

# State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development (1981 EPI 21)

[1981-21]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**
  - State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Complying Development
  - State Environmental Planning Policy No 4—Development Without Consent

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development (1981 EPI 21)



New South Wales

## Part 1 Preliminary

### 1 Name of Policy

This State environmental planning policy may be cited as *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development*.

### 2 Definitions

(1) In this Policy, except in so far as the context or subject-matter otherwise indicates or requires:

**council**, in relation to the carrying out of development, means the council of the area in which the development is to be carried out.

**filming** means recording images (whether on film or video tape or electronically or by other means) for exhibition or broadcast (such as by cinema, television or the Internet or by other means), but does not include:

- (a) still photography, or
- (b) video recording of a wedding ceremony or other private celebration or event principally for the purpose of making a record for the participants in the ceremony, celebration or event, or
- (c) video recording as a visitor or tourist for non-commercial purposes, or
- (d) recording for the immediate purposes of a television program that provides information by way of current affairs or daily news.

**floor space**, in relation to a building, means the area of a floor of the building, where

the area of the floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1 400 millimetres above the floor level, excluding:

- (a) columns, fin walls, sun control devices and any elements, projections or works outside the general line of the outer face of the external wall,
- (b) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and vertical air-conditioning ducts,
- (c) car-parking needed to meet any requirements of the council and any internal access thereto, and
- (d) space for the loading and unloading of goods.

**iconic site** means any of the following land:

- (a) the land described in Schedule 1 to the *Sydney Olympic Park Authority Act 2001*,
- (b) the Trust lands within the meaning of the *Royal Botanic Gardens and Domain Trust Act 1980*,
- (c) the Trust lands within the meaning of the *Centennial Park and Moore Park Trust Act 1983*,
- (d) the foreshore area within the meaning of the *Sydney Harbour Foreshore Authority Act 1998*.

**offensive noise** has the same meaning as in the *Protection of the Environment Operations Act 1997*.

**private land** means land that is not a public place or an iconic site.

**private service provider** means a person or body that has entered into an agreement with New South Wales Fire Brigades to monitor fire alarm systems.

**rainwater tank** means a tank designed for the storage of rainwater gathered on the land on which the tank is situated.

**water supply service pipe** means a pipe connecting premises to a water main.

- (2) Part 2 of the *Environmental Planning and Assessment Model Provisions 1980* applies to and in respect of this Policy in the same way as it applies to and in respect of a local environmental plan by which that Part is adopted and so applies as if the reference to “the local environmental plan” in clause 4 (1) of that Part were a reference to this Policy.
- (3) A written notice given to a council under clause 7 or 8 with respect to a change of the use of a building is a sufficient written notice, within the meaning of that clause, only

if:

(a) it is given by:

(i) the owner of the building, or

(ii) the occupier of the building, with the consent of the owner of the building,

and contains a statement that it is so given executed by that owner,

(b) it contains a description of the building sufficient to identify the building and a statement of the particular purpose for which the building will be used after the notice has been given, and

(c) it is accompanied by the fee (if any) not exceeding \$50 fixed by the council for registration of the notice pursuant to clause 12.

(4) Nothing in this Policy shall be read or construed as:

(a) affecting any requirement to comply with a development standard,

(b) authorising the carrying out of any development that is prohibited under the Act, except where the carrying out of the development is so prohibited by reason only of a requirement for the obtaining of development consent before it may be carried out,

(c) authorising the change of an existing use, within the meaning of Division 2 of Part 4 of the Act, to another use, or

(d) authorising an alteration to, or the extension or rebuilding of, a building or work being used for an existing use, within the meaning of Division 2 of Part 4 of the Act, except as provided by clause 13.

(5) Nothing in this Policy shall be construed as permitting, without development consent being obtained therefor, development for the purposes of:

(a) the construction or erection of, or the carrying out of work for the purpose of, an aircraft landing field or helicopter landing pad or any other facility for the landing or taking off of aircraft or helicopters,

(b) the use of land for the landing or taking off of aircraft or helicopters,

(c) a home industry, or

(d) the conversion of a dwelling-house into 2 dwellings, or

(e) a brothel (within the meaning of the *Disorderly Houses Act 1943*) or the alteration of a building used as a brothel.

(6) Nothing in this Policy, except clauses 5B, 11A and 11E, and clause 13 in the case of

land described in paragraph (b) or (c) of this subclause, permits the alteration of or addition to, or the extension or demolition of, a building or work:

- (a) described in an environmental planning instrument as a heritage item, an item of the environmental heritage or a potential historical archaeological site, or
- (b) on land described in an environmental planning instrument as comprising or being within a conservation area (not being a conservation area sub-catchment within the meaning of *Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)*) or a heritage conservation area, or
- (c) on land described in an environmental planning instrument as comprising or being within a foreshore scenic protection area, a harbour foreshore preservation area or a beach front scenic protection area.

### **3 Aims, objectives etc**

- (1) This Policy is designed to permit development for a purpose which is of minor environmental significance, development for certain purposes by public utility undertakings and development on certain land reserved or dedicated under the *National Parks and Wildlife Act 1974* without the necessity for development consent being obtained therefor, where:
  - (a) the carrying out of that development is not prohibited under the Act, except by reason only of a requirement for the obtaining of development consent before that development may be carried out, and
  - (b) the development is carried out in accordance with any development standard applying in respect of the development,but without affecting any requirement to obtain consent or approval under any other Act in respect of the carrying out of development.
- (2) This Policy is also designed to regulate, as complying development throughout the State:
  - (a) the conversion of fire alarm systems from connection with the alarm monitoring system of New South Wales Fire Brigades to connection with the alarm monitoring system of a private service provider, and
  - (b) the conversion of fire alarm systems from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider, and
  - (c) the conversion of fire alarm systems from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.

