



New South Wales

# **State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2017**

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*.

ANTHONY ROBERTS, MP  
Minister for Planning

## **State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2017**

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### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2017*.

### **2 Commencement**

This Policy commences 28 days after the date 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- (1) This Policy is repealed on the day following the day on which this Policy commences.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 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

**[1]    Clause 1.4A**

Omit the clause. Insert instead:

**1.4A    Development to which Policy does not apply**

This Policy does not apply to development to which Part 3 of *State Environmental Planning Policy (Affordable Rental Housing) 2009* applies.

**[2]    Clause 1.5 Interpretation—general**

Omit the definitions of *ancillary development*, *boundary wall*, *detached studio* and *outbuilding* from clause 1.5 (1).

Insert in alphabetical order:

*ancillary development*, in Parts 1, 2, 3A and 4, means any of the following that are not exempt development under this Policy:

- (a) access ramp,
- (b) awning, blind or canopy,
- (c) balcony, deck, patio, pergola, terrace or verandah that is attached to a dwelling house,
- (d) basement,
- (e) carport that is attached to a dwelling house,
- (f) detached studio,
- (g) driveway, hard stand space, pathway or paving,
- (h) fence or screen,
- (i) garage that is attached to a dwelling house,
- (j) outbuilding,
- (k) rainwater tank that is attached to a dwelling house,
- (l) retaining wall,
- (m) swimming pool or spa pool and child-resistant barrier.

*ancillary development*, in Parts 5 and 5A, means any of the following that are not exempt development under this Policy:

- (a) access ramp,
- (b) awning, blind or canopy,
- (c) carport,
- (d) driveway, hard stand space, pathway or paving,
- (e) earthworks, retaining wall and structural support,
- (f) fence or screen,
- (g) garbage bin store enclosure,
- (h) landscaping,
- (i) loading dock,
- (j) pergola,
- (k) rainwater tank (above ground),

- (l) rainwater tank (below ground),
- (m) roller shutter door,
- (n) shed,
- (o) storage enclosure.

**boundary wall** means a wall that has a setback of 150mm or less from the side or rear boundary of a lot.

**detached studio** means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and:

- (a) is established in conjunction with a dwelling house, and
- (b) is on the same lot of land as the dwelling house, and
- (c) is separate from the dwelling house, and
- (d) is not used as a separate dwelling house, and
- (e) does not contain any cooking facilities.

**outbuilding** means any of the following class 10a buildings under the *Building Code of Australia*:

- (a) balcony, deck, patio, pergola, terrace or verandah that is detached from a dwelling house,
- (b) cabana, cubby house, fernery, garden shed, gazebo or greenhouse,
- (c) carport that is detached from a dwelling house,
- (d) farm building,
- (e) garage that is detached from a dwelling house,
- (f) rainwater tank (above ground) that is detached from a dwelling house,
- (g) shade structure that is detached from a dwelling house,
- (h) shed.

**site coverage** means the proportion of a site area covered by buildings.

**[3] Clause 1.5 (3)**

Insert after clause 1.5 (2):

- (3) For the purposes of calculating site coverage of development, the following are not to be included in determining the area covered by buildings:
  - (a) an access ramp,
  - (b) any part of an awning, blind or canopy that is outside the outer wall of a building,
  - (c) a balcony, deck, patio, pergola, terrace or verandah attached to a dwelling house that is not enclosed by a wall higher than 1.4m above the floor level,
  - (d) the eaves of a building,
  - (e) a driveway,
  - (f) a farm building,
  - (g) a fence or screen,
  - (h) a pathway or paving,
  - (i) a rainwater tank that is attached to a dwelling house,
  - (j) a swimming pool or spa pool.

**[4] Clause 1.11 Amendment of environmental planning instruments**

Omit the clause.

**[5] Clause 1.16 General requirements for exempt development**

Insert at the end of clause 1.16 (1) (c):

, and

- (d) must not be carried out on land that is described or otherwise identified on a map specified in Schedule 4.

**[6] Clauses 1.18 (1) (g), 2.73 (2), 3A.38A (2) (a), 4A.6 (m) and 4A.8 (e)**

Omit “City of Dubbo, Gilgandra or Warrumbungle Shire” wherever occurring.

Insert instead “Gilgandra, Warrumbungle Shire or that part of the local government area of Dubbo Regional that was formerly in the City of Dubbo”.

**[7] Clause 1.19 Land on which complying development may not be carried out**

Insert after clause 1.19 (5):

**(6) Specific land exemptions may apply only to part of a lot**

Nothing in this clause prevents complying development being carried out on part of a lot that is not land referred to in this clause even if other parts of the lot are such land.

