



New South Wales

# **State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous) 2011**

under the

Environmental Planning and Assessment Act 1979

The Administrator, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*. (11/03067)

TONY KELLY, MLC  
Minister for Planning

**2011 No 99**

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous) 2011

Clause 1

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under the

Environmental Planning and Assessment Act 1979

**1 Name of Policy**

This Policy is *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous) 2011*.

**2 Commencement**

This Policy commences on 25 February 2011 and must be published on the NSW legislation website.

**3 Definition**

In this Policy, *Additional Codes SEPP* means *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Additional Codes) 2010*.

**4 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- (1) This Policy is repealed on the day following the day on which this Policy commences.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 1.12 Variations to certain codes**

Insert “and the Rural Housing Code” after “General Housing Code” in clause 1.12 (2).

**[2] Clause 1.12 (3)**

Omit “or the General Housing Code”.

Insert instead “, the General Housing Code or the Rural Housing Code”.

**[3] Clause 1.17A Requirements for complying development for all environmental planning instruments (as inserted by the Additional Codes SEPP)**

Omit “the” where firstly occurring in clause 1.17A (d).

**[4] Clause 1.19 Land on which exempt development and complying development may not be carried out (as amended by the Additional Codes SEPP)**

Omit “subclause (4)” from clause 1.19 (2).

Insert instead “subclauses (3) and (4)”.

**[5] Clause 1.19 (3)**

Insert after clause 1.19 (2) (as inserted by the Additional Codes SEPP):

- (3) To be complying development, the development must not be carried out on land that comprises, or on which there is, a draft heritage item.

**[6] Clause 1.19 (6) (a) (as inserted by the Additional Codes SEPP)**

Insert “or swimming pool” after “detached outbuilding”.

**[7] Clause 2.44**

Omit the clause (but not the notes). Insert instead:

**2.44 Development standards**

The standards specified for this development are that the development must:

- (a) not involve a change of building use, and

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- (b) if the development is on land to which a local environmental plan made under section 33A of the Act applies, comply with the applicable standards specified under clause 5.4 (2) and (3) of that plan.

### [8] Part 2, Subdivision 25A

Insert after Subdivision 25:

#### **Subdivision 25A Maintenance of buildings in draft heritage conservation areas**

##### **2.50A Specified development**

The maintenance of a building in a draft heritage conservation area comprising only:

- (a) painting, plastering, cement rendering, or cladding, or
- (b) the repair or replacement of an external window, glazing areas or a door (other than those on bush fire prone land), or
- (c) the repair or replacement of a non-structural wall or roof cladding, or
- (d) the repair or replacement of a balustrade,

is development specified for this code if it is not constructed or installed on or in, or in relation to, a heritage item or draft heritage item.

##### **2.50B Development standards**

The standards specified for that development are that the development must:

- (a) reproduce the existing materials, finish and design of the building so as not to alter its appearance, and
- (b) not result in an increase of floor area or alter the layout of the building, and
- (c) not comprise the making of, or an alteration to the size of, any opening in a wall or roof, such as a doorway, window or skylight, and
- (d) not reduce the existing fire resistance level of a wall or roof, and

- (e) if located on bush fire prone land:
  - (i) be adequately sealed or protected to prevent the entry of embers, and
  - (ii) use equivalent or improved quality materials, and
- (f) not affect any existing fire resisting components of the building, and
- (g) not affect the means of egress from the building in an emergency.

**[9] Clause 2.75 Specified development (as inserted by the Additional Codes SEPP)**

Omit clause 2.75 (b) and (c). Insert instead:

- (b) a minor realignment of boundaries:
  - (i) that will not create additional lots or the opportunity for additional dwellings, and
  - (ii) that will not result in one or more lots that are smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (unless the original lot or lots are already smaller than the minimum size), and
  - (iii) that will not adversely affect the provision of existing services on a lot, and
  - (iv) that will not result in any increased bush fire risk to existing buildings,

**[10] Clause 3.5 Ancillary development (as inserted by the Additional Codes SEPP)**

Insert “if the development is ancillary to a dwelling house” after “code” in clause 3.5 (1).

**[11] Clause 3.5 (as inserted by the Additional Codes SEPP)**

Insert “or a swimming pool” after “detached ancillary development” in the note to the clause.

