



New South Wales

# **State Environmental Planning Policy (Major Projects) 2005 (Amendment No 28)**

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* in accordance with the recommendation made by the Minister for Planning. (S07/01186-1)

FRANK SARTOR, M.P.,  
Minister for Planning

## **State Environmental Planning Policy (Major Projects) 2005 (Amendment No 28)**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Major Projects) 2005 (Amendment No 28)*.

### **2 Aims of Policy**

The aims of this Policy are:

- (a) to identify the land to which this Policy applies (being the Illawarra Regional Business Park site) as a State significant site under *State Environmental Planning Policy (Major Projects) 2005*, and
- (b) to establish appropriate zoning and other development controls for that land, and
- (c) to rezone that land for employment purposes, and
- (d) to promote economic development and the creation of employment on that land by allowing development for the purposes of warehouses or distribution centres, light industries and passenger transport facilities and by requiring satisfactory arrangements for contributions to the provision of designated State public infrastructure, and
- (e) to provide for development that is consistent with the effective operation of the Illawarra Regional Airport, and
- (f) to protect the views of the adjoining heritage item, and
- (g) to amend *State Environmental Planning Policy No 14—Coastal Wetlands* to extend its operation with respect to that land.

### **3 Land to which Policy applies**

This Policy applies to the land in the local government area of Shellharbour, shown edged heavy black on the map marked “State Environmental Planning Policy (Major Projects) 2005 (Amendment No 28)—Illawarra Regional Business Park Site—Land Application Map” held at the head office of the Department.

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**4 Amendment of State Environmental Planning Policy (Major Projects)  
2005**

*State Environmental Planning Policy (Major Projects) 2005* is amended as set out in Schedule 1.

**5 Amendment of State Environmental Planning Policy No 14—Coastal  
Wetlands**

*State Environmental Planning Policy No 14—Coastal Wetlands* is amended as set out in Schedule 2.

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**Schedule 1 Amendment of State Environmental Planning Policy (Major Projects) 2005**

(Clause 4)

**Schedule 3 State significant sites**

Insert at the end of the Schedule (before the maps) with appropriate Part numbering:

**Part Illawarra Regional Business Park site**

**Division 1 Preliminary**

**1 Land to which Part applies**

This Part applies to the land shown edged heavy black on the Land Application Map, referred to in this Schedule as the *Illawarra Regional Business Park site*.

**2 Interpretation**

(1) In this Part:

*Airport Height Limitation Plan* means the plan titled *Airport Height Limitation and Noise Exposure Forecast Plan*, 17 April 1998, specifying the obstacle limitation surface for the land and held in the office of the Council.

*Council* means the Shellharbour City Council.

*Height of Buildings Map* means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 28)—Illawarra Regional Business Park Site—Height of Buildings Map.

*Land Application Map* means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 28)—Illawarra Regional Business Park Site—Land Application Map.

*Land Reservation Acquisition Map* means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 28)—Illawarra Regional Business Park Site—Land Reservation Acquisition Map.

*Land Zoning Map* means the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 28)—Illawarra Regional Business Park Site—Land Zoning Map.

*wetland improvement* means the creation, enhancement, regeneration or maintenance of wetlands whether the wetland is natural or artificial and whether or not the wetland forms part of an integrated drainage system.

- (2) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* unless it is otherwise defined in this Part.

### **3 Consent authority**

The consent authority for development on land in the Illawarra Regional Business Park site, other than development that is a project to which Part 3A of the Act applies, is the Council.

### **4 Maps**

- (1) A reference in this Part to a named map adopted by this Part is a reference to a map by that name:
- (a) approved by the Minister when the map is adopted, and
  - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Part to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Part, a map may be in, and may be kept and made available in, electronic or paper form, or both.

### **5 Relationship with other environmental planning instruments**

The only environmental planning instruments that apply, according to their terms, to land within the Illawarra Regional Business Park site are this Policy and all other State environmental planning policies, except *State Environmental Planning Policy No 1—Development Standards*.

**Division 2 Provisions applying to development within Illawarra Regional Business Park site**

**6 Application of Part**

This Part applies with respect to development within the Illawarra Regional Business Park site and so applies whether or not the development is a project to which Part 3A of the Act applies.

