for imposing the conditions,

(d) the date on which the determination was made,

(e) if development consent is granted for a concept development application—whether a subsequent development application is required,

(f) if development consent is granted—

(i) the date from which the development consent operates, and

(ii) the date on which the development consent lapses,

(iii) a copy of any relevant plans endorsed by the consent authority.

(g) if the development involves a building but does not require a construction certificate for the development to be carried out—the class of the building under the *Building Code of Australia*,

(h) whether the Independent Planning Commission has conducted a public hearing about the application,

(i) which approval bodies have given general terms of approval in relation to the development, as referred to in the Act, section 4.50,

(j) whether the applicant has the right to request a review of the determination under the Act, section 8.3,

(k) whether the applicant has a right of appeal against the determination under the Act, Part 8,

(l) whether an objector has a right of appeal against the determination under the Act.

(2) The notice must clearly refer to the registered number of the development application.

(3) If a development consent is granted subject to a condition that the development consent is not to operate until the applicant satisfies the consent authority, or a person specified by the consent authority, about a matter specified in the condition—

(a) the date from which the development consent operates must not be endorsed on the notice of determination, and

(b) if the applicant satisfies the consent authority, or person, about the matter, the consent authority must notify the applicant of the date from which the development consent operates.

80 Additional information relating to local infrastructure contributions

(cl 101 2000 Reg)

(1) This clause applies to the notice of the determination of a development application given to the applicant under clause 78(1)(a), if the development consent is granted subject to—

(a) a condition under the Act, section 7.11 requiring the dedication of land or the payment of a monetary contribution, or both, or

(b) a condition under the Act, section 7.12 requiring the payment of a levy.

(2) The notice must also specify —

(a) the contributions plan under which the condition is imposed, and

(b) that the contributions plan is available on the council's website, and

(c) for a condition under the Act, section 7.11—the specific public amenity or public service in relation to which the condition is imposed.

81 Content of notice of determination for persons who made submissions

(cl 100 2000 Reg)

(1) This clause applies to notice of the determination of a development application given to a person under clause 78(1)(b).

(2) The notice must contain the following information—

(a) whether the application has been granted or refused,

(b) if development consent is granted—

(i) the date from which the development consent operates, and

(ii) the date on which the development consent lapses,

(c) whether the Independent Planning Commission has conducted a public hearing about the application,

(d) which approval bodies have given general terms of approval in relation to the development, as referred to in the Act, section 4.50,

(e) whether the applicant has the right to request a review of the determination under the Act, section 8.3,

(f) whether the applicant has a right of appeal against the determination under the Act, Part 8,

(g) whether an objector has a right of appeal against the determination under the Act,

(h) how the person may access more information about the development application.

(3) The notice must clearly refer to the registered number of the development application.

82 Notice to approval bodies of determination of development application for integrated development

(cl 105 2000 Reg)

(1) This clause applies to the notice of a determination of a development application for integrated development that is required under the Act, section 4.47(6) to be given to all relevant approval bodies.

(2) The notice must be given within 14 days after the determination by—

(a) email, or

(b) post, or

(c) lodging the notice on the NSW planning portal.

(3) Failure to give the notice within 14 days does not affect the validity of the notice or a development consent to which it relates.

Division 4 Time for determining development applications

83 Time for determining development applications—the Act, s 8.11

(cl 106, 109, 111 and 113 2000 Reg)

(1) A consent authority is taken to have refused development consent if it has not determined the development application within the assessment period calculated in accordance with this Division.

(2) The assessment period is 60 days for a development application—

(a) for designated development, or

(b) for integrated development, other than integrated development that is Class 1 aquaculture development, or

(c) for development requiring concurrence, or

(d) that is accompanied by a biodiversity development assessment report under the *Biodiversity Conservation Act 2016* that proposes to reduce the number of biodiversity credits required to be retired.

(3) The assessment period is 90 days for a development application for State significant development.

(4) The assessment period is 40 days for all other development applications, other than a Crown development application referred to in clause 87.

84 Commencement of assessment period

(1) The assessment period for a development application commences on the date on which the development application is lodged on the NSW planning portal.

(2) If a public hearing is conducted by the Independent Planning Commission into a development or part of a development, the assessment period for the development application commences on the date on which the Independent Planning Commission's final report is published on the NSW planning portal, as required under the Act, Schedule 2, clause 6.

85 Additional days for certain assessment periods

(1) The assessment period for a development application for the following development is increased by the number of days by which the public exhibition period for the development application exceeds the minimum period required under the Act—

(a) designated development,

(b) nominated integrated development,

(c) threatened species development,

(d) State significant development.

(2) If the public exhibition period for a development application for development specified in subclause (1) exceeds the minimum period required under the Act, the consent authority must notify the applicant of the dates of the public exhibition period and the effect of subclause (1).

86 Circumstances in which the assessment period ceases to run

(1) The assessment period for a development application for State significant development ceases to run during the period between—

(a) the date on which the Planning Secretary requested a written response to submissions from the applicant under clause 56(2), and

(b) the date on which the applicant gives a written response to the Planning Secretary.

(2) The assessment period for a development application ceases to run during the period between the date on which a consent authority requests additional information from an applicant under clause 34 and the earlier of—

(a) the date on which the information is given to the consent authority, or

(b) the date on which the applicant gives, or is taken to have given, written notice to the consent authority that the information will not be given.

(3) Subclause (2) applies only if the consent authority's request is made within 25 days after the date on which the development application is lodged.

(4) The assessment period for integrated development that requires an Aboriginal heritage impact permit under the *National Parks and Wildlife Act 1974* ceases to run during the period of Aboriginal community consultation required under that Act that occurs within 46 days after the date on which the development application is lodged.

(5) Subclause (4) applies only if the Aboriginal community consultation commences within 25 days after the date on which the development application is given to the approval body under the *National Parks and Wildlife Act 1974*.

(6) The assessment period for development requiring the concurrence of a concurrence authority or the approval of an approval body ceases to run during the period between the date on which the concurrence authority or approval body requests additional information from a consent authority and the earlier of—

(a) the date on which the consent authority gives the information to the concurrence authority or approval body, or

(b) the date on which the consent authority gives, or is taken to have given, written notice to the concurrence authority or approval body that the information will not be given.

(7) Subclause (6) applies only if the concurrence authority or approval body makes the request to the consent authority within 25 days after the request for concurrence or approval is received by the concurrence authority or approval body from the consent authority.

87 Time for determining Crown development applications

(cl 113B 2000 Reg)

(1) For the purposes of the Act, section 4.33(2), the prescribed period is 70 days after the Crown development application is lodged on the NSW planning portal.

(2) For the purposes of the Act, section 4.33(5), the prescribed period is 50 days after the Crown development application is referred to the applicable Sydney district or regional planning panel under the Act, section 4.33(2)(b).

Division 5 Miscellaneous

88 When work is physically commenced—the Act, s 4.53(7)

(cl 124AA 2000 Reg)

(1) Work is not taken to have been physically commenced merely by the doing of one or more of the following—

(a) creating a bore hole for soil testing,

(b) removing water or soil for testing,

(c) carrying out survey work, including the placing of pegs or other survey equipment,

(d) acoustic testing,

(e) removing vegetation as an ancillary activity,

(f) marking the ground to indicate how land will be developed.

(2) This clause does not apply to a development consent granted before 15 May 2020.

89 Validity of development consents—the Act, s 4.59

(cl 124 2000 Reg)

A notice relating to the granting of a development consent that describes the land and the development must be published on the consent authority's website.

Part 5 Modification of development consents

Division 1 Applications for modification of development consent

90 Persons who may make modification applications

(cl 115 2000 Reg)

(1) A modification application may be made only with the consent of the owner of the land to which the application relates.

(2) The consent of the owner is not required if the original development application was made, or could have been made, without the consent of the owner.

(3) The consent of the owner of the land is not required for a modification application made by a public authority, or a modification application for public notification development, if the applicant instead gives notice of the modification application—

(a) to the owner of the land before the modification application is made, or

(b) by publishing a notice no later than 14 days after the modification application is made—

(i) in a newspaper circulating in the area in which the development will be carried out, and

(ii) for a modification application made by a public authority, on the public authority's website or, for public notification development, on the NSW planning portal.

(4) A modification application relating to land owned by a Local Aboriginal Land Council may be made only with the consent of the New South Wales Aboriginal Land Council.

(5) A development consent may not be modified by the Court under the Act, section 4.55 if a modification application has been made to the consent authority under the Act, section 4.56 and has not been withdrawn.

91 Content of modification applications

(cl 115 2000 Reg)

(1) A modification application must —

(a) be in the approved form, and

(b) contain all the information and documents specified in the approved form or required by the Act or this Regulation, and

(c) be submitted on the NSW planning portal.

(2) A modification application is taken to be lodged—

(a) on the day on which the fees the applicant is required to pay under this Regulation are paid, or

(b) if the applicant is notified under Part 13 that no fee is required—on the day the applicant submitted the application on the NSW planning portal.

Note— The fees payable are determined in accordance with Part 13 and Schedule 4.

(3) A fee is not payable for an application for the modification of a development consent granted by the Court on appeal from a consent authority.

(4) A modification application must contain the following information—

(a) the name and address of the applicant,

(b) a description of the development that will be carried out under the development consent,

(c) the address and folio identifier number of the land on which the development will be carried out,

(d) a description of the proposed modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,

(e) whether the modification is intended to—

(i) merely correct a minor error, misdescription or miscalculation, or

(ii) have another effect specified in the modification application,

(f) a description of the expected impacts of the modification,

(g) an undertaking that the modified development will remain substantially the same as the development originally approved,

(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,

(i) if the applicant is not the owner of the land, a statement that the owner consents to the making of the modification application,

(j) whether the modification application is being made to—

(i) the Court under the Act, section 4.55, or

(ii) the consent authority under the Act, section 4.56.

(5) Subclause (4)(i) does not apply if the consent of the owner is not required under clause 90.

(6) If a modification application under the Act, section 4.55(1A) or (2) relates to BASIX development, or BASIX optional development if the development application was accompanied by a BASIX certificate, the application must be accompanied by—

(a) the BASIX certificate, or

(b) a new BASIX certificate if the current BASIX certificate is no longer consistent with the development.

(7) In this clause—

biodiversity credits information, in relation to a modification application, means the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under a biodiversity development assessment report if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the *Biodiversity Conservation Act 2016*.

92 Exception for Penrith Lakes Development Corporation development consents

(cl 115(10)–(12) 2000 Reg)

(1) This clause applies to a modification application that relates to a Penrith Lakes Development Corporation development consent if the proposed modification relates only to part of the land to which the development consent applies.

(2) The requirement for the owner's consent under clause 90 is a requirement for the consent of the owner of the part of the land to which the modification relates only.

(3) In this clause—

Penrith Lakes Development Corporation development consent means the development consents DA2, DA3 and DA4 granted to the Penrith Lakes Development Corporation Limited in relation to land to which *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* applies on 24 February 1987, 27 June 1995 and 9 September 1998 respectively.

93 Modification applications for residential apartment development consents

(cl 115 2000 Reg)

(1) A modification application under the Act, section 4.55(2) or 4.56(1), where the original development application was required to be accompanied by a statement by a qualified designer under clause 27, must be accompanied by—

(a) the additional fee specified in Schedule 4, and

(b) a statement by a qualified designer.

(2) The statement must—

(a) verify that the qualified designer designed, or directed the design of, the modification of the development, and

(b) verify if the qualified designer designed, or directed the design of, the development for which the original development consent was granted (the ***original development***), and

(c) explain how the development addresses—

(i) the design quality principles, and

(ii) the objectives in the Apartment Design Guide, and

(d) verify that the modification does not—

(i) diminish or detract from the design quality of the original development, or

(ii) compromise the design intent of the original development.

(3) If the modification application is accompanied by a BASIX certificate for a building, the design quality principles do not need to be addressed to the extent to which they aim—

(a) to reduce consumption of mains-supplied potable water or greenhouse gas emissions in the use of the building or the land on which the building is located, or

(b) to improve the thermal performance of the building.

(4) If a statement by the qualified designer does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel, if any, for advice.

(5) The relevant design review panel must advise whether the modification—

(a) diminishes or detracts from the design quality of the original development, or

(b) compromises the design intent of the original development.

(6) The consent authority may refer a modification application to the relevant design review panel.

(7) Subclauses (4) and (6) do not apply to a modification application for State significant development.

(8) The fee payable for a modification application that is referred to a relevant design review panel for advice is specified in Schedule 4.

94 Modification applications for mining and petroleum development consents

(cl 119A 2000 Reg)

(1) This clause applies to an application under the Act, section 4.55(2), to modify a development consent that relates to mining or petroleum development on land—

(a) shown on the Strategic Agricultural Land Map, or

(b) subject to a site verification certificate.

(2) The application must be accompanied by—

(a) for development on land shown on the Strategic Agricultural Land Map as critical industry cluster land—a current gateway certificate that applies to the development to be carried out under the modified consent, or

(b) for development on other land—

(i) a current gateway certificate that applies to the development to be carried out under the modified consent, or

(ii) a site verification certificate certifying that the land on which the development will be carried out is not biophysical strategic agricultural land.

(3) To avoid doubt, *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, Part 4AA, other than Divisions 2 and 5, applies, with necessary modifications, to an application to modify a development consent as if it were a development application.

(4) To avoid doubt, a site verification certificate or gateway certificate for the purposes of this clause may be issued in relation to the part of the land or the part of the development to which the modification relates, rather than the whole of the land or the whole development to which the consent relates.

Division 2 Notification of modification applications

95 Notice of modification applications involving minimal environmental impact

(cl 117 2000 Reg)

(1) This clause applies to—

(a) a modification application under the Act, section 4.55(1A), and

(b) a modification application under the Act, section 4.56, if the modification is, in the consent authority's opinion, of minimal environmental impact.

(2) If a modification application is required by a community participation plan to be notified or advertised and the development consent was granted by the Court on appeal, the modification application must be notified or advertised by the consent authority to which the original development application was made.

(3) The consent authority must, for a modification application referred to in subclause (1)(b), notify the Court of—

(a) the way in which the application was notified or advertised, and

(b) the period for submissions required by the community participation plan, and

(c) the period during which the application was notified or advertised.

(4) This clause does not apply to State significant development.

96 Notice of modification applications for designated development, State significant development and other development

(cl 118 2000 Reg)

(1) This clause applies to a modification application under the Act, section 4.55(2) or 4.56(1) if the original development application was an application to carry out—

(a) designated development, or

(b) State significant development, or

(c) the following development, if the original development application was made to a consent authority other than a council—

(i) nominated integrated development,
(ii) threatened species development,
(iii) Class 1 aquaculture development.

(2) Immediately after a modification application is lodged with a consent authority, the consent authority must——

(a) publish a notice on its website that contains the following information—
(i) a brief description of the development consent, the land to which it relates and the details of the modification sought,
(ii) a statement that written submissions about the proposed modification may be made to the consent authority during the public exhibition period required under the Act,
(iii) a statement that, if the application is approved, there is no right of appeal to the Court by an objector, and

(b) give the notice to each person who made a submission in relation to the original development application.

(3) If an application under the Act, section 4.56 relates to development consent granted by the Court on appeal, the consent authority or council, as the case requires, must notify the Court of the date on which notice of the application is published under subclause (2)(a).

97 Notice of other modification applications
(cl 119 200 Reg)

(1) This clause applies to—

(a) a modification application under the Act, section 4.55(2) to which clause 96 does not apply, and

(b) a modification application under the Act, section 4.56(1) to which clauses 95 and 96 do not apply.

(2) An application must be notified or advertised—

(a) for the minimum period specified in the Act, Schedule 1, clause 10, and

(b) otherwise in the same way as the original development application was notified or advertised.

(3) If an application relates to a development consent that was granted by the Court on appeal, the application must be notified or advertised in accordance with this clause by the consent authority to which the original development application was made.

(4) The consent authority must, for an application referred to in subclause (1)(b), notify the Court of—

(a) the way in which the application was notified or advertised, and

(b) the period for submissions required by the community participation plan, and

(c) the period during which the application was notified or advertised.

98 Notification of concurrence authorities and approval bodies
(cl 120 2000 Reg)

(1) As soon as practicable after a modification application under the Act, section 4.55(1) or (1A) is lodged with a consent authority, the consent authority must give a copy of the application to—

(a) if the modification affects a condition imposed by a concurrence authority—the concurrence authority, and

(b) if the modification affects the general terms of approval of an approval body—the approval body.

(2) As soon as practicable after a modification application under the Act, section 4.55(2) is lodged with a consent authority, the consent authority must give a copy of the application to each concurrence authority and approval body for the development to which the application relates.

(3) A consent authority is not required to comply with this clause if, within 14 days after the modification application is lodged—

(a) the consent authority rejects the application, or

(b) the application is withdrawn.

99 Consent authority to notify or publicly exhibit modification applications

A requirement under the Act or this Division to notify or publicly exhibit a modification application must be carried out by—

(a) if the original development consent was granted by the Court—the consent authority to which the original development application was made, or

(b) if the original development consent was granted or deemed to be refused by a Sydney district or regional planning panel—the council or councils of the area in which the development will be carried out, or

(c) if the development consent was granted by the Court on appeal and the original development consent was granted or deemed to be refused by a Sydney district or regional planning panel—the council or councils of the area in which the development will be carried out, or

(d) otherwise—the consent authority to which the modification application is made.

Division 3 Rejection and withdrawal of modification applications

100 Rejection of applications for modifications

(1) A consent authority may reject a modification application within 14 days after receiving the application if—

(a) the application is illegible or unclear about the modification sought, or

(b) the application does not specify the conditions of the development consent proposed to be modified, or

(c) the application does not contain the information and documents specified in the approved form or required by the Act or this Regulation, or

(d) for an application for integrated development—the application does not identify all of the approvals required to be obtained, as referred to in the Act, section 4.46, before the development may be carried out.

(2) The consent authority must give the applicant written notice of the reasons for rejecting the application.

(3) Immediately after rejecting a modification application for integrated development or development for which concurrence was required, the consent authority must notify each relevant approval body or concurrence authority.

(4) Subclause (3) applies only if the consent authority has already notified the approval body or concurrence authority under clause 98.

101 Withdrawal of applications for modifications

(1) An applicant for a modification application may, at any time before the application is determined, withdraw the application by giving written notice to the consent authority.

(2) A modification application withdrawn under this clause is taken, for the purposes of the Act, never to have been made.

(3) Immediately after the withdrawal of a modification application for integrated development or development requiring concurrence, the consent authority must notify each relevant approval body or concurrence authority of the withdrawal.

(4) Subclause (3) applies only if the consent authority has already notified the approval body or concurrence authority under clause 98.

102 Application for extension of development consent

(cl 114 2000 Reg)

(1) An application under the Act, section 4.54 for an extension of 1 year must—

(a) identify the development consent to which it relates, and

(b) indicate why the consent authority should extend the time.

(2) The application must be lodged on the NSW planning portal.

103 Notice of proposed revocation or modification of consent

(cl 123 2000 Reg)

(1) For the purposes of the Act, section 4.57(3)(a)(ii), the Secretary of the Department of Customer Service is prescribed in relation to a proposed revocation or modification of a development consent that affects—

(a) the transfer, alteration, repair or extension of water service pipes, or

(b) the carrying out of sanitary plumbing work, sanitary drainage work or stormwater drainage work.

(2) The notice of the proposed revocation or modification of a development consent or a complying development certificate must contain the reasons for the proposed revocation or modification.

Division 4 Determination of modification applications

104 Notice of determination of application to modify development consent

(cl 122 2000 Reg)

(1) Notice of the determination of a modification application must be given to the applicant, by means of the NSW planning portal, as soon as practicable after the determination.

(2) Notice of the determination of an application to grant a modification of a development consent must contain a copy of the relevant plans endorsed by the consent authority.

(3) If the determination is made subject to a condition or by refusing the application, the notice must—

(a) indicate the consent authority's reasons for the imposition of the condition or the refusal, and

(b) specify any right the applicant has to request a review or to appeal against the determination under the Act, Part 8.

(4) If a modification application applies to land owned by a Local Aboriginal Land Council, a notice of the determination must also be given to the New South Wales Aboriginal Land Council.

(5) A consent authority that grants an application for modification of a development consent must give a modified development consent to the applicant that complies with any requirements specified by the Planning Secretary in relation to the form and content of modified development consents.

105 Effect of failure to determine modification applications

(cl 122A 2000 Reg)

(1) For the purposes of the Act, sections 4.55(6) and 4.56(3), a consent authority is taken to have refused a modification application if it does not determine the application within 40 days after the application is lodged.

(2) A later determination by the consent authority does not prejudice or affect the continuance or determination of a related appeal.

(3) If the consent authority makes a later determination to grant consent, the consent authority is entitled, with the consent of the applicant and without prejudice to costs, to have a related appeal withdrawn at any time before the appeal is determined.

(4) In this clause—

related appeal means an appeal under the Act, section 8.9 against a determination taken to have been made under subclause (1)(a).

Part 6 Complying development

Division 1 Applications for complying development certificates

106 Application for complying development certificate

(cl 126 and 128 2000 Reg)

(1) An application for a complying development certificate must—

(a) be in the approved form, and

(b) contain all the information and documents specified in the approved form or required by the Act or this Regulation, and

(c) be lodged on the NSW planning portal.

(2) The applicant must be notified, by means of the NSW planning portal, that the application for a complying development certificate has been lodged.

(3) A single application for a complying development certificate may be made for complying development comprising—

(a) the erection of a dual occupancy, manor house or multi dwelling housing (terraces) on a lot and the subsequent subdivision of the lot, or

(b) the concurrent erection of any of the following on existing adjoining lots—

(i) new single storey or two storey dwelling houses,

(ii) dual occupancies,

(iii) manor houses,

(iv) multi dwelling housing (terraces).

107 Plans and drawings to accompany complying development certificate application

(cl 4 and 7 of Sch 1 2000 Reg)

(1) An application for a complying development certificate must be accompanied by the following—

(a) a site plan of the land,

(b) a drawing of the development.

(2) The site plan of the land must be drawn to a suitable scale and indicate the following—

(a) the location, boundary dimensions, site area and north point of the land,

(b) existing vegetation and trees on the land,

(c) the location and uses of existing buildings on the land,

(d) existing levels of the land in relation to buildings and roads,

(e) the location and uses of buildings on sites adjoining the land.

(3) The drawing of the development must indicate the following—

(a) the location of proposed buildings or works, including extensions or additions to existing buildings or works, in relation to the land's boundaries and adjoining development,

(b) the floor plans of proposed buildings showing the layout, partitioning, room sizes and intended uses of each part of the building,

(c) the building envelope,

(d) elevations and sections showing proposed external finishes and height of proposed buildings, other than temporary structures,

(e) elevations and sections showing—

(i) the height of proposed temporary structures, and

(ii) the materials the structures are proposed to be made from, using the relevant abbreviations,

(f) proposed finished levels of the land in relation to existing and proposed buildings and roads,

(g) proposed parking arrangements, entry and exit points for vehicles and provision for movement of vehicles on the site, including dimensions if appropriate,

(h) proposed landscaping and treatment of the land, indicating plant types and their height and maturity,

(i) proposed methods of draining the land,

(j) if the application is accompanied by a BASIX certificate—the other matters required by a relevant BASIX certificate.

108 Documents required for complying development involving building work

(cl 4 and 7 of Sch 1 2000 Reg)

(1) This clause applies to an application for a complying development certificate that relates to development involving building work, including building work in relation to—

(a) a dwelling house, or

(b) a building or structure that is ancillary to a dwelling house.

(2) An application for a complying development certificate must contain the following—

(a) a detailed description of the development,

(b) appropriate building work plans and specifications.

(3) The detailed description of the development must indicate the following—

(a) for each proposed new building—

(i) the number of storeys in the building, including underground storeys, and

(ii) the gross floor area of the building in square metres, and

(iii) the gross site area of the land on which the building will be erected in square metres, and

(iv) the site coverage, that is, the percentage of the site area that will be covered by a building,

(b) for each proposed new residential building—

(i) the number of existing dwellings on the land on which the new building will be erected, and

(ii) the number of the existing dwellings that will be demolished in connection with the erection of the new building, and

(iii) the number of dwellings that will be in the new building, and

(iv) if the new building will be attached to an existing building, and

(v) if the new building will be attached to another new building, and

(vi) if the land contains a dual occupancy, and

(vii) the materials to be used in the construction of the new building, using the relevant abbreviations.

(4) Appropriate building work plans and specifications must contain the following—

(a) detailed building work plans, drawn to a suitable scale and consisting of a block plan and a general plan, that show—

(i) a plan of each floor section, and

(ii) a plan of each elevation of the building, and

(iii) the levels of the lowest floor, the levels of a yard or area that is not built on belonging to the lowest floor and the levels of the adjacent ground, and

(iv) the height, design, construction and provision for fire safety and fire resistance, if any,

(b) specifications for the development that—

(i) describe the construction and the materials to be used to construct the building, and

(ii) describe the method of drainage, sewerage and water supply, and

(iii) state whether the materials to be used are new or second-hand and contain details of any second-hand materials to be used,

(c) if the development involves building work to alter, expand or rebuild an existing building—a scaled plan of the existing building,

(d) for BASIX development, or BASIX optional development if the application is accompanied by a BASIX certificate—the other matters required by a relevant BASIX certificate.

(5) An application for a complying development certificate must also contain the following—

(a) if the building work involves a performance solution under the *Building Code of Australia*—a report about the performance solution prepared in accordance with the requirements set out in A2.2(4) in Volume 1 of the *Building Code of Australia*,

(b) a description of any building product or system accredited under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* for the purposes of the Act, section 4.28(4),

(c) a copy of a compliance certificate to be relied on.

109 Fire safety requirements for complying development certificate application

(cl 4 of Sch 1 2000 Reg)

(1) An application for a complying development certificate for development involving a change of use of a building must be accompanied by—

(a) a list of the Category 1 fire safety provisions that currently apply to the existing building, and

(b) a list of the Category 1 fire safety provisions that will apply to the building after its change of use.

(2) Subclause (1) does not apply to—

(a) a dwelling house, or

(b) a building or structure that is ancillary to a dwelling house, or

(c) a temporary structure.

(3) An application for a complying development certificate for development that involves building work must be accompanied by—

(a) a list of the existing fire safety measures provided in relation to the land or an existing building on the land, and

(b) a list of the proposed fire safety measures to be provided in relation to the land and buildings on the land as a consequence of the building work.

(4) Subclause (3) does not apply to work in relation to—

(a) a dwelling house, or

(b) a building or structure that is ancillary to a dwelling house.

(5) An application for a complying development certificate that relates to fire alarm communication link works must be accompanied by—

(a) a plan that indicates the location of the new fire alarm communication link and associated works, and

(b) a document that describes the design, construction and mode of operation of the new fire alarm communication link and associated works.

(6) An application for a complying development certificate that relates to an alteration to a hydraulic fire safety system must be accompanied by—

(a) a plan that indicates the location of the alteration and associated works, and

(b) a document that describes—

(i) the required pressure and flow characteristics of the hydraulic fire safety system that will be altered, and

(ii) the pressure and flow characteristics that will be available from the town main following mains pressure reduction by or on behalf of the relevant water utility, and

(iii) the design, construction and performance of the alteration and associated works.

(7) In this clause—

alteration to a hydraulic fire safety system has the same meaning as in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

110 Documents required for complying development involving subdivision

(cl 4 of Sch 1 2000 Reg)

(1) An application for a complying development certificate for development involving subdivision work must be accompanied by appropriate subdivision work plans and specifications.

(2) The appropriate subdivision work plans and specifications must contain the following—

(a) details of the existing and proposed subdivision pattern, including the number of lots and the location of roads,

(b) details about the public authorities that have been consulted about the provision of utility services to the land,

(c) detailed engineering plans about earthworks, roadworks, road pavement, road furnishings, stormwater drainage, water supply works, sewerage works, landscaping works and erosion control works,

(d) a copy of a compliance certificate to be relied on.

111 Documents required for complying development involving telecommunications facilities or electricity power lines

(1) An application for a complying development certificate for development for the purposes of a telecommunications facility or electricity power lines must be accompanied by detailed engineering plans.

(2) In this clause—

telecommunications facility has the same meaning as in the Standard Instrument.

112 Documents required for complying development in Activation Precincts

(cl 129 2000 Reg)

(1) An application for a complying development certificate for development on land in an Activation Precinct under *State Environmental Planning Policy (Activation Precincts) 2020* must be accompanied by a current Activation Precinct certificate.

(2) This clause does not apply to an application made by a public authority, except the Development Corporation within the meaning of that Policy.

113 Documents required for complying development in Western Sydney Aerotropolis

(cl 128 2000 Reg)

An application for a complying development certificate for development on land in the Western Sydney Aerotropolis under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* must be accompanied by a current Aerotropolis certificate issued under that Policy.

114 Documents required for traffic generating complying development

(cl 4 of Sch 1 2000 Reg)

(1) This clause applies to an application for a complying development certificate that relates to development for—

(a) a purpose specified in *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, clause 39(1) that will result in a school being able to accommodate at least 50 additional students, or

(b) the purposes of a new building, or the alteration of or addition to an existing building, to which *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 5A applies, if—

(i) the total gross floor area of the new building or the altered existing building will be 5,000 square metres or more, and

(ii) the site of the development has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access, measured along the alignment of the connecting road, is within 90 metres of the connection.

(2) An application for a complying development certificate must be accompanied by a certificate issued by the relevant roads authority certifying that any impacts on the surrounding road network as a result of the development—

(a) are acceptable, or

(b) will be acceptable if the requirements specified in the certificate are met.

(3) In this clause—

classified road has the same meaning as in the *Roads Act 1993*.

115 Documents required for complying development on contaminated land

(cl 3 and 4 of Sch 1 2000 Reg)

(1) This clause applies to an application for a complying development certificate involving the following development to which *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 5A applies—

(a) the erection of a new building,

(b) the alteration of or addition to an existing building.

(2) The application must specify whether the land on which the development will be carried out—

(a) is or was used for a purpose listed in Table 1 to clause 3.2.1 of the document entitled *Managing Land Contamination Planning Guidelines, SEPP 55—Remediation of Land*, published in 1998 by the Department of Urban Affairs and Planning and the Environment Protection Authority, or

(b) is on the list of sites notified under the *Contaminated Land Management Act 1997*, section 60.

(3) If the development will be carried out on land specified in subclause (2)(a), the application must be accompanied by a statement by a qualified person certifying that the land—

(a) is suitable for the intended purpose of the development, having regard to the contamination status of the land, or

(b) will be suitable if the remediation works specified in the statement are carried out.

(4) If the development will be carried out on land specified in subclause (2)(b), the application must be accompanied by a site audit statement for the land prepared by a site auditor under the *Contaminated Land Management Act 1997*.

(5) This clause does not apply to complying development carried out under the complying development provisions of *State Environmental Planning Policy (Three Ports) 2013* in the Lease Area, within the meaning of that Policy.

(6) In this clause—

qualified person means a person who has the competencies that are essential to contaminated site assessment and investigation, as set out in the document entitled *Schedule B9 Guideline on Competencies and Acceptance of Environmental Auditors and Related Professionals* published by the National Environment Protection Council in 2013.

116 Other documents to accompany complying development certificate application

(cl 4 Sch 1 2000 Reg)

(1) An application for a complying development certificate for development involving the erection of a wall to a boundary that has a wall less than 0.9m from the boundary must be accompanied by a report by a professional engineer that outlines the proposed method of supporting the adjoining wall.

(2) An application for a complying development certificate for development involving the demolition or removal of a wall to a boundary that has a wall less than 0.9m from the boundary must be accompanied by a report by a professional engineer that outlines the proposed method of maintaining support for the adjoining wall after the demolition or removal.