**[8] Clause 2.6 Development standards**

Omit clause 2.6 (1) (g) and (h). Insert instead:

- (g) if it is constructed or installed on or in a heritage item or a draft heritage item—be ground mounted, and
- (h) if it is constructed or installed on or in a heritage item or a draft heritage item or in a heritage conservation area or a draft heritage conservation area—be installed at or behind the rear building line.

**[9] Clause 2.6D Development standards**

Omit clause 2.6D (a) (ii). Insert instead:

- (ii) must be located inside existing commercial premises within an external wall that is at least 2m from a road and not installed or constructed on or in a heritage item or draft heritage item or in a heritage conservation area or draft heritage conservation area, and

**[10] Clause 2.20B Development standards**

Insert “, unless the change of use is from a class 5 building to a class 6 building, or from a class 6 building to a class 5 building, and the building meets all the relevant provisions of that code for the new use” after “*Building Code of Australia*” in clause 2.20B (d).

**[11] Clause 2.25**

Omit the clause. Insert instead:

**2.25 Specified development**

Demolition of development specified as exempt development under this code, if it is not carried out on or in a heritage item or a draft heritage item or on or

in a heritage conservation area or a draft heritage conservation area, is development specified for this code.

**[12] Part 2, Division 1, Subdivision 17**

Omit the heading. Insert instead:

**Subdivision 17 Fences (certain residential zones and Zone RU5)**

**[13] Clause 2.33 Specified development**

Omit “R3 or R4”. Insert instead “R3, R4 or RU5”.

**[14] Clause 2.34 Development standards**

Omit “that development” from clause 2.34 (1).

Insert instead “development specified in clause 2.33”.

**[15] Part 2, Division 1, Subdivision 17A**

Insert after Subdivision 17:

**Subdivision 17A Fences for swimming pools (certain residential zones and Zone RU5)**

**2.34A Specified development**

The construction or installation of a fence on land within Zone R1, R2, R3, R4 or RU5 is development specified for this code if it forms a barrier to a swimming pool.

**2.34B Development standards**

The standards specified for that development are that the development must comply with the requirements of the *Swimming Pools Act 1992*.

**[16] Part 2, Division 1, Subdivision 18**

Omit the heading. Insert instead:

**Subdivision 18 Fences (certain rural zones, environment protection zones and Zone R5)**

**[17] Clause 2.35 Specified development**

Omit “a rural zone”. Insert instead “Zone RU1, RU2, RU3, RU4 or RU6”.

**[18] Clause 2.75 Specified development**

Omit clause 2.75 (b) (ii) and (iii). Insert instead:

- (ii) that will not create additional lots or increase the number of lots with a dwelling entitlement or increase the opportunity for additional dwellings, and
- (iii) that will not result in any lot that is smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (other than a lot that was already smaller than that minimum size), and

**[19] Clause 2.105 Development standards**

Omit “a parcel of land” from clause 2.105 (1) (a).

Insert instead “a parcel of land, a dwelling house”.

**[20] Clause 2.105 (2) (a) (iv) and (v)**

Insert at the end of clause 2.105 (2) (a) (iii) (B):

and

(iv) not be illuminated, and

(v) if on the site of a heritage item or draft heritage item—not be attached to a building,

**[21] Clause 2.110 Development standards**

Omit clause 2.110 (b). Insert instead:

(b) if it is a temporary construction site fence adjoining or on a public place—be designed and installed in accordance with AS 4687—2007, *Temporary fencing and hoardings*, and

**[22] Clause 2.131 Specified development**

Omit clause 2.131 (b). Insert instead:

(b) the development is authorised by an extended trading authorisation granted under section 49 of the *Liquor Act 2007* for a special occasion (referred to in section 49 (5) (b) of that Act) of local, State or national significance or by a regulation made under section 13 of that Act in connection with an event of that kind, and

**[23] Parts 3A and 5**

Renumber Notes 1 and 2 at the beginning of the Parts as Notes 2 and 3, respectively.

Insert before Note 2 as renumbered:

**Note 1.** Clause 1.18 (1) (b) states that to be complying development for the purposes of this Policy the development must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out.

**[24] Clause 3A.5 Ancillary development**

Insert after clause 3A.5 (2) (before the note):

(3) Ancillary development that is permitted by a current complying development certificate may be erected on a lot:

(a) if a dwelling house exists on the lot—at any time, or

(b) if there is a current development consent or complying development certificate for the construction of a dwelling house on the lot—before the construction of the dwelling house.

