



New South Wales

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous) 2010

under the

Environmental Planning and Assessment Act 1979

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*. (S09/00647)

TONY KELLY, MLC
Minister for Planning

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1 Name of Policy

This Policy is *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous) 2010*.

2 Commencement

- (1) This Policy commences on the day on which it is published on the NSW legislation website, except as provided by subclause (2).
- (2) Schedule 1 [1] and [2], [4]–[9] and [15]–[22] commence on 4 June 2010.

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- (1) This Policy is repealed on the day following the day on which this Policy commences.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 (Exempt and Complying Development Codes) 2008

[1] Clause 1.3 Aims of policy

Omit “General Housing Code” from paragraph (c).

Insert instead “complying development codes”.

[2] Clause 1.3 (c)

Omit “Environmental Planning and Assessment Act 1979”.

Insert instead “Act”.

[3] Clause 1.5 Interpretation—general

Omit the definitions of *building height* (or *height of building*) and *building line* from subclause (1).

Insert instead in alphabetical order:

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

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

[4] Clause 1.5 (1)

Omit the definitions of *complying development code*, *draft heritage conservation area*, *draft heritage item* and *foreshore area*.

Insert instead in alphabetical order:

ANEF contour, for an airport, means a noise exposure contour shown as an ANEF contour on any Noise Exposure Forecast Contour Map for that airport prepared by the Department of the Commonwealth responsible for airports.

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community consultation means:

- (a) consultation with the community under section 57 of the Act, or
- (b) public exhibition under section 66 of the Act, as in force on 30 June 2009.

complying development code means any of the following codes:

- (a) the General Housing Code,
- (b) the Housing Internal Alterations Code,
- (c) the General Commercial and Industrial Code,
- (d) the Subdivisions Code.

draft heritage conservation area means an area of land identified as a heritage conservation area or place of Aboriginal heritage significance in a local environmental plan that has been subject to community consultation, other than an area that was consulted on before 1 March 2006, but has not been included in a plan before 27 February 2009.

draft heritage item means a building, work, archeological site, tree, place or aboriginal object identified as a heritage item in a local environmental plan that has been subject to community consultation, other than an item that was consulted on before 1 March 2006, but has not been included in a plan before 27 February 2009.

foreshore area means the land between a foreshore building line and the mean high water mark of an adjacent waterbody (natural).

foreshore building line means the foreshore building line identified by:

- (a) a development control plan adopted before 12 December 2008, or
- (b) an environmental planning instrument.

Subdivisions Code means the code for complying development set out in Part 6.

[5] Clause 1.6 Interpretation—references to land use zones

Omit the table to the clause. Insert instead:

Named land use zone	Permitted land uses
RU1 Primary Production	Primary production, including agriculture and a diverse range of primary industry enterprises

Named land use zone	Permitted land uses
RU2 Rural Landscape	Compatible rural land uses, including extensive agriculture
RU3 Forestry	Forestry land uses and other development compatible with forestry land uses
RU4 Rural Small Holdings	Compatible rural land uses, including extensive agriculture on small rural lots
RU5 Village	Dwelling houses, business and retail premises and associated uses and facilities in a rural village setting
R1 General Residential	Residential accommodation of various types and densities and associated services and facilities
R2 Low Density Residential	Generally low density dwellings with associated services and facilities
R3 Medium Density Residential	Mix of medium density dwellings with associated services and facilities
R4 High Density Residential	High density dwellings including residential flat buildings with associated services and facilities
R5 Large Lot Residential	Dwelling houses on large residential lots in a rural setting
B1 Neighbourhood Centre	Small scale business and retail premises, community facilities and shop top housing in a neighbourhood centre
B2 Local Centre	Business and retail premises, entertainment and community facilities and shop top housing in a local centre
B3 Commercial Core	Large scale business, office and retail premises and community and entertainment facilities in a major centre
B4 Mixed Use	A variety of business, office and retail premises, community and entertainment facilities and associated uses
B5 Business Development	Large floor area business uses, including warehouse or distribution centres, and specialised retail premises in areas that are close to, and support the viability of, centres

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Named land use zone	Permitted land uses
B6 Enterprise Corridor	Business premises, office premises, retail premises and light industries, warehouse or distribution centres and associated facilities along a main road, residential uses only as part of a mixed use development
B7 Business Park	Office premises and light industries, that encourage employment opportunities, together with associated facilities and services
IN1 General Industrial	Depots, freight transport facilities, industries, neighbourhood shops and warehouse or distribution centres in a general industrial setting
IN2 Light Industrial	Depots, light industries, neighbourhood shops and warehouse or distribution centres in a light industrial setting
IN3 Heavy Industrial	Depots, freight transport facilities and heavy industries, including hazardous and offensive industries and storage establishments in a heavy industrial setting
IN4 Working Waterfront	Waterfront industrial and maritime activities, including boat launching ramps, boat repair facilities, jetties and light industries

