



New South Wales

State Environmental Planning Policy Amendment (Gwandalan) 2012

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*.

BRAD HAZZARD, MP
Minister for Planning and Infrastructure

2012 No 146

Clause 1 State Environmental Planning Policy Amendment (Gwandalan) 2012

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Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy Amendment (Gwandalan) 2012*.

2 Commencement

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

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- (1) This Policy is repealed on the day following the day on which this Policy commences.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.

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[1] Clause 3 Land to which plan applies

Omit “This plan” from clause 3 (2).

Insert instead “Except as provided by Part 4, this plan”.

[2] Clause 7 Definitions

Insert after clause 7 (2):

- (3) Notes in this plan are provided for guidance and do not form part of this plan.

[3] Part 4

Insert after Part 3:

Part 4 Gwandalan site

Division 1 Preliminary

73 Application of Part

- (1) This Part applies to the land identified on the Land Application Map, referred to in this Part as the *Gwandalan site*.
- (2) No other provision of this plan (other than clauses 7 (3) and 8) applies to land within the Gwandalan site.

74 Interpretation

- (1) In this Part:

Council means the Council of the Shire of Wyong.

Height of Buildings Map means the Wyong Local Environmental Plan 1991—Gwandalan—Height of Buildings Map.

Land Application Map means the Wyong Local Environmental Plan 1991—Gwandalan—Land Application Map.

Land Reservation Acquisition Map means the Wyong Local Environmental Plan 1991—Gwandalan—Land Reservation Acquisition Map.

Land Zoning Map means the Wyong Local Environmental Plan 1991—Gwandalan Site—Land Zoning Map.

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- (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.

75 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
 - (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 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.

76 Relationship with this plan and other environmental planning instruments

The only other environmental planning instruments that apply, according to their terms, to land within the Gwandalan site are all State environmental planning policies, except the following:

- (a) *State Environmental Planning Policy No 1—Development Standards*,
- (b) *State Environmental Planning Policy No 71—Coastal Protection*.

Division 2 Provisions applying to development in Gwandalan site

77 Land use zones

For the purposes of this Part, land within the Gwandalan site is in a zone as follows if the land is shown on the Land Zoning Map as being in that zone:

- (a) Zone R1 General Residential,

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- (b) Zone R2 Low Density Residential,
 - (c) Zone E1 National Parks and Nature Reserves.

78 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.

79 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,
 - (d) to encourage development that does not impact on the scenic, aesthetic and cultural heritage qualities of the built and natural environment of the Wallarah Peninsula,
 - (e) to encourage development that responds and is sympathetic to the surrounding built and natural environmental setting,
 - (f) to ensure that any non-residential development is compatible with the amenity of the area.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone R1 General Residential:
home-based child care; 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; bed and breakfast accommodation; boarding houses; building identification signs; business identification signs; child care centres; community facilities; dual occupancies; dwelling houses; educational establishments; environmental facilities; environmental protection works; group homes; health consulting rooms; home businesses; home industries; hostels; information and education facilities; multi dwelling housing; neighbourhood shops; places of public worship; recreation areas; recreation facilities (outdoor); residential flat buildings; respite day care centres; roads; semi-detached dwellings; shop top housing.

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- (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).

80 Zone R2 Low Density Residential

- (1) The objectives of Zone R2 Low Density Residential are as follows:
- (a) to provide for the housing needs of the community within a low density residential environment,
 - (b) to enable other land uses that provide facilities or services to meet the day to day needs of residents,
 - (c) to encourage development that does not impact on the scenic, aesthetic and cultural heritage qualities of the built and natural environment of the Wallarah Peninsula,
 - (d) to encourage development that responds and is sympathetic to the surrounding built and natural environmental setting,
 - (e) to ensure that any non-residential development is compatible with the amenity of the area.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone R2 Low Density Residential:
- home-based child care; home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R2 Low Density Residential:
- bed and breakfast accommodation; boarding houses; building identification signs; business identification signs; child care centres; community facilities; dual occupancies; dwelling houses; educational establishments; environmental facilities; environmental protection works; group homes; health consulting rooms; home businesses; home industries; information and education facilities; neighbourhood shops; recreation areas; recreation facilities (outdoor); respite day care centres; roads; semi-detached dwellings; shop top housing.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone R2 Low Density Residential unless it is permitted by subclause (2) or (3).

81 Zone E1 National Parks and Nature Reserves

- (1) The objectives of Zone E1 National Parks and Nature Reserves are as follows:
 - (a) to enable the management and appropriate use of land that is reserved under the *National Parks and Wildlife Act 1974*,
 - (b) to enable uses authorised under the *National Parks and Wildlife Act 1974*,
 - (c) to identify land that is to be reserved under the *National Parks and Wildlife Act 1974* and to protect the environmental significance of that land.
- (2) Development for any of the following purposes is permitted without consent on land within Zone E1 National Parks and Nature Reserves:
uses authorised under the *National Parks and Wildlife Act 1974*.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone E1 National Parks and Nature Reserves:
nil.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone E1 National Parks and Nature Reserves unless it is permitted by subclause (2) or (3).

82 Subdivision—consent requirements

Land within the Gwandalan site may be subdivided, but only with development consent.

