



New South Wales

State Environmental Planning Policy (Infrastructure) Amendment (Miscellaneous) 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*.

TONY KELLY, MLC
Minister for Planning

State Environmental Planning Policy (Infrastructure) Amendment (Miscellaneous) 2010

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1 Name of Policy

This Policy is *State Environmental Planning Policy (Infrastructure) 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 [43–[45] and [47]–[49] commence on the commencement of Schedule 1 [25] to the *Coastal Protection and Other Legislation Amendment Act 2010*.

3 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which all of its provisions have commenced.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

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[1] Clause 5 Interpretation—general

Insert in alphabetical order in clause 5 (2):

infrastructure facility means development that is the subject of development controls under Part 3.

primary road means the road to which the front of a dwelling house, or a main building, on a lot faces or is proposed to face.

[2] Clause 8 Relationship to other environmental planning instruments

Insert “, 48B” after “41 (2) (b)” in clause 8 (3).

[3] Part 2, Division 4, note

Insert after the heading to the Division:

Note 1. Under section 76 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act.

The section states that exempt development:

- (a) must be of minimal environmental impact, and
- (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
- (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).

Note 2. In addition to the requirements set out in this Policy in relation to exempt development, 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 the kind of exempt development concerned 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.

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[4] Clauses 20 and 20A

Omit clause 20. Insert instead:

20 General requirements for exempt development

- (1) This clause applies to any development that this Policy provides is exempt development.

Note. Clause 20A and other provisions of this Policy identify kinds of development that are exempt development if they meet the requirements of this clause.

- (2) To be exempt development, the development:

- (a) must meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, or if there are no such relevant provisions, must be structurally adequate, and

- (b) must not, if it relates to an existing building:

- (i) cause the building to contravene the *Building Code of Australia*, or

- (ii) compromise the fire safety of the building or affect access to any fire exit, and

- (c) must be carried out in accordance with all relevant requirements of the Blue Book, and

- (d) must not be designated development, and

Note. Designated development is defined in section 77A of the Act as development that is declared to be designated development by an environmental planning instrument or the regulations.

- (e) if it is likely to affect a State or local heritage item or a heritage conservation area, must involve no more than minimal impact on the heritage significance of the item or area, and

- (f) must be installed in accordance with the manufacturer's specifications, if applicable, and

- (g) must not involve the removal or pruning of a tree or other vegetation that requires 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*.

20A Exempt development carried out by public authorities for purposes in Schedule 1

Development for a purpose specified in Schedule 1 is exempt development if:

- (a) it is carried out by or on behalf of a public authority, and
- (b) it meets the development standards for the development specified in Schedule 1, and
- (c) it complies with clause 20.

[5] Part 2, Division 5

Insert after Division 4 of Part 2:

Division 5 Complying development

Note. Under section 76A of the Act, development consent for the carrying out of complying development may be obtained by the issue of a complying development certificate.

The section states that development cannot be complying development if:

- (a) it is on land that is critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), or
- (b) it is on land within a wilderness area (identified under the *Wilderness Act 1987*), or
- (c) the development is designated development, or
- (d) the development is on land that comprises, or on which there is, an item of environmental heritage (that is listed on the State Heritage Register or that is subject to an interim heritage order under the *Heritage Act 1977*), or
- (e) the development requires concurrence (except a concurrence of the Director-General of the Department of Environment, Climate Change and Water in respect of development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat (identified under the *Threatened Species Conservation Act 1995*)), or
- (f) the development is on land identified as an environmentally sensitive area.

20B General requirements for complying development

- (1) This clause applies to any development that this Policy provides is complying development.
- (2) To be complying development, the development must:
 - (a) not be exempt development under this Policy, and
 - (b) be permissible, with consent, in the land use zone in which it is carried out, and
 - (c) meet the relevant provisions of the *Building Code of Australia*, and

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- (d) before the complying development certificate is issued, have written consent from the relevant roads authority, if required by the *Roads Act 1993*:
 - (i) for each opening of a public road required by the development, and
 - (ii) to operate or store machinery, materials or waste required by the development on a road or footpath reserve, and
- (e) if it is the alteration or erection of improvements on land in a mine subsidence district within the meaning of the *Mine Subsidence Compensation Act 1961*, have the prior approval of the Mine Subsidence Board, and

Note. Information about mine subsidence is information that is a prescribed matter for the purpose of a planning certificate under section 149 (2) of the Act.
- (f) not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent, and

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*.
- (g) not be carried out within 1m of any public sewer, if the development comprises the erection of a building, except with the written approval of the authority that has management or control of that sewer.