- (3) This Policy is also designed to allow, as exempt development throughout the State:
- (a) filming that complies with the requirements of clauses 14 and 15, and
  - (b) rainwater tanks that comply with the requirements of clauses 14 and 16.

#### 4 Application of Policy

- (1) Subject to subclause (2), this Policy applies to the State but does not apply to land to which *State Environmental Planning Policy No 26—Littoral Rainforests* or *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts* applies.
- (2) Except as provided by clauses 11A, 11E and 13, this Policy does not apply to:
- (a) land which is reserved under an environmental planning instrument for use exclusively for a purpose referred to in section 26 (c) of the Act,
  - (b) land, other than land referred to in paragraph (a), which is reserved under an environmental planning instrument for use exclusively for any purpose or thing for which a site could have been reserved under section 342G (3) (e), (f), (g), (h), or (j) of the *Local Government Act 1919*, as in force immediately before 1 September 1980, or
  - (c) land, other than land referred to in paragraph (a) or (b), which a public authority may, under an environmental planning instrument, be required to acquire by the owner of the land.
- (3) Clause 7 (2) does not apply to land within Zone No 3 (f-r) under *Parramatta Local Environmental Plan 1989 (City Centre)*.
- (4) Clauses 9 and 10 of this Policy do not apply to land within Zone No 2 (g) under *Parramatta Local Environmental Plan 1989 (City Centre)* or within a conservation area as defined in that plan.
- (4A) Clause 10 does not apply to the land to which *Murray Regional Environmental Plan No 2—Riverine Land* applies where clause 10 would authorise a person to carry out, without development consent, works on or a use of land identified in that plan as flood liable, for the purposes of chemical, fuel or fertiliser storage.
- (5) Clauses 9 and 10 do not apply to the land to which the *Sydney Regional Environmental Plan No 16—Walsh Bay* applies.
- (6) Clauses 6–10 do not apply to land that is within a local government area specified in Schedule 2 or to other land specified in that Schedule.
- (6A) Clause 10 does not apply to development for which consent is required under the provisions of clause 66 of *Kiama Local Environmental Plan 1996*.
- (7) Clause 10 does not apply to land to which *Williams River Catchment Regional*



*Environmental Plan 1997* applies so as to allow a person to carry out, without development consent, works on or a use of land within 30 metres of the Williams River for the purposes of chemical, fuel or fertiliser storage, milking sheds, stables, chicken sheds, pig sties or the keeping of any other animal or organic materials.

## **5 Inconsistency between instruments**

Subject to section 74 (1) of the Act, in the event of an inconsistency between this Policy and another environmental planning instrument, whether made before or after this Policy, this Policy shall prevail to the extent of the inconsistency.

## **Part 2 Development without consent**

### **5A Places of public worship**

(1) If:

- (a) a building is or was last lawfully used for the purpose of a place of public worship of a particular kind, and
- (b) the building could not, but for this clause, be used for the purposes of a place of public worship of another kind, except with development consent being obtained therefor,

the building may, without the necessity for development consent being obtained therefor, on not less than 40 days written notice being given to the council, be used for the purposes of a place of public worship of another kind, subject to subclause (2).

- (2) This clause does not authorise the use of a building for the purposes of a place of public worship if the use will increase or create adverse environmental impacts, such as:
  - (a) emission of noise, or
  - (b) movement of motor vehicles, or
  - (c) parking of motor vehicles, or
  - (d) significant change in the hours of use.
- (3) If, immediately before the commencement of a use of a building authorised by this clause, a condition of a development consent applied to the use of a building or the use of the land on which the building is erected, the condition applies to and in respect of the use of the building so authorised or the use of the land on which it is erected in the same way as it applies to and in respect of the former use.

### **5B Aerial subscriber connections to telecommunications distribution lines**

(1) This clause applies to development being:

- (a) the connection from a subscriber's premises to a telecommunications distribution line by means of a cable that is wholly or partly an aerial cable, or
  - (b) the erection of any structure necessary to enable the connection to be made or ancillary to the making of the connection, being a structure that is located between the point of connection of the cable to the subscriber's premises and the point of connection of the cable to the telecommunications distribution line.
- (2) If, but for this clause, development to which this clause applies is prohibited or could not be carried out without development consent being obtained therefor, and:
- (a) the subscriber's premises and any land or other thing traversed by the connection do not comprise an item of the environmental heritage, and
  - (b) electricity is not supplied to the subscriber's premises by means of an underground connection,
- the development may be carried out and may be carried out without the necessity for development consent.
- (3) If, but for this clause, development to which this clause applies is prohibited, and:
- (a) the subscriber's premises or any land or other thing traversed by the connection comprise an item of the environmental heritage, or
  - (b) electricity is supplied to the subscriber's premises by means of an underground connection,
- or both, the development may be carried out but only with development consent.
- (4) A cable erected in accordance with this clause, to the extent to which it is an aerial cable, must:
- (a) be consistent with the Austroads publication *Telecommunications in Road Reserves—Operational Guidelines for Installations*, as amended from time to time, and
  - (b) comply with the standards of the appropriate road authority.
- (5) In this clause, **item of the environmental heritage** means:
- (a) any place, building, work, relic or precinct to which an interim heritage order or listing on the State Heritage Register under the [Heritage Act 1977](#) applies, or
  - (b) any place, building, work, relic, tree or precinct that is identified as a heritage item, or an item of the environmental heritage, or by a similar description, in an environmental planning instrument, or
  - (c) any place that comprises, or any thing that is within, a heritage conservation area

identified in an environmental planning instrument.

(6) This clause extends to:

- (a) a development application made but not finally determined before the date on which this clause (as inserted by *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Complying Development (Amendment No 14)*) commenced, and
- (b) development that was commenced to be carried out but not completed before that date.