[6] Clause 1.18 General requirements for complying development

Insert after subclause (2A):

- (2B) To be complying development on land in the 20-25 ANEF contours, the development must be constructed in accordance with AS 2021—2000, *Acoustics—Aircraft noise intrusion—Building siting and construction*.

[7] Clause 1.19 Land on which exempt development and complying development may not be carried out

Insert after subclause (2) (c):

- (d) the Subdivisions Code.

[8] Clause 1.19 (5)

Insert “, unless the development is only the demolition or removal of a dwelling house, the demolition of ancillary development or the erection of a swimming pool, fence or retaining wall” after “prone land” in paragraph (e).

[9] Clause 1.19 (5) (i)

Insert at the end of subclause (5) (h):

, or

- (i) land that is in the 25 ANEF contour or a higher ANEF contour.

[10] Clause 2.24 Development standards

Omit “the highest point of the roof of the dwelling on the lot” from subclause (1) (c) (ii).

Insert instead “ground level (existing)”.

[11] Clauses 3.16 and 3.17

Omit the clauses. Insert instead:

3.16 Setbacks of dwelling houses from side boundaries

- (1) This clause applies to a dwelling house and any carport, garage, balcony, deck, patio, pergola, terrace or verandah that is attached to the dwelling house (a *building*).
- (2) Any point of a building, on a lot in Zone R1, R2, R3, R4, R5 or RU5, that has a building height of 3.8m or less on its building line at that point must have a setback from the side boundary nearest to that point of at least the following distance:
 - (a) if the lot has an area of at least 450m² but less than 900m²—900mm,
 - (b) if the lot has an area of at least 900m² but less than 1500m²—1.5m,
 - (c) if the lot has an area of at least 1500m²—2.5m.
- (3) Any point of a building, on a lot in Zone R1, R2, R3, R4, R5 or RU5, that has a building height of more than 3.8m on its building line at that point must have a setback from the side boundary nearest to that point of at least the sum of:
 - (a) the distance of the setback specified for the relevant sized lot in subclause (2), and
 - (b) a distance that is equal to one-quarter of the additional building height above 3.8m.

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- (4) A building on a lot in Zone RU1, RU2, RU3 or RU4 must have a setback from a side boundary of at least 10m.

3.17 Setbacks of dwelling houses from rear boundaries

- (1) This clause applies to a dwelling house and any carport, garage, balcony, deck, patio, pergola, terrace or verandah that is attached to the dwelling house (a *building*).
- (2) Any point of a building, on a lot in Zone R1, R2, R3, R4, R5 or RU5, that has a building height of 3.8m or less on its building line at that point must have a setback from the rear boundary of at least the following distance:
- (a) if the lot has an area of at least 450m² but less than 900m²—3m,
 - (b) if the lot has an area of at least 900m² but less than 1500m²—5m,
 - (c) if the lot has an area of at least 1500m²—10m.
- (3) Any point of a building, on a lot in Zone R1, R2, R3, R4, R5 or RU5, that has a building height of more than 3.8m on its building line at that point must have a setback from the rear boundary of at least the following distance:
- (a) if the lot has an area of at least 450m² but less than 900m²—3m, plus an amount that is equal to three times the additional building height above 3.8m, up to a maximum of 8m,
 - (b) if the lot has an area of at least 900m² but less than 1500m²—5m, plus an amount that is equal to three times the additional building height above 3.8m, up to a maximum of 12m,
 - (c) if the lot has an area of at least 1500m²—10m, plus an amount that is equal to three times the additional building height above 3.8m, up to a maximum of 15m.
- (4) Despite subclauses (2) and (3), a building on a lot in Zone R1, R2, R3, R4 or RU5 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.
- (5) A building on a lot in Zone RU1, RU2, RU3 or RU4 must have a setback from the rear boundary of at least 10m.

[12] Clause 3.18 Setbacks of new outbuildings from side and rear boundaries

Omit “An outbuilding with a building height at any part” from subclauses (1) and (2) wherever occurring.

Insert instead “A new outbuilding, or alterations and additions to an existing outbuilding, with a building height, on the building line,”.

