



New South Wales

State Environmental Planning Policy Amendment (Lismore Flood Recovery) 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 Amendment (Lismore Flood Recovery) 2022*.

2 Commencement

This Policy commences on 13 February 2023 and is required to be published on the NSW legislation website.

3 Repeal of Policy

This Policy is repealed at the beginning of the day following the day on which this Policy commences.

Schedule 1 Amendment of Lismore Local Environmental Plan 2012

[1] Schedule 3 Complying development

Insert in Schedule 3, Part 1—

Raising of dwelling houses above flood planning level

- (1) This clause applies to the following development—
 - (a) the alteration or rebuilding of a lawfully erected dwelling house for the purpose of raising the finished floor level of the dwelling house to a level above the flood planning level,
 - (b) the construction or installation of the following in connection with that development—
 - (i) footings, foundations or other structural elements,
 - (ii) structures associated with the provision of utility services,
 - (iii) access ramps, stairways, landings, balustrades, pathways, paving, light fittings, privacy screens, gutters, pipes or cooling or heating appliances,
 - (c) other associated works.
- (2) The development must—
 - (a) meet the requirements for complying development specified in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, clause 1.17A, and
 - (b) not be designated development, and
 - (c) not be carried out on land that is, or contains, a draft heritage item.
- (3) For subclause (2)(a), a reference in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, clause 1.17A to this Policy must be read as a reference to this Plan.
- (4) The development must not involve the enlargement or extension of the dwelling house.
- (5) The dwelling house must be certified as suitable for the development in a certificate issued by—
 - (a) the Northern Rivers Reconstruction Corporation, or
 - (b) the NSW Reconstruction Authority.
- (6) Each part of the dwelling house erected as part of the development must—
 - (a) if erected at or below the flood planning level—be constructed of flood compatible material, and
 - (b) be able to withstand the forces exerted by water, debris and buoyancy during a flood, up to the flood planning level.
- (7) The development must not restrict the flow of floodwater on the land.
- (8) The development standards specified in subclauses (6)(b) and (7) are satisfied if a registered professional engineer issues a certificate certifying the standards are satisfied.
- (9) The finished floor level must be no more than 3.5m above ground level (existing).

- (10) The height of the dwelling house may exceed the maximum height shown for the land on the Height of Buildings Map.
- (11) The setback of the dwelling house from each property boundary must not be altered.
- (12) A landing for a stairway constructed or installed as part of the development must have an area of no more than 3m².
- (13) The total area of all landings for stairways constructed or installed as part of the development must not exceed 9m².
- (14) The following must be located above the flood planning level—
 - (a) the connection point for the dwelling house,
 - (b) electrical installations,
 - (c) switchboards,
 - (d) meters.
- (15) A privacy screen must be installed for each part of a window that is less than 1.5m above the finished floor level if—
 - (a) the window—
 - (i) is in a habitable room with a finished floor level of more than 1m above ground level (existing), and
 - (ii) faces a side or rear boundary and is less than 3m from the boundary, or
 - (b) the window—
 - (i) is in a habitable room with a finished floor level of more than 3m above ground level (existing), and
 - (ii) faces a side or rear boundary and is at least 3m, but no more than 6m, from the boundary.
- (16) Subclause (15) does not apply to a bedroom window with an area of no more than 2m².
- (17) A privacy screen must be installed for a balcony, deck, patio, terrace or verandah with an area of at least 3m² if the structure is—
 - (a) less than 3m from a side or rear boundary and has a finished floor level of more than 1m above ground level (existing), or
 - (b) at least 3m, but no more than 6m, from a side or rear boundary and has a finished floor level of more than 2m above ground level (existing).
- (18) The privacy screen required under subclause (17) must—
 - (a) have a height of at least 1.7m, but no more than 2.2m, above the finished floor level of the balcony, deck, patio, terrace or verandah, and
 - (b) be installed along the edge of the part of the structure that is parallel to, or faces, the relevant side or rear boundary.
- (19) In this clause—

connection point has the same meaning as in the *Electricity Supply Act 1995*.

draft heritage item has the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

electrical installation has the same meaning as in the *Electricity Supply Act 1995*.

finished floor level means the top of the floor surface of each habitable room in the dwelling house.

flood compatible material has the same meaning as in *State Environmental Planning Policy (Housing) 2021*.

flood planning level has the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

habitable room has the same meaning as in the *Building Code of Australia*.

Northern Rivers Reconstruction Corporation means the Northern Rivers Reconstruction Corporation constituted under the *Growth Centres (Development Corporations) Act 1974*, section 4.

NSW Reconstruction Authority means the NSW Reconstruction Authority established under the *NSW Reconstruction Authority Act 2022*, section 7.

privacy screen has the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

registered professional engineer has the same meaning as in the *Design and Building Practitioners Act 2020*.

[2] Schedule 3, Part 2

Insert at the end of the Part—

Conditions for raising of dwelling houses above flood planning level

Before building work commences, a restriction must be registered in accordance with the *Conveyancing Act 1919*, section 88E against the title of the property to which the development relates that ensures—

- (a) the space under the dwelling house cannot be enclosed, and
- (b) a habitable room cannot be constructed below the level to which the dwelling house is raised.

