



New South Wales

State Environmental Planning Policy (Infrastructure) Amendment (Schools, Affordable Housing and Metro Rail) 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.

KRISTINA KENEALLY MP
Minister for Planning

State Environmental Planning Policy (Infrastructure) Amendment (Schools, Affordable Housing and Metro Rail) 2009

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Infrastructure) Amendment (Schools, Affordable Housing and Metro Rail) 2009*.

2 Aims of Policy

The aims of this Policy are as follows:

- (a) to permit development for the purposes of educational establishments to be carried out with development consent in a number of prescribed zones,
- (b) to provide that certain development for the purposes of non-government schools is to be complying development and that in relation to complying development for the purposes of non-government schools:
 - (i) the same development standards apply, and
 - (ii) the same matters must be taken into consideration, as for development for the purposes of government schools,
- (c) to assist the provision of affordable rental housing by social housing providers and public authorities,
- (d) to identify a rail corridor for the proposed city metro and to ensure that development on, or adjacent to, land within that corridor does not adversely affect the viability of the proposed metro or any proposed metro station.

3 Land to which Policy applies

- (1) In respect of the aims set out in clause 2 (a), (b) or (c), this Policy applies to the State.
- (2) In respect of the aims set out in clause 2 (d), this Policy applies to the following land:
 - (a) land shown as follows on the map marked “State Environmental Planning Policy (Infrastructure) 2007—Interim Rail Corridor

CBD Rail Link & CBD Metro” held in the head office of the
Department of Planning:

- (i) CBD Metro (Zone A—Above Ground Including Cut &
Cover Tunnel),
 - (ii) CBD Metro (Zone B—Tunnel),
 - (iii) CBD Metro Station Extent,
 - (iv) CBD Rail Link (Zone B—Tunnel),
- (b) land adjacent to land shown as CBD Metro Station Extent on that
map.

2009 No 61

State Environmental Planning Policy (Infrastructure) Amendment (Schools, Affordable Housing and Metro Rail) 2009

Schedule 1

Amendment of State Environmental Planning Policy (Infrastructure) 2007

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

[1] **Clause 6 Interpretation—references to land use zones**

Omit “a public authority proposing to carry out development, or on whose behalf development is proposed to be carried out, on that land” from clause 6 (2).

Insert instead “the relevant authority”.

[2] **Clause 6 (3)**

Insert after clause 6 (2):

- (3) In this clause, *relevant authority* means:
 - (a) the public authority proposing to carry out development, or on whose behalf development is proposed to be carried out, on the land, or
 - (b) if the development is to be carried out by or on behalf of a person other than a public authority, the Director-General.

[3] **Clause 19 Site compatibility certificates**

Omit “62 (2)” from clause 19 (1). Insert instead “63C (2) (a)”.

[4] **Clause 27 Definitions**

Omit the definitions of *government school* and *non-government school*.

[5] **Clause 28 Development permitted with consent**

Insert after clause 28 (1):

- (1A) Development for the purpose of educational establishments may be carried out by or on behalf of a person other than a public authority with consent on land in a prescribed zone.
- (1B) Subclause (1A) ceases to have effect 3 years after the commencement of that subclause.

[6] **Clause 31A Complying development—existing schools and TAFE establishments**

Omit “a public authority on land within the boundaries of an existing government school” from clause 31A (1).

Insert instead “any person on land within the boundaries of an existing school”.

[7] Clause 31B Complying development—non-government schools

Omit the clause.

[8] Clause 32 Determination of development applications

Omit clause 32 (1).

[9] Clause 32 (2)

Omit “to which this clause applies”.

Insert instead “for development for the purposes of a school”.

[10] Part 3 Development controls

Omit “and group homes” from the heading to Division 11.

[11] Part 3, Division 11

Insert before clause 59:

Subdivision 1 Preliminary

58A Definition

In this Division:

social housing provider means any of the following:

- (a) the New South Wales Land and Housing Corporation,
- (b) Housing NSW,
- (c) a community housing organisation registered with the Office of Community Housing of Housing NSW,
- (d) the Aboriginal Housing Office,
- (e) a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*,
- (f) the Department of Ageing, Disability and Home Care,
- (g) a local government authority that provides affordable housing,
- (h) a not-for-profit organisation that is a direct provider of rental housing to tenants.

Subdivision 2 Group homes

[12] Clause 59 Definitions

Omit “In this Division”. Insert instead “In this Subdivision”.

2009 No 61

State Environmental Planning Policy (Infrastructure) Amendment (Schools, Affordable Housing and Metro Rail) 2009

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

[13] Clause 59, definition of “social housing provider”

Omit the definition.

[14] Clause 62 Development permitted with consent—public authorities or social housing providers

Omit the clause.

