



New South Wales

# **Sutherland Shire Local Environmental Plan 2015 (Amendment No 1)**

under the

**Environmental Planning and Assessment Act 1979**

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.

**SCOTT PHILLIPS, GENERAL MANAGER, SUTHERLAND SHIRE COUNCIL**  
As delegate for the Minister for Planning

## **Sutherland Shire Local Environmental Plan 2015 (Amendment No 1)**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Plan**

This Plan is *Sutherland Shire Local Environmental Plan 2015 (Amendment No 1)*.

### **2 Commencement**

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

### **3 Land to which Plan applies**

This Plan applies to land within Zone E4 Environmental Living under *Sutherland Shire Local Environmental Plan 2015*.

## **Schedule 1      Amendment of Sutherland Shire Local Environmental Plan 2015**

### **[1] Schedule 3 Complying development**

Insert in Part 1:

**Note.** This Part has the following structure:

- (a) Division 1 specifies the development that is complying development under this Part,
- (b) Division 2 sets out the specified development standards that apply to all development specified by this Part,
- (c) Division 3 sets out additional specified development standards that apply only to the erection, alteration of or addition to certain dwelling houses (so that such development must accord with both Divisions 2 and 3),
- (d) Division 4 sets out additional specified development standards that apply only to the erection, construction, installation, alteration of or addition to certain ancillary development (so that such development must accord with both Divisions 2 and 4).

### **Division 1      Development that is complying development under this Part**

#### **1 Land to which Part applies**

- (1) This Part applies to development on land in Zone E4 Environmental Living.
- (2) This Part does not apply to development on land:
  - (a) identified on the Acid Sulfate Soils Map as being Class 1 or Class 2, or
  - (b) identified as being within the foreshore area, or
  - (c) that is contaminated land, or
  - (d) that is identified as “Environmentally Sensitive Land” on the Groundwater Vulnerability Map, the Natural Landform Map, the Riparian Land and Watercourses Map or the Terrestrial Biodiversity Map, or
  - (e) that is, or on which there is:
    - (i) a heritage item, or
    - (ii) a draft heritage item (that is, a building, work, archaeological site, tree, place or aboriginal object identified as a heritage item in a draft local environmental plan that amends this Plan and that has been subject to community consultation under section 57 of the Act), or
    - (iii) an item that is listed on the State Heritage Register under the *Heritage Act 1977*, or
    - (iv) an item that is subject to an interim heritage order under the *Heritage Act 1977*, or
    - (v) a nominated State heritage item.

**Note.** Clause 3.3 of this Plan provides that complying development must not be carried out on any environmentally sensitive area (within the meaning of that clause).

#### **2 New single storey and two storey dwelling houses**

The erection of a new single storey or two storey dwelling house is development specified for this Part.

### 3 Alterations or additions to existing single storey and two storey dwelling houses

Alterations or additions to an existing single storey or two storey dwelling house, including the addition of a second storey to an existing single storey dwelling house, is development specified for this Part.

### 4 Certain ancillary development

(1) The erection, construction or installation of any of the following, or any alteration or addition to any of the following, is development specified for this Part if the development is ancillary to a dwelling house and is not otherwise exempt development:

- (a) an awning, blind or canopy,
- (b) a balcony, deck, patio, pergola, terrace or verandah,
- (c) a carport,
- (d) a driveway associated with access to an open hard stand space, a carport or a garage,
- (e) a hard stand space associated with a driveway, whether open or part of a carport,
- (f) a pathway or paving (including any paving of a deck, pergola, patio or terrace),
- (g) a fence or screen,
- (h) a rainwater tank,
- (i) a retaining wall,
- (j) a swimming pool that is not part of development that requires development consent under clause 6.4 of this Plan,
- (k) a spa pool and child-resistant barrier.

**Note.** This Part does not apply to the ancillary development in the above list if the development is exempt development. This means that, if the development is carried out in accordance with the specifications set out in Part 2 of *State Environmental Planning Policy (Exempt and Complying Development Code) 2008* this Part does not apply.

(2) In this clause:

**hard stand space** means an area of concrete, paving or other hard material at ground level designed solely for parking a motor vehicle.

### 5 General exclusions from this Part

The following development is not development specified for this Part:

- (a) the erection of a roof terrace on the topmost roof of an existing or new dwelling house or an existing or new outbuilding,
- (b) the erection of a building over a registered easement,
- (c) the erection of a basement.