(3) An application for a complying development certificate for development involving the erection of a temporary structure must be accompanied by the following—

(a) a document that specifies the live and dead loads the temporary structure is designed to meet,

(b) a list of the proposed fire safety measures to be provided in connection with the use of the temporary structure,

(c) for a temporary structure proposed to be used as an entertainment venue where the building work involves a performance solution for a requirement set out in Part B1 or NSW Part H102 in Volume 1 of the *Building Code of Australia* — a report about the performance solution prepared in accordance with the requirements set out in A2.2(4) in Volume 1 of the *Building Code of Australia*,

(d) a document that describes any building product or system accredited under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* for the purposes of the Act, section 4.28(4),

(e) a copy of a compliance certificate to be relied on.

(4) An application for a complying development certificate for development involving the following uses of a building must be accompanied by a statement specifying the maximum number of persons proposed to occupy, at any one time, the part of the building to which the use applies—

(a) an entertainment venue,

(b) a function centre,

(c) a pub,

(d) a registered club,

(e) a restaurant or cafe.

(5) An application for a complying development certificate for development required, by a development standard, to be set back from a registered easement must be accompanied by—

(a) a copy of the certificate of title for the lot on which the development will be carried out, and

(b) if the land is subject to a registered easement—a title diagram for the lot and each adjoining lot that benefits from the easement.

(6) An application for a complying development certificate for development involving the erection or alteration of, or an addition to, the following must be accompanied by a design statement—

(a) a dual occupancy,

(b) a manor house,

(c) multi dwelling housing (terraces).

(7) Words and expressions used in this clause have the same meaning as they have in the Standard Instrument.

(8) In this clause—

accredited designer means—

(a) a qualified designer, or

(b) a person accredited as a building designer by the Building Designers Association of Australia.

design statement means a statement by an accredited designer that—

(a) verifies that the designer designed, or directed the design of, the development, and

(b) explains how the design is consistent with the relevant design criteria set out in the *Low Rise Housing Diversity Design Guide for Development Applications* published by the Department in July 2020.

professional engineer has the same meaning as in the *Building Code of Australia*.

117 BASIX development and certificates

(cl 129A and cl 4 and 4A Sch 1 2000 Reg)

(1) An application for a complying development certificate for BASIX development must be accompanied by—

(a) a relevant BASIX certificate for the development issued no earlier than 3 months before the date on which the application is made, and

(b) the other matters required by the BASIX certificate.

(2) If the development involves the alteration, enlargement or extension of a BASIX building that contains more than one dwelling, a separate BASIX certificate is required for each dwelling concerned.

(3) An application for a complying development certificate for BASIX optional development that is accompanied by a BASIX certificate must be accompanied by the other matters required by the BASIX certificate.

(4) If an application for a complying development certificate is amended before it is determined and the proposed amendment results in the development differing materially from the description contained in the BASIX certificate that accompanied the original application, the amendment must be accompanied by a new BASIX certificate that takes account of the amendment.

(5) If the original application for a complying development certificate was accompanied by a BASIX certificate, the original application may be amended by lodging on the NSW planning portal—

(a) a new BASIX certificate to replace the current BASIX certificate for the original application, and

(b) if a new document is required or a document that accompanied the original application requires amendment—the new or amended document.

Division 2 Determination of applications for complying development certificates

118 Certifier may require additional information

(cl 127 2000 Reg)

(1) A certifier may request additional information about the development from the applicant for a complying development certificate that the certifier considers necessary to properly consider the application.

(2) A certifier may require the additional information to be obtained from a properly qualified person.

(3) Nothing in this clause affects the certifier's duty to determine an application for a complying development certificate.

119 Time for determining application for complying development certificate

(cl 130AA 2000 Reg)

For the purposes of the Act, section 4.28(8), the determination of an application for a complying development certificate must be completed within—

(a) for a complying development certificate to which clause 120 applies—20 days, or

(b) otherwise—10 days.

120 Notice to neighbours and councils

(cl 130AB 2000 Reg)

(1) This clause applies to a complying development certificate in relation to development on relevant land that is—

(a) specified under an environmental planning instrument and involves a new dwelling or an addition to an existing dwelling, or

(b) specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 7, or

(c) specified in *State Environmental Planning Policy (Affordable Rental Housing) 2009*, Part 2, Division 2 or 7.

(2) This clause applies only if the development will be carried out on a lot that has a boundary within 20 metres of the boundary of another lot on which a dwelling is located.

(3) A certifier must not issue a complying development certificate until at least 14 days after the certifier has given written notice to—

(a) if the development will be on land in a rural or residential zone—each neighbour on land in a rural or residential zone, and

(b) if the certifier is not the council for the area in which the development will be carried out—the council.

(4) The notice must contain the following—

(a) the name and contact details of the certifier,

(b) a statement that the certifier has received an application for a complying development certificate and will determine the application in accordance with the Act,

(c) the name, address and contact details of the applicant for the complying development certificate,

(d) the address of the land on which the development will be carried out,

(e) a description of the development to which the application relates,

(f) the name of each relevant environmental planning instrument, including the relevant complying development code,

(g) the site plan of the land, as referred to in clause 107, that accompanied the application,

(h) the date on which the application was received by the certifier,

(i) a statement that, once the application is determined, the council is required to make a copy of the determination available for inspection.

(5) A certifier is not required to give notice to each neighbour under subclause (3)(a) for an application to modify development in relation to which a complying development certificate has been issued if notice was given to the neighbour in accordance with that subclause in relation to the original complying development certificate.

(6) In this clause—

applicable local government area means the local government areas of Bayside, City of Blacktown, City of Blue Mountains, Burwood, Camden, City of Campbelltown, Canada Bay, Canterbury-Bankstown, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter's Hill, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Wingecarribee, Wollondilly or Woollahra.

neighbour means the occupier of a dwelling located on a lot that has a boundary within 20 metres of the boundary of the lot on which the work will be carried out.

relevant land means land in an applicable local government area that is not in—

(a) an urban release area identified in a local environmental plan that adopts the applicable mandatory provisions of the Standard Instrument, or

(b) a growth centre under the Growth Centres SEPP, or

(c) an area to which *State Environmental Planning Policy (State Significant Precincts) 2005*, Appendix 5, 14 or 15 applies.

121 Council to be notified of significant fire safety issues

(cl 129D 2000 Reg)

(1) This clause applies to a certifier if—

(a) an application is made to the certifier for a complying development certificate affecting an existing building, and

(b) the building is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, and

(c) between receiving the application and issuing the complying development certificate, the certifier becomes aware, when carrying out an inspection or otherwise, of a significant fire safety issue with the building.

(2) Within 2 days after becoming aware of a significant fire safety issue, the certifier must give written notice to the council that describes the fire safety issue and the parts of the building affected by the issue.

(3) However, the certifier is not required to give notice if the fire safety issue is being addressed by—

(a) the proposed development, or

(b) a fire safety order under the Act, Schedule 5, Part 2, or

(c) another development consent or complying development certificate that affects the building.

(4) To avoid doubt, this clause extends to a council that is a certifier.

Division 3 Issue of complying development certificates

122 Form of complying development certificate

(cl 134 2000 Reg)

(1) A complying development certificate must contain the following—

(a) the name of the certifier that issued the certificate,

(b) if the certifier is a registered body corporate—the name of the individual who issued the certificate,

(c) if the certifier is a registered certifier—

(i) the registration number of the certifier, and

(ii) if the certifier is a registered body corporate—the registration number of the individual who issued the certificate,

(d) the signature of the individual who issued the certificate,

(e) the date of the certificate,

(f) the date on which the certificate lapses,

(g) a statement that the development is complying development and, if carried out as specified in the certificate, will comply with—

(i) all the development standards applicable to the development, and

(ii) other requirements of this Regulation relating to the issue of the certificate,

(h) if the development involves the erection of a building—the class of the building under the *Building Code of Australia*,

(i) if a report about a performance solution is required under clause 123(3)—the following details of the report—

(i) the title of the report,

(ii) the date on which the report was made,

(iii) the reference number and version number of the report,

(iv) the name of the person who prepared the report or on whose behalf the report was prepared,

(v) if the person referred to in subparagraph (iv) is an accredited practitioner (fire safety) and a registered certifier—the accredited practitioner's registration number,

(j) if any of the building work is exempt from compliance with the *Building Code of Australia* under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*—the details of the exemption,

(k) the conditions imposed on the development under this Regulation.

(2) A complying development certificate must also contain—

(a) a detailed list of the particular plans, reports, studies or other documents relied on by the certifier to determine the application for the certificate, including information about how the documents can be accessed, and

(b) a copy of the relevant plans endorsed by the certifier.

(3) A complying development certificate for development that is complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* must also specify—

(a) the land use zone in which the land is located, and

(b) if the land is not zoned under an environmental planning instrument made as provided by the Act, section 3.20(2), the equivalent named land use zone for the land under that Policy, and

(c) if the development is carried out under a complying development code under that Policy—the name of the code.

(4) A complying development certificate for the erection of a building must be accompanied by the fire safety schedule for the building, if required under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

(5) Subclause (4) does not apply to—

(a) the erection of a building that will be a class 1a or class 10 building when completed, or

(b) the erection of a temporary structure.

(6) A certifier must not issue a compliance certificate that does not comply with subclause (1), (2)(b) or (4).

Maximum penalty (subclause (6))—

(a) for non-compliance with subclause (1) or (2)(b)—

(i) 300 penalty units for a corporation, or

(ii) 150 penalty units for an individual, and

(b) for non-compliance with subclause (4)—

(i) 600 penalty units for a corporation, or

(ii) 300 penalty units for an individual.

123 Compliance with Building Code of Australia

(cl 130 2000 Reg)

(1) A certifier must not issue a complying development certificate for building work unless the proposed building, not including a temporary building, will comply with the relevant requirements of the *Building Code of Australia*, as in force at the time the application for the certificate was made.

(2) A complying development certificate for complying development that is required to comply with the deemed-to-satisfy provisions in Volume 1, or section 3 of Volume 2, of the *Building Code of Australia*, must not authorise compliance with a performance solution to the performance requirements corresponding to the deemed-to-satisfy provisions.

(3) A certifier must not issue a complying development certificate for building work, or development comprising internal alterations to, or a change of use of, an existing building, that involves a performance solution under the *Building Code of Australia* unless the certifier—

(a) has obtained or been given a performance solution report, and

(b) is satisfied that—

(i) the report was prepared in accordance with the requirements set out in A2.2(4) in Volume 1 of the *Building Code of Australia*, and

(ii) the plans show, and the specifications describe, the physical elements of the performance solution, if they are capable of being shown and described.

(4) A certifier must not issue a complying development certificate unless the certifier has endorsed the plans, specifications and other documents that were lodged with the application for the certificate or submitted to the certifier under Division 1 with evidence of the issue of the certificate.

Maximum penalty—

(a) 300 penalty units for a corporation, or

(b) 150 penalty units for an individual.

(5) A report about a performance solution for a fire safety requirement must be prepared by or on behalf of—

(a) for a prescribed report—a person who is both an accredited practitioner (fire safety) and a fire safety engineer, or

(b) otherwise—a person who is an accredited practitioner (fire safety).

(6) In this clause—

fire safety engineer means a person registered under the *Building and Development Certifiers Act 2018* whose registration authorises the person to exercise the functions of a fire safety engineer.

fire safety requirement means a requirement under the *Building Code of Australia* relating to—

(a) a fire safety system, as defined in the *Building Code of Australia*, and components of a fire safety system, or

(b) the safety of persons if there is a fire, or

(c) the prevention, detection or suppression of fire.

prescribed report means a report about a performance solution for a requirement set out in EP1.4, EP2.1, EP2.2, DP4 and DP5 in Volume 1 of the *Building Code of Australia* for—

(a) a class 9a building that is proposed to have a total floor area of 2,000 square metres or more, or

(b) a building, other than a class 9a building, that is proposed to have a fire compartment, as defined in the *Building Code of Australia*, with a total floor area of more than 2,000 square metres, or

(c) a building, other than a class 9a building, that is proposed to have a total floor area of more than 6,000 square metres.

124 Complying development under Education SEPP

(cl 129AA and 129AB 2000 Reg)

(1) A certifier must not issue a complying development certificate for the following development unless the certifier has been given a written statement by a qualified designer verifying that the development applies the design quality principles set out in *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, Schedule 4—

(a) development for a purpose specified in that Policy, clause 39(1)(a) or 40(2)(e) that involves the construction of a new building with a building height of more than 12 metres,

(b) development for a purpose specified in that Policy, clause 39(1)(a) or 40(2)(e) that involves an alteration or addition to an existing building that will result in a building height of more than 12 metres.

(2) A certifier must not issue a complying development certificate for development that is identified as complying development under *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* unless—

(a) the relevant roads authority has given its written consent, if required by the *Roads Act 1993*—

(i) for each opening of a public road required by the development, and

(ii) to operate or store machinery, materials or waste required by the development on a road or footpath reserve, and

(b) if the development involves the alteration or erection of improvements on land in a mine subsidence district—the Chief Executive of Subsidence Advisory NSW has given written approval of the development.

(3) In this clause—

building height has the same meaning as in the Standard Instrument.

mine subsidence district has the same meaning as in the *Coal Mine Subsidence Compensation Act 2017*.

125 Site inspection required

(cl 129B 2000 Reg)

(1) A certifier must not issue a complying development certificate for development unless a council or registered certifier has carried out an inspection of the site of the development.

(2) If the development affects an existing building that is a class 1b, 2, 3, 4, 5, 6, 7, 8 or 9 building, an inspection of the site of the development must include an inspection of—

(a) the parts of the building affected by the development, and

(b) the egress routes from those parts of the building.

(3) This clause does not apply to a complying development certificate that relates only to fire alarm communication link works.

126 Record of site inspections

(cl 129C 2000 Reg)

(1) A council or registered certifier must make a record of each inspection carried out by the council or registered certifier for the purposes of clause 125.

(2) If the council or registered certifier required to make the record is not the certifier in relation to the issue of the complying development certificate, the council or registered certifier must, within 2 days after the carrying out of the inspection, give a copy of the record to the certifier, by means of the NSW planning portal.

(3) The record must contain the following—

(a) the date of the application for the complying development certificate,

(b) the address of the property at which the inspection was carried out,

(c) the type of inspection,

(d) the date on which the inspection was carried out,

(e) if the inspection was carried out by a council—

(i) the name of the council, and

(ii) the name and signature of the individual who carried out the inspection,

(f) if the inspection was carried out by a registered certifier—

(i) the name and registration number of the registered certifier, and

(ii) if the registered certifier is a registered body corporate—the name and registration number of the individual who carried out the inspection,

(g) details of the current fire safety measures in the existing buildings on the site that will be affected by the development,

(h) details about whether the plans and specifications accompanying the application for the complying development certificate adequately and accurately depict the existing site conditions,

(i) details of features of the site, or of a building on the site, that would result in the development—

(i) not being complying development, or

(ii) not complying with the *Building Code of Australia*.

127 Notice of determination of complying development certificate application

(cl 130 2000 Reg)

(1) Within 2 days after issuing a complying development certificate, a registered certifier must lodge the certificate on the NSW planning portal.

(2) The fee for lodging a complying development certificate on the NSW planning portal is specified in Schedule 4.

(3) A certifier must give the applicant notice of the determination of an application for a complying development certificate under the Act, section 4.28(11) by means of the NSW planning portal.

Maximum penalty—

(a) 300 penalty units for a corporation, or

(b) 150 penalty units for an individual.

(4) Within 2 days after determining an application for a complying development certificate, a registered certifier must give the following to the council by means of the NSW planning portal—

(a) the application and the determination,

(b) the endorsed plans, specifications or other documents that were lodged with the application or submitted to the registered certifier in accordance with Division 1,

(c) the fire safety schedule for the building, if required under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*,

(d) the record of an inspection made for the purposes of clause 126 in relation to the issue of the complying development certificate, but only if the inspection was not carried out by the council.

Maximum penalty—

(a) 300 penalty units for a corporation, or

(b) 150 penalty units for an individual.

Division 4 Development standards for complying development

128 Development standards for change of building use

(cl 131 2000 Reg)

The development standards applicable to complying development that involves a change of building use of an existing building include the following requirements—

(a) the building will, whether or not any building work is carried out—

(i) contain measures that are adequate, if there is a fire, to facilitate the safe egress of persons from the part of the building affected by the change of building use, and

(ii) comply with the Category 1 fire safety provisions that apply to the proposed use,

(b) the fire protection and structural capacity of the building will, on completion of the building work, be appropriate to the proposed use.

129 Development standards for building work involving alteration, enlargement or extension of existing building

(cl 132 2000 Reg)

(1) The development standards applicable to complying development that involves the alteration, enlargement or extension of an existing building include the following requirements—

(a) if the building work involves the reconfiguration of an internal part of the building that will be occupied—on completion of the building work, the building will contain measures that are adequate, if there is a fire, to facilitate the safe egress of persons from the reconfigured part of the building,

(b) the fire protection and structural capacity of the building will, on completion of the building work, not be reduced.

(2) This clause does not apply to development in connection with a change of building use of an existing building.

130 Development standards for erection of temporary structure

(cl 133 2000 Reg)

The development standards applicable to complying development that involves the erection of a temporary structure include the following requirements—

(a) the fire protection and structural capacity of the structure will be appropriate to the proposed use of the structure,

(b) the ground or other surface on which the structure will be erected will be sufficiently firm and level to sustain the structure while in use.

131 Effect of Division

This Division does not affect any requirement for the building work to be carried out in accordance with—

(a) the plans and specifications to which a complying development certificate relates, and

(b) the conditions of the complying development certificate.

Division 5 Conditions of complying development certificates

132 Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989

(cl 136A 2000 Reg)

(1) A complying development certificate for development that involves building work must be issued subject to the following conditions—

(a) the work must be carried out in accordance with the requirements of the *Building Code of Australia*,

(b) for residential building work that requires a contract of insurance under the *Home Building Act 1989*—a contract of insurance must be in force before the building work authorised to be carried out by the certificate commences.

(2) A complying development certificate for a temporary structure that is used as an entertainment venue must be issued subject to a condition that the temporary structure must comply with Part B1 and NSW Part H102 in Volume 1 of the *Building Code of Australia*.

(3) This clause does not limit the other conditions to which a complying development certificate may be subject.

(4) This clause does not apply—

(a) to the extent to which an exemption from a provision of the *Building Code of Australia* or a fire safety standard is in force under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, or

(b) to the erection of a temporary building, other than a temporary structure to which subclause (2) applies.

(5) In this clause, a reference to the *Building Code of Australia* is a reference to the Code as in force on the date on which the application for the relevant complying development certificate is made.

133 Fire safety systems in class 2–9 buildings

(cl 136AA 2000 Reg)

(1) A complying development certificate for building work involving the installation, extension or modification of a relevant fire safety system in a class 2, 3, 4, 5, 6, 7, 8 or 9 building must be issued subject to a condition that the building work must not commence unless—

(a) plans have been submitted to the principal certifier that show—

(i) for building work involving the installation of the relevant fire safety system—the layout, extent and location of key components of the relevant fire safety system, or

(ii) for building work involving the extension or modification of the relevant fire safety system—the layout, extent and location of the new or modified components of the relevant fire safety system, and

(b) specifications have been submitted to the principal certifier that—

(i) describe the basis for the design, installation and construction of the relevant fire safety system, and

(ii) identify the provisions of the *Building Code of Australia* on which the design of the system is based, and

(c) the plans and specifications—

(i) have been certified by a compliance certificate as complying with the relevant provisions of the *Building Code of Australia*, or

(ii) have been endorsed by an accredited practitioner (fire safety) as complying with the relevant provisions of the *Building Code of Australia*, and

(d) if the plans and specifications were submitted before the complying development certificate was issued—each of them was endorsed by a certifier with a statement that the certifier is satisfied that it correctly identifies the relevant performance requirements and deemed-to-satisfy provisions, and

(e) if the plans and specifications were not submitted before the complying development certificate was issued—each of them was endorsed by the principal certifier with a statement that the principal certifier is satisfied that it correctly identifies the relevant performance requirements and deemed-to-satisfy provisions.

(2) Subclause (1)(c)(ii) does not apply to the extent of an exemption under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

(3) In this clause—

relevant fire safety system means the following—

(a) a hydraulic fire safety system,

(b) a fire detection and alarm system,

(c) a mechanical ducted smoke control system.

134 Notice to neighbours of commencement of work

(cl 136AB 2000 Reg)

(1) This clause applies to a complying development certificate for development involving—

(a) the erection of a new building, or

(b) an addition to an existing building, or

(c) the demolition of a building.

(2) This clause applies only if the development will be carried out on a lot that has a boundary within 20 metres of the boundary of another lot on which a dwelling is located.

(3) A complying development certificate must be issued subject to a condition that the person having the benefit of the certificate must give each neighbour written notice of the person's intention to commence the work authorised by the certificate—

(a) for development on relevant land—at least 7 days before commencing work, or

(b) otherwise—at least 2 days before commencing work.

(4) In this clause—

neighbour and ***relevant land*** have the same meaning as in clause 120.

135 Erection of signs

(cl 136B 2000 Reg)

(1) This clause applies to a complying development certificate for development involving building work, subdivision work or demolition work.

(2) A complying development certificate must be issued subject to a condition that the requirements of subclauses (3) and (4) must be complied with.

(3) A sign must be erected in a prominent position on a site on which building work, subdivision work or demolition work is being carried out—

(a) showing the name, address and telephone number of the principal certifier for the work, and

(b) showing the name of the principal contractor, if any, for building work and a telephone number on which the principal contractor may be contacted outside working hours, and

(c) stating that unauthorised entry to the work site is prohibited.

(4) The sign must be—

(a) maintained while the building work, subdivision work or demolition work is being carried out, and

(b) removed when the work is completed.

(5) This clause does not apply in relation to—

(a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or

(b) Crown building work certified to comply with the *Building Code of Australia*. under the Act, Part 6.

136 Notification of Home Building Act 1989 requirements

(cl 136C 2000 Reg)

(1) This clause applies to a complying development certificate if—

(a) the development involves residential building work, and

(b) the principal certifier is not the council.

(2) A complying development certificate must be issued subject to a condition that the work is carried out in accordance with the requirements of this clause.

(3) Residential building work must not be carried out unless the principal certifier has given the council written notice of the following—

(a) for work that requires a principal contractor to be appointed—

(i) the name and licence number of the principal contractor, and

(ii) the name of the insurer of the work under the *Home Building Act 1989*, Part 6,

(b) for work to be carried out by an owner-builder—

(i) the name of the owner-builder, and

(ii) if the owner-builder is required to hold an owner-builder permit under that Act—the number of the owner-builder permit.

(4) If the information notified under subclause (3) is no longer correct, further work must not be carried out unless the principal certifier has given the council written notice of the updated information.

(5) This clause does not apply in relation to Crown building work certified to comply with the *Building Code of Australia* under the Act, Part 6.

137 Fulfilment of BASIX commitments

(cl 136D 2000 Reg)

A complying development certificate for the following development must be issued subject to a condition that each commitment listed in a relevant BASIX certificate must be fulfilled—

(a) BASIX development,

(b) BASIX optional development, if the application for the complying development certificate was accompanied by a BASIX certificate.

138 Development involving asbestos material

(cl136E 2000 Reg)

(1) A complying development certificate for development that involves building work or demolition work must be issued subject to the following conditions—

(a) asbestos removal work involving the removal of asbestos from an area of more than 10 square metres must be undertaken by a person who conducts a business of asbestos removal work in accordance with the *Work Health and Safety Regulation 2017*, clause 458 (a ***licensed person***),

(b) the person having the benefit of the complying development certificate must give the principal certifier a copy of a signed contract with a licensed person before development under the complying development certificate commences,

(c) the contract must indicate whether asbestos will be removed, and if so, must specify the landfill site, which may lawfully receive asbestos, to which the asbestos will be delivered,

(d) if the contract indicates that asbestos will be removed to a specified landfill site—the person having the benefit of the complying development certificate must give the principal certifier a copy of a receipt from the operator of the landfill site stating that all the asbestos referred to in the contract has been received by the operator.

(2) In this clause—

asbestos removal work has the same meaning as in the *Work Health and Safety Regulation 2017*.

Note 1— The effect of subclause (1)(a) is that the development will be a workplace to which the *Work Health and Safety Regulation 2017* applies while asbestos removal work is being undertaken.

Note 2— Information on the removal and disposal of asbestos to landfill sites licensed to accept asbestos is available from the NSW Environment Protection Authority.

139 Shoring and adequacy of adjoining property

(cl 136H 2000 Reg)

(1) This clause applies to a complying development certificate for development that involves excavation that extends below the level of the base of the footings of a building, structure or work, including a structure or work in a road or rail corridor, on adjoining land.

(2) The complying development certificate must be issued subject to a condition that the person having the benefit of the certificate must, at the person's own expense—

(a) protect and support the building, structure or work from possible damage from the excavation, and

(b) if necessary, underpin the building, structure or work to prevent damage from the excavation.

(3) This clause does not apply if—

(a) the person having the benefit of the complying development certificate owns the adjoining land, or

(b) the owner of the adjoining land has given written consent to the condition not applying.

140 Traffic generating development

(cl 136I 2000 Reg)

If an application for a complying development certificate is required to be accompanied by a certificate of the relevant roads authority under clause 114, the complying development certificate must be issued subject to a condition that any requirements specified in the certificate of the relevant roads authority must be complied with.

141 Development on contaminated land

(cl 136J 2000 Reg)

If an application for a complying development certificate is required to be accompanied by a statement referred to in clause 115(2) or (3), the complying development certificate must be issued subject to a condition that the requirements specified in the statement must be complied with.

142 Development contributions

(cl 136K and 136L 2000 Reg)

(1) This clause applies if a council's contributions plan provides for the payment of a monetary section 7.11 contribution or a section 7.12 levy in relation to development for a particular purpose (a ***relevant purpose***), whether the development is classed as complying development under the contributions plan.

(2) A complying development certificate that authorises development for a relevant purpose must be issued subject to the following conditions—

(a) a condition requiring payment of the contribution or levy, as required by the Act, section 4.28(9),

(b) the contribution or levy must be paid before the work authorised by the certificate commences.

(3) This clause applies despite a provision to the contrary in the council's contributions plan.

(4) In this clause—

section 7.11 contribution means the dedication of land, the payment of a monetary contribution or the provision of a material public benefit, as referred to in the Act, section 7.11.

section 7.12 levy means the payment of a levy, as referred to in the Act, section 7.12.

143 Payment of security

(cl 136M 2000 Reg)

(1) This clause applies to a complying development certificate authorising the carrying out of development if—

(a) the development involves the demolition of a work or building, the erection of a new building or an addition to an existing building, and

(b) the estimated cost of the development, as specified in the application for the certificate, is $25,000 or more, and

(c) the development will be carried out on land adjacent to a public road, and

(d) at the time the application for the certificate is made, the council for the area in which the development will be carried out, has specified, on its website, an amount of security that must be paid in relation to development—

(i) of the same type or description, or

(ii) carried out in the same circumstances, or

(iii) carried out on land of the same size or description.

(2) A complying development certificate must be issued subject to a condition that the amount of security referred to in subclause (1)(d) will be given, in accordance with this clause, to the council before the building work or subdivision work authorised by the certificate commences.

(3) The applicant may give the security to the council by—

(a) a deposit with the council, or

(b) a guarantee satisfactory to the council.

(4) The council may use the security to meet the cost of making good damage caused to council property as a consequence of doing a thing, or not doing a thing, authorised or required by the complying development certificate, including the cost of an inspection to determine if damage has been caused.

(5) The balance of the security remaining after meeting the costs referred to in subclause (4) must be refunded to, or at the direction of, the person who gave the security.

Division 6 Miscellaneous

144 Application to modify complying development

(cl 129E 2000 Reg)

(1) An application under the Act, section 4.30 to modify complying development in relation to which a complying development certificate has been issued, or in relation to which an application for a complying development certificate has been made, must be made in the approved form.

(2) This Part applies to an application to modify complying development in the same way as it applies to the original application.

145 Complying development certificate to be given to NSW Rural Fire Service and council

(cl 130A 2000 Reg)

(1) If a certifier issues a complying development certificate for development on bush fire prone land, the certifier must give a copy of the following to the NSW Rural Fire Service—

(a) the complying development certificate,

(b) associated documents, including—

(i) a copy of the application for the certificate, and

(ii) any certification referred to in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* that is required to carry out the complying development on bush fire prone land.

(2) If the certifier is not a council, the certifier must also give a copy of the documents to the council.

146 Validity of complying development certificates—the Act, s 4.59

(cl 137 2000 Reg)

A notice relating to the issue of a complying development certificate, including a certificate issued by a registered certifier, that describes the land and the complying development must be published on the relevant council's website.

Part 7 Existing uses—the Act, Div 4.11

147 Application of Part

(cl 39 2000 Reg)

(1) The provisions of this Part are provisions in force for the purposes of the Act, section 4.67(1).

Note— The Act, section 4.67(2) provides that the provisions in force for the purposes of the Act, section 4.67(1) are taken to be incorporated in every environmental planning instrument.

(2) In this Part—

relevant day means—

(a) in relation to an existing use referred to in the Act, section 4.65(a)—the date on which an environmental planning instrument having the effect of prohibiting the existing use first comes into force, or

(b) in relation to an existing use referred to in the Act, section 4.65(b)—the date on which the building, work or land being used for the existing use was first erected, carried out or used.

148 Certain development allowed

(cl 41 2000 Reg)

(1) An existing use may, subject to this Part—

(a) be enlarged, expanded or intensified, or

(b) be altered or extended, or

(c) be rebuilt, or

(d) be changed to another use, but only if the other use is a use that may be carried out with or without development consent under the Act, or

(e) if it is a commercial use—be changed to another commercial use, including a commercial use that would otherwise be prohibited under the Act, or

(f) if it is a light industrial use—be changed to another light industrial use or a commercial use, including a light industrial use or commercial use that would otherwise be prohibited under the Act.

(2) However, an existing use must not be changed under subclause (1)(e) or (f) unless the change—

(a) involves only minor alterations or additions, and

(b) does not involve an increase of more than 10% in the gross floor area of the premises associated with the existing use, and

(c) does not involve the rebuilding of the premises associated with the existing use, and

(d) does not involve a significant intensification of the existing use.

(3) In this clause—

commercial use means the use of a building, work or land for the purposes of commercial premises, within the meaning of the Standard Instrument.

light industrial use means the use of a building, work or land for the purposes of light industry, within the meaning of the Standard Instrument.

149 Enlargement, expansion and intensification of existing uses

(cl 42 2000 Reg)

(1) Development consent is required for any enlargement, expansion or intensification of an existing use.

(2) The enlargement, expansion or intensification must be—

(a) for the existing use and for no other use, and

(b) must be carried out only on the land on which the existing use was carried out immediately before the relevant day.

150 Alteration or extension of buildings and works

(cl 43 2000 Reg)

(1) Development consent is required for any alteration or extension of a building or work used for an existing use.

(2) The alteration or extension must be—

(a) for the existing use of the building or work and for no other use, and

(b) erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant day.

151 Rebuilding of buildings and works

(cl 44 2000 Reg)

(1) Development consent is required for any rebuilding of a building or work used for an existing use.

(2) The rebuilding must be—

(a) for the existing use of the building or work and for no other use, and

(b) carried out only on the land on which the building or work was erected or carried out immediately before the relevant day.