20C General conditions of complying development certificates

Note. The *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Noise Control) Regulation 2008* contain provisions relating to noise.

(1) General

A complying development certificate for complying development under this Policy is subject to the conditions specified in this clause.

Note. The regulations made under the Act contain additional conditions of a complying development certificate.

(2) Conditions applying before works commence

A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the

works begin and must be kept in place until after the completion of works if the works:

- (a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- (b) could cause damage to adjoining lands by falling objects, or
- (c) involve the enclosure of a public place or part of a public place.

Note. See the entry for hoardings in Schedule 1. See also the entry for scaffolding, hoardings and temporary construction site fences in the General Exempt Development Code in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

- (3) Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.
- (4) Each toilet must:
 - (a) be a standard flushing toilet connected to a public sewer, or
 - (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
 - (c) be a temporary chemical closet approved under the *Local Government Act 1993*.
- (5) A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed.
- (6) **Conditions applying during works**

Construction or demolition may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction or demolition is to be carried out at any time on a Sunday or a public holiday.
- (7) Works must be carried out in accordance with the plans and specifications to which the complying development certificate relates.
- (8) Run-off and erosion controls must be effectively maintained until the site has been stabilised and landscaped.
- (9) Building, or demolition, materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.

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- (10) Demolition materials and waste materials must be sorted, and must be disposed of at a waste or resource management facility.
- (11) The work site must be left clear of waste and debris at the completion of the works.
- (12) **Utility services**
If the complying development requires alteration to, or the relocation of, utility services on the lot on which the complying development is carried out, the complying development is not complete until all such works are carried out.
- (13) **Post-works requirements**
If:
(a) the development involves the erection or change of use of a building within a water supply authority's area of operations, and
(b) the water supply authority requires a certificate of compliance to be obtained with respect to the erection or change of use of the building,
the building cannot be occupied before such a certificate has been obtained.
- (14) In this clause:
certificate of compliance, in relation to a water supply authority, means a certificate of compliance issued by the water supply authority under the Act under which the water supply authority is constituted.
water supply authority means:
(a) the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority within the meaning of the *Water Management Act 2000*, or
(b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

[6] **Clauses 31 (1) and (2) (c), 39 (2) (a), 43, 54 (1) and (2), 66 (1) and (2) (a), 70, 82, 92A, 97 (1), 107, 112 and 127**

Omit "clause 20 (2) (Exempt development)" wherever occurring.

Insert instead "clause 20".

[7] Clause 31 Exempt development

Insert after clause 31 (1):

- (1A) Clause 20 (2) (g) does not apply in relation to development carried out under subclause (1) (b).

[8] Clause 31 (2), note

Omit “20 (1)”. Insert instead “20A”.

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

Omit clause 31A (1)–(2). Insert instead:

- (1) Development carried out by or on behalf of any person on land within the boundaries of an existing school or TAFE establishment is complying development if:
- (a) it consists of the construction of, or alterations or additions to, any of the following:
 - (i) a library or an administration building,
 - (ii) a gym, indoor sporting facility or hall,
 - (iii) a classroom, lecture theatre, laboratory, trade or training facility,
 - (iv) a tuckshop, cafeteria, bookshop or child care facility to provide for students or staff (or both),
 - (v) a hall with an associated covered outdoor learning area or tuck shop,
 - (vi) if the development is not on bush fire prone land or if the educational establishment is not, or does not contain, a heritage item—an outdoor learning or play area and associated awnings or canopies,
 - (vii) a car park, and
 - (b) it complies with this clause and clause 20B (General requirements for complying development).
- (2) Development carried out by or on behalf of any person on land within the boundaries of an existing school or TAFE establishment is complying development if:
- (a) it is an alteration or addition referred to in subclause (1) that is carried out for the purpose of a change of use to another use specified in that subclause, and
 - (b) it complies with this clause and clause 20B (General requirements for complying development).

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(3) Clause 20B (2) (f) does not apply in relation to development carried out under this clause.

[10] Clause 31C Complying development certificates—additional conditions

Insert “(in addition to the conditions set out in clause 20C)” after “conditions”.

[11] Clause 31C (a), (c) and (g)–(i)

Omit the paragraphs.

[12] Clause 31C (f)

Omit the paragraph. Insert instead:

(f) the person having the benefit of the complying development certificate must give at least 2 days’ notice in writing of the intention to commence the works to the owner or occupier of any dwelling that is situated within 20m of the lot on which the works will be carried out.

[13] Part 3, Division 4, heading

Insert “or solar energy systems” after “works”.

