



New South Wales

# **State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023**

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*.

PAUL SCULLY, MP  
Minister for Planning and Public Spaces

## **State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of policy**

This policy is *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023*.

### **2 Commencement**

This policy commences on 1 November 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This policy is repealed at the beginning of the day following the day on which this policy commences.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 environmental planning instruments

### 1.1 Local environmental plans

#### [1] Principal amendments

Omit from the local environmental plans specified in Column 1 of the following table the provisions specified opposite in Column 2 and insert instead the following subclauses—

- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant for development consent has demonstrated that—
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
  - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- Note—** The *Environmental Planning and Assessment Regulation 2021* requires the development application to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- (4) The consent authority must keep a record of its assessment carried out under subclause (3).

| Column 1   | Column 2   |
|--|--|
| <i>Ballina Local Environmental Plan 1987</i>                 | Clause 39(3)–(5) and (7)   |
| <i>Bega Valley Local Environmental Plan 2002</i>             | Clause 65A(3)–(5) and (7)  |
| <i>Blue Mountains Local Environmental Plan 1991</i>          | Clause 37(3)–(5) and (7)   |
| <i>Blue Mountains Local Environmental Plan 2005</i>          | Clause 9A(3)–(5) and (7)   |
| <i>Blue Mountains Local Environmental Plan No 4</i>          | Clause 9A(3)–(5) and (7)   |
| <i>Byron Local Environmental Plan 1988</i>                   | Clauses 64A(3)–(5) and (7) and 85(3)–(5) and (7)   |
| <i>Deniliquin Local Environmental Plan 1997</i>              | Clause 37(3)–(5) and (7)   |
| <i>Forbes Local Environmental Plan 1986</i>                  | Clause 9B(3)–(5) and (7)   |
| <i>Hurstville Local Environmental Plan 1994</i>              | Clause 9B(3)–(6)   |
| <i>Lake Macquarie Local Environmental Plan 2004</i>          | Clauses 21(3)–(5) and (7), 76(3)–(6), 98(3)–(6), 121(3)–(5) and (7) and 145(3)–(5) and (7) |
| <i>Leichhardt Local Environmental Plan 2000</i>              | Clause 40(3)–(6)   |
| <i>Lismore Local Environmental Plan 2000</i>                 | Clause 28C(3)–(5) and (7)  |
| <i>Penrith Local Environmental Plan 1998 (Urban Land)</i>    | Clause 39(3)–(5) and (7)   |
| <i>Penrith Local Environmental Plan No 201 (Rural Lands)</i> | Clause 22(3)–(5) and (7)   |
| <i>Shellharbour Local Environmental Plan 2000</i>            | Clause 90(3)–(5) and (7)   |
| <i>Shellharbour Rural Local Environmental Plan 2004</i>      | Clauses 64A(3)–(5) and (7) and 77(3)–(5)   |
| <i>Shoalhaven Local Environmental Plan 1985</i>              | Clause 54J(3)–(5) and (7)  |
| <i>Singleton Local Environmental Plan 1996</i>               | Clause 39AA(3)–(5) and (7)   |

| <b>Column 1</b>  | <b>Column 2</b>                  |
|--|----------------------------------|
| <i>South Sydney Local Environmental Plan 1998</i>                              | Clause 56B(3)–(6)                |
| <i>Sutherland Shire Local Environmental Plan 2006</i>                          | Clauses 58A(3)–(6) and 72(3)–(6) |
| <i>Sydney Local Environmental Plan 2005</i>                                    | Clause 10A(3)–(6)                |
| <i>Sydney Local Environmental Plan (Glebe Affordable Housing Project) 2011</i> | Clause 4.6(3)–(5) and (7)        |
| <i>Sydney Local Environmental Plan (Green Square Town Centre) 2013</i>         | Clause 4.6(3)–(5) and (7)        |
| <i>Sydney Local Environmental Plan (Green Square Town Centre—Stage 2) 2013</i> | Clause 4.6(3)–(5) and (7)        |
| <i>Tweed Local Environmental Plan 2000</i>                                     | Clause 59(3)–(5) and (7)         |
| <i>Wollongong Local Environmental Plan 1990</i>                                | Clause 43(3)–(5) and (7)         |

**[2] Consequential amendments—existing savings provisions**

Insert the following subclause in the local environmental plans specified in Column 1 of the following table at the end of the provision specified opposite in Column 2, with appropriate subclause numbering—