152 Change of existing uses

(cl 45 and 46 2000 Reg)

(1) Development consent is required for—

(a) a change of an existing use to another use, and

(b) for a building, work or land that is used for different existing uses—a change in the proportions in which the various parts of the building, work or land are used for the different existing uses.

(2) This Part does not prevent the granting of a development consent referred to in another provision of this Part at the same time as the granting of a development consent referred to in subclause (1).

Part 8 Infrastructure and environmental impact assessment

Division 1 Preliminary

153 Definitions

(1) In this Part—

environmental assessment requirements means—

(a) in relation to State significant development, designated development or an activity under the Act, Division 5.1—the environmental assessment requirements prepared by the Planning Secretary and notified under clause 161, and

(b) in relation to State significant infrastructure—the requirements prepared by the Planning Secretary under the Act, section 5.16.

guidelines means guidelines issued by the Secretary under clause 155.

responsible person means the applicant or proponent responsible for preparing an environmental impact statement.

(2) For the purposes of the Act, section 5.11, definition of ***infrastructure***, if a single development comprises development that is only partly infrastructure, the remainder of the development, for whatever purposes, is also infrastructure.

154 Development that is not an activity

(cl 227AA 2000 Reg)

For the purposes of the Act, section 5.1(1), definition of ***activity***, the demolition of a temporary structure is not an activity.

155 Planning Secretary guidelines about review of environmental factors—the Act, s 5.10(a)

(cl 228 2000 Reg)

(1) The Planning Secretary may issue guidelines in relation to—

(a) the factors to be taken into account by a determining authority when considering the likely impact of an activity, and

(b) the form of a report required to be prepared by a determining authority.

(2) The guidelines must be published on the NSW planning portal.

(3) The Planning Secretary may vary or revoke the guidelines.

156 Review of environmental factors—the Act, s 5.10(a)

(cl 228 2000 Reg)

(1) When considering the likely impact of an activity on the environment, the determining authority must take into account the factors specified in guidelines that apply to the activity.

(2) If there are no guidelines in force, the determining authority must take into account the following factors—

(a) the environmental impact on the community,

(b) the transformation of the locality,

(c) the environmental impact on the ecosystems of the locality,

(d) reduction of the aesthetic, recreational, scientific or other environmental quality or value of the locality,

(e) the effects on the locality or a place or building with aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations,

(f) the impact on the habitat of protected animals, within the meaning of the *Biodiversity Conservation Act 2016*,

(g) the endangering of a species of animal, plant or other form of life, whether living on land, in water or in the air,

(h) long-term effects on the environment,

(i) degradation of the quality of the environment,

(j) risk to the safety of the environment,

(k) reduction in the range of beneficial uses of the environment,

(l) pollution of the environment,

(m) environmental problems associated with the disposal of waste,

(n) increased demands on natural or other resources that are, or are likely to become, in short supply,

(o) the cumulative environmental effect with other existing or likely future activities,

(p) the impact on coastal processes and coastal hazards, including those under projected climate change conditions,

(q) applicable local strategic planning statements, regional strategic plans or district strategic plans made under the Act, Division 3.1,

(r) other relevant environmental factors.

(3) A determining authority must prepare a report demonstrating how the factors specified in guidelines, or the factors specified in subclause (2) if no guidelines are in force, were taken into account when considering the likely impact of an activity.

(4) The report must be published on the determining authority's website or the NSW planning portal before the activity commences if—

(a) the activity has a capital investment value of more than $5 million, or

(b) the activity requires approval under an Act before it may be carried out, other than an approval under the *Environmental Planning and Assessment Act 1979*, or

(c) the determining authority considers that it is in the public interest to publish the report.

(5) A provision of an approved code under Division 6 that applies to a determining authority's exercise of functions under the Act, section 5.5 prevails to the extent of an inconsistency with a provision of this clause.

Division 2 Environmental assessment requirements for State significant development and designated development—the Act, ss 4.39, 4.64 and 5.10

157 Application of Division

(1) This Division applies to an environmental impact statement prepared under the Act, section 4.12(8) or 5.7 only.

(2) This Division does not apply to an environmental impact statement prepared under the Act, section 5.16.

158 Application to Planning Secretary for environmental assessment requirements
(cl 3 of Sch 2 2000 Reg)

(1) Before preparing an environmental impact statement, the responsible person must make a written application to the Planning Secretary for the environmental assessment requirements for the proposed statement.

(2) The application must—

(a) be in the approved form, and

(b) contain details of the location, nature and scale of the development or activity.

(3) The Planning Secretary may require the responsible person to provide further information about the location, nature and scale of the development or activity.

(4) The Planning Secretary may at any time waive the requirement for an application in relation to—

(a) a particular development or activity, or

(b) a particular class or description of development or activity.

(5) A waiver may be given subject to conditions or unconditionally.

(6) Subclause (4) does not apply to the following development—

(a) integrated development,

(b) State significant development that, but for the Act, section 4.41, would require an authorisation specified in that section,

(c) State significant development for which an authorisation, other than a consent under the *Roads Act 1993*, section 138, must be given under the Act, section 4.42.

159 Application for environmental assessment requirements for integrated development
(cl 4 of Sch 2, 2000 Reg)

(1) An application for environmental assessment requirements that relates to integrated development must also contain details of the approvals that are required for the development.

(2) After receiving an application for environmental assessment requirements for integrated development, the Planning Secretary must, by written notice, request each relevant approval body to give the approval body's requirements in relation to the environmental impact statement to the Planning Secretary.

(3) If the approval body's requirements are given to the Planning Secretary within 14 days after receipt of the Planning Secretary's request, the Planning Secretary must notify the approval body of the environmental assessment requirements and any modifications to the requirements.

(4) If the approval body's requirements are not given to the Planning Secretary within 14 days, the Planning Secretary must give written notice to the responsible person.

(5) After receiving notice under subclause (4), the responsible person must—

(a) apply to the approval body for its requirements in relation to the environmental impact statement, and

(b) if the approval body gives its requirements to the responsible person—consider the requirements in completing the environmental impact statement.

(6) In this clause—

approval body's requirements means the approval body's requirements in relation to an environmental impact statement for the purposes of its decision about the general

terms of the approval in relation to the development, including whether it will grant an approval.

160 Environmental assessment requirements for State significant development

(cl 3 of Sch 2 2000 Reg)

(1) This clause applies to the environmental assessment requirements for an application for State significant development.

(2) In preparing the environmental assessment requirements, the Planning Secretary must—

(a) consult relevant public authorities, and

(b) consider whether the requirements need to assess any key issues raised by the public authorities.

(3) In preparing the environmental assessment requirements for development in relation to which a gateway certificate has been issued, the Planning Secretary must address any recommendations of the Gateway Panel set out in the certificate.

(4) In preparing the environmental assessment requirements for development in relation to which an unconditional gateway certificate has been issued, the Planning Secretary must—

(a) consult the Gateway Panel, and

(b) consider whether the requirements need to assess any key issues raised by the Panel.

(5) If a gateway certificate is issued for the development after the environmental assessment requirements for the development have been notified under clause 161, the Planning Secretary—

(a) must consider any recommendations of the Gateway Panel set out in the gateway certificate, and

(b) may modify the requirements in accordance with clause 161.

(6) In this clause—

Gateway Panel means the Mining and Petroleum Gateway Panel under *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

unconditional gateway certificate means a gateway certificate issued under *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, clause 17I(3).

161 Notice of environmental assessment requirements

(cl 3 of Sch 2 2000 Reg)

(1) The Planning Secretary must give written notice of the environmental assessment requirements to—

(a) the responsible person, and

(b) if relevant, the relevant consent authority or determining authority.

(2) The notice must be given—

(a) within 28 days after the application is made under clause 158, or

(b) if the Planning Secretary requests further information—within 28 days after the information is given to the Planning Secretary, or

(c) within a further period agreed between the Planning Secretary and the responsible person.

(3) The Planning Secretary may modify the environmental assessment requirements by further written notice.

(4) The Planning Secretary may impose environmental assessment requirements by reference to specified publications.

(5) If an environmental impact statement is not submitted with a development application within 2 years after written notice is last given under this clause, the responsible person must further consult the Planning Secretary in relation to the preparation of the statement.

162 Compliance with environmental assessment requirements

(cl 3 of Sch 2 2000 Reg)

The responsible person must ensure that an environmental impact statement complies with the environmental assessment requirements notified to the person under clause 161.

Division 3 Approval of State significant infrastructure—the Act, Div 5.2

163 Applications for approval

(cl 192 2000 Reg)

(1) An application for approval of the Minister to carry out State significant infrastructure must contain—

(a) details of any approvals that would, but for the Act, section 5.23, be required to carry out the State significant infrastructure, and

(b) details of any authorisations that must be given under the Act, section 5.24 if the application is approved, and

(c) a statement about the basis on which the proposed infrastructure is State significant infrastructure including, if relevant, the capital investment value of the proposed infrastructure.

(2) An application may, with the approval of the Planning Secretary, be amended at any time before the application is determined.

(3) However, the Planning Secretary must not approve an amendment unless satisfied that the nature of the proposed amendment is sufficiently identified.

(4) An application and a modification request must be accompanied by a fee determined in accordance with Part 13 and Schedule 4.

(5) An application for approval of the Minister to carry out critical State significant infrastructure must be accompanied by the additional fee specified in Schedule 4.

164 Owner's consent

(cl 193 2000 Reg)

(1) An application for approval of State significant infrastructure or a modification request may be made only with the consent of the owner of the land on which the State significant infrastructure will be carried out.

(2) If an application or modification request relates to land owned by a Local Aboriginal Land Council and requires the consent of the Local Aboriginal Land Council, the consent of the New South Wales Aboriginal Land Council is also required.

(3) Consent may be obtained at any time before the determination of the application or request.

(4) Consent of the owner is not required for an application or modification request for the following State significant infrastructure—

(a) State significant infrastructure proposed to be carried out by a proponent that is a public authority,

(b) critical State significant infrastructure,

(c) State significant infrastructure comprising one or more of the following—

(i) linear transport infrastructure,

(ii) utility infrastructure,

(iii) infrastructure on land with multiple owners designated by the Planning Secretary for the purposes of this clause by written notice to the person making the application or request.

(5) The proponent of State significant infrastructure specified in subclause (4) must—

(a) publish notice of the application or modification request on the NSW planning portal, and

(b) give notice of the application or modification request during the relevant period by—

(i) giving written notice to the owner of the land, or

(ii) an advertisement published in a newspaper circulating in the area in which the infrastructure will be carried out.

(6) In this clause—

relevant period means—

(a) for written notice under subclause (5)(b)(i)—the period ending 14 days after the application or modification request is made, or

(b) for an advertisement under subclause (5)(b)(ii) for an application —the period ending 14 days before the environmental impact statement relating to the infrastructure is publicly exhibited, or

(c) for an advertisement under subclause (5)(b)(ii) for a modification request—the period ending 14 days after the modification request is made.

Division 4 Environmental assessment for State significant infrastructure—the Act, Div 5.2

165 Environmental assessment requirements for State significant infrastructure

(cl 12 of Sch 2 2000 Reg)

In preparing the environmental assessment requirements for an application for State significant infrastructure, the Planning Secretary may—

(a) require the responsible person to give further information, and

(b) impose environmental assessment requirements by reference to specified publications.

166 Compliance with environmental assessment requirements

(cl 13 of Sch 2 2000 Reg)

The responsible person must ensure that an environmental impact statement for State significant infrastructure complies with the environmental assessment requirements notified to the proponent by the Planning Secretary under the Act, section 5.16.

167 Environmental impact statement submitted 2 years after requirements notified

(cl 14 of Sch 2 2000 Reg)

If an environmental impact statement is not submitted to the Planning Secretary under the Act, section 5.17 within 2 years after notice is last given under the Act,

section 5.16(4), the responsible person must further consult the Planning Secretary in relation to the preparation of the statement.

168 Environmental impact statement for infrastructure on land near Siding Spring Observatory—the Act, s 5.29(e)

(cl 193A 2000 Reg)

When preparing an environmental impact statement for State significant infrastructure on land less than 200 kilometres from the Siding Spring Observatory, the proponent must consider the *Dark Sky Planning Guideline*, prepared by the Planning Secretary and published in the Gazette.

Note— The Guideline is available on the Department's website.

169 Planning Secretary's environmental assessment report

(cl 195 2000 Reg)

(1) The Planning Secretary must give the report under the Act, section 5.18 to the Minister within 90 days after the end of the public exhibition period for the environmental impact statement to which the report relates.

(2) The 90-day period does not include the time during which the Planning Secretary is waiting for a response or a preferred infrastructure report required from the proponent under the Act, section 5.17(6).

170 State significant infrastructure documents to be publicly available

(cl 196 2000 Reg)

(1) For the purposes of the Act, section 5.28(1), the documents must be published on the NSW planning portal.

(2) For the purposes of the Act, section 5.28(1)(i), submissions made under the Act, section 5.17, or the report of the issues raised in the submissions, are prescribed.

171 Surrender of approvals or existing use rights—the Act, s 5.28(4)

(cl 197 2000 Reg)

(1) A surrender of an approval for State significant infrastructure or of a right conferred by the Act, Division 4.11 must be made by giving the Planning Secretary a written notice of the surrender.

(2) The notice of surrender must contain the following information—

(a) the name and address of the person giving the notice,

(b) the address and folio identifier of the land to which the approval or right relates,

(c) a description of the approval or right to be surrendered,

(d) if the person giving notice is not the owner of the land—a statement by the owner of the land that the owner consents to the surrender of the approval or right.

(3) A notice of surrender takes effect on the date determined by the Planning Secretary.

(4) A notice of surrender operates, according to its terms, to surrender the approval or right to which it relates.

172 Application of the Act, Part 6 to State significant infrastructure—the Act, s 6.33(2)

(cl 198 2000 Reg)

(1) A relevant provision applies to approved State significant infrastructure in the same way as it applies, with necessary modifications, to development to which a development consent relates.

(2) For the purposes of this clause, a reference in the Act, Part 6 to a development consent is taken to include a reference to an approval of State significant infrastructure.

(3) A relevant provision—

(a) does not apply unless that provision would have applied if the development was not State significant infrastructure, and

(b) applies to critical State significant infrastructure only if the Minister, when giving approval to the infrastructure, makes it a condition of the approval that the provision applies.

(4) In this clause—

relevant provision means—

(a) the Act, section 6.6, 6.9 or 6.12, or

(b) a provision of the Act relating to the issue of a subdivision certificate.

Division 5 Environmental impact statements—the Act, ss 4.12(8), 5.7(1) and 5.16(2)

173 Definition

In this Division—

infrastructure means State significant infrastructure.

174 Form of environmental impact statement

(cl 6 of Sch 2 2000 Reg)

(1) An environmental impact statement must contain the following information—

(a) the name, address and professional qualifications of the person who prepared the statement,

(b) the name and address of the responsible person,

(c) the address of the land—

(i) to which the development application relates, or

(ii) on which the activity or infrastructure to which the statement relates will be carried out,

(d) a description of the development, activity or infrastructure,

(e) an assessment by the person who prepared the statement of the environmental impact of the development, activity or infrastructure, dealing with the matters referred to in this Division.

(2) An environmental impact statement must also contain a declaration by the person who prepared the statement that—

(a) the statement has been prepared in accordance with this Division, and

(b) the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure, and

(c) the information contained in the statement is not false or misleading.

175 Content of environmental impact statement

(cl 7 of Sch 2 2000 Reg)

(1) An environmental impact statement must contain the following—

(a) a summary of the environmental impact statement,

(b) a statement of the objectives of the development, activity or infrastructure,

(c) an analysis of feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure,

(d) an analysis of the development, activity or infrastructure, including—

(i) a full description of the development, activity or infrastructure, and

(ii) a general description of the environment likely to be affected by the development, activity or infrastructure and a detailed description of the aspects of the environment that are likely to be significantly affected, and

(iii) the likely impact on the environment of the development, activity or infrastructure, and

(iv) a full description of the measures proposed to mitigate adverse effects of the development, activity or infrastructure on the environment, and

(v) a list of the approvals that must be obtained under another Act or law before the development, activity or infrastructure may lawfully be carried out,

(e) a compilation, in a single section of the environmental impact statement, of the measures referred to in paragraph (d)(iv),

(f) the reasons justifying the carrying out of the development, activity or infrastructure as proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development set out in clause 176.

Note— A cost benefit analysis may be submitted or referred to in the reasons justifying the carrying out of the development, activity or infrastructure.

(2) This clause is subject to the environmental assessment requirements that relate to the environmental impact statement.

(3) This clause does not apply if—

(a) the Planning Secretary has waived the requirement for an application for environmental assessment requirements in relation to an environmental impact statement for State significant development, and

(b) the conditions of the waiver specify that the environmental impact statement must instead comply with requirements set out or referred to in the conditions.

(4) A document adopted or referred to by an environmental impact statement is taken to form part of the statement.

176 Principles of ecologically sustainable development

(1) The principles of ecologically sustainable development are the following—

(a) the precautionary principle,

(b) inter-generational equity,

(c) conservation of biological diversity and ecological integrity,

(d) improved valuation, pricing and incentive mechanisms.

(2) The precautionary principle is that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(3) In applying the precautionary principle, public and private decisions should be guided by—

(a) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(b) an assessment of the risk-weighted consequences of various options.

(4) The principle of inter-generational equity is that the present generation should ensure the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

(5) The principle of the conservation of biological diversity and ecological integrity is that the conservation of biological diversity and ecological integrity should be a fundamental consideration.

(6) The principle of improved valuation, pricing and incentive mechanisms is that environmental factors should be included in the valuation of assets and services, such as—

(a) polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement, and

(b) the users of goods and services should pay prices based on the full life cycle of the costs of providing the goods and services, including the use of natural resources and assets and the ultimate disposal of waste, and

(c) established environmental goals should be pursued in the most cost effective way by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

177 Publication of environmental impact statements—the Act, s 5.8

(cl 233 2000 Reg)

(1) The notice required under the Act, section 5.8 must also contain the following—

(a) the following heading in capital letters and bold type—

"**ASSESSMENT OF ENVIRONMENTAL IMPACT OF** (*a title description of the proposed activity and its location*)**—PUBLIC EXHIBITION**"

(b) a brief description of the proposed activity and its locality,

(c) the name of the proponent,

(d) the website on which the environmental impact statement will be published,

(e) a statement that a person may, before the specified closing date, make written representations to the determining authority about the proposed activity.

(2) The notice must be published on the NSW planning portal.

(3) The period during which the environmental impact statement may be inspected begins on the date on which the notice is first published on the NSW planning portal.

(4) An environmental impact statement must be published on—

(a) the website of the determining authority for the activity, and

(b) the website of the council of each area affected by the activity.

178 Reports about activities under the Act, Division 5.1

(cl 243 2000 Reg)

(1) A determining authority for an activity must prepare a report on an activity for which an environmental impact statement has been prepared.

(2) The report must be prepared as soon as practicable after a decision is made by the determining authority to—

(a) carry out or refrain from carrying out the activity, or

(b) approve or disapprove the carrying out of the activity.

(3) The report must consider and comment on each of the following matters—

(a) the environmental impact statement,

(b) any representations duly made about the proposed activity,

(c) the effects of the proposed activity on the environment,

(d) the proponent's proposals to mitigate adverse effects of the activity on the environment,

(e) findings and recommendations relating to the proposed activity arising from the following—

(i) a report by the Planning Secretary under the Act, section 5.8,

(ii) advice given by the Minister under the Act, section 5.9,

(iii) a public hearing by the Independent Planning Commission.

(4) The report must also contain—

(a) full details of the determining authority's decision on the proposed activity, and

(b) if the authority has granted approval to the carrying out of the activity—any conditions or modifications imposed or required by the authority in connection with the carrying out of the activity.

(5) The determining authority must—

(a) make the report public as soon as practicable after it is completed, and

(b) send a copy of the report to the council of each area that is, or would have been, affected by the activity.

(6) Subclause (5) does not apply to the extent of a direction given by the Independent Planning Commission under the Act, Schedule 2, clause 5 that prohibits or restricts the publication of the report.

Division 6 Codes for the carrying out of activities by determining authorities—the Act, s 5.6

179 Definitions

(cl 244D, 244J and 244M 2000 Reg)

In this Division—

approved Code means a Code approved by the Minister under this Division.

ARTC means the Australian Rail Track Corporation Ltd (ACN 081 455 754).

ARTC Code means a Code approved under clause 182(1).

180 Approved Codes

(cl 244E, 244F, 244K and 244N 2000 Reg)

(1) An approved Code may make provision about the following—

(a) the exercise by ARTC of its functions under the Act, section 5.5 in relation to activities for the following purposes—

(i) development for the purposes of the construction, maintenance or operation of ARTC rail infrastructure facilities,

(ii) geotechnical investigations relating to ARTC rail infrastructure facilities,

(iii) environmental management and pollution control relating to ARTC rail infrastructure facilities,

(iv) access for the purpose of the construction, maintenance or operation of ARTC rail infrastructure facilities,

(v) temporary construction sites and storage areas, including temporary batching plants, the storage of plant and equipment and the stockpiling of excavated material,

(b) the exercise by a proprietor of a registered non-government school of its functions under the Act, section 5.5 in relation activities for the purposes of development that is permitted without consent under *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, clause 36,

(c) the exercise by an authorised network operator of its functions under the Act, section 5.5 in relation to activities for the following purposes—

(i) development for the purposes of the construction, maintenance or operation of a transacted electricity transmission or distribution network,

(ii) geotechnical investigations relating to a transacted electricity transmission or distribution network,

(iii) environmental management and pollution control relating to a transacted electricity transmission or distribution network,

(iv) access for the purpose of the construction, maintenance or operation of a transacted electricity transmission or distribution network,

(v) temporary construction sites and storage areas, including temporary batching plants, the storage of plant and equipment and the stockpiling of excavated material.

(2) An approved Code may specify the period for which the approved Code is in force.

(3) An approved Code does not apply to an activity for which the relevant determining authority is required under the Act, Part 5 to provide or obtain an environmental impact statement.

(4) Without limitation, an approved Code may provide for the matters specified in the Act, section 5.6(2).

(5) The Minister may, by written notice to a relevant determining authority, exempt a specified activity of the authority from the operation of an approved Code.

(6) An exemption may be—

(a) subject to conditions, and

(b) revoked or varied at any time by written notice to the relevant determining authority.

(7) In this clause—

ARTC rail infrastructure facilities means rail infrastructure facilities owned by ARTC or a rail authority, within the meaning of the *Transport Administration Act 1988*, Part 8A, that are subject to, or located on land subject to, a lease or licence under that Part.

transacted electricity transmission or distribution network means a transacted distribution system or transacted transmission system under the *Electricity Network Assets (Authorised Transactions) Act 2015*.

181 Additional requirements for ARTC Code

(cl 244F(6) 2000 Reg)

The ARTC Code must also contain the following matters—

(a) classes of activities for the purposes of the application of the Code,

(b) assessment requirements for specified activities or classes of activities,

(c) procedures for carrying out assessments,

(d) protocols for consultation,

(e) requirements to consider advice from the Planning Secretary,

(f) requirements to consider environmental management procedures in relation to effects of activities on the environment,

(g) requirements for documents,

(h) protocols for the availability of documents to the Minister, the Planning Secretary and the public,

(i) protocols for auditing the performance of and compliance with the Code,

(j) other matters required by the Minister.

182 Approval of ARTC Code

(1) ARTC must prepare a Code and apply to the Planning Secretary for approval of the Code by the Minister.

(2) As soon as practicable after receiving an application for approval of a Code, the Planning Secretary must—

(a) assess the application, and

(b) give a report on the application to the Minister.

(3) The Minister may—

(a) approve or refuse to approve a Code prepared by ARTC, and

(b) vary or revoke an approved Code.

(4) The Minister must give ARTC written notice of an approval of or refusal to approve a Code, including the reasons for a refusal.

(5) An approval may be given subject to conditions.

183 Approval of other Codes

(cl 244L and 244O 2000 Reg)

(1) The Minister may—

(a) approve one or more Codes for the purposes of this Division, and

(b) vary or revoke an approved Code.

(2) An approval of a Code, or a variation or revocation of an approved Code, takes effect on—

(a) the date on which notice of the approval, variation or revocation is published in the Gazette, or

(b) a later date specified in the approval, variation or revocation.

(3) Before varying or revoking a Code or approving a Code as a replacement for an existing Code that applies to an authorised network operator as referred to in clause 180(1)(c), the Minister must—

(a) notify each authorised network operator affected by the proposal, and

(b) give each operator an opportunity to make submissions on the proposal.

(4) The Minister must take into account any submission made by an authorised network operator within 20 business days after the operator was notified of the proposal.

(5) This clause does not apply to an ARTC Code.

(6) In this clause—

business day means a day that is not a Saturday, a Sunday or a public holiday throughout New South Wales.

Part 9 Infrastructure contributions and finance

Division 1 Planning agreements—the Act, s 7.10

184 Definitions

(cl 25A 2000 Reg)

(1) In this Part—

development contribution means the dedication of land, the payment of a monetary contribution or the provision of a material public benefit, as referred to in the Act, section 7.11.

development contribution condition means a condition of development consent, referred to in the Act, section 7.11, requiring the dedication of land or the payment of a monetary contribution, or both.

development levy means a levy referred to in the Act, section 7.12.

development levy condition means a condition of development consent, referred to in the Act, section 7.12, requiring the payment of a levy.

(2) For the purposes of the Act, section 7.1, definition of ***planning authority***, paragraph (e), all public authorities are declared to be planning authorities.

185 Making of planning agreements

(cl 25B and 25C 2000 Reg)

(1) A planning agreement must be—

(a) written, and

(b) signed by the parties to the agreement, and

(c) lodged on the NSW planning portal.

(2) The fee for lodging a planning agreement on the NSW planning portal is specified in Schedule 4.

(3) A planning agreement is not entered into until it is signed by all the parties to the agreement.

(4) A planning agreement may specify that it does not take effect until—

(a) if the agreement relates to a proposed change to an environmental planning instrument—the date on which the change is made, or

(b) if the agreement relates to a development application or proposed development application—the date on which the development consent is granted.

(5) A planning agreement may be amended or revoked by further agreement signed by the parties to the agreement, including by means of a subsequent planning agreement.

(6) The Planning Secretary may from time to time issue practice notes to assist parties to prepare planning agreements.

(7) A council that is negotiating or entering into a planning agreement must consider any relevant practice notes.

186 Public notice of planning agreements—the Act, s 7.5(2)

(cl 25D 2000 Reg)

(1) If a planning authority proposes to enter into, amend or revoke a planning agreement, in connection with a development application or a change to a local environmental plan, notice of the planning authority's proposal must be given as part of, and at the same time and in the same way as, the notice of—

(a) the development application to which the proposal relates, or

(b) the planning proposal for the change to the local environmental plan to which the proposal relates.

(2) The Planning Secretary must give notice of any other planning agreement that requires public notice under the Act, section 7.5—

(a) at least 28 days before the agreement is entered into, amended or revoked, and

(b) in the way agreed to by the planning authorities that are parties to the agreement.

(3) If it is not practicable for notice to be given as required under this clause, the notice must be given—

(a) as soon as possible, and

(b) in a way agreed to by the planning authorities that are parties to the agreement.

187 Explanatory notes for planning agreements

(cl 25E 2000 Reg)

(1) A planning authority proposing to enter into, amend or revoke a planning agreement must prepare a written statement (an ***explanatory note***) that—

(a) summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and

(b) contains an assessment of the merits of the proposed agreement, amendment or revocation, including the positive and negative impacts on the public or a relevant section of the public.

(2) In preparing the explanatory note, the planning authority must consider any relevant practice notes issued by the Planning Secretary under clause 185(6).

(3) A copy of the explanatory note must be exhibited with the copy of the proposed agreement, amendment or revocation when it is made publicly available in accordance with the Act.

(4) If a council is not a party to a planning agreement that applies to the area of the council, a copy of the explanatory note must be given to the council when a copy of the agreement is given to the council under the Act, section 7.5(4).

(5) A planning agreement may provide that the explanatory note must not be used to assist in construing the agreement.

188 Information about planning agreements

(cl 25F–25H 2000 Reg)

(1) A planning authority must keep a register of all relevant planning agreements and record the following information in the register for each relevant planning agreement—

(a) the date on which the agreement was entered into,

(b) the names of the parties to the agreement,

(c) a description of the development to which the agreement relates, if relevant,

(d) the land to which the agreement applies.

(2) The planning authority must make the following publicly available free of charge during the authority's ordinary office hours—

(a) the register under subclause (1),

(b) each relevant planning agreement,

(c) the explanatory note under clause 187 relating to each relevant planning agreement.

(3) The functions of the Minister as a planning authority under this clause must be exercised by the Planning Secretary.

(4) This clause extends to a planning agreement entered into before the commencement of this clause.

(5) Subclause (2) does not apply to a planning authority that is not a council or the Minister until 1 July 2022.

(6) In this clause—

relevant planning agreement means—

(a) if the planning authority is a council—a planning agreement that applies to the area of the council, including an amendment to the planning agreement, whether or not the council is a party to the agreement, and

(b) otherwise—a planning agreement to which the planning authority is a party, including an amendment to the planning agreement.

Division 2 Development contributions and development levies

189 Indexation of monetary development contribution—the Act, s 7.11(3)

(cl 25I 2000 Reg)

The cost of providing public amenities and public services must be indexed quarterly or annually, as specified in the relevant contributions plan, in accordance with movements in the Consumer Price Index.

190 Determination of proposed cost of development—the Act, s 7.12(5)(a)

(cl 25J 2000 Reg)

(1) The proposed cost of carrying out development must be determined by the consent authority by adding up all the costs and expenses that have been or will be incurred by the applicant in carrying out the development.

(2) The costs include the costs of, and costs incidental to, the following—

(a) if the development involves the erection of a building or the carrying out of engineering or construction work—

(i) erecting the building or carrying out the work, and

(ii) demolition, excavation and site preparation, decontamination or remediation,

(b) if the development involves a change of use of land—doing anything necessary to enable the use of the land to be changed,

(c) if the development involves the subdivision of land—preparing, executing and registering—

(i) the plan of subdivision, and

(ii) the related covenants, easements or other rights.

(3) In determining the proposed cost, a consent authority may consider an estimate of the proposed cost that is prepared by a person, or a person of a class, approved by the consent authority to provide the estimate.

(4) The following costs and expenses must not be included in an estimate or determination of the proposed cost—

(a) the cost of the land on which the development will be carried out,

(b) the costs of repairs to a building or works on the land that will be kept in connection with the development,

(c) the costs associated with marketing or financing the development, including interest on loans,

(d) the costs associated with legal work carried out, or to be carried out, in connection with the development,

(e) project management costs associated with the development,

(f) the cost of building insurance for the development,

(g) the costs of fittings and furnishings, including refitting or refurbishing, associated with the development, except if the development involves an enlargement, expansion or intensification of a current use of land,

(h) the costs of commercial stock inventory,

(i) the taxes, levies or charges, excluding GST, paid or payable in connection with the development by or under a law,

(j) the costs of enabling access by people with disability to the development,

(k) the costs of energy and water efficiency measures associated with the development,

(l) the costs of development that is provided as affordable housing,

(m) the costs of development that is the adaptive reuse of a heritage item.

(5) The proposed cost may be adjusted before payment of a development levy, as specified in a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan between the date on which the proposed cost was determined by the consent authority and the date by which the development levy must be paid.

Example— A contributions plan may adopt the Consumer Price Index.

(6) To avoid doubt, this clause does not affect the determination of the fee payable for a development application.

