



New South Wales

State Environmental Planning Policy Amendment (Heathcote Ridge West Menai) 2015

under the

Environmental Planning and Assessment Act 1979

His 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*.

ROBERT STOKES, MP
Minister for Planning

State Environmental Planning Policy Amendment (Heathcote Ridge West Menai) 2015

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1 Name of Policy

This Policy is *State Environmental Planning Policy Amendment (Heathcote Ridge West Menai) 2015*.

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- (1) This Policy is repealed on the day following the day on which this Policy commences.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

Schedule 1 Amendment of Sutherland Shire Local Environmental Plan 2006

[1] Clause 4 Land to which plan applies

Insert at the end of the clause (after the note):

- (2) Despite subclause (1), Part 4 applies to the Heathcote Ridge West Menai site (within the meaning of that Part).

[2] Part 4

Insert after Part 3:

Part 4 Heathcote Ridge West Menai site

59 Application of Part

- (1) This Part applies to the land identified on the Land Application Map, referred to in this Part as the *Heathcote Ridge West Menai site*.
- (2) No other provision of this plan (other than clauses 5 (2) and 6) applies to land within the Heathcote Ridge West Menai site.

60 Interpretation

- (1) In this Part:
 - Council* means the Sutherland Shire Council.
 - Height of Buildings Map* means the Sutherland Shire Local Environmental Plan 2006—Heathcote Ridge West Menai—Height of Buildings Map.
 - Land Application Map* means the Sutherland Shire Local Environmental Plan 2006—Heathcote Ridge West Menai—Land Application Map.
 - Land Zoning Map* means the Sutherland Shire Local Environmental Plan 2006—Heathcote Ridge West Menai—Land Zoning Map.
 - Lot Size Map* means the Sutherland Shire Local Environmental Plan 2006—Heathcote Ridge West Menai—Lot Size Map.
- (2) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*, unless it is otherwise defined in this Part.
- (3) A reference in clause 65 to a type of building or other thing does not include (despite any definition applied to this Part) a reference to a type of building or other thing referred to separately in the clause.

61 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 named map is a reference to the relevant part or aspect of the single map.

- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Part, a map may be in, and may be kept and made available in, electronic or paper form, or both.

62 Application of SEPPs

- (1) This Part is subject to the provisions of any State environmental planning policy that prevails over this Part as provided by section 36 of the Act.
- (2) *State Environmental Planning Policy No 1—Development Standards* does not apply to the land to which this Part applies.

63 Land use zones

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

- (a) Zone R2 Low Density Residential.

64 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.

65 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.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone R2 Low Density Residential:
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; child care centres; community facilities; dual occupancies; dwelling houses; environmental protection works; exhibition homes; exhibition villages; flood mitigation works; group homes; health consulting rooms; home businesses; home industries; multi dwelling housing; places of public worship; recreation areas; respite day care centres; roads; secondary dwellings; semi-detached dwellings; seniors housing.
- (4) Except as otherwise provided by this Part, development for any of the following purposes is prohibited on land within Zone R2 Low Density Residential:
any development not specified in subclause (2) or (3).

66 Subdivision—consent requirements

- (1) Land to which this Part applies may be subdivided, but only with development consent.

- (2) Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot Size Map in relation to that land.

67 Minimum subdivision lot size

- (1) The objectives of this clause are as follows:
 - (a) to establish minimum lot sizes for residential and commercial development,
 - (b) to ensure that residential development has adequate usable areas for buildings and open space,
 - (c) to ensure that commercial development has adequate usable areas for buildings, parking and landscaping,
 - (d) to facilitate and encourage the provision of a range of dwelling types.
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Part.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies must not be less than the minimum size shown on the Lot Size Map in relation to that land.
- (4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

68 Height of buildings

- (1) The objectives of this clause are as follows:
 - (a) to establish the maximum height for buildings,
 - (b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,
 - (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.
- (2) The height of a building on any land within the Heathcote Ridge West Menai site must not exceed the maximum height shown for the land on the Height of Buildings Map.

69 Demolition requires development consent

The demolition of a building or work may be carried out only with development consent.

Note. If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this Part or *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, as exempt development, the Act enables it to be carried out without development consent.

70 Temporary use of land

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.
- (2) Despite any other provision of this Part, development consent may be granted for development on land in any zone for a temporary use for a maximum

period of 52 days (whether or not consecutive days) in any period of 12 months.

- (3) Development consent must not be granted unless the consent authority is satisfied that:
 - (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Part and any other applicable environmental planning instrument, and
 - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
 - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and
 - (d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.
- (4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.
- (5) Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).

71 Interim land use for exhibition and sales office

- (1) Despite any other provision of this Part, development consent may be granted for development on land in Zone R2 Low Density Residential for the purposes of an exhibition and sales office for a maximum period of 6 years from the date of consent.
- (2) Development consent must not be granted unless the consent authority is satisfied that:
 - (a) the use will not prejudice the subsequent carrying out of development on the land in accordance with this Part and any other applicable environmental planning instrument, and
 - (b) the use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
 - (c) the use and location of any structures related to the use will not adversely impact on environmental attributes, heritage significance, features of the land, or increase the risk of natural hazards that may affect the land.
- (3) In this clause:
exhibition and sales office means a building or place used for house and land sales, site offices, advisory services, car parking and other associated purposes.

72 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (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) that 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 standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (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 benefit 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,
 - (c) clause 74, 80 or 81.