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

| <b>Column 1</b>  | <b>Column 2</b>                |
|--|--------------------------------|
| <i>Bega Valley Local Environmental Plan 2002</i>                               | Clause 11                      |
| <i>Hurstville Local Environmental Plan 1994</i>                                | Clause 26B                     |
| <i>Lake Macquarie Local Environmental Plan 2004</i>                            | Clause 11                      |
| <i>Shellharbour Local Environmental Plan 2000</i>                              | Clause 5                       |
| <i>Shellharbour Rural Local Environmental Plan 2004</i>                        | Clause 15                      |
| <i>Shoalhaven Local Environmental Plan 1985</i>                                | Clause 54K (Savings provision) |
| <i>South Sydney Local Environmental Plan 1998</i>                              | Clause 56                      |
| <i>Sutherland Shire Local Environmental Plan 2006</i>                          | Clause 58                      |
| <i>Sydney Local Environmental Plan (Glebe Affordable Housing Project) 2011</i> | Clause 1.8A                    |
| <i>Sydney Local Environmental Plan (Green Square Town Centre) 2013</i>         | Clause 1.8A                    |
| <i>Sydney Local Environmental Plan (Green Square Town Centre—Stage 2) 2013</i> | Clause 1.8A                    |
| <i>Tweed Local Environmental Plan 2000</i>                                     | Clause 58                      |
| <i>Wollongong Local Environmental Plan 1990</i>                                | Clause 41                      |

**[3] Consequential amendments—new savings provisions**

Insert the following clause in the local environmental plans specified in Column 1 of the following table after the clause specified opposite in Column 2, with appropriate clause numbering—

**Savings provisions relating to development applications**

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

| <b>Column 1</b>  | <b>Column 2</b> |
|--|-----------------|
| <i>Ballina Local Environmental Plan 1987</i>                 | Clause 7        |
| <i>Blue Mountains Local Environmental Plan 1991</i>          | Clause 5        |
| <i>Blue Mountains Local Environmental Plan 2005</i>          | Clause 9A       |
| <i>Blue Mountains Local Environmental Plan No 4</i>          | Clause 9A       |
| <i>Byron Local Environmental Plan 1988</i>                   | Clause 5        |
| <i>Deniliquin Local Environmental Plan 1997</i>              | Clause 7        |
| <i>Forbes Local Environmental Plan 1986</i>                  | Clause 7        |
| <i>Leichhardt Local Environmental Plan 2000</i>              | Clause 11       |
| <i>Lismore Local Environmental Plan 2000</i>                 | Clause 9        |
| <i>Penrith Local Environmental Plan 1998 (Urban Land)</i>    | Clause 6        |
| <i>Penrith Local Environmental Plan No 201 (Rural Lands)</i> | Clause 7        |
| <i>Singleton Local Environmental Plan 1996</i>               | Clause 36       |

**[4] Lake Macquarie Local Environmental Plan 2004**

**Clause 21 Exceptions to development standards**

Omit “considering a written request” from clause 21(9).

Insert instead “deciding whether to grant development consent”.

**[5] Sydney Local Environmental Plan 2005**

**Clause 14 Saving of certain development applications and development plans**

Insert after clause 14(1A)—

- (1B) A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

## 1.2 Precincts State environmental planning policies

**[1] Principal amendments**

Omit from the State environmental planning policies specified in Column 1 of the following table the matter specified opposite in Column 2 and insert instead the following subsections—

- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant for development consent has demonstrated that—
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
  - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- Note—** The *Environmental Planning and Assessment Regulation 2021* requires the development application to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- (4) The consent authority must keep a record of its assessment carried out under subsection (3).

| Column 1  | Column 2  |
|---|---|
| <i>State Environmental Planning Policy (Precincts—Central River City) 2021</i>    | Section 5.35(3)–(5) and (7)<br>Appendix 5, section 4.6(3)–(5) and (7)<br>Appendix 6, section 4.6(3)–(5) and (7)<br>Appendix 7, section 4.6(3)–(5) and (7)<br>Appendix 8, section 4.6(3)–(5) and (7)<br>Appendix 9, section 4.6(3)–(5) and (7)<br>Appendix 10, section 4.6(3)–(5) and (7)<br>Appendix 11, section 4.6(3)–(5) and (7)<br>Appendix 12, section 4.6(3)–(5) and (7)<br>Appendix 13, section 4.6(3)–(5) and (7) |
| <i>State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021</i>  | Section 4.35(3)–(6)<br>Section 5.9(3)–(6)<br>Section 7.12(3)–(6)<br>Appendix 3, section 16A(3)–(6)<br>Appendix 5, section 20(3)–(6)<br>Appendix 7, section 14(3), (4) and (6)<br>Appendix 8, section 12(3)–(6)  |
| <i>State Environmental Planning Policy (Precincts—Regional) 2021</i>              | Section 5.28(3)–(5) and (7)   |
| <i>State Environmental Planning Policy (Precincts—Western Parkland City) 2021</i> | Section 5.21(3)–(5) and (7)<br>Appendix 2, section 4.6(3)–(5) and (7)<br>Appendix 4, section 4.6(3)–(5) and (7)<br>Appendix 5, section 4.6(3)–(5) and (7)<br>Appendix 6, section 4.6(3)–(5) and (7)<br>Appendix 7, section 4.6(3)–(5) and (7)<br>Appendix 8, section 4.6(3)–(5) and (7)<br>Appendix 9, section 4.6(3)–(5) and (7)<br>Appendix 10, section 4.6(3), (4) and (6)   |