[14] Clause 33 Definitions

Omit the definition of *prescribed zone*. Insert instead:

prescribed residential zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (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 R5 Large Lot Residential,
- (f) Zone RU5 Village.

prescribed rural zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape,
- (c) Zone RU3 Forestry,
- (d) Zone RU4 Rural Small Holdings.

prescribed rural, industrial or special use zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU1 Primary Production,
- (b) RU2 Rural Landscape,
- (c) RU3 Forestry,
- (d) RU4 Rural Small Holdings,
- (e) IN1 General Industrial,
- (f) IN2 Light Industrial,
- (g) IN3 Heavy Industrial,
- (h) IN4 Working Waterfront,
- (i) SP1 Special Activities,
- (j) SP2 Infrastructure.

small wind turbine means a wind turbine that has a generating capacity of no more than 100kW.

small wind turbine system means a system comprising one or more small wind turbines each of which feed into the same grid or battery bank.

solar energy system means any of the following systems:

- (a) a photovoltaic electricity generating system,
- (b) a solar hot water system,
- (c) a solar air heating system.

[15] Clause 34 Development permitted with consent

Omit clause 34 (1). Insert instead:

- (1) Development for the purpose of electricity generating works may be carried out by any person with consent on any land in a prescribed rural, industrial or special use zone.

[16] Clause 34 (5)–(8)

Insert after clause 34 (4):

- (5) Without limiting subclause (1), development for the purpose of a small wind turbine system may be carried out by any person with consent on any land.

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- (6) However, subclause (5) only applies in relation to land in a prescribed residential zone if:
- (a) the small wind turbine system has the capacity to generate no more than 10kW, and
 - (b) the height of any ground-mounted small wind turbine in the system from ground level (existing) to the topmost point of the wind turbine is no more than 18m.
- (7) **Solar energy systems**
- Except as provided by subclause (8), development for the purpose of a solar energy system may be carried out by any person with consent on any land.
- (8) Development for the purpose of a photovoltaic electricity generating system may be carried out by a person with consent on land in a prescribed residential zone only if the system has the capacity to generate no more than 100kW.

[17] **Clause 36 Development permitted without consent**

Insert after clause 36 (2):

- (3) **Solar energy systems**
- Development for the purpose of a solar energy system may be carried out by or on behalf of a public authority without consent on any land if:
- (a) it is ancillary to an existing infrastructure facility, and
 - (b) in the case of development for the purpose of a photovoltaic electricity generating system—the system has the capacity to generate no more than 100kW.

[18] **Clause 37**

Omit the clause. Insert instead:

37 Complying development

- (1) **Small wind turbine systems**
- Development for the purpose of a small wind turbine system is complying development on any land if:
- (a) the development complies with clause 20B, and
 - (b) the land is not in a heritage conservation area, and
 - (c) the system is installed no less than:
 - (i) 25 metres—in the case of a system that has a source sound power level of 0–70 dB(A), or

- (ii) 40 metres—in the case of a system that has a source sound power level of 71–80 dB(A), or
- (iii) 126 metres—in the case of a system that has a source sound power level of 81–90 dB(A), or
- (iv) 200 metres—in the case of a system that has a source sound power level of more than 91 dB(A), or
- (v) 200 metres—in the case of a system that has an unknown source sound power level,
from any dwelling that is not owned or occupied by the owner of the system, and
- (d) the system is located clear of any works, including power lines, of any relevant network operator (within the meaning of the *Electricity Supply Act 1995*) and complies with any requirements of the network operator that relate to clearance from those works, and
- (e) the system is installed in accordance with the manufacturer's specifications or by a person who is endorsed for the design and installation of small wind turbine systems under the Clean Energy Council's wind endorsement scheme, and
- (f) in the case of any ground-mounted small wind turbine in the system—the turbine does not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 2 kilometres of the proposed development and reported to the Civil Aviation Safety Authority, and
- (g) in the case of land in a prescribed residential zone:
 - (i) the system has the capacity to generate no more than 10kW, and
 - (ii) if the system is ground-mounted:
 - (A) the development will result in no more than one small wind turbine being situated on the lot concerned, and
 - (B) the small wind turbine has a height of not more than 18m above ground level (existing), and
 - (C) the small wind turbine is not installed forward of any existing building line on the lot concerned that faces a primary road, and