## **Division 2      Development standards that apply to new dwelling houses, alterations or additions to dwelling houses and ancillary development**

### **6      Application of development standards**

This Division:

- (a) sets out the specified development standards that apply to all development specified for this Part, and
- (b) applies in addition to all other development standards specified for this Part.

### **7      Setbacks**

- (1) A new dwelling house, an addition to an existing dwelling house or ancillary development must have:
  - (a) a setback from any secondary frontage of at least 3m, and
  - (b) a setback from the rear boundary of at least 6m, and
  - (c) a setback from the side boundaries of at least 1.5m, and
  - (d) a setback from the primary street frontage of the lesser of the following:
    - (i) 7.5m,
    - (ii) the average distance of the setbacks of the nearest 2 dwelling houses to the dwelling house (but only if they have the same primary street boundary as the dwelling house and are located within 40m of the lot on which the dwelling house is erected).
- (2) Any second storey of a new dwelling house, or an existing dwelling house that has been altered or added to, must not exceed a depth of 50% of the depth of the allotment, measured from the primary street frontage.
- (3) A new dwelling house, or an existing dwelling house that has been altered or added to, must not require a cut or fill that extends further than 900mm beyond the dwelling footprint.

### **8      Earthworks and drainage**

- (1) A lot on which development is carried out must have a finished ground floor level that is within 0.6m of the existing ground level.
- (2) Natural rock outcrops greater than 5m<sup>2</sup> in area must be retained on any lot on which development is carried out.
- (3) Fill, for the purpose of erecting a new dwelling house, must be contained within the footprint of the dwelling house.

### **9      Landscaped area**

- (1) A lot on which development is carried out must have a landscaped area of at least 45% of the area of the site.
- (2) For this purpose, the area of the site includes the area on which any dwelling house and any ancillary development is located.

### **10     Stormwater drainage**

- (1) All stormwater drainage collection as a result of the development must be conveyed by a gravity system fed to:
  - (a) a public drainage system, or

- (b) an inter-allotment drainage system, or
  - (c) an on-site disposal system.
- (2) All stormwater drainage systems within a lot and the connection to a public or an inter-allotment drainage system must:
- (a) if an approval is required under section 68 of the *Local Government Act 1993*, be approved under that Act and carried out in accordance with that approval, or
  - (b) if an approval is not required under section 68 of the *Local Government Act 1993*, comply with any requirements for the disposal of stormwater drainage contained in a development control plan, in force on the date of commencement of *Sutherland Shire Local Environmental Plan 2015 (Amendment No 1)*, that is applicable to the land.

#### **11 Additional development standards for flood control lots**

Clause 3.36C (2)–(6) of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* applies to all development specified for this Part that is to be carried out on a flood control lot (within the meaning of that Policy).

#### **12 Additional development standards for bush fire prone land or bush interface property**

- (1) This clause applies to all development specified for this Part that is to be carried out on a lot that is wholly or partly:
- (a) bush fire prone land, or
  - (b) bush fire interface property.
- (2) The development may be carried out on the lot only if:
- (a) the development conforms to the specifications and requirements of the following that are relevant to the development:
    - (i) *Planning for Bush Fire Protection*, or
    - (ii) if another document is prescribed by the regulations for the purposes of section 79BA of the *Environmental Planning and Assessment Act 1979*—that document, and
  - (b) the part of the lot on which the development is to be carried out, and any associated access way, is not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ), and
  - (c) the lot has direct access to a public road or a road vested in or maintained by the Council, and
  - (d) there is sufficient access designed in accordance with the acceptable solutions identified in clause 4.1.3 (2) of *Planning for Bush Fire Protection*, and
  - (e) reticulated or bottled gas on the lot is installed and maintained in accordance with AS/NZS 1596:2008, *The storage and handling of LP Gas* and the requirements of relevant authorities (metal piping must be used), and
  - (f) all fixed gas cylinders on the lot are located at least 10m from flammable materials and are enclosed on the hazard side of the installation, and
  - (g) any gas cylinders on the lot that are within 10m of a dwelling house:

- (i) have the release valves directed away from the dwelling house, and
- (ii) are enclosed on the hazard side of the installation, and
- (iii) have metal connections to and from the cylinders, and
- (h) there are no polymer-sheathed flexible gas supply lines to gas meters adjacent to the dwelling.

