



New South Wales

# **State Environmental Planning Policy (Aboriginal Land) 2019**

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

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## State Environmental Planning Policy (Aboriginal Land) 2019

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### Part 1 Preliminary

#### 1 Name of Policy

This Policy is *State Environmental Planning Policy (Aboriginal Land) 2019*.

#### 2 Commencement

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

#### 3 Aims of Policy

The aims of this Policy are:

- (a) to provide for development delivery plans for areas of land owned by Local Aboriginal Land Councils to be considered when development applications are considered, and
- (b) to declare specified development carried out on land owned by Local Aboriginal Land Councils to be regionally significant development.

#### 4 Definitions

- (1) In this Policy:

*capital investment value* has the same meaning as in the *Environmental Planning and Assessment Regulation 2000*.

*development delivery plan* means a plan adopted by the Minister under Part 2.

*LALC* means a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*.

*Land Application Map* means the State Environmental Planning Policy (Aboriginal Land) 2019 Land Application Map.

*the Act* means the *Environmental Planning and Assessment Act 1979*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Policy.

- (2) Notes included in this Policy do not form part of this Policy.

#### 5 Land to which Policy applies

This Policy applies to the land specified on the Land Application Map.

#### 6 Relationship with other environmental planning instruments

In the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

## **7 Maps**

- (1) A reference in this Policy to a named map adopted by this Policy 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 persons making the instruments when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map.
- (3) In that case, a reference in this Policy to the named map is a reference to the relevant part or aspect of the single map.
- (4) The maps adopted by this Policy are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (5) For the purposes of this Policy, a map may be in, and may be kept and made available in, electronic or paper form, or both.

## Part 2 Development delivery plans

### 8 Approval of development delivery plans

- (1) The Minister is to approve development delivery plans for land to which this Policy applies.
- (2) The Minister must not approve a development delivery plan unless:
  - (a) the Minister is satisfied that the plan was prepared by or on behalf of the LALC that owns the land (the *responsible LALC*), or
  - (b) if the plan was prepared by or on behalf of the Minister, the responsible LALC was consulted on the proposed plan and the Minister has considered any submissions made by the responsible LALC.
- (3) The Minister may amend or refuse to approve a development delivery plan prepared by or on behalf of the responsible LALC.
- (4) The Minister is to consult with the responsible LALC and to consider any submissions made by the responsible LALC before amending a proposed development delivery plan prepared by the responsible LALC.
- (5) A development delivery plan is taken to be approved by the Minister on the day on which it is published in the Gazette or the NSW planning portal.
- (6) An approved development delivery plan may be amended or replaced by the Minister at the request of the responsible LALC or at the Minister's discretion.
- (7) The Minister is to make approved development delivery plans, and amendments to those plans, publicly available.

### 9 Requirements for development delivery plans

- (1) A development delivery plan for land must:
  - (a) apply to all land to which this Policy applies that is owned by the same LALC, and
  - (b) set out the general objectives of the LALC for the land, and
  - (c) set out the nature of development proposed for the land, and
  - (d) set out the basis on which the development is proposed, having regard to applicable economic, social and environmental factors, and
  - (e) set out strategies, actions and a program for achieving the objectives for the land, and
  - (f) contain other matters that the Minister thinks appropriate.
- (2) A development delivery plan may also set out 1 or more of the following matters:
  - (a) the bulk, scale and size of development proposed for the land to which the plan applies,
  - (b) measures to support Aboriginal cultural heritage that may be affected by development proposed for the land,
  - (c) measures to support strategic biodiversity conservation relating to the land,
  - (d) proposals for provision for public utility infrastructure and roads.
- (3) A responsible LALC or the Minister must have regard to the following when preparing a development delivery plan or an amendment to a plan:
  - (a) a regional strategic plan that applies to the region in which the land to which the plan applies is situated,

- (b) the community, land and business plan adopted by the responsible LALC under the *Aboriginal Land Rights Act 1983*,
  - (c) any other matters the LALC or Minister considers relevant.
- (4) A development delivery plan may also apply to land that is owned by a LALC that is not land to which this Policy applies.

**10 Development delivery plan to be considered when determining development applications**

A consent authority must have regard to matters referred to in clause 9 (2) that are included in a development delivery plan that is applicable to land to which this Policy applies when determining an application for development consent to carry out development on that land.

## **Part 3 Regional development**

### **11 Application of Part**

This Part does not apply to development on land to which this Policy applies unless a development delivery plan is in force under this Policy for the land.

### **12 Declaration of regionally significant development: section 4.5 (b) of the Act**

- (1) The following development on land to which this Policy applies owned by a LALC is declared to be regionally significant development for the purposes of the Act:
  - (a) development that has a capital investment value of more than \$5 million,
  - (b) development in respect of which more than 50 submissions are received after the development application for the development is placed on public exhibition,
  - (c) development for which a development application to the relevant council has been lodged but not determined within 60 days after the application was lodged and that is the subject of a written request to the council by the applicant for the application to be dealt with by a regional panel, unless the chairperson of the regional panel determines that the delay in determining the application was caused by the applicant.
- (2) If development the subject of a concept development application under Part 4 of the Act is development that has a capital investment value of more than \$5 million, a part of the development that is the subject of a separate development application is taken to be development specified by subclause (1) (whether or not that part of the development has a capital investment value of more than \$5 million).
- (3) However, the following development is not declared to be regionally significant development:
  - (a) complying development,
  - (b) development for which development consent is not required,
  - (c) development that is State significant development,
  - (d) development for which a person or body other than a council is the consent authority,
  - (e) development within the area of the City of Sydney.

## Part 4 Miscellaneous

### 13 Transitional provision—existing development applications

- (1) This clause applies to a development application (an *existing application*) if the application:
  - (a) relates to land to which this Policy applies, and
  - (b) was made before the application of this Policy to the land, and
  - (c) was not determined before the application of this Policy to the land.
- (2) Development that is the subject of an existing application is not regionally significant development for the purposes of the development application.
- (3) Clause 10 applies to the determination of an existing application.