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- (iii) if the system is not ground-mounted:
 - (A) the development will result in no more than 2 small wind turbines being situated on the lot concerned, and
 - (B) each small wind turbine does not protrude more than 3m above any building to which it is attached (as measured from the point of attachment), and
 - (C) each small wind turbine is not attached to a wall or roof facing a primary road, and
- (h) in the case of land in a prescribed rural, industrial or special use zone:
 - (i) the system has the capacity to generate no more than 100kW, and
 - (ii) if the system is ground-mounted:
 - (A) the development will result in no more than 3 small wind turbines being situated on the lot concerned, and
 - (B) each small wind turbine has a height of not more than 35m above ground level (existing), and
 - (iii) if the system is not ground-mounted:
 - (A) the development will result in no more than 4 small wind turbines being situated on the lot concerned, and
 - (B) each small wind turbine does not protrude more than 5m above any building to which it is attached (as measured from the point of attachment), and
- (i) in the case of land in any land use zone other than a land use zone referred to in paragraph (g) or (h):
 - (i) the system has the capacity to generate no more than 100kW, and
 - (ii) if the system is ground-mounted:
 - (A) the development will result in no more than 2 small wind turbines being situated on the lot concerned, and
 - (B) each small wind turbine has a height of not more than 26m above ground level (existing), and

- (iii) if the system is not ground-mounted:
 - (A) the development will result in no more than 4 small wind turbines being situated on the lot concerned, and
 - (B) each small wind turbine does not protrude more than 5m above any building to which it is attached (as measured from the point of attachment).

(2) **Solar energy systems**

Development for the purpose of a solar energy system is complying development on any land if:

- (a) the development complies with clause 20B, and
- (b) the land is not in a heritage conservation area, and
- (c) in the case of development for the purposes of a photovoltaic electricity generating system:
 - (i) the system is installed in accordance with the manufacturer's specifications or by a person who is accredited by the Clean Energy Council for the installation of photovoltaic electricity generating systems, and
 - (ii) the system has the capacity to generate no more than 100kW if the land is in a prescribed residential zone, and
- (d) in the case of development for the purposes of a system other than a photovoltaic electricity generating system—the system is installed in accordance with the manufacturer's specifications, and
- (e) in the case of a system that is ground-mounted:
 - (i) the system occupies an area of not more than 500m², and
 - (ii) the system has a height of not more than 10m above ground level (existing), and
 - (iii) the system is installed no less than 10m from any adjoining property boundary, and
 - (iv) if the system involves the use of mirrors or lenses to reflect or concentrate sunlight—the system is installed no less than 100m from any dwelling or other building that is not owned or occupied by the owner of the system, and
 - (v) if the solar energy system is a photovoltaic electricity generating system having the capacity to

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- generate 10kW or more—the system is installed no less than 50m from any dwelling that is not owned or occupied by the owner of the system, and
- (f) in the case of a system that is not ground-mounted:
- (i) the development does not reduce the structural integrity of, or involve structural alterations to, any building to which it is attached, and
Note. The term **building** is defined in the *Environmental Planning and Assessment Act 1979* as including any structure.
 - (ii) the system does not involve mirrors or lenses to reflect or concentrate sunlight, and
 - (iii) if the land is in a prescribed residential zone and is attached to a wall or roof facing a primary road—the system does not protrude more than 0.5m from the wall or roof (as measured from the point of attachment), and
 - (iv) if the land is in a prescribed residential zone and is not attached to a wall or roof facing a primary road:
 - (A) the system does not protrude more than 1.5m from any building to which it is attached (as measured from the point of attachment), and
 - (B) the system is installed no less than 1m from any adjoining property boundary if the system protrudes more than 0.5m from any building to which it is attached (as measured from the point of attachment), and
 - (v) the system does not protrude more than 3m from any building to which it is attached (as measured from the point of attachment) if the land is in a land use zone other than a prescribed residential zone.
- (3) For the purposes of subclause (1) (c), a **source sound power level** is a level that is measured at a wind speed of no less than 8 metres per second and in accordance with the International Standard IEC 61400—11 *Noise Measurement*.

[19] Clause 39 Exempt development

Omit clause 39 (1). Insert instead:

(1) Small wind turbine systems

Development for the purpose of a small wind turbine system is exempt development on land in a prescribed rural zone if:

- (a) it complies with clause 20 (other than clause 20 (2) (f)), and
- (b) the system is ground-mounted, and
- (c) each small wind turbine has a height of not more than 35m from ground level (existing), and
- (d) each small wind turbine is installed no less than 200m from any dwelling that is not owned or occupied by the owner of the system, and
- (e) the development will result in no more than 2 small wind turbines being situated on the lot concerned, and
- (f) each small wind turbine is located clear of any works, including power lines, of any relevant network operator (within the meaning of the *Electricity Supply Act 1995*) and complies with any requirements of the network operator that relate to clearance from those works, and
- (g) each small wind turbine does not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 2 kilometres of the proposed development and reported to the Civil Aviation Safety Authority, and
- (h) the system is installed in accordance with the manufacturer's specifications or by a person who is endorsed for the design and installation of small wind systems under the Clean Energy Council's wind endorsement scheme, and
- (i) if the land contains a State or local heritage item or is in a heritage conservation area—the system is not visible from any road at the point where the road adjoins the property boundary concerned.