**[25] Clause 3A.5, note**

Omit “clause 1.19 (6) (a)”. Insert instead “clause 1.19 (1) (a)”.

**[26] Clause 3A.16 Setbacks of dwelling houses from side boundaries**

Omit “or RU4” from clause 3A.16 (2) (b). Insert instead “, RU4 or RU6”.

**[27] Clause 3A.29**

Omit the clause. Insert instead:

**3A.29 Earthworks, retaining walls and structural support**

**(1) Excavation**

Excavation for the purposes of development under this code must not exceed a maximum depth, measured from ground level (existing), of:

- (a) if located not more than 1m from any boundary—1m, and
- (b) if located more than 1m but not more than 1.5m from any boundary—2m, and
- (c) if located more than 1.5m from any boundary—3m.

- (2) Despite subclause (1), the excavation must not exceed a maximum depth, measured from ground level (existing), of 1m if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural).

**(3) Fill**

Fill must not exceed a maximum height, measured from ground level (existing), of:

- (a) if the fill is for the purposes of the erection or alteration of, or an addition to, a dwelling house under this code—1m, and
- (b) if the fill is for any other purpose under this code—600mm.

- (4) Despite subclause (3), the height of fill contained wholly within the footprint of a dwelling house or ancillary development is not limited.

- (5) Fill that is higher than 150mm above ground level (existing) and is not contained wholly within the footprint of a dwelling house or ancillary development is limited to 50% of the landscaped area of the lot.

- (6) The ground level (finished) of the fill must not be used to measure the height of any dwelling house or ancillary development under this code.

**(7) Retaining walls and structural supports**

Support for earthworks more than 600mm above or below ground level (existing) must take the form of a retaining wall or other structural support that:

- (a) a professional engineer has certified as structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load, and
- (b) has been designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property, and
- (c) has adequate drainage lines connected to the stormwater drainage system for the site, and
- (d) does not have a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and
- (e) is separated from any other retaining wall or structural support on the site by at least 2m, measured horizontally, and
- (f) is installed in accordance with any manufacturer's specifications, and



- (g) if it is an embankment or batter—has a toe or top that is more than 1m from any side or rear boundary.

**Note 1.** *Excavation, fill and ground level (existing)* have the same meanings as they have in the Standard Instrument.

**Note 2.** Fill and excavation that is not associated with a building may be exempt development under clauses 2.29 and 2.30.

**[28] Clause 3A.33 Swimming pools**

Omit “, or” from clause 3A.33 (4) (a). Insert instead “, and”.

**[29] Clause 3A.33 (7)**

Omit “clause 3A.24 and this clause”.

Insert instead “clauses 3A.24, 3A.24A, 3A.25, 3A.29, 3A.38 and this clause”.

**[30] Clause 3A.33A**

Insert after clause 3A.33:

**3A.33A Development standards for detached studios**

- (1) This clause applies:

- (a) to a detached studio, and  
(b) in addition to the development standards specified in clause 3A.24.

**Note.** Clauses 3A.9 and 3A.10 contain development standards that also apply to detached studios.

- (2) A detached studio must not be located in a heritage conservation area or draft heritage conservation area.
- (3) A detached studio must be located behind the building line of a dwelling house.
- (4) No more than one detached studio may be located on a lot.
- (5) A detached studio must not have a building height of more than 3.6m.
- (6) The floor area of a detached studio must not be more than 35m<sup>2</sup>.
- (7) A detached studio must have a setback from a side or rear boundary of at least:
- (a) if the lot is in Zone R5 and has an area of less than 4,000m<sup>2</sup>—2.5m, or  
(b) in any other case—5m.

**[31] Clause 3A.37 Development standards for bush fire prone land**

Omit clause 3A.37 (1) (a). Insert instead:

- (a) to all development specified for this code that is carried out on a lot that is wholly or partly bush fire prone land (other than development that is the erection of non-habitable ancillary development that is more than 10m from any dwelling house, landscaping, a non-combustible fence or a swimming pool), and

**[32] Clause 3A.37 (2) (f) and (fa)**

Omit clause 3A.37 (2) (f). Insert instead:

- (f) a reticulated water supply is connected to the lot, or a water supply with a 65mm metal Storz outlet with a gate or ball valve is provided for fire fighting purposes on the lot (the gate or ball valve, pipes and tank penetrations are to be designed to allow for a full 50mm inner diameter

- water flow through the Storz fitting and must be of a metal construction), and
- (fa) the size of the non-reticulated water supply mentioned in paragraph (f) is:
    - (i) for a lot with an area no greater than 10,000m<sup>2</sup>—10,000L, and
    - (ii) for a lot with an area greater than 10,000m<sup>2</sup>—20,000L, and

