



New South Wales

# **State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2015**

under the

Environmental Planning and Assessment Act 1979

His 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 (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2015**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2015*.

### **2 Commencement**

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

### **3 Repeal of Policy**

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

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# public consultation draft

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

### [1]    Clause 1.5 Interpretation—general

Omit the definitions of *ancillary development*, *detached studio*, *dwelling house* and *outbuilding*.

### [2]    Clause 1.5

Insert in alphabetical order:

*ancillary development*, in Parts 1, 2, 3, 3A and 4, means any of the following that are not exempt development under this Policy:

- (a) access ramp,
- (b) awning, blind or canopy,
- (c) balcony, deck, patio, pergola, terrace or verandah that is attached to a dwelling house,
- (d) basement,
- (e) carport that is attached to a dwelling house,
- (f) detached studio,
- (g) driveway, hard stand space, pathway or paving,
- (h) fence or screen,
- (i) garage that is attached to a dwelling house,
- (j) outbuilding,
- (k) rainwater tank that is attached to a dwelling house,
- (l) retaining wall,
- (m) swimming pool or spa pool and child-resistant barrier.

*ancillary development*, in Parts 5 and 5A, means any of the following that are not exempt development under this Policy:

- (a) access ramp,
- (b) awning, blind or canopy,
- (c) carport,
- (d) driveway, hard stand space, pathway or paving,
- (e) earthworks, retaining wall and structural support,
- (f) fence or screen,
- (g) garbage bin store enclosure,
- (h) landscaping,
- (i) loading dock,
- (j) pergola,
- (k) rainwater tank (above ground),
- (l) rainwater tank (below ground),
- (m) roller shutter door,
- (n) shed,
- (o) storage enclosure.

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**building line** means the line of the outside face of an external wall of a building (not including any ancillary development) closest to the primary road boundary, or other stated boundary, of a lot.

**detached studio** means a habitable development that is used for purposes ancillary to a dwelling house and:

- (a) is established in conjunction with a dwelling house, and
- (b) is on the same lot of land as the dwelling house, and
- (c) is separate from the dwelling house, and
- (d) is not used as a separate dwelling house, and
- (e) does not contain any cooking facilities for the preparation of meals.

**dwelling house** means a building containing one dwelling, but does not include any part of the building that is ancillary development or exempt development under this Policy.

**outbuilding** means any of the following class 10a buildings:

- (a) balcony, deck, patio, pergola, terrace or verandah that is detached from a dwelling house,
- (b) cabana, cubby house, fernery, garden shed, gazebo or greenhouse,
- (c) carport that is detached from a dwelling house,
- (d) farm building,
- (e) garage that is detached from a dwelling house,
- (f) rainwater tank (above ground) that is detached from a dwelling house,
- (g) shade structure that is detached from a dwelling house,
- (h) shed.

**site coverage**, for development, does not include any of the following:

- (a) an access ramp,
- (b) any part of an awning, blind or canopy that is outside the outer wall of a building,
- (c) a balcony, deck, patio, pergola, terrace or verandah attached to a dwelling house that is not enclosed by a wall higher than 1.4 metres above the floor level,
- (d) the eaves,
- (e) a driveway,
- (f) a farm building,
- (g) a fence or screen,
- (h) a pathway or paving,
- (i) a rainwater tank that is attached to a dwelling house,
- (j) a swimming pool or spa pool.

## [3] Clause 1.11 Amendment of environmental planning instruments

Omit the clause.

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**[4] Clause 1.16 General requirements for exempt development**

Omit “that Act.” from clause 1.16 (1) (c). Insert instead:

that Act, and

- (d) must not be carried out on land that is described or otherwise identified on a map specified in Schedule 4.

**[5] Clause 1.19 Land on which complying development may not be carried out**

Omit “the alteration of a dwelling house” from subclause (1) (h).

Insert instead “the alteration of or addition to a dwelling house”.

**[6] Clause 1.19 (3)**

Omit “30 November 2015”. Insert instead “30 November 2018”.

**[7] Clause 1.19 (5)**

Insert after subclause (5):

- (6) **Specific land exemptions may apply only to part of a lot**

If a land based exemption to which this clause applies does not apply to and does not compromise the whole of a lot, complying development may be carried out on any part of the lot that is not affected by the land based exemption.

**[8] Clause 2.6 Development standards**

Omit clause 2.6 (1) (g) and (h). Insert instead:

- (g) if it is constructed or installed on or in a heritage item or a draft heritage item—be ground mounted, and
- (h) if it is constructed or installed on or in a heritage item or a draft heritage item or on or in a heritage conservation area or a draft heritage conservation area—be located in the rear yard.