(1A) Wind monitoring towers

The installation of a wind monitoring tower used in connection with investigating or determining the feasibility of a small wind

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turbine system that has a generating capacity of no more than 1 MW is exempt development on any land if:

- (a) it complies with clause 20 (other than clause 20 (2) (f)), and
- (b) the tower is located clear of any works, including power lines, of any relevant network operator (within the meaning of the *Electricity Supply Act 1995*) and complies with any requirements of the network operator that relate to clearance from those works, and
- (c) the tower does not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 2 kilometres of the proposed development and reported to the Civil Aviation Safety Authority, and
- (d) the tower is installed in accordance with the manufacturer's specifications or by a person who is endorsed for the design and installation of small wind turbine systems under the Clean Energy Council's wind endorsement scheme, and
- (e) if the land contains a State or local heritage item or is in a heritage conservation area—the tower is not visible from any road at the point where the road adjoins the property boundary concerned, and
- (f) in the case of land in a prescribed residential zone:
 - (i) there is no other wind monitoring tower installed on the lot concerned, and
 - (ii) the height of the tower from ground level (existing) to the topmost point of the tower is no more than 18m, and
 - (iii) the tower is installed no less than 18m from any dwelling that is not owned or occupied by the owner of the tower, and
- (g) in the case of land in a prescribed rural, industrial or special use zone:
 - (i) there are no more than 2 other wind monitoring towers installed on the lot concerned, and
 - (ii) the height of the tower from ground level (existing) to the topmost point of the tower is no more than 35m, and

- (iii) the tower is installed no less than 35m from any dwelling that is not owned or occupied by the owner of the tower, and
- (h) in the case of land in any land use zone (other than a land use zone referred to in paragraph (f) or (g)):
 - (i) there is no more than one other wind monitoring tower installed on the lot concerned, and
 - (ii) the height of the tower from ground level (existing) to the topmost point of the tower is no more than 26m, and
 - (iii) the tower is installed no less than 26m from any dwelling that is not owned or occupied by the owner of the tower, and
- (i) the tower is demolished within 30 months after the construction or installation is completed.

[20] Clause 39 (2)

Insert “that has a generating capacity of more than 1 MW” after “wind farm”.

[21] Clause 39 (3)

Insert after clause 39 (2):

(3) Solar energy systems

Development for the purpose of a solar energy system is exempt development if:

- (a) it complies with clause 20 (other than clause 20 (2) (f)), and
- (b) in the case of development for the purposes of a photovoltaic electricity generating system—the system is installed in accordance with the manufacturer’s specifications or by a person who is accredited by the Clean Energy Council for the installation of photovoltaic electricity generating systems, and
- (c) in the case of development for the purpose of any solar energy system other than a photovoltaic electricity generating system—the system is installed in accordance with the manufacturer’s specifications, and
- (d) the system does not involve mirrors or lenses to reflect or concentrate sunlight, and

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- (e) in the case of a system that is ground-mounted:
 - (i) the system occupies an area of not more than 150m², and
 - (ii) the system has a height of not more than 5m above ground level (existing), and
 - (iii) the system is installed no less than 3m from any adjoining property boundary, and
 - (iv) if the land contains a State or local heritage item or is in a heritage conservation area—the system is not visible from any road at the point where the road adjoins the property boundary concerned, and
 - (v) if the solar energy system is a photovoltaic electricity generating system having the capacity to generate 10kW or more—the system is installed no less than 10m from any dwelling that is not owned or occupied by the owner of the system, and
- (f) in the case of a system that is not ground-mounted:
 - (i) the development does not reduce the structural integrity of, or involve structural alterations to, any building to which it is attached, and
Note. The term **building** is defined in the *Environmental Planning and Assessment Act 1979* as including any structure.
 - (ii) if the land is in a prescribed residential zone and is attached to a wall or roof facing a primary road—the system does not protrude more than 0.5m from the wall or roof (as measured from the point of attachment), and
 - (iii) if the land is in a prescribed residential zone and is not attached to a wall or roof facing a primary road:
 - (A) the system does not protrude more than 1m from any building to which it is attached (as measured from the point of attachment), and
 - (B) the system is installed no less than 1m from any adjoining property boundary if the system protrudes more than 0.5m from any building to which it is attached (as measured from the point of attachment), and
 - (iv) if the land contains a State or local heritage item or is in a heritage conservation area:
 - (A) the system is not attached to any wall or roof of a building facing a primary road, and

