



New South Wales

# **State Environmental Planning Policy (Major Development) Amendment (Wahroonga Estate) 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*. (S09/00778/PC)

TONY KELLY, MLC  
Minister for Planning

## **State Environmental Planning Policy (Major Development) Amendment (Wahroonga Estate) 2009**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Major Development) Amendment (Wahroonga Estate) 2009*.

### **2 Commencement**

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

### **3 Repeal of Policy**

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

## Schedule 1      **Amendment of State Environmental Planning Policy (Major Development) 2005**

### Schedule 3 State significant sites

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

## Part      **Wahroonga Estate 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 Part as the *Wahroonga Estate site*.

#### 2      **Interpretation**

(1) In this Part:

**Gross Floor Area Map** means the State Environmental Planning Policy (Major Development) 2005 Wahroonga Estate Gross Floor Area Map.

**Height of Buildings Map** means the State Environmental Planning Policy (Major Development) 2005 Wahroonga Estate Height of Buildings Map.

**heritage item** means a building, work, archaeological site, tree, place or Aboriginal object:

- (a) shown on the Heritage Map as a heritage item, and
- (b) the location and nature of which is described in the Table to clause 24 (8).

**Heritage Map** means the State Environmental Planning Policy (Major Development) 2005 Wahroonga Estate Heritage Map.

**Land Application Map** means the State Environmental Planning Policy (Major Development) 2005 Wahroonga Estate Land Application Map.

**Land Zoning Map** means the State Environmental Planning Policy (Major Development) 2005 Wahroonga Estate Land Zoning Map.

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***place of Aboriginal heritage significance*** means an area of land shown on the Heritage Map that is:

- (a) the site of one or more Aboriginal objects or a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people. It can (but need not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or
- (b) a natural Aboriginal sacred site or other sacred feature. It includes natural features such as creeks or mountains of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance.

***relevant council***, in relation to land, means the council of the local government area in which the land is situated.

**Note.** The land concerned is situated partly in the local government area of Hornsby and partly in the local government area of Ku-ring-gai.

- (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 Consent authority

The consent authority for development on land within the Wahroonga Estate site, other than development that is a project to which Part 3A of the Act applies, is the relevant council.

### 4 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.

**5 Relationship with other environmental planning instruments**

The only environmental planning instruments that apply, according to their terms, to land within the Wahroonga Estate site are:

- (a) this Policy, and
- (b) all other State environmental planning policies, other than *State Environmental Planning Policy No 1—Development Standards*.

**Division 2 Provisions relating to development in Wahroonga Estate site**

**6 Application of Division**

- (1) This Division applies to development on land within the Wahroonga Estate site, except as provided by subclause (2).
- (2) Clauses 8–15, 17, 21–25 and 27 do not apply to development to the extent that it is a project to which Part 3A of the Act applies.

**7 Land use zones**

For the purposes of this Part, land within the Wahroonga Estate site is in one of the following zones if the land is shown on the Land Zoning Map as being within that zone:

- (a) Zone R1 General Residential,
- (b) Zone R2 Low Density Residential,
- (c) Zone R3 Medium Density Residential,
- (d) Zone R4 High Density Residential,
- (e) Zone B1 Neighbourhood Centre,
- (f) Zone SP1 Special Activities,
- (g) Zone E2 Environmental Conservation.

**8 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.

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### **9 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 development consent on land within Zone R1 General Residential:  
home occupations.
- (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; group homes; hostels; multi dwelling housing; neighbourhood shops; places of public worship; residential flat buildings; roads; semi-detached dwellings; seniors housing; shop top housing.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone R1 General Residential unless it is permitted by subclause (2) or (3).

### **10 Zone R2 Low Density Residential**

- (1) The objectives of Zone R2 Low Density Residential are as follows:
  - (a) to provide for the housing needs of the community within a low density residential environment,
  - (b) to enable other land uses that provide facilities or services to meet the day to day needs of residents,
  - (c) to ensure that housing is compatible with the existing environmental character of the area.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone R2 Low Density Residential:  
home-based child care; home occupations.

- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R2 Low Density Residential:
- bed and breakfast accommodation; boarding houses; child care centres; community facilities; drainage; dual occupancies; dwelling houses; earthworks; educational establishments; environmental protection works; health consulting rooms; home businesses; home industries; neighbourhood shops; places of public worship; recreation areas; roads; secondary dwellings; seniors housing; signage.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone R2 Low Density Residential unless it is permitted by subclause (2) or (3).