**[9] Clause 2.6D Development standards**

Omit clause 2.6D (a). Insert instead:

- (a) the development:
  - (i) must be located inside, and only be accessible from within, existing commercial premises, or
  - (ii) must be located inside existing commercial premises within an external wall that is at least 2m from a road and not installed or constructed on land in a heritage conservation area or draft heritage conservation area or in or on a heritage item or draft heritage item, and

**[10] Clause 2.20B Development standards**

Omit “, and” from clause 2.20B (d). Insert instead:

unless the change of use is from a class 5 building to a class 6 building, or from a class 6 building to a class 5 building and the building meets all the relevant provisions of that code for the new use, and

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**[11] Clause 2.25**

Omit the clause. Insert instead:

**2.25 Specified development**

Demolition of development specified under this code, if it is not carried out on or in a heritage item or a draft heritage item or on or in a heritage conservation area or a draft heritage conservation area, is development specified for this code.

**[12] Clause 2.33 Specified development**

Omit “R3 or R4”. Insert instead “R3, R4 or RU5”.

**[13] Part 2, Division 1, Subdivision 17**

Omit the heading. Insert instead:

**Subdivision 17 Fences (certain residential zones and Zone RU5)**

**[14] Part 2, Division 1, Subdivision 18**

Omit the heading. Insert instead:

**Subdivision 18 Fences (certain rural zones, environment protection zones and Zone R5)**

**[15] Clause 2.35 Specified development**

Omit “a rural zone”.

Insert instead “Zones RU1, RU2, RU3, RU4, RU6, an environment protection zone or Zone R5”.

**[16] Clause 2.75 Specified development**

Omit clause 2.75 (b) (ii) and (iii). Insert instead:

- (ii) that will not create additional lots or increase the number of lots with a dwelling entitlement or increase the opportunity for additional dwellings, and
- (iii) that will not result in any lot that is smaller than the minimum size specified in an environmental planning instrument in relation to the land concerned (unless a lot or lots whose boundaries are being realigned is or are already smaller than that minimum size), and

**[17] Clause 2.105 Development standards**

Omit “a parcel of land” from clause 2.105 (1) (a).

Insert instead “a parcel of land, a dwelling house”.

**[18] Clause 2.105**

Omit “illuminated” from subclause (1) (b) (iv). Insert instead “externally illuminated”.

**[19] Clause 2.105**

Omit “*Wind actions,*” from subclause (2) (a) (iii) (B). Insert instead:

- Wind actions,* and
- (iv) not be externally illuminated, and

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- (v) if on the site of a heritage item or draft heritage item—not be attached to a building,

**[20] Parts 3, 3A and 5**

Renumber Notes 1 and 2 at the beginning of the Parts as Notes 2 and 3.

Insert before Note 2 as renumbered:

**Note 1.** Clause 1.18 (1) (b) states that to be complying development for the purposes of this Policy the development must be permissible with consent under an environmental planning instrument applying to the land on which the development is carried out.

**[21] Clause 3.4 General exclusions from this code**

Insert at the end of the clause:

- (2) Subclause (1) (b) does not apply to the following parts of a building within the airspace over a registered easement if the easement permits them:
  - (a) an aerial,
  - (b) an antenna,
  - (c) an awning,
  - (d) the eaves,
  - (e) a flue,
  - (f) a chimney pipe,
  - (g) guttering,
  - (h) a down-pipe,
  - (i) a cooling or heating appliance.

**[22] Clause 3.5 Ancillary development**

Insert at the end of clause 3.5 (2) (d):

- , and
- (e) development that is a retaining wall and that is not associated with the erection of, or the alteration or addition to, a dwelling house or other ancillary development, but not including fences.

**[23] Clause 3.5 (3)**

Insert after clause 3.5 (2):

- (3) Ancillary development under subclause (1) may be constructed on a lot:
  - (a) if an approved dwelling house exists on the lot—at any time, or
  - (b) if there is a current development approval or complying development certificate for the construction of a dwelling house on the lot—before the construction of the dwelling house.

**[24] Clause 3.5, Note**

Omit “clause 1.19 (6) (a)”. Insert instead “clause 1.19 (1) (a)”.

**[25] Clause 3.8 Lot requirements**

Insert after clause 3.8 (2):

- (3) A secondary dwelling approved for construction on a lot under *State Environmental Planning Policy (Affordable Rental Housing) 2009* is taken not to be a dwelling house under subclause (1).