## **6 Subdivision**

(1) Where, in the absence of this clause, a subdivision of land could be carried out, but only with development consent, for the purpose of:

- (a) widening a public road,
- (b) making an adjustment to a boundary between allotments, being an adjustment that does not involve the creation of any additional allotment,
- (c) rectifying an encroachment upon an allotment,
- (d) creating a public reserve,
- (e) consolidating allotments, or
- (f) excising from an allotment land which is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other rescue service purposes or public conveniences,

the subdivision may be carried out without that consent.

(2) This clause does not apply:

- (a) to land described in an environmental planning instrument as comprising or being within a conservation area or a heritage conservation area, or
- (b) to land comprising, or on which is situated, an item described in an environmental planning instrument as a heritage item, an item of the environmental heritage or a potential historical archaeological site.

### **6A Dwelling-houses in the City of Sydney**

(1) This clause applies to all land within the City of Sydney.

(2) In subclause (3), a reference to land within a residential zone is a reference to land which, under an environmental planning instrument, is within a zone (within the meaning of that instrument) identified in that instrument as being a residential zone,

but does not include land that is within an area described in an environmental planning instrument as a foreshore scenic protection area, a harbour foreshore preservation area or a beach front scenic protection area.

- (3) If, in the absence of this clause, a dwelling-house could be erected on land within a residential zone, but only with development consent, the dwelling-house may be erected without that consent.
- (4) Subclause (3) does not authorise the alteration of any dwelling-house:
- (a) shown upon a map supporting, or embodied or incorporated in, any environmental planning instrument, or
  - (b) listed in any Schedule forming part of an environmental planning instrument or a development control plan,

and identified as being an item of the environmental heritage, or within an area identified as a conservation area, within the meaning of the instrument or plan.

## **7 Shops and commercial premises etc**

- (1) Subject to subclause (5), where:
- (a) a building is lawfully used, or has been lawfully constructed to be used, for the purposes of a shop of a particular kind, and
  - (b) the building could not, but for this clause, be used for the purposes of a shop of another kind, except with development consent being obtained therefor,
- the building may, without the necessity for development consent being obtained therefor, upon a sufficient written notice being given to the council, be used for the purposes of a shop of another kind.
- (2) Subject to subclause (5), where:
- (a) a building is lawfully used, or has been lawfully constructed to be used, for the purposes of commercial premises of a particular kind, and
  - (b) the building could not, but for this clause, be used for the purposes of commercial premises of another kind, except with development consent being obtained therefor,
- the building may, without the necessity for development consent being obtained, upon a sufficient written notice being given to the council, be used for the purposes of commercial premises of another kind.
- (2A) Clause 7 does not apply to land within Zone No 4 or 4 (d) under *South Sydney Local Environmental Plan No 114 (Southern Industrial and Rosebery/Zetland Planning Districts)*.

(3) Where:

- (a) a building is lawfully used, or has been lawfully constructed to be used, for the purposes of a social or sporting club (other than a club registered under the *Registered Clubs Act 1976*) or a community or cultural centre, and
- (b) the building could not, but for this clause, be used for any other of the purposes referred to in paragraph (a), except with development consent being obtained therefor,

the building may, without the necessity for development consent being obtained therefor, upon a sufficient written notice being given to the council, be used for any of those purposes.

(4) (Repealed)

(5) Subclauses (1) and (2) do not authorise the use of a building for the purposes of a shop or commercial premises in which:

- (a) restricted publications, within the meaning of the *Indecent Articles and Classified Publications Act 1975* are shown, exhibited, displayed, sold, or otherwise rendered accessible or available to the public,
- (b) a business to which section 10 of that Act applies is conducted, or
- (c) a business is conducted, an object of which is the display or exhibition of any article, within the meaning of that Act, that is primarily concerned with sexual behaviour, but is not printed matter.

(6) Where a building is used for the purposes of a shop or commercial premises in pursuance of this clause:

- (a) the curtilage of the shop or commercial premises shall not be used for storage or display purposes, and
- (b) the hours of operation of the shop or commercial premises shall not, in the case of a building used for the purposes of a shop or commercial premises immediately before the commencement of the use authorised by this clause, extend outside the hours during which the shop or commercial premises were so used at that time.

(7) Where, immediately before the commencement of a use of a building authorised by this clause, a condition relating to:

- (a) the maintenance of landscaping,
- (b) the parking of vehicles, or
- (c) the provision of space for the loading or unloading of goods or vehicles,

was imposed upon the use of the building or the use of the land upon which the building was erected, that condition applies to and in respect of the use of the building so authorised or the use of the land upon which it is erected in the same way as it applies to and in respect of that former use.

## **8 Industry and light industry**

(1) Subject to subclauses (3) and (4), where:

- (a) a building is lawfully used, or has been lawfully constructed to be used, for the purposes of an industry, other than a light industry, and
- (b) the building could not, but for this clause, be used for the purposes of a light industry, except with development consent being obtained therefor,

the building may, without the necessity for development consent being obtained therefor, upon a sufficient written notice being given to the council, be used for the purposes of a light industry.

(2) Subject to subclauses (3) and (4), where:

- (a) a building is lawfully used, or has been lawfully constructed to be used, for the purposes of a light industry of a particular kind, and
- (b) the building could not, but for this clause, be used for the purposes of a light industry of another kind, except with development consent being obtained therefor,

the building may, without the necessity for development consent being obtained therefor, upon a sufficient written notice being given to the council, be used for the purposes of a light industry of another kind.

(3) Neither subclause (1) nor subclause (2) authorises, in any particular case, the use, for the purposes of a light industry, of any of the floor space of a building, if:

- (a) the total of the floor space which, in the absence of this paragraph, would be authorised to be so used in that case exceeds 500 square metres, or
- (b) the building does not have rear service access or access to off-street loading facilities.

