



New South Wales

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 35)

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. (S08/00923-1)

KRISTINA KENEALLY, M.P.,
Minister for Planning

2009 No 5

Clause 1

State Environmental Planning Policy (Major Projects) 2005 (Amendment No 35)

**State Environmental Planning Policy (Major Projects)
2005 (Amendment No 35)**

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Major Projects) 2005 (Amendment No 35)*.

2 Aims of Policy

The aims of this Policy are:

- (a) to identify the land to which this Policy applies as a state significant site under *State Environmental Planning Policy (Major Projects) 2005*, and
- (b) to establish appropriate zoning and other development controls for that land, and
- (c) to provide for appropriate development of that land that satisfies the principles of ecologically sustainable development, and
- (d) to provide for development of that land in a manner consistent with the outcomes envisaged by the *Lower Hunter Regional Strategy*, published by the NSW Department of Planning in October 2006, and
- (e) to identify and provide part of that land for high quality open space for recreational purposes and for community uses that serve the needs of those who live and work in the Huntlee community and surrounding areas.

3 Land to which Policy applies

This Policy applies to certain land in the local government areas of Cessnock City and Singleton identified on State Environmental Planning Policy (Major Projects) 2005 (Amendment No 35)—Huntlee New Town Site—Land Application Map held in the head office of the Department.

**4 Amendment of State Environmental Planning Policy (Major Projects)
2005**

State Environmental Planning Policy (Major Projects) 2005 is
amended as set out in Schedule 1.

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Schedule 1 Amendment

Schedule 1 Amendment

(Clause 4)

Schedule 3 State significant sites

Insert at the end of the Schedule (before the maps) with appropriate Part numbering:

Part Huntlee New Town Site

Division 1 Preliminary

1 Land to which Part applies

This Part applies to the land identified on the Land Application Map, referred to in this Schedule as the *Huntlee New Town site*.

2 Interpretation

(1) In this Part:

consent authority means the relevant council.

Land Application Map means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 35)—Huntlee New Town Site—Land Application Map.

Land Reservation Acquisition Map means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 35)—Huntlee New Town Site—Land Reservation Acquisition Map.

Land Zoning Map means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 35)—Huntlee New Town Site—Land Zoning Map.

relevant Council:

- (a) in relation to development of land within the local government area of Cessnock City, means Cessnock City Council, or
- (b) in relation to development of land within the local government area of Singleton, means Singleton Shire Council.

(2) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* unless it is otherwise defined in this Part.

3 Maps

- (1) A reference in this Part to a named map adopted by this Part is a reference to a map by that name:
 - (a) approved by the Minister when the map is adopted, and
 - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Part to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Part, a map may be in, and may be kept and made available in, electronic or paper form, or both.

4 Relationship with other environmental planning instruments

The only environmental planning instruments that apply, according to their terms, to or in respect of development within the Huntlee New Town site are as follows:

- (a) this Policy,
- (b) all other State environmental planning policies otherwise applicable to the land, except *State Environmental Planning Policy No 1—Development Standards*.

Division 2 Provisions relating to development within Huntlee New Town site

5 Application of Division

- (1) This Division applies to development on land within the Huntlee New Town site, except as provided by subclause (2).
- (2) Clauses 7–13, 16, 18 and 21–25 do not apply to development within the Huntlee New Town site to the extent that it is a project to which Part 3A of the Act applies.

6 Land use zones

For the purposes of this Part, land within the Huntlee New Town site is in a zone as follows if the land is shown on the Land Zoning Map as being within that zone:

- (a) Zone R1 General Residential,
- (b) Zone R5 Large Lot Residential,
- (c) Zone B4 Mixed Use,
- (d) Zone SP2 Infrastructure,
- (e) Zone RE1 Public Recreation,
- (f) Zone E1 National Parks and Nature Reserves.

7 Objectives of land use zones to be taken into account

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

8 Zone R1 General Residential

- (1) The objectives of Zone R1 General Residential are as follows:
 - (a) to provide for the housing needs of the community,
 - (b) to provide for a variety of housing types and densities,
 - (c) to enable other land uses that provide facilities or services to meet the day to day needs of residents.
- (2) Development for any of the following purposes is permitted without consent on land within Zone R1 General Residential:
environmental protection works; home occupations; roads constructed or operated by or on behalf of a public authority.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R1 General Residential:
attached dwellings; boarding houses; child care centres; community facilities; dwelling houses; educational establishments; exhibition villages; group homes; hostels; multi dwelling housing; neighbourhood shops; places of public worship; recreation facilities (outdoor); residential care facilities; residential flat buildings; roads; semi-detached dwellings; seniors housing; shop top housing.
- (4) Except as otherwise provided by this Policy, development is prohibited on land within Zone R1 General Residential unless it is permitted by subclause (2) or (3).