**Note.** The requirements of AS 3959—2009, *Construction of buildings in bushfire-prone areas*, as set out in the *Building Code of Australia* also apply.

- (3) A standard specified in subclause (2) (b) is satisfied if one of the following certifies that the development is not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ):
  - (a) a person who is recognised by the NSW Rural Fire Service as a suitably qualified consultant in bush fire risk assessment, or
  - (b) the Council.

**Note.** More information about the categories of bush fire attack, including the flame zone, can be found in Table A3.4.2 of *Addendum: Appendix 3* (ISBN 0 9751033 2 6 and published by NSW Rural Fire Service in 2010) to the publication titled *Planning for Bush Fire Protection* (ISBN 0 9751033 2 6) published by NSW Rural Fire Service in 2006.

- (4) This clause does not apply to the erection, construction or installation of any of the following, or any alteration or addition to any of the following:
  - (a) a driveway,
  - (b) a hard stand space,
  - (c) a pathway or paving.

- (5) In this clause:

**bush fire attack level-40 (BAL-40)** has the same meaning as it has in AS 3959—2009, *Construction of buildings in bushfire-prone areas*.

**bush fire interface property** means a lot identified as bushfire interface property by a development control plan made by the Council for the purposes of this clause and in force when this clause commenced.

**flame zone (BAL-FZ)** has the same meaning as it has in AS 3959—2009, *Construction of buildings in bushfire-prone areas*.

**Planning for Bush Fire Protection** means the following:

- (a) *Planning for Bush Fire Protection* (ISBN 0 9751033 2 6) published by the NSW Rural Fire Service in December 2006, and
- (b) *Addendum: Appendix 3* (ISBN 0 9751033 2 6, published by NSW Rural Fire Service in 2010) to *Planning for Bush Fire Protection* (ISBN 0 9751033 2 6).

### **Division 3 Additional development standards only for new dwelling houses or alterations or additions to dwelling houses**

#### **13 Application of development standards**

This Division:

- (a) sets out the specified development standards that apply to development specified for this Part by clauses 2 and 3, and
- (b) applies in addition to all other development standards specified for this Part.

**14 Maximum floor space ratio**

The maximum floor space ratio of a new building or an existing building that is altered or added to must not be more than 0.45:1.

**15 Maximum height of dwelling houses**

- (1) The height of a new dwelling house, or the alterations and additions to an existing dwelling house, that is not on an internal lot:
  - (a) must not be greater than 8.5m in height above ground level (existing), and
  - (b) must not be more than 2 storeys.
- (2) The height of a new dwelling house, or the alterations and additions to an existing dwelling house, that is on an internal lot:
  - (a) must not be greater than 5.4m in height above ground level (existing), and
  - (b) must not be more than one storey.
- (3) For the purposes of calculating the number of storeys in a dwelling house, any existing basement (including a garage) is to be counted as a storey.
- (4) In this clause:

**internal lot** means a lot to which there is no practical means of vehicular access by car or to which the only practical means of vehicular access is by way of:

  - (a) an access corridor (in the case of a hatchet-shaped lot), or
  - (b) a right of way that traverses another lot, or
  - (c) an access corridor that is common property in a strata plan or community title scheme.

**16 Retention of vegetative cover**

- (1) If development for the purposes of a new dwelling house, or the alteration or addition to an existing dwelling house, is carried out on a lot that has a slope greater than 18°, any vegetative cover on those slopes must be retained.
- (2) This clause does not apply to that part of any slope on which a dwelling house is located.

**17 Car parking and access**

- (1) Development for the purposes of a new dwelling house, or an existing dwelling house that has been altered or added to, must not reduce the existing number of car spaces to fewer than 2 spaces.
- (2) Development for the purposes of the erection of a new dwelling house must result in an additional 2 car parking spaces (and no more than 2 spaces) behind the building line, additional to those that existed before the erection of the dwelling house.
- (3) If the development involves the building of any new kerb, crossover or driveway in association with car parking written consent must have been given by the relevant roads authority (if required under section 138 of the *Roads Act 1993*) for the building of any kerb, crossover or driveway.



## 18 Building articulation

- (1) A new dwelling house, other than a dwelling house on a battle-axe block, must have an entry that faces the street.
- (2) A new dwelling house, other than a dwelling house on a battle-axe block, must overlook any other adjacent public areas.