- (B) the system does not protrude more than 0.5m from any building to which it is attached (as measured from the point of attachment), and
- (v) the system does not protrude more than 1.5m from any building or structure to which it is attached (as measured from the point of attachment) if the land is in a land use zone other than a prescribed residential zone, and
- (vi) in the case of development for the purposes of a photovoltaic electricity generating system—the system has the capacity to generate no more than 10kW.

[22] Clause 43 Exempt development

Insert at the end of the clause:

- (2) Clause 20 (2) (g) does not apply in relation to development carried out under subclause (1) (k).

[23] Clause 46 Definitions

Insert in alphabetical order:

Bush Fire Management Committee means a Bush Fire Management Committee established under the *Rural Fires Act 1997*.

[24] Clause 46, definition of “prescribed zone”

Insert after paragraph (e) of the definition:

- (e1) B1 Neighbourhood Centre,

[25] Clause 46, definition of “prescribed zone”

Insert after paragraph (l) of the definition:

- (11) IN 2 Light Industrial,

[26] Clause 47 Development permitted with consent

Insert “the NSW Rural Fire Service or” after “on behalf of”.

[27] Clause 47 (2)

Insert at the end of clause 47:

- (2) Development for the purpose of an emergency services facility may be carried out with consent by or on behalf of the Ambulance Service of New South Wales, New South Wales Fire Brigades or

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the NSW Rural Fire Service on land in any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU6 Transition,
- (b) R1 General Residential,
- (c) R2 Low Density Residential,
- (d) R3 Medium Density Residential,
- (e) R4 High Density Residential,
- (f) R5 Large Lot Residential,
- (g) RE1 Public Recreation,
- (h) E3 Environmental Management,
- (i) E4 Environmental Living.

[28] **Clause 48 Development permitted without consent**

Insert “(other than the NSW Rural Fire Service)” after “public authority” in clause 48 (1).

[29] **Clause 48 (2A)**

Insert after clause 48 (2):

- (2A) Before development to which subclause (1) or (2) applies is carried out, the proponent of the development 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 (unless the proponent is that council) and to the occupiers of adjoining and adjacent land, and
 - (b) take into consideration any response to the notice that is received within 21 days after the notice is given.

[30] **Clauses 48A and 48B**

Insert after clause 48:

48A Exempt development

- (1) Development for the purpose of maintaining existing fire trails or asset protection zones, or for the purpose of installing or maintaining gates and associated structures on such trails or zones, is exempt development if:
 - (a) the development complies with clause 20, and
 - (b) the development is consistent with the applicable bush fire risk management plan under the *Rural Fires Act 1997*, and

- (c) in the case where the development is for the purpose of maintaining fire trails or for the purpose of installing or maintaining gates and associated structures on such trails—those trails are recorded as being fire trails on a publicly available Bush Fire Management Committee Fire Trail Register maintained by a Bush Fire Management Committee, and
 - (d) in the case where the development is for the purpose of maintaining an asset protection zone or for the purpose of installing or maintaining gates and associated structures on such a zone—the development is consistent with the NSW Rural Fire Service’s publication *Standards for Asset Protection Zones* published on the website of the NSW Rural Fire Service, and
 - (e) the development does not result in any change in the alignment of fire trails or asset protection zones.
- (2) This clause does not apply to land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies.

48B Development on land to which SEPP 14 applies

- (1) This clause applies to land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies.
- (2) Development for the purpose of bush fire hazard reduction work may be carried out by any person without consent on land to which this clause applies if:
 - (a) the land is within 20 metres of a dwelling house, secondary dwelling, dual occupancy, multi dwelling housing, residential flat building, educational establishment, hospital, child care centre, attached dwelling, boarding house, group home, hostel, semi-detached dwelling, seniors housing, residential accommodation, residential aged care facility or retirement village within the meaning of the *Retirement Villages Act 1999*, that was in existence immediately before the commencement of this clause, and
 - (b) the bush fire hazard reduction work does not involve the use of fire, and
 - (c) the bush fire hazard reduction work is carried out under section 66, 70, 73 or 74E the *Rural Fires Act 1997*, and
 - (d) the bush fire hazard reduction work is consistent with the standards relating to bush fire hazard reduction set out

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in the Department's and NSW Rural Fire Service's joint publication *Standards for Bush Fire Hazard Reduction Works in SEPP 14—Coastal Wetlands* published on the website of the Department.