**7 Land use zones**

- (1) For the purposes of this Part, land within the Illawarra Regional Business Park site is in a zone as follows if the land is shown on the Land Zoning Map as being within that zone:
  - (a) Zone IN2 Light Industrial,
  - (b) Zone SP2 Infrastructure,
  - (c) Zone E2 Environmental Conservation.
- (2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

**8 Zone IN2 Light Industrial**

- (1) The objectives of Zone IN2 Light Industrial are as follows:
  - (a) to facilitate development for a wide range of employment generating light industrial purposes,
  - (b) to provide for airport related facilities and services, including hotel accommodation and passenger transport facilities,
  - (c) to provide for roads and service stations, warehouses and distribution centres and information and education facilities,
  - (d) to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area,
  - (e) to minimise any adverse effect of industry on other land uses and the environment.
- (2) Development for the following purposes is permitted without development consent on land within Zone IN2 Light Industrial:  
environmental protection works

- (3) Development for any of the following purposes is permitted only with development consent on land within Zone IN2 Light Industrial:
- airports; child care centres; depots; fill; flood mitigation works; food and drink premises; freight transport facilities; helipads; heliports; hotel or motel accommodation; industrial retail outlets; information and education facilities; landscape and garden supplies; light industries; liquid fuel depots; neighbourhood shops; office premises (that are ancillary to development for another permitted purpose); passenger transport facilities; public administration buildings; recreation facilities (indoor); roads; service stations; signage; timber and building supplies; transport depots; truck depots; vehicle body repair workshops; vehicle repair stations; vehicle sales or hire premises; veterinary hospitals; warehouse or distribution centres
- (4) Except as otherwise provided by this Policy, development is prohibited on land within Zone IN2 Light Industrial unless it is permitted by subclause (2) or (3).

**9 Zone SP2 Infrastructure**

- (1) The objectives of Zone SP2 Infrastructure are as follows:
- (a) to provide for infrastructure and related uses,
  - (b) to prevent development that is not compatible with or that may detract from the provision of infrastructure,
  - (c) to protect the infrastructure of Illawarra Regional Airport.
- (2) Development for the following purposes is permitted without development consent on land within Zone SP2 Infrastructure:
- drainage; fencing; vegetation management
- (3) Development for the following purposes is permitted only with development consent on land within Zone SP2 Infrastructure:
- the purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose; roads
- (4) Except as otherwise provided by this Policy, development is prohibited on land within Zone SP2 Infrastructure unless it is permitted by subclause (2) or (3).

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### 10 Zone E2 Environmental Conservation

- (1) The objectives of Zone E2 Environmental Conservation are as follows:
  - (a) to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values,
  - (b) to prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- (2) Development for the following purposes is permitted without development consent on land within Zone E2 Environmental Conservation:  
environmental protection works
- (3) Development for the following purposes is permitted only with development consent on land within Zone E2 Environmental Conservation:  
earthworks; environmental facilities; recreation areas; roads; wetland improvements
- (4) Except as otherwise provided by this Policy, development is prohibited on land within Zone E2 Environmental Conservation unless it is permitted by subclause (2) or (3).

### 11 Public utility undertakings excepted

Development for the purpose of a public utility undertaking that is carried out on land within the Illawarra Regional Business Park site does not require development consent.

**Note.** As a consequence of the removal of the requirement for development consent under Part 4 of the Act, development for the purposes of public utility undertakings is subject to the environmental assessment and approval requirements of Part 5 of the Act or, if it is applicable, Part 3A of the Act.

### 12 Exempt and complying development

Development within the Illawarra Regional Business Park site that satisfies the requirements for:

- (a) exempt development specified in *Shellharbour City Council Exempt Development Control Plan*, 4 May 2005, or
- (b) complying development specified in *Shellharbour City Council Complying Development Control Plan*, 4 May 2005,

as in force at the commencement of this Part, is exempt development or complying development, as appropriate.

**13 Subdivision—consent requirements**

- (1) Land within the Illawarra Regional Business Park site may be subdivided, but only with development consent.
- (2) However, development consent is not required for a subdivision for the purpose only of any one or more of the following:
  - (a) widening a public road,
  - (b) a minor realignment of boundaries that does not create additional lots or the opportunity for additional buildings,
  - (c) a consolidation of lots that does not create additional lots or the opportunity for additional buildings,
  - (d) rectifying an encroachment on a lot,
  - (e) creating a public reserve,
  - (f) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

**14 Height of buildings**

- (1) The objectives of this clause are as follows:
  - (a) to regulate the height of buildings on land in the Illawarra Regional Business Park site,
  - (b) to ensure that the effective and on-going operation of Illawarra Regional Airport is not compromised by any development,
  - (c) to protect the views to and from “Ravensthorpe” at 52–56 Tongarra Road, Albion Park, being a heritage item identified by *Shellharbour Rural Local Environmental Plan 2004*.
- (2) The height of a building on any land in the Illawarra Regional Business Park site is not to exceed the maximum height shown for the land on the:
  - (a) Height of Buildings Map, or
  - (b) Airport Height Limitation Plan,whichever is the lesser.
- (3) Despite subclause (2), development consent may be granted for development that exceeds the maximum height for the land if:
  - (a) the consent authority is satisfied that the proposed building is unlikely to adversely affect the views to and from “Ravensthorpe” as referred to in subclause (1) (c), and

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- (b) the consent authority is satisfied that the proposed building is unlikely to constitute an obstruction or hazard to aircraft flying in the vicinity, and
- (c) if the proposed building does not comply with the Airport Height Limitation Plan, the Civil Aviation Safety Authority has been given notice of the proposal and any comments made by it to the consent authority within 28 days of its being notified have been taken into consideration by the consent authority.