**[33] Clause 3A.38**

Omit the clause. Insert instead:

**3A.38 Complying development on flood control lots**

- (1) Development under this code must not be carried out on any part of a flood control lot, other than a part of the lot that the council or a professional engineer who specialises in hydraulic engineering has certified, for the purposes of the issue of the complying development certificate, 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.
- (2) Development that is carried out under this code on any part of a flood control lot must meet the following requirements:
  - (a) if there is a minimum floor level adopted in a development control plan by the relevant council for the lot, the development must not cause any habitable room in the dwelling house to have a floor level lower than that floor level,
  - (b) any part of the dwelling house or any ancillary development that is erected at or below the flood planning level is constructed of flood compatible material,
  - (c) any part of the dwelling house or any ancillary development that is erected is able to withstand the forces exerted during a flood by water, debris and buoyancy up to the flood planning level (or if an on-site refuge is provided on the lot, the probable maximum flood level),
  - (d) the development must not result in increased flooding elsewhere in the floodplain,
  - (e) the lot must have pedestrian and vehicular access to a readily accessible refuge at a level equal to or higher than the lowest habitable floor level of the dwelling house,
  - (f) vehicular access to the dwelling house will not be inundated by water to a level of more than 0.3m during a 1:100 ARI (average recurrent interval) flood event,
  - (g) the lot must not have any open car parking spaces or carports lower than the level of a 1:20 ARI (average recurrent interval) flood event.
- (3) The requirements under subclause (2) (c) and (d) are satisfied if a joint report by a professional engineer specialising in hydraulic engineering and a professional engineer specialising in civil engineering states that the requirements are satisfied.

(4) A word or expression used in this clause has the same meaning as it has in the *Floodplain Development Manual*, unless it is otherwise defined in this Policy.

(5) In this clause:

***flood compatible material*** means building materials and surface finishes capable of withstanding prolonged immersion in water.

***flood planning level*** means:

(a) the flood planning level adopted by a local environmental plan applying to the lot, or

(b) if a flood planning level is not adopted by a local environmental plan applying to the lot, the flood planning level adopted in a development control plan by the relevant council for the lot.

***Floodplain Development Manual*** means the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

***flow path*** means a flow path identified in the council's flood study or floodplain risk management study carried out in accordance with the *Floodplain Development Manual*.

***high hazard area*** means a high hazard area identified in the council's flood study or floodplain risk management study carried out in accordance with the *Floodplain Development Manual*.

***high risk area*** means a high risk area identified in the council's flood study or floodplain risk management study carried out in accordance with the *Floodplain Development Manual*.

**Note 1.** **Council, flood control lot, habitable room** and **professional engineer** are defined in clause 1.5.

**Note 2.** A section 149 certificate from a Council will state whether or not a lot is a flood control lot.

**[34] Parts 4, 4A, 6 and 7**

Omit Note 1 at the beginning of the Parts.

Re-number Note 2 at the beginning of the Parts appropriately.

**[35] Part 4, Division 1, Subdivision 2**

Omit the heading. Insert instead:

**Subdivision 2 External alterations to existing dwelling houses and ancillary development**

**[36] Clause 4.3 Specified complying development**

Omit "the dwelling house that is a single storey" from clause 4.3 (b).

Insert instead "an existing dwelling house that comprises the storey on the ground level".

**[37] Clause 4.3 (c)**

Omit "a dwelling house". Insert instead "an existing dwelling house".

**[38] Clause 4.4 Development standards**

Omit clause 4.4 (1) (b) and (c). Insert instead:

(b) must not result in a change to the floor area of the dwelling house or ancillary development, and

- (c) must not result in a change to the footprint of the dwelling house or ancillary development, and
- (ca) must not result in an increase in the existing building height of the dwelling house or ancillary development, and
- (cb) must not result in more than a 5% change in the pitch of the roof of the dwelling house or ancillary development, and
- (cc) must not result in the enclosure of any carport, and

**[39] Part 4, Division 1, Subdivision 2A**

Omit the heading. Insert instead:

**Subdivision 2A External alterations to residential accommodation other than dwelling houses and ancillary development**

**[40] Clause 4.6 Development standards**

Omit clause 4.6 (2) (b).

**[41] Clause 5.2 Development standards**

Insert after clause 5.2 (1) (h):

- (i) if the alteration involves the amalgamation of retail premises located in a building, the amalgamation must not result in 1 retail premises having more than 50% of the total floor area of the building that is used for the purposes of retail premises.