73 Development near zone boundaries

- (1) The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development on the site and be compatible with the planning objectives and land uses for the adjoining zone.

- (2) This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 25 metres.
- (3) This clause does not apply to land proposed to be developed for the purpose of sex services or restricted premises.
- (4) Despite the provisions of this Part relating to the purposes for which development may be carried out, development consent may be granted to development of land to which this clause applies for any purpose that may be carried out in the adjoining zone, but only if the consent authority is satisfied that:
 - (a) the development is not inconsistent with the objectives for development in both zones, and
 - (b) the carrying out of the development is desirable due to compatible land use planning principles relating to the efficient and timely development of land.
- (5) This clause does not prescribe a development standard that may be varied under this Part.

74 Controls relating to miscellaneous permissible uses

(1) Bed and breakfast accommodation

If development for the purposes of bed and breakfast accommodation is permitted under this Part, the accommodation that is provided to guests must consist of no more than 5 bedrooms.

Note. Any such development that provides for a certain number of guests or rooms may involve a change in the class of building under the *Building Code of Australia*.

(2) Home businesses

If development for the purposes of a home business is permitted under this Part, the carrying on of the business must not involve the use of more than 50 square metres of floor area.

(3) Home industries

If development for the purposes of a home industry is permitted under this Part, the carrying on of the home industry must not involve the use of more than 50 square metres of floor area.

(4) Secondary dwellings

If development for the purposes of a secondary dwelling is permitted under this Part, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,
- (b) 20% of the total floor area of the principal dwelling.

75 Conversion of fire alarms

- (1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.
- (2) The following development may be carried out, but only with development consent:
 - (a) converting a fire alarm system from connection with the alarm monitoring system of Fire and Rescue NSW to connection with the alarm monitoring system of a private service provider,

- (b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider,
 - (c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.
- (3) Development to which subclause (2) applies is complying development if it consists only of:
- (a) internal alterations to a building, or
 - (b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm × 100mm × 100mm.
- (4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.
- (5) In this clause:
private service provider means a person or body that has entered into an agreement that is in force with Fire and Rescue NSW to monitor fire alarm systems.

76 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.
- (2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.
Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.
- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:
- (a) development consent, or
 - (b) a permit granted by the Council.
- (4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.
- (5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.
- (6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.
- (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:
- (a) that is or forms part of a heritage item (within the meaning of clause 77 (10)), or

- (b) that is within an Aboriginal place of heritage significance, unless the Council is satisfied that the proposed activity:
- (c) is of a minor nature or is for the maintenance of the heritage item or Aboriginal place of heritage significance, and
- (d) would not adversely affect the heritage significance of the heritage item or Aboriginal place of heritage significance.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 77 will be applicable to any such consent.

- (8) This clause does not apply to or in respect of:
 - (a) the clearing of native vegetation:
 - (i) that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*, or
 - (ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
 - (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause, or
 - (c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*, or
 - (d) action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying and Spatial Information Act 2002*, or
 - (e) plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.
- Note.** Permissibility may be a matter that is determined by or under any of these Acts.

77 Heritage conservation

(1) Requirement for consent

Development consent is required for any of the following:

- (a) demolishing or moving a heritage item,
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in the Table to this clause in relation to the item,
- (c) disturbing or excavating a heritage item that is an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land on which a heritage item is located or that is within an Aboriginal place of heritage significance,
- (f) subdividing land on which a heritage item is located or that is within an Aboriginal place of heritage significance.

(2) When consent not required

However, development consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in

writing before any work is carried out that it is satisfied that the proposed development:

- (i) is of a minor nature or is for the maintenance of the heritage item or Aboriginal place of heritage significance, and
 - (ii) would not adversely affect the heritage significance of the heritage item or Aboriginal place, or
- (b) the development is in a cemetery or burial ground and the proposed development:
- (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (d) the development is exempt development.

(3) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item, consider the effect of the proposed development on the heritage significance of the item. This subclause applies regardless of whether a heritage management document is prepared under subclause (4) or a heritage conservation management plan is submitted under subclause (5).

(4) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or
- (b) on land that is within an Aboriginal place of heritage significance, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or Aboriginal place concerned.

(5) Heritage conservation management plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(6) Archaeological sites

The consent authority must, before granting consent under this clause to the carrying out of development on a heritage item that is an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(7) **Aboriginal places of heritage significance**

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

(8) **Demolition of nominated State heritage items**

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (a) notify the Heritage Council about the application, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(9) **Conservation incentives**

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Part, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

(10) In this clause:

heritage item means a building, work, archaeological site, tree, place or Aboriginal object described in the Table to this clause.

Table—heritage items

Item description	Address	Property description	Significance	Item no
(When this clause commenced this Table was blank)				

78 Bush fire hazard reduction

Bush fire hazard reduction work authorised by the *Rural Fires Act 1997* may be carried out on any land without development consent.

Note. The *Rural Fires Act 1997* also makes provision relating to the carrying out of development on bush fire prone land.

79 Infrastructure development and use of existing buildings of the Crown

- (1) This Part does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, 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 *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.

80 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).
- (5) This clause does not apply to any part of the Heathcote Ridge West Menai site if all or any part of it is in a special contributions area (as defined by section 93C of the Act).

81 Public utility infrastructure

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

82 Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land within the Heathcote Ridge West Menai 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).