191 Maximum percentage of development levy—the Act, s 7.12(5)(b)

(cl 25K 2000 Reg)

(1) The following Table specifies the maximum percentage of the proposed cost of carrying out development that may be imposed by a development levy for development specified in the Table—

Table

Proposed cost of development		Maximum development levy
Development on land to which *Burwood Local Environmental Plan (Burwood Town Centre) 2010* applied immediately before its repeal—		
(a)	up to and including $250,000	Nil
(b)	more than $250,000	4%
Development on land identified in Figure 1 of the *Willoughby Local Infrastructure Contributions Plan 2019* adopted by Willoughby City Council on 11 June 2019—		
(a)	up to and including $100,000	Nil
(b)	$100,001–$200,000	0.5%

Proposed cost of development		Maximum development levy
(c)	$200,001–$250,000	1%
(d)	more than $250,000	3%
Development on land in Zone B1, B3, B4 or B6 under *Liverpool City Centre Local Environmental Plan 2007* immediately before its repeal—		
(a)	up to but not including $1 million	Nil
(b)	$1 million or more	3%
Development on land in Zone R4 or IN2 under *Liverpool City Centre Local Environmental Plan 2007* immediately before its repeal—		
(a)	up to but not including $1 million	Nil
(b)	$1 million or more	2%
Development on land to which *Newcastle City Centre Local Environmental Plan 2008* applied immediately before its repeal—		
(a)	up to and including $100,000	Nil
(b)	$100,001–$200,000	0.5%
(c)	$200,001–250,000	1%
(d)	more than $250,000	3%
Development on land to which *Parramatta City Centre Local Environmental Plan 2007* applied immediately before its repeal—		
(a)	up to and including $250,000	Nil
(b)	more than $250,000	3%
Development on land in Zone B3 under *Wollongong Local Environmental Plan 2009*—		
(a)	up to and including $250,000	Nil
(b)	more than $250,000	2%
Development on land identified in Figures 1 and 2 in the *Section 7.12 Development Contributions Plan 2019: Kensington and Kingsford Town Centres* adopted by Randwick City Council on 10 December 2019		
(a)	up to and including $100,000	Nil
(b)	$100,001–$200,000	0.5%
(c)	$200,001–250,000	1%
(d)	more than $250,000	2.5%

(2) The maximum percentage of the proposed cost of carrying out development that may be imposed by a development levy for development not specified in the Table to subclause (1) is—

(a) for a proposed cost of up to and including $100,000—nil, and

(b) for a proposed cost of $100,001–$200,000—0.5%, and

(c) for a proposed cost of more than $200,000—1%.

(3) This clause is subject to a direction given by the Minister under the Act, section 7.17(1)(d).

(4) To avoid doubt, the Table to subclause (1) continues to apply to the land specified in the Table even if the local environmental plan or contributions plan used to describe the land is repealed.

Division 3 Contributions plans—the Act, ss 7.18 and 7.21

192 Form of contributions plan

(cl 26 2000 Reg)

(1) The Planning Secretary may from time to time issue practice notes to assist councils to prepare contributions plans.

(2) A practice note must be published on the NSW planning portal.

(3) In preparing a contributions plan, a council must consider any relevant practice notes.

(4) One or more contributions plans may be made—

(a) for all or part of a council's area, and

(b) in relation to one or more public amenities or public services.

(5) A contributions plan may be made for land outside a council's area for the purposes of a condition referred to in the Act, section 7.15.

(6) A council must not approve a contributions plan that is inconsistent with a direction given to it under the Act, section 7.17.

193 Content of contributions plan

(cl 27 2000 Reg)

(1) A contributions plan must contain the following information—

(a) the purpose of the plan,

(b) the land to which the plan applies,

(c) the relationship between—

(i) the expected types of development in the area to which the plan applies, and

(ii) the demand for additional public amenities and public services to meet the expected development,

(d) the formulas to be used for determining the development contributions required for different categories of public amenities and public services,

(e) the development contribution rates for different types of development, as specified in a schedule to the plan,

(f) a map showing the specific public amenities and public services proposed to be provided by the council,

(g) a works schedule that contains an estimate of the cost and staging of the public amenities and public services, whether by reference to dates or thresholds,

(h) if the plan authorises monetary development contributions or development levies paid for different purposes to be pooled and applied progressively for the different purposes—the priorities for the expenditure of the development contributions or development levies, by reference to a works schedule.

(2) If a contributions plan authorises the imposition of a development levy condition, the plan must contain—

(a) the percentage of the development levy for each type of development, as specified in a schedule to the plan, and

(b) the method, if any, of adjusting the proposed cost of carrying out the development, after being determined by the consent authority, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan between the date of the determination and the date by which the levy must be paid.

Example— A contributions plan may adopt the Consumer Price Index.

(3) A contributions plan must contain information about the council's policy about the following—

(a) the timing of the payment of monetary development contributions,

(b) development levies,

(c) the imposition of development contribution conditions or development levy conditions that allow deferred or periodic payment.

(4) A contributions plan that provides for the imposition of development contribution conditions or development levy conditions in relation to the issue of a complying development certificate must provide that monetary payments in accordance with the conditions must be made before the commencement of the building work or subdivision work authorised by the certificate.

(5) In determining the development contribution rates or development levy percentages for different types of development, the council must consider the conditions that may be imposed under the Act, section 4.17(6)(b) or the *Local Government Act 1993*, section 97(1)(b).

(6) A contributions plan may authorise monetary development contributions or development levies paid for different purposes to be pooled and applied progressively for the different purposes only if the council is satisfied that the pooling and progressive application will not unreasonably prejudice the carrying into effect, within a reasonable time, of the purposes for which the money was originally paid.

194 Public exhibition of draft contributions plans

(cl 28–30 2000 Reg)

(1) After preparing a draft contributions plan, the council must publish the following on its website—

(a) the draft contributions plan and any supporting documents,

(b) the period during which submissions about the draft plan may be made to the council.

(2) This clause does not apply to a draft contributions plan if—

(a) the plan is a subsequent contributions plan that amends a contributions plan, and

(b) the Minister has given written notice to the council that this clause does not apply.

195 Approval of contributions plans

(cl 31 2000 Reg)

(1) After considering any submissions about the draft contributions plan that have been duly made, the council may—

(a) approve the plan in the form in which it was publicly exhibited, or

(b) approve the plan with any alterations the council considers appropriate, or

(c) decide not to proceed with the plan.

(2) The council must publish notice of its decision on its website within 28 days after the decision is made.

(3) Notice of a decision not to proceed with a contributions plan must contain the council's reasons for the decision.

(4) A contributions plan comes into effect on—

(a) the date on which notice of the council's decision to approve the plan is published on the council's website, or

(b) a later date specified in the notice.

196 Amendment or repeal of contributions plan

(cl 32 and 33 2000 Reg)

(1) A council may amend a contributions plan by a subsequent contributions plan.

(2) A council may repeal a contributions plan—

(a) by a subsequent contributions plan, or

(b) by publishing notice of a decision to repeal the plan on its website.

(3) At least 14 days before repealing a contributions plan under subclause (2)(b), the council must publish notice of its intention to repeal the plan, and the reasons for the repeal, on its website.

(4) The repeal of a contributions plan under subclause (2)(b) takes effect on the date on which the notice under subclause (2)(b) is published on the council's website.

(5) A council may make the following kinds of amendments to a contributions plan without preparing a new contributions plan—

(a) minor typographical corrections,

(b) changes to the rates of development contributions set out in the plan to reflect quarterly or annual variations to—

(i) readily accessible index figures adopted by the plan, such as the Consumer Price Index, or

(ii) index figures prepared by or on behalf of the council from time to time that are adopted by the plan,

(c) the omission of details of works that have been completed.

197 Review of contributions plan

(cl 33A 2000 Reg)

(1) A council must keep a contributions plan under review and, if the plan specifies a date by which a review must be done, must review the plan by the date.

(2) A council must also consider any submissions about contributions plans received from public authorities or the public.

Division 4 Records to be kept by councils—the Act, Part 7

198 Councils must keep contributions register

(cl 34 2000 Reg)

(1) A council that imposes development contribution conditions or development levy conditions on development consents must keep a contributions register.

(2) The contributions register must contain the following—

(a) details identifying each development consent subject to a development contribution condition or development levy condition,

(b) the nature and extent of the development contribution or development levy required by the condition for each public amenity or public service,

(c) the contributions plan under which the development contribution condition or development levy condition was imposed,

(d) the date or dates on which the development contribution or development levy required by the condition was received, and its nature and extent.

199 Councils must keep accounting records for development contributions and development levies

(cl 35 2000 Reg)

(1) A council must keep accounting records that allow development contributions or development levies received in the form of money, and any additional amounts earned from the investment of that money, to be distinguished from all other money held by the council.

(2) The accounting records for a contributions plan must indicate the following—

(a) the various kinds of public amenities and public services for which expenditure is authorised by the plan,

(b) the monetary development contributions or development levies received under the plan, by reference to the various kinds of public amenities and public services for which they have been received,

(c) for development contributions or development levies paid for different purposes—the pooling or progressive application of the contributions or levies for the different purposes, in accordance with—

(i) the requirements of the plan, or

(ii) a ministerial direction under the Act, Division 7.1,

(d) the amounts spent in accordance with the plan, by reference to the various kinds of public amenities and public services for which they have been spent.

(3) A council must disclose the following information for each contributions plan in the notes to its annual financial report—

(a) the opening and closing balances of money held by the council for the accounting period covered by the report,

(b) the total amounts of development contributions or development levies received in the form of money during the period, by reference to the various kinds of public amenities and public services for which they have been received,

(c) the total amounts spent in accordance with the contributions plan during the period, by reference to the various kinds of public amenities and public services for which they have been spent,

(d) the outstanding obligations of the council to provide public amenities and public services, by reference to the various kinds of public amenities and public services for which development contributions or development levies have been received in the form of money during that or any previous accounting period.

200 Councils must prepare annual statements

(cl 36 2000 Reg)

(1) As soon as practicable after the end of each financial year, a council must prepare an annual statement for the contributions plans in force in its area.

(2) The annual statement must disclose, for each contributions plan, the information required by this Division to be included in its accounting records or notes to its annual financial report.

201 Councils must keep certain records publicly available
(cl 37 and 38 2000 Reg)

(1) A council must make the following available for inspection—
  (a) each current contributions plan,
  (b) the current development contribution rates under each contributions plan,
  (c) all annual statements,
  (d) the contributions register.

(2) The documents must be available at the council's principal office, free of charge, during the council's ordinary office hours.

(3) Subject to the *Local Government Act 1993*, section 428, the annual statement may be included in, or form part of, the annual report prepared by the council under that section.

Division 5 Development areas

202 Notice of proposal to constitute development area—the Act, s 7.38(4)
(cl 269 2000 Reg)

Written notice of the Planning Secretary's proposal to include the whole or part of a council's area in a development area must be given to the council.

203 Assessment of loan commitments of councils in development areas—the Act, s 7.42(1)
(cl 278 2000 Reg)

(1) An assessment of a council must be made in accordance with the following formula—

Contribution = Total assessment x Rateable value of council/Rateable value of all councils

where—

Contribution represents the amount to be contributed by the council.

Total assessment represents the total assessment for the development area, as referred to in the Act, section 7.42(1).

Rateable value of council represents the value shown in the statement given by the council in relation to the assessment payable during the calendar year ending 31 December 1990 for rateable land in the area or part of the area of the council.

Rateable value of all councils represents the total of the values shown in the statements given by all councils in the development area in relation to the assessment payable during the calendar year ending 31 December 1990 for all rateable land in the areas, or parts of the areas, of all the councils in the development area.

(2) The Planning Ministerial Corporation is not required to notify a council of its intention to make an assessment.

(3) After making an assessment of a council, the Planning Ministerial Corporation must serve notice of the assessment on the council on or before 1 April before the financial year in which the assessed amount must be paid.

(4) For the purposes of the Act, section 7.42(4), the prescribed day is the day occurring 3 months after notice of the assessment is served on the council.

Part 10 Paper subdivisions—the Act, Sch 7

Division 1 Preliminary

204 Definitions

(cl 268Y and 268YA 2000 Reg)

(1) For the purposes of the Act, Schedule 7, clause 1, definition of ***subdivision works***, works for the following purposes are prescribed—

(a) gas supply,

(b) remediation of contaminated land,

(c) demolition of a building or work if the demolition is required to carry out other subdivision works.

(2) In this Part—

co-owner of a lot means a person who owns a lot jointly with 1 or more other persons.

contaminated land has the same meaning as in the Act, Schedule 6.

relevant authority includes a proposed relevant authority.

remediation has the same meaning as in *State Environmental Planning Policy No 55—Remediation of Land*.

Division 2 Preparation and notice of proposed development plans

205 Content of development plans

(cl 268Z 2000 Reg)

A development plan must contain the following—

(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 will 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.

206 Preparation of development plans

(cl 268ZA 2000 Reg)

(1) A relevant authority must give the Minister written notice if it proposes to prepare a development plan on its own initiative.

(2) A relevant authority that prepares a development plan must consult with and consider submissions from—

(a) the public authorities likely to be affected by the proposed development plan, and

(b) each council in whose area the land concerned is located.

207 Notice of proposed development plans and ballots

(cl 268ZB 2000 Reg)

(1) A relevant authority that proposes to adopt a development plan must, not less than 14 days before the ballot papers are issued for the ballot under Division 3, publish on the NSW planning portal a notice containing the following information—

(a) that the relevant authority proposes to adopt a development plan,

(b) the website on which the proposed development plan will be published,

(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 relevant authority.

(2) The relevant authority must also—

(a) give a copy of the notice to each council in whose area the land is located, and

(b) display, on or near the land to which the development plan applies, a copy of the notice for not less than 28 days before the ballot closes, and

(c) publish the proposed development plan on a public website.

Division 3 Consent by owners

208 Ballot to be held

(cl 268ZC 2000 Reg)

(1) Consent to a proposed development plan by owners of the land subject to the plan must be determined by a postal ballot held by the relevant authority proposing the plan.

(2) The relevant authority must—

(a) determine the form of the ballot paper, and

(b) fix the dates for forwarding 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 Planning Secretary.

(4) The ballot paper must specify, or require the owner to specify, the following—

(a) the name of the owner,

(b) the lot and deposited plan of all land held by the owner that is subject to the proposed development plan,

(c) the name of any other co-owner of the lot.

(5) The returning officer may be assisted by a person approved by the relevant authority.

209 Voting roll and ballot papers

(cl 268ZD 2000 Reg)

(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) 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.

(3) Each owner of land subject to the proposed development plan is entitled to 1 ballot paper, whether the land—

(a) consists of 1 or more lots, or

(b) is owned with other co-owners or the same co-owners.

(4) The returning officer must, at least 28 days before the date fixed for the closing of the ballot, send by post or otherwise deliver the following to each owner entitled to a ballot paper—

(a) 1 ballot paper,

(b) a statement of the place, date and time at which the proposed development plan is available for inspection or the website on which it may be found,

(c) an envelope (the ***outer envelope***) addressed to the returning officer, which has the name and address of the owner and the lots and deposited plan numbers of the land to which the ballot paper relates marked on the reverse side,

(d) a small envelope (the ***inner envelope***) in which the ballot paper must be placed,

(e) a statement relating to the ballot in a form approved by the Planning Secretary.

(5) The returning officer may send a duplicate ballot paper to an owner if the returning officer is satisfied that—

(a) the owner has not received a ballot paper or the ballot paper has been lost, spoilt or destroyed, and

(b) the owner has not already voted

(6) If a duplicate ballot paper is sent, the relevant outer envelope must be marked "duplicate".

210 Voting

(cl 268ZE 2000 Reg)

An owner casts a vote in a ballot by—

(a) completing the ballot paper according to the instructions on the ballot paper, and

(b) sending the ballot paper, in the envelopes provided, to the returning officer.

211 Safe keeping of ballot papers

(cl 268ZF and 268ZI 2000 Reg)

(1) The returning officer must provide a ballot box that must—

(a) be secured immediately before the ballot papers are delivered to the owners in accordance with this Division, and

(b) remain secured until the close of the ballot.

(2) The returning officer must place the outer envelopes in the ballot box no later than the time and date fixed on the ballot paper for the closing of the ballot.

(3) The returning officer must keep the following materials in the ballot box for a period of not less than 3 months after the ballot or for a longer period directed by the Planning Secretary—

(a) ballot papers,

(b) rejected outer envelopes,

(c) the voting roll.

212 Counting of votes

(cl 268ZG 2000 Reg)

(1) As soon as practicable after the date fixed for the closing of the ballot, the returning officer must, in the presence of scrutineers that may be appointed by the relevant

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 method, 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 a 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 in the method specified in 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 is taken to be 1 formal vote consenting to the development plan for the lot,

(b) otherwise—the vote is taken not to be a formal vote in favour of consent to the development plan for the lot.

213 Result of ballot

(cl 268ZH 2000 Reg)

(1) The returning officer must count all votes cast and sign a statement containing the following information—

(a) the total number of owners who are eligible to vote,

(b) the number of formal votes by the owners consenting to the development plan,

(c) the number of formal votes by the owners against consent to the development plan,

(d) the number of informal votes by the owners,

(e) the number of envelopes marked "rejected",

(f) the number of lots of land in relation to which no votes were cast,

(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,

(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.

(2) The returning officer must give the relevant authority and the Planning Secretary written notice of the result of the ballot and a copy of the voting roll.

(3) In this clause—

total number of owners means the sum of—

(a) the total number of sole owners of lots, whether they are also the co-owners of other lots, and

(b) the total number of groups of co-owners of lots.

Division 4 Adoption and amendment of development plans

214 Adoption of development plans

(cl 268ZJ 2000 Reg)

(1) A development plan is adopted by a relevant authority if—

(a) the relevant authority resolves to adopt the plan or takes other action that is necessary to take the decision to adopt the plan, and

(b) the relevant authority publishes notice of the adoption of the plan on the NSW planning portal within 28 days after the decision of the relevant authority to adopt the plan.

(2) A relevant authority must not adopt a development plan unless it is satisfied that the consent of the owners, as referred to in the Act, Schedule 7, clause 3(2)(g), has been obtained.

(3) A development plan that is adopted by a relevant authority is taken to be in force in relation to the subdivision land for the purposes of the Act, Schedule 7, clause 4(5).

215 Amendment of development plans

(cl 268ZK 2000 Reg)

A proposed amendment to a development plan is adopted by the relevant authority if the relevant authority—

(a) resolves to adopt the amendment or takes other action that is necessary to take the decision to adopt the amendment, and

(b) within 28 days after the decision to adopt the amendment—gives written notice to the following—

(i) the Minister,

(ii) the owners of the land to which the development plan applies,

(iii) each council in whose area the land is located.

216 Additional requirements for certain amendments

(cl 268ZL 2000 Reg)

(1) A relevant 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 207 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 must be held in accordance with Division 3.

(3) Division 3 applies to the proposed amendment in the same way as it applies to a proposed development plan.

(4) A relevant 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 on the NSW planning portal that specifies the following—

(i) the website on which the proposed amendment is published,

(ii) the period of at least 28 days during which submissions may be made to the relevant authority about the proposed amendment,

(iii) the name, contact phone number and email address of the relevant authority, and

(b) give the notice to each council in whose area the land is located, and

(c) display, during the submission period, the notice on or near the land to which the development plan applies, and

(d) make the proposed amendment publicly available.

(5) Before adopting an amendment, the relevant authority must consider any submissions received during the submission period.

(6) In this clause—

major amendment means an amendment to a development plan that is not a minor amendment and that—

(a) if adopted, would, in the Minister's opinion, 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 the *Land Acquisition (Just Terms Compensation) Act 1991*, Part 3, Division 4.

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 paid by 1 or more owners of the land by no more than 5% in a particular case.

Division 5 Miscellaneous

217 Contributions by owners

(cl 268ZM 2000 Reg)

(1) A notice given under the Act, Schedule 7, clause 9(1) must specify—

(a) the amount of the contribution sought, and

(b) the period, not less than 90 days, within which the contribution must be paid.

(2) For the purposes of the Act, Schedule 7, clause 9(5), 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 on which the land is dedicated or traded, as determined by the Valuer-General under the *Valuation of Land Act 1916*.

218 Powers of entry

(cl 268ZN 2000 Reg)

(1) This clause applies to entry onto land under the Act, Schedule 7, clause 15.

(2) Entry may be made only at a reasonable hour in the daytime or at an 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.

219 Notice to council of subdivision action

(cl 268ZO 2000 Reg)

A relevant authority must give written notice of the following matters to a council—

(a) the adoption by the relevant authority of a development plan relating to land in the area of the council,

(b) the making of a subdivision order or an amendment to a subdivision order relating to land in the area of the council,

(c) the completion of subdivision works carried out by or on behalf of the relevant authority on land in the area of the council.

220 Reporting requirements for relevant authorities

(cl 268ZP 2000 Reg)

(1) A relevant authority under a subdivision order must, no later than 3 months after the end of each financial year, give a written report to the Minister about the following—

(a) actions taken during the year by the relevant authority for the purposes of implementing the development plan for the subdivision land,

(b) details of purchases and sales or other acquisitions or disposals of subdivision land by the relevant authority during the year, including details of compensation and other amounts paid or received by the relevant authority,

(c) details of contributions required to be made, and made or not made, by owners of subdivision land during the year under the subdivision order,

(d) details of amounts paid by the relevant authority during the year from funds received for carrying out subdivision works,

(e) other matters specified by the Minister by written notice to the relevant authority relating to the subdivision order,

(f) other matters the relevant authority considers 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, give 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 relevant authority in relation to its activities under the subdivision order,

(c) details of any unspent funds collected by the relevant authority under the subdivision order,

(d) details of a proposed scheme for distribution of the unspent funds and of consultation with owners of the subdivision land about the scheme,

(e) details of purchases and sales or other acquisitions or disposals of subdivision land by the relevant authority for the purposes of the subdivision order, including details of amounts paid or received by the relevant authority,

(f) details of the subdivision land owned by the relevant authority,

(g) details of the notification by the relevant authority of owners of the subdivision land of the completion of the implementation of the development plan.

Part 11 Registers and other records—the Act, s 4.58

221 Council to keep a register of development applications and development consents

(cl 264 and 268 2000 Reg)

(1) This clause applies to—

(a) a development application that is made to a council as the consent authority, and

(b) a development consent granted by the council as the consent authority, and

(c) other development applications and development consents that are provided to a council under this Regulation, when the council is not the consent authority.

(2) A council must keep a register containing the following information about each development application—

(a) the registered number of the application,

(b) the date on which the application was made,

(c) the amount of the fees payable in connection with the application,

(d) the date on which the fees were paid,

(e) the date on which the application was determined.

(3) The register must also contain the following information about each development consent—

(a) the name and address of the person to whom the development consent was granted,

(b) the address and folio identifier of the land to which the development consent relates,

(c) the date on which the development consent was granted,

(d) a brief description of the subject matter of the development consent, including a statement about whether the development is residential, commercial, industrial or another kind,

(e) the conditions of the development consent,

(f) the duration of the development consent,

(g) the date on which the development consent became effective,

(h) whether the development consent is revoked, modified or surrendered,

(i) the date on which notice of the grant of the development consent was published on the council's website for the purposes of the Act, section 4.59,

(j) the date of issue of a related construction certificate or subdivision works certificate,

(k) the date of commencement of building work or subdivision work under the development consent,

(l) the name and registration number of the principal certifier appointed in relation to a development consent involving building work or subdivision work,

(m) for a development consent that relates to residential building work—

(i) the name of each licensee and owner-builder, and

(ii) the name of the approved insurer, if relevant, of the licensee under the *Home Building Act 1989*, Part 6, and

(iii) the number endorsed on each contractor licence or permit if the number is notified to the council under this Regulation,

(n) for a development consent with a condition under the Act, section 4.17(10B)—the outcome of a review carried out by the consent authority under the condition,

(o) the date of issue of a related subdivision certificate or occupation certificate,

(p) the approvals taken, by the Act, section 4.12, to have been granted under the *Local Government Act 1993*,

(q) the approvals under any Act that were considered as part of the integrated development process.

(4) The register must contain the following indexes of the development consents—

(a) an index prepared by reference to the address of the land to which each development consent relates,

(b) an index prepared by reference to the chronological order of the granting of each development consent.

(5) The register must be—

(a) kept in electronic form, and

(b) published on the council's website.

222 Council to keep a register of complying development certificates

(cl 265 and 268 2000 Reg)

(1) A council must keep a register containing the following information about each application for a complying development certificate and each complying development certificate for development on land in the council's area—

(a) the date on which the application was made,

(b) the name and address of the applicant,

(c) the address and folio identifier of the land to which the complying development certificate relates,

(d) the date on which the complying development certificate was issued or refused,

(e) if the complying development certificate was issued or refused by a registered certifier—the name and registration number of the registered certifier,

(f) the date of commencement of building work or subdivision work to which the complying development certificate relates,

(g) the name and registration number of the principal certifier appointed in relation to the building work or subdivision work,

(h) for a complying development certificate that relates to residential building work—

(i) the name of each licensee and owner-builder, and

(ii) the name of the approved insurer, if relevant, of the licensee under the *Home Building Act 1989*, Part 6, and

(iii) the number endorsed on each contractor licence or permit, if the number is notified to the council under this Regulation,

(i) the date of issue of a related subdivision certificate or occupation certificate,

(j) the date on which notice of the issue of the complying development certificate was published on the council's website for the purposes of the Act, section 4.59.

(2) The register must contain the following indexes of the complying development certificates—

(a) an index prepared by reference to the address of the land to which each complying development certificate relates,

(b) an index prepared by reference to the chronological order of the issuing of each complying development certificate.

(3) The register must be—

(a) kept in electronic form, and

(b) published on the council's website.

(4) This clause applies to an application for a complying development certificate and a complying development certificate, whether or not the council is the certifier.

223 Council to keep certain documents relating to development applications and consents

(cl 266 and 268 2000 Reg)

(1) This clause applies to—

(a) a development application that is made to the council as the consent authority, and

(b) a development consent granted by the council as the consent authority, and

(c) other development applications, development consents and documents that are provided to the council under this Regulation, when the council is not the consent authority or the certifier.

(2) A council must keep the following documents, or a copy of the documents, for each development application and each development consent—

(a) the development application,

(b) the post-determination notice given to the applicant under the Act, section 4.18,

(c) an instrument by which some other development consent or existing use right conferred by the Act, Division 4.11 has been modified or surrendered,

(d) a decision of the Court in relation to a development consent granted by the Court on appeal from the determination of the council,

(e) a recommendation made by a relevant employee of the council in relation to the determination of the application,

(f) if the development consent is revoked, modified or surrendered—the instrument of revocation, modification or surrender,

(g) the notification of the determination to issue a related construction certificate or subdivision works certificate, including—

(i) any construction certificate or subdivision works certificate issued, and

(ii) the related plans and specifications and other documents that were given to the council,

(h) the notice of the grant of the development consent published on the council's website for the purposes of the Act, section 4.59,

(i) the notification of the appointment of the principal certifier,

(j) the notification of the commencement of building work or subdivision work,

(k) the notification of the determination of an application for a related occupation certificate, including any occupation certificate issued,

(l) the notification of the determination of an application for a related subdivision certificate, including the endorsed plan of subdivision,

(m) the notification of the determination of an application for a related compliance certificate, including—

(i) any compliance certificate issued, and

(ii) the related plans and specifications and other documents that were given to the council,

(n) a decision of the Court in relation to an occupation certificate, subdivision certificate or construction certificate issued by the Court on appeal from a determination of the council,

(o) details of approved performance solutions relating to a construction certificate or compliance certificate and details of the assessment methods used to establish compliance with the relevant performance requirements under the *Building Code of Australia*,

(p) the record of an inspection made for the purposes of the issue of a construction certificate.

(3) A council must publish the documents required to be kept under this clause on its website.

224 Council to keep certain documents relating to complying development certificates

(cl 267 and 268 2000 Reg)

(1) A council must keep the following documents, or a copy of the documents, in relation to each application for a complying development certificate and each complying development certificate for development on land in the council's area—

(a) the determination of the application for a complying development certificate, including—

(i) any complying development certificate issued, and

(ii) the related plans and specifications,

(b) the notice of the issue of the complying development certificate published on the council's website for the purposes of the Act, section 4.59,

(c) the notification of the appointment of the principal certifier,

(d) the notification of the commencement of building work or subdivision work,

(e) the notification of the determination of an application for a related occupation certificate,

(f) the notification of the determination of an application for a related subdivision certificate, including the endorsed plan of subdivision,

(g) the notification of the determination of an application for a related compliance certificate,

(h) a decision of the Court in relation to an occupation certificate or subdivision certificate issued by the Court on appeal from a determination of the council,

(i) details of approved performance solutions relating to a compliance certificate and details of the assessment methods used to establish compliance with the relevant performance requirements under the *Building Code of Australia*,

(j) the record of an inspection made for the purposes of the issue of a complying development certificate,

(k) a notice given to, or given by, the council under clause 120.

(2) A council must publish the documents required to be kept under this clause on its website.

(3) This clause applies to an application for a complying development certificate and a complying development certificate, whether or not the council is the certifier.

Part 12 Reviews and appeals

225 Application for review of consent authority's decision or determination—the Act, Div 8.2

(cl 123G, 123H and 123I 2000 Reg)

(1) An application for review must be—

(a) in the approved form, and

(b) submitted on the NSW planning portal.

(2) An application for review must be submitted on the NSW planning portal no later than—

(a) for review of a determination of a modification application by a consent authority—28 days after the date of the determination, or

(b) for review of a decision by a council to reject and not determine a development application—14 days after the applicant is notified of the decision.

(3) An application for review is taken to be lodged on the day on which the fee required to be paid by the applicant under this Regulation, as determined under Part 13 and Schedule 4, is paid.

226 Notice of application for review of consent authority's decision or determination—the Act, Div 8.2

(cl 113A and 123I 2000 Reg)

(1) The notice of an application for review, as required under the Act, Schedule 1, clause 20A, must contain the following information—

(a) a brief description of the application for review and the land to which it relates,

(b) a statement that submissions about the application for review may be made to the council during the period specified in the Act, Schedule 1, clause 20A.

(2) An application for review must be otherwise notified or advertised in the same way as the development application or modification application was originally notified or advertised.

(3) The consent authority must give copies of an application for review to each concurrence authority for the development to which the application relates.

(4) The fee payable for the notice under this clause is specified in Schedule 4.

227 Notice of consent authority's review—the Act, Div 8.2

(cl 123G–123I 2000 Reg)

As soon as practicable after determining an application for review, the consent authority must, by means of the NSW planning portal, notify the following of the determination—

(a) the applicant,

(b) if the application applies to land owned by a Local Aboriginal Land Council—the New South Wales Aboriginal Land Council, but not if the review confirms the determination,

(c) each person who made a submission under the Act in relation to the original application.

228 Deemed refusal period for consent authority reviews—the Act, Div 8.2

(cl 123H 2000 Reg)

A council is taken to have refused an application for review of a decision to reject and not determine a development application or modification application if it does not determine the application for review within 14 days after the application for review is made.

229 Deemed refusal period for Court appeals

(cl 293 2000 Reg)

(1) For the purposes of the Act, section 8.22(2), the period of 40 days after the date of the application to extend the period after which a development consent expires is prescribed.

(2) For the purposes of the Act, section 8.25(1)(b), the period of 40 days after the later of the following is prescribed—

(a) the date on which the application for the building information certificate was made,

(b) if the applicant receives a notice under the Act, section 6.26(2) to supply information—the date on which the information is supplied.

