



New South Wales

State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment 2022

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*.

ANTHONY ROBERTS, MP
Minister for Planning

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1 Name of Policy

This Policy is *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment 2022*.

2 Commencement

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

3 Repeal of Policy

This Policy is repealed on the day following the day on which this Policy commences.

Schedule 1 Amendment of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

[1] Clause 1.5 Interpretation—general

Insert in alphabetical order in clause 1.5(1)—

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

flood planning level, for a lot, 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 council for the lot, or
- (c) if a flood planning level is not adopted by a development control plan applying to the lot—the flood planning level otherwise adopted by the 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*.

[2] Clause 1.18 General requirements for complying development under this Policy

Omit clause 1.18(1)(c4).

[3] Part 2, Division 1, Subdivision 3AA

Insert after Subdivision 3—

Subdivision 3AA Ancillary take away food and drink outlets

2.6AA Specified development

The ancillary use of the following for the preparation and retail sale of food or drink, or both, for immediate consumption away from the premises is development specified for this code—

- (a) business premises that were used as a cooking school immediately before the commencement of this Subdivision,
- (b) community facilities,
- (c) educational establishments that were used as a cooking school immediately before the commencement of this Subdivision,
- (d) food and drink premises, other than take away food and drink premises,
- (e) function centres.

2.6AB Development standards

The standards specified for the development are as follows—

- (a) the premises must have existing kitchen facilities,
- (b) the premises must not provide seating to take away customers,
- (c) the relevant land use referred to in clause 2.6AA(a)–(e) must be—
 - (i) permitted without development consent, or
 - (ii) permitted by a current development consent,
- (d) the ancillary use must comply with the provisions of an environmental planning instrument, and, if relevant, the conditions of the current development consent, applying to the premises,
- (e) the ancillary use must not have an adverse impact on the amenity of the neighbourhood, including from noise, waste and fumes and other smells.

Note— The preparation and retail sale of food or drink is also regulated under other legislation, including the following—

- (a) the *Food Act 2003*,
- (b) the *Liquor Act 2007*.

[4] Clause 2.40D Development standards

Omit “(Operations)” from clause 2.40D(a)(ii). Insert instead “Operations”.

[5] Clause 2.40E Repeal of Subdivision

Omit “18 April 2022”. Insert instead “30 June 2022”.

[6] Clause 2.40H Repeal of Subdivision

Omit “18 April 2022”. Insert instead “30 June 2022”.

[7] Clause 2.46C Specified development

Insert “in Zones B1, B2, B3, B4, B5, B6, B7, B8, IN1, IN2, IN3 and IN4” after “premises” in clause 2.46C(1).

[8] Clause 2.54B Development standards

Omit clause 2.54B(f). Insert instead—

- (f) if carried out on land in a residential zone—only be carried out between 7am and 7pm, and
- (f1) if carried out on land immediately adjacent to a residential zone—only be carried out between 7am and 10pm, and

[9] Clauses 3.5(5), 3A.38(5), 3B.5(5), 3C.6(5), 3D.7(5) and 5A.6K(5)

Omit the subclauses.

[10] Clauses 3.5, 3A.38, 3B.5, 3C.6, 3D.7 and 5A.6K

Omit Note 1 wherever occurring.

Re-number Note 2 appropriately.

[11] Clause 5.22B Development standards

Omit “car parking space” from clause 5.22B(4). Insert instead “car park”.

[12] Clause 5A.2, heading

Omit “purposes”. Insert instead “purpose”.

[13] Clause 5A.6B Development standards—general

Insert after clause 5A.6B(6)—

- (7) The development must not be a controlled activity within the meaning of the *Airports Act 1996* of the Commonwealth, Part 12, Division 4.

Note— Controlled activities include the construction or alteration of buildings or other structures that causes an intrusion into prescribed airspace, which is generally airspace around airports. Controlled activities cannot be carried out without an approval granted under regulations made for the purposes of the *Airports Act 1996* of the Commonwealth, Part 12, Division 4.

[14] Clause 5A.6D Maximum gross floor area for particular specified purposes

Insert “ancillary” before “office premises” in clause 5A.6D(2).

[15] Clause 5A.19 Maximum gross floor area

Omit “new” from clause 5A.19(2).

[16] Clause 5A.20B Site coverage and landscaped areas

Omit “25%” from clause 5A.20B(3). Insert instead “50%”.

[17] Clause 5A.20B(8A)

Insert after clause 5A.20B(8)—

- (8A) If there is more than 1 building on a lot, the number of storeys for the purposes of this clause must be determined in accordance with the *Business Zone Design Guide* dated December 2021 and published on the NSW planning portal.