(4) Where a building is used for the purposes of a light industry in pursuance of this clause:

- (a) the curtilage of the building shall not be used for storage or display purposes, and
- (b) the hours of operation of the light industry shall not:
  - (i) in the case of a building used for the purposes of an industry immediately

before the commencement of the use authorised by this clause, extend outside the hours during which the building was so used at that time, and

(ii) in any other case, extend outside the hours between 6 am and 6 pm.

(5) Where, immediately before the commencement of a use of a building authorised by this clause, a condition relating to:

(a) the maintenance of landscaping,

(b) the parking of vehicles, or

(c) the provision of space for the loading or unloading of goods or vehicles,

was imposed upon the use of the building or the use of the land upon which the building was erected, that condition applies to and in respect of the use of the building so authorised or the use of the land upon which it is erected in the same way as it applies to and in respect of that former use.

## **8A (Repealed)**

## **9 Alteration of a building or work**

(1) In subclause (2), a reference to the alteration of a building or work is a reference to the making of changes:

(a) to the internal fabric or appearance of the building or work, whether or not involving structural alterations, or

(b) to the external fabric or appearance of the building or work, being changes that involve the repair or renovation, or the painting, plastering or other decoration, of the building or work,

but does not include a reference to the enlargement or extension of the building or work.

(2) A building or work that, but for this clause, could not be altered except with development consent being obtained therefor may be altered without that consent.

(3) This clause does not apply:

(a) to a building or work described in an environmental planning instrument as a heritage item, an item of the environmental heritage or a potential historical archaeological site, or

(b) to a building or work on land described in an environmental planning instrument as comprising or being within a conservation area or a heritage conservation area, or

- (c) to a building or work on land described in an environmental planning instrument as comprising or being within a foreshore scenic protection area, a harbour foreshore preservation area or a beach front scenic protection area.

## **10 Certain ancillary or incidental development**

- (1) This clause applies to development on land for a purpose that is ancillary or incidental to a purpose for which the land may be used, being development:
  - (a) for the purpose of parking, loading facilities, drainage, workers' amenities, pollution control, security or for other similar purposes, or
  - (b) which consists of the erection of fences, garages, fuel sheds, tool houses, milking bails, haysheds, stables, fowl houses, pig sties, barns or the like.
- (2) Development that, but for this clause, could not be carried out except with development consent being obtained therefor may be carried out without that consent.
- (3) This clause does not apply:
  - (a) to development carried out on land, or in relation to a building or work, described in an environmental planning instrument as a heritage item, an item of the environmental heritage or a potential historical archaeological site, or
  - (b) to development carried out on land, or in relation to a building or work on land, described in an environmental planning instrument as comprising or being within a conservation area or a heritage conservation area, or
  - (c) to development carried out on land, or in relation to a building or work on land, described in an environmental planning instrument as comprising or being within a foreshore scenic protection area, a harbour foreshore preservation area or a beach front scenic protection area, or
  - (d) to land, or a building or work on land, a part of which land is used:
    - (i) as a means of entrance to, or exit from, the land, or
    - (ii) for the loading, unloading, manoeuvring or parking of vehicles, or
    - (iii) for landscaping required to be carried out or maintained by reason of a condition imposed under the Act,if the development would prevent or restrict that use of the part of the land, or
  - (e) to development authorised by clause 9, or
  - (f) to land to which [State Environmental Planning Policy No 14—Coastal Wetlands](#) applies, or



- (f1) to land that is a sensitive coastal location within the meaning of *State Environmental Planning Policy No 71—Coastal Protection*, or
- (g) to land to which *Sydney Regional Environmental Plan No 25—Orchard Hills* applies, or
- (h) to land shown as a wetland on the map marked “*Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)*” or to land consisting of a scenic area shown on that map as being of significance beyond the region or of regional significance. (That map is deposited in the Parramatta office of the Department of Urban Affairs and Planning, and copies are deposited in the Department’s offices at Sydney, Newcastle and Wollongong, and in the office of each consent authority referred to in that plan.), or
- (i) to development specified in Schedule 1.

## **11 Certain development by public authorities**

- (1) Where, in the absence of this clause, development, being the construction of water storage dams, sewage treatment works or electricity transmission lines by or on behalf of a public authority may be carried out only with development consent being obtained therefor, that development may be carried out without that consent.
- (2) Subclause (1) does not apply to the following land:
  - Land within the Municipalities of Kiama and Shellharbour shown edged heavy black (other than land shown bounded by a black line edged by a broken line) on Sheet 1 of the map marked “*Illawarra Regional Environmental Plan No 2—Jamberoo Valley*”.
  - Land shown edged heavy black on Map 1 of the maps marked “*Sydney Regional Environmental Plan No 24—Homebush Bay Area—Amendment No 2*”.
- (3) In this clause, a reference to a map is a reference to a map deposited in the office of the Department of Planning.
- (4) Subclause (1) does not apply to a development consent referred to in subclause (1) that involves the carrying out of development for the purpose of an extractive industry on land to which *Western Division Regional Environmental Plan No 1—Extractive Industries* applies.
- (5) Subclause (1) does not apply to a development consent referred to in subclause (1) that involves the carrying out of development for the purpose of sewage treatment works on land within Zone No 6 (d) under *Coffs Harbour Local Environmental Plan 1988*.

### **11A Certain development on Aboriginal areas etc**

- (1) This clause applies to development carried out on land dedicated or reserved under the *National Parks and Wildlife Act 1974* as an Aboriginal area, historic site, national park, regional park, nature reserve, state game reserve or state recreation area.
- (2) Where, in the absence of this clause, development to which this clause applies may be carried out only with development consent being obtained therefor, that development may be carried out without that consent.
- (3) A nominated authority shall not, in any area, carry out development to which this clause applies, being prescribed development, or cause or permit any such development to be carried out unless the nominated authority has:
  - (a) given notice in writing to the council of the area of its intention to carry out the development or cause or permit the development to be carried out, and
  - (b) given consideration to any matters requested, within 30 days of the council's having been given notice under paragraph (a), by the council to be taken into account before the development is carried out, being matters related to the fact that the intended development will be prescribed development.
- (4) In subclause (3):

**area** has the meaning ascribed thereto in the *Local Government Act 1919*.

**nominated authority** means:

- (a) except as provided by paragraphs (b) and (c), the Director of National Parks and Wildlife, and
- (b) in relation to prescribed development intended to be carried out in a regional park, the trustees of the regional park, and
- (c) in relation to prescribed development intended to be carried out in a state recreation area, the trustees of the state recreation area.