Part 13 Fees

Division 1 Preliminary—the Act, s 7.44

230 Definitions

In this Part—

application means the following—

(a) a development application, including for State significant development,

(b) a modification application, including for State significant development,

(c) an application for approval of State significant infrastructure,

(d) a request for modification of an approval of State significant infrastructure.

concept component of a staged application means the part of a concept development application or a staged infrastructure application that sets out concept proposals for the development of a site or for proposed infrastructure.

planning reform services means—

(a) the monitoring and reviewing by the Planning Secretary of the practices and procedures followed by consent authorities in dealing with applications for the following purposes—

(i) assessing the efficiency and effectiveness of the practices and procedures,

(ii) ensuring the practices and procedures comply with the provisions of the Act and this Regulation, and

(b) the monitoring and reviewing by the Planning Secretary of the following provisions of environmental planning instruments for the purposes of assessing the effectiveness of the provisions in achieving their intended effect and making recommendations for their improvement—

(i) provisions that control development,

(ii) provisions that consent authorities are required to consider when dealing with applications, and

(c) the online delivery of planning services and information by the Planning Secretary, including—

(i) the compilation and maintenance of the NSW planning database, and

(ii) the operation of the NSW planning portal, and

(iii) the enhancement of the NSW planning database and the NSW planning portal.

staged infrastructure application has the same meaning as it has in the Act, section 5.20.

231 Services covered by fees for development applications

(cl 246A and 256L 2000 Reg)

(1) The services covered by the fee for a development application, other than an application for State significant development or approval of State significant infrastructure, include the following—

(a) the receipt of the application and internal referrals of the application,

(b) consideration of the application for the purpose of determining if further information is required in relation to the proposed development,

(c) inspection of the land to which the proposed development relates,

(d) evaluation of the proposed development, including discussion with interested parties,

(e) preparation of internal reports on the application,

(f) preparation and service of notices of the consent authority's determination of the application,

(g) planning reform services.

(2) The services covered by the fee for a development application for State significant development or approval of State significant infrastructure include planning reform services.

232 Estimated cost of development

(cl 255 and 256P 2000 Reg)

(1) If a fee specified in Schedule 4 is based on the estimated cost of the development, the estimated cost must be determined by reference to a genuine estimate of the following—

(a) for development involving the erection of a building that is State significant development or State significant infrastructure—the capital investment value of the development,

(b) for development involving the erection of a building that is not State significant development or State significant infrastructure—the costs associated with the construction of the building and the preparation of the building for the purpose for which it will be used, such as the costs of installing plant, fittings, fixtures and equipment,

(c) for development involving the carrying out of a work—the construction costs of the work,

(d) for development involving the demolition of a building or work—the costs of demolition.

(2) For the purposes of determining the fee for an application for development referred to in subclause (1)(b), (c) or (d), a consent authority must use the estimate specified in the application, unless the consent authority is not satisfied that the estimate is genuine or accurate.

(3) For the purposes of determining the fee in relation to the concept component of a staged application, the Planning Secretary may make any necessary assumptions about the detail of the future stages of the development or infrastructure.

Division 2 Determination of fees generally—the Act, s 7.44

233 Planning Secretary may determine fees

(cl 263 2000 Reg)

(1) The Planning Secretary may determine, either generally or in a particular case, the fee payable for doing anything referred to in the Act, section 7.44(1).

(2) In determining the fee, the Planning Secretary must consider the cost to the Minister, the Planning Ministerial Corporation, the Department or the Planning Secretary of doing the thing referred to in that subsection.

(3) If the Planning Secretary has not determined a fee under subclause (1), the maximum fee that may be imposed under the Act, section 7.44(1) is 120% of the cost to the Minister, the Planning Ministerial Corporation, the Department or the Planning Secretary of doing the thing referred to in that subsection.

234 Waiver and refund of fees

(cl 52(3), 252A(6) and 253(6) and 2000 Reg)

(1) A person or body to whom a fee or charge is payable under this Regulation may waive or refund payment of all or part of the fee or charge if the person or body considers it is appropriate to do so.

Example— A consent authority may refund the whole or part of an application fee paid in relation to a development application that is withdrawn before it is determined.

(2) A concurrence authority or an approval body may waive all or part of a fee payable to the authority or body for its concurrence or approval by giving written notice to—

(a) a consent authority, in relation to concurrence or approval fees collected by the consent authority, or

(b) the Planning Secretary, in relation to concurrence or approval fees collected by means of the NSW planning portal.

(3) A waiver under subclause (2) may be given generally, in relation to a particular class of applications or in relation to a particular application.

235 Circumstances in which refund of fees required

(cl 51(4), 252(2) and 258(3) and (3A) 2000 Reg)

(1) If a consent authority rejects an application, the consent authority must refund to the applicant the whole of the fee paid for the application.

(2) If a consent authority is paid a fee for giving notice of the following development, the consent authority must refund to the applicant any part of the fee that is not spent in giving the notice—

(a) designated development,

(b) nominated integrated development,

(c) threatened species development,

(d) Class 1 aquaculture development,

(e) prohibited development,

(f) other development for which a community participation plan requires notice to be given.

(3) If a consent authority is paid a fee for giving notice of a modification application, the consent authority must refund to the applicant any part of the fee that is not spent in giving the notice.

(4) If a consent authority is paid an additional fee for an application that is accompanied by a statement of a qualified designer, the consent authority must refund to the applicant the additional fee, if the development is not referred to a design review panel.

Division 3 Fees for development applications, including State significant development and State significant infrastructure—the Act, ss 4.64 and 5.29

236 Information about development application fees

(cl 48 2000 Reg)

(1) A consent authority must publish the following on its website—

(a) the consent authority's scale of fees for applications generally,

(b) the amount of the fee to accompany an application of a particular kind, if determined by the consent authority.

(2) This clause does not apply to fees for State significant infrastructure.

237 Determination of fees for applications

(cl 256, 256D and 256E 2000 Reg)

(1) The fee for an application must be determined in accordance with this Part and Schedule 4 by—

(a) if the application relates to State significant development or State significant infrastructure—the Planning Secretary, or

(b) otherwise—the consent authority.

(2) The determination of the fee for an application must be made before, or within 14 days after, the application is received by—

(a) if the application relates to State significant infrastructure—the Minister, or

(b) otherwise—the consent authority.

(3) The determination takes effect when notice of the determination is given to the applicant by means of the NSW planning portal.

(4) The fee for an application may consist of the sum of one or more fees for different matters.

Note— Schedule 4 specifies various fees for different matters, including the following—

(a) different fees for different kinds of development,

(b) additional fees for certain kinds of development,

(c) fees payable if a consent authority is required to publicly notify a development application or other document,

(d) fees payable to an approval body for integrated development and to a concurrence authority for development requiring concurrence.

(5) If a fee has been determined and notified to the applicant but has not been paid, the consent authority, or the Minister if the application relates to State significant infrastructure, may refuse to consider the application.

(6) In this clause—

application includes an application for review under the Act, section 8.3.

238 Timing for payment of certain additional fees

(cl 256J(2) 2000 Reg)

If State significant infrastructure is declared to be critical State significant infrastructure after the fee for the application for approval of State significant infrastructure is due or paid, the additional fee for the approval of critical State significant infrastructure is payable within 14 days after the Planning Secretary notifies the applicant of the additional fee.

239 Concept development applications other than State significant development

(cl 256B 2000 Reg)

(1) The fee payable for a concept development application in relation to a site, and for a subsequent development application for part of the site, is the fee that would be payable if a single development application were required for all development on the site.

(2) This clause does not apply to State significant development.

Division 4 Miscellaneous fees—the Act, s 7.44

240 Fees for proponents of State significant development

(cl 263(3)–(6) 2000 Reg)

(1) The Planning Secretary may require an SSD proponent to pay a fee determined by the Planning Secretary that does not exceed the reasonable costs incurred by the Department in exercising the functions under clause 259 in relation to the request.

(2) In this clause—

SSD proponent means a person who requests a Ministerial planning order under the Act, section 4.36(3).

241 Assessment fee for concept component of staged applications for State significant development and State significant infrastructure

(cl 256KA 2000 Reg)

(1) The Planning Secretary may require the payment of an additional fee for the assessment of the concept component of a staged application that relates to State significant development or State significant infrastructure.

(2) The amount of the fee must not exceed the fee that would be payable for all the proposed State significant development or State significant infrastructure to which the concept component of the staged application relates.

(3) The payment of a fee under this clause does not remove the need to pay another fee under this Regulation in relation to—

(a) a concept development application to the extent to which it sets out detailed proposals for the first stage of development, or

(b) a staged infrastructure application to the extent to which it sets out detailed proposals for the first stage, or

(c) another application, including a subsequent application that relates to the staged application.

242 Fees for referral to Independent Planning Commission or Sydney district or regional planning panel

(cl 263 2000 Reg)

(1) The Planning Secretary may require the payment of a fee, of no more than the maximum fee specified in Schedule 4, for considering a request that the Minister or the Planning Secretary refer a matter to the Independent Planning Commission or a Sydney district or regional planning panel.

(2) If the matter is referred, the Planning Secretary may require the payment of a fee, of no more than the maximum fee specified in Schedule 4, for the costs and expenses incurred by—

(a) the Minister or the Planning Secretary in preparing a report about the referred matter, including any necessary consultation with councils and other relevant agencies, or

(b) the Independent Planning Commission or a Sydney district or regional planning panel in providing advice to the Minister or the Planning Secretary.

(3) A fee is not payable under this clause in relation to a request made by an SSD proponent under clause 240.

243 Public hearing by Independent Planning Commission

(cl 256N 2000 Reg)

(1) This clause applies to a public hearing held by the Independent Planning Commission under the Act, section 2.9(1)(d) that relates to—

(a) a development application for State significant development, or

(b) an application for approval of State significant infrastructure.

(2) The fee payable for the public hearing is the sum of—

(a) the base fee specified in Schedule 4, and

(b) an additional fee determined by the Planning Secretary for the estimated costs to the Independent Planning Commission of the public hearing, not exceeding the maximum additional fee specified in Schedule 4.

(3) The fee is payable by the person making the application to which the hearing relates within 14 days after the Planning Secretary notifies the person of the fee payable.

244 Consideration of planning proposal with State significant development application

(cl 256O 2000 Reg)

(1) The fee payable for considering a proposed environmental planning instrument in conjunction with a development application for State significant development under the Act, section 4.38(5) is specified in Schedule 4.

(2) The fee is payable by the person making the development application within 14 days after the Planning Secretary notifies the person of the fee payable.

245 Making environmental impact statements publicly available

(cl 256K 2000 Reg)

The maximum additional fee payable for making an environmental impact statement publicly available under the Act in relation to an application for State significant development or for approval of State significant infrastructure is specified in Schedule 4.

246 Planning reform contributions from development application fees

(cl 256A 2000 Reg)

(1) This clause applies to a development application for development with an estimated cost of more than $50,000 that involves—

(a) the erection of a building, or

(b) the carrying out of a work, or

(c) the demolition of a work or a building.

(2) A consent authority to whom a development application is made must set aside an amount from the fee paid for the development application for payment to the Planning Secretary for planning reform services.

(3) The amount must be determined in accordance with the following formula—

$$P = (E \times 0.00064) - 5$$

where—

P represents the amount to be set aside, expressed in dollars rounded down to the nearest dollar, and

E represents the estimated cost of the development, expressed in dollars rounded up to the nearest thousand dollars.

(4) The consent authority must give the Planning Secretary—

(a) on or before the 14th day of each month—a report in the approved form, in relation to the applications lodged with the consent authority during the previous month, and

(b) on or before the 28th day of each month—the total amount set aside under this clause in relation to the applications.

(5) The Planning Secretary must apply the amounts received under this clause to planning reform services.

(6) The Planning Secretary may, at any time, waive the requirement for all or part of an amount to be set aside by a consent authority and paid to the Planning Secretary under this clause.

(7) A waiver may be unconditional or subject to conditions.

(8) This clause does not apply to development to which clause 247 applies.

247 Planning reform contributions from development application fees for State significant development and State significant infrastructure

(cl 256L 2000 Reg)

(1) This clause applies to the following applications—

(a) a development application for State significant development with an estimated cost of more than $50,000,

(b) an application for approval of State significant infrastructure with an estimated cost of more than $50,000.

(2) The Planning Secretary may require the payment of a fee for the application that is to be used for planning reform services.

(3) The fee payable must not exceed the amount calculated in accordance with the following formula—

$$P = E \times 0.00064$$

where—

P represents the amount to be set aside, expressed in dollars rounded down to the nearest dollar, and

E represents the estimated cost of the development or infrastructure, expressed in dollars rounded up to the nearest thousand dollars.

(4) This clause does not apply to the concept component of a staged application.

248 Other fees—the Act, section 10.8 and Sch 3, cl 3(2)

(1) The fee payable for a certified copy of a document, map or plan under the Act, section 10.8(2) is specified in Schedule 4.

(2) The fee payable for submitting the following on the NSW planning portal is specified in Schedule 4—

(a) an application for a complying development certificate,

(b) an application for a site compatibility certificate,

(c) an application for the following under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*—

(i) a construction certificate

(ii) a subdivision works certificate,

(iii) an occupation certificate
(iv) a subdivision certificate,
(v) a building information certificate.

(3) The fee payable for the use of the NSW planning portal to pay a monetary contribution or levy under the Act, Division 7.1 is specified in Schedule 4.

Part 14 Miscellaneous

Division 1 Sydney district or regional planning panels and local planning panels

249 Functions exercisable by council on behalf of Sydney district or regional planning panel—the Act, s 4.7(2)(h)

(cl 123BA 2000 Reg)

(1) The determination of an application to modify a development consent under the Act, section 4.55 is prescribed as a function of a Sydney district or regional planning panel that must be exercised on behalf of the panel by the council of the area concerned, except as provided by subclause (2).

(2) A council must not determine an application to modify a development consent under the Act, section 4.55(2) on behalf of a Sydney district or regional planning panel if the application is of a kind specified in the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW planning portal on 30 June 2020.

250 Development applications for land in 2 or more local government areas—the Act, s 4.12

(cl 123C and 124H 2000 Reg)

(1) This clause applies to a development application for development located in 2 or more local government areas.

(2) If a Sydney district or regional planning panel has the function of determining the development application, a separate development application must be lodged with the council for each area in which the development is located.

(3) If a single local planning panel has been established for 2 or more councils, a separate development application must be lodged with the council for each area in which the development is located.

251 Determination of development applications and modification applications—the Act, s 4.8

(cl 123E, 123F, 124I and 124J 2000 Reg)

(1) For the purpose of determining a development application, a local planning panel or a Sydney district or regional planning panel may obtain—

(a) assessment reports, in addition to an assessment report or other information provided by a relevant council, and

(b) other technical advice or assistance the panel considers appropriate.

(2) If a development consent is granted by a local planning panel or a Sydney district or regional planning panel subject to a condition referred to in the Act, section 4.16(3) or 4.17(2), the panel is taken to be satisfied about a matter specified in the condition if the council for the area gives written notice to the chairperson of the panel that the matter specified in the condition has been satisfied.

(3) A local planning panel or a Sydney district or regional planning panel may carry out consultation in relation to a modification application under the Act, section 4.55(2)(b) by directing the general manager of a council for an area to consult the relevant Minister, public authority or approval body on behalf of the panel.

Division 2 Bush fire protection—the Act, s 4.14

252 Definitions

In this Division—

bush fire attack level has the same meaning as in the Australian Standard AS 3959:2018, *Construction of buildings in bushfire-prone areas*.

bush fire attack level–40 (BAL–40) and ***flame zone (BAL–FZ)*** have the same meaning as in Appendix G to the Australian Standard AS 3959:2018, *Construction of buildings in bushfire-prone areas*.

Note— More information about bush fire attack levels, including the flame zone, can be found in Table A1.7 of *Planning for Bush Fire Protection* ISBN 978 0 646 99126 9, dated November 2019.

bush fire safety authority has the same meaning as in the *Rural Fires Act 1997*, Part 4, Division 8.

secondary dwelling has the same meaning as in the Standard Instrument.

post-subdivision bush fire attack level certificate means a certificate that certifies that, at the time of issue—

(a) the bush fire attack level of the part of the land on which the development is proposed to be carried out corresponded to the bush fire attack level shown on the subdivision plan, and

(b) part of the land was not in bush fire attack level–40 (BAL–40) or the flame zone (BAL–FZ).

recognised consultant means a person recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment.

urban release area means land identified as an urban release area on the map entitled "Bush Fire Planning—Urban Release Area Map" that is approved, or amended or replaced from time to time, by the Planning Secretary and published on the NSW planning portal.

253 Planning for Bush Fire Protection—the Act, s 4.14(1)(a)

(cl 272 2000 Reg)

The document entitled *Planning for Bush Fire Protection* ISBN 978 0 646 99126 9 dated November 2019 is prescribed.

254 Development excluded from bush fire prone land requirements—the Act, s 4.14(1C)

(cl 273 2000 Reg)

(1) This clause applies to development on land in an urban release area involving the erection of a building that is, or is ancillary to, a dual occupancy, dwelling house or secondary dwelling.

(2) Development is excluded from the application of the Act, section 4.14 if the consent authority—

(a) has been given—

(i) a bush fire safety authority for the subdivision of the land that was in force on the date on which the development application for the development was lodged and issued no more than 5 years before that date, and

(ii) a copy of a plan of subdivision that shows the bush fire attack levels for the land and contains a notation from the NSW Rural Fire Service that the plan was considered in determining the application for the bush fire safety authority under the *Rural Fires Act 1997*, and

(iii) a post-subdivision bush fire attack level certificate, and

(b) is satisfied that the development complies with relevant standards specified in the bush fire safety authority relating to setbacks, asset protection zones, provision of water supply or other matters.

(3) The post-subdivision bush fire attack level certificate must—

(a) specify the address and folio identifier of the land to which it relates, and

(b) specify the date on which it was issued, and

(c) identify the relevant bush fire safety authority, and

(d) if the subdivision to which the bush fire safety authority relates required development consent—identify the relevant development consent, including the name of the consent authority or certifier, the date on which the consent was granted or issued and the registered number of the consent.

(4) A post-subdivision bush fire attack level certificate may only be issued by the NSW Rural Fire Service or a recognised consultant.

(5) Within 7 days after a recognised consultant issues a post-subdivision bush fire attack level certificate, the consultant must give the certificate to the Commissioner of the NSW Rural Fire Service.

(6) The methodology for determining bush fire attack levels, for the purposes of this clause, is the methodology specified in *Planning for Bush Fire Protection* ISBN 978 0 646 99126 9, dated 9 November 2019.

255 Fees for post-subdivision bush fire attack level certificates—the Act, s 4.14(1C)(b)
(cl 273 2000 Reg)

(1) If an application for a post-subdivision bush fire attack level certificate is made to the NSW Rural Fire Service, it must be accompanied by the fee determined by the NSW Rural Fire Service.

(2) The maximum fee that the NSW Rural Fire Service may charge for the application is as follows—

(a) if the application relates to a single lot or proposed lot—$500, or

(b) if the application relates to 2–10 lots or proposed lots—$500, plus $300 for each lot or proposed lot exceeding 1 lot, or

(c) if the application relates to 11 or more lots or proposed lots—$3,200, plus $150 for each lot or proposed lot exceeding 10 lots.

256 Bush fire prone land map—the Act, s 10.3(2A)
(cl 273A 2000 Reg)

(1) The Commissioner of the NSW Rural Fire Service may review the designation of land on a bush fire prone land map and revise the map if—

(a) the land is in an urban release area, and

(b) the Commissioner considers that a revision of the map is necessary to—

(i) record land as bush fire prone land on the map if the bush fire risk is not low, or

(ii) remove land as bush fire prone land on the map if the bush fire risk is low, or

(iii) correct, or record changes to, other information relating to land shown on the map.

(2) For the purposes of subclause (1)(b), the Commissioner of the NSW Rural Fire Service may consider—

(a) a post-subdivision bush fire attack level certificate applying in relation to the land, and

(b) other evidence the Commissioner considers relevant.

Division 3 Calling in development as State significant development—the Act, s 4.39

257 Advice of Independent Planning Commission

(cl 124E 2000 Reg)

(1) In providing its advice under the Act, section 4.36(3), the Independent Planning Commission must consider a general issue relating to State or regional planning significance that the Minister has requested the Commission to consider.

(2) If the Minister considers that the advice of the Commission does not adequately address the issue, the Minister may request the Commission to reconsider the issue.

(3) This clause does not affect the validity of advice given or a decision made under the Act, section 4.36(3).

258 Calling in existing development applications

(cl 124F 2000 Reg)

(1) This clause applies to development declared to be State significant development by a Ministerial planning order under the Act, section 4.36(3) in relation to which a development application has been made but not finally determined before the order is made.

(2) On making the order, the Minister may, by written direction, require the relevant consent authority—

(a) to complete any steps in relation to the development application, and

(b) to give the development application and other relevant documents and information relating to the development to the Minister, and

(c) to pay a specified proportion of the fees paid in relation to the development application to the Planning Secretary, and

(d) to notify the applicant, relevant authorities and the other persons or classes of persons specified in the direction that the Minister is now the consent authority for the development.

(3) If a Ministerial planning order is made, the following apply—

(a) the development application is taken to be a development application for State significant development,

(b) an amount payable under this Regulation in relation to the development must be reduced by the amount, if any, payable to the Planning Secretary under subclause (2)(c),

(c) any steps taken by the relevant consent authority in relation to the development application are taken to be steps taken by the Planning Secretary or the Minister in relation to the application for State significant development.

259 Orders declaring State significant development

(cl 124G 2000 Reg)

The Planning Secretary may exercise the following functions in relation to a Ministerial planning order under the Act, section 4.36(3)—

(a) receiving a proponent's request to make a Ministerial planning order,

(b) preparing and providing a report to the Independent Planning Commission to assist the Commission in advising the Minister on the State or regional planning significance of the proposed development,

(c) consulting councils and other relevant agencies for the purpose of preparing the report.

Division 4 Development control orders—the Act, Div 9.3 and Sch 5

260 Notice of development control orders

(cl 281A 2000 Reg)

(1) If a consent authority, other than a council, proposes to give a development control order that relates to building work or subdivision work for which the consent authority is not the principal certifier, the consent authority must give the principal certifier notice of its intention to give the order.

(2) A notice required to be given by a consent authority under this clause or by a council under the Act, Schedule 5, clause 9(2) must be given within 7 days after the notice of intention to give the order is given under the Act, Schedule 5, clause 8.

261 Enforcement of orders by cessation of utilities

(cl 285 2000 Reg)

(1) Backpackers' accommodation and boarding houses are prescribed for the purposes of the Act, Schedule 5, clause 35(1)(b).

(2) The making of utilities orders for premises used as boarding houses is authorised for the purposes of the Act, Schedule 5, clause 35(10).

(3) In this clause—

backpackers' accommodation and ***boarding house*** have the same meaning as in the Standard Instrument.

262 Form of compliance cost notices—the Act, Sch 5, cl 37(6)(b)

(cl 281B 2000 Reg)

(1) 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 date by which the amount must be paid,

(e) the person to whom payment must be made,

(f) the way in which payment must be made,

(g) details of the costs and expenses claimed under the notice, including details of the following—

(i) the relevant tasks undertaken,

(ii) the hours spent completing the tasks,

(iii) the salary rates of the persons who undertook the tasks,

(iv) the relevant out of pocket expenses,

(h) information setting out how a person may appeal against the notice under the Act, section 8.24,

(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.

263 Amounts payable under compliance cost notices—the Act, Sch 5, cl 37(6)(c)
(cl 281C 2000 Reg)

The maximum amount that may be required to be paid under a compliance cost notice is—

(a) $1,000 for costs or expenses relating to an investigation that leads to the giving of a development control order, and

(b) $500 for costs or expenses relating to the preparation or serving of the notice of the intention to give a development control order.

Division 5 Miscellaneous

264 Building information certificates—the Act, Div 6.7
(cl 280 and 281 2000 Reg)

(1) An application for a building information certificate must be made by means of the NSW planning portal.

(2) A building information certificate must contain the following information—

(a) a description of the building, including the address,

(b) the date on which the building was inspected,

(c) a statement that the council is satisfied about the matters specified in the Act, section 6.25(1),

(d) a statement that describes the effect of the certificate in the same terms as, or in substantially similar terms to, the Act, section 6.25,

(e) the date on which the certificate is issued.

(3) A building information certificate must be issued to an applicant by means of the NSW planning portal.

265 Planning certificates—the Act, s 10.7

(1) Schedule 3 sets out the matters required to be specified in a planning certificate.

Note— See also the *Contaminated Land Management Act 1997*, section 59(2) that sets out additional matters that must be specified in a planning certificate.

(2) A planning certificate may be issued containing only the information set out in Schedule 3, clause 4.

(3) The fee payable for an application to a council for a planning certificate is specified in Schedule 4.

(4) A council may charge a fee, not exceeding the maximum fee specified in Schedule 4, for giving advice in a planning certificate as referred to in the Act, section 10(5).

266 Councils required to constitute single local planning panel—the Act, s 2.17(2)(c)
(cl 124K 2000 Reg)

The councils of the following local government areas are prescribed—

(a) Central Coast,

(b) Wingecarribee.

267 Reimbursement for local planning panel costs paid by Department—the Act, s 7.44
(cl 263A 2000 Reg)

(1) This clause applies if—

(a) the Minister constitutes a local planning panel under the Act, section 2.17(5), and

(b) the costs of the panel are paid from the funds of the Department.

(2) The Planning Secretary may require the council to pay a fee in connection with the constitution and operation of the panel not exceeding the amount of the costs of the panel that have been paid from the Department's funds.

(3) For the purposes of this clause, the costs of a local planning panel are—

(a) the amounts paid in connection with the appointment and remuneration of members of the panel, and

(b) other expenses reasonably incurred by the panel in connection with its operation.

268 Community participation requirements
(cl 56A and 56B 2000 Reg)

(1) For the purposes of the Act, section 2.21(2)(f), environmental impact assessment functions under the Act, Division 5.1 are prescribed if—

(a) a species impact statement or a biodiversity development assessment report is required under the *Biodiversity Conservation Act 2016*, section 7.8, or

(b) a species impact statement is required under the *Fisheries Management Act 1994*, section 221ZX.

(2) For the purposes of the Act, section 2.23(3)(c), the community participation plan of a council applies to the exercise of the council's relevant planning functions by—

(a) a Sydney district or regional planning panel, or

(b) a local planning panel.

(3) For the purposes of the Act, section 2.23(3)(c), a Sydney district or regional planning panel or local planning panel is not required to prepare its own community participation plan.

269 Use of NSW planning portal—the Act, Sch 3, cl 3
(cl 295 2000 Reg)

(1) If a relevant authority is, under this Regulation, required or permitted to provide a document or information to, or request a document or information from, an applicant or another relevant authority by means other than the NSW planning portal, the relevant authority may provide or request the document or information by means of the NSW planning portal.

(2) For the purposes of this Regulation—

(a) the time at which a document or information is provided by a relevant authority by means of the NSW planning portal is the time when the document or information is shown on the NSW planning portal to have been provided by the relevant authority, and

(b) the time at which a document or information is received by an applicant or relevant authority is the time when the document or information becomes capable of being retrieved by the applicant or relevant authority by means of the NSW planning portal.

(3) In this clause—

document or information includes an application, notification, advice or request.

relevant authority means a consent authority, a concurrence authority, an approval body, a council, a registered certifier or the Planning Secretary.

270 Crown development—the Act, s 4.32(2)(a)

(cl 226 2000 Reg)

The following persons are prescribed as the Crown—

(a) a public authority, other than a council,

(b) an Australian university, within the meaning of the *Higher Education Act 2001*,

(c) a TAFE establishment, within the meaning of the *Technical and Further Education Commission Act 1990*,

(d) without limiting paragraph (a), a Crown cemetery operator, within the meaning of the *Cemeteries and Crematoria Act 2013*.

271 Modification of Protection of the Environment Operations Act 1997, Part 8.3—the Act, s 9.56(2A)

(cl 285A 2000 Reg)

The *Protection of the Environment Operations Act 1997*, Part 8.3 applies to an offence against the Act or this Regulation, with the following modifications—

(a) a reference in that Part to preventing, controlling, abating or mitigating harm to the environment caused by the commission of the offence is taken to include a reference to reversing or rectifying any unlawful development or activity related to the commission of the offence,

(b) the terms ***environment*** and ***public authority***, when used in that Part, have the same meaning as in the *Environmental Planning and Assessment Act 1979*,

(c) a reference in that Part to a regulatory authority or the EPA is to be read as a reference to a public authority,

(d) the reference in section 250(1)(e) to the Environment Trust established under the *Environmental Trust Act 1998* is to be disregarded,

(e) the maximum penalty for an offence under section 251 of failing to comply with an order is $50,000 for a corporation and $10,000 for an individual.

272 Provision of false or misleading information—the Act, s 10.6(3)(d)

(cl 285B 2000 Reg)

(1) The matters specified in this clause are declared to be the provision of information in connection with a planning matter.

(2) The provision of information in response to a requirement imposed by the following conditions, except a condition imposed under the Act, section 9.40—

(a) a condition of development consent,

(b) a condition of an approval to carry out a transitional Part 3A project, within the meaning of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, Schedule 2,

(c) a condition of an approval to carry out State significant infrastructure under the Act, Division 5.2.

(3) The provision of information in or for the purposes of a submission in response to the public exhibition of the following documents—

(a) a draft strategic plan,

(b) a planning proposal,

(c) an environmental impact statement,

(d) a development application or a modification application,

(e) an application for approval of State significant infrastructure or a request to modify the approval,

(f) another plan, policy, strategy or document publicly exhibited for a planning purpose by the Department or a council.

273 Planning Secretary may certify certain documents—the Act, s 10.8(1)(b)(i)

(cl 282 2000 Reg)

The Planning Secretary is prescribed for the certification of documents.

274 Special provisions for public hearings or public meetings of planning bodies during COVID-19 pandemic—the Act, Part 2 and Sch 2

(cl 294 2000 Reg)

(1) This clause applies to public hearings or public meetings of planning bodies held on or before 31 March 2022.

(2) The public hearing or public meeting must—

(a) be held by audio link or audio visual link, and

(b) be able to be heard or viewed by electronic means by a member of the public at the time it is held.

(3) A notice of the public hearing or public meeting must contain information about how a member of the public may hear or view the hearing or meeting.

(4) During the public hearing or public meeting, the planning body may adjourn the hearing or meeting to a specified time or date if the planning body considers the adjournment necessary.

(5) To avoid doubt, any notice required to be given of the public hearing or public meeting is not required to be given in relation to the adjournment.

(6) A requirement that a person attend the public hearing or public meeting is taken to be satisfied if the person participates by audio link or audio visual link.

(7) The Act, Schedule 2, clause 25(3) applies to a public hearing of a planning body in the same way it applies to a public meeting of a planning body.

(8) In this clause—

planning body has the same meaning as in the Act, Schedule 2.

275 Savings

Any act, matter or thing that, immediately before the repeal of the *Environmental Planning and Assessment Regulation 2000*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Public authorities

(cl 277 2000 Reg)

clause 3(2)

1 Australian Rail Track Corporation Ltd

(1) Australian Rail Track Corporation Ltd (ACN 081 455 754), but only for the following purposes—

(a) to be a public authority for development for the purposes of rail and related transport facilities that is State significant infrastructure,

(b) to be a determining authority for the following development permitted without consent by a public authority under *State Environmental Planning Policy (Infrastructure) 2007* for—

(i) development for the purposes of rail infrastructure facilities,

(ii) development on land in or adjacent to a rail corridor,

(iii) development for a railway or railway project specified in that Policy, Schedule 2,

(c) to be a determining authority for the following development permitted without consent under another environmental planning instrument—

(i) development for the purposes of rail infrastructure facilities, and

(ii) development on land in or adjacent to a rail corridor.