[15] Part 3, Division 11, Subdivision 3

Insert after clause 63:

Subdivision 3 Housing provided by social housing providers and public authorities

63A Land to which this Subdivision applies

This Subdivision applies to the following land, but not if development for the purposes of a residential flat building or multi dwelling housing is permissible on the land under another environmental planning instrument:

- (a) land in the Sydney Region that is within 800 metres of:
 - (i) a public entrance to a railway station or light rail station, or
 - (ii) in the case of a light rail station with no entrance—a platform of the light rail station,
- (b) land in one of the following towns that is within 400 metres of land in Zone B3 Commercial Core or Zone B4 Mixed Use or in an equivalent zone under an environmental planning instrument:

Albury; Ballina; Batemans Bay; Bathurst; Bega; Bowral; Cessnock; Charlestown; Coffs Harbour; Dapto; Dubbo; Glendale–Cardiff; Gosford; Goulburn; Grafton; Lismore; Maitland; Morisset; Newcastle; Nowra; Orange; Port Macquarie; Queanbeyan; Raymond Terrace; Shellharbour; Tamworth; Taree; Tuggerah–Wyong; Tweed Heads; Wagga Wagga; Warrawong; Wollongong.

63B Development to which this Subdivision applies

This Subdivision applies to development on land to which this Subdivision applies, for the purposes of a residential flat building or multi dwelling housing, by or on behalf of a public authority or social housing provider or by a person who is undertaking the development in a joint venture with Housing NSW.

63C Development for the purposes of multi dwelling housing or residential flat buildings

- (1) Development to which this Subdivision applies may be carried out with consent.
- (2) A consent authority must not grant consent to development to which this Subdivision applies unless it is satisfied that:
 - (a) the Director-General has certified in a site compatibility certificate that, in the Director-General's opinion, the development is compatible with the surrounding land uses, and
 - (b) if the development is in respect of a building on land zoned primarily for commercial purposes, no part of the ground floor of the building that fronts a street will be used for residential purposes unless another environmental planning instrument permits that use.
- (3) Nothing in this clause prevents a consent authority from:
 - (a) granting consent for development on a site by reference to site and design features that are more stringent than those identified in a site compatibility certificate for the same site, or
 - (b) refusing to grant consent for development by reference to the consent authority's own assessment of the compatibility of the development with the surrounding land uses, or
 - (c) having regard to any other matter in determining a development application.
- (4) Car parking is not required to be provided in relation to development to which this Subdivision applies.

Subdivision 4 Housing NSW**63D Development by or on behalf of Housing NSW**

- (1) This clause applies to development for any of the following purposes where that development may be carried out with consent:
 - (a) residential development, but only if it does not result in:
 - (i) the construction of a building more than 8.5 metres in height, or
 - (ii) more than 20 dwellings on a single lot.

2009 No 61

State Environmental Planning Policy (Infrastructure) Amendment (Schools, Affordable Housing and Metro Rail) 2009

Schedule 1

Amendment of State Environmental Planning Policy (Infrastructure) 2007

- (b) demolition of dwellings and associated structures, but not if the dwelling or structure is:
 - (i) identified in an environmental planning instrument as being a heritage item or within a heritage conservation area or is part of any such heritage item, or
 - (ii) listed on the State Heritage Register under the *Heritage Act 1977* or is part of an item that is so listed,
- (c) subdivision of land and subdivision works.
- (2) Development to which this clause applies may be carried out by or on behalf of Housing NSW without development consent.
- (3) Before carrying out development for a purpose referred to in subclause (1) (a), Housing NSW must:
 - (a) give written notice of the intention to carry out the development to the council for the area in which the land is located and to the occupiers of adjoining land, and
 - (b) take into consideration any response to the notice that is received within 21 days after the notice is given, and
 - (c) take into account the *Seniors Living Policy: Urban design guidelines for infill development* (ISBN 0 7347 5446 9) published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that it is not inconsistent with this Policy.

63E Exempt development

Development for the following purposes is exempt development if it is carried out by or on behalf of Housing NSW in relation to housing:

- (a) repairs and maintenance work,
- (b) non-structural renovations and building alterations,
- (c) landscaping and gardening.

63F Transitional provision—existing development applications

If, in respect of development to which clause 63D applies, a development application has been lodged before the commencement of that clause but not finally determined, the development application may be determined as if that clause had not commenced.

[16] Clause 78 Definitions

Omit the definition of *Interim Metropolitan Rail Expansion Corridor* (including the note to the definition).

Insert in alphabetical order:

Interim Metro Corridor means land shown on a rail corridors map as:

- (a) CBD Metro (Zone A—Above Ground Including Cut & Cover Tunnel), or
- (b) CBD Metro (Zone B—Tunnel), or
- (c) CBD Metro Station Extent.

interim rail corridor means the Interim Metro Corridor or the Interim Rail Link Corridor.