**prescribed development** means development which is likely:

- (a) to generate traffic to an extent which will strain the capacity of the road system in the locality of the land on which the development is intended to be carried out or otherwise adversely affect the movement of traffic on that road system, or
- (b) to otherwise significantly affect other land in that locality.

### **11B Erection and use of portable classrooms**

- (1) If, in the absence of this clause, the erection or use of a portable classroom on land on which a government school or a non-government school is situated may be carried out

only with development consent being obtained, that development may be carried out without that consent.

(2) Nothing in this clause authorises:

- (a) the erection of a portable classroom having a height exceeding 1 storey, or
- (b) the use of a portable classroom for more than 5 years after the date of its erection.

(3) In this clause, **government school** and **non-government school** have the same meanings as in the [Education Reform Act 1990](#).

### **11C Classified roads and toll works**

(1) In this clause:

**classified road** means a classified road within the meaning of the [State Roads Act 1986](#).

**toll work** means a work declared to be a toll work under section 46 of the [State Roads Act 1986](#).

(2) Where, in the absence of this clause, development for the purposes of a classified road or toll work, or a proposed classified road or toll work, may be carried out only with development consent being obtained therefor, that development may be carried out without that consent.

### **11D Bush fire hazard reduction**

(1) In this clause:

**bush fire hazard reduction** means a reduction or modification (by controlled burning or by mechanical, chemical or manual means) of material that constitutes a bush fire hazard.

(2) Where, in the absence of this clause, development for the purpose of bushfire hazard reduction may be carried out only with development consent being obtained therefor, that development may be carried out without that consent if:

- (a) the development is consistent with a bush fire management plan referred to in section 52 of the [Rural Fires Act 1997](#) that applies to the area or locality in which it is proposed to carry out that development, and
- (b) the development does not include the clearing, within the meaning of clause 7 of [State Environmental Planning Policy No 14—Coastal Wetlands](#), of land to which that Policy applies.

### **11E Emergency and routine work by Sydney Water or irrigation corporations**

- (1) This clause applies to the following development in relation to Sydney Water Corporation Limited's works or the works of an irrigation corporation:
  - (a) development consisting of emergency work,
  - (b) development consisting of routine maintenance.
- (2) If, in the absence of this clause, development to which this clause applies may be carried out only with development consent, Sydney Water Corporation Limited or an irrigation corporation may carry out the development (and development ancillary to that development, such as the carrying out of excavation work, the construction of accessways and the provision of power supplies) without that consent.
- (3) Despite subclause (2), Sydney Water Corporation Limited or an irrigation corporation may carry out development only with development consent if the development consists of routine maintenance involving the demolition of a building or work described in an environmental planning instrument as a heritage item or an item of the environmental heritage.
- (4) In this clause:

**demolition** of a heritage item or an item of the environmental heritage means the total or partial destruction or dismantling of the item.

**emergency work** means the repair or replacement of any part of Sydney Water Corporation Limited's works or the works of an irrigation corporation:

- (a) because it has been (or is being) damaged by a natural disaster, an accident, an act of vandalism or a similar occurrence, or
- (b) because it has suddenly ceased to function or suddenly ceased to function adequately,

and includes work reasonably necessary to prevent or limit any further damage or malfunction.

**irrigation corporation** has the same meaning as in the [Irrigation Corporations Act 1994](#).

**routine maintenance** includes the periodic inspection, cleaning, repair and replacement of Sydney Water Corporation Limited's works or the works of an irrigation corporation, but does not include development that would result in an increase in the designed capacity of any part of those works.

**Sydney Water Corporation Limited's works** means such works (within the meaning of the [Water Board \(Corporatisation\) Act 1994](#)) as are owned or controlled by

Sydney Water Corporation Limited.

***works of an irrigation corporation*** means such works as are owned or controlled by an irrigation corporation.

## **12 Register of variations of uses**

Where a written notice given pursuant to clause 7 or 8 is received by a council, it shall forthwith record that fact in a register kept for that purpose.

## **Part 3 Complying development**

### **13 Conversion of fire alarms**

- (1) This clause applies to a fire alarm system that can be monitored by New South Wales Fire Brigades or a private service provider.
- (2) A person must not:
  - (a) convert a fire alarm system from connection with the alarm monitoring system of New South Wales Fire Brigades to connection with the alarm monitoring system of a private service provider, or
  - (b) convert a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider, or
  - (c) convert a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider,except with development consent.
- (3) Development to which subclause (2) (a), (b) or (c) applies is complying development if it consists only of:
  - (a) internal alterations to a building, or
  - (b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm x 100mm x 100mm.
- (4) A complying development certificate issued in respect of complying development under subclause (3) is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.

## **Part 4 Exempt development**

## 14 Exempt development

- (1) This clause identifies the development and the requirements that must be met in respect of it for the development to be carried out without development consent as exempt development.

