



New South Wales

State Environmental Planning Policy Amendment (Exempt and Complying Development) 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*.

Minister for Planning

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

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1 Name of Policy

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

2 Commencement

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

3 Repeal of Policy

This Policy is repealed at the beginning of the day following the day on which this Policy commences.

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

[1] Clause 1.5 Interpretation—general

Insert in alphabetical order in clause 1.5(1)—

Agritourism and Farm Stay Accommodation Code means the code for complying development set out in Part 9.

drop edge beam means a vertical concrete slab—

- (a) constructed at the edge of a horizontal concrete slab, and
- (b) designed to hold fill under the horizontal concrete slab.

[2] Clause 1.5(1), definition of “complying development code”

Insert after paragraph (i)—

- (j) the Agritourism and Farm Stay Accommodation Code.

[3] Clause 2.12 Development standards

Insert after clause 2.12(1)(i)—

- (i1) if it is a roofed structure—have a roof that does not overhang the structure by more than 600mm on each side,

[4] Clause 2.20B Development standards

Omit “Zone B1, B2, B3, B4, B5, B6, B7, B8, IN4, SP1, SP2 or SP3” from clause 2.20B(3).

Insert instead “Zone E1, E2, E3, MU1, B1, B2, B3, B4, B5, B6, B7, B8, IN4, SP1, SP2, SP3, SP5 or W4”.

[5] Clause 2.32G Specified development

Insert at the end of clause 2.32G(2)(c)—

, or

- (d) a floodway area within the meaning of the *Floodplain Development Manual*.

[6] Clause 2.32I Specified development

Insert at the end of clause 2.32I(2)(c)—

, or

- (d) a floodway area within the meaning of the *Floodplain Development Manual*.

[7] Clause 2.32K Specified development

Insert at the end of clause 2.32K(2)(b)—

, or

- (c) in a floodway area within the meaning of the *Floodplain Development Manual*.

[8] Clause 2.46C Specified development

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

Insert instead “Zone E1, E2, E3, E4, E5, MU1, B1, B2, B3, B4, B5, B6, B7, B8, IN1, IN2, IN3, IN4, SP5 or W4”.

[9] Clause 2.46C(2)(a)

Omit “Zones B1, B2, B3, B5, B6, B7, B8, IN4, SP1, SP2 and SP3”.

Insert instead “Zone E1, E2, E3, B1, B2, B3, B5, B6, B7, B8, IN4, SP1, SP2, SP3, SP5 or W4”.

[10] Clause 2.46C(2)(b)

Omit “Zone B4”. Insert instead “Zone MU1 or B4”.

[11] Clause 2.46C(2)(c) and (d)

Omit “Zones IN1, IN2 and IN3” wherever occurring.

Insert instead “Zone E4, E5, IN1, IN2 or IN3”.

[12] Clause 2.66AA Specified development

Insert at the end of clause 2.66AA(c)—

, and

- (d) not in a floodway area within the meaning of the *Floodplain Development Manual*.

[13] Clause 3.2 Development that is not complying development under this code

Insert after clause 3.2(g)—

- (h) development on land identified as being susceptible to landslide risk in an environmental planning instrument applying to the land.

[14] Clause 3.2(2)

Insert at the end of clause 3.2—

- (2) Development involving the construction of gutters or eaves over a registered easement may, despite subclause 3.2(1)(d), be complying development under this code if—

- (a) the registered easement is for the purposes of maintenance and allows gutters or eaves to be constructed over the registered easement, and
- (b) no part of the building other than the gutters and eaves is located over the registered easement.

[15] Clause 3.11 Exceptions to setbacks

Insert after clause 3.11(1)(g)—

- (h) access ramps to the ground floor,
- (i) fences.

[16] Clause 3.12, heading

Insert “—general” after “house”.

[17] Clause 3.12(4)

Insert after clause 3.12(3)—

- (4) This clause does not affect development involving the erection of a balcony, deck, patio, terrace or verandah that is permitted under clause 3.12A.

