



New South Wales

Standard Instrument (Local Environmental Plans) Amendment (Canal Estate Development and Public Bushland) Order 2022

under the

Environmental Planning and Assessment Act 1979

MARGARET BEAZLEY, Governor

I, the Honourable Margaret Beazley AC KC, Governor of New South Wales, with the advice of the Executive Council, make the following Order under the *Environmental Planning and Assessment Act 1979*, section 3.20.

Dated, this 19th day of October 2022.

By Her Excellency's Command,

ANTHONY ROBERTS, MP
Minister for Planning

Standard Instrument (Local Environmental Plans) Amendment (Canal Estate Development and Public Bushland) Order 2022

under the

Environmental Planning and Assessment Act 1979

1 Name of Order

This Order is *Standard Instrument (Local Environmental Plans) Amendment (Canal Estate Development and Public Bushland) Order 2022*.

2 Commencement

This Order commences on 21 November 2022.

Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

[1] Clause 2.9

Insert after clause 2.8—

2.9 Canal estate development prohibited [compulsory]

- (1) Canal estate development is prohibited on land to which this Plan applies.
- (2) In this Plan, *canal estate development* means development that involves—
 - (a) a constructed canal, or other waterway or waterbody, that—
 - (i) is inundated by surface water or groundwater movement, or
 - (ii) drains to a waterway or waterbody by surface water or groundwater movement, and
 - (b) the erection of a dwelling, and
 - (c) one or both of the following—
 - (i) the use of fill material to raise the level of all or part of the land on which the dwelling will be erected to comply with requirements for residential development in the flood planning area,
 - (ii) excavation to create a waterway.
- (3) Canal estate development does not include development for the purposes of drainage or the supply or treatment of water if the development is—
 - (a) carried out by or with the authority of a person or body responsible for the drainage, supply or treatment, and
 - (b) limited to the minimum reasonable size and capacity.
- (4) In this clause—
flood planning area has the same meaning as in clause 5.21.

[2] Land Use Table

Omit “*State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 7*” from the note.

[3] Clause 5.23

Insert after clause 5.22—

5.23 Public bushland [optional]

- (1) The objective of this clause is to protect and ensure the ecological viability of bushland, including rehabilitated areas in urban areas, by—
 - (a) preserving biodiversity, habitat corridors and links between public bushland and other nearby bushland, and
 - (b) preserving bushland as a natural stabiliser of the soil surface, and
 - (c) preserving existing hydrological landforms, processes and functions, including natural drainage lines, watercourses, wetlands and foreshores, and

- (d) preserving the recreational, educational, scientific, aesthetic, environmental, ecological and cultural values and potential of bushland, and
 - (e) mitigating disturbance caused by development.
- (2) Development that will disturb, or is reasonably likely to disturb, public bushland is permitted with development consent.
- (3) Development consent must not be granted to development that will disturb, or is reasonably likely to disturb, public bushland unless the consent authority is satisfied of the following—
 - (a) the disturbance of the bushland is essential for a purpose in the public interest,
 - (b) there is no reasonable alternative to the disturbance,
 - (c) the development minimises the amount of bushland to be disturbed,
 - (d) the development includes measures to remediate the disturbed bushland.
- (4) Despite subclause (2), development that will disturb, or is reasonably likely to disturb, public bushland is permitted without development consent if the development is for the following purposes—
 - (a) the construction, operation or maintenance of pipelines to carry water, sewerage or gas or pipelines licensed under the *Pipelines Act 1967*,
 - (b) the construction, operation or maintenance of electricity or telecommunication lines,
 - (c) bush fire hazard reduction,
 - (d) the construction or maintenance of classified roads,
 - (e) facilitating the recreational use of the public bushland.
- (5) Development specified in subclause (4)(e) is permitted without development consent only if it is carried out in accordance with a plan of management for the public bushland, adopted by the Council in the same way a plan of management is required to be adopted for community land under the *Local Government Act 1993*, Chapter 6, Part 2, Division 2, that includes measures for the following—
 - (a) the recreational use of the land,
 - (b) bush fire hazard reduction,
 - (c) the prevention of degradation, including the alteration of drainage patterns, rubbish dumping, vehicle intrusion and infestation with weeds or non-native plants,
 - (d) the remediation of degraded public bushland.
- (6) This clause does not require development consent for clearing of native vegetation if the clearing is of a kind that is authorised under the *Local Land Services Act 2013*, section 60O.
- (7) In deciding whether to grant development consent to development on land adjoining public bushland, the consent authority must consider the following—
 - (a) the need to retain public bushland adjoining the site of the development,
 - (b) the likely effect of the development on public bushland, including the following—
 - (i) the erosion of soil,

- (ii) the siltation of streams and waterways,
 - (iii) the spread of weeds and non-native plants within public bushland,
 - (c) other matters the consent authority considers relevant to the protection and preservation of public bushland.
- (8) This clause does not apply to the following land that is public bushland—
 - (a) land in Zone RU1, RU2, RU3, RU4 or RU5,
 - (b) land reserved, dedicated or acquired under the *National Parks and Wildlife Act 1974*,
 - (c) land within a State forest, flora reserve or timber reserve within the meaning of the *Forestry Act 2012*,
 - (d) land to which *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, Chapter 7 applies.

Direction— Other land may be added to subclause (8).
- (9) In this clause—

disturb public bushland means—

 - (a) remove vegetation from public bushland, or
 - (b) cause a change in the natural ecology of public bushland that results in the destruction or degradation of the public bushland.

non-native plant means a plant that is not native vegetation.

public bushland means land—

 - (a) on which there is vegetation that is—
 - (i) a remainder of the natural vegetation of the land, or
 - (ii) representative of the structure and floristics of the natural vegetation of the land, and
 - (b) that is owned, managed or reserved for open space or environmental conservation by the Council or a public authority.

[4] Dictionary

Omit the definition of *canal estate development*. Insert instead—
canal estate development—see clause 2.9.

Schedule 2 **Amendment of Standard Instrument (Local Environmental Plans) Order 2006**

Clause 11

Insert after clause 10—

11 Transitional provisions consequent on making of Standard Instrument (Local Environmental Plans) Amendment (Canal Estate Development and Public Bushland) Order 2022

- (1) This clause applies to land at Lot 11, DP 870049 and Lot 11, DP 124295, Beach Road, Batemans Bay.
- (2) Canal estate development is permitted with development consent on land to which this clause applies.
- (3) The amendments made by the *Standard Instrument (Local Environmental Plans) Amendment (Canal Estate Development and Public Bushland) Order 2022* to the standard instrument prescribed by this Order do not have effect to the extent that the amendments are inconsistent with subclause (2).
- (4) In this clause—
canal estate development has the same meaning as in the standard instrument prescribed by this Order.

Note— This clause preserves the effect of *Eurobodalla Local Environmental Plan 2012*, clause 1.9(3) before the repeal of the subclause by *State Environmental Planning Policy Amendment (Water Catchments) 2022*.