#### **11 Zone R3 Medium Density Residential**

- (1) The objectives of Zone R3 Medium Density Residential are as follows:
- (a) to provide for the housing needs of the community within a medium density residential environment,
- (b) to provide a variety of housing types within a medium density residential environment,
- (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 development consent on land within Zone R3 Medium Density Residential:
- home-based child care; home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R3 Medium Density Residential:
- attached dwellings; bed and breakfast accommodation; boarding houses; child care centres; community facilities; drainage; dual occupancies; dwelling houses; earthworks; educational establishments; environmental protection works; group homes; home businesses; home industries; hostels; multi dwelling housing; neighbourhood shops; places of public worship; recreation areas; roads; secondary dwellings; semi-detached dwellings; seniors housing.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone R3 Medium Density Residential unless it is permitted by subclause (2) or (3).

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### 12    **Zone R4 High Density Residential**

- (1) The objectives of Zone R4 High Density Residential are as follows:
  - (a) to provide for the housing needs of the community within a high density residential environment,
  - (b) to provide a variety of housing types within a high density residential environment,
  - (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 development consent on land within Zone R4 High Density Residential:  
home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R4 High Density Residential:  
bed and breakfast accommodation; boarding houses; child care centres; community facilities; drainage; dwelling houses; earthworks; educational establishments; environmental protection works; group homes; health consulting rooms; home businesses; home industries; hostels; medical centres; multi dwelling housing; neighbourhood shops; places of public worship; recreation areas; residential flat buildings; roads; seniors housing; serviced apartments; shop top housing.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone R4 High Density Residential unless it is permitted by subclause (2) or (3).

### 13    **Zone B1 Neighbourhood Centre**

- (1) The objective of Zone B1 Neighbourhood Centre is to provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone B1 Neighbourhood Centre:  
home occupations.



- (3) Development for any of the following purposes is permitted only with development consent on land within Zone B1 Neighbourhood Centre:
- business premises; car parks; child care centres; community facilities; drainage; earthworks; environmental protection works; food and drink premises (other than pubs); office premises; places of public worship; public administration buildings; roads; shop top housing; shops; signage; veterinary hospitals.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone B1 Neighbourhood Centre unless it is permitted by subclause (2) or (3).

**14 Zone SP1 Special Activities**

- (1) The objectives of Zone SP1 Special Activities are as follows:
- (a) to provide for special land uses that are not provided for in other zones,
  - (b) to provide for sites with special natural characteristics that are not provided for in other zones,
  - (c) to facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone SP1 Special Activities:
- nil.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone SP1 Special Activities:
- earthworks; roads; 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 Part, development is prohibited on land within Zone SP1 Special Activities unless it is permitted by subclause (2) or (3).

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### 15 Zone E2 Environmental Conservation

- (1) The objectives of Zone E2 Environmental Conservation are as follows:
  - (a) to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values,
  - (b) to prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone E2 Environmental Conservation:  
environmental protection works.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone E2 Environmental Conservation:  
drainage; earthworks; environmental facilities.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone E2 Environmental Conservation unless it is permitted by subclause (2) or (3).

### 16 Prohibited development

Development on land within the Wahroonga Estate site that is part of a project to which Part 3A of the Act applies is prohibited if it would be prohibited were it development to which Part 4 of the Act applies.

### 17 Subdivision—consent requirements

- (1) Land within the Wahroonga Estate 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) a minor realignment of boundaries that does not create additional lots or the opportunity for additional dwellings,
  - (c) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,
  - (d) rectifying an encroachment on a lot,
  - (e) creating a public reserve,

- (f) 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.

#### **18 Height and gross floor area restrictions**

- (1) The height of a building on any land within the Wahroonga Estate site is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2) The total gross floor area of all buildings (excluding the floor area of dwellings) within a precinct must not exceed the gross floor area shown for the precinct on the Gross Floor Area Map.
- (3) For the purposes of subclause (2), a precinct is an area within the Wahroonga Estate site shown by distinctive colouring on the Gross Floor Area Map.
- (4) This clause does not apply to a project to which Part 3A of the Act applies to the extent to which an approval for a concept plan for the project (whether given before or after the commencement of this clause) provides for a building or buildings that exceeds or exceed the height or gross floor area restrictions, or both, set out in subclauses (1) and (2).

#### **19 Maximum number of dwellings**

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

#### **20 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 on land within the Wahroonga Estate 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.

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- (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.

**21 Exceptions to development standards—other development**

- (1) This clause applies to development on land within the Wahroonga Estate site, 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
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (3) Development 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) Development 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) Development 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.
- (7) Development consent must not be granted under this clause for a subdivision of land in Zone SP1 Special Activities or Zone E2 Environmental Conservation.
- (8) 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).
- (9) This clause does not allow development 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.

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### 22 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.