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**[26] Clause 3.9**

Omit the clause. Insert instead:

**3.9 Maximum site coverage of all development**

- (1) The site coverage of the dwelling house and all ancillary development on a lot must not be more than the following:
  - (a) 65 per cent of the area of the lot, if the lot has an area of at least 200m<sup>2</sup> but not more than 250m<sup>2</sup>,
  - (b) 60 per cent of the area of the lot, if the lot has an area of more than 250m<sup>2</sup> but not more than 300m<sup>2</sup>,
  - (c) 55 per cent of the area of the lot, if the lot has an area of more than 300m<sup>2</sup> but not more than 450m<sup>2</sup>,
  - (d) 50 per cent of the area of the lot, if the lot has an area of more than 450m<sup>2</sup> but not more than 900m<sup>2</sup>,
  - (e) 40 per cent of the area of the lot, if the lot has an area of more than 900m<sup>2</sup> but not more than 1500m<sup>2</sup>,
  - (f) 30 per cent of the area of the lot, if the lot has an area of more than 1500m<sup>2</sup>.
- (2) Despite subclause (1) (d), the site coverage of a single storey dwelling house and all ancillary development on a lot must not be more than 55 per cent of the area of the lot, if the lot has an area of more than 450m<sup>2</sup> but not more than 500m<sup>2</sup>.

**[27] Part 3, Division 2, Subdivision 3**

Omit the heading. Insert instead:

**Subdivision 3 Building heights, setbacks, articulation and privacy**

**[28] Clause 3.16 Setbacks of dwelling houses and outbuildings from side boundaries and built to boundary walls**

Omit clause 3.16 (3). Insert instead:

- (3) Despite subclause (2) (a) and (b):
  - (a) if the lot has a width, measured at the building line, of at least 6m, but not more than 8m—the building may be built to both side boundaries, or
  - (b) if the lot has a width, measured at the building line, of more than 8m, but not more than 12.5m—the building may be built to only one side boundary.

**[29] Clause 3.16**

Insert after subclause (5):

- (5A) A wall of a building erected under subclause (3) and within 900mm of the boundary must not contain a door, window or any other opening.

**[30] Clause 3.19A**

Insert after clause 3.19:

**3.19A Encroachments over registered easements**

A building element specified in clause 3.4 (2):

- (a) must not encroach more than 450mm into the registered easement, and



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- (b) must be suspended so that it is at least 1m above the ground level (existing) of the registered easement, and
- (c) must have a height of not more than 450mm above the height of the building at that point, or 8.5m above the ground level (existing) of the registered easement, whichever is lower.

**[31] Clause 3.24 Landscaped area**

Omit “landscaped area” from clause 3.24 (4). Insert instead “required landscaped area”.

**[32] Clause 3.27 Garages, carports and car parking spaces**

Insert after clause 3.27 (4):

- (5) This clause does not apply to an existing garage, carport or car parking space.

**[33] Clause 3.29**

Omit the clause. Insert instead:

**3.29 Earthworks, retaining walls and structural supports**

**(1) Excavation**

Excavation for the purposes of development under this code must not exceed a maximum depth measured from ground level (existing) of:

- (a) if located not more than 1m from any boundary—1m, and
  - (b) if located more than 1m but not more than 1.5m from any boundary—2m, and
  - (c) if located more than 1.5m from any boundary—3m.
- (2) Despite subclause (1), the excavation must not be more than 1m below ground level (existing) if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural).
  - (3) Excavation must be contained by a retaining wall or structural support that meets the requirements of subclause (8).

**(4) Fill**

Fill for the purposes of development under this code must not exceed a maximum height, measured from ground level (existing), of:

- (a) if located not more than 1m from any boundary—600mm, and
  - (b) if located more than 1m from any boundary—1m.
- (5) Fill must be contained by a retaining wall or structural support that meets the requirements of subclause (8).
  - (6) Despite subclause (4), the height of fill contained wholly within the footprint of the dwelling house or ancillary development is not limited.
  - (7) The ground level (finished) of the fill must not be used for the purposes of measuring the height of any development erected under this Policy.

**(8) Retaining walls and structural supports**

Support for earthworks must take the form of a retaining wall or other structural support that:

- (a) has been designed so as not to redirect the flow of any surface water or ground water or cause sediment to be transported onto an adjoining property, and

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- (b) has adequate drainage lines connected to the existing stormwater drainage system for the site, and
  - (c) does not result in any retaining wall or structural support with a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and
  - (d) is separated from any retaining wall or structural support on the site by at least 2m, measured horizontally, and
  - (e) has been installed in accordance with any manufacturer's specifications, and
  - (f) if it is an embankment or batter—must have its toe or top more than 1m from any side or rear boundary.
- (9) Retaining walls or structural supports for earthworks erected under subclause (8) must be certified by a professional engineer if the earthworks are:
- (a) more than 600mm above or below ground level (existing) and within 1m of a boundary, or
  - (b) more than 1m above or below ground level (existing) and more than 1m from a boundary.

**Note.** Fill and excavation that is not associated with a building may be exempt development under clauses 2.29 and 2.30.

**[34] Clause 3.34 Swimming pools**

Omit “, or” from clause 3.34 (4) (a). Insert instead “, and”.