**[42] Clause 5.10 Development standards**

Omit clause 5.10 (e). Insert instead:

- (e) in the case of the replacement of an awning or the construction of a new awning—be no less than 2.7m high at any point measured above ground level (existing), and

**[43] Clause 5.16 Development standards**

Omit “within a residential zone or” from clause 5.16 (i).

**[44] Part 5, Division 1, Subdivision 9**

Omit the heading. Insert instead:

**Subdivision 9 Ancillary development**

**[45] Clause 5.20**

Omit the clause. Insert instead:

**5.20 Development standards**

**(1) Excavation**

The standards specified for excavation work are that the work must:

- (a) be structurally sound, and
- (b) if the land is not identified as Class 3 or 4 on the Acid Sulfate Soils Map—not be more than 3m below ground level (existing), and

- (c) if the land is identified as Class 3 or 4 on the Acid Sulfate Soils Map—  
not be more than 1m below ground level (existing), and
  - (d) be carried out at least 40m from any waterbody (natural), and
  - (e) not result in a building being located over a registered easement, and
  - (f) if it is on a lot adjacent to a rail corridor—be setback at least 3m from  
the corridor.
- (2) **Fill**
- The standards specified for fill are that the fill must:
- (a) not raise the ground level (existing) more than 2m, and
  - (b) be structurally sound, and
  - (c) be located at least 40m from any waterbody (natural).
- (3) **Structural supports**
- Earthworks that are more than 1m above or below ground level (existing) are  
structurally sound only if they have structural support that:
- (a) a professional engineer has certified as structurally sound, including in  
relation to (but not limited to) the ability to withstand the forces of  
lateral soil load, and
  - (b) has adequate drainage lines connected to an existing stormwater  
drainage system for the site, and
  - (c) does not redirect the flow of any water or cause sediment to be  
transported onto an adjoining property, and
  - (d) is not higher than 3m, and
  - (e) is separated from any other structural support on the site by at least 2m,  
measured horizontally, and
  - (f) is not located over a registered easement.

**[46] Part 5, Division 1, Subdivision 13**

Insert after Subdivision 12:

**Subdivision 13 Development standards for land near Siding Spring  
Observatory**

**5.24A Specified development**

All external lighting associated with development under this Part in the local  
government areas of Coonamble, Gilgandra, Warrumbungle Shire and that  
part of the local government area of Dubbo Regional that was formerly in the  
City of Dubbo is development specified for this code.

**5.24B Development standards**

- (1) The standards specified for that development are that the development must:
  - (a) be installed or constructed using a shielded light fitting, and
  - (b) be downward facing, and
  - (c) for each site—not exceed 50,000 lumens, and
  - (d) for each individual light—not exceed a maximum colour temperature of  
3,500 kelvin.

(2) In this clause:

**shielded light fitting** means a light fitting that does not allow light to shine above the horizontal plane.

**[47] Part 5A Commercial and Industrial (New Buildings and Additions) Code**

Renumber the Note at the beginning of the Part as Note 2.

Insert before Note 2 as renumbered:

**Note 1.** Clause 1.18 (1) (b) states that to be complying development for the purposes of this Policy the development must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out.

**[48] Clause 5A.27**

Omit the clause. Insert instead:

**5A.27 Earthworks**

(1) **Excavation**

The standards specified for excavation work are that the work must:

- (a) be structurally sound, and
- (b) if the land is not identified as Class 3 or 4 on the Acid Sulfate Soils Map—not be more than 3m below ground level (existing), and
- (c) if the land is identified as Class 3 or 4 on the Acid Sulfate Soils Map—not be more than 1m below ground level (existing), and
- (d) be carried out at least 40m from any waterbody (natural), and
- (e) not result in a building being located over a registered easement, and
- (f) if it is on a lot adjacent to a rail corridor—be setback at least 3m from the corridor.

(2) **Fill**

The standards specified for fill are that the fill must:

- (a) not raise the ground level (existing) more than 2m, and
- (b) be structurally sound, and
- (c) be located at least 40m from any waterbody (natural).

(3) **Structural supports**

Earthworks that are more than 1m above or below ground level (existing) are structurally sound only if they have structural support that:

- (a) a professional engineer has certified as structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load, and
- (b) has adequate drainage lines connected to an existing stormwater drainage system for the site, and
- (c) does not redirect the flow of any water or cause sediment to be transported onto an adjoining property, and
- (d) is not higher than 3m, and
- (e) is separated from any other structural support on the site by at least 2m, measured horizontally, and
- (f) is not located over a registered easement.