[13] Clause 3.18 (3)

Omit “An outbuilding”. Insert instead “A new outbuilding, or alterations and additions to an existing outbuilding,”.

[14] Clause 3.20 Calculating setbacks

Omit subclauses (4) and (5).

[15] Clause 3.27 Garages, carports and car parking spaces

Omit subclause (2) (b). Insert instead:

- (b) if the lot has a frontage of more than 15m—be not more than 50 per cent of the width of the building, measured at the building line to the relevant property boundary, and
- (c) if the lot has a frontage of not more than 15m—be not more than 60 per cent of the width of the building, measured at the building line to the relevant property boundary.

[16] Clause 3.29 Excavation of sloping sites

Omit subclause (2). Insert instead:

- (2) A retaining wall:
 - (a) must not redirect the flow of surface water onto adjoining property, and
 - (b) must not extend more than 2m horizontally from any external wall of the dwelling house or ancillary development.

[17] Clause 3.29 (3)

Omit “1m”. Insert instead “2m”.

[18] Clause 3.30 Fill of sloping sites

Omit subclause (1). Insert instead:

- (1) Fill associated with the erection of, or an alteration or addition to, a dwelling house or ancillary development must:
 - (a) be contained wholly within the footprint of the dwelling house or ancillary development, or

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- (b) be adequately contained by a retaining wall that:
 - (i) is not higher than 600mm (including the height of any batters) above ground level (existing), and
 - (ii) does not redirect the flow of surface water onto adjoining property.

[19] Clause 3.35 Fences and retaining walls

Insert after subclause (4):

- (4A) If the land on which a fence or retaining wall is to be erected is bush fire prone land, the fence or retaining wall must be constructed from non combustible materials.

[20] Clause 3.36 Construction of fences

Insert after subclause (1):

- (2) If the land on which a fence is to be erected is bush fire prone land, the fence must be constructed from non combustible materials.

[21] Part 4 Housing Internal Alterations Code

Omit Divisions 1 and 1A. Insert instead:

Division 1 Specified development and development standards under this code

Subdivision 1 Internal alterations

4.1 Specified complying development

Internal alterations to an existing dwelling or existing ancillary development that is associated with a dwelling, other than development that is the erection or conversion of a basement to an existing dwelling, is development specified for this code.

Note. See the entry for minor building alterations (internal) in the General Exempt Development Code.

4.1A Development standards

The standards specified for that development are that the development:

- (a) must not result in a change of classification of the building under the Act or the *Building Code of Australia*, and
- (b) must not result in any additional separate dwelling, and

- (c) if it relates to a building on land in the Sydney region, as declared under section 4 (6) of the Act, or in the local government area of Newcastle or Wollongong—must be to a building, other than a dwelling house, that was approved for subdivision under the *Strata Schemes (Freehold Development) Act 1973* or has an occupation certificate issued after 28 January 2000.

Subdivision 2 Demolition

4.1B Specified development

Demolition of development that would be complying development under this code if it were being constructed or installed is development specified for this code.

4.1C Development standards

The standards specified for that development are that the development must be carried out in accordance with AS 2601—2001, *Demolition of structures*.

[22] Part 6 Subdivisions Code

Insert after Part 5:

Part 6 Subdivisions Code

Note 1. Schedule 3 contains variations to this code.

Note 2. In addition to the requirements specified for development under this code, adjoining owners' property rights, the applicable common law and other legislative requirements for approvals, licences, permits and authorities still apply. For example, requirements relevant to development in this code may be contained in the Act, the *Environmental Planning and Assessment Regulation 2000*, various State environmental planning policies, the *Protection of the Environment Operations Act 1997*, the *Roads Act 1993* and Acts applying to various infrastructure authorities. If the development is in proximity to infrastructure, including water, stormwater and sewer mains, electricity power lines and telecommunications facilities, the relevant infrastructure authority should be contacted before commencing the development.

6.1 Specified complying development

The strata subdivision of a building, other than a dual occupancy, for which development consent or a complying development certificate was granted or issued is, for 5 years from the date the consent or certificate was granted or issued, development specified for this code.

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6.2 Development standards

The standards specified for that development are:

- (a) that any development consent or complying development certificate relating to the building, the subject of the subdivision, and granted or issued before 1 January 2011 must require the allocation of parking spaces for each individual dwelling, and
- (b) that the subdivision must not contravene any condition of any development consent or complying development certificate applying to the development.

Note. Registered interests on the land, the subject of the strata subdivision, the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973* apply.