**[35] Clause 3.34**

Omit “clause 3.24 and this clause” from subclause (7).

Insert instead “clauses 3.24, 3.24A, 3.25, 3.29, 3.36B and 3.36C”.

**[36] Clause 3.35 Fences**

Omit “clause 2.33” from clause 3.35 (1).

Insert instead “clause 2.33, other than development specified in clause 2.33 (c),”

**[37] Clause 3.35**

Omit the Note to the clause. Insert instead:

**Note.** Development standards for fences in certain rural zones, environment protection zones and Zone R5 are specified in clause 2.36.

**[38] Clause 3A.5 Ancillary development**

Insert after subclause (2):

- (3) Ancillary development under subclause (1) may be constructed on a lot:
  - (a) if an approved dwelling house exists on the lot—at any time, or
  - (b) if there is a current development approval or complying development certificate for the construction of a dwelling house on the lot—before the construction of the dwelling house.

**[39] Clause 3A.16 Setbacks of dwelling houses from side boundaries**

Omit “or RU4” from clause 3A.16 (2) (b). Insert instead “, RU4 or RU6”.

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**[40] Clause 3A.29**

Omit the clause. Insert instead:

**3A.29 Earthworks, retaining walls and structural supports**

**(1) Excavation**

Excavation for the purposes of development under this code must not exceed a maximum depth measured from ground level (existing) of:

- (a) if located not more than 1m from any boundary—1m, and
- (b) if located more than 1m but not more than 1.5m from any boundary—2m, and
- (c) if located more than 1.5m from any boundary—3m.

(2) Despite subclause (1), the excavation must not be more than 1m below ground level (existing) if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural).

(3) Excavation must be contained by a retaining wall or structural support that meets the requirements of subclause (8).

**(4) Fill**

Fill for the purposes of development under this code must not exceed a maximum height, measured from ground level (existing), of:

- (a) if located not more than 1m from any boundary—600mm, and
- (b) if located more than 1m from any boundary—1m.

(5) Fill must be contained by a retaining wall or structural support that meets the requirements of subclause (8).

(6) Despite subclause (4), the height of fill contained wholly within the footprint of the dwelling house or ancillary development is not limited.

(7) The ground level (finished) of the fill must not be used for the purposes of measuring the height of any development erected under this Policy.

**(8) Retaining walls and structural supports**

Support for earthworks must take the form of a retaining wall or other structural support that:

- (a) has been designed so as not to redirect the flow of any surface water or ground water or cause sediment to be transported onto an adjoining property, and
- (b) has adequate drainage lines connected to the existing stormwater drainage system for the site, and
- (c) does not result in any retaining wall or structural support with a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and
- (d) is separated from any retaining wall or structural support on the site by at least 2m, measured horizontally, and
- (e) has been installed in accordance with any manufacturer's specifications, and
- (f) if it is an embankment or batter—must have its toe or top more than 1m from any side or rear boundary.

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- (9) Retaining walls or structural supports for earthworks erected under subclause (8) must be certified by a professional engineer if the earthworks are:

- (a) more than 600mm above or below ground level (existing) and within 1m of a boundary, or
- (b) more than 1m above or below ground level (existing) and more than 1m from a boundary.

**Note.** Fill and excavation that is not associated with a building may be exempt development under clauses 2.29 and 2.30.

**[41] Clause 3A.33 Swimming pools**

Omit “, or” from clause 3A.33 (4) (a). Insert instead “, and”.

**[42] Clause 3A.33**

Omit “clause 3A.24 and this clause” from subclause (7).

Insert instead “clauses 3A.24, 3A.24A, 3A.25, 3A.29, 3A.37 and 3A.38”.

**[43] Clause 3A.35A**

Insert at the end of Part 3A, Division 3, Subdivision 7:

**3A.35A Development standards for detached studios**

- (1) This clause applies:
  - (a) to a detached studio, and
  - (b) in addition to the development standards specified in clauses 3A.9, 3A.10 and 3A.24.
- (2) A detached studio must not be located in a heritage conservation area or draft heritage conservation area.
- (3) A detached studio must be located behind the building line of the dwelling house.
- (4) No more than one detached studio may be located on a lot.
- (5) A detached studio must not have a building height of more than 3.6m.
- (6) The floor area of a detached studio must not be more than 35m<sup>2</sup>.
- (7) A detached studio must have a setback from a side or rear boundary of at least:
  - (a) if the lot is in Zone R5 and has an area of less than 4000m<sup>2</sup>—2.5m, or
  - (b) in any other case—5m.

