



New South Wales

# **State Environmental Planning Policy (Major Development) Amendment (Rise Bilambil Heights) 2010**

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*. (S09/01743)

TONY KELLY, MLC  
Minister for Planning

## **State Environmental Planning Policy (Major Development) Amendment (Rise Bilambil Heights) 2010**

under the

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### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Major Development) Amendment (Rise Bilambil Heights) 2010*.

### **2 Commencement**

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

### **3 Repeal**

- (1) This Policy is repealed on the day following the day on which all of the provisions of the Policy have commenced.
- (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 amendments made by this Policy.

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

### **Schedule 3 State significant sites**

Insert in the Schedule with appropriate Part numbering:

## **Part      Rise Bilambil Heights 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 *Rise Bilambil Heights site*.

#### **2      Interpretation**

- (1) In this Part:

*council* means the Tweed Shire Council.

*Height of Buildings Map* means the State Environmental Planning Policy (Major Development) 2005 Rise Bilambil Heights Height of Buildings Map.

*Land Application Map* means the State Environmental Planning Policy (Major Development) 2005 Rise Bilambil Heights Land Application Map.

*Land Zoning Map* means the State Environmental Planning Policy (Major Development) 2005 Rise Bilambil Heights Land Zoning Map.

- (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 Rise Bilambil Heights site is the 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

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- (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 Rise Bilambil Heights site are this Policy and all other State environmental planning policies, other than *State Environmental Planning Policy No 1—Development Standards*.

## Division 2 Provisions relating to development in Rise Bilambil Heights site

### 6 Land use zones

For the purposes of this Part, land within the Rise Bilambil Heights 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 B4 Mixed Use,
- (c) Zone E2 Environmental Conservation.

### 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 development consent on land within Zone R1 General Residential:  
environmental protection works; 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; child care centres; community facilities; dwelling houses; educational establishments; environmental facilities; food and drink premises; group homes; health consulting rooms; home businesses; home industries; hostels; kiosks; markets; multi dwelling housing; neighbourhood shops; places of public worship; public administration buildings; recreation areas; recreation facilities (indoor); recreation facilities (outdoor); residential flat buildings; roads; semi-detached dwellings; seniors housing; shop top housing; shops; tourist and visitor accommodation; water supply systems.
- (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).

**9 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 business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone B4 Mixed Use:  
environmental protection works; home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone B4 Mixed Use:  
business premises; child care centres; community facilities; educational establishments; entertainment facilities; food and drink premises; function centres; home businesses; home industries; hostels; hotel or motel accommodation; information and education facilities; office premises; passenger transport

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facilities; recreation areas; recreation facilities (indoor); registered clubs; residential flat buildings; retail premises; roads; seniors housing; shop top housing; water supply systems.

- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone B4 Mixed Use unless it is permitted by subclause (2) or (3).

### 10 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:

environmental facilities; roads.

- (4) Except as otherwise provided by this Part, development for any of the following purposes is prohibited on land within Zone E2 Environmental Conservation:

business premises; hotel or motel accommodation; industries; multi dwelling housing; recreation facilities (major); residential flat buildings; retail premises; seniors housing; service stations; warehouse or distribution centres; any other development not specified in subclause (2) or (3).

### 11 Subdivision—consent requirements

- (1) Land within the Rise Bilambil Heights 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.

## **12 Height of buildings**

- (1) The objectives of this clause are as follows:
  - (a) to establish the maximum height for which a building can be designed,
  - (b) to ensure that building height relates to the land's capacity to provide and maintain an appropriate urban character and level of amenity,
  - (c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,
  - (d) to encourage greater population density in less car-dependent urban areas,
  - (e) to enable a transition in building heights between urban areas comprised of different characteristics,
  - (f) to limit the impact of the height of a building on the existing natural and built environment,
  - (g) to prevent gross overshadowing impacts on the natural and built environment.
- (2) The height of a building on any land within the Rise Bilambil Heights site is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (3) This clause applies only in relation to development where the Minister has not, in an approval for a concept plan for the development (whether given before or after the commencement of this clause) provided for the construction of a building that exceeds the height of building set out in subclause (2).

## **13 Exceptions to development standards**

- (1) This clause applies to development on land within the Rise Bilambil Heights site.

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- (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 E2 if:
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (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.

#### **14 Controls relating to miscellaneous uses**

- (1) **Bed and breakfast accommodation**

Development for the purposes of bed and breakfast accommodation on land within the Rise Bilambil Heights site must not involve the provision of more than 6 bedrooms for accommodation for guests.
- (2) **Farm stay accommodation**

Development for the purposes of farm stay accommodation on land within the Rise Bilambil Heights site must not involve the provision of more than 12 bedrooms for accommodation for guests.

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(3) **Home businesses**

Development for the purposes of a home business on land within the Rise Bilambil Heights site must not involve the use of more than 40 square metres of floor area for the carrying on of the home business.

(4) **Home industries**

Development for the purposes of a home industry on land within the Rise Bilambil Heights site must not involve the use of more than 60 square metres of floor area for the carrying on of the home industry.

(5) **Kiosks**

Development for the purposes of a kiosk on land within the Rise Bilambil Heights site must not have a gross floor area that exceeds 15 square metres.

(6) **Neighbourhood shops**

Development for the purposes of a neighbourhood shop on land within the Rise Bilambil Heights site must not have a retail floor area that exceeds 300 square metres.

(7) **Roadside stalls**

Development for the purposes of a roadside stall on land within the Rise Bilambil Heights site must not have a gross floor area that exceeds 30 square metres.

### 15 **Arrangements for designated State public infrastructure**

- (1) This clause applies to land in Zones R1 General Residential and B4 Mixed Use within the Rise Bilambil Heights 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
  - (c) any lot that is proposed to be reserved or dedicated for public open space, public roads, public utility undertakings, 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 and bus lanes,
  - (c) land required for regional open space,
  - (d) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).

#### **16 Public utility infrastructure**

- (1) Development consent must not be granted for development on land within the Rise Bilambil Heights 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.
- (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,

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(c) the disposal and management of sewage.

**17 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.

**18 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 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).

<b>Type of land shown on Map</b>	<b>Authority of the State</b>
(When this clause commenced this Table was blank.)	

**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*).

- (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.

**19 Suspension of covenants, agreements and instruments**

- (1) For the purpose of enabling development on land within the Rise Bilambil Heights site to be carried out in accordance with this Part 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 the council or that the council 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*, or
  - (g) to any planning agreement within the meaning of Division 6 of Part 4 of the Act.
- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (4) Under section 28 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).