



New South Wales

# **State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Amendment No 1)**

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. (S09/00152/PC)

KRISTINA KENEALLY MP  
Minister for Planning

## **State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Amendment No 1)**

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### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Amendment No 1)*.

### **2 Aims of Policy**

The aims of this Policy are to amend *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* to make changes to:

- (a) the land that is covered by the Policy, and
- (b) the specification of certain exempt development, and
- (c) the development standards that apply to certain exempt and complying development.

### **3 Land to which Policy applies**

This Policy applies to the land to which *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* applies.

### **4 Amendments to have no effect**

The amendments to be made by Schedule 1.3 to *State Environmental Planning Policy (Infrastructure) 2007* (as to be repealed by Schedule 1 [37] to this Policy) have no effect.

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**[1] Clause 1.4 Land to which Policy applies**

Omit clause 1.4 (2). Insert instead:

(2) This Policy does not apply to land to which:

- (a) *State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007* applies, and
- (b) *Warringah Local Environmental Plan 2000* applies.

**[2] Clause 1.4A**

Insert after clause 1.4:

**1.4A Development to which this Policy does not apply**

This Policy does not apply to the following development on land to which *Orana Regional Environmental Plan No 1—Siding Spring* applies:

- (a) development that is a skylight or roof window,
- (b) development that would otherwise be exempt development under this Policy on land that is within 18km of the land owned by the Australian National University at Siding Spring,
- (c) development that would otherwise be complying development under this Policy.

**[3] Clause 1.5 Interpretation—general**

Insert in alphabetical order in clause 1.5 (1):

***building height*** (or ***height of building***) means the greatest vertical height of a building, measured between a point at ground level (existing) and the highest point of the building immediately above, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

***foreshore area*** means the land between a foreshore building line, identified by an environmental planning instrument or a development control plan adopted before 12 December 2008, and the mean high water mark of an adjacent waterbody (natural).

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### [4] **Clause 1.6 Interpretation—references to land use zones**

Insert after clause 1.6 (2):

- (3) If the Director-General, by order published in the Gazette, certifies that a land use zone in a specified environmental planning instrument that is not made as provided by section 33A (2) of the Act is, or is not, a land use zone in which equivalent land uses are permitted to those permitted in a named land use zone, that certification is conclusive for the purposes of this clause.

### [5] **Clause 1.8 Relationship with other State environmental planning policies**

Insert “if carried out by a person who may carry out the development under *State Environmental Planning Policy (Infrastructure) 2007*” after “that development” in clause 1.8 (2).

### [6] **Clause 1.8 (4)**

Insert “*State Environmental Planning Policy (Sydney Region Growth Centres) 2006* or” after “provision in”.

### [7] **Clause 1.8 (4)**

Omit “cease”. Insert instead “ceases”.

### [8] **Clause 1.18 General requirements for complying development**

Insert at the end of clause 1.18 (1) (d):

, and

- (e) not involve the removal or pruning of a tree or other vegetation that would otherwise require a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent.

**Note.** A permit for the removal or pruning of a tree or other vegetation may be granted under a local environmental plan. A development consent for the removal of native vegetation may be granted under the *Native Vegetation Act 2003*.

### [9] **Clause 1.19 Land-based requirements for exempt and complying development**

Insert at the end of clause 1.19 (2) (j):

, or

- (k) land in a foreshore area.

**[10] Clause 1.19 (4), definition of “environmentally sensitive area”**

Omit paragraph (h). Insert instead:

- (h) land reserved under the *National Parks and Wildlife Act 1974* or land to which Part 11 of that Act applies,

**[11] Clause 1.19 (4), definition of “excluded land identified by an environmental planning instrument”**

Omit paragraphs (f) and (g).

**[12] Clauses 2.7, 2.21, 2.61, 2.63 and 2.71**

Omit “code.” wherever occurring in clauses 2.7, 2.21, 2.61, 2.63 and 2.71.

Insert instead “code if it is not constructed or installed on land in a foreshore area.”

**[13] Clauses 2.11, 2.17, 2.19, 2.30, 2.47 and 2.59**

Omit “item.” wherever occurring in clauses 2.11, 2.17, 2.19, 2.47 and 2.59.

Insert instead “item or on land in a foreshore area.”

**[14] Clause 2.12 Development standards**

Omit “if it is freestanding—” from clause 2.12 (1) (i).

**[15] Clause 2.27**

Omit the clause. Insert instead:

**2.27 Specified development**

The construction or installation of a driveway associated with access to an open hard stand space, a carport or garage is development specified for this code if it is not constructed or installed on or in, or in relation to, a heritage item or a draft heritage item in a heritage conservation area or a draft heritage conservation area or on land in a foreshore area.