[18] Clause 3.12A

Insert after clause 3.12—

3.12A Other development standards for balconies, decks, patios, terraces and verandahs attached to side or rear of dwelling house—small lots

- (1) The erection of a balcony, deck, patio, terrace or verandah that is attached to the side or rear elevation of a dwelling house is permitted on a lot if—
 - (a) the area of the lot is at least 200m², and
 - (b) the width of the lot, measured at the building line, is more than 7m.
- (2) The maximum height of the balcony, deck, patio, terrace or verandah is 3m above ground level (existing).
- (3) The balcony, deck, patio, terrace or verandah must not—
 - (a) have a finished floor level of more than 1m above ground level (existing), or
 - (b) extend above the roof gutter line of the dwelling house.
- (4) This clause does not affect development involving the erection of a balcony, deck, patio, terrace or verandah that is permitted under clause 3.12.

[19] Clause 3.14 Building design

Omit “The dwelling house” from clause 3.14(2).

Insert instead “For development specified in subclause (1)(a), the dwelling house”.

[20] Clause 3.14(2A)

Insert after clause 3.14(2)—

- (2A) For development specified in subclause (1)(b), the dwelling house must contain at least 1 window to a habitable room at ground floor level facing the primary road or a parallel road.

[21] Clause 3.26 Exceptions to setbacks

Omit “greater” from clause 3.26(2)(i). Insert instead “not more”.

[22] Clauses 3.30(8), 3A.29(8), 3B.58(10), 3C.33(8) and 3D.61(10), definition of “drop edge beam”

Omit the provisions, excluding the notes.

[23] Clause 3A.1A

Insert after clause 3A.1—

3A.1A Development that is not complying development under this code

Development on land identified as being susceptible to landslide risk in an environmental planning instrument applying to the land is not complying development under this code.

[24] Clause 3C.2 Development that is complying development under this code

Omit clause 3C.2(3)(d).

[25] Clause 3C.3 Development that is not complying development under this code

Insert after clause 3C.3(g)—

- (h) development on land identified as being susceptible to landslide risk in an environmental planning instrument applying to the land.

[26] Clause 3C.3(2)

Insert at the end of clause 3C.3—

- (2) Development involving the construction of gutters or eaves over a registered easement may, despite subclause 3C.3(d), be complying development under this code if—
 - (a) the registered easement is for the purposes of maintenance and allows gutters or eaves to be constructed over the registered easement, and
 - (d) no part of the building other than the gutters and eaves is located over the registered easement.

[27] Clause 3C.13(1) and (2)

Omit “7m” wherever occurring. Insert instead “8m”.

[28] Clause 3C.13(5A)

Insert after clause 3C.13(5)—

- (5A) Subclause (5) does not apply to an attached garage on a corner lot.

[29] Clause 3C.13(7)–(9)

Insert after 3C.13(6)—

- (7) An attached garage on a lot with a width of more than 8m measured at the building line may have a finished floor level of 1.2m above ground level (existing) if the wall of the attached garage is above a drop edge beam.
- (8) A wall of the attached garage referred to in subclause (7) that is within 900mm of a boundary must not exceed 3.3m above the finished floor level of the garage for more than 6.5m along the boundary.
- (9) Subclause (8) applies despite clause 3C.11(5)(a).

[30] Clause 3C.14, heading

Insert “—general” after “house”.

[31] Clause 3C.14(4)

Insert after clause 3C.14(3)—

- (4) This clause does not affect development involving the erection of a balcony, deck, patio, terrace or verandah that is permitted under clause 3C.14A.

[32] Clause 3C.14A

Insert after clause 3C.14—

3.14A Other development standards for balconies, decks, patios, terraces and verandahs attached to side or rear of dwelling house—small lots

- (1) The erection of a balcony, deck, patio, terrace or verandah that is attached to the side or rear elevation of a dwelling house is permitted on a lot if—
 - (a) the area of the lot is at least 200m², and
 - (b) the width of the lot, measured at the building line, is more than 7m.

