



New South Wales

# **State Environmental Planning Policy (Penrith Lakes Scheme) Amendment 2019**

under the

**Environmental Planning and Assessment Act 1979**

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

**ROBERT STOKES, MP**  
Minister for Planning and Public Spaces

## **State Environmental Planning Policy (Penrith Lakes Scheme) Amendment 2019**

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### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Penrith Lakes Scheme) Amendment 2019*.

### **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- (1) This Policy is repealed on the day following the day on which this Policy commences.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 State Environmental Planning Policy (Penrith Lakes Scheme) 1989**

### **[1]    Clause 4 Relationship with other State environmental planning policies**

Insert after clause 4(3)—

- (4) *State Environmental Planning Policy No 1—Development Standards* does not apply to land to which this Policy applies.

### **[2]    Clause 5 Definitions**

Omit “recurrent” from the definition of *flood planning level* in clause 5(1).

Insert instead “recurrence”.

### **[3]    Clause 17A**

Insert after clause 17—

#### **17A    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 development on land to which this Policy applies,
- (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 Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land zoned Residential if—
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least 1 lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) 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).
- (8) 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 land on which such a building is situated,
  - (c) clause 25(1).

**[4] Land Use Table**

Insert “Dual occupancies;” in alphabetical order in item 3 of the matter relating to Zone Residential.

**[5] Clauses 21–24, 26, 27 and 34**

Insert “Planning” before “Secretary” wherever occurring.

**[6] Part 5, note**

Insert “Planning” before “Secretary”.

**[7] Part 5, note**

Omit “Division 6 of Part 3 of the *Environmental Planning and Assessment Act 1979*”.

Insert instead “Division 3.6 of the Act”.

**[8] Clauses 22(b), 25(2)(c) and 26(d)**

Omit the paragraphs.

**[9] Clause 25 Development on land zoned Residential**

Omit “exceed 30” from clause 25(1). Insert instead “exceed 38”.

**[10] Clause 25(3) and (4)**

Insert after clause 25(2)—

- (3) Development consent must not be granted for development on land zoned Residential for the purposes of a dual occupancy unless the consent authority is satisfied that—

- (a) the size of the lot is not less than 2 hectares, and
- (b) the dual occupancy will be erected on an area of land on the lot that is above the level of the probable maximum flood (based on the natural surface level and not a level achieved by filling).

**Note.** Clause 33 provides for development on land that is at or below the flood planning level.

- (4) In this clause—

***probable maximum flood*** has the same meaning as it has in the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.

**Note.** The probable maximum flood is the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation.