



New South Wales

# **State Environmental Planning Policy (Infrastructure) Amendment (Group Homes) 2009**

under the

**Environmental Planning and Assessment Act 1979**

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Planning. (S08/01991)

**KRISTINA KENEALLY, MP**  
Minister for Planning

## **State Environmental Planning Policy (Infrastructure) Amendment (Group Homes) 2009**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Infrastructure) Amendment (Group Homes) 2009*.

### **2 Aims of Policy**

The aims of this Policy are as follows:

- (a) to allow development for the purposes of a group home to be carried out on certain land:
  - (i) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or
  - (ii) with consent in any other case,
- (b) to make certain development exempt development if it is carried out within the boundaries of an existing group home by or on behalf of a public authority,
- (c) to make development for the purposes of a group home complying development if the development satisfies certain requirements,
- (d) to provide that a consent authority must not, in circumstances where a group home is permissible with development consent:
  - (i) refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or
  - (ii) impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home,
- (e) to update references to publications that must be taken into consideration by a consent authority in determining an application for development for the purposes of a group home.

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**3 Land to which Policy applies**

This Policy applies to the State.

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### Schedule 1 Amendment of State Environmental Planning Policy (Infrastructure) 2007

#### [1] Clause 32 Determination of development applications

Omit clause 32 (2) (b) and (c). Insert instead:

- (b) *Schools Facilities Standards—Design Standard* (Version 1/09/2006),
- (c) *Schools Facilities Standards—Specification Standard* (Version 01/11/2008).

#### [2] Clause 32 (5)

Insert after clause 32 (4):

- (5) If a development application has been made before the commencement of the amendment to this clause by *State Environmental Planning Policy (Infrastructure) Amendment (Group Homes) 2009*, and the application has not been finally determined before that commencement, the application must be determined as if that amendment had not been made.

#### [3] Part 3 Development controls

Omit Subdivision 2 of Division 11. Insert instead:

### Subdivision 2 Group homes

#### 59 Definitions

In this Subdivision:

**group home** means a permanent group home or a transitional group home.

**prescribed zone** means:

- (a) any of the following land use zones or a land use zone that is equivalent to any of those zones:
  - (i) R1 General Residential,
  - (ii) R2 Low Density Residential,
  - (iii) R3 Medium Density Residential,
  - (iv) R4 High Density Residential,
  - (v) B4 Mixed Use,
  - (vi) SP1 Special Activities,
  - (vii) SP2 Infrastructure, and

- (b) any other zone in which development for the purpose of dwellings, dwelling houses or multi dwelling housing may be carried out with or without consent under an environmental planning instrument.

#### **60 Development in prescribed zones**

Development for the purpose of a group home on land in a prescribed zone may be carried out:

- (a) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or
- (b) with consent in any other case.

#### **61 Exempt development—existing group homes**

- (1) Development for a purpose specified in Schedule 1 that is carried out within the boundaries of an existing group home, by or on behalf of a public authority, is exempt development if:
  - (a) it meets the development standards for the development specified in that Schedule (as modified by subclause (2)), and
  - (b) it complies with the requirements of clause 20 (2).
- (2) For the purposes of this clause, the development standards set out in Schedule 1 with respect to carports associated with an existing building are taken to be modified as follows:
  - (a) the maximum surface area for such a carport is taken to be 30 square metres,
  - (b) the maximum height for such a carport is taken to be 3 metres above ground level (existing),
  - (c) any such carport may be located up to 1 metre forward of a front building setback.

#### **62 Complying development—group homes**

- (1) Development for the purposes of a group home is complying development if the development satisfies the requirements for complying development specified in clauses 1.18 and 1.19 (other than clauses 1.18 (2) (c) and 1.19 (2) (e)) of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* with the following modifications:
  - (a) clause 1.19 (2) (c) of that Policy is taken not to include a reference to a draft heritage conservation area,

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- (b) the definition of *excluded land identified by an environmental planning instrument* in clause 1.19 of that Policy is taken not to include a difficult site,
  - (c) a reference to a flood control lot is taken to mean a lot to which flood related development controls apply in respect of development for the purposes of dwelling houses, dual occupancies, multi dwelling housing, residential flat buildings, group homes or seniors housing.
- (2) The development standards for complying development under this clause are set out in Schedule 1A.
  - (3) A complying development certificate is taken to satisfy any requirement of an environmental planning instrument or tree preservation order for a consent, permit or approval to remove a tree, or other vegetation, under 4 metres in height if the complying development cannot be carried out without the removal of the tree or other vegetation.
  - (4) A complying development certificate for development that is complying development under this clause is subject to the conditions specified in Division 3 of Part 3 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* except that the reference in clause 3.44 (1) of that Policy to a dwelling house is taken to be a reference to a group home.

### 62A Determination of development applications

- (1) A consent authority must not:
  - (a) refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or
  - (b) impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.
- (2) This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.

### 63 Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Subdivision or with a development consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out

of that development does not apply to the extent necessary to serve that purpose.

- (2) This clause does not apply:
  - (a) to a covenant imposed by the council or that the council requires to be imposed, or
  - (b) to any prescribed instrument within the meaning of section 183A of the *Crown Lands Act 1989*, or
  - (c) to any conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
  - (d) to any trust agreement within the meaning of the *Nature Conservation Trust Act 2001*, or
  - (e) to any property vegetation plan within the meaning of the *Native Vegetation Act 2003*, or
  - (f) to any biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*.
- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (4) Under section 28 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).

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### [4] Schedule 1A

Insert after Schedule 1:

## Schedule 1A Complying development—group homes

(Clause 62 (2))

### 1 Definitions

In this Schedule:

**ancillary development** means any of the following that are not exempt development under this Policy:

- (a) an access ramp,
- (b) an awning, blind or canopy,
- (c) a balcony, deck, patio, pergola, terrace or verandah that is attached to a group home,
- (d) a carport that is attached to a group home,
- (e) a driveway, pathway or paving,
- (f) a fence or screen,
- (g) a garage that is attached to a group home,
- (h) an outbuilding,
- (i) a rainwater tank that is attached to a group home,
- (j) a retaining wall,
- (k) a swimming pool or spa pool and child-resistant barrier.

**articulation zone** means an area within a site within which building elements are or may be located, that consists of that part of the setback area from a primary road that is measured horizontally for a distance of 1.5 metres from:

- (a) the foremost edge of the building line, or
- (b) a gable or roof parapet having a surface area of more than 10 square metres.

**battle-axe lot** means a lot that has access to a road by an access laneway.

**building line** means the line of the existing or proposed building wall (other than a wall of any building element within an articulation zone), or the outside face of any existing or proposed ancillary development, closest to the relevant boundary of the site.



**classified road** has the same meaning as it has in Division 17 of Part 3.

**habitable room** has the same meaning as in the *Building Code of Australia*.

**Note.** The term is defined as a room used for normal domestic activities, other than a bathroom, laundry, toilet, pantry, walk in wardrobe, hallway, lobby, clothes drying room or other space of a specialised nature that is not occupied frequently or for extended periods.

**outbuilding** means any of the following that are detached from a group home:

- (a) a balcony, deck, patio, pergola, terrace or verandah,
- (b) a cabana, cubby house, fernery, shed, gazebo or greenhouse,
- (c) a carport or garage,
- (d) a rainwater tank (above ground),
- (e) a shade structure.

**parallel road** means, in the case of a site that has boundaries with parallel roads, the road that is not the primary road.

**primary road** means the road to which the front of a group home, or a main building, on a site faces or is proposed to face.

**secondary road** means, in the case of a corner site that has boundaries with adjacent roads, the road that is not the primary road.

**setback** means the horizontal distance between the relevant boundary of the site and the building line.

**setback area** means the area between the building line and the relevant boundary of the site.

## 2 Site requirements

Development may only be carried out on a site that:

- (a) has an area of at least 450 square metres (excluding the area of the access laneway if it is a battle-axe lot), and
- (b) has a boundary with, or lawful access to, a public road, and
- (c) if it is not a battle-axe lot, has a boundary with a primary road of at least 12 metres, and
- (d) if it is a battle-axe lot, has an access laneway of at least 3 metres in width, and
- (e) has at least one area on the site that measures at least 12 metres by 12 metres (excluding the access laneway if it is a battle-axe lot).

**3 Maximum site coverage of all development**

- (1) The group home and all ancillary development must not cover more than 70 per cent of the site area.
- (2) For the purpose of calculating the site coverage in subclause (1), the area of any of the following is not included:
  - (a) an access ramp,
  - (b) any part of an awning, blind or canopy that is outside the outer wall of a building,
  - (c) a balcony, deck, patio, pergola, terrace or verandah attached to the group home that is not enclosed by a wall higher than 1.4 metres above the floor level,
  - (d) an eave,
  - (e) a driveway,
  - (f) a fence or screen,
  - (g) a pathway or paving,
  - (h) a rainwater tank that is attached to the group home,
  - (i) a swimming pool or spa pool.

**4 Building height**

Any building used for the purposes of a group home must not have a height of more than 8.5 metres above ground level (existing).

**5 Setbacks from roads other than classified roads**

- (1) A group home and all ancillary development on a site must have a setback from the boundary with a primary road that is not a classified road of at least:
  - (a) the average distance of the setbacks of the nearest 2 group homes or dwelling houses having a boundary with the same primary road and located within 40 metres of the site on which the group home is erected, or
  - (b) in any case where 2 group homes or dwelling houses are not located within 40 metres of the site—4.5 metres.
- (2) A group home and all ancillary development on a site must have a setback from the boundary with a secondary road that is not a classified road of at least 2 metres.
- (3) A group home and all ancillary development on a site must have a setback from a boundary with a parallel road that is not a classified road of at least:

- (a) the average distance of the setbacks of the nearest 2 group homes or dwelling houses having a boundary with the same parallel road and located within 40 metres of the site on which the group home is erected, or
- (b) in any case where 2 group homes or dwelling houses are not located within 40 metres of the site—4.5 metres.

#### **6 Setbacks from classified roads**

A group home and all ancillary development on a site must have a setback from a boundary with a classified road of at least:

- (a) if another environmental planning instrument applying to the land establishes a setback for a group home or dwelling house having a boundary with a classified road—that distance, or
- (b) 9 metres in any other case.

#### **7 Doors and windows facing roads**

A new group home, other than a group home on a battle-axe lot, must have:

- (a) a front door and a window to a habitable room in a building wall that faces a primary road, and
- (b) a door and a window to a habitable room in a building wall that faces a parallel road.

#### **8 Articulation zones**

- (1) A group home that has a setback from a primary road of 3 metres or more is taken to incorporate an articulation zone.
- (2) The following building elements are permitted in an articulation zone:
  - (a) an entry feature or portico,
  - (b) a balcony, deck, patio, pergola, terrace or verandah,
  - (c) a window box,
  - (d) a bay window or similar feature,
  - (e) an awning or other feature over a window,
  - (f) a sun shading feature.
- (3) A building element must not extend above the eave gutter line, other than a pitched roof to an entry feature or portico that has the same pitch as the roof on the group home.

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- (4) The maximum area of all building elements within the articulation zone, other than a building element listed in subclause (2) (e) or (f), must not be more than 25 per cent of the area of the articulation zone, measured through the horizontal plane of the building elements.

### 9 Side and rear boundary setbacks

- (1) A group home and all ancillary development on a site must have a setback from the side boundary of at least the following:
  - (a) in relation to a group home with a building height of up to 3.8 metres—0.9 metres,
  - (b) in relation to a group home with a building height greater than 3.8 metres—0.9 metres plus 0.25 per cent of the additional building height above 3.8 metres.
- (2) A group home and all ancillary development on a site must have a setback from the rear boundary of at least the following:
  - (a) in relation to a group home or ancillary development with a building height of up to 3.8 metres—0.9 metres,
  - (b) in relation to a group home or ancillary development with a building height greater than 3.8 metres—3 metres plus an amount that is 3 times the additional building height above 3.8 metres, up to a maximum setback of 8 metres.
- (3) Despite subclauses (1) and (2), a group home on a site that has a rear boundary with a laneway may have a building line that abuts that boundary for up to 50 per cent of the length of that boundary.