(2) In this clause—

rail corridor and ***rail infrastructure facilities*** have the same meaning as in *State Environmental Planning Policy (Infrastructure) 2007*.

2 Port Operators

(1) A Port Operator, but only for the purposes of being a determining authority for development that is permitted without consent under *State Environmental Planning Policy (Three Ports) 2013* on unzoned land or land in the Lease Area of the port concerned.

(2) In this clause—

Lease Area and ***Port Operator*** have the same meaning as in *State Environmental Planning Policy (Three Ports) 2013*.

3 Universities

The following universities, but only for the purposes of being a determining authority for development that is permitted without consent on land vested in, leased by or otherwise under the control or management of the university, under a provision of *State Environmental Planning Policy (Infrastructure) 2007* or *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*—

(a) Charles Sturt University,

(b) Macquarie University,

(c) Southern Cross University,

(d) University of New England,

(e) University of New South Wales,

(f) University of Newcastle,

(g) University of Sydney,

(h) University of Technology Sydney,

(i) University of Wollongong,

(j) Western Sydney University.

4 Authorised network operators

An authorised network operator, but only for the purposes of being a determining authority for development for the purposes of an electricity transmission or distribution network operated or to be operated by the authorised network operator that is—

(a) permitted without consent by a public authority under *State Environmental Planning Policy (Infrastructure) 2007*, or

(b) permitted without consent under another environmental planning instrument.

5 Non-government schools

(1) The proprietor of a registered non-government school, but only for the following purposes—

(a) to be a public authority in relation to development at the school that is exempt development under *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*, clause 18,

(b) to be a determining authority for development that is permitted without consent under that Policy, clause 36, on land in a prescribed zone within the meaning of that Policy, clause 33.

(2) The Planning Secretary may determine that subclause (1) does not apply to a particular proprietor of a registered non-government school.

(3) The Planning Secretary may vary or revoke a determination under subclause (2).

(4) A determination, or a variation or revocation of a determination, takes effect—

(a) when notice of it is published in the Gazette, or

(b) on a later date specified in the determination, variation or revocation.

6 Children (Education and Care Services) National Law Regulatory Authority

The Regulatory Authority for New South Wales under the *Children (Education and Care Services) National Law (NSW)*, but only for the purposes of the Act, section 3.18(2).

7 Ministers

A Minister of the Government of New South Wales in relation to the Act, section 4.5(c).

Schedule 2 Designated development

(cl 4 and Sch 3 2000 Reg)

clause 7

Part 1 Preliminary

1 Definitions

(1) In this Schedule—

acid sulfate soil means acid sulfate soil, potential acid sulfate soil, sulfidic clay or sulfidic sand with soil profiles or layers, within the material to be disturbed or impacted by the development, with more than 0.1% sulfide and a net acid generation potential of more than zero.

artificial waterbody has the same meaning as in the Standard Instrument.

ADG Code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail* approved by the National Transport Commission, as in force from time to time.

coastal dune field means a system of wind-blown sand deposits extending landwards of the coastline, whether active or stable.

coastline means ocean beaches, headlands or other coastal landforms, excluding bays, estuaries or inlets.

contaminated soil means soil or sediment that contains a substance at a concentration that—

(a) is above the concentration at which the substance is normally present in soil or sediment from the same locality, and

(b) presents a risk of harm to human health or the environment, where harm to the environment includes a direct or indirect alteration of the environment that has the effect of degrading the environment.

development site, in relation to a development application—

(a) means—

(i) the whole of the land to which the application applies, or

(ii) the part of the land that is identified in the application as the actual site of the development, and

(b) includes, in relation to a development application for development involving alterations or additions, the actual site of the existing or approved development.

drinking water catchment means—

(a) land in a restricted area prescribed by a controlling water authority, including—

(i) a declared catchment area, within the meaning of the *Water NSW Act 2014*, and

(ii) a catchment district proclaimed under the *Local Government Act 1993*, section 128, or

(b) land within 500 metres of a groundwater source used by a local water utility or major utility, within the meaning of the *Water Management Act 2000*, for the purposes of town water supply.

dwelling means a room or suite of rooms occupied or used, or constructed or adapted to be capable of being occupied or used, as a separate domicile.

effluent includes treated or partially treated wastewater from—

(a) a sewage treatment plant, or

(b) a treatment plant associated with intensive livestock industries or aquaculture, agricultural, livestock, wood, paper or food processing industries.

environmentally sensitive area of State significance means the following—

(a) coastal waters of the State,

(b) land identified as coastal wetlands or littoral rainforest on the Coastal Wetlands and Littoral Rainforests Area Map, within the meaning of *State Environmental Planning Policy (Coastal Management) 2018*,

(c) an area declared to be an aquatic reserve or marine park under the *Marine Estate Management Act 2014*,

(d) a declared Ramsar wetland or declared World Heritage property within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,

(e) land reserved or dedicated under the *Crown Land Management Act 2016* for the preservation of flora, fauna, geological formations or for other environmental protection purposes,

(f) land declared as an area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*,

(g) land identified as critical habitat under the *Fisheries Management Act 1994*, Part 7A,

(h) land in a national park, state conservation area, historic site, nature reserve or wilderness area under the *National Parks and Wildlife Act 1974*,

(i) land identified as wilderness under the *Wilderness Act 1987*,

(j) land identified in an environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance or as in an environment protection zone,

(k) land, places, buildings or structures listed on the State Heritage Register under the *Heritage Act 1977*.

floodplain means—

(a) the floodplain level nominated in a local environmental plan, or

(b) if no level has been nominated—the areas inundated as a result of a 1 in 100 flood event.

high watertable means the areas where the groundwater depth is less than 3 metres below the surface at its highest seasonal level.

highly permeable soil means soil profiles or layers, within the upper 2 metres of the material to be disturbed or impacted by the development, with a saturated hydraulic conductivity of more than 50 millimetres per hour.

incinerate includes any method of burning or thermally oxidising solids, liquids or gases.

mean high water mark has the same meaning as in the Standard Instrument.

natural waterbody has the same meaning as in the Standard Instrument.

poultry farm has the same meaning as in the Standard Instrument.

relevant irrigation land means—

(a) land in the area of operations of any irrigation corporation, within the meaning of the *Water Management Act 2000*, Chapter 4, Part 1, or

(b) land shown edged heavy black on the East Cadell Map under *State Environmental Planning Policy (Primary Production and Rural Development) 2019*.

residential zone means land identified in an environmental planning instrument as being predominantly for residential use, including urban, village or living area zones, but excluding rural residential zones.

saline soil means soil profiles or layers, within the upper 2 metres of soil, with an electrical conductivity of saturated extracts (Ece) value of more than 4 decisiemens per metre (dS/m).

sludge means semi-liquid particulate matter produced as a by-product of agricultural processing of produce, aquaculture, breweries or distilleries, intensive livestock agriculture, livestock processing industries, paper pulp or pulp product industries or sewerage systems or works.

sodic soil means soil profiles or layers, within the upper 2 metres of soil, with an exchangeable sodium percentage (ESP) of more than 6%.

thermal treatment has the same meaning as in the *Protection of the Environment Operations Act 1997*, Schedule 1.

toxic substance means a substance classified as toxic in the ADG Code, including toxic gases (Class 2.3) and toxic and infectious substances (Class 6).

waste tyres has the same meaning as in the *Protection of the Environment Operations Act 1997*, Schedule 1.

waterbody has the same meaning as in the Standard Instrument.

wetland has the same meaning as in the Standard Instrument.

(2) In this Schedule, ***waste*** includes a matter or thing that—

(a) is solid, gaseous or liquid or a combination of solid, gaseous or liquid, and

(b) is discarded or is refuse from processes or uses.

Example— Domestic, medical, industrial, mining, agricultural or commercial processes and uses.

(3) A substance may be ***waste*** for the purposes of this Schedule even if it may be—

(a) reprocessed, re-used or recycled, or

(b) sold or intended for sale.

2 Measuring distances

(1) The distance between aquaculture leases is measured as the shortest distance between—

(a) the boundary of an existing lease area, and

(b) the boundary of the area to which the development application applies.

(2) The distance from a coastline is measured as the shortest distance between—

(a) the mean high water mark, and

(b) the boundary of the development site, excluding access roads.

(3) The distance from a dwelling is measured as the shortest distance between—

(a) the edge of the dwelling, excluding associated works such as access roads, and

(b) the boundary of the development or works to which the development application applies.

(4) The distance from an environmentally sensitive area of State significance is measured as the shortest distance between—

(a) the boundary of the environmentally sensitive area of State significance, and

(b) the boundary of the development site.

(5) The distance between extractive industries or mine sites is measured as the shortest distance between—

(a) any area of disturbance by a mine or extractive industry that has operated within the past 5 years, and

(b) the boundary of the development site, excluding access roads.

(6) The distance between poultry farms is measured as the shortest distance between—

(a) the edge of any facilities or works associated with an existing poultry farm, and

(b) the facilities or works to which the development application applies, excluding access roads.

(7) The distance from a residential zone is measured as the shortest distance between—

(a) the boundary of the residential zone, and

(b) the facilities or works to which the development application applies, excluding access roads.

(8) The distance between turf farms is measured as the shortest distance between—

(a) the edge of an area that is growing or has previously grown turf sod within the last 5 years, and

(b) the edge of the area for growing turf sod to which the development application applies.

(9) The distance from a waterbody is measured as the shortest distance between—

(a) the boundary of the development site, and

(b) the top of the high bank, if present, or, if no high bank is present—

(i) the mean high water mark in tidal waters, or

(ii) the mean water level in non-tidal waters.

(10) The distance from a wetland is measured as the shortest distance between—

(a) the boundary of the development site, and

(b) the top of the high bank, if present, or, if no high bank is present, the edge of vegetation communities dominated by wetland species.

Part 2 Designated development

3 Agricultural produce processing facilities

(1) Development for the purposes of an agricultural processing facility is designated development if the facility—

(a) involves crushing, juicing, grinding, ginning, milling, separating, washing, sorting, coating, rolling, pressing, steaming, flaking, combing, homogenising and pasteurising more than 30,000 tonnes of agricultural produce per year, or

(b) releases effluent, sludge or other waste—

(i) in or within 100 metres of a natural waterbody or wetland, or

(ii) in an area of high watertable, highly permeable soils or acid sulfate, sodic or saline soils.

(2) In this clause—

agricultural processing facility means a building or place at which agricultural produce is processed.

agricultural produce includes dairy products, seeds, fruit, vegetables or other plant material.

4 Artificial waterbodies

(1) Development for the purposes of an artificial waterbody is designated development if the artificial waterbody—

(a) has a maximum aggregate surface area of water of more than 0.5 hectares, and

(b) is located—

(i) in or within 40 metres of a natural waterbody or environmentally sensitive area of State significance, or

(ii) in or within 100 metres of a wetland, or

(iii) in an area of high watertable or acid sulfate, sodic or saline soils.

(2) Development for the purposes of an artificial waterbody is designated development if the artificial waterbody—

(a) has a maximum aggregate surface area of water of more than 20 hectares, or

(b) has a storage capacity of more than 800 megalitres, or

(c) will have more than 30,000 cubic metres of material removed from it per year.

(3) Subclauses (1) and (2) do not apply to an artificial waterbody located on relevant irrigation land.

(4) Development for the purposes of an artificial waterbody is designated development if the waterbody—

(a) is located on relevant irrigation land, and

(b) has a storage capacity of—

(i) 100 megalitres or more, if the waterbody is in an environmentally sensitive area of State significance, or

(ii) 800 megalitres or more.

(5) This clause does not apply to an artificial waterbody located on land to which *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* applies.

5 Aquaculture

(1) Development for the purposes of aquaculture is designated development if it involves supplemental feeding in a tank or artificial waterbody that—

(a) is located in an area of high watertable or acid sulfate soil, or

(b) has a total water storage area of more than 10 hectares, or

(c) has a total water volume of more than 400 megalitres.

(2) Development for the purposes of aquaculture is designated development if it involves supplemental feeding in a tank or artificial waterbody that—

(a) has a total water storage area of more than 2 hectares or total water volume of more than 40 megalitres, and

(b) is located on a floodplain or release effluent or sludge into a natural waterbody or wetland or into groundwater.

(3) Development for the purposes of aquaculture is designated development if it involves supplemental feeding in a natural waterbody, unless the development is a trial project that—

(a) operates for a maximum period of 2 years, and

(b) is approved by the Secretary of Regional NSW.

(4) Development for the purposes of aquaculture is designated development if it—

(a) involves farming of species not indigenous to New South Wales, and

(b) is located—

(i) in or within 500 metres of a natural waterbody or wetland, or

(ii) on a floodplain.

(5) Development for the purposes of aquaculture is designated development if it—

(a) involves the establishment of new areas for lease under the *Fisheries Management Act 1994* with a total area of more than 10 hectares, and

(b) in the consent authority's opinion, is likely to cause significant impacts—

(i) on the habitat value or the scenic value, or

(ii) on the amenity of the waterbody by obstructing or restricting navigation, fishing or recreational activities, or

(iii) because another lease is within 500 metres.

(6) Development for the purposes of aquaculture is designated development if it involves the establishment of new areas for lease under the *Fisheries Management Act 1994* with a total area of more than 50 hectares.

(7) This clause does not apply to—

(a) aquaculture development to which *State Environmental Planning Policy (Primary Production and Rural Development) 2019*, Part 5, Division 2 applies, or

(b) artificial waterbodies located on relevant irrigation land.

(8) In this clause—

aquaculture means the commercial breeding, hatching, rearing or cultivation of marine, estuarine or fresh water organisms, including aquatic plants or animals such as fin fish, crustaceans, molluscs or other aquatic invertebrates.

Note— *State Environmental Planning Policy (Primary Production and Rural Development) 2019*, clause 28 declares—

(a) Classes 1 and 2 aquaculture development are not designated development, and

(b) Class 3 aquaculture development is designated development.

6 Breweries and distilleries

(1) Development for the purposes of a brewery or distillery that produces alcohol or alcoholic products is designated development if the brewery or distillery has an intended production capacity of more than—

(a) 30 tonnes per day, or

(b) 10,000 tonnes per year.

(2) Development for the purposes of a brewery or distillery that produces alcohol or alcoholic products is designated development if the brewery or distillery—

(a) is located within 500 metres of a residential zone, and

(b) is likely, in the consent authority's opinion, to significantly affect the amenity of the neighbourhood because of odour, traffic or waste.

(3) Development for the purposes of a brewery or distillery that produces alcohol or alcoholic products is designated development if the brewery or distillery releases effluent or sludge—

(a) in or within 100 metres of a natural waterbody or wetland, or

(b) in an area of high watertable, highly permeable soils or acid sulfate, sodic or saline soils.

(4) Subclause (2) does not apply to artisan food and drink industries, within the meaning of the Standard Instrument.

7 Turf farms

Development for the purposes of a turf farm is designated development if the turf farm—

(a) is located—

(i) within 100 metres of a natural waterbody or wetland, or

(ii) in an area of high watertable or acid sulfate, sodic or saline soils, or

(iii) in a drinking water catchment, or

(iv) within 250 metres of another turf farm, and

(b) is likely to significantly affect the environment because of its location.

8 Feedlots

(1) Development for the purposes of a feedlot is designated development if the feedlot accommodates in a confinement area, and wholly or substantially rears or fattens on prepared or manufactured feed, more than—

(a) 1,000 head of cattle, or

(b) 4,000 sheep, or

(c) 5,000 animals of any kind, excluding poultry.

(2) This clause does not apply to a facility for drought or similar emergency relief.

9 Dairies

Development for the purposes of a dairy is designated development if the dairy accommodates more than 800 head of cattle for the purposes of milk production.

10 Poultry farms

(1) Development for the purposes of a poultry farm is designated development if the poultry farm—

(a) accommodates more than 250,000 birds, or

(b) is located within 500 metres of another poultry farm.

(2) Development for the purposes of a poultry farm is designated development if the poultry farm—

(a) accommodates more than 10,000 birds, and

(b) is located within—

(i) 100 metres of a natural waterbody or wetland, or

(ii) a drinking water catchment, or

(iii) 500 metres of a residential zone or 150 metres of a dwelling not associated with the development and, in the consent authority's opinion, having regard to topography and local meteorological conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, lights, traffic or waste.

11 Pig farms

(1) Development for the purposes of a pig farm is designated development if the pig farm accommodates more than 2,000 pigs or 200 breeding sows.

(2) Development for the purposes of a pig farm is designated development if the pig farm—

(a) accommodates more than 200 pigs or 20 breeding sows, and

(b) is located—

(i) within 100 metres of a natural waterbody or wetland, or

(ii) in an area of high watertable, highly permeable soils or acid sulfate, sodic or saline soils, or

(iii) on land that slopes at more than 6 degrees to the horizontal, or

(iv) in a drinking water catchment, or

(v) on a floodplain, or

(vi) within 5 kilometres of a residential zone and, in the consent authority's opinion, having regard to topography and local meteorological conditions, is likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, traffic or waste.

12 Commercial horse facilities

(1) Development for the purposes of a facility or confined area operated on a commercial basis for the keeping or breeding of horses is designated development if the facility or area accommodates more than 400 horses.

(2) This clause does not apply to a facility for drought or similar emergency relief.

13 Saleyards for cattle and other animals

Development for the purposes of a saleyard is designated development if the annual throughput, for the purposes of sale, auction or exchange or transportation by road, rail or ship, is more than—

(a) 50,000 head of cattle, or

(b) 200,000 animals of any type, including cattle.

14 Livestock processing facilities

(1) Development for the purposes of a livestock processing facility is designated development if the facility involves the slaughter of animals, including poultry, with an intended processing capacity of more than 750 tonnes per year of live weight.

(2) Development for the purposes of a livestock processing facility that manufactures products derived from the slaughter of animals is designated development.

(3) Subclause (2) includes the following facilities—

(a) a tannery or fellmongery with an intended production capacity of more than 2 tonnes per year of products,

(b) a rendering or fat extraction plant with an intended production capacity of more than 200 tonnes per year of tallow, fat or their derivatives or proteinaceous matter,

(c) a plant with an intended production capacity of more than 5,000 tonnes per year of products, including hides, adhesives, pet feed, gelatine, fertiliser or meat products.

(4) Development for the purposes of a livestock processing facility that scours, tops, carbonises or otherwise processes greasy wool or fleeces is designated development if the facility has an intended production capacity of more than 200 tonnes per year.

(5) Development for the purposes of a livestock processing facility is designated development if the facility is located—

(a) within 100 metres of a natural waterbody or wetland, or

(b) in an area of high watertable or highly permeable soils or acid sulfate, sodic or saline soils, or

(c) on land that slopes at more than 6 degrees to the horizontal, or

(d) in a drinking water catchment, or

(e) on a floodplain, or

(f) within 5 kilometres of a residential zone and, in the consent authority's opinion, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, lights, traffic or waste.

(6) In this clause—

livestock processing facility means a building or place at which the commercial production of products derived from the slaughter of animals or the processing of skins or wool of animals is carried out.

15 Aircraft facilities

(1) Development for the purposes of an aircraft facility for seaplanes or aeroplanes is designated development if the facility—

(a) causes a significant environmental impact or significantly increases the environmental impacts as a result of—

(i) the number of flight movements, including taking-off or landing, or

(ii) the maximum take-off weight of aircraft capable of using the facility, and

(b) is located so that the whole or part of a residential zone, school or hospital is—

(i) in an ANEF contour of 20 or greater according to the Australian Noise Exposure Forecast for the facility within the meaning of the *Airports Act 1996* of the Commonwealth, or

(ii) within 5 kilometres of the facility, if there is no Australian Noise Exposure Forecast for the facility.

(2) Development for the purposes of an aircraft facility for helicopters is designated development if the facility—

(a) has an intended use of more than 7 helicopter flight movements per week, including taking-off or landing, and

(b) is located within 1,000 metres of a dwelling not associated with the facility.

(3) Subclause (2) does not apply to a facility used exclusively for emergency aeromedical evacuation, retrieval or rescue.

(4) Development for the purposes of an aircraft facility is designated development if the development will result in more than 20 hectares of native vegetation being disturbed by clearing.

(5) Development for the purposes of an aircraft facility is designated development if the facility is located within 40 metres of—

(a) an environmentally sensitive area of State significance, or

(b) a natural waterbody.

(6) Subclause (5)(b) does not apply to an aircraft facility for seaplanes or helicopters.

(7) In this clause—

aircraft facility means a facility for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters and includes a terminal, a building for the parking, servicing or maintenance of aircraft, installations and movement areas.

16 Shipping facilities

Development for the purposes of a wharf or wharf-side facility is designated development if cargo is loaded onto or unloaded from vessels, or temporarily stored, at the wharf or facility at a rate of more than—

(a) for a wharf or facility handling goods classified in the ADG Code—
  (i) 150 tonnes per day, or,
  (ii) 5,000 tonnes per year, or

(b) otherwise—
  (i) 500 tonnes per day, or
  (ii) 50,000 tonnes per year.

17 Railway freight terminals

(1) Development for the purposes of a railway freight terminal is designated development if—
  (a) the terminal has more than 250 truck movements per day, or
  (b) the development will result in the clearing of more than 20 hectares of native vegetation.

(2) Development for the purposes of a railway freight terminal is designated development if the terminal is located within—
  (a) 40 metres of a natural water body, or
  (b) 40 metres of an environmentally sensitive area of State significance, or
  (c) 100 metres of a wetland.

(3) Development for the purposes of a railway freight terminal is designated development if the terminal—
  (a) is located within 500 metres of—
    (i) a residential zone, or
    (ii) a dwelling not associated with the terminal, and
  (b) is, in the consent authority's opinion, having regard to topography and local meteorological conditions, likely to significantly affect the amenity of the neighbourhood because of noise, odour, dust, lights, traffic or waste.

(4) In this clause—

railway freight terminal includes the following—
  (a) associated spur lines,
  (b) a freight handling facility,
  (c) a truck or container loading or unloading facility,
  (d) container storage,
  (e) a packaging or repackaging facility.

18 Marinas and related land and water shoreline facilities

(1) Development for the purposes of a marina or related facility is designated development if the marina or facility has an intended capacity of—
  (a) 15 or more vessels with a length of 20 metres or more, or

(b) 80 or more vessels of any length.

(2) Development for the purposes of a marina or related facility is designated development if —

(a) the marina or facility has an intended capacity of 30 or more vessels of any length, and

(b) the marina or facility—

(i) is located in non-tidal waters or within 100 metres of a wetland or aquatic reserve, or

(ii) requires the construction of a groyne or annual maintenance dredging, or

(iii) the ratio of car park spaces to vessels is less than 0.5:1.

(3) Development for the purposes of a boat repair or maintenance facility is designated development if the facility has an intended capacity of—

(a) one or more vessels with a length of 25 metres or more, or

(b) 5 or more vessels of any length at any one time.

(4) In this clause—

boat repair or maintenance facility means a facility at which vessels are repaired or maintained out of the water and includes slipways, hoists or other facilities.

related facility means a land or water shoreline facility that moors, parks or stores vessels, excluding rowing boats, dinghies or other small craft—

(a) at fixed or floating berths or freestanding moorings, or

(b) alongside jetties or pontoons, or

(c) within dry storage stacks or on cradles on hardstand areas.

19 Battery storage facilities

Development for the purposes of a battery storage facility is designated development if the facility supplies or is capable or supplying more than 30 megawatts of electrical power.

20 Electricity generating stations

(1) Development for the purposes of an electricity generating station is designated development if the station supplies or is capable of supplying—

(a) electrical power where—

(i) the associated water storage facilities inundate land identified as wilderness under the *Wilderness Act 1987*, or

(ii) the temperature of the water released from the generating station into a natural waterbody is more than 2 degrees centigrade from the ambient temperature of the receiving water, or

(b) more than 1 megawatt of hydroelectric power requiring a new dam, weir or inter-valley transfer of water, or

(c) more than 30 megawatts of electrical power from other energy sources, including coal, gas, wind, bio-material, hydroelectric stations on existing dams or co-generation, but excluding solar powered generators.

(2) Development for the purposes of an electricity generating station is designated development if the station—

(a) supplies or is capable of supplying more than 30 megawatts of electrical power from a solar powered generator, and

(b) is located on a floodplain.

(3) This clause does not apply to a power generation facility used exclusively for stand-by power purposes for less than 4 hours per week averaged over any continuous 3-month period.

(4) In this clause—

electricity generating station includes associated water storage, ash or waste management facilities.

21 Energy recovery facilities

(1) Development for the purposes of an energy recovery facility is designated development if the facility—

(a) processes more than 200 tonnes per year of waste, other than hazardous waste, restricted solid waste, liquid waste or special waste, or

(b) has on site at any time more than 200 kilograms of hazardous waste, restricted solid waste, liquid waste or special waste.

(2) Subclause (1) does not apply to—

(a) the processing of contaminated soil, or

(b) container reconditioning, or

(c) the recovery of gases classified in Class 2 under the ADG Code.

(3) For the purposes of this clause, 1 litre of waste is taken to weigh 1 kilogram.

(4) In this clause—

energy recovery facility means a building or place that—

(a) receives waste from on site or off site, and

(b) recovers energy from waste.

hazardous waste, ***liquid waste***, ***restricted solid waste*** and ***special waste*** have the same meaning as in the *Protection of the Environment (Operations) Act 1977*, Schedule 1.

22 Desalination plants

(1) Development for the purposes of a desalination plant is designated development if the plant has an intended processing capacity of more than 2,500 persons equivalent capacity or 750 kilolitres per day.

(2) Development for the purposes of a desalination plant is designated development if the plant—

(a) has an intended processing capacity of more than 20 persons equivalent capacity or 6 kilolitres per day, and

(b) is located—

(i) on a floodplain, or

(ii) in a coastal dune field, or

(iii) in a drinking water catchment, or

(iv) within 100 metres of a natural waterbody or wetland, or

(v) within 250 metres of a dwelling not associated with the development.

23 Bitumen pre-mix and hot-mix facilities

(1) Development for the purposes of a bitumen premix or hot-mix facility is designated development if the facility—

(a) has an intended production capacity of more than—
(i) 150 tonnes per day, or
(ii) 30,000 tonnes per year, or
(b) is located within—
(i) 100 metres of a natural waterbody or wetland, or
(ii) 250 metres of a residential zone, or
(iii) 250 metres of a dwelling not associated with the development.

(2) This clause does not apply to a bitumen plant located on or adjacent to a construction site that exclusively provides material to the development being carried out on the site—
(a) for a period of less than 12 months, or
(b) if the environmental impacts were previously assessed in an environmental impact statement prepared for the development.

(3) In this clause—
bitumen premix or hot-mix facility means a building or place at which crushed or ground rock is mixed with bituminous materials.

24 Cement works

(1) Development for the purposes of cement works is designated development if the works—
(a) have an intended processing capacity of more than—
(i) 150 tonnes per day, or
(ii) 30,000 tonnes per year, and
(b) burn, sinter or heat until molten calcareous, argillaceous or other materials or grind clinker or compound cement.

(2) Development for the purposes of cement works is designated development if the works have an intended combined handling capacity of bulk cement, fly ash, powdered lime or other dry cement product of more than—
(a) 150 tonnes per day, or
(b) 30,000 tonnes per year.

(3) Development for the purposes of cement works is designated development if the works are located within—
(a) 100 metres of a natural waterbody or wetland, or
(b) 250 metres of a residential zone, or
(c) 250 metres of a dwelling not associated with the development.

(4) In this clause—
cement works means works that manufacture portland or other special purpose cement or quicklime.

25 Ceramic and glass manufacturing

(1) Development for the purposes of a ceramic or glass manufacturing facility is designated development if the facility—
(a) has an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year, or
(b) is located within—
(i) 40 metres of a natural waterbody, or

(ii) 100 metres of a wetland, or
(iii) 250 metres of a residential zone, or
(iv) 250 metres of a dwelling not associated with the development.

(2) In this clause—

ceramic or glass manufacturing facility means a building or place at which bricks, tiles, pipes, pottery, ceramics, refractories or glass are manufactured using a firing process.

26 Chemical industrial facilities and works

(1) Development for the purposes of the following chemical industrial facilities or works is designated development—

(a) an agriculture fertiliser facility or works that manufactures inorganic plant fertilisers in quantities of more than 20,000 tonnes per year,

(b) a facility that—
(i) manufactures or reprocesses batteries, and
(ii) uses or recovers more than 30 tonnes of metal per year,

(c) a carbon black plant that manufactures more than 5,000 tonnes of carbon black per year,

(d) an explosive and pyrotechnic facility that manufactures explosives, including for industrial purposes, extractive industries and mining uses, ammunition, fireworks or fuel propellents,

(e) a facility that manufactures any of the following in quantities of more than 5,000 tonnes per year—
(i) paints or paint solvents,
(ii) pigments, dyes or printing inks,
(iii) industrial polishes,
(iv) adhesives.
(v) sealants,

(f) a petrochemical facility that manufactures petrochemicals or petrochemical products in quantities of more than 2,000 tonnes per year,

(g) a facility for pesticide, fungicide, herbicide, rodenticide, nematocide, miticide, fumigant or related products that—
(i) use or produce toxic substances, or
(ii) manufactures products in quantities of more than 2,000 tonnes per year, excluding simple blending,

(h) a facility for pharmaceutical or veterinary products that uses or produces toxic substances in quantities of more than 1 tonne per year,

(i) a plastics facility that—
(i) manufactures more than 2,000 tonnes per year of synthetic plastic resins, or
(ii) reprocesses more than 5,000 tonnes per year of plastics other than by a simple melting and reforming process,

(j) a rubber facility that—
(i) manufactures more than 2,000 tonnes per year of synthetic rubber, or
(ii) manufactures, retreads, recycles or processes, otherwise than by thermal treatment, more than 5,000 tonnes per year of rubber products, rubber tyres or waste tyres, or

(iii) dumps or stores, otherwise than in a building, more than 10 tonnes of waste tyres,

(k) a facility that manufactures soap or detergent, including domestic, institutional or industrial soap or detergent that produces—

(i) more than 100 tonnes per year of materials containing toxic substances, or

(ii) more than 5,000 tonnes per year of products, excluding simple blending.

(2) Development for the purposes of a chemical industrial facility or works not referred to in subclause (1) is designated development if the facility or works—

(a) manufacture, blend, recover or use toxic substances or substances classified as explosive or radioactive in the ADG Code, or

(b) manufacture or use more than 1,000 tonnes per year of substances classified in the ADG Code, but not as toxic, explosive or radioactive, or

(c) crush, grind or mill more than 10,000 tonnes per year of chemical substances.

(3) Development for the purposes of a chemical industrial facility or works is designated development if the facility or works are located—

(a) within 40 metres of a natural waterbody, or

(b) within 100 metres of a wetland, or

(c) in an area of high watertable or highly permeable soil, or

(d) in a drinking water catchment, or

(e) on a floodplain.

(4) This clause does not apply to—

(a) chemical industries or works where a chemical specified in the *Work Health and Safety Regulation 2017*, Schedule 11 is stored in a quantity below the placard quantity specified in that Schedule for the chemical, or

(b) development specifically referred to elsewhere in this Schedule.

(5) In this clause—

chemical industrial facility or works means a building or place at which any of the following are carried out—

(a) the commercial production of chemical substances,

(b) research into chemical substances.

27 Chemical storage facilities

(1) Development for the purposes of a chemical storage facility is designated development if the facility—

(a) stores or packages chemical substances in containers, bulk storage facilities, stockpiles or dumps, and

(b) has a total storage capacity of more than—

(i) 20 tonnes of pressurised gas, or

(ii) 200 tonnes of liquefied gases, or

(iii) 2,000 tonnes of chemical substances.