## 19 Walls

- (1) A new dwelling house, or an existing dwelling house that has been altered or added to, must not present blank walls to any street frontage.
- (2) A new dwelling house, or an existing dwelling house that has been altered or added to, must not have any external wall longer than 6m that does not have a door or window.

## 20 Privacy screens on certain windows and balconies

- (1) A relevant window in a new dwelling house, or a new window in any alteration or addition to an existing dwelling house, must have an acceptable privacy screen for any part of the window that is less than 1.5m above floor level.
- (2) Any balcony in a new dwelling house, or a new balcony in an existing dwelling house, on the upper level of a two storey dwelling:
  - (a) must face the street, and
  - (b) if the side setback is less than 3m and the balcony is greater than 1m<sup>2</sup> in area, must have an acceptable privacy screen.

- (3) In this clause:

**acceptable privacy screen** means a structure that:

- (a) provides a screen or visual barrier between a window of a habitable room or an outdoor area on a lot and an adjoining lot, and
- (b) has no individual opening more than 30mm wide, and
- (c) has a total area of all openings that is no more than 30% of the surface area of the screen or barrier, and
- (d) has a height of at least 1.7m, but not more than 2.2m, above the finished floor level facing towards the relevant side or rear boundary.

**relevant window** means a window that:

- (a) is in a habitable room (other than a bedroom) that has a finished floor level of more than 0.6m above ground level (existing), and
- (b) has a sill height of less than 1.5m above that floor level, and
- (c) either:
  - (i) faces a side or rear boundary and is less than 6m from that boundary, or
  - (ii) faces residential land.

## 21 Open space

- (1) A new dwelling house, or an addition to an existing dwelling house, must provide at least one primary area of usable private open space at ground level and directly accessible from, and adjacent to, a living area with minimum dimensions of 6m × 6m.
- (2) A minimum of 50% of the outdoor private open space for a new dwelling house, or an existing dwelling house that has been altered or added to, must

receive direct sunlight at ground level for at least 4 hours between 9.00 am and 3.00 pm on 21 June.

## **22 Heating and ventilation**

The erection of a new dwelling house, or an alteration or addition to an existing dwelling house, must not involve the installation of:

- (a) any oil or solid fuel heating appliance, or
- (b) any commercial mechanical exhaust ventilation system.

## **23 Development in certain areas subject to aircraft noise**

- (1) A new dwelling house, or any alteration of or addition to an existing dwelling house, on land in an ANEF contour of between 20 and 29 (inclusive) must be constructed in accordance with AS 2021—2000, *Acoustics—Aircraft noise intrusion—Building siting and construction*.

- (2) In this clause:

**ANEF contour** means a noise exposure contour shown as an ANEF contour on the Noise Exposure Forecast Contour Map for the Sydney Airport prepared by the Department of the Commonwealth responsible for airports.

## **Division 4 Additional development standards only for ancillary development**

### **24 Application of development standards**

This Division:

- (a) sets out the specified development standards that apply to development specified for this Part by clause 4, and
- (b) applies in addition to all other development standards specified for this Part.

### **25 Awnings, blinds, canopies, shade structures and sunshades**

A new awning, blind, canopy, shade structure or sunshade, or an awning, blind, canopy, shade structure or sunshade that has been altered or added to:

- (a) must not occupy an area greater than 40m<sup>2</sup>, and
- (b) must not be greater than 4m in height above ground level, and
- (c) must be set back behind the building line, and
- (d) must be at least 1.5m from each side and rear boundary.

### **26 Carports, gazebos, pergolas, decks and patios**

A new carport, gazebo, pergola, deck or patio, or a carport, gazebo, deck or patio that has been altered or added to:

- (a) must not occupy an area greater than 40m<sup>2</sup>, and
- (b) must not be greater than 4m in height above ground level (existing), and
- (c) must be set back behind the building line, and
- (d) must be at least 1.5m from each side and rear boundary, and
- (e) must not have a finished floor level more than 0.6m in height above ground level (existing), and
- (f) must have not less than one-third of its perimeter open, and

- (g) must not have a solid enclosing wall greater than 1.4m in height above the floor level of the structure.

## 27 Fences

- (1) A new front fence, or a front fence that has been altered or added to, must not be greater than 1.2m in height above ground level (existing).
- (2) A new side or rear fence, or a side or rear fence that has been altered or added to, must not be greater than 1.8m in height above ground level (existing).
- (3) In this clause:

**front fence** means a fence all of which is built forward of the front building line and, in the case of a corner lot, is a fence all of which is built forward of both the front and side building alignments.