**[16] Clause 2.28 Development standards**

Omit clause 2.28 (d). Insert instead:

- (d) not be wider than the open hard stand space, carport or garage with which it is associated, and
- (e) be constructed in accordance with Australian Standard AS 2890.1—1993, *Parking facilities—Off-street car parking*, and

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(f) be constructed in accordance with the relevant road authority's policy and specifications on vehicle and driveway crossings, and

(g) have the consent of the relevant road authority under the *Roads Act 1993* for each opening of a public road required for the development.

### [17] Clause 2.30 Development standards

Insert at the end of clause 2.30 (i):

, and

(j) be located at least 50m from a waterbody (natural).

### [18] Clause 2.33 Specified development

Insert at the end of clause 2.33 (c):

, and

(d) not constructed or installed on land in a foreshore area.

### [19] Clause 2.41 Specified development

Insert at the end of clause 2.41 (b):

, and

(c) not constructed or installed on land in a foreshore area.

### [20] Clause 2.44

Omit the clause. Insert instead:

#### 2.44 Development standards

The standard specified for this development is that it must not involve a change of building use.

**Note 1.** The elements that must comprise this development are specified in the definition of **home business**, **home industry** or **home occupation** the Standard Instrument.

**Note 2.** Under the *Building Code of Australia*, a change of building use involving a floor area greater than 10% of the floor area of a building would cause the building to contravene the development standard.

### [21] Clause 2.51 Specified development

Insert at the end of the clause:

(2) The installation of new or replacement insulation material in the ceiling, floor or wall of a building is development specified for this code.

**[22] Clause 2.52 Development standards**

Insert at the end of clause 2.52 (d):

- , and
- (e) not include a change to the fire resisting components of a building, and
- (f) if it is the installation of new or replacement insulation material in a dwelling, it must be in accordance with Part 3.12.1 of the *Building Code of Australia*.

**[23] Clause 2.54 Development standards**

Omit “compromise” from clause 2.54 (a). Insert instead “comprise”.

**[24] Clause 2.56 Development standards**

Insert at the end of clause 2.56 (c):

- , and
- (d) not have an area more than 15% of the floor area of the associated development.

**[25] Part 2, Division 1, Subdivision 38**

Omit the Subdivision.

**[26] Clause 3.8 Lot requirements**

Insert “, measured at the building line,” after “road” in clause 3.8 (1) (b).

**[27] Clause 3.14 Setbacks of dwelling houses and ancillary development from roads, other than classified roads**

Omit “or R5” from clause 3.14 (2). Insert instead “, R5 or RU5”.

**[28] Clause 3.14 (4)**

Omit “, RU4 or RU5”. Insert instead “or RU4”.

**[29] Clause 3.28**

Omit the clause. Insert instead:

**3.28 Vehicle access**

- (1) A lot on which an off-street car parking space is provided or retained under clause 3.26 must have a driveway to a public road.

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- (2) A driveway on a lot must be constructed in accordance with Australian Standard AS 2890.1—1993, *Parking facilities—Off-street car parking*.

**Note.** Clause 2.28 applies to the construction or installation of a driveway as exempt development.

### [30] **Clause 3.29 Excavation of sloping sites**

Insert “(other than a swimming pool)” after “ancillary development” in clause 3.29 (1).

### [31] **Clause 3.29 (4)**

Insert after subclause (3):

- (4) 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.

### [32] **Clause 3.30 Fill of sloping sites**

Omit clause 3.30 (1). Insert instead:

- (1) Fill associated with the erection of, or alteration or additions to, a dwelling house or ancillary development must be contained wholly within the external walls of the dwelling house or ancillary development.

### [33] **Clause 3.32**

Omit clause 3.32. Insert instead:

#### **3.32 Drainage**

- (1) All stormwater drainage collecting as a result of the erection of, or alterations or additions to, a dwelling house or ancillary development must be conveyed by a gravity fed or charged system to:
- (a) a public drainage system, or
  - (b) an inter-allotment drainage system, or
  - (c) an on-site disposal system.
- (2) All stormwater drainage systems within a lot and the connection to a public or an inter-allotment drainage system must:
- (a) if an approval is required under section 68 of the *Local Government Act 1993*, be approved under that Act, or
  - (b) if an approval is not required under section 68 of the *Local Government Act 1993*, comply with any requirements for



the disposal of stormwater drainage contained in a development control plan that is applicable to the land.

**[34] Clause 3.33 Demolition or removal of dwelling houses and ancillary development**

Omit clause 3.33 (1) (b). Insert instead:

- (b) not be relocated on the same lot or to a different lot, except in accordance with the development standards in this Division.

**[35] Clause 3.33 (2)**

Omit the subclause.

**[36] Clause 3.36 Construction of fences**

Omit clause 3.36 (2).

**[37] Schedule 1 Amendment of other environmental planning instruments**

Omit Schedule 1.3.