**[2] Further principal amendments**

Omit from the State environmental planning policies specified in Column 1 of the following table the matter specified opposite in Column 2 and insert instead the following subsections—

- (4) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant for development consent has demonstrated that—
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
  - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- Note—** The *Environmental Planning and Assessment Regulation 2021* requires the development application to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- (5) The consent authority must keep a record of its assessment carried out under subsection (4).

| Column 1  | Column 2   |
|---|--|
| <i>State Environmental Planning Policy (Precincts—Central River City) 2021</i>    | Appendix 3, section 20(4)–(7)<br>Appendix 4, section 22(4)–(7)   |
| <i>State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021</i>  | Appendix 6, section 21(4)–(6) and (8)  |
| <i>State Environmental Planning Policy (Precincts—Regional) 2021</i>              | Appendix 3, section 18(4)–(6) and (8)<br>Appendix 4, section 13(4)–(6) and (8)<br>Appendix 5, section 23(4)–(6) and (8)<br>Appendix 6, section 15(4)–(7) |
| <i>State Environmental Planning Policy (Precincts—Western Parkland City) 2021</i> | Appendix 1, section 28(4)–(6) and (8)  |

### 1.3 State Environmental Planning Policy (Industry and Employment) 2021

#### [1] Section 2.26 Exceptions to development standards

Omit section 2.26(3)–(6). Insert instead—

- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant for development consent has demonstrated that—
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
  - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
- Note—** The *Environmental Planning and Assessment Regulation 2021* requires the development application to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- (4) The consent authority must keep a record of its assessment carried out under subsection (3).

#### [2] Section 2.45 Savings provisions

Insert after section 2.45(4)—

- (5) A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

## 1.4 State Environmental Planning Policy (Transport and Infrastructure) 2021

### [1] Section 5.9, heading

Omit the heading. Insert instead—

#### 5.9 Savings

### [2] Section 5.9(3)

Insert after section 5.9(2)—

- (3) A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

### [3] Section 5.22 Exceptions to development standards

Omit section 5.22(3)–(6). Insert instead—

- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant for development consent has demonstrated that—
  - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
  - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

**Note—** The *Environmental Planning and Assessment Regulation 2021* requires the development application to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- (4) The consent authority must keep a record of its assessment carried out under subsection (3).



## **Schedule 2 Consequential amendments to Precincts State environmental planning policies**

### **2.1 State Environmental Planning Policy (Precincts—Central River City) 2021**

**[1] Section 2.6A**

Insert after section 2.6—

**2.6A Savings**

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**[2] Section 3.9, heading**

Omit the heading. Insert instead—

**3.9 Savings**

**[3] Section 3.9(3)**

Insert after section 3.9(2)—

(3) A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**[4] Section 5.7A**

Insert after section 5.7—

**5.7A Savings**

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

### **2.2 State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021**

**[1] Section 2.6A**

Insert after section 2.6—

**2.6A Savings**

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**[2] Section 4.6A**

Insert after section 4.6—

**4.6A Savings**

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**[3] Section 5.6A**

Insert after section 5.6—

**5.6A Savings**

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**[4] Section 7.5A**

Insert after section 7.5—

**7.5A Savings**

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**2.3 State Environmental Planning Policy (Precincts—Regional) 2021**

**[1] Section 2.6A**

Insert after section 2.6—

**2.6A Savings**

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**[2] Section 5.8 Savings provision relating to development applications**

Insert at the end of section 5.8—

- (2) A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**2.4 State Environmental Planning Policy (Precincts—Western Parkland City) 2021**

**[1] Section 2.6A**

Insert after section 2.6—

**2.6A Savings**

A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment*

*(Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**[2] Section 3.9, heading**

Omit the heading. Insert instead—

**3.9 Savings**

**[3] Section 3.9(3)**

Insert after section 3.9(2)—

- (3) A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.

**[4] Section 5.8 Savings provisions relating to development applications**

Insert after section 5.8(2)—

- (3) A development application made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Exceptions to Development Standards) 2023* must be determined as if that policy had not commenced.