### 15 Floor space ratio

The floor space ratio of a building on any land in the Illawarra Regional Business Park site is not to exceed 1:1.

### 16 Exceptions to development standards

- (1) The objectives of this clause are:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that:

- (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
- (5) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (6) This clause does not allow consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated.

#### **17 Controls relating to miscellaneous permissible uses**

(1) **Industrial retail outlets**

If development for the purposes of an industrial retail outlet is permitted on any land in the Illawarra Regional Business Park site, the retail floor area must not exceed:

- (a) 40% of the combined gross floor area of the industrial retail outlet and the building or place on which the relevant industry is carried out, or
  - (b) 400 square metres,
- whichever is the lesser.

(2) **Neighbourhood shops**

If development for the purposes of a neighbourhood shop is permitted on any land in the Illawarra Regional Business Park site, the retail floor area must not exceed 80 square metres.

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**18 Controls relating to office premises**

The consent authority must not grant development consent to development for the purpose of office premises on land in the Illawarra Regional Business Park site unless it is satisfied that:

- (a) the office premises are ancillary to another use of the land, and
- (b) the gross floor area of the office premises will not exceed 25% of the gross floor area of all of the buildings on the land.

**19 Relevant acquisition authority**

- (1) The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991 (the owner-initiated acquisition provisions)*.

**Note.** If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant authority, section 23 of the *Land Acquisition (Just Terms Compensation) Act 1991* requires the authority to acquire the land.

- (2) The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).

Type of land shown on Land Reservation Acquisition Map	Authority of the State
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Zone SP2 Infrastructure and marked "Airport"	Council
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- (3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.

**Note.** If land, other than land specified in the Table to subclause (2), is required to be acquired under the owner-initiated acquisition provisions, the Minister for Planning is required to take action to enable the designation of the acquiring authority under this clause. Pending the designation of the acquiring authority for that land, the acquiring authority is to be the authority determined by order of the Minister for

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Planning (see section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

**20 Zone IN2 Light Industrial—satisfactory arrangements for the provision of regional transport infrastructure and services**

- (1) This clause applies to land in Zone IN2 Light Industrial within the Illawarra Regional Business Park site, but does not apply to any such land if the whole or any part of it is in a special contributions area (as defined by section 93C of the Act).
- (2) The object of this clause is to require assistance to authorities of the State towards the provision of designated State public infrastructure to satisfy needs that arise from development on land to which this clause applies.
- (3) Despite any other provision of this Part, the consent authority must not consent to the subdivision of land to which this clause applies unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the land to which this clause applies.
- (4) Subclause (3) does not apply in relation to:
  - (a) any land that is reserved exclusively for a public purpose, or
  - (b) any development that is, in the opinion of the consent authority, of a minor nature.
- (5) In this clause, *designated State public infrastructure* means public facilities or services that are provided or financed by the State (or if provided or financed by the private sector, to the extent of any financial or in-kind contribution by the State) of the following kinds:
  - (a) State and regional roads,
  - (b) bus interchanges and bus lanes,
  - (c) rail infrastructure and land,
  - (d) land required for regional open space,
  - (e) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).

**21 Suspension of covenants, agreements and instruments**

- (1) For the purpose of enabling development on land in the Illawarra Regional Business Park site to be carried out in accordance with this Policy or with a development consent granted under the Act,

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any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

- (2) This clause does not apply:
  - (a) to a covenant imposed by the Council or that the Council requires to be imposed, or
  - (b) to any prescribed instrument within the meaning of section 183A of the *Crown Lands Act 1989*, or
  - (c) to any conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
  - (d) to any Trust agreement within the meaning of the *Nature Conservation Trust Act 2001*, or
  - (e) to any property vegetation plan within the meaning of the *Native Vegetation Act 2003*, or
  - (f) to any biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*.
- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (4) Pursuant to section 28 of the Act, before the making of this clause, the Governor approved of subclauses (1)–(3).

## **Schedule 2      Amendment of State Environmental Planning Policy No 14—Coastal Wetlands**

(Clause 5)

**[1]    Clause 3 Definitions**

Omit “57,” from paragraph (k) of the definition of *the map*.

**[2]    Clause 3, definition of "the map"**

Insert after paragraph (k):

- (l) State Environmental Planning Policy (Major Projects) 2005 (Amendment No 28)—Illawarra Regional Business Park Site—Coastal Wetlands—map 25.