**[44] Clause 3A.37 Development standards for bush fire prone land**

Omit clause 3A.37 (1) (a). Insert instead:

- (a) to development, being the erection of a dwelling house or any ancillary development, or alterations or additions to an existing dwelling house or any ancillary development within 10m of a dwelling house, that is carried out on land that is wholly or partly bush fire prone land, and

**[45] Clause 3A.37**

Omit subclause (2) (f). Insert instead:

- (f) a reticulated water supply is connected to the lot, or a water supply with a 65mm metal Storz outlet with a gate or ball valve is provided for fire

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fighting purposes on the lot (the gate or ball valve, pipes and tank penetrations are to be designed to allow for a full 50mm inner diameter water flow through the Storz fitting and must be of a metal construction), and

- (fa) the size of the non-reticulated water supply mentioned in subclause (f) is:
- (i) for a lot with an area no greater than 10,000m<sup>2</sup>—10,000L, and
  - (ii) for a lot with an area greater than 10,000m<sup>2</sup>—20,000L, and

**[46] Parts 4, 4A, 6 and 7**

Omit Note 1 at the beginning of the Parts.

**[47] Part 4, Division 1, Subdivision 2**

Omit the heading. Insert instead:

**Subdivision 2 External alterations to dwelling houses, attached dwellings, semi-detached dwellings and ancillary development**

**[48] Clause 4.3**

Omit the clause. Insert instead:

**4.3 Specified complying development**

The following development is specified for this code:

- (a) if the development is on land that is not within a heritage conservation area or a draft heritage conservation area—external alterations to an existing dwelling house, attached dwelling or semi-detached dwelling,
- (b) if the development is on land that is within a heritage conservation area or a draft heritage conservation area—external alterations to that part of an existing dwelling house, attached dwelling or semi-detached dwelling that is a single storey,
- (c) external alterations to existing ancillary development that is associated with an existing dwelling house, attached dwelling or semi-detached dwelling.

**[49] Clause 4.4 Development standards**

Omit clause 4.4 (1) (b) and (c). Insert instead:

- (b) must not result in a change to the floor area of the dwelling house, attached dwelling, semi-detached dwelling or ancillary development, and
- (c) must not result in a change to the footprint of the dwelling house, attached dwelling, semi-detached dwelling or ancillary development, and
- (ca) must not result in a change to the building height or pitch of the roof of the dwelling house, attached dwelling, semi-detached dwelling or ancillary development, and

**[50] Clause 4.4**

Omit “dwelling house” from clause 4.4 (2).

Insert instead “dwelling house, attached dwelling or semi-detached dwelling”.

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**[51] Part 4, Division 1, Subdivision 2A**

Omit the heading. Insert instead:

**Subdivision 2A External alterations to residential accommodation  
other than dwelling houses, attached dwellings,  
semi-detached dwellings and ancillary development**

**[52] Clause 4.4A**

Omit the clause. Insert instead:

**4.4A Specified complying development**

External alterations to existing residential accommodation (other than a dwelling house, attached dwelling or semi-detached dwelling) or existing ancillary development to residential accommodation (other than a dwelling house, attached dwelling or semi-detached dwelling) is development specified for this code if the development is:

- (a) on land that is not within a heritage conservation area or a draft heritage conservation area, and
- (b) on land that is not identified as being within a flood control lot, and
- (c) not the erection of a new balcony, deck, patio, terrace or verandah.

**[53] Clause 4.6 Development standards**

Omit clause 4.6 (2) (b).

**[54] Clause 5.2 Development standards**

Insert after clause 5.2 (1) (h):

- (i) the alteration must not cause the contravention of an existing condition of the most recent development consent (other than a complying development certificate) that applies to the premises relating to hours of operation, noise, loading, vehicular movement, traffic generation, waste management or landscaping,
- (j) car parking must be provided:
  - (i) in accordance with any existing condition relating to car parking that applies to the use of the land, or
  - (ii) if there is no existing condition relating to car parking—in accordance with any relevant requirements contained in an environmental planning instrument or development control plan applying to the land.

**[55] Clause 5.10 Development standards**

Omit clause 5.10 (e). Insert instead:

- (e) in the case of the replacement of an awning or the construction of a new awning—be no less than 2.7m high at any point measured above ground level (existing), and

**[56] Clause 5.16 Development standards**

Omit “within a residential zone or” from clause 5.16 (i).

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**[57] Part 5, Division 1, Subdivision 9**

Omit the heading. Insert instead:

**Subdivision 9 Ancillary development**

**[58] Clause 5.18 Development standards**

Insert at the end of the clause:

- (2) Subclause (1) (e) does not apply to the following parts of a building within the airspace over a registered easement if the easement permits them:
  - (a) an aerial,
  - (b) an antenna,
  - (c) an awning,
  - (d) the eaves,
  - (e) a flue,
  - (f) a chimney pipe,
  - (g) guttering,
  - (h) a down-pipe,
  - (i) a cooling or heating appliance.

