



New South Wales

# **State Environmental Planning Policy (Major Projects) Amendment (Caritas) 2009**

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. (S09/00174/PC)

KRISTINA KENEALLY, MP  
Minister for Planning

## **State Environmental Planning Policy (Major Projects) Amendment (Caritas) 2009**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Major Projects) Amendment (Caritas) 2009*.

### **2 Aims of Policy**

The aim of this Policy is to amend Part 11 of Schedule 3 to *State Environmental Planning Policy (Major Projects) 2005* relating to the Caritas site:

- (a) to replace the maps identifying the Caritas site and showing the maximum height of buildings and heritage items on that site, and
- (b) to clarify the development standards that apply to development that is a project to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies, and
- (c) to provide for exceptions to development standards in certain circumstances, and
- (d) to prohibit certain development if it would result in less than 8% of the total gross floor area permitted at the Caritas site being used for business premises and retail premises, and
- (e) to omit the provision for calculating *floor space ratio* so that the term has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

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

This Policy applies to the land shown edged heavy red on State Environmental Planning Policy (Major Projects) Amendment (Caritas) 2009 Land Application Map held in the head office of the Department.

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

**[1]      Schedule 3 State significant sites**

Omit “identified on Map 9 to this Schedule” from clause 1 of Part 11.

Insert instead “shown edged heavy red on the Land Application Map”.

**[2]      Schedule 3, Part 11, clause 2**

Omit the clause. Insert instead:

**2      Interpretation**

(1)      In this Part:

*Height of Buildings Map* means the State Environmental Planning Policy (Major Projects) Amendment (Caritas) 2009 Height of Buildings Map.

*Heritage Map* means the State Environmental Planning Policy (Major Projects) Amendment (Caritas) 2009 Heritage Map.

*Land Application Map* means the State Environmental Planning Policy (Major Projects) Amendment (Caritas) 2009 Land Application Map.

(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]      Schedule 3, Part 11, clause 3 (1) (b)**

Omit the paragraph. Insert instead:

(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.

**[4]      Schedule 3, Part 11, clause 3 (4)**

Insert after clause 3 (3):

(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.

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**[5] Schedule 3, Part 11, clause 4**

Omit the clause. Insert instead:

**4 Application of Division**

- (1) This Division applies to development on land within the Caritas site, except as provided by subclause (2).
- (2) Clauses 5A, 6, 7A, 9, 14 and 15 do not apply to development within the Caritas site to the extent that it is a project to which Part 3A of the Act applies.

**[6] Schedule 3, Part 11, clauses 5 and 5A**

Omit clause 5. Insert instead:

**5 Land use zones**

Land within the Caritas site is within Zone B4 Mixed Use.

**5A Objectives of land use zone to be taken into account**

The consent authority must have regard to the objectives for development in Zone B4 Mixed Use when determining a development application in respect of land within that zone.

**[7] Schedule 3, Part 11, clauses 7–8**

Omit clauses 7 and 8. Insert instead:

**7 Exceptions to development standards—Part 3A projects**

- (1) A development standard imposed by this or any other environmental planning instrument on development that is part of a project to which Part 3A of the Act applies, and is within the Caritas site, does not apply to that development if the Director-General is satisfied, and issues a certificate to the effect, that:
  - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) there are sufficient environmental planning grounds to justify exempting the development from that development standard.

- (2) In deciding whether to issue a certificate, the Director-General must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General.

**7A Exceptions to development standards—other development**

- (1) This clause applies to development on land within the Caritas site, other than development that is part of a project to which Part 3A of the Act applies.
- (2) 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.
- (3) 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.
- (4) 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.

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- (5) Consent must not be granted for development that contravenes a development standard unless:
  - (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (4), and
    - (ii) 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, and
  - (b) the concurrence of the Director-General has been obtained.
- (6) In deciding whether to grant concurrence, the Director-General must consider:
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (7) 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 (4).
- (8) This clause does not allow consent to be granted for development that would contravene a development standard for complying development.

### **8 Infrastructure development and the use of existing buildings of the Crown**

- (1) This Division does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried out with or without consent or that is exempt development under *State Environmental Planning Policy (Infrastructure) 2007*.
- (2) This Division does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

**[8] Schedule 3, Part 11, clause 10**

Omit the clause. Insert instead:

**10 Height of buildings**

- (1) Except as provided by subclause (2), the height of a building on any land within the Caritas site is not to exceed the maximum number of storeys shown for the land on the Height of Buildings Map.
- (2) If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.
- (3) For the purposes of this clause (including the Height of Buildings Map), the *number of storeys* does not include any underground storey.

**[9] Schedule 3, Part 11, clause 12 (2)**

Omit the subclause. Insert instead:

- (2) Development that is:
  - (a) the erection of a new building, or
  - (b) a change of use of an existing building,must not be carried out if it would result in the total gross floor area of all business premises and retail premises on the Caritas site being less than 8% of the maximum gross floor area permitted by subclause (1).

**[10] Schedule 3, Part 11, clause 13**

Omit the clause.

**[11] Schedule 3, Part 11, clause 14 (3)**

Omit the subclause. Insert instead:

- (3) In this clause, *heritage item* means a building, work, relic, tree or place that is indicated as a heritage item on the Heritage Map.

**[12] Schedule 3, Map 9**

Omit the map.