(2) Development for the purposes of a chemical storage facility is designated development if the facility is located—

(a) within 40 metres of a natural waterbody, or

(b) within 100 metres of a wetland, or

(c) in an area of high watertable or highly permeable soil, or

(d) in a drinking water catchment, or

(e) on a floodplain.

28 Concrete works

(1) Development for the purposes of concrete works is designated development if the works have an intended production capacity of more than—

(a) 150 tonnes per day, or

(b) 30,000 tonnes per year.

(2) Development for the purposes of concrete works is designated development if the works—

(a) have an intended production capacity of more than 500 tonnes per year, and

(b) are located within—

(i) 100 metres of a natural waterbody or wetland, or

(ii) 250 metres of a residential zone, or

(iii) 250 metres of a dwelling not associated with the development.

(3) This clause does not apply to concrete works located on or adjacent to a construction site exclusively providing material to the development carried out on the site—

(a) for a period of less than 12 months, or

(b) if the environmental impacts were previously assessed in an environmental impact statement prepared for the development.

(4) In this clause—

concrete works means works that produce pre-mixed concrete or concrete products.

29 Paper pulp industrial facilities

(1) Development for the purposes of a paper pulp industrial facility is designated development if the facility has an intended production capacity of more than—

(a) 30,000 tonnes per year, or

(b) 70,000 tonnes per year if—

(i) at least 90% of the raw material is recycled material, and

(ii) no bleaching or de-inking is undertaken.

(2) Development for the purposes of a paper pulp industrial facility is designated development if the facility releases effluent or sludge—

(a) in or within 100 metres of a natural waterbody or wetland, or

(b) in an area of high watertable or highly permeable soils, or

(c) in a drinking water catchment.

(3) In this clause—

paper pulp industrial facility means a building or place at which paper pulp or pulp products industries are carried out.

30 Wood or timber milling or processing works

(1) Development for the purposes of wood or timber milling or processing works is designated development if the works—

(a) have an intended processing capacity of more than 6,000 cubic metres per year of timber, and

(b) are located within—

(i) 500 metres of a dwelling not associated with the development, or

(ii) 40 metres of a natural waterbody, or

(iii) 100 metres of a wetland.

(2) Development for the purposes of wood or timber milling or processing works is designated development if the works—

(a) have an intended processing capacity of more than 6,000 cubic metres per year of timber, and

(b) burn waste, other than as a source of fuel.

(3) Development for the purposes of wood or timber milling or processing works is designated development if the works have an intended processing capacity of more than 50,000 cubic metres per year of timber.

(4) In this clause—

wood or timber milling or processing works means works that saw, machine, mill, chip, pulp or compress timber or wood, other than joineries, builders supply yards or home improvement centres.

31 Wood preservation works

(1) Development for the purposes of wood preservation works is designated development if the works—

(a) process more than 10,000 cubic metres per year of timber, or

(b) are located—

(i) in or within 250 metres of a natural waterbody, wetland or environmentally sensitive area of State significance, or

(ii) in an area of high watertable or highly permeable soils, or

(iii) on land that slopes at more than 6 degrees to the horizontal, or

(iv) in a drinking water catchment, or

(v) within 250 metres of a dwelling not associated with the development.

(2) In this clause—

wood preservation works means works that treat or preserve timber using chemical substances containing—

(a) copper, chromium, arsenic or creosote, or

(b) a substance classified in the ADG Code.

32 Crushing, grinding or separating works

(1) Development for the purposes of crushing, grinding or separating works is designated development if the works have the capacity to process more than—

(a) 150 tonnes per day, or

(b) 30,000 tonnes per year.

(2) Development for the purposes of crushing, grinding or separating works is designated development if the works are located within—

(a) 40 metres of a natural waterbody, or

(b) 100 metres of a wetland, or

(c) 250 metres of a residential zone, or

(d) 250 metres of a dwelling not associated with the development.

(3) This clause does not apply to development specifically referred to elsewhere in this Schedule.

(4) In this clause—

crushing, grinding or separating works means works that process the following materials by crushing, grinding or separating into different sizes—

(a) materials such as sand, gravel, rock or minerals,

(b) materials for recycling or reuse, such as slag, road base, concrete, bricks, tiles, bituminous material, metal or timber.

33 Contaminated groundwater treatment works

Development for the purposes of contaminated groundwater treatment works is designated development if the works have the capacity to treat more than 100 megalitres per year of contaminated water.

34 Contaminated soil treatment works

(1) Development for the purposes of contaminated soil treatment works is designated development if—

(a) the contaminated soil does not originate from the site on which the development is located, and

(b) the works are located—

(i) within 100 metres of a natural waterbody or wetland, or

(ii) in an area of high watertable or highly permeable soils, or

(iii) in a drinking water catchment, or

(iv) on land that slopes at more than 6 degrees to the horizontal, or

(v) on a floodplain, or

(vi) within 100 metres of a dwelling not associated with the development.

(2) Development for the purposes of contaminated soil treatment works is designated development if the works treat more than 1,000 cubic metres per year of contaminated soil that does not originate from the site on which the development is located.

(3) Development for the purposes of contaminated soil treatment works is designated development if—

(a) the contaminated soil originates exclusively from the site on which the development is located, and

(b) the works—

(i) incinerate more than 1,000 cubic metres per year of contaminated soil, or

(ii) treat, otherwise than by incineration, and store more than 30,000 cubic metres of contaminated soil, or

(iii) disturb more than an aggregate area of 3 hectares of contaminated soil.

(4) In this clause—

contaminated soil treatment works means works for on-site or off-site treatment of contaminated soil and includes works that incinerate or store contaminated soil but does not include works that excavate contaminated soil for treatment at another site.

35 Container reconditioning works

(1) Development for the purposes of container reconditioning works is designated development if the works handle—

(a) containers, including metal, plastic or glass drums, bottles, cylinders or intermediate bulk containers, previously used for the transport or storage of—

(i) toxic substances, or

(ii) substances classified as radioactive in the ADG Code, or

(b) more than 100 metal drums per day.

(2) Subclause (1)(b) does not apply if the works, including associated drum storage, are wholly contained within a building.

(3) In this clause—

container reconditioning works means works at which containers and metal drums are received from off site and reconditioned, recovered, treated or stored.

36 Mineral processing or metallurgical works

(1) Development for the purposes of mineral processing or metallurgical works is designated development if the works process into ore concentrates more than 150 tonnes per day of material.

(2) Development for the purposes of mineral processing or metallurgical works is designated development if the works smelt, process, coat, reprocess or recover more than 10,000 tonnes per year of ferrous or non-ferrous metals, alloys or ore concentrates.

(3) Development for the purposes of mineral processing or metallurgical works is designated development if the works—

(a) crush, grind, shred, sort or store more than 150 tonnes per day, or 30,000 tonnes per year, of scrap metal, and

(b) are not wholly contained within a building.

(4) Development for the purposes of mineral processing or metallurgical works is designated development if the works—

(a) crush, grind, shred, sort or store more than 50,000 tonnes per year of scrap metal, and

(b) are wholly contained within a building.

(5) Development for the purposes of mineral processing or metallurgical works is designated development if the works are located—

(a) within 40 metres of a natural waterbody, or

(b) within 100 metres of a wetland, or

(c) in an area of high watertable, or

(d) within 500 metres of a residential zone and, in the consent authority's opinion, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood because of noise, vibration, odour, fumes, smoke, soot, dust, traffic or waste, or

(e) so they are likely, in the consent authority's opinion, having regard to the topography and local meteorological conditions, to significantly affect the environment because of the use or production of toxic substances.

(6) In this clause—

mineral processing or metallurgical works means works at which any of the following is carried out—

(a) the commercial production or extraction of ores using methods including chemical, electrical, magnetic, gravity or physico-chemical methods,

(b) the commercial refinement, processing or reprocessing of metals involving smelting, casting, metal coating or metal products recovery.

37 Mines

(1) Development for the purposes of a mine is designated development if the mine—

(a) disturbs or will disturb a total surface area of more than 4 hectares of land, by

(i) clearing or excavating, or

(ii) constructing dams, ponds, drains, roads, railways or conveyors, or

(iii) storing or depositing overburden, ore, ore products or tailings, and

(b) is associated with a mining lease or mineral claim under the *Mining Act 1992*.

(2) Development for the purposes of a mine is designated development if the mine is located —

(a) in or within 40 metres of a natural waterbody, drinking water catchment or environmentally sensitive area of State significance, or

(b) in or within 100 metres of a wetland, or

(c) within 200 metres of a coastline, or

(d) if the mine involves blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or

(e) within 500 metres of another mining site that has operated during the past 5 years, or

(f) so the mine is likely, in the consent authority's opinion, having regard to topography and local meteorological conditions, to significantly affect the environment because of the use or production of toxic substances.

(3) In this clause—

mine means a mine that mines, processes or handles minerals.

mineral has the same meaning as in the *Mining Act 1992*, but does not include coal or limestone.

38 Coal mines

(1) Development for the purposes of an underground coal mine that mines, processes or handles coal is designated development.

(2) Development for the purposes of an open cut mine that mines, processes or handles coal is designated development if the mine—

(a) produces or processes more than 500 tonnes per day of coal or carbonaceous material, or

(b) disturbs or will disturb a total surface area of more than 4 hectares of land by—

(i) clearing or excavating, or

(ii) constructing dams, ponds, drains, roads, railways or conveyors, or

(iii) storing or depositing overburden, coal or carbonaceous material or tailings.

(3) Development for the purposes of a coal mine that mines, processes or handles coal is designated development if the mine is located—

(a) in or within 40 metres of—
(i) a natural waterbody, or
(ii) a drinking water catchment, or
(iii) an environmentally sensitive area of State significance, or
(b) in or within 100 metres of a wetland, or
(c) within 200 metres of a coastline, or
(d) on land that slopes at more than 18 degrees to the horizontal, or
(e) if the mine involves blasting, within—
(i) 1,000 metres of a residential zone, or
(ii) 500 metres of a dwelling not associated with the development.

39 Coal works

(1) Development for the purposes of coal works is designated development if the coal works—
(a) handle more than 500 tonnes per day of coal or carbonaceous material, or
(b) store more than 5,000 tonnes of coal, except if the storage is within a closed container or a closed building, or
(c) store or deposit more than 5,000 tonnes of carbonaceous reject material, or
(d) are located in or within 40 metres of—
(i) a natural waterbody, or
(ii) a drinking water catchment, or
(iii) an environmentally sensitive area of State significance, or
(e) are located in or within 100 metres of a wetland.

(2) In this clause—

coal works means works that store and handle coal or carbonaceous material at an existing coal mine or on a separate coal industry site, including a coal loader, conveyor, washery or reject dump.

40 Extractive industries

(1) Development for the purposes of an extractive industry facility is designated development if the facility obtains or processes for sale, or reuse, more than 30,000 cubic metres of extractive material per year.

(2) Development for the purposes of an extractive industry facility is designated development if the facility disturbs or will disturb a total surface area of more than 2 hectares of land by—
(a) clearing or excavating, or
(b) constructing dams, ponds, drains, roads or conveyors, or
(c) storing or depositing overburden, extractive material or tailings.

(3) Development for the purposes of an extractive industry facility is designated development if the facility is located—
(a) in or within 40 metres of a natural waterbody or environmentally sensitive area of State significance, or
(b) in or within 100 metres of a wetland, or
(c) within 200 metres of a coastline, or
(d) in an area of contaminated soil or acid sulfate soil, or

(e) on land that slopes at more than 18 degrees to the horizontal, or

(f) if the facility involves blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or

(g) within 500 metres of the site of another extractive industry facility that has operated during the last 5 years.

(4) This clause does not apply to the following—

(a) an extractive industry facility on land to which *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* applies,

(b) an extractive industry facility on land in the Western Division, within the meaning of the *Crown Land Management Act 2016*,

(c) maintenance dredging involving the removal of less than 1,000 cubic metres of alluvial material from oyster leases, sediment ponds or dams, artificial wetland or deltas formed at stormwater outlets, drains or the junction of creeks with rivers, if—

(i) the extracted material does not include contaminated soil or acid sulfate soil, and

(ii) dredging operations do not remove any seagrass or native vegetation, and

(iii) there has been no other dredging within 500 metres during the past 5 years,

(d) an extractive industry facility that—

(i) is operated in accordance with a plan of management that complies with subclause (5), and

(ii) involves the removal of less than 1,000 cubic metres of extractive material from a potential extraction site specified in the plan of management,

(e) the excavation of contaminated soil for treatment at another site,

(f) an artificial waterbody, contaminated soil treatment works, turf farm or waste management facility or works, specifically referred to elsewhere in this Schedule,

(g) an artificial waterbody located on relevant irrigation land,

(h) maintenance dredging of alluvial material from oyster leases and adjacent areas in Wallis Lake, if the dredging is undertaken in accordance with the document entitled *Protocol for Wallis Lake Oyster Lease Maintenance Dredging* approved by the Planning Secretary and published in the Gazette, as amended by the Planning Secretary from time to time by publication of an amended Protocol in the Gazette.

(5) A plan of management must be—

(a) prepared in accordance with guidelines approved by the Planning Secretary, and

(b) approved by a public authority, and

(c) adopted by the consent authority, and

(d) reviewed by the consent authority every 5 years.

(6) In this clause—

extractive industry facility means a building or place at which—

(a) extractive materials are obtained by methods including excavating, dredging, tunnelling or quarrying, or

(b) extractive materials are stored, stockpiled or processed by methods including washing, crushing, sawing or separating.

extractive material has the same meaning as in the Standard Instrument.

plan of management means a plan for a river, estuary, land or water that considers the cumulative impacts, bank and channel stability, flooding, ecology and hydrology of the area to which the plan applies.

41 Limestone mines and works

(1) Development for the purposes of limestone mines or works is designated development if the works disturb a total surface area of more than 2 hectares of land by—

(a) clearing or excavating, or

(b) constructing dams, ponds, drains, roads, railways or conveyors, or

(c) storing or depositing overburden, limestone, limestone products or tailings.

(2) Development for the purposes of a mine that mines or processes limestone is designated development if the mine is located—

(a) in or within 40 metres of—

(i) a natural waterbody, or

(ii) a drinking water catchment, or

(iii) an environmentally sensitive area of State significance, or

(b) in or within 100 metres of a wetland, or

(c) if the mine involves blasting, within—

(i) 1,000 metres of a residential zone, or

(ii) 500 metres of a dwelling not associated with the development, or

(d) within 500 metres of another mining site that has operated within the past 5 years.

(3) Development for the purposes of limestone works is designated development if the works—

(a) are not associated with a mine, and

(b) crush, screen, burn or hydrate more than 150 tonnes per day, or 30,000 tonnes per year, of material.

(4) Development for the purposes of limestone works is designated development if the works—

(a) are not associated with a mine, and

(b) are located within—

(i) 100 metres of a natural waterbody, or

(ii) 100 metres of a wetland, or

(iii) 250 metres of a residential zone, or

(iv) 250 metres of a dwelling not associated with the development.

42 Geosequestration facilities

(1) Development for the purposes of a facility for the injection and geological storage of greenhouse gases is designated development.

(2) Development for the purposes of drilling or operating a greenhouse gas geological exploration well is designated development.

(3) Subclause (2) does not include apply to a stratigraphic borehole or monitoring well.

43 Oil and petroleum waste storage works

(1) Development for the purposes of oil and petroleum waste storage works is designated development.

(2) In this clause—

oil and petroleum waste storage works means works that involve an activity requiring a licence under the *Protection of the Environment (Operations) Act 1997*, Schedule 1, clause 42.

44 Petroleum works

(1) Development for the purposes of petroleum works is designated development if the works involve an activity requiring a licence under the *Protection of the Environment (Operations) Act 1997*, Schedule 1, clause 31A.

(2) Development for the purposes of petroleum works is designated development if the works involve receiving waste oil from off site or processing waste oil, to the extent that the activity requires a licence under the *Protection of the Environment (Operations) Act 1997*, Schedule 1, clause 34 or 41.

(3) Development for the purposes of petroleum works is designated development if the works are located—

(a) on land in the area of a production licence under the *Petroleum (Offshore) Act 1982*, or

(b) on land included in a production lease under the *Petroleum (Onshore) Act 1991*, or

(c) within 40 metres of a natural waterbody, or

(d) within 100 metres of a wetland, or

(e) in an area of high watertable or highly permeable soils, or

(f) in a drinking water catchment, or

(g) on a floodplain.

45 Sewerage systems and sewer mining systems

(1) Development for the purposes of a sewerage system or works is designated development if the system or works have an intended processing capacity of more than 2,500 persons equivalent capacity or 750 kilolitres per day.

(2) Development for the purposes of a sewerage system or works is designated development if the system or works—

(a) have an intended processing capacity of more than 20 persons equivalent capacity or 6 kilolitres per day, and

(b) are located—

(i) on a floodplain, or

(ii) in a coastal dune field, or

(iii) in a drinking water catchment, or

(iv) within 100 metres of a natural waterbody or wetland, or

(v) within 250 metres of a dwelling not associated with the development.

(3) Subclauses (1) and (2) do not apply to development for the purposes of sewer mining systems or works.

(4) Development for the purposes of a sewerage system or works that incinerate sewage or sewage products is designated development.

(5) Development for the purposes of sewer mining systems or works is designated development if the system or works extract and treat more than 1,500 kilolitres per day of sewage.

(6) This clause does not apply to the pumping out of sewage from recreational vessels.

(7) In this clause—

sewer mining systems or works means systems or works for—

(a) the extraction of sewage from a sewerage system, before or after the sewage has been through the system's sewage treatment plant, and

(b) the treatment of the sewage using physical, chemical or biological processes to produce treated water that is suitable for its intended end use, and

(c) the distribution of the treated water for the intended end use, and

(d) the return of waste to a sewage system that is subject to a licence under the *Protection of the Environment Operations Act 1997*, Schedule 1.

46 Waste management facilities or works

(1) Development for the purposes of a waste management facility or works is designated development if—

(a) the facility or works dispose of solid or liquid waste by landfilling, thermal treatment, storing, placing or other means, and

(b) the waste —

(i) includes a substance classified in the ADG Code or medical, cytotoxic or quarantine waste, or

(ii) comprises more than 100,000 tonnes of clean fill in a way that, in the consent authority's opinion, is likely to cause significant impacts on drainage or flooding, or

Example— Clean fill includes soil, sand, gravel, bricks or other excavated or hard material.

(iii) comprises more than 1,000 tonnes per year of effluent or sludge, or

(iv) comprises more than 200 tonnes per year of other waste material.

(2) Development for the purposes of a waste management facility or works is designated development if—

(a) the facility or works sorts, consolidates or temporarily stores waste at a transfer station or material recycling facility for transfer to another site for final disposal, permanent storage, reprocessing, recycling, use or reuse, and

(b) the facility or works—

(i) handle substances classified in the ADG Code or medical, cytotoxic or quarantine waste, or

(ii) have an intended handling capacity of more than 10,000 tonnes per year of waste containing food or livestock, agricultural or food processing industries waste or similar substances, or

(iii) have an intended handling capacity of more than 30,000 tonnes per year of waste such as glass, plastic, paper, wood, metal, rubber or building demolition material.

(3) Development for the purposes of a waste management facility or works that purify, recover, reprocess or process more than 5,000 tonnes per year of solid or liquid organic materials is designated development.

(4) Development for the purposes of a waste management facility or works is designated development if the facility or works are located—

(a) in or within 100 metres of a natural waterbody, wetland, coastal dune field or environmentally sensitive area of State significance, or

(b) in an area of high watertable, highly permeable soils, acid sulfate, sodic or saline soils, or

(c) in a drinking water catchment, or

(d) in a catchment of an estuary where the entrance to the sea is intermittently open, or

(e) on a floodplain, or

(f) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development and, in the consent authority's opinion, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood because of noise, visual impacts, vermin, traffic or air pollution, including odour, smoke, fumes or dust.

(5) This clause does not apply to—

(a) development comprising or involving the use of effluent or sludge if—

(i) the dominant purpose is not waste disposal, and

(ii) the development is carried out in a location other than a location specified in subclause (4), or

(b) an artificial waterbody located on relevant irrigation land, or

(c) development comprising or involving waste management facilities or works specifically referred to elsewhere in this Schedule.

(6) In this clause—

waste management facility or works means a facility or works that—

(a) stores, treats, purifies or disposes of waste, or

(b) sorts, processes, recycles, recovers, uses or reuses material from waste.

47 Composting facilities or works

(1) Development for the purposes of a composting facility or works is designated development if the facility or works process more than 5,000 tonnes per year of organics.

(2) Development for the purposes of a composting facility or works is designated development if the facility or works are located—

(a) in or within 100 metres of—

(i) a natural waterbody, or

(ii) a wetland,

(iii) a coastal dune field,

(iv) an environmentally sensitive area of State significance, or

(b) in an area of high watertable, highly permeable soils, acid sulfate, sodic or saline soils, or

(c) in a drinking water catchment, or

(d) in a catchment of an estuary where the entrance to the sea is intermittently open, or

(e) on a floodplain, or

(f) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development and, in the consent authority's opinion,

having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood because of noise, visual impacts, vermin or traffic or air pollution, including odour, smoke, fumes or dust.

(3) In this clause—

composting facility or works means a facility or works involving the controlled aerobic or anaerobic biological conversion of organics into humus-like products by—

(a) methods such as bioconversion, biodigestion or vermiculture, or

(b) reducing the size of organics by shredding, chipping, mulching or grinding.

organics has the same meaning as in the *Protection of the Environment Operations Act 1997*, Schedule 1.

Part 3 Exceptions

48 Alterations or additions to existing or approved development

(1) Development involving alterations or additions to development, whether existing or approved, is not designated development if, in the consent authority's opinion, the alterations or additions do not significantly increase the environmental impacts of the existing or approved development.

(2) In forming its opinion, a consent authority must consider—

(a) the impact of the existing development, having regard to factors including—

(i) previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice, and

(ii) rehabilitation or restoration of any disturbed land, and

(iii) the number and nature of all past changes and their cumulative effects, and

(b) the likely impact of the proposed alterations or additions, having regard to factors including—

(i) the scale, character or nature of the proposal in relation to the development, and

(ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is, or will be, carried out and the surrounding locality, and

(iii) the degree to which the potential environmental impacts can be predicted with adequate certainty, and

(iv) the capacity of the receiving environment to accommodate changes in environmental impacts, and

(c) any proposals—

(i) to mitigate the environmental impacts and manage any residual risk, and

(ii) to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.

Note 1— The Act, section 8.8 does not extend to development that is not designated development under this clause even if it is State significant development.

Note 2— This clause does not apply in relation to an application for modification of a development consent.

49 Ancillary development

(1) Development of a kind specified in this Schedule, Part 2 is not designated development if—

(a) it is ancillary to other development, and

(b) it is not proposed to be carried out independently of that other development.

(2) This clause does not apply to development of a kind specified in this Schedule, clause 19 or 45(1).

50 Development in Parkes Activation Precinct

The following development is not designated development if it is carried out on land in the Regional Enterprise Zone in the Parkes Activation Precinct under *State Environmental Planning Policy (Activation Precincts) 2020*—

(a) development for the purposes of thermal electricity generating works, within the meaning of that Policy, Schedule 1, clause 6,

(b) development of a kind specified in this Schedule, clauses 4, 6, 8–14, 17, 25, 29, 32 or 47.

Schedule 3 Planning certificates

(cl 279 and Sch 4 2000 Reg)

clause 265

1 Names of relevant planning instruments and development control plans

(1) The name of each environmental planning instrument and development control plan that applies to the carrying out of development on the land.

(2) The name of each proposed environmental planning instrument and draft development control plan, which is or has been subject to community consultation or public exhibition under the Act, that will apply to the carrying out of development on the land.

(3) Subclause (2) does not apply in relation to a proposed environmental planning instrument or draft development control plan if—

(a) it has been more than 3 years since the end of the public exhibition period for the proposed instrument or draft plan, or

(b) for a proposed environmental planning instrument—the Planning Secretary has notified the council that the making of the proposed instrument has been deferred indefinitely or has not been approved.

(4) In this clause—

proposed environmental planning instrument means a draft environmental planning instrument and includes a planning proposal for a local environmental plan.

2 Zoning and land use under relevant planning instruments

The following matters for each environmental planning instrument or draft environmental planning instrument that includes the land in a zone, however described—

(a) the identity of the zone, whether by reference to—

(i) a name, such as "Residential Zone" or "Heritage Area", or

(ii) a number, such as "Zone No 2 (a)",

(b) the purposes for which development in the zone—

(i) may be carried out without development consent, and

(ii) may not be carried out except with development consent, and

(iii) is prohibited,

(c) whether any additional permitted uses apply to the land,

(d) whether any development standards applying to the land fix minimum land dimensions for the erection of a dwelling house on the land and, if so, the fixed minimum land dimensions,

(e) whether the land is in an area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*,

(f) whether the land is in a conservation area, however described,

(g) whether an item of environmental heritage, however described, is located on the land.

3 Contributions plans

(1) The name of each contributions plan under the Act, Division 7.1 applying to the land, including any draft contributions plan.

(2) If the land is in a special contributions area under the Act, Division 7.1, the name of the area.

4 Complying development

(1) If the land is land on which complying development may be carried out under each of the complying development codes under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* because of that Policy, clause 1.17A(1)(c)–(e), (2), (3) or (4), 1.18(1)(c3) or 1.19.

(2) If complying development may not be carried out on the land because of one of those clauses, the reasons why it may not be carried out under the clause.

(3) If the council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land, a statement that—

(a) a restriction applies to the land, but it may not apply to all of the land, and

(b) the council does not have sufficient information to ascertain the extent to which complying development may or may not be carried out on the land.

(4) If the complying development codes are varied, under that Policy, clause 1.12, in relation to the land.

5 Exempt development

(1) If the land is land on which exempt development may be carried out under each of the exempt development codes under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* because of that Policy, clause 1.16(1)(b1)–(d) or 1.16A.

(2) If exempt development may not be carried out on the land because of one of those clauses, the reasons why it may not be carried out under the clause.

(3) If the council does not have sufficient information to ascertain the extent to which exempt development may or may not be carried out on the land, a statement that—

(a) a restriction applies to the land, but it may not apply to all of the land, and

(b) the council does not have sufficient information to ascertain the extent to which exempt development may or may not be carried out on the land.

(4) If the exempt development codes are varied, under that Policy, clause 1.12, in relation to the land.

6 Affected building notices and building product rectification orders

(1) Whether the council is aware that—

(a) an affected building notice is in force in relation to the land, or

(b) a building product rectification order is in force in relation to the land that has not been fully complied with, or

(c) a notice of intention to make a building product rectification order given in relation to the land is outstanding.

(2) In this clause—

affected building notice has the same meaning as in the *Building Products (Safety) Act 2017*, Part 4.

building product rectification order has the same meaning as in the *Building Products (Safety) Act 2017*.

7 Land reserved for acquisition

Whether an environmental planning instrument or proposed environmental planning instrument referred to in clause 1 makes provision in relation to the acquisition of the land by an authority of the State, as referred to in the Act, section 3.15.

8 Road widening and road realignment

Whether the land is affected by road widening or road realignment under—

(a) the *Roads Act 1993*, Part 3, Division 2, or

(b) an environmental planning instrument, or

(c) a resolution of the council.

9 Flood related development controls

(1) If the land or part of the land is within the flood planning area and subject to flood related development controls.

(2) If the land or part of the land is between the flood planning area and the probable maximum flood and subject to flood related development controls.

(3) In this clause—

flood planning area has the same meaning as in the Floodplain Development Manual.

Floodplain Development Manual means the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

probable maximum flood has the same meaning as in the Floodplain Development Manual.

10 Council and other public authority policies on hazard risk restrictions

(1) Whether any of the land is affected by an adopted policy that restricts the development of the land because of the likelihood of land slip, bush fire, tidal inundation, subsidence, acid sulfate soils, contamination, aircraft noise, salinity, coastal hazards, sea level rise or another risk, other than flooding.

(2) In this clause—

adopted policy means a policy adopted—

(a) by the council, or

(b) by another public authority, if the public authority has notified the council that the policy will be included in a planning certificate issued by the council.

11 Bush fire prone land

(1) If any of the land is bush fire prone land, designated by the Commissioner of the NSW Rural Fire Service under the Act, section 10.3, a statement that all or some of the land is bush fire prone land.

(2) If none of the land is bush fire prone land, a statement to that effect.

12 Loose-fill asbestos insulation

If the land includes residential premises, within the meaning of the *Home Building Act 1989*, Part 8, Division 1A, that are listed on the Register kept under that Division, a statement to that effect.

13 Mine subsidence

Whether the land is declared to be a mine subsidence district, within the meaning of the *Coal Mine Subsidence Compensation Act 2017*.

14 Paper subdivision information

(1) The name of any development plan adopted by a relevant authority that—

(a) applies to the land, or

(b) is proposed to be subject to a 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 in this Regulation, Part 10 and the Act, Schedule 7.

15 Property vegetation plans

If the land is land in relation to which a property vegetation plan is approved and in force under the *Native Vegetation Act 2003*, Part 4, a statement to that effect, but only if the council has been notified of the existence of the plan by the person or body that approved the plan under that Act.

16 Biodiversity stewardship sites

If the land is a biodiversity stewardship site under a biodiversity stewardship agreement under the *Biodiversity Conservation Act 2016*, Part 5, a statement to that effect, but only if the council has been notified of the existence of the agreement by the Biodiversity Conservation Trust.

Note— Biodiversity stewardship agreements include biobanking agreements under the *Threatened Species Conservation Act 1995*, Part 7A that are taken to be biodiversity stewardship agreements under the *Biodiversity Conservation Act 2016*, Part 5.

17 Biodiversity certified land

If the land is biodiversity certified land under the *Biodiversity Conservation Act 2016*, Part 8, a statement to that effect.

Note— Biodiversity certified land includes land certified under the *Threatened Species Conservation Act 1995*, Part 7AA that is taken to be certified under the *Biodiversity Conservation Act 2016*, Part 8.

18 Orders under Trees (Disputes Between Neighbours) Act 2006

Whether an order has been made under the *Trees (Disputes Between Neighbours) Act 2006* to carry out work in relation to a tree on the land, but only if the council has been notified of the order.

19 Annual charges under Local Government Act 1993 for coastal protection services that relate to existing coastal protection works

(1) If the *Coastal Management Act 2016* applies to the council, whether the owner, or a previous owner, of the land has given written consent to the land being subject to annual charges under the *Local Government Act 1993*, section 496B, for coastal protection services that relate to existing coastal protection works.

(2) In this clause—

existing coastal protection works has the same meaning as in the *Local Government Act 1993*, section 553B.

Note— Existing coastal protection works are works to reduce the impact of coastal hazards on land, such as seawalls, revetments, groynes and beach nourishment, that existed before 1.1.2011.

20 State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

Whether under *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* the land is—

(a) in an ANEF or ANEC contour of 20 or greater, as referred to in that Policy, clause 19, or

(b) shown on the Lighting Intensity and Wind Shear Map, or

(c) shown on the Obstacle Limitation Surface Map, or

(d) in the "public safety area" on the Public Safety Area Map, or

(e) in the "3 kilometre wildlife buffer zone" or the "13 kilometre wildlife buffer zone" on the Wildlife Buffer Zone Map.

Schedule 4 Fees

Part 13

Part 1 Adjustment of fees for inflation

1 Calculation of fee units

(1) For the purposes of this Schedule, a ***fee unit*** is—

(a) in the financial years ending on 30 June 2022 and 30 June 2023—$100, and

(b) in each subsequent financial year—the amount calculated as follows—

$100 x A/B

where—

A is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

B is the CPI number for the March quarter of 2023.