**Note—**

The *Environmental Planning and Assessment Act 1979* states that exempt development:

- (a) must be of minimal environmental impact, and
  - (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
  - (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).
- (2) Development specified in clauses 15 and 16 that meets the requirements for the development contained in those clauses and that complies with the requirements of this clause is exempt development for the purposes of this Policy.
- (3) To be exempt development:
- (a) the development must:
    - (i) meet the relevant provisions of the *Building Code of Australia*, and
    - (ii) be more than 1 metre from any easement or public sewer main, and
  - (b) the development must not:
    - (i) if it relates to an existing building, cause the building to contravene the *Building Code of Australia*, or
    - (ii) require a tree to be removed, or
    - (iii) be designated development.
- (4) Exempt development cannot be carried out on:
- (a) the site of an item of environmental heritage that:
    - (i) is identified as such in an environmental planning instrument applying to the land, or
    - (ii) is listed on the State Heritage Register under the *Heritage Act 1977*, or
    - (iii) is subject to an interim heritage order under the *Heritage Act 1977*, or
  - (b) land within a heritage conservation area that is identified as such in an environmental planning instrument applying to the land, or

(c) land identified:

- (i) by the consent authority on a map held in the consent authority's offices, or
  - (ii) in an environmental planning instrument, or
  - (iii) in a development control plan,
- as an environmentally sensitive area for exempt development,

(d) land:

- (i) that is within 40 metres of a perennial watercourse identified by a 1:50,000 topographic map held by Land and Property Information NSW, or
- (ii) that is an Aboriginal place identified by the *National Parks and Wildlife Act 1974* or contains an Aboriginal relic, or
- (iii) that is reserved or dedicated under the *National Parks and Wildlife Act 1974*, or
- (iv) that is a State forest dedicated under the *Forestry Act 1916*, or
- (v) the surface of which generally has a slope greater than 18 degrees from the horizontal, or
- (vi) that is mapped as wetland by *State Environmental Planning Policy No 14—Coastal Wetlands*.

**Note—**

Clause 4 provides that this Policy does not apply to certain land, including land to which *State Environmental Planning Policy No 26—Littoral Rainforests* or *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts* applies.

## **15 When filming is exempt development**

(1) For filming at a particular location to be exempt development:

- (a) the filming must not create significant interference with the neighbourhood, and
- (b) a filming management plan for the filming must be prepared and lodged in accordance with subclause (2), and
- (c) the person carrying out the filming must obtain a policy of insurance that adequately covers the public liability of the person in respect of the filming for an amount of not less than \$10,000,000, and
- (d) the location of the filming must be land:
  - (i) that is private land, or

- (ii) that is an iconic site, and
  - (e) if the filming is carried out on private land, the filming must not be carried out for more than 30 days within a 12-month period at the particular location, and
  - (f) the person carrying out the filming must, at least 5 days before the commencement of filming at the particular location, give notice in writing of the filming to residents within a 50-metre radius of the location in accordance with subclause (3).
- (2) A filming management plan must be lodged with the consent authority for the location at least 5 days before the commencement of filming at the location, and must contain the following information and be accompanied by the following documents:
- (a) the name, address and telephone number of the person carrying out the filming (such as a production company) and of the producer for the filming,
  - (b) a brief description of the filming to be carried out (for example, a television commercial, a television series, a feature film or a documentary),
  - (c) the proposed location of the filming,
  - (d) the proposed commencement and completion dates for the filming at the location,
  - (e) the proposed daily length of filming at the location,
  - (f) the number of persons to be involved in the filming,
  - (g) details of any temporary structures to be erected at the location for the purposes of the filming,
  - (h) the type of filming equipment to be used in the filming (such as a hand-held or mounted camera),
  - (i) proposed arrangements for parking all vehicles associated with the filming during the filming,
  - (j) whether there will be any disruption to the location of the filming or the surrounding area and the amenity of the neighbourhood (for example, by the discharge of firearms or explosives, the production of offensive noise, vibrations, disruption to traffic flow or the release of smells, fumes, vapour, steam, soot, ash, dust, waste water, grit or oil),
  - (k) whether the filming will involve the use of outdoor lighting or any other special effects equipment,
  - (l) a copy of the public liability insurance policy that covers the filming at the location,
  - (m) a copy of any approval given by a public authority to carry out an activity



associated with the proposed filming at the location, such as the following:

- (i) an approval by the Roads and Traffic Authority for the closure of a road,
- (ii) an approval by the council for the location concerned for the erection of a temporary structure, closure of a road or a public footpath, or a restriction in pedestrian access,
- (iii) an approval by the Environment Protection Authority for an open fire,
- (iv) an approval by NSW Police for the discharge of firearms,
- (v) an approval by the Department of Land and Water Conservation for the use of Crown land.

**Note—**

Subclause (2) does not limit the information or documents that may be submitted with a filming management plan.

- (3) The notice to residents is to be by way of a letter-box drop and is to contain the following information:
  - (a) the name and telephone number of the person carrying out the filming (such as a production company) and of a contact representative of that person,
  - (b) a brief description of the filming to be carried out at the location, and any proposed disruptions to the location or the surrounding area or the amenity of the neighbourhood (as referred to in subclause (2) (j)),
  - (c) the proposed commencement and completion dates for the filming at the location,
  - (d) the proposed daily length of filming at the location.
- (4) Clause 14 (3) (a) and (4) (d) (v) do not apply to filming that complies with this clause.
- (5) Filming that complies with this clause may be carried out on land described in clause 14 (4) (a), (b) or (c) if the filming will not involve or result in any of the following:
  - (a) any changes or additions that are not merely superficial and temporary to any part of an item of environmental heritage, a heritage conservation area or an environmentally sensitive area,
  - (b) the mounting or fixing of any object or article on any part of such an item or area (including any building or structure),
  - (c) the movement, parking or standing of any vehicle or equipment on or over any part of such an item or area that is not specifically designed for the movement, parking or standing of a vehicle or equipment on or over it,

(d) any changes to the vegetation on, or level of, such an item or area or any changes to any other natural or physical feature of the item or area.

(6) Nothing in this clause or clause 14 causes an activity referred to in paragraph (a)–(d) of the definition of **filming** in clause 2 (1) to be development.