9 Zone R5 Large Lot Residential

- (1) The objectives of Zone R5 Large Lot Residential are as follows:
 - (a) to provide residential housing in a rural setting while preserving environmentally sensitive locations and scenic quality,
 - (b) to ensure that large residential allotments do not hinder the proper and orderly development of urban areas in the future,
 - (c) to ensure that development in the area does not unreasonably increase the demand for public services or public facilities,
 - (d) to minimise conflict between land uses within the zone and adjoining zones,
 - (e) to enable land to be used for public open space or recreational purposes,
 - (f) to protect the natural environment for recreational purposes.
- (2) Development for any of the following purposes is permitted without consent on land within Zone R5 Large Lot Residential:
environmental protection works; roads constructed or operated by or on behalf of a public authority.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R5 Large Lot Residential:
dwelling houses; environmental facilities; environmental protection works; home occupations; recreation areas; roads.
- (4) Except as otherwise provided by this Policy, development is prohibited on land within Zone R5 Large Lot Residential unless it is permitted by subclause (2) or (3).

10 Zone B4 Mixed Use

- (1) The objectives of Zone B4 Mixed Use are as follows:
 - (a) to provide a mixture of compatible land uses,
 - (b) to integrate suitable development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

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- (2) Development for any of the following purposes is permitted without consent on land within Zone B4 Mixed Use:
environmental protection works; roads constructed or operated by or on behalf of a public authority.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone B4 Mixed Use:
boarding houses; business premises; car parks; child care centres; community facilities; educational establishments; entertainment facilities; food and drink premises; function centres; health service facilities; highway service centres; hotel or motel accommodation; information and education facilities; light industries; markets; multi dwelling housing; office premises; passenger transport facilities; places of public worship; recreation facilities (indoor); recreation facilities (outdoor); registered clubs; residential flat buildings; retail premises; roads; seniors housing; shop top housing; tourist and visitor accommodation.
- (4) Except as otherwise provided by this Policy, development is prohibited on land within Zone B4 Mixed Use unless it is permitted by subclause (2) or (3).

11 Zone SP2 Infrastructure

- (1) The objectives of Zone SP2 Infrastructure are as follows:
 - (a) to provide for infrastructure and related uses,
 - (b) to prevent development that is not compatible with or that may detract from the provision of infrastructure.
- (2) Development for any of the following purposes is permitted without consent on land within Zone SP2 Infrastructure:
roads.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone SP2 Infrastructure:
schools; the purpose shown on the Land Zoning Map including any development that is ordinarily incidental or ancillary to development for that purpose.
- (4) Except as otherwise provided by this Policy, development is prohibited on land within Zone SP2 Infrastructure unless it is permitted by subclause (2) or (3).

12 Zone RE1 Public Recreation

- (1) The objectives of Zone RE1 Public Recreation are as follows:
 - (a) to enable land to be used for public open space or recreational purposes,
 - (b) to provide a range of recreational settings and activities and compatible land uses,
 - (c) to protect and enhance the natural environment for recreational purposes.
- (2) Development for any of the following purposes is permitted without consent on land within Zone RE1 Public Recreation:
roads.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone RE1 Public Recreation:
environmental facilities; environmental protection works; kiosks; recreation areas.
- (4) Except as otherwise provided by this Policy, development is prohibited on land within Zone RE1 Public Recreation unless it is permitted by subclause (2) or (3).

13 Zone E1 National Parks and Nature Reserves

- (1) The objectives of Zone E1 National Parks and Nature Reserves are as follows:
 - (a) to enable the management and appropriate use of land that is reserved under the *National Parks and Wildlife Act 1974*,
 - (b) to enable uses authorised under the *National Parks and Wildlife Act 1974*.
- (2) Development for any of the following purposes is permitted without consent on land within Zone E1 National Parks and Nature Reserves:
uses authorised under the *National Parks and Wildlife Act 1974*.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone E1 National Parks and Nature Reserves:
nil.

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- (4) Except as otherwise provided by this Policy, development is prohibited on land within Zone E1 National Parks and Nature Reserves unless it is permitted by subclause (2) or (3).

14 Prohibited development

Development, other than development that is permitted with or without consent on land within a zone, is prohibited on land within that zone.

15 Interim land uses

- (1) Despite any other provision of this Part, development on land within the Huntlee New Town site for the purposes specified in subclause (2) is permitted with consent and is not prohibited under clause 14 if:
- (a) the development is for a specified interim period, and
 - (b) the development will not adversely affect the use of the land for permissible development in accordance with this Part at the end of the specified interim period, and
 - (c) the development will not adversely affect the use of other land in the same locality for permissible development in accordance with this Part.
- (2) Development specified for the purposes of this clause is any one or more of the following:
- (a) extensive agriculture,
 - (b) extractive industries,
 - (c) farm forestry,
 - (d) intensive plant agriculture,
 - (e) mining.