**[59] Clause 5.20**

Omit the clause. Insert instead:

**5.20 Development standards**

**(1) Excavation**

The standards specified for excavation work are that the work must:

- (a) be structurally supported in accordance with subclause (3), and
- (b) if the land is not identified as Class 3 or Class 4 on the Acid Sulfate Soils Map—not be more than 3m below ground level (existing), and
- (c) if the land is identified as Class 3 or Class 4 on the Acid Sulfate Soils Map—not be more than 1m below ground level (existing), and
- (d) be carried out at least 40m from any waterbody (natural), and
- (e) not result in a building being located over a registered easement, and
- (f) if it is on a lot adjacent to a rail corridor—be setback at least 3m from the corridor.

**(2) Fill**

The standards specified for fill are that the fill must:

- (a) not raise the ground level (existing) more than 2m, and
- (b) be wholly contained by structural support in accordance with subclause (3), and
- (c) be located at least 40m from any waterbody (natural).

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**(3) Structural supports**

Structural support for earthworks more than 1m above or below ground level (existing) must take the form of a retaining wall or other form of structural support that:

- (a) has been certified by a professional engineer, and
- (b) has adequate drainage lines connected to an existing stormwater drainage system for the site, and
- (c) does not redirect the flow of any water or cause sediment to be transported onto an adjoining property, and
- (d) is not higher than 3m, and
- (e) is separated from any other structural support on the site by at least 2m, measured horizontally, and
- (f) is not located over a registered easement.

**[60] Clause 5A.6**

Omit the clause. Insert instead:

**5A.6 Registered easements**

- (1) Development that will result in the erection of a building over a registered easement is not complying development under this code.
- (2) Subclause (1) does not apply to the following parts of a building within the airspace over a registered easement if the easement permits them:
  - (a) an aerial,
  - (b) an antenna,
  - (c) an awning,
  - (d) the eaves,
  - (e) a flue,
  - (f) a chimney pipe,
  - (g) guttering,
  - (h) a down-pipe,
  - (i) a cooling or heating appliance.
- (3) A building element specified in subclause (2):
  - (a) must not encroach more than 450mm into the registered easement, and
  - (b) must be suspended so that it is at least 1m above the ground level (existing) of the registered easement, and
  - (c) must have a height of not more than 450mm above the height of the building at that point, or 8.5m above the ground level (existing) of the registered easement, whichever is lower.

**[61] Clause 5A.27 Earthworks**

Omit clause 5A.27 (1) (e).

**[62] Clause 5A.27**

Omit “horizontally.” from subclause (2) (e). Insert instead:

- horizontally, and
- (f) is not located over a registered easement.



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**[63] Clause 6.1 Specified complying development**

Omit “, for 5 years from the date the consent or certificate was granted or issued,”.

**[64] Clause 6.2**

Omit the clause. Insert instead:

**6.2 Development standards**

The standards specified for that development are:

- (a) that the subdivision must not contravene any condition of any development consent applying to the building, the subject of the development, and
- (b) that the required allocation of parking spaces for each individual dwelling as required by any development consent relating to the building must be provided, and
- (c) if the required allocation of parking spaces cannot be provided—that a contribution in relation to car parking in compliance with a contributions plan under Division 6 of Part 4 of the Act is imposed as a condition of approval under clause 136K of the regulation.

**Note.** Registered interests on the land, the subject of the strata subdivision, the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973* apply.

**[65] Clause 7.1 Specified complying development**

Insert “under Parts 2, 3, 3A, 4, 5 and 5A” after “ancillary development” in clause 7.1 (1) (b).

**[66] Schedule 3 Complying development codes—variations**

Omit “The General Commercial and Industrial Code” wherever occurring in column 2 of the matter relating to Liverpool City and Penrith.

Insert instead “The Commercial and Industrial Alterations Code”.

**[67] Schedule 4 Land excluded from the General Exempt Development Code**

Omit “(Clause 1.19 (1A))”. Insert instead “(Clause 1.16 (1) (d))”.

**[68] Schedule 6, Conditions applying to complying development certificates under the General Housing Code and the Rural Housing Code**

Omit clause 13. Insert instead:

**13 Aboriginal objects discovered during excavation**

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- (a) all excavation or disturbance of the area must stop immediately, and
- (b) the person making the discovery must advise the Director-General of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

**Note.** If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

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**[69] Schedule 8 Conditions applying to complying development certificates under the Commercial and Industrial Alterations Code and the Commercial and Industrial (New Buildings and Additions) Code**

Omit clause 17 (2) and (3). Insert instead:

- (2) If the work is the subject of a notice of requirements for water supply or sewerage services (or both) by a water utility or an entity authorised by the utility, the work must be satisfactorily completed and any monetary contributions required to be paid to the relevant water supply authority must be paid before the occupation certificate is issued.
- (3) If the work is the subject of a compliance certificate under section 73 of the *Sydney Water Act 1994*, the work must be satisfactorily completed and any monetary contributions required to be paid to the Sydney Water Corporation must be paid before the occupation certificate is issued.