- (2) The maximum height of the balcony, deck, patio, terrace or verandah is 3m above ground level (existing).
- (3) The balcony, deck, patio, terrace or verandah must not—
 - (a) have a finished floor level of more than 1m above ground level (existing), or
 - (b) extend above the roof gutter line of the dwelling house.
- (4) This clause does not affect development involving the erection of a balcony, deck, patio, terrace or verandah that is permitted under clause 3C.14.

[33] Clause 3D.4 Development that is not complying development under this code

Insert after clause 3D.4(k)—

- (l) development on land identified as being susceptible to landslide risk in an environmental planning instrument applying to the land.

[34] Clause 5A.1 Interpretation

Omit “Zone B1, B2, B3, B4, B5, B6, B7, B8, IN4, SP1, SP2 or SP3” from clause 5A.1(1), definition of *business zone*.

Insert instead “Zone E1, E2, E3, MU1, B1, B2, B3, B4, B5, B6, B7, B8, IN4, SP1, SP2, SP3, SP5 or W4”.

[35] Clause 5A.1(1), definition of “industrial zone”

Insert “E4, E5,” after “Zone”.

[36] Clause 5A.2 Meaning of “specified purpose”

Insert before clause 5A.2(1)(k)—

- (k1) local distribution premises,

[37] Clause 5A.2(1)(r)

Insert after clause 5A.2(1)(q)—

- (r) waste or resource transfer stations.

[38] Clause 5A.2(2)(a1)

Insert before clause 5A.2(2)(a)—

- (a1) data centres,

[39] Clause 5A.3 Development specified for this code

Insert at the end of clause 5A.3—

- (2) Despite subclause (1), development involving the erection of a new building for a specified purpose is not development specified for this code on land in Zone E1, E2, MU1, B1, B2, B3, B4, B8, IN4, SP1, SP3, SP5 or W4.
- (3) Despite subclause (1), development for the purposes of waste or resource transfer stations is development specified for this code only if carried out by or on behalf of a public authority.

[40] Clause 5A.4 Development standards

Insert at the end of clause 5A.4—

- (2) Divisions 2 and 3 do not apply to development involving internal alterations only, if the development does not increase the gross floor area of the building.

[41] Clause 5A.6AA

Insert after clause 5A.6A—

5A.6AA Internal alterations

Internal alterations to an existing building used for a specified purpose may be complying development under this code, even if the development is carried out on land referred to in clause 1.19(5).

[42] Clause 5A.6B Development standard—general

Omit “*Environmental Planning and Assessment Regulation 2000*, clause 41(1)(a), (e) or (f)” from clause 5A.6B(5).

Insert instead “*Environmental Planning and Assessment Regulation 2021*, section 163(1)(a), (e) or (f)”.

[43] Clause 5A.6C Miscellaneous development standards for particular specified purposes

Omit clause 5A.6C(2).

[44] Clause 5A.6F Car parking and access

Omit “Zone B1, B2, B3, B4, B8, IN4, SP1 or SP3” from clause 5A.6F(1).

Insert instead “Zone E1, E2, MU1, B1, B2, B3, B4, B8, IN4, SP1, SP3, SP5 or W4”.

[45] Clause 5A.6F(1B)

Omit “*Environmental Planning and Assessment Regulation 2000*, clause 136K”.

Insert instead “*Environmental Planning and Assessment Regulation 2021*, section 156”.

[46] Clause 5A.6G Loading facilities and driveways

Insert before clause 5A.6G(1)—

- (1A) This clause applies to development that—
- (a) provides a new loading bay or new driveway, or
 - (b) involves alterations or additions specifically to an existing loading bay or driveway.