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

Omit “450” from clause 3.14 (2) (a). Insert instead “200”.

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

Omit “in Zone RU1, RU2, RU3 or RU4”.

**[14] Clause 3.17 Setbacks of dwelling houses from rear boundaries (as inserted by the Additional Codes SEPP)**

Omit clause 3.17 (2). Insert instead:

- (2) Any point of a building on a lot must have a setback from the rear boundary of the lot nearest to that building of at least the following distance:
- (a) if the lot has an area, of at least 200m<sup>2</sup>, but less than 900m<sup>2</sup>, for any part of the building with a height of up to 4.5m—3m,
  - (b) if the lot has an area of at least 200m<sup>2</sup>, but less than 300m<sup>2</sup>, for any part of the building with a height greater than 4.5m:
    - (i) in a case where there are 2 adjoining dwelling houses with a height greater than 4.5m—10m or the average distance setback from the rear boundary of that part of those adjoining dwelling houses which is greater than 4.5m, whichever is the lesser, or
    - (ii) in a case where there are not 2 such adjoining dwellings—10m,
  - (c) if the lot has an area of at least 300m<sup>2</sup>, but less than 900m<sup>2</sup>, for any part of the building with a height greater than 4.5m—8m,
  - (d) if the lot has an area of at least 900m<sup>2</sup>, but less than 1500m<sup>2</sup>:
    - (i) for any part of the building with a height of up to 4.5m—5m, or
    - (ii) for any part of the building with a height greater than 4.5m—12m, or
  - (e) if the lot has an area of at least 1500m<sup>2</sup>:
    - (i) for any part of the building with a height of up to 4.5m—10m, or
    - (ii) for any part of the building with a height greater than 4.5m—15m.

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**[15] Clause 3.18 Setbacks of outbuildings from rear boundaries (as inserted by the Additional Codes SEPP)**

Omit clause 3.18 (2). Insert instead:

- (2) Any point of an outbuilding on a lot must have a setback from the rear boundary of the lot of at least the following:
  - (a) if the lot has an area of at least 200m<sup>2</sup>, but less than 300m<sup>2</sup>:
    - (i) for any part of the outbuilding with a height of up to 3.3m—the outbuilding may be built to the rear boundary, or
    - (ii) for any part of the outbuilding with a height greater than 3.3m—one-quarter of the height of the outbuilding above 3.3m,
  - (b) if the lot has an area of at least 300m<sup>2</sup>, but less than 900m<sup>2</sup>:
    - (i) for any part of the outbuilding with a height of up to 3.8m—0.9m, or
    - (ii) for any part of the outbuilding with a height greater than 3.8m—0.9m plus one-quarter of the height of the outbuilding above 3.8m,
  - (c) if the lot has an area of at least 900m<sup>2</sup>, but less than 1500m<sup>2</sup>:
    - (i) for any part of the outbuilding with a height of up to 3.8m—1.5m, or
    - (ii) for any part of the outbuilding with a height greater than 3.8m—1.5m plus one-quarter of the height of the outbuilding above 3.8m,
  - (d) if the lot has an area of at least 1500m<sup>2</sup>:
    - (i) for any part of the outbuilding with a height of up to 3.8m—2.5m, or
    - (ii) for any part of the outbuilding with a height greater than 3.8m—2.5m plus one-quarter of the height of the outbuilding above 3.8m.

**[16] Clause 3.20 Calculating setbacks**

Insert after clause 3.20 (2):

- (2A) For the purpose of calculating the setbacks of the nearest 2 dwelling houses as referred to in clause 3.14 (1) (a) and (3) (a), a dwelling house located on a battle axe block is to be disregarded.

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- [17] **Clause 3.26 Car parking requirements (as amended by the Additional Codes SEPP)**  
Omit “, except in the local government areas of Fairfield City and Holroyd City” from clause 3.26 (1A).
- [18] **Clause 3.27 Garages, car ports and car parking spaces (as inserted by the Additional Codes SEPP)**  
Omit “, except in the local government areas of Fairfield City and Holroyd City” from clause 3.27 (3).
- [19] **Clause 3.33 Development standards for detached studios adjoining lanes (as inserted by the Additional Codes SEPP)**  
Omit clause 3.33 (2). Insert instead:  
(2) A detached studio must be at least 3m from any part of the dwelling house below 4.5m in building height and 6m from any part of the dwelling house above 4.5m in building height.
- [20] **Clause 3.34 Swimming pools**  
Insert at the end of clause 3.34 (1):  
**Note.** Development for the purposes of a swimming pool is not complying development under this Code unless it is ancillary to a dwelling house.
- [21] **Clause 3.34 (2A)**  
Insert after clause 3.34 (2):  
(2A) Despite subclauses (1) and (2), if the swimming pool is being constructed in a heritage conservation area, the swimming pool must be located:  
(a) behind the rear most building line of the dwelling house, and  
(b) no closer to each side boundary than the dwelling house.
- [22] **Clause 3.34 (7) (as inserted by the Additional Codes SEPP)**  
Omit the subclause. Insert instead:  
(7) If the swimming pool is being constructed after, and at a different time to, the erection of a dwelling house on the lot, the development standards for this Code (other than the standards referred to in clause 3.24 and this clause) do not apply to the construction.



**[23] Clause 3.36C Development standards for flood control lots (as inserted by the Additional Codes SEPP)**

Omit clause 3.36C (2). Insert instead:

- (2) The development must not be on any part of a flood control lot unless that part of the lot has been certified, for the purposes of the issue of the relevant complying development certificate, by the council or a professional engineer who specialises in hydraulic engineering as not being any of the following:
- (a) a flood storage area,
  - (b) a floodway area,
  - (c) a flow path,
  - (d) a high hazard area,
  - (e) a high risk area.

**[24] Clause 3.36C (5) (as inserted by the Additional Codes SEPP)**

Omit the subclause. Insert instead:

- (5) If a word or expression used in this clause is defined in the Floodplain Development Manual, the word or expression has the same meaning as it has in that Manual unless it is otherwise defined in this clause.

**[25] Clause 3A.5 Ancillary development (as inserted by the Additional Codes SEPP)**

Insert “ancillary to a dwelling house and” after “development is” in clause 3A.5 (1).

**[26] Clause 3A.5 (as inserted by the Additional Codes SEPP)**

Insert “or a swimming pool” after “detached ancillary development” in the note to the clause.

**[27] Clause 3A.20 Calculating setbacks (as inserted by the Additional Codes SEPP)**

Insert after clause 3A.20 (2):

- (2A) For the purpose of calculating the setbacks of the nearest 2 dwelling houses as referred to in clause 3A.15 (1) (a), a dwelling house located on a battle axe block is to be disregarded.

**[28] Clause 3A.29 Excavation of sloping sites (as inserted by the Additional Codes SEPP)**

Omit “2m” from clause 3A.29 (3). Insert instead “4m”.

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**[29] Clause 3A.30 Fill of sloping sites (as inserted by the Additional Codes SEPP)**

Omit “600mm” from clause 3A.30 (1) (b) (i). Insert instead “1m”.

**[30] Clause 3A.33 Swimming pools (as inserted by the Additional Codes SEPP)**

Insert at the end of clause 3A.33 (1):

**Note.** Development for the purposes of a swimming pool is not complying development under this Code unless it is ancillary to a dwelling house.

**[31] Clause 3A.33 (2A)**

Insert after clause 3A.33 (2) (as inserted by the Additional Codes SEPP):

(2A) Despite subclauses (1) and (2), if the swimming pool is being constructed in a heritage conservation area, the swimming pool must be located:

- (a) behind the rear most building line of the dwelling house, and
- (b) no closer to each side boundary than the dwelling house.

**[32] Clause 3A.33 (7) (as inserted by the Additional Codes SEPP)**

Omit the subclause (but not the note). Insert instead:

(7) If the swimming pool is being constructed after, and at a different time to, the erection of a dwelling house on the lot, the development standards for this Code (other than the standards referred to in clause 3A.24 and this clause) do not apply to the construction.

**[33] Clause 3A.38 Development standards for flood control lots (as inserted by the Additional Codes SEPP)**

Omit clause 3A.38 (2). Insert instead:

(2) The development must not be on any part of a flood control lot unless that part of the lot has been certified, for the purposes of the issue of the relevant complying development certificate, by the council or a professional engineer who specialises in hydraulic engineering as not being any of the following:

- (a) a flood storage area,
- (b) a floodway area,

- (c) a flow path,
- (d) a high hazard area,
- (e) a high risk area.