Schedule 2 Amendment of State Environmental Planning Policy (Housing) 2021

[1] Chapter 3 Diverse housing

Insert after Part 10—

Part 11 Residential accommodation for flood recovery

136 Definitions

In this Part—

bush fire prone land means land identified on a bush fire prone land map certified under the Act, section 10.3.

coastal vulnerability area has the same meaning as in *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2.

coastal wetlands and littoral rainforests area has the same meaning as in *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2.

declared area of outstanding biodiversity value has the same meaning as in the *Biodiversity Conservation Act 2016*.

flood planning area has the same meaning as in the *Floodplain Development Manual*.

forestry area has the same meaning as in the *Forestry Act 2012*.

Northern Rivers Reconstruction Corporation means the Northern Rivers Reconstruction Corporation constituted under the *Growth Centres (Development Corporations) Act 1974*, section 4.

NSW Reconstruction Authority means the NSW Reconstruction Authority established under the *NSW Reconstruction Authority Act 2022*, section 7.

Planning for Bush Fire Protection means the version of the document entitled *Planning for Bush Fire Protection* prescribed by the *Environmental Planning and Assessment Regulation 2021*, section 271.

standard development application means a development application not made in reliance on a site compatibility certificate issued under this Part.

137 Land to which Part applies

- (1) This Part applies to land in the Lismore City local government area.
- (2) This Part does not apply to land—
 - (a) in a flood planning area, or
 - (b) in a conservation zone, or
 - (c) in a forestry area, or
 - (d) reserved under the *National Parks and Wildlife Act 1974*, or
 - (e) in the coastal wetlands and littoral rainforests area, or
 - (f) in the coastal vulnerability area, or
 - (g) in a declared area of outstanding biodiversity value, or
 - (h) included on the Biodiversity Values Map published under the *Biodiversity Conservation Regulation 2017*, clause 7.3, or
 - (i) that is a natural wetland.

138 Residential development permitted with development consent

- (1) The following development may be carried out with development consent on land to which this Part applies—
 - (a) development for the purposes of residential accommodation,
 - (b) the subdivision of land proposed to be used for the purposes of residential accommodation.
- (2) Development consent must not be granted to the development unless the consent authority is satisfied—
 - (a) a site compatibility certificate has been issued for the development under this Part, and
 - (b) the development will comply with the requirements, if any, specified in the certificate.
- (3) This Part does not apply to development that would be permissible without this Part.

139 Application for site compatibility certificate

- (1) Either of the following may apply to the Planning Secretary for a site compatibility certificate for development to which this Part applies—
 - (a) the Northern Rivers Reconstruction Corporation,
 - (b) the NSW Reconstruction Authority.
- (2) The application must be—
 - (a) in the form approved by the Planning Secretary, and
 - (b) accompanied by the documents required by the Planning Secretary, and
 - (c) submitted within 3 years of the commencement of this Part.
- (3) The Planning Secretary must publish the application on the NSW planning portal as soon as practicable after receiving the application.
- (4) The Planning Secretary may request further information or documents from the applicant for the purposes of assessing the application.

140 Consultation by Planning Secretary

- (1) The Planning Secretary must consult the following before determining an application for a site compatibility certificate—
 - (a) if the application relates to bush fire prone land—the NSW Rural Fire Service,
 - (b) if a single local planning panel has been constituted for the Lismore City local government area—the panel,
 - (c) if a single local planning panel has not been constituted for the Lismore City local government area—Lismore City Council.
- (2) The Planning Secretary must—
 - (a) send a copy of the application to each body the Planning Secretary is required to consult under subsection (1) within 7 days of receiving the application, and
 - (b) request that comments on the application be provided by the body within 14 days of receiving the request.

141 Issue of site compatibility certificate

- (1) The Planning Secretary may—
 - (a) issue a site compatibility certificate if the Planning Secretary considers the proposed development is suitable for the site, or
 - (b) refuse to issue a site compatibility certificate.
- (2) The Planning Secretary may refuse to issue a site compatibility certificate if the Planning Secretary considers development consent for development on the land should be sought using a standard development application.
- (3) In determining whether the proposed development is suitable for the site, the Planning Secretary must consider the following—
 - (a) comments received, within 14 days of the request being made, from a body the Planning Secretary was required to consult under section 140,
 - (b) regional strategic plans for the region the land is in,
 - (c) the suitability of the development having regard to, and the impact on, the use of the land the application relates to and surrounding land uses, including—
 - (i) existing and approved land uses, and
 - (ii) land uses that, in the opinion of the Planning Secretary, are likely to be the preferred future uses of the land,
 - (d) the services and infrastructure that are or will be available to meet the demands arising from the development,
 - (e) whether the development is likely to have an adverse impact on the environmental values of the land the application relates to or surrounding land,
 - (f) whether there are unacceptable environmental hazards or risks on the land the application relates to or surrounding land,
 - (g) the ability to evacuate the land the application relates to during a flood,
 - (h) if the application relates to bush fire prone land—the requirements of Planning for Bush Fire Protection.
- (4) If the site compatibility certificate is issued, the applicant must notify persons who own or occupy adjoining land.
- (5) A site compatibility certificate may specify development standards and other requirements that apply to the development.
- (6) A site compatibility certificate is valid for—
 - (a) the period specified in the certificate, or
 - (b) if no period is specified—5 years.
- (7) A development application submitted, but not finally determined, during the period the site compatibility certificate is valid must be determined as if the certificate is still valid.
- (8) A site compatibility certificate continues to apply to the land to which it relates for the period the certificate is valid despite a change in ownership of the land.