83 Height of buildings

- (1) The objectives of this clause are as follows:
 - (a) to ensure that development has an appropriate scale and height in relation to its visual, landscape and heritage setting,
 - (b) to ensure that building heights do not adversely impact on the amenity of residents and people using the public domain.
- (2) The height of a building on land within the Gwandalan site is not to exceed the maximum height shown for the land on the Height of Buildings Map.

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84 Neighbourhood shops in Zone R1 or R2

- (1) The objective of this clause is to set a maximum retail floor area for neighbourhood shops in Zone R1 General Residential or Zone R2 Low Density Residential.
- (2) The retail floor area of a neighbourhood shop must not exceed 125 square metres.

85 Exceptions to development standards

- (1) The objectives of this clause are:
 - (a) to provide an appropriate degree of flexibility in applying certain standards to particular development, and
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) 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.
- (3) 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) there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) 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 (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standards and the objectives for

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- 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.
- (5) 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 benefits of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) 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 (3).
- (7) 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.

86 Development within the coastal zone

- (1) The objectives of this clause are as follows:
 - (a) to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,
 - (b) to implement the principles in the NSW Coastal Policy, and in particular to:
 - (i) protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and

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- (ii) protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and
 - (iii) provide opportunities for pedestrian public access to and along the coastal foreshore, and
 - (iv) recognise and accommodate coastal processes and climate change, and
 - (v) protect amenity and scenic quality, and
 - (vi) protect and preserve rock platforms, beach environments and beach amenity, and
 - (vii) protect and preserve native coastal vegetation, and
 - (viii) protect and preserve the marine environment, and
 - (ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
 - (x) ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and
 - (xi) protect Aboriginal cultural places, values and customs, and
 - (xii) protect and preserve items of heritage, archaeological or historical significance.
- (2) Development consent must not be granted to development on land within the Gwandalan site that is wholly or partly within the coastal zone unless the consent authority has considered:
- (a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:
 - (i) maintaining existing public access and, where possible, improving that access, and
 - (ii) identifying opportunities for new public access, and
 - (b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:
 - (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and

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- (ii) the location, and
 - (iii) the bulk, scale, size and overall built form design of any building or work involved, and
 - (c) the impact of the proposed development on the amenity of the coastal foreshore including:
 - (i) any significant overshadowing of the coastal foreshore, and
 - (ii) any loss of views from a public place to the coastal foreshore, and
 - (d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and
 - (e) how biodiversity and ecosystems, including:
 - (i) native coastal vegetation and existing wildlife corridors, and
 - (ii) rock platforms, and
 - (iii) water quality of coastal waterbodies, and
 - (iv) native fauna and native flora, and their habitats, can be conserved, and
 - (f) the cumulative impacts of the proposed development and other development on the coastal catchment.
 - (3) Development consent must not be granted to development on land within the Gwandalan site that is wholly or partly within the coastal zone unless the consent authority is satisfied that:
 - (a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and
 - (b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and
 - (c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and
 - (d) the proposed development will not:
 - (i) be significantly affected by coastal hazards, or

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- (ii) have a significant impact on coastal hazards, or
- (iii) increase the risk of coastal hazards in relation to any other land.

87 Arrangements for designated State public infrastructure

- (1) 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 Part applies to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.
- (2) Development consent must not be granted for the subdivision of land to which this Part applies 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.
- (3) Subclause (2) does not apply in relation to:
 - (a) any lot identified in the certificate as a residue lot, or
 - (b) any lot to be created by a subdivision of land that was the subject of a previous development consent granted 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.
- (4) 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).

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- (5) This clause does not apply to any part of the Gwandalan site if all or any part of it is in a special contributions area (as defined by section 93C of the Act).

88 Public utility infrastructure

- (1) Development consent must not be granted for development on land within the Gwandalan 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 and gas,
 - (c) the disposal and management of sewage.

89 Development control plan

- (1) The objective of this clause is to ensure that development on land within the Gwandalan site occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.
- (2) Development consent must not be granted for development on land within the Gwandalan site unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.
- (3) The development control plan must provide for all of the following:
- (a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,
 - (b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,
 - (c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation,

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including visually prominent locations, and detailed landscaping requirements for both the public and private domain,

- (d) a network of passive and active recreational areas,
 - (e) stormwater and water quality management controls,
 - (f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,
 - (g) detailed urban design controls for significant development sites,
 - (h) measures to encourage higher density living around transport, open space and service nodes,
 - (i) measures to accommodate and control appropriate neighbourhood commercial and retail uses,
 - (j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.
- (4) Subclause (2) does not apply to any of the following development:
- (a) a subdivision for the purpose of a realignment of boundaries that does not create additional lots,
 - (b) a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,
 - (c) a subdivision of land in a zone in which the erection of structures is prohibited,
 - (d) proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.

90 Infrastructure development and the 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, by or on behalf of a public authority, that is permitted to be carried out

with or without development 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.

91 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 to which this Part applies, 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).

Type of land shown on Land Reservation Acquisition Map	Authority of the State
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Zone E1 National Parks and Nature Reserves and marked "National Park"	Minister administering the <i>National Parks and Wildlife Act 1974</i>
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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 and Infrastructure is required to take action to enable the designation of the acquiring authority under this Part. 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 and Infrastructure (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.

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92 Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land within the Gwandalan site to be carried out in accordance with this Part or with a 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).