### 23 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the Wahroonga Estate site through the preservation of trees.
- (2) This clause applies to a tree that meets the criteria set out under the heading “What is a tree under this Order?” in the tree preservation order made under clause 42 of the *Ku-ring-gai Planning Scheme Ordinance* and adopted by the Ku-ring-gai Council on 12 December 2006, but does not apply to a tree of a species described as an exempt tree species in that order.
- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree to which this clause applies on the Wahroonga Estate site without the authority conferred by:
  - (a) development consent, or
  - (b) a permit granted by the relevant council.
- (4) The refusal by the relevant council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the relevant council to grant consent for the carrying out of the activity for which a permit was sought.
- (5) This clause does not apply to a tree that the relevant council is satisfied is dying or dead and is not required as the habitat of native fauna.
- (6) This clause does not apply to a tree that the relevant council is satisfied is a risk to human life or property.
- (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree that is or forms part of a heritage item.

**Note.** As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 24 will be applicable to any such consent.
- (8) This clause does not apply to or in respect of:
  - (a) the clearing of native vegetation that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003* or that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or

- (b) action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying Act 2002*, or
- (c) plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.

## 24 Heritage conservation

### (1) Objectives

The objectives of this clause are:

- (a) to conserve the environmental heritage of the Wahroonga Estate site, and
- (b) to conserve the heritage significance of heritage items and heritage conservation areas including associated fabric, settings and views, and
- (c) to conserve places of Aboriginal heritage significance.

### (2) Requirement for consent

Development consent is required for any of the following:

- (a) demolishing or moving a heritage item,
- (b) altering a heritage item, including (in the case of a building) making changes to the detail, fabric, finish or appearance of its exterior,
- (c) altering a heritage item that is a building by making structural changes to its interior,
- (d) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (e) disturbing or excavating a place of Aboriginal heritage significance,
- (f) erecting a building on land on which a heritage item is located,
- (g) subdividing land on which a heritage item is located.

### (3) When consent not required

However, consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has

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advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:

- (i) is of a minor nature, or is for the maintenance of the heritage item or archaeological site, and
  - (ii) would not adversely affect the significance of the heritage item or archaeological site, or
- (b) the development is limited to the removal of a tree or other vegetation that the relevant Council is satisfied is a risk to human life or property, or
- (c) the development is exempt development.

(4) **Effect on heritage significance**

The consent authority must, before granting consent under this clause, consider the effect of the proposed development on the heritage significance of the heritage item concerned.

(5) **Heritage impact assessment**

The consent authority may, before granting consent to any development on land:

- (a) on which a heritage item is situated, or
- (b) within the vicinity of land on which a heritage item is situated,

require a heritage impact statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item concerned.

(6) **Places of Aboriginal heritage significance**

The consent authority must, before granting consent under this clause to the carrying out of development in a place of Aboriginal heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place, and
- (b) notify the local Aboriginal communities (in such way as it thinks appropriate) about the application and take into consideration any response received within 28 days after the notice is sent.



**(7) Conservation incentives**

The consent authority may grant consent to development for any purpose of a building that is a heritage item, or of the land on which such a building is erected, even though development for that purpose would otherwise not be allowed by this Part, if the consent authority is satisfied that:

- (a) the conservation of the heritage item is facilitated by the granting of consent, and
  - (b) the proposed development is in accordance with a heritage conservation management plan that has been approved by the consent authority, and
  - (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage conservation management plan is carried out, and
  - (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, and
  - (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.
- (8) For the purposes of paragraph (b) of the definition of *heritage item* in clause 2 (1), the location and nature of a heritage item is specified in the following Table:

**Table—heritage items**

<b>Item description</b>	<b>Address</b>	<b>Property description</b>
Administrative headquarters, Seventh Day Adventist Church	148 Fox Valley Road, Wahroonga	Lot 621, DP 1128314

**25 Public utility infrastructure**

- (1) Development consent must not be granted for development on land within the Wahroonga Estate 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) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.

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- (3) In this clause, **public utility infrastructure** includes infrastructure for any of the following:
- (a) the supply of water,
  - (b) the supply of electricity or gas,
  - (c) the disposal and management of sewage.

### 26 Infrastructure development and use of existing buildings of the Crown

- (1) This Part does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development that is permitted to be carried out with or without consent or that is exempt development under the *State Environmental Planning Policy (Infrastructure) 2007*.
- (2) This Part does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

### 27 Temporary use of land

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.
- (2) Despite any other provision of this Part, development consent may be granted for development on land within the Wahroonga Estate site in any zone for a temporary purpose for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.
- (3) Development consent must not be granted unless the consent authority is satisfied that:
- (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Part and any other applicable environmental planning instrument, and
  - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
  - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

- (d) at the end of the temporary use period the site will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.
- (4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or housing estate may exceed 52 days (whether or not consecutive days) in any period of 12 months.
- (5) Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).