16 Subdivision—consent requirements

- (1) Land within the Huntlee New Town site may be subdivided, but only with development consent.
- (2) However, development consent is not required for a subdivision for the purpose only of any one or more of the following:
- (a) widening a public road,
 - (b) making an adjustment to a boundary between lots, being an adjustment that does not involve the creation of a greater number of lots,
 - (c) a minor realignment of boundaries that does not create additional lots or the opportunity for additional buildings,

- (d) a consolidation of lots that does not create additional lots or the opportunity for additional buildings,
- (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 toilets.

17 Exceptions to development standards—Part 3A projects

- (1) A development standard imposed by this or any other environmental planning instrument on development that is part of a project to which Part 3A of the Act applies, and is within the Huntlee New Town site, does not apply to that development if the Director-General is satisfied, and issues a certificate to the effect, that:
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) there are sufficient environmental planning grounds to justify exempting the development from that development standard.
- (2) In deciding whether to issue a certificate, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General.

18 Exceptions to development standards—other development

- (1) This clause applies to development, other than development that is part of a project to which Part 3A of the Act applies.
- (2) The objectives of this clause are:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

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- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (3) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (4) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (5) Consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (4), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (6) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

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- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (4).
 - (8) This clause does not allow consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated.

19 Maximum number of dwellings

A person must not erect a dwelling on land within the Huntlee New Town site if, as a result, the number of dwellings within that site would exceed 7,500.

20 Arrangements for designated State public infrastructure for Zones R1 General Residential and B4 Mixed Uses

- (1) This clause applies to land in Zone R1 General Residential or Zone B4 Mixed Uses within the Huntlee New Town site, but does not apply to any such land if the whole or any part of it is in a special contributions area (as defined by section 93C of the Act).
- (2) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land to which this clause applies to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.
- (3) Land to which this clause applies must not be subdivided if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the commencement of this Part, unless the Director-General has certified in writing that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.
- (4) Subclause (3) does not apply in relation to:
 - (a) any lot identified in the certificate as a residue lot, or
 - (b) any lot created by a previous subdivision of land in accordance with this clause, or

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- (c) any lot that is proposed to be reserved or dedicated for public open space, public roads, public utilities, educational facilities, or any other public purpose, or
 - (d) a subdivision for the purpose only of rectifying an encroachment on any existing lot.
- (5) In this clause, *designated State public infrastructure* means public facilities or services that are provided or financed by the State (or if provided or financed by the private sector, to the extent of any financial or in-kind contribution by the State) of the following kinds:
- (a) State and regional roads,
 - (b) bus interchanges, bus services and bus lanes,
 - (c) rail infrastructure and land,
 - (d) land required for regional open space,
 - (e) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).

21 Public utility infrastructure

- (1) Development consent must not be granted for development on land within the Huntlee New Town site unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.
- (2) In this clause, *public utility infrastructure* includes infrastructure for any of the following:
 - (a) the supply of water,
 - (b) the supply of electricity,
 - (c) the supply of natural gas,
 - (d) the disposal and management of sewage.
- (3) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.

22 Infrastructure development and the use of existing buildings of the Crown

- (1) This Division does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be

carried out without consent under *State Environmental Planning Policy (Infrastructure) 2007*.

- (2) This Division does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

23 Bush fire hazard reduction

Bush fire hazard reduction work authorised by the *Rural Fires Act 1997* may be carried out on any land without consent.

Note. The *Rural Fires Act 1997* also makes provision relating to the carrying out of development on bush fire prone land.

24 Exempt and complying development

Development within the Huntlee New Town site that satisfies the requirements for exempt development or complying development specified in *State Environmental Planning Policy No 60—Exempt and Complying Development*, is exempt development or complying development, as appropriate.

25 Relevant acquisition authority

- (1) The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991 (the owner-initiated acquisition provisions)*.

Note. If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant authority, section 23 of the *Land Acquisition (Just Terms Compensation) Act 1991* requires the authority to acquire the land.

- (2) The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown coloured yellow on the Land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).

Type of land shown on Land Reservation Acquisition Map Authority of the State

Zone E1 National Parks and Nature Reserves

Minister administering the *National Parks and Wildlife Act 1974*

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- (3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.

Note. If land, other than land specified in the Table to subclause (2), is required to be acquired under the owner-initiated acquisition provisions, the Minister for Planning is required to take action to enable the designation of the acquiring authority under this clause. Pending the designation of the acquiring authority for that land, the acquiring authority is to be the authority determined by order of the Minister for Planning (see section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

26 Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land in the Huntlee New Town site to be carried out in accordance with this Policy 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 Cessnock City Council or Singleton Shire Council or that either of those councils 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) Pursuant to section 28 of the Act, before the making of this clause, the Governor approved of subclauses (1)–(3).

BY AUTHORITY