Interim Rail Link Corridor means land shown on a rail corridors map as:

- (a) CBD Rail Link (Zone B—Tunnel), or
- (b) South West Rail Link (Zone A—Above Ground Including Cut & Cover Tunnel), or
- (c) South West Rail Link (Zone B—Tunnel).

major development has the same meaning it has in Part 4 of the *City of Sydney Act 1988*.

rail authority for an interim rail corridor means:

- (a) in relation to the Interim Metro Corridor—Sydney Metro, and
- (b) in relation to the Interim Rail Link Corridor—RailCorp.

rail corridors map means the maps marked as follows and held in the head office of the Department of Planning:

- (a) State Environmental Planning Policy (Infrastructure) 2007—Interim Rail Corridor—CBD Rail Link & CBD Metro,
- (b) State Environmental Planning Policy (Infrastructure) 2007—Interim Rail Corridor—South West Rail Link,

Sydney Metro means Sydney Metro constituted under the *Transport Administration Act 1988*.

[17] Clause 78, definition of “rail authority for the rail corridor”

Insert after paragraph (a):

- (a1) in relation to a rail corridor that is owned, leased, managed or controlled by Sydney Metro—Sydney Metro, and

2009 No 61

State Environmental Planning Policy (Infrastructure) Amendment (Schools, Affordable Housing and Metro Rail) 2009

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

[18] Part 3, Division 15, Subdivision 2

Omit the note before clause 84. Insert instead:

Note. This Subdivision contains provisions requiring the notification of certain development to ARTC, Sydney Metro or RailCorp. See also clause 45.

[19] Clause 88 Development within or adjacent to interim rail corridor

Omit “an Interim Metropolitan Rail Expansion Corridor map” from clause 88 (1) (a).

Insert instead “a rail corridors map”.

[20] Clause 88 (1) (b)

Omit “such a map”. Insert instead “a rail corridors map”.

[21] Clause 88 (2)

Omit the subclause. Insert instead:

- (2) This clause also applies to development on land within 25 metres of that part of the Interim Rail Link Corridor shown on the map marked “State Environmental Planning Policy (Infrastructure) 2007—Interim Rail Corridor—South West Rail Link”, but only in relation to a development application lodged before 31 December 2010.

[22] Clause 88 (3)

Insert “interim” after “rail authority for the”.

[23] Clauses 88A–88C

Insert after clause 88:

88A Major development within Interim Metro Corridor

- (1) This clause applies to land within the City of Sydney that is within the Interim Metro Corridor.
- (2) A consent authority must:
 - (a) give written notice of an application for consent to major development on land to which this clause applies to Sydney Metro within 7 days of receiving the application, and
 - (b) before determining the application, take into account any submissions made by Sydney Metro within 21 days after giving the notice.

- (3) A consent authority must not grant consent to major development on land to which this clause applies if the development would have an adverse affect on the viability of the proposed metro, including by increasing the likely cost of developing the proposed metro.
- (4) For the purposes of determining whether a proposed major development could have an adverse affect on the viability of the proposed metro, a consent authority may rely on a certificate issued by Sydney Metro that certifies whether or not there would be any such adverse affect.
- (5) The consent authority must provide Sydney Metro with a copy of the determination of the application within 7 days after the determination is made.

88B Development near proposed metro stations

- (1) This clause applies to land shown as CBD Metro Station Extent on a rail corridors map and land that is adjacent to that land.
- (2) A consent authority must not grant consent to development on land to which this clause applies unless it has taken into consideration:
 - (a) whether the proposed development will adversely affect the development and operation of a proposed metro station, including by impeding access to, or egress from, the proposed metro station, and
 - (b) whether the proposed development will encourage the increased use of public transport.

88C Development near proposed Rozelle Metro Station

- (1) This clause applies to land shown as CBD Metro Station Extent on the rail corridors map and marked "Rozelle" and land that is adjacent to that land.
- (2) A consent authority must:
 - (a) give written notice of an application for consent to development on land to which this clause applies to Sydney Metro within 7 days of receiving the application, and
 - (b) before determining the application, take into account any submissions made by Sydney Metro within 21 days after giving the notice.

2009 No 61

State Environmental Planning Policy (Infrastructure) Amendment (Schools, Affordable Housing and Metro Rail) 2009

Schedule 1

Amendment of State Environmental Planning Policy (Infrastructure) 2007

- (3) The consent authority must provide Sydney Metro with a copy of the determination of the application within 7 days after the determination is made.
- (4) This clause applies only in respect of a development application that is lodged before 31 December 2010.

[24] Clause 89 Review of land within interim rail corridors

Omit “17 February 2009 and every 2 years after that, review the Interim Metropolitan Rail Expansion Corridors”.

Insert instead “17 February 2010 and every 2 years after that, review the interim rail corridors”.