### 10 Calculating setbacks

- (1) For the purpose of calculating the setback of an existing group home, the location of any of the following is not included:
  - (a) any part of an existing garage or carport that is located between the building line of the group home and a boundary with the primary road,
  - (b) any existing building element of a group home that is located within the articulation zone.
- (2) For the purpose of calculating the setbacks of the nearest 2 group homes or dwelling houses, those group homes or dwelling houses must be on the same side of the road as the site.
- (3) For the purpose of calculating the setbacks of a group home, any building element that is permitted in the articulation zone is not included.

- (4) For the purpose of calculating a side or rear setback, the maximum building height of a group home on a sloping site is to be used.
- (5) A setback is to be calculated at the closest point to the boundary from the building line.
- (6) For the purpose of calculating the setback from a road, a reference to ancillary development does not include the following:
  - (a) a driveway, pathway or paving,
  - (b) an eave,
  - (c) a fence or screen,
  - (d) a retaining wall,
  - (e) any ancillary development that is a building element that is permitted in the articulation zone.

#### 11 Exceptions to side and rear setbacks

Despite any other clause in this Schedule:

- (a) a group home or any attached ancillary outbuilding must have a setback of at least 3 metres from a boundary with a public reserve, and
- (b) side and rear boundary setbacks do not apply to allowable encroachments permitted under clause 3.7.1.7 of Volume Two of the *Building Code of Australia*.

**Note.** The allowable encroachments permitted under clause 3.7.1.7 of Volume Two of the *Building Code of Australia* include fascias, gutters, downpipes, rainwater tanks, eaves with non-combustible roof cladding and lining, flues, chimneys, pipes, domestic fuel tanks, cooling or heating appliances or other services, light fittings, electricity or gas meters, aerials, antennae, pergolas, sun blinds, unroofed terraces, landings, steps and ramps.

#### 12 Building separation

The distance between buildings that are used for the purposes of group homes on a site must be at least 1.8 metres.

#### 13 Privacy

- (1) A window in a group home must have a privacy screen if:
  - (a) it is a window in a habitable room, other than a bedroom, that has a floor level of more than 1 metre above ground level (existing), and

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- (b) the wall in which the window is located has a setback of less than 3 metres from a side or rear boundary, and
  - (c) the window has a sill height of less than 1.5 metres.
- (2) A balcony, deck, patio, pergola, terrace or verandah must have a privacy screen if it:
- (a) has a setback of less than 3 metres from a side or rear boundary, and
  - (b) has a floor area of more than 3 square metres, and
  - (c) has a floor level of more than 1 metre above ground level (existing).
- (3) A detached balcony, deck, patio, pergola, terrace or verandah must not have a floor level that is more than 0.6 metres above ground level (existing).
- (4) In this clause, *privacy screen* means a screen that:
- (a) faces the relevant boundary, and
  - (b) is 1.5 metres high, measured from the floor level, and
  - (c) has no individual opening more than 0.3 metres wide, and
  - (d) has a total of all openings less than 30 per cent of the surface area of the screen.

### 14 Landscaped area

- (1) At least 20 per cent of the site area on which the erection of, or alterations or additions to, a group home or ancillary development is carried out must be a landscaped area.
- (2) At least 50 per cent of the landscaped area must be located behind the building line to the primary road boundary.
- (3) The landscaped area must be at least 2.5 metres wide.

### 15 Principal private open space

A site on which a group home is erected must have at least 24 square metres of principal private open space that:

- (a) has an area at ground level (existing) that is directly accessible from, and adjacent to, a habitable room, other than a bedroom, and
- (b) is at least 4 metres wide, and
- (c) has a gradient that is no steeper than 1:50.

**16 Requirement to provide car parking**

- (1) At least two off-street car parking spaces must be provided on the site on which a group home is erected.
- (2) At least one off-street car parking space must be retained on a site on which alterations or additions to an existing off-street car parking space are carried out.
- (3) A car parking space under this clause may be an open hard stand space or a carport or garage, whether attached or detached from the group home.

**17 Garage, carport and parking spaces**

- (1) A garage, carport or car parking space must be no more than 1 metre forward of the front building setback.
- (2) If the door or doors on a garage face a primary road, a secondary road or a parallel road, the total width of all those door openings must:
  - (a) be not more than 6 metres, and
  - (b) be not more than 50 per cent of the width of the building, measured at the building line to the relevant property boundary.
- (3) An open hard stand car parking space must measure at least 2.6 metres wide by 5.4 metres long.