**[70] Schedule 8, clause 23**

Insert after clause 23 (2):

- (3) In addition to the requirements of subclauses (1) and (2), in the local government areas of Coonamble, Gilgandra, Warrumbungle and Dubbo, all external lighting associated with development under Parts 5 and 5A must:
  - (a) be installed or constructed using a shielded light fitting, and
  - (b) be downward facing, and
  - (c) for each site—not exceed 50,000 lumens, and
  - (d) for each individual light—not exceed a maximum colour temperature of 3,500 Kelvin.
- (4) In this clause:  
*shielded light fitting* means a light fitting that does not allow light to shine above the horizontal plane.

**[71] Schedule 9 Conditions applying to complying development certificates under the Demolition Code**

Omit clause 3 (1). Insert instead:

- (1) A waste management plan for the work must be prepared before work commences on the site.

**[72] Schedule 9, clause 10**

Insert at the end of the Schedule:

**10 Aboriginal objects discovered during excavation**

If an Aboriginal object (including evidence of habitation or remains) is discovered during the course of the work:

- (a) all excavation or disturbance of the area must stop immediately, and
- (b) the person making the discovery must advise the Director-General of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

**Note.** If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

## **Schedule 2      Amendment of State Environmental Planning Policy (Affordable Rental Housing) 2009**

**[1]    Clause 6 Affordable housing**

Omit “Sydney Statistical Division” from clause 6 (1) (a).

Insert instead “Sydney Greater Capital City Statistical Area”.

**[2]    Clause 21 Development to which this Division applies**

Insert at the end of clause 21:

- (2) In this Division, development for the purposes of a secondary dwelling includes ancillary development associated with the secondary dwelling.

**[3]    Clause 45 Complying development—group homes**

Omit “clause 3.36B” from clause 45 (1A). Insert instead “clause 3.36C”.

**[4]    Schedule 1 Development standards for secondary dwellings**

Insert after clause 1 (2):

- (2A) A word or expression used in this Schedule and not defined in this clause or in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* has the same meaning as it has in the standard instrument (as in force immediately before the commencement of the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*).

**[5]    Schedule 1, clause 4**

Omit “a secondary dwelling must” from clause 4 (1).

Insert instead “a secondary dwelling (other than any ancillary development relating to that dwelling) must”.

**[6]    Schedule 1, clause 4**

Omit “dwelling” wherever occurring from the definition of *floor area* in clause 4 (3).

Insert instead “principal dwelling or secondary dwelling”.

**[7]    Schedule 1, clause 6**

Insert at the end of the clause:

- (2) Development for the purposes of ancillary development must not result in a new building or a new part of an existing building having a building height above ground level (existing) of more than:
- (a) if an outbuilding—4.8 metres, or
  - (b) if a fence—1.8 metres.

**[8]    Schedule 1, clauses 6, 7 (1), (2) and (3), 8, 9 (1) and (2), 10 (1) and (2) and 11 (a)**

Omit “secondary dwelling” wherever occurring.

Insert instead “secondary dwelling and ancillary development”.

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State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment  
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**[9] Schedule 1, clause 17**

Insert after clause 17 (1):

- (1A) The principal private open space may be shared by both the principal and secondary dwelling and may be in the form of a balcony or deck.

**[10] Schedule 1, clause 18**

Omit the clause. Insert instead:

**18 Earthworks, retaining walls and structural supports**

**(1) Excavation**

Excavation for the purposes of development under this code must not exceed a maximum depth measured from ground level (existing) of:

- (a) if located not more than 1m from any boundary—1m, and
  - (b) if located more than 1m but not more than 1.5m from any boundary—2m, and
  - (c) if located more than 1.5m from any boundary—3m.
- (2) Despite subclause (1), the excavation must not be more than 1m below ground level (existing) if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural).
  - (3) Excavation must be contained by a retaining wall or structural support that meets the requirements of subclause (8).

**(4) Fill**

Fill for the purposes of development under this code must not exceed a maximum height, measured from ground level (existing), of:

- (a) if located not more than 1m from any boundary—600mm, and
  - (b) if located more than 1m from any boundary—1m.
- (5) Fill must be contained by a retaining wall or structural support that meets the requirements of subclause (8).
  - (6) Despite subclause (4), the height of fill contained wholly within the footprint of the dwelling house or ancillary development is not limited.
  - (7) The ground level (finished) of the fill must not be used for the purposes of measuring the height of any development erected under this Policy.