[47] Clause 5A.6N

Insert after clause 5A.6M—

5A.6N Garbage and waste storage

- (1) This clause applies to development to which this code applies that involves the erection of a building, if the building does not have an existing garbage and waste storage area.
- (2) A garbage and waste storage area must be provided as part of the development.
- (3) The garbage and waste storage area must—
 - (a) be screened, and
 - (b) be located behind the primary road frontage building line, and
 - (c) not be located in car parking, loading bay or landscaped area, and
 - (d) not be located on a side of the building that faces an adjoining lot on which there is a dwelling, and

- (e) comply with the following appendices in the document entitled *Better Practice Guidelines for Waste Management and Recycling in Commercial and Industrial Facilities*, ISBN 978-1-74293-944-5, published by the NSW Environment Protection Authority in December 2012—
 - (i) appendices A and B, for the size and location of garbage and storage areas and the size of waste receptacles,
 - (ii) appendices C and D, for the design of openings of waste storage areas and loading bay turning circles for waste removal vehicles,
 - (iii) appendix E, for standard signs for waste storage areas,
 - (iv) appendix F, for the design and operational capacity of waste storage areas.

[48] Clause 5A.18 General standards

Omit “Zone B1, B2, B3, B4, B8, IN4, SP1 or SP3” from clause 5A.18(a).

Insert instead “Zone E1, E2, MU1, B1, B2, B3, B4, B8, IN4, SP1, SP3, SP5 or W4”.

[49] Clause 5A.18(b)

Insert after clause 5A.18(a)—

- (b) if the development involves the erection of a building in Zone E3, B5, B6 or B7—the design of the development must be consistent with the relevant design criteria set out in the *Business Zone Design Guide*, published by the Department of Planning, Industry and Environment in December 2021 and available on the NSW planning portal.

[50] Clause 5A.18(2)

Insert at the end of clause 5A.18—

- (2) Despite subclause (1)(b), the requirements of this Part prevail to the extent that the *Business Zone Design Guide* is inconsistent with this Part.

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

Omit “Zone B1, B2, B3, B4, B8, IN4, SP1 or SP3” from clause 5A.19(1).

Insert instead “Zone E1, E2, MU1, B1, B2, B3, B4, B8, IN4, SP1, SP3, SP5 or W4”.

[52] Clause 5A.19(2)

Insert “E3,” after “Zone”.

[53] Clause 5A.19(3)

Insert after subclause (2)—

- (3) Despite subclause (2), the maximum gross floor area for a building resulting from development on land to which the *Sydney Local Environment Plan 2012*, clause 7.23 applies and used for the purposes of specialised retail premises or vehicle sales or hire premises is 1000m².

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

Insert “E3,” after “Zone” in clause 5A.20B(1).

[55] Schedule 2 Exempt development codes—variations

Insert at the end of the Schedule—

Land in Zone RU2 under *Bathurst Regional
Local Environmental Plan 2014*

The General Exempt Development Code is
varied in its application by omitting
Subdivisions 16C, 16D, 16E and 33AA

[56] Schedule 3 Complying development codes—variations

Insert after the matter relating to **Bankstown**—

Bathurst Regional

Land in Zone RU2 under *Bathurst Regional
Local Environmental Plan 2014*

The Agritourism and Farm Stay
Accommodation Code is varied in its
application by omitting Divisions 3 and 4

[57] Schedule 3

Omit the matter relating to Snowy Monaro from Columns 1 and 2.

**[58] Schedule 8 Conditions applying to complying development certificates under the
Industrial and Business Alterations Code, the Industrial and Business Buildings
Code and the Container Recycling Facilities Code**

Omit “Zone B1, B2, B3, B4 or B8” from clause 24A(2).

Insert instead “Zone E1, E2, MU1, B1, B2, B3, B4, B8 or SP5”.

[59] Schedule 8, clause 24B

Omit the clause.

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

[1] Schedule 1, section 25, heading

Omit “**storage**”. Insert instead “**centres**”.

[2] Schedule 1, section 25(1)

Omit “storage premises used for the storage of data and related information technology hardware”.

Insert instead “data centres”.

Schedule 3 Amendment of State Environmental Planning Policy (Transport and Infrastructure) 2021

[1] Chapter 2, Part 2.3, Division 3, heading

Omit “storage”. Insert instead “centres”.

[2] Section 2.31 Development permitted with consent

Omit “storage premises used for the storage of data and related information technology hardware” in section 2.31(1).

Insert instead “data centres”.