**Note—**

The following documents assist in understanding the statutory controls relating to filming:

(a) Division 4 of Part 1 of Chapter 7 of the *Local Government Act 1993*,

(b) the *Local Government Filming Protocol* published by the NSW Department of Local Government,

(c) the *Guide to NSW EPA Requirements for the Film and Television Industry* published by the NSW Environment Protection Authority.

## **16 When rainwater tanks are exempt development**

(1) For a rainwater tank to be exempt development, it must comply with the following requirements:

(a) the capacity of the tank, or the combined capacity of tanks, on a lot must not exceed 10,000 litres,

(b) the tank must be designed to capture and store roof water from gutters or downpipes on a building,

(c) the tank must not collect water from a source other than gutters or downpipes on a building or a water supply service pipe,

(d) the tank must be fitted with a first-flush device, being a device that causes the initial run-off of any rain to bypass the tank to reduce pollutants entering the tank,

(e) the tank must be structurally sound,

(f) the tank must be prefabricated, or be constructed from prefabricated elements that were designed and manufactured for the purpose of the construction of a rainwater tank,

(g) the tank must be assembled and installed in accordance with the instructions of the manufacturer or designer of the tank,

(h) the tank, and any stand for the tank, must be installed and maintained in accordance with any requirements of the public authority that has responsibility for the supply of water to the premises on which the tank is installed,

(i) the installation of the tank must not involve the excavation of more than 1 metre from the existing ground level, or the filling of more than 1 metre above the existing ground level,

- (j) the tank must not be installed over or immediately adjacent to a water main or a sewer main, unless it is installed in accordance with any requirements of the public authority that has responsibility for the main,
- (k) the tank must not be installed over any structure or fittings used by a public authority to maintain a water or sewer main,
- (l) no part of the tank or any stand for the tank may rest on a footing of any building or other structure, including a retaining wall,
- (m) the tank must be located behind the front alignment to the street of the building to which the tank is connected (or, in the case of a building on a corner block, the tank must be located behind both the street front and street side alignments of the building),
- (n) the tank must not exceed 2.4 metres in height above ground level, including any stand for the tank,
- (o) the tank must be located at least 450 millimetres from any property boundary,
- (p) a sign must be affixed to the tank clearly stating that the water in the tank is rainwater,

**Note—**

If water in rainwater tanks is intended for human consumption, the tank should be maintained to ensure that the water is fit for human consumption—see the *Rainwater Tanks* brochure produced by NSW Health and the publication titled *Guidance on the use of rainwater tanks*, Water Series No 3, 1998, published by the National Environmental Health Forum.

- (q) any overflow from the tank must be directed into an existing stormwater system,
- (r) the tank must be enclosed, and any inlet to the tank must be screened or filtered, to prevent the entry of foreign matter or creatures,
- (s) the tank must be maintained at all times so as not to cause a nuisance with respect to mosquito breeding or overland flow of water,
- (t) any plumbing work undertaken on or for the tank that affects a water supply service pipe or a water main must be undertaken:
  - (i) with the consent of the public authority that has responsibility for the water supply service pipe or water main, and
  - (ii) in accordance with any requirements by the public authority for the plumbing work, and
  - (iii) by a licensed plumber in accordance with the *New South Wales Code of Practice—Plumbing and Drainage* produced by the Committee on Uniformity of Plumbing and Drainage Regulations in New South Wales,

- (u) any motorised or electric pump used to draw water from the tank or to transfer water between tanks:
  - (i) must not create an offensive noise, and
  - (ii) in the case of a permanent electric pump, must be installed by a licensed electrician.
- (2) Despite subclause (1) (a), a rainwater tank with a capacity exceeding 10,000 litres may be exempt development if another environmental planning instrument applying to the land concerned provides for such a rainwater tank to be exempt development.
- (3) This clause does not apply to land that is a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

## **Schedule 1 Ancillary or incidental development involving acid sulfate soils excepted from clause 10**

(Clause 10 (3) (i))

Development for which the following provisions require consent is excepted from clause 10:

Clause 20A of *Sydney Regional Environmental Plan No 24—Homebush Bay Area*

Clause 83 of *Sydney Regional Environmental Plan No 28—Parramatta*

Clause 40 of *Grafton Local Environmental Plan 1988*

Clause 56 of *Kempsey Local Environmental Plan 1987*

Clause 18 of *Macleay Local Environmental Plan 2001*

Clause 66 of *Nambucca Local Environmental Plan 1995*

Clause 18A of *Richmond River Local Environmental Plan 1992*

Clause 27 of *City of Shoalhaven Local Environmental Plan 1985*

Clause 35 of *Tweed Local Environmental Plan 2000*

Clause 41 of *Holroyd Local Environmental Plan 1991*

Clause 23 of *Coffs Harbour City Local Environmental Plan 2000*

Clause 25A of *Concord Planning Scheme Ordinance*

Clause 2A of *Interim Development Order No 8—Municipality of Concord*

Clause 2A of *Interim Development Order No 9—Municipality of Concord*

Clause 2A of *Interim Development Order No 10—Municipality of Concord*

Clause 2A of *Interim Development Order No 11—Municipality of Concord*

Clause 2A of *Interim Development Order No 14—Municipality of Concord*

Clause 2A of *Interim Development Order No 15—Municipality of Concord*

Clause 2A of *Interim Development Order No 16—Municipality of Concord*

Clause 4A of *Interim Development Order No 18—Municipality of Concord*

Clause 28A of *Lismore Local Environmental Plan 2000*

Clause 57 of *Marrickville Local Environmental Plan 2001*

Clause 41 (5) of *North Sydney Local Environmental Plan 2001*

Clause 34 of *Parramatta Local Environmental Plan 2001*

Clause 22 of *Bankstown Local Environmental Plan 2001*

Clause 61A of *Dungog Local Environmental Plan 1990*

Clause 36 of *Ballina Local Environmental Plan 1987*

## **Schedule 2 Land excepted from clauses 6-10**

(Clause 4 (6))