**(8) Retaining walls and structural supports**

Support for earthworks must take the form of a retaining wall or other structural support that:

- (a) has been designed so as not to redirect the flow of any surface water or ground water or cause sediment to be transported onto an adjoining property, and
- (b) has adequate drainage lines connected to the existing stormwater drainage system for the site, and
- (c) does not result in any retaining wall or structural support with a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and
- (d) is separated from any retaining wall or structural support on the site by at least 2m, measured horizontally, and

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- (e) has been installed in accordance with any manufacturer's specifications, and
  - (f) if it is an embankment or batter—must have its toe or top more than 1m from any side or rear boundary.
- (9) Retaining walls or structural supports for earthworks erected under subclause (8) must be certified by a professional engineer if the earthworks are:
- (a) more than 600mm above or below ground level (existing) and within 1m of a boundary, or
  - (b) more than 1m above or below ground level (existing) and more than 1m from a boundary.

**Note.** Fill and excavation that is not associated with a building may be exempt development under clauses 2.29 and 2.30 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**[11] Schedule 2 Complying development—group homes**

Insert after clause 1 (2):

- (3) A word or expression used in this Schedule and not defined in this clause or in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* has the same meaning as it has in the standard instrument (as in force immediately before the commencement of the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*).

**[12] Schedule 2, clause 2A**

Insert after clause 2:

**2A Site requirements for group homes in certain zones**

- (1) Development that is the erection of a group home may only be carried out on a lot:
  - (a) in Zone R5 Large Lot Residential, or
  - (b) if the lot has an area of at least 4,000m<sup>2</sup>—in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots or Zone RU6 Transition.
- (2) This clause does not apply if the size of the lot is less than the minimum lot size for the erection of a dwelling house under the environmental planning instrument applying to the lot.

**[13] Schedule 2, clause 7**

Omit the clause. Insert instead:

**7 Building articulation**

- (1) Subclause (2) applies to the group home that is nearest to a primary road on a lot other than a battle-axe lot or a corner lot.
- (2) The group home must have a front door and a window to a habitable room in the building wall that faces the primary road.
- (3) Subclause (4) applies to the group home that is nearest to a parallel road on a lot other than a battle-axe lot or a corner lot.
- (4) The group home must have a window to a habitable room in the building wall that faces the parallel road.

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- (5) Subclause (6) applies to the group home on a corner lot that is nearest to the secondary road.
- (6) The group home must have a window in a habitable room that is at least 1m<sup>2</sup> in area and faces, and is visible from, the secondary road.
- (7) If on a lot mentioned in subclauses (1), (3) and (5) there is more than one group home that is nearest to the relevant road, then subclauses (2), (4) and (6) respectively apply to each group home that is nearest to the relevant road.

## **Schedule 3      Amendment of State Environmental Planning Policy (Infrastructure) 2007**

### **[1]    Clause 8 Relationship to other environmental planning instruments**

Insert after clause 8 (2) (b):

- (ba) *State Environmental Planning Policy (Exempt and Complying  
Development Codes) 2008,*

### **[2]    Clause 20B General requirements for complying development**

Insert at the end of the clause:

**Note.** Clause 1.17A of *State Environmental Planning Policy (Exempt and Complying  
Development Codes) 2008* specifies the requirements for complying development for  
all environmental planning instruments, including this Policy.

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State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment  
(Miscellaneous and Affordable Housing) 2015 [NSW]  
Schedule 4 Amendment of State Environmental Planning Policy No 70—Affordable Housing (Revised  
Schemes)

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## **Schedule 4      Amendment of State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)**

### **Clause 8 Definition of “affordable housing”**

Omit “Sydney Statistical Division”.

Insert instead “Sydney Greater Capital City Statistical Area”.



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State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment  
(Miscellaneous and Affordable Housing) 2015 [NSW]  
Schedule 5 Amendment of State Environmental Planning Policy (Housing for Seniors or People with a  
Disability) 2004

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## **Schedule 5      Amendment of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

### **[1]      Clause 3 Interpretation**

Omit the definition of “Sydney Statistical Division” from clause 8. Insert instead:

*Sydney Greater Capital City Statistical Area* means the area that the  
Australian Bureau of Statistics determines from time to time to be the Sydney  
Greater Capital City Statistical Area.

### **[2]      Clause 26 Location and access to facilities**

Omit “Sydney Statistical Division” from clause 26 (2) wherever occurring.

Insert instead “Sydney Greater Capital City Statistical Area”.

### **[3]      Clause 45 Vertical villages**

Omit “Sydney Statistical Division” from clause 45 (12).

Insert instead “Sydney Greater Capital City Statistical Area”.

## **Schedule 6      Amendment of Willoughby Local Environmental Plan 2012**

### **Clause 6.8 Affordable housing**

Omit “Sydney Statistical Division” from clause 6.8 (1) (b).

Insert instead “Sydney Greater Capital City Statistical Area”.