**[49] Clauses 5A.30 and 5A.30A**

Omit clause 5A.30. Insert instead:

**5A.30 Complying development on flood control lots**

- (1) Development under this code must not be carried out on any part of a flood control lot, other than a part of the lot that the council or a professional engineer who specialises in hydraulic engineering has certified, for the purposes of the issue of the complying development certificate, 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.
- (2) Development that is carried out under this code on any part of a flood control lot must meet the following requirements:
  - (a) if there is a minimum floor level adopted in a development control plan by the relevant council for the lot, the development must not cause any habitable room in the dwelling house to have a floor level lower than that floor level,
  - (b) any part of the building that is erected at or below the flood planning level is constructed of flood compatible material,
  - (c) any part of the building that is erected is able to withstand the forces exerted during a flood by water, debris and buoyancy up to the flood planning level (or if an on-site refuge is provided on the lot, the probable maximum flood level),
  - (d) the development must not result in increased flooding elsewhere in the floodplain,
  - (e) the lot must have pedestrian and vehicular access to a readily accessible refuge at a level equal to or higher than the lowest habitable floor level of the building,
  - (f) vehicular access to the building will not be inundated by water to a level of more than 0.3m during a 1:100 ARI (average recurrent interval) flood event,
  - (g) the lot must not have any open car parking spaces or carports lower than the level of a 1:20 ARI (average recurrent interval) flood event.
- (3) The requirements under subclause (2) (c) and (d) are satisfied if a joint report by a professional engineer specialising in hydraulic engineering and a professional engineer specialising in civil engineering states that the requirements are satisfied.
- (4) A word or expression used in this clause has the same meaning as it has in the *Floodplain Development Manual*, unless it is otherwise defined in this Policy.
- (5) In this clause:

***flood compatible material*** means building materials and surface finishes capable of withstanding prolonged immersion in water.

***flood planning level*** means:

  - (a) the flood planning level adopted by a local environmental plan applying to the lot, or

- (b) if a flood planning level is not adopted by a local environmental plan applying to the lot, the flood planning level adopted in a development control plan by the relevant council for the lot.

***Floodplain Development Manual*** means the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

***flow path*** means a flow path identified in the council's flood study or floodplain risk management study carried out in accordance with the *Floodplain Development Manual*.

***high hazard area*** means a high hazard area identified in the council's flood study or floodplain risk management study carried out in accordance with the *Floodplain Development Manual*.

***high risk area*** means a high risk area identified in the council's flood study or floodplain risk management study carried out in accordance with the *Floodplain Development Manual*.

**Note 1.** **Council, flood control lot, habitable room** and **professional engineer** are defined in clause 1.5.

**Note 2.** A section 149 certificate from a Council will state whether or not a lot is a flood control lot.

#### **5A.30A Development standards for land near Siding Spring Observatory**

- (1) This clause applies:
- (a) to all external lighting associated with development under this Part in the local government areas of Coonamble, Gilgandra, Warrumbungle Shire and that part of the local government area of Dubbo Regional that was formerly in the City of Dubbo, and
  - (b) in addition to all other development standards specified for this code.
- (2) The development must:
- (a) be installed or constructed using a shielded light fitting, and
  - (b) be downward facing, and
  - (c) for each site—not exceed 50,000 lumens, and
  - (d) for each individual light—not exceed a maximum colour temperature of 3,500 kelvin.
- (3) In this clause:
- shielded light fitting*** means a light fitting that does not allow light to shine above the horizontal plane.

#### **[50] Clause 6.1**

Omit the clause. Insert instead:

#### **6.1 Specified complying development**

- (1) The strata subdivision of a building for which development consent or a complying development certificate was granted or issued is, for 5 years from the date the consent or certificate was granted or issued, development specified for this code.
- (2) Subclause (1) does not include the strata subdivision of the following development:
- (a) a dual occupancy,
  - (b) a secondary dwelling,



- (c) a boarding house,
- (d) a group home.

**[51] Clause 7.1 Specified complying development**

Insert “under Part 2, 3A, 4, 5 or 5A” after “ancillary development” in clause 7.1 (1) (b).

**[52] Schedule 3 Complying development codes—variations**

Omit “The General Commercial and Industrial Code” wherever occurring in column 2 of the matter relating to Liverpool City and Penrith.

Insert instead “The Commercial and Industrial Alterations Code”.

**[53] Schedule 4 Land excluded from the General Exempt Development Code**

Omit “(Clause 1.19 (1A))”. Insert instead “(Clause 1.16 (1) (d))”.