(2) The amount of a fee unit must be rounded to the nearest cent and an amount of 0.5 cent must be rounded down.

(3) The amount of a fee calculated by reference to a fee unit must be rounded to the nearest dollar and an amount of 50 cents must be rounded down.

(4) If the amount of a fee unit calculated for a financial year is less than the amount that applied for the previous financial year, the amount for the previous financial year applies instead.

(5) As soon as practicable after the CPI number for the March quarter is first published by the Australian Bureau of Statistics, the Planning Secretary must—

(a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of the amount can be published on the NSW legislation website, and

(b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.

(6) This clause operates to change an amount of a fee that is calculated by reference to a fee unit and the change is not dependent on the notification or other notice required by this clause.

(7) This clause does not apply to a fee specified in a dollar amount.

(8) In this clause—

CPI number means the Consumer Price Index in the latest published series of the index.

financial year means a period of 12 months commencing on 1 July.

Part 2 Fees for development applications—other than State significant development

Item	Matter for which fee is payable	Maximum fee
2.1	Development application for development, other than a development application referred to in item 2.2 or 2.3, involving the erection of a building, the carrying out of a work or the demolition of a work or building with an estimated cost of development—	
	Up to $5,000	1.29 fee units
	$5,001–$50,000—	
	(a) base fee, plus	1.98 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $5,000	$3.00
	$50,001–$250,000—	
	(a) base fee, plus	4.12 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $50,000	$3.64
	$250,001–$500,000—	
	(a) base fee, plus	13.56 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $250,000	$2.34
	$500,001–$1 million—	
	(a) base fee, plus	20.41 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $500,000	$1.64
	$1,000,001–$10 million—	
	(a) base fee, plus	30.58 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $1 million	$1.44
	More than $10 million—	
	(a) base fee, plus	185.65 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $10 million	$1.19
2.2	Development application for development for the purposes of one or more advertisements, but only if the fee under this item exceeds the fee that would be payable under item 2.1—	
	(a) one advertisement, plus	3.33 fee units
	(b) for each additional advertisement	$93.00
2.3	Development application for development involving the erection of a dwelling house with an estimated cost of $100,000 or less	5.32 fee units
2.4	Development application involving subdivision, other than strata subdivision, involving the opening of a public road—	
	(a) base fee, plus	7.77 fee units
	(b) for each additional lot created by subdivision	$65.00

Item	Matter for which fee is payable	Maximum fee
2.5	Development application involving subdivision, other than strata subdivision, not involving the opening of a public road—	
	(a) base fee, plus	3.86 fee units
	(b) for each additional lot created by subdivision	$53.00
2.6	Development application involving strata subdivision—	
	(a) base fee, plus	3.86 fee units
	(b) for each additional lot created by subdivision	$65.00
2.7	Development application for development not involving the erection of a building, the carrying out of a work, the subdivision of land or the demolition of a work or building	3.33 fee units

Part 3 Additional fees for development applications—other than State significant development

Item	Matter for which fee is payable	Maximum fee
3.1	Additional fee for development application for integrated development—	
	(a) fee payable to consent authority	1.64 fee units
	(b) fee payable to approval body	3.74 fee units
3.2	Additional fee for development application for development requiring concurrence, other than if concurrence is assumed under clause 52—	
	(a) fee payable to consent authority	1.64 fee units
	(b) fee payable to concurrence authority	3.74 fee units
3.3	Additional fee for development application for designated development	10.76 fee units
3.4	Additional fee for development application that is referred to design review panel for advice	35.08 fee units
3.5	Giving of notice for designated development	25.96 fee units
3.6	Giving of notice for nominated integrated development, threatened species development or Class 1 aquaculture development	12.92 fee units
3.7	Giving of notice for prohibited development	12.92 fee units
3.8	Giving of notice for other development for which a community participation plan requires notice to be given	12.92 fee units

Part 4 Fees for applications for State significant development and approval of State significant infrastructure

2 Definitions

In this Part—

application means a development application for State significant development or an application for approval of State significant infrastructure.

minor subdivision means subdivision for the purposes only of one or more of the following—

(a) widening a public road,

(b) making an adjustment to a boundary between lots that does not create a greater number of lots,

(c) a minor realignment of boundaries that does not create additional lots or the opportunity for additional dwellings,

(d) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,

(e) rectifying an encroachment on a lot,

(f) creating a public reserve,

(g) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public conveniences.

moored vessel means a vessel that can be moored, berthed or stored—

(a) at fixed or floating berths or freestanding moorings, or

(b) alongside jetties or pontoons, or

(c) in dry storage stacks or on cradles in hardstand areas.

vessel does not include a dinghy or other small craft.

Item	Matter for which fee is payable	Maximum fee
4.1	Application involving the erection of a building, the carrying out of a work or the demolition of a work or building, other than in relation to a marina or extractive industry referred to in item 4.2 or 4.3, with an estimated cost of development of—	
	Up to $5,000	8.77 fee units
	$5,001–$50,000—	
	(a) base fee, plus	8.77 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $5,000	$23.33
	$50,001–$100,000—	
	(a) base fee, plus	21.05 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $50,000	$70.00
	$100,001–$200,000—	
	(a) base fee, plus	61.98 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $100,000	$4.50
	$200,001–$500,000—	
	(a) base fee, plus	67.25 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $200,000	$5.83
	$500,001–$1 million—	
	(a) base fee, plus	87.71 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $500,000	$5.00

Item	Matter for which fee is payable	Maximum fee
	$1,000,001–$2 million—	
	(a) base fee, plus	116.95 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $1 million	$1.00
	$2,000,001–$3 million—	
	(a) base fee, plus	128.64 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $2 million	$0.50
	$3,000,001–$4 million	
	(a) base fee, plus	134.49 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $3 million	$0.70
	$4,000,001–$5 million	
	(a) base fee, plus	142.68 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $4 million	$0.80
	$5,000,001–$8 million	
	(a) base fee, plus	152.03 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $5 million	$1.00
	$8,000,001–$9 million	
	(a) base fee, plus	187.11 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $8 million	$1.50
	$9,000,001–$10 million	
	(a) base fee, plus	204.66 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $9 million	$2.50
	$10,000,001–$50 million	
	(a) base fee, plus	233.90 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $10 million	$1.00
	$50,000,001–$100 million	
	(a) base fee, plus	701.69 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $50 million	$0.60
	$100,000,001–$200 million	
	(a) base fee, plus	1052.53 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $100 million	$0.50

Item	Matter for which fee is payable		Maximum fee
	$200,000,001–$300 million		
	(a)	base fee, plus	1,637.27 fee units
	(b)	for each $1,000, or part $1,000, by which estimated cost exceeds $200 million	$0.35
	$300,000,001–$400 million		
	(a)	base fee, plus	2,046.59 fee units
	(b)	for each $1,000, or part $1,000, by which estimated cost exceeds $300 million	$0.81
	More than $400 million		
	(a)	base fee, plus	2,993.86 fee units
	(b)	for each $1,000, or part $1,000, by which estimated cost exceeds $400 million	$0.64
4.2	Application involving the erection of a building or the carrying out of a work for the purposes of a marina—		
	(a)	base fee, plus	66.19 fee units
	(b)	for each moored vessel or, if the development involves an extension of a marina, for each additional vessel that can be moored as a result of the extension	$565.00
4.3	Application involving an extractive industry, other than mining—		
	(a)	base fee, plus	66.19 fee units
	(b)	for each tonne of material to be extracted annually, determined by Planning Secretary by reference to a genuine estimate of average annual weight of material to be extracted, plus	$0.06
	(c)	an additional fee if the application involves the erection of a building, being the maximum fee calculated in accordance with this Regulation for the erection of a building	
4.4	Application involving minor subdivision		9.94 fee units
4.5	Application involving strata subdivision		9.94 fee units
4.6	Application involving other subdivision—		
	(a)	base fee, plus	66.19 fee units
	(b)	for each hectare, or part hectare, of land being subdivided	$340.00 The maximum fee payable is 397.62 fee units, including the base fee and additional fee

Part 5 Additional fees for applications for State significant development and approval of State significant infrastructure

Item	Matter for which fee is payable	Maximum fee
5.1	Application for consideration of planning proposal under the Act, section 4.38(5) in relation to a development application for State significant development	
	(a) base fee, plus	264.89 fee units
	(b) for each hectare, or part hectare, of area of development site	$1,130.00
5.2	Additional fee for application for approval of critical State significant infrastructure	584.74 fee units
5.3	Making an environmental impact statement publicly available in relation to an application	33.10 fee units
5.4	Modification application for State significant development—	
	(a) under the Act, section 4.55(1)	9.94 fee units
	(b) under the Act, section 4.55(1A)	58.47 fee units
5.5	Modification request for State significant infrastructure—	
	(a) involving a minor matter, such as a minor error, misdescription or miscalculation	9.94 fee units
	(b) involving minor environmental assessment	58.47 fee units
5.6	Modification application for State significant development or modification request for State significant infrastructure other than item 5.4 or 5.5	Greater of— (a) 50% fee paid for application for request for development or infrastructure proposed to be modified, or (b) 58.47 fee units
5.7	Public notice of modification application for State significant development or modification request for State significant infrastructure, other than public notice on the NSW planning portal	33.10 fee units
5.8	Submitting modification application under the Act, section 4.55(1A) or (2) for State significant development or a modification request for State significant infrastructure on the NSW planning portal	0.40 fee units

Part 6 Fees for modification of development consents—other than State significant development

Item	Matter for which fee is payable	Maximum fee
6.1	Modification application under the Act, section 4.55(1)	0.83 fee units

Item	Matter for which fee is payable	Maximum fee
6.2	Modification application— (a) under the Act, section 4.55(1A), or (b) under the Act, section 4.56(1) that involves, in the consent authority's opinion, minimal environmental impact	Lesser of— (a) 7.54 fee units, or (b) 50% fee for original application
6.3	Modification application under the Act, section 4.55(2) or 4.56(1) that does not, in the consent authority's opinion, involve minimal environmental impact, if the fee for the original development application was— (a) less than 1 fee unit, or (b) 1 fee unit or more and the original development application did not involve the erection of a building, the carrying out of a work or the demolition of a work or building	50% fee for original application
6.4	Modification application under the Act, section 4.55(2) or 4.56(1) that does not, in the consent authority's opinion, involve minimal environmental impact, if— (a) the fee for the original development application was 1 fee unit or more, and (b) the original development application involved the erection of a dwelling house with an estimated cost of $100,000 or less	2.22 fee units
6.5	Modification application under the Act, section 4.55(2) or 4.56(1) that does not, in the consent authority's opinion, involve minimal environmental impact, if the fee for the original application was 1 fee unit or more and the application relates to an original development application, other than an original development application specified in item 6.3 or 6.4, with an estimated cost of development of—	
	Up to $5,000	0.64 fee units
	$5,001–$250,000—	
	(a) base fee, plus	0.99 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $5,000	$1.50
	$250,001–$500,000—	
	(a) base fee, plus	5.85 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $250,000	$0.85
	$500,001–$1 million—	
	(a) base fee, plus	8.33 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $500,000	$0.50
	$1,000,001–$10 million—	
	(a) base fee, plus	11.54 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $1 million	$0.40
	More than $10 million—	
	(a) base fee, plus	55.40 fee units

Item	Matter for which fee is payable	Maximum fee
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $10 million	$0.27
6.6	Additional fee for modification application if notice of application is required to be given under the Act, section 4.55(2) or 4.56(1)	7.78 fee units
6.7	Additional fee for modification application that is accompanied by statement of qualified designer	8.89 fee units
6.8	Additional fee for modification application that is referred to design review panel for advice	35.08 fee units
6.9	Submitting modification application under the Act, section 4.55(1A) or (2) on the NSW planning portal	0.40 fee units

Part 7 Fees for reviews and appeals

Item	Matter for which fee is payable	Maximum fee
7.1	Application for review under the Act, section 8.3 that relates to a development application not involving the erection of a building, the carrying out of a work or the demolition of a work or building	50% fee for original development application
7.2	Application for review under the Act, section 8.3 that relates to a development application involving the erection of a dwelling house with an estimated cost of $100,000 or less	2.22 fee units
7.3	Application for review under the Act, section 8.3 that relates to a development application, not referred to in item 7.1 and 7.2 for development with an estimated cost of—	
	Up to $5,000	0.64 fee units
	$5,001–$250,000—	
	(a) base fee, plus	1.00 fee unit
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $5,000	$1.50
	$250,001–$500,000—	
	(a) base fee, plus	5.85 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $250,000	$0.85
	$500,001–$1 million—	
	(a) base fee, plus	8.33 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $500,000	$0.50
	$1,000,001–$10 million—	
	(a) base fee, plus	11.54 fee units
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $1 million	$0.40
	More than $10 million—	
	(a) base fee, plus	55.40 fee units

Item	Matter for which fee is payable	Maximum fee
	(b) for each $1,000, or part $1,000, by which estimated cost exceeds $10 million	$0.27
7.4	Application for review of decision to reject and not determine a development application under the Act, section 8.2(1)(c) if the estimated cost of development is—	
	(a) less than $100,000	0.64 fee units
	(b) $100,000–$1 million	1.75 fee units
	(c) more than $1 million	2.92 fee units
7.5	Appeal against determination of modification application under the Act, section 8.9	50% fee that was payable for the application the subject of appeal
7.6	Submitting application for review of a determination under the Act, section 8.3 on the NSW planning portal	0.05 fee units
7.7	Notice of application for review of a determination under the Act, section 8.3	7.25 fee units

Part 8 Fees for site compatibility certificates and site verification certificates under SEPPs

Item	Matter for which fee is payable	Maximum fee
8.1	Application for site compatibility certificate (affordable rental housing) under *State Environmental Planning Policy (Affordable Rental Housing) 2009*—	
	(a) base fee, plus	3.10 fee units
	(b) for each dwelling	$42.00 The maximum fee payable is 6.26 fee units, including the base fee and additional fee
8.2	Application for site compatibility certificate (infrastructure) under *State Environmental Planning Policy (Infrastructure) 2007* or site compatibility certificate (schools or TAFE establishments) under *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*	
	(a) base fee, plus	3.10 fee units
	(b) for each hectare, or part hectare, of area of land	$265.00 The maximum fee payable is 6.26 fee units, including the base fee and additional fee
8.3	Application for site compatibility certificate (seniors housing) under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*—	
	(a) for development for the purposes of a residential care facility—	

Item	Matter for which fee is payable	Maximum fee
	(i) base fee, plus	3.28 fee units
	(ii) for each bed in proposed facility	$45.00 The maximum fee payable is 6.26 fee units, including the base fee and additional fee
	(b) for other development—	
	(i) base fee, plus	3.28 fee units
	(ii) for each dwelling	$45.00 The maximum fee payable is 6.26 fee units, including the base fee and additional fee
8.4	Application for site verification certificate under *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, Part 4AA	43.75 fee units
8.5	Lodging application for site compatibility certificate on the NSW planning portal	0.40 fee units

Part 9 Other fees

Item	Matter for which fee is payable	Maximum fee
9.1	Consideration of request for the Minister or Planning Secretary to refer matter to the Independent Planning Commission or a Sydney district or regional planning panel under clause 242(1)	57.46 fee units
9.2	Referral of matter by the Minister or Planning Secretary to the Independent Planning Commission or a Sydney district or regional planning panel under clause 242(2)	172.38 fee units
9.3	Lodging a complying development certificate on the NSW planning portal	0.36 fee units
9.4	Submitting application for construction certificate, subdivision works certificate, occupation certificate, subdivision certificate, building information certificate or complying development certificate on the NSW planning portal	0.40 fee units
9.5	Payment of monetary contribution or levy under the Act, Division 7.1 on the NSW planning portal	0.05 fee units
9.6	Lodging planning agreement on the NSW planning portal	0.05 fee units
9.7	Application for planning certificate under the Act, section 10.7(1)	0.62 fee units
9.8	Additional fee if planning certificate includes advice under the Act, section 10.7(5)	0.94 fee units
9.9	Provision of certified copy of a document, map or plan under the Act, section 10.8(2)	0.62 fee units
9.10	Public hearing by Independent Planning Commission under the Act, section 2.9(1)(d)—	
	(a) base fee, plus	661.93 fee units

Item	Matter for which fee is payable	Maximum fee
	(b) additional fee for estimated costs of hearing	$66,192.50

Schedule 5 Penalty notice offences

1 Application of Schedule

(cl 284 and Sch 5 2000 Reg)

(1) For the purposes of the Act, section 9.58—

(a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and

(b) the amount payable for the penalty notice is the amount specified opposite the provision.

(2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—

(a) that limited kind of offence, or

(b) an offence committed in those limited circumstances.

2 Authorised persons who may serve penalty notices

(cl 284(3)–(5) 2000 Reg)

(1) The following persons are declared to be authorised persons for the purposes of the Act, section 9.58—

(a) a person generally or specifically authorised by the Minister,

(b) a person, including a person employed in the Department, generally or specifically authorised by the Planning Secretary,

(c) a person, including an employee of a council, generally or specifically authorised by a council,

(d) a police officer.

(2) An authorised fire officer is declared to be an authorised person for the purposes of the Act, section 9.58 for an offence under the Act, section 9.37 in relation to a contravention of a fire safety order under the Act, Schedule 5, Part 2 if the fire safety order was given by an authorised fire officer.

(3) Despite subclause (1), only the persons referred to in subclause (1)(a) and (b) are declared to be authorised persons for the following offences—

(a) an offence under the Act, section 5.14(1) or (2), 6.5(5) or 10.4(11),

(b) an offence under this Regulation.

Column 1		Column 2	Column 3
Provision		**Penalty for an individual**	**Penalty for a corporation**
Offences under the Act			
Section 4.2(1)—			
(a)	for development involving a class 1a or class 10 building	$1,500	$3,000
(b)	for development that, at the time of the alleged offence, is designated development or State significant development that is not a class 1a or class 10 building—		
	(i) for a penalty notice served by a person referred to in this Schedule, clause 2(1)(c) or (d)	$3,000	$6,000

Column 1 Provision	Column 2 Penalty for an individual	Column 3 Penalty for a corporation
(ii) otherwise	$7,500	$15,000
(c) for a contravention of *State Environmental Planning Policy No 64—Advertising and Signage*, clause 27A(2)	$1,500	$3,000
(d) otherwise	$3,000	$6,000
Section 4.3—		
(a) for a contravention of *State Environmental Planning Policy No 64—Advertising and Signage*, clause 27A(1)	$1,500	$3,000
(b) otherwise	$3,000	$6,000
Section 5.14(1) and (2)	$7,500	$15,000
Section 6.3		
(a) for a work or activity involving a class 1a or class 10 building	$1,500	$3,000
(b) otherwise	$3,000	$6,000
Section 6.5(5)	$3,000	$6,000
Section 6.6(3)		
(a) for building work involving a class 1a or class 10 building	$1,500	$3,000
(b) otherwise	$3,000	$6,000
Section 6.12(3)	$1,500	$3,000
Section 9.25(1)	$3,000	$6,000
Section 9.37 for failure to comply with development control order, except an order referred to in the Act, Schedule 5, Part 1, item 6, 10, 12 or 13	$3,000	$6,000
Section 9.42(3)	$3,000	$6,000
Section 10.4(11)	$1,500	$3,000
Section 10.6(1)	$1,500	$3,000
Offences under this Regulation		
Clause 122(6) for non-compliance with clause 122(1) or (2)(b)	$1,500	$3,000
Clause 122(6) for non-compliance with clause 122(4)	$3,000	$6,000
Clause 123(4)	$1,500	$3,000
Clause 127(3) and (4)	$1,500	$3,000

Schedule 6 Amendment of Environmental Planning and Assessment Regulation 2021 commencing on 1 July 2022

[1] Clause 188 Information about planning agreements

Omit "make the following publicly available free of charge during the authority's ordinary office hours" from clause 188(2).

Insert instead "publish the following on the NSW planning portal and the planning authority's website".

[2] Clause 188(2)(d)

Insert after clause 188(2)(c)—

(d) records for each financial year that show—

(i) the monetary amounts received by the planning authority under the relevant planning agreements, and

(ii) the value of works contributed under the relevant planning agreements, including assets provided to, or held by, the planning authority in relation to the works, and

(iii) the value of land contributed under the relevant planning agreements.

[3] Clause 198 Councils must keep contributions register

Omit clause 198(2)(a) and (b). Insert instead—

(a) details of each development consent subject to a development contribution condition or development levy condition, including the following—

(i) the development application to which the development consent relates,

(ii) the relevant consent authority,

(iii) the date on which the development consent was granted,

(b) the nature and extent of the development contribution or development levy required by the condition for each public amenity or public service, including the following—

(i) the purpose for which the contribution or levy was received,

(ii) the value and location of any land dedicated or material public benefit provided,

(iii) the total contribution or levy payable,

(iv) the total contribution or levy received,

[4] Clause 199 Councils must keep accounting records for development contributions and development levies

Insert after clause 199(1)—

(1A) The accounting records for a contributions plan must identify the following—

(a) all contributions received by the council under the plan,

(b) the monetary amount or value of each contribution,

(c) whether the contributions were in the form of—

(i) money, or

(ii) land, or

(iii) a material public benefit, other than money or land, or

(iv) a combination of the things in subparagraphs (i)–(iii).

[5] Clause 199(2)(a)

Omit clause 199(2)(a) and (b). Insert instead—

(a) all development contributions or development levies received under the plan, by reference to the various kinds of public amenities and public services for which they have been received and for which expenditure is authorised by the plan,

Example— Public amenities and public services include open space, roads and traffic facilities, community facilities and drainage and stormwater management.

[6] Clause 199(3)(a1)

Insert after clause 199(3)(a)—

(a1) the value of land and material public benefits, other than land or money, contributed,

[7] Clause 199A

Insert after clause 199—

199A Matters to be included in annual reports of councils

(1) A council must disclose, in its annual report, how development contributions and development levies have been used or expended under each contributions plan.

(2) The annual report must contain the following details for each project for which the contributions or levies have been used or expended—

(a) the project identification number and description,

(b) the kind of public amenity or public service to which the project relates,

(c) the amount of monetary contributions or levies used or expended on the project,

(d) the percentage of the cost of the project funded by contributions or levies,

(e) the amounts expended that have been temporarily borrowed from money to be expended for another purpose under the same or another contributions plan,

(f) the value of the following used for the project—

(i) land,

(ii) material public benefit other than money or land,

(g) whether the project is complete.

(3) The annual report must also contain—

(a) the total value of all contributions and levies received during the period covered by the annual report, and

(b) the total value of all contributions and levies expended during the period covered by the annual report.

(4) The information required to be included in the annual report must also be published on the NSW planning portal.

[8] Clause 201 Councils must keep certain records publicly available

Omit "make the following documents available for inspection" from clause 201(1).

Insert instead "publish the following documents on the NSW planning portal and the council's website".

[9] Clause 201(2)

Omit the subclause.

Dictionary

clause 3

accredited practitioner means the holder of an accreditation under the *Building and Development Certifiers Act 2018* that authorises the holder to exercise the functions of an accredited practitioner.

accredited practitioner (fire safety) means an accredited practitioner whose class of accreditation authorises the practitioner to exercise the functions of an accredited practitioner (fire safety) who is acting in relation to matters to which the accreditation applies.

Apartment Design Guide has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

approval body has the same meaning as in the Act, section 4.45.

approved form means a form approved by the Planning Secretary and available on the NSW planning portal.

assessment period—see Part 4, Division 4.

authorised network operator means an authorised network operator under the *Electricity Network Assets (Authorised Transactions) Act 2015*.

BASIX building means a building that contains one or more dwellings, but does not include the following within the meaning of the Standard Instrument—

(a) hotel or motel accommodation,

(b) a boarding house that—

  (i) accommodates more than 12 lodgers, or

  (ii) has a gross floor area exceeding 300 square metres,

(c) seniors housing,

(d) group homes,

(e) hostels.

BASIX certificate means a certificate issued by the Planning Secretary under the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

BASIX development means the following development if it is not BASIX excluded development—

(a) development that involves the erection, but not the relocation, of a BASIX building,

(b) development that involves a change of building use by which a building becomes a BASIX building,

(c) development that involves the alteration, enlargement or extension of a BASIX building, if the estimated construction cost of the development is $50,000 or more,

(d) development for the purposes of a swimming pool or spa, or combination of swimming pools and spas, that—

  (i) services 1 dwelling only, and

  (ii) has a capacity, or combined capacity, of 40,000 litres or more.

BASIX excluded development means the following development—

(a) development for the purposes of a garage, storeroom, carport, gazebo, verandah or awning,

(b) alterations, enlargements or extensions to a building listed on the State Heritage Register under the *Heritage Act 1977*,

(c) alterations, enlargements or extensions that result in a space that cannot be fully enclosed, other than a space that can be fully enclosed but for a vent needed for the safe operation of a gas appliance,

Example— A verandah that is open or enclosed by a screen, mesh or other material that permits the free and uncontrolled flow of air.

(d) alterations, enlargements or extensions declared by the Planning Secretary, by order published in the Gazette, to be BASIX excluded development.

BASIX optional development means the following development if it is not BASIX excluded development—

(a) development that involves the alteration, enlargement or extension of a BASIX building, if the estimated construction cost of the development is less than $50,000,

(b) development for the purposes of a swimming pool or spa, or combination of swimming pools and spas, that—

(i) services 1 dwelling only, and

(ii) has a capacity, or combined capacity, of less than 40,000 litres.

biophysical strategic agricultural land has the same meaning as in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

building information certificate means a building information certificate referred to in the Act, Division 6.7.

capital investment value of a development or project includes all costs necessary to establish and operate the project, including the design and construction of buildings, structures, associated infrastructure and fixed or mobile plant and equipment, other than the following costs—

(a) amounts payable, or the cost of land dedicated or other benefit provided, under a condition imposed under the Act, Division 7.1 or 7.2 or a planning agreement,

(b) costs relating to a part of the development or project that is the subject of a separate development consent or project approval,

(c) land costs, including costs of marketing and selling land,

(d) GST, within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

Category 1 fire safety provision means the following provisions of the *Building Code of Australia*—

(a) EP1.3, EP1.4, EP1.6, EP2.1, EP2.2 and EP3.2 in Volume 1,

(b) P2.3.2 in Volume 2.

certifier, in relation to a complying development certificate, means a council or a registered certifier.

class, in relation to a building or part of a building, means the class to which the building or part of a building belongs, as ascertained in accordance with the *Building Code of Australia*.

Class 1 aquaculture development means development that is categorised as Class 1 under *State Environmental Planning Policy (Primary Production and Rural Development) 2019*, Part 5.

Consumer Price Index means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics.

critical industry cluster land has the same meaning as in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

concurrence authority means a person whose concurrence under one or more of the following is required by a consent authority before determining a development application—

(a) the Act,

(b) an environmental planning instrument,

(c) the *Biodiversity Conservation Act 2016*, Part 7.

contributions plan means a contributions plan referred to in the Act, section 7.18.

deemed-to-satisfy provisions has the same meaning as in the *Building Code of Australia*.

design quality principles has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

design review panel and ***relevant design review panel*** have the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

determining authority has the same meaning as in the Act, Division 5.1.

dual occupancy has the same meaning as in the Standard Instrument.

dwelling, in relation to a BASIX building, means a room or suite of rooms occupied or used, or constructed or adapted to be capable of being occupied or used, as a separate domicile.

dwelling house has the same meaning as in the Standard Instrument.

electricity transmission or distribution network has the same meaning as in *State Environmental Planning Policy (Infrastructure) 2007*, Part 3, Division 5.

entertainment venue means a building used as a cinema, theatre or concert hall or an indoor sports stadium.

environmental impact statement means an environmental impact statement referred to in the Act, section 4.12, 5.7 or 5.16.

fire alarm communication link means the part of a fire alarm system that transmits a fire alarm signal from the system to an alarm monitoring network.

fire alarm communication link works means the installation or conversion of a fire alarm communication link to connect with the fire alarm monitoring network of a private service provider, but does not include works associated with the alteration, enlargement, extension or change of use of an existing building.

fire protection and structural capacity of a building means—

(a) the structural strength and load-bearing capacity of the building, and

(b) the measures to protect persons using the building, and to facilitate their safe egress from the building, if there is a fire, and

(c) the measures to restrict the spread of fire from the building to other buildings nearby.

gateway certificate means a gateway certificate issued under *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, Part 4AA.

gross floor area has the same meaning as in the Standard Instrument.

Growth Centres SEPP means the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

hydraulic fire safety system has the same meaning as in the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

manor house has the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

mining or petroleum development has the same meaning as in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, Part 4AA.

modification application means an application for modification of a development consent under the Act, section 4.55 or 4.56.

modification request means a request under the Act, section 5.25 for the modification of the Minister's approval of State significant infrastructure.

multi dwelling housing (terraces) has the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

nominated integrated development has the same meaning as in the Act, Schedule 1, clause 7.

performance requirement has the same meaning as in the *Building Code of Australia*.

performance solution has the same meaning as in the *Building Code of Australia*.

planning agreement has the same meaning as in the Act, Division 7.1.

principal certifier has the same meaning as in the Act, Part 6.

private service provider means a person or body that has entered into an agreement with Fire and Rescue NSW to monitor fire alarm systems.

proprietor, in relation to a registered non-government school, has the same meaning as in the *Education Act 1990*.

public notification development means—

(a) State significant development set out in *State Environmental Planning Policy (State and Regional Development) 2011*, Schedule 1, clause 5 or 6, excluding development carried out on land in a state conservation area reserved under the *National Parks and Wildlife Act 1974*, or

(b) State significant development on land with multiple owners designated by the Planning Secretary for the purposes of clause 23 by written notice to the applicant for the State significant development.

qualified designer means a person registered as an architect under the *Architects Act 2003*.

Note— A building designer may be able to be registered as an architect under the *Architects Act 2003* even though the person may have no formal qualifications in architecture.

rail infrastructure facilities has the same meaning as in *State Environmental Planning Policy (Infrastructure) 2007*, Part 3, Division 15.

registered body corporate has the same meaning as in the *Building and Development Certifiers Act 2018*.

registered non-government school means a registered non-government school within the meaning of the *Education Act 1990*, other than one to which a current certificate of exemption applies under that Act.

relevant abbreviations for materials means the codes specified in the Table to clause 5.

relevant BASIX certificate, in relation to development, means—

(a) for development the subject of development consent—

(i) a BASIX certificate that applies to the development when development consent is granted or modified, or

(ii) if a replacement BASIX certificate accompanies a subsequent application for a construction certificate—the replacement BASIX certificate that applies to the development when the construction certificate is issued or modified, or

(b) for development the subject of a complying development certificate—a BASIX certificate that applies to the development when the complying development certificate is granted or modified.

residential apartment development has the same meaning as in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*.

residential building work has the same meaning as in the *Home Building Act 1989*.

roads authority has the same meaning as in the *Roads Act 1993*.

Siding Spring Observatory means the land owned by the Australian National University at Siding Spring and the buildings and equipment on the land.

site verification certificate means a site verification certificate issued under *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, Part 4AA.

Standard Instrument means the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

Strategic Agricultural Land Map has the same meaning as in *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

temporary building means—

(a) a temporary structure, or

(b) a building that is specified as a temporary building in a development consent or complying development certificate granted or issued in relation to its erection.

the Act means the *Environmental Planning and Assessment Act 1979*.

threatened species development means development to which the *Biodiversity Conservation Act 2016*, section 7.7(2) or the *Fisheries Management Act 1994*, section 221ZW applies.