**18 Vehicle access**

The design and construction of the vehicular access to a site must comply with Australian Standard AS 2890.1–1993, *Parking facilities—Off-street car parking*.

**19 Excavation of sloping sites**

- (1) Excavation associated with the erection of, or alterations or additions to, a group home or ancillary development (other than a swimming pool) must:
  - (a) be not more than 1 metre below ground level (existing), and
  - (b) be constructed using a retaining wall or unprotected embankment that does not extend more than 1 metre horizontally beyond the external wall of the group home or ancillary development.

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- (2) Excavation associated with the erection of, or alterations or additions to, a swimming pool must be not more than the depth required for the pool structure.

### 20 Fill of sloping sites

- (1) Fill associated with the erection of, or alterations or additions to, a group home or ancillary development must:
  - (a) be not more than 1 metre above ground level (existing), and
  - (b) be contained wholly within the external walls of the group home or ancillary development.
- (2) Despite subclause (1), exposed fill may be constructed using an unprotected embankment if the group home or ancillary development has a setback of more than 2 metres from a side or rear boundary, if:
  - (a) the fill is not more than 0.6 metres above ground level (existing), and
  - (b) the fill (but not the embankment) does not extend more than 1 metre beyond an external wall of the group home or detached ancillary development, and
  - (c) the toe of the unprotected embankment has a setback of at least 0.4 metres from a side or rear boundary.

### 21 Drainage

- (1) All stormwater collecting as a result of the erection of, or alterations or additions to, a group home or ancillary development must be conveyed by a gravity fed or charged system to:
  - (a) a street drainage system under the control of the relevant public authority, or
  - (b) an inter-allotment drainage system, or
  - (c) an on-site disposal system approved under section 68 of the *Local Government Act 1993*, if the site is unsewered.
- (2) All surface water run-off emanating from a sloping site as a result of the erection of, or alterations or additions to, a group home or ancillary development must be collected and conveyed to a drainage system listed in subclause (1).

### 22 Demolition or removal of buildings

- (1) An existing group home, dwelling house or ancillary development that is to be demolished or relocated must:



- (a) be disconnected from any essential service in accordance with the requirements of the relevant authority, and
  - (b) not be relocated, except in accordance with the approval of the relevant authority.
- (2) Demolition or removal must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent.

### 23 Swimming pools

- (1) Ancillary development comprising a swimming pool for private use must be located:
- (a) behind the setback from any road boundary, or
  - (b) in the rear yard area.
- (2) The swimming pool water line must have a setback of at least 1 metre from a side or rear boundary.
- (3) Decking around a swimming pool must not be more than 0.6 metres above ground level (existing).
- (4) Coping around a swimming pool must not be more than:
- (a) 1.4 metres above ground level (existing), or
  - (b) 0.3 metres wide if the coping is more than 0.6 metres above ground level (existing).
- (5) Water from a swimming pool must be discharged in accordance with an approval under the *Local Government Act 1993* if the site is not connected to a sewer main.

**Note.** A child-resistant barrier must be constructed or installed in accordance with the requirements of the *Swimming Pools Act 1992*.

### 24 Fences

- (1) Ancillary development comprising a fence must be constructed so as not to prevent natural flow of stormwater drainage or run-off.
- (2) The height of a boundary fence in a residential zone must not exceed:
- (a) in the case of development within the boundaries of an existing group home—2.1 metres above ground level (existing) if the fence is behind the front building line and 1.2 metres above ground level (existing) if the fence is on or forward of that line, and

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- (b) in any other case—1.8 metres above ground level (existing) if the fence is behind the front building line and 1.2 metres above ground level (existing) if the fence is on or forward of that line.
- (3) A fence must not include masonry construction to a height of more than 0.9 metres above ground level (existing).

**25 Access ramps**

- (1) The gradient of any access ramp must not be steeper than 1:14.
- (2) An access ramp must be constructed so as to comply with Australian Standard AS 1428.1–2001, *Design for access and mobility—General requirements for access—New building work*.
- (3) An access ramp must not create a traffic or pedestrian hazard.