**[54] Schedule 6 Conditions applying to complying development certificates under the General Housing Code and the Rural Housing Code**

Omit the note to clause 1.

**[55] Schedule 6, clause 11A**

Insert after clause 11:

**11A Swimming pool safety**

If the work involves the construction of a swimming pool, a child-resistant barrier that complies with the requirements of the *Building Code of Australia* and AS 1926.1—2012, *Swimming pool safety—Part 1: Safety barriers for swimming pools* must be erected around that work during the construction.

**[56] Schedule 6, clause 13**

Omit the clause. Insert instead:

**13 Aboriginal objects discovered during excavation**

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- (a) all excavation or disturbance of the area must stop immediately, and
- (b) the person making the discovery must advise the Chief Executive (within the meaning of the *National Parks and Wildlife Act 1974*) of the discovery in accordance with section 89A of that Act.

**Note.** If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

**[57] Schedule 8 Conditions applying to complying development certificates under the Commercial and Industrial Alterations Code and the Commercial and Industrial (New Buildings and Additions) Code**

Omit clause 17 (2) and (3). Insert instead:

- (2) If the work is the subject of a notice of requirements for water supply or sewerage services (or both) by a water utility or an entity authorised by the utility, the work must be satisfactorily completed and any monetary contributions required to be paid to the relevant water supply authority must be paid before the occupation certificate is issued.
- (3) If the work is the subject of a compliance certificate under section 73 of the *Sydney Water Act 1994*, the work must be satisfactorily completed and any

monetary contributions required to be paid to the Sydney Water Corporation must be paid before the occupation certificate is issued.

**[58] Schedule 8, clause 24**

Omit the clause. Insert instead:

**24 Use of driveways and parking areas**

- (1) All driveways and parking areas must be unobstructed at all times.
- (2) Except as otherwise permitted by an existing condition of the most recent development consent (other than a complying development certificate) that applies to the premises, driveways and car spaces:
  - (a) must not be used for the manufacture, storage or display of goods, materials or any other equipment, and
  - (b) must be used solely for vehicular access and for the parking of vehicles associated with the use of the premises.

**[59] Schedule 9 Conditions applying to complying development certificates under the Demolition Code**

Omit clause 3 (1). Insert instead:

- (1) A waste management plan for the work must be prepared before work commences on the site.

**[60] Schedule 9, clause 10**

Insert at the end of the Schedule:

**10 Aboriginal objects discovered during excavation**

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- (a) all excavation or disturbance of the area must stop immediately, and
- (b) the person making the discovery must advise the Chief Executive (within the meaning of the *National Parks and Wildlife Act 1974*) of the discovery in accordance with section 89A of that Act.

**Note.** If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

## **Schedule 2 Amendment of State Environmental Planning Policy (Affordable Rental Housing) 2009**

- [1] **Clause 6 Affordable housing**  
Omit “Sydney Statistical Division” from clause 6 (1) (a).  
Insert instead “Greater Sydney (Greater Capital City Statistical Area)”.
- [2] **Clause 21 Development to which Division applies**  
Insert “and ancillary development (within the meaning of Schedule 1)” after “secondary dwelling”.
- [3] **Schedule 1 Development standards for secondary dwellings**  
Insert “associated with a secondary dwelling and that are” after “that are” in the definition of *ancillary development* in clause 1 (1).
- [4] **Schedule 1, clause 1 (2A)**  
Insert after clause 1 (2):  
(2A) A word or expression used in this Schedule and not defined in this clause or in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* has the same meaning as it has in the standard instrument (as in force immediately before the commencement of the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*).
- [5] **Schedule 1, clauses 2 (1), 6, 7 (1), (2) and (3), 8, 9 (1) and (2), 10 (1) and (2), 16 (1) and 21 (1)**  
Insert “or ancillary development” after “a secondary dwelling” wherever occurring.
- [6] **Schedule 1, clause 4 (1)**  
Insert “(excluding any ancillary development)” after “floor area of a secondary dwelling”.
- [7] **Schedule 1, clause 4 (3)**  
Omit “dwelling” wherever occurring from the definition of *floor area*.  
Insert instead “principal dwelling or secondary dwelling”.
- [8] **Schedule 1, clause 6 (2)**  
Insert at the end of the clause:  
(2) Development for the purposes of ancillary development must not result in a new building or a new part of an existing building having a building height above ground level (existing) of more than:  
(a) if an outbuilding—4.8 metres, or  
(b) if a fence—1.8 metres.
- [9] **Schedule 1, clauses 9 (1) and (2) and 10 (1) and (2)**  
Omit “that is attached to such a building” wherever occurring.
- [10] **Schedule 1, clause 17 (1A)**  
Insert after clause 17 (1):  
(1A) The principal private open space may be shared by both the principal dwelling and secondary dwelling and may be in the form of a balcony or deck.