**[34] Clause 3A.38 (5) (as inserted by the Additional Codes SEPP)**

Omit the subclause. Insert instead:

- (5) If a word or expression used in this clause is defined in the Floodplain Development Manual, the word or expression has the same meaning as it has in that Manual unless it is otherwise defined in this clause.

**[35] Clause 4A.2 Development standards (as inserted by the Additional Codes SEPP)**

Insert “or, if there is a local environmental plan applying to the land that was made under section 33A of the Act, the maximum number of bedrooms specified in clause 5.4 (1) of that plan” after “bedrooms” in clause 4A.2 (b).

**[36] Clause 7.1 Specified complying development (as inserted by the Additional Codes SEPP)**

Insert after clause 7.1 (1) (b):

- (b1) a swimming pool,

**[37] Clause 7.2 Development standards (as inserted by the Additional Codes SEPP)**

Insert after clause 7.2 (3):

- (4) If a swimming pool is removed:
  - (a) the site of the swimming pool must be filled (if necessary) so as to restore the site to the ground level (existing) adjacent to the pool, taking into account any sloping of the site, and
  - (b) the fill must be compacted, and
  - (c) any piping or similar material must be removed from the site before the site is filled.

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### [38] Schedule 3

Omit the Schedule. Insert instead:

## Schedule 3 Complying development codes—variations

(Clause 1.12 (2))

Column 1	Column 2
Land to which variation applies	Variation
<b>Cooma Monaro</b>	
All of the land in the local government area of Cooma Monaro	<p>The Rural Housing Code is varied in its application by:</p> <p>(a) inserting “(other than in the local government area of Cooma Monaro)” after “dwelling house” in clause 3A.2 (1),</p> <p>(b) inserting after clause 3A.2 (2) the following subclause:</p> <p>(2A) The erection of a new single storey or two storey dwelling house within the local government area of Cooma Monaro is development specified for this code if the development is erected on a lot that:</p> <p>(a) has an area of at least 80 hectares, or</p> <p>(b) is subject to a restriction created under section 88B of the <i>Conveyancing Act 1919</i> that specifies a building envelope for the lot and was required by the council.</p>
<b>Fairfield City</b>	
All of the land in the local government area of Fairfield City	<p>The General Housing Code is varied in its application by inserting “, except in the local government areas of Fairfield City and Holroyd City” after “8m” wherever occurring in clauses 3.26 (1A) and 3.27 (3).</p>

<b>Column 1</b>	<b>Column 2</b>
<b>Land to which variation applies</b>	<b>Variation</b>
<b>Holroyd City</b>	
All of the land in the local government area of Holroyd City	The General Housing Code is varied in its application by inserting “, except in the local government areas of Fairfield City and Holroyd City” after “8m” wherever occurring in clauses 3.26 (1A) and 3.27 (3).
<b>Wingecarribee</b>	
All of the land in the local government area of Wingecarribee	The General Housing Code is varied in its application by: <ul style="list-style-type: none"> <li>(a) inserting at the end of clause 3.14 (1) (b): <ul style="list-style-type: none"> <li>, or</li> <li>(v) 15m, if the lot has an area of at least 4,000m<sup>2</sup>.</li> </ul> </li> <li>(b) inserting “or, if the lot has an area of at least 4,000m<sup>2</sup>, 7.5m for all building heights” after “building heights” in clause 3.16 (2) (d),</li> <li>(c) inserting “but less than 4,000m<sup>2</sup>” after “1,500m<sup>2</sup>” in clause 3.24 (1) (f),</li> <li>(d) inserting after clause 3.24 (1) (f): <ul style="list-style-type: none"> <li>(g) 75% of the area of the lot, if the lot has an area of at least 4,000m<sup>2</sup>.</li> </ul> </li> </ul>

**[39] Schedule 5 Land excluded from the General Housing Code**

Insert in appropriate order:

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Wingecarribee Complying Development Land Map (SEPP\_ECD\_8350\_LCD\_001\_20110211)

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 Wingecarribee Complying Development Land Map (SEPP\_ECD\_8350\_LCD\_002\_20110211)