- (3) Development for the purpose of maintaining a fire trail may be carried out by a public authority without consent on land to which this clause applies if:
- (a) the development is consistent with the applicable bush fire risk management plan under the *Rural Fires Act 1997*, and
 - (b) the fire trails are recorded as being fire trails on a publicly available Bush Fire Management Committee Fire Trail Register maintained by a Bush Fire Management Committee, and
 - (c) the development does not involve the use of fire, the widening of a fire trail, any clearing of vegetation (other than of regrowth on a fire trail) or any excavation.

[31] **Clause 68 Development permitted without consent**

Insert after clause 68 (4):

- (4AA) To avoid doubt, subclause (4) does not permit the subdivision of any land.

[32] **Clause 71 Complying development**

Omit "Subject to subclause (2), development for any of the following purposes is complying development if it is lawfully carried out on land in the area of a port managed by a Port Corporation" from clause 71 (1).

Insert instead "Development for any of the following purposes is complying development if it is lawfully carried out on land in the area of a port managed by a port corporation and complies with clause 20B".

[33] **Clause 71 (2) and (3)**

Omit the subclauses.

[34] **Clause 72 Complying development certificates—additional conditions**

Insert "(in addition to the conditions set out in clause 20C)" after "conditions".

[35] **Clause 72 (a), (b) and (d)–(f)**

Omit the paragraphs.

[36] **Clause 74 Definitions**

Omit the definition of *infrastructure facility*.

[37] Clause 116 Exempt development

Omit “(2)” from clause 116 (c).

[38] Clause 116 (e) and (j)

Omit the paragraphs.

[39] Clause 116A Complying development

Omit “clause 20” from clause 116A (1). Insert instead “clause 20A”.

[40] Clause 116A (1) (c)

Insert “and clause 20B” after “this clause”.

[41] Clause 116A (2) (a), (h) and (i)

Omit the paragraphs.

[42] Clause 116B

Omit the clause. Insert instead:

116B Complying development certificates—additional conditions

A complying development certificate for development that is complying development under this Division is subject to the following conditions:

- (a) the conditions set out in clause 20C,
- (b) if the development is part of infrastructure for a public mobile phone network—the principal certifying authority must, before work commences, be given:
 - (i) in the case of development that will produce electromagnetic radiation—a report in the format required by the Australian Radiation Protection and Nuclear Safety Agency that shows the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and
 - (ii) a report showing compliance with the Mobile Phone Networks Code.

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[43] Clause 128 Definitions

Insert in alphabetical order:

coastal lake has the same meaning as in *State Environmental Planning Policy No 71—Coastal Protection*.

Coastal Panel means the NSW Coastal Panel established under Part 2A of the *Coastal Protection Act 1979*.

coastal protection works has the same meaning as in the *Coastal Protection Act 1979*.

coastal zone management plan has the same meaning as in the *Coastal Protection Act 1979*.

[44] Clause 128, definition of “water or foreshore management activity”

Insert at the end of paragraph (c) of the definition:

, and

- (d) coastal protection works, and
- (e) salt interception schemes to improve water quality in surface freshwater systems, and
- (f) installation or upgrade of waterway gauging stations for water accounting purposes.

[45] Clause 129 Development permitted without consent

Omit “Development” from clause 129 (1).

Insert instead “Despite clause 129A, development”.

[46] Clause 129 (1A)

Insert after clause 129 (1):

- (1A) To avoid doubt, subclause (1) does not permit the subdivision of any land.

[47] Clause 129 (2) (c)

Insert at the end of the paragraph:

Note. Emergency coastal protection works within the meaning of the *Coastal Protection Act 1979* are excluded from the operation of the EP&A Act and therefore are not development to which this clause applies.

[48] Clause 129 (2A) and (2B)

Insert after clause 129 (2):

- (2A) The following provisions apply in relation to the carrying out of new coastal protection works by or on behalf of a public authority on the open coast or entrance to a coastal lake:
- (a) if a coastal zone management plan is in force in relation to the land on which the development is to be carried out—the public authority (or person carrying out the works on behalf of the public authority) must consider the provisions of that plan before carrying out the development,
 - (b) if a coastal zone management plan is not in force in relation to the land on which the development is to be carried out—the public authority (or person carrying out the works on behalf of the public authority) must:
 - (i) notify the Coastal Panel before carrying out the development, and
 - (ii) take into consideration any response received from the Coastal Panel within 21 days of the notification.
- (2B) For the purposes of subclause (2A):
new coastal protection works means coastal protection works other than:
- (a) the placement of sand (including for beach nourishment) or sandbags, or
 - (b) the replacement, repair or maintenance of any such works.