**[11] Schedule 1, clause 18**

Omit the clause. Insert instead:

**18 Earthworks, retaining walls and structural support**

**(1) Excavation**

Excavation for the purposes of a secondary dwelling or ancillary development must not exceed a maximum depth, measured from ground level (existing), of:

- (a) if located not more than 1m from any boundary—1m, and
- (b) if located more than 1m but not more than 1.5m from any boundary—2m, and
- (c) if located more than 1.5m from any boundary—3m.

(2) Despite subclause (1), the excavation must not exceed a maximum depth, measured from ground level (existing), of 1m if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural).

**(3) Fill**

Fill must not exceed a maximum height, measured from ground level (existing), of:

- (a) if the fill is for the purposes of a secondary dwelling—1m, and
- (b) if the fill is for the purposes of ancillary development—600mm.

(4) Despite subclause (3), the height of fill contained wholly within the footprint of a secondary dwelling or ancillary development is not limited.

(5) Fill that is higher than 150mm above ground level (existing) and is not contained wholly within the footprint of a secondary dwelling or ancillary development is limited to 50% of the landscaped area of the lot.

(6) The ground level (finished) of the fill must not be used to measure the height of any secondary dwelling or ancillary development under this code.

**(7) Retaining walls and structural supports**

Support for earthworks more than 600mm above or below ground level (existing) must take the form of a retaining wall or other structural support that:

- (a) a professional engineer has certified is structurally sound, including the ability to withstand the forces of lateral soil load, and
- (b) has been designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property, and
- (c) has adequate drainage lines connected to the stormwater drainage system for the site, and
- (d) does not result in a retaining wall or structural support with a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and
- (e) is separated from any other retaining wall or structural support on the site by at least 2m, measured horizontally, and
- (f) has been installed in accordance with any manufacturer's specifications, and

- (g) if it is an embankment or batter—must have its toe or top more than 1m from any side or rear boundary.

**Note.** Fill and excavation that is not associated with a building may be exempt development under clauses 2.29 and 2.30 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**[12] Schedule 2 Complying development—group homes**

Insert after clause 1 (2):

- (3) A word or expression used in this Schedule and not defined in this clause or in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* has the same meaning as it has in the standard instrument (as in force immediately before the commencement of the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*).

**[13] Schedule 2, clause 2A**

Insert after clause 2:

**2A Site requirements for group homes in certain zones**

- (1) Development that is the erection of a group home may only be carried out on a lot:
- (a) in Zone R5 Large Lot Residential, or
  - (b) if the lot has an area of at least 4,000m<sup>2</sup>—in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots or Zone RU6 Transition.
- (2) Despite subclause (1), development that is the erection of one or more group homes must not be carried out on a lot if the size of the lot is less than the minimum lot size for the erection of a dwelling house under the environmental planning instrument applying to the lot.

**[14] Schedule 2, clause 7**

Omit the clause. Insert instead:

**7 Building articulation**

A group home, other than a group home on a battle-axe lot, must have:

- (a) a front door and a window to a habitable room in a building wall that faces, and is visible from, any primary road, and
- (b) a window to a habitable room in a building wall that faces, and is visible from, any parallel road, and
- (c) a window (with an area of at least 1m<sup>2</sup>) to a habitable room in a building wall that faces, and is visible from, any secondary road.

### **Schedule 3      Amendment of State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)**

#### **Clause 8 Definition of “affordable housing”**

Omit “Sydney Statistical Division”.

Insert instead “Greater Sydney (Greater Capital City Statistical Area)”.

## **Schedule 4      Amendment of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

### **[1]    Clause 3 Interpretation**

Omit the definition of *Sydney Statistical Division* from clause 3 (1).

Insert in alphabetical order:

***Greater Sydney (Greater Capital City Statistical Area)*** means the area that the Australian Bureau of Statistics determines from time to time to be the Greater Sydney (Greater Capital City Statistical Area).

### **[2]    Clause 26 Location and access to facilities**

Omit “Sydney Statistical Division” from clause 26 (2) wherever occurring.

Insert instead “Greater Sydney (Greater Capital City Statistical Area)”.

### **[3]    Clause 45 Vertical villages**

Omit “Sydney Statistical Division” from the definition of *affordable place* in clause 45 (12).

Insert instead “Greater Sydney (Greater Capital City Statistical Area)”.