**side or rear fence** means a fence following the side of a building and, in the case of a corner lot, is a fence not wholly built forward of both the front and side building lines.

## 28 Swimming pools

- (1) Any new swimming pool, or any swimming pool that has been altered or added to:
  - (a) must be installed or erected in the rear or side yard, and
  - (b) must be installed or erected behind the building line, and
  - (c) must have a water line that has a setback of at least 1.5m from a side or rear boundary, and
  - (d) must not be:
    - (i) in the case of an in-ground pool—greater than 0.6m in height above ground level (existing), or
    - (ii) in the case of an above ground pre-fabricated pool (where any coping width is no greater than 250mm wide)—greater than 1.2m in height above ground level (existing), and
  - (e) must meet the standards required under *Environmental Specification Swimming Pools 2012* published by the Council on 23 April 2012, and
  - (f) if the pool, its surrounds or decking stands are more than 500mm above ground level (existing)—must be screened by plants and must have its surrounds and decking screened by plants.

**Note.** A child-resistant barrier must be constructed or installed in accordance with the requirements of the *Swimming Pools Act 1992*.
- (2) Any pool pump and equipment associated with the pump of a new swimming pool, or a swimming pool that has been altered or added to:
  - (a) must be designed so as to be sound insulated, or
  - (b) must be isolated so that the noise emitted does not exceed an LAeq of 5 dB (A) above background noise level in any octave band from 63 Hz centre frequencies inclusive, as measured at the property boundary in accordance with the Australian Standard AS 1055.1—1997, *Acoustics—Description and measurement of environmental noise, Part 1: General procedures*.

## 29 Driveways

A driveway:

- (a) must not require cut or fill more than 600mm below or above ground level (existing), and
- (b) must not result in less than 50% of the area forward of the building line being landscaped area, and
- (c) must not be wider than the open hard stand space, carport or garage with which it is associated, and
- (d) must not result in less than a 750mm wide landscaped strip along the boundary with an adjoining lot on which a dwelling is located, and
- (e) must be constructed in accordance with:
  - (i) AS/NZS 2890.1:2004, *Parking facilities, Part 1: Off-street car parking*, or
  - (ii) AS 2890.2—2002, *Parking facilities, Part 2: Off-street commercial vehicle facilities*.

## 30 Hard stand space

A hard stand space:

- (a) must not require cut or fill more than 600mm below or above ground level (existing), and
- (b) must not result in less than 50% of the area forward of the building line being landscaped area, and
- (c) must not result in less than a 750mm wide landscaped strip along the boundary with an adjoining lot on which a dwelling is located.

## 31 Pathway or paving

Pathway or paving:

- (a) must not require cut or fill more than 600mm below or above ground level (existing), and
- (b) must not result in less than 50% of the area forward of the building line being landscaped area, and
- (c) must not result in any landscaped strip along the boundary with an adjoining lot on which a dwelling house is located being less than 750mm wide.

## [2] Schedule 3, Part 2

Insert at the end of the Part:

### 2 Provision of information to Council relating to certain Council property

- (1) Prior to work commencing, the current condition of any property owned or controlled by the Council that is in the vicinity of the development must be documented and photographed.
- (2) Those documents and photographs must be provided to the Council at or before the time that notice to commence demolition or the erection of a building is given to the Council.

**Note.** Clause 136M of the *Environmental Planning and Assessment Regulation 2000* requires certain complying development certificates to be issued subject to conditions requiring the provision of security relating to potential damage to council property.

### 3 Removal or pruning of trees or other protected vegetation

- (1) If the development involves the removal or pruning of a protected tree or other protected vegetation, a permit or development consent for that removal or pruning must have been granted before any work commences.
- (2) In this clause:  
*protected tree or other protected vegetation* means a tree or other vegetation:
  - (a) that requires a separate permit granted by the Council under clause 5.9 of this Plan or development consent, and
  - (b) that is more than 3m away from any new dwelling house being erected or any existing dwelling house altered or added to or from the ancillary development, and
  - (c) that has a height of 6m or more.

**Note.** A permit for the removal or pruning of a tree or other vegetation may be granted under clause 5.9 of this Plan. A development consent for the removal of native vegetation may be granted under the *Native Vegetation Act 2003*.

### [3] Dictionary

Insert in alphabetical order:

*contaminated land* has the same meaning as in Part 7A of the Act.