Albury City local government area  
Armidale City local government area  
Ashfield local government area  
Bankstown local government area  
Ballina local government area  
Balranald local government area  
Barraba local government area  
Bathurst City local government area  
Baulkham Hills local government area  
Bega Valley local government area  
Bellingen local government area  
Berrigan local government area  
Bingara local government area  
Blacktown City local government area  
Bland local government area  
Blayney local government area  
City of Blue Mountains  
Bogan local government area  
Bombala local government area  
Boorowa local government area  
Botany Bay City  
Bourke local government area  
Brewarrina local government area  
Broken Hill City

Burwood local government area  
Byron local government area  
Cabonne local government area  
Camden local government area  
City of Campbelltown local government area  
Canterbury City local government area  
Carrathool local government area  
Casino local government area  
Central Darling local government area  
City of Cessnock local government area  
Cobar local government area  
Coffs Harbour City local government area  
Conargo local government area  
Concord local government area  
Coolah local government area  
Coolamon local government area  
Cooma-Monaro local government area  
Coonabarabran local government area  
Coonamble local government area  
Cootamundra local government area  
Copmanhurst local government area  
Corowa local government area  
Cowra local government area  
Crookwell local government area  
Culcairn local government area  
Deniliquin local government area  
Land to which [Drummoynne Local Environmental Plan 1986](#) applies  
Land to which [Dubbo Local Environmental Plan 1997—Rural Areas](#) applies  
Land to which [Dubbo Local Environmental Plan 1998—Urban Areas](#) applies  
Dumaresq local government area  
Dungog local government area  
Eurobodalla local government area  
Evans local government area  
Fairfield City local government area  
Forbes local government area  
Gilgandra local government area  
Glen Innes local government area  
Gloucester local government area  
Gosford City local government area  
Goulburn City local government area  
City of Grafton local government area  
Great Lakes local government area  
City of Greater Lithgow local government area  
Greater Taree City local government area  
City of Griffith local government area  
Gundagai local government area  
Gunnedah local government area  
Gunning local government area

Guyra local government area  
Harden local government area  
Hastings local government area  
Land to which [Hawkesbury Local Environmental Plan 1989](#) applies  
Hay local government area  
Holbrook local government area  
Holroyd City local government area  
Hornsby local government area  
Hume local government area  
Hunters Hill local government area  
Hurstville City local government area  
Inverell local government area  
Jerilderie local government area  
Junee local government area  
Kempsey local government area  
Kiama local government area  
Kogarah local government area  
Ku-ring-gai local government area  
Kyogle local government area  
Lachlan local government area  
Lake Macquarie City local government area  
Lane Cove local government area  
Leeton local government area  
Land within the Leeton local government area to which [Leeton Local Environmental Plan No 35](#) applies  
Leichhardt local government area  
Lismore City local government area  
Liverpool City local government area  
Lockhart Shire Council's local government area  
Macleay local government area  
City of Maitland local government area  
Manilla local government area  
Manly local government area  
Marrickville local government area  
Merriwa local government area  
Moree Plains local government area  
Mosman local government area  
Mudgee local government area  
Mulwaree local government area  
Murray local government area  
Murrumbidgee local government area  
Murrurundi local government area  
Muswellbrook local government area  
Nambucca local government area  
Narrabri local government area  
Narrandera local government area  
Narromine local government area  
Newcastle City local government area  
North Sydney Local Government Area

Nundle local government area  
Oberon local government area  
City of Orange  
Parkes local government area  
City of Parramatta local government area  
Parry local government area  
Penrith City  
Pittwater local government area  
Port Stephens local government area  
Pristine Waters local government area  
Queanbeyan City local government area  
Quirindi local government area  
Richmond River local government area  
Rockdale City local government area  
City of Ryde local government area  
Rylstone local government area  
Scone local government area  
Severn local government area  
Shellharbour City local government area  
City of Shellharbour local government area  
City of Shoalhaven local government area  
Singleton local government area  
Snowy River local government area  
City of South Sydney including all land shown deferred under *South Sydney Local Environmental Plan 1998*, but excluding land covered by *Sydney Regional Environmental Plan No 26—Eveleigh Precinct* and *State Environmental Planning Policy No 47—Moore Park Showground*  
Strathfield local government area  
Land to which *Sutherland Shire Local Environmental Plan 2000* applies  
Tallaganda local government area  
Tamworth  
Temora local government area  
Tenterfield local government area  
Tumbarumba Local Government area  
Tumut local government area  
Tweed local government area  
Uralla local government area  
Urana local government area  
City of Wagga Wagga local government area  
Wakool local government area  
Walcha local government area  
Walgett local government area  
Warren local government area  
Waverley local government area  
Land within Waverley local government area to which *Waverley and Woollahra Joint Local Environmental Plan 1991—Bondi Junction Commercial Centre* applies  
Weddin local government area  
Wellington local government area  
Wentworth local government area



Willoughby City local government area  
Windouran local government area  
Wingecarribee local government area  
Wollondilly local government area  
Wollongong City local government area  
Woollahra local government area (but only land subject to *Woollahra Local Environmental Plan 1995* or *Woollahra Local Environmental Plan No 24* or *27*)  
Land within Woollahra local government area to which *Waverley and Woollahra Joint Local Environmental Plan 1991—Bondi Junction Commercial Centre* applies  
Wyong Local Government Area  
Yallaroi local government area  
Yarrowlumla local government area  
Yass local government area  
Land to which *Young Local Environmental Plan 1991—Urban Lands* applies  
Land to which *Young Local Environmental Rural Plan 1993* applies  
Land to which *Sydney Regional Environmental Plan No 29—Rhodes Peninsula* applies  
Land to which *Sydney Regional Environmental Plan No 30—St Marys* applies  
Land to which *State Environmental Planning Policy No 61—Exempt and Complying Development for White Bay and Glebe Island Ports* applies