[49] Clause 129A

Insert after clause 129:

129A Development with consent

- (1) Development for the purposes of a sea wall or beach nourishment may be carried out by any person with consent on the open coast or entrance to a coastal lake.
- (2) If a coastal zone management plan does not apply to the land on which any such development is to be carried out, the Coastal Panel has the function of determining a development application for development to which this clause applies.

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- (3) Before determining a development application for development to which this clause applies, the consent authority must take the following matters into consideration:
- (a) the provisions of any coastal zone management plan applying to the land,
 - (b) the matters set out in clause 8 of *State Environmental Planning Policy No 71—Coastal Protection*,
 - (c) any guidelines for assessing and managing the impacts of coastal protection works that are issued by the Director-General for the purposes of this clause and published in the Gazette.

Note. Section 55M of the *Coastal Protection Act 1979* sets out preconditions to the granting of development consent relating to coastal protection works.

[50] Clause 130 Riding for the disabled centre to be complying development

Omit clause 130 (2) (a)–(d). Insert instead:

- (a) comply with clause 20B, and

[51] Clause 131 Complying development certificate—additional conditions for riding for disabled centre

Insert “(in addition to the conditions set out in clause 20C)” after “conditions”.

[52] Clause 131 (a)–(c) and (f)–(h)

Omit the paragraphs.

[53] Schedule 1 Exempt development—general

Omit “(clause 20 (2))”. Insert instead “(clause 20A)”.

[54] Schedule 1

Omit the third dot point from the matter relating to Building internal alterations.

[55] Schedule 1

Omit the matter relating to Bush fire protection—maintenance of existing fire trails or asset protection zones or installation or maintenance of gates and associated structures on such trails or zones.

[56] Schedule 5 Savings and transitional provisions

Insert after clause 1:

2 Application of amendments made by State Environmental Planning Policy (Infrastructure) Amendment (Miscellaneous) 2010

- (1) In this clause, *amending Policy* means *State Environmental Planning Policy (Infrastructure) Amendment (Miscellaneous) 2010*.
- (2) Except as provided by subclause (2), an amendment made to this Policy by the amending Policy does not apply to:
 - (a) development for which an application for development consent was lodged, or the carrying out of development that was commenced, before the commencement of the amendment, or
 - (b) an activity under Part 5 of the Act that a determining authority commenced to consider before the commencement of the amendment.
- (3) The amendments made by Schedule 1 [31] and [46] to the amending Policy extend to development or an activity referred to in subclause (2).
- (4) The amendments made to *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* by the amending Policy extend to applications for development consent lodged, but not determined, before the commencement of the amending Policy.

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Schedule 2

Amendment of State Environmental Planning Policy (Exempt and
Complying Development Codes) 2008

**Schedule 2 Amendment of State Environmental
Planning Policy (Exempt and Complying
Development Codes) 2008**

Part 2 Exempt Development Codes

Insert after Subdivision 37 of Division 1 of Part 2:

Note. Development for the purposes of small wind turbine systems or solar energy systems (ie a photovoltaic electricity generating system, solar hot water system or solar air heating system) is specified as exempt development under Division 4 of Part 3 of *State Environmental Planning Policy (Infrastructure) 2007*.

Schedule 3 Amendment of State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Additional Codes) 2010

Schedule 1, item [86]

Omit the item. Insert instead:

[86] Part 2, Division 1, Subdivision 38

Insert before Subdivision 39:

Subdivision 38 Subdivision

2.75 Specified development

The subdivision of land, for the purpose only of any one or more of the following, is development specified for this code:

- (a) widening a public road,
- (b) a minor realignment of boundaries that does not create:
 - (i) additional lots or the opportunity for additional dwellings, or
 - (ii) lots that are smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned,
- (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.

2.76 Development standards

Note. (At the commencement of this clause no standards were specified.)

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Schedule 4 Amendment of Sydney Regional Environmental Plan (Sydney Harbour
Catchment) 2005

**Schedule 4 Amendment of Sydney Regional
Environmental Plan (Sydney Harbour
Catchment) 2005**

[1] Clause 18 Development control in the waterways

Insert in alphabetical order in the Table to the clause:

Subdivision N N N N N N N N

**[2] Clause 32 Subdivision of existing and future public domain identified on
master plans**

Omit the clause.

[3] Clause 46 Preparation of master plans

Omit clause 46 (2) (f).