



New South Wales

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) Amendment 2021

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*.

ROB STOKES, MP
Minister for Planning and Public Spaces

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) Amendment 2021

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) Amendment 2021*.

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This Policy is repealed on the day following the day on which this Policy commences.

Schedule 1 Amendment of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

[1] Clause 5 Interpretation

Insert in alphabetical order in clause 5(2)—

campus student accommodation, in relation to a school, university or TAFE establishment, means residential accommodation that is—

- (a) associated with the school, university or TAFE establishment, and
- (b) principally for students enrolled at the school, university or TAFE establishment, and
- (c) not located on land outside the boundaries of the school, university or TAFE establishment, and
- (d) designed primarily for shared living with common spaces and shared facilities provided for residents.

[2] Clause 5(2), definition of “Child Care Planning Guideline”

Omit the definition.

Insert instead—

Child Care Planning Guideline means the Child Care Planning Guideline approved by the Planning Secretary and published in the Gazette on 1 October 2021.

[3] Clause 5(3)(f)

Omit “, ringbarking”.

[4] Clause 8 Relationship to other environmental planning instruments

Omit “Subject to subclause (2), if” from clause 8(1). Insert instead “If”.

[5] Clause 8(4)

Omit “subclause (2)”. Insert instead “subclause (3)”.

[6] Clauses 13(2)(a) and 21(9)(b)

Omit “the Office of Environment and Heritage” wherever occurring.

Insert instead “an appropriate Public Service employee designated by the Minister for Energy and Environment”.

[7] Clause 13 Consultation with public authorities other than councils

Omit “*Mine Subsidence Compensation Act 1961*—the Mine Subsidence Board” from clause 13(2)(h).

Insert instead “*Coal Mine Subsidence Compensation Act 2017*—Subsidence Advisory NSW”.

[8] Clause 13(3)(d)(i) and (ii)

Omit “access point to the school” wherever occurring.

Insert instead “or pedestrian access point to the school from a public road”.

[9] Clause 16 Additional uses of certain State land permitted

Omit clause 16(1)–(3). Insert instead—

- (1) Development for a purpose that is permitted under this Policy without development consent on relevant land by the zoning of the relevant land may be carried out without development consent on adjacent prescribed State land.
- (2) Development for a purpose that is permitted under this Policy with development consent on relevant land by the zoning of the relevant land may be carried out with development consent on adjacent prescribed State land, if there is a valid site compatibility certificate applying to the development.
- (3) Subclauses (1) and (2) apply despite any local environmental plan that applies to the adjacent land.

[10] Clause 16(4)

Omit “subclause (3)”. Insert instead “subclause (2)”.

[11] Clause 16(7) and (8)

Omit clause 16(7) and (8). Insert instead—

- (7) This clause does not apply to development for the purposes of campus student accommodation.
- (8) In this clause—
prescribed State land means State land other than the following land—
 - (a) land in the following zones under an environmental planning instrument—
 - (i) Zone RE1 Public Recreation,
 - (ii) Zone E1 National Parks and Nature Reserves,
 - (iii) Zone E2 Environmental Conservation,
 - (iv) Zone W1 Natural Waterways,
 - (b) land in a forestry area within the meaning of the *Forestry Act 2012*,
 - (c) land reserved under the *National Parks and Wildlife Act 1974*,
 - (d) land reserved under the *Crown Land Management Act 2016* for a public purpose that, in the opinion of the relevant planning panel, is an environmental protection or nature conservation purpose.

relevant land means—

- (a) for subclause (1)—land that is prescribed State land on which a school or TAFE establishment is located, and
- (b) for subclause (2)—land that was prescribed State land when the site compatibility certificate was issued and on which a school or TAFE establishment is located.

relevant planning panel has the same meaning as in clause 15.

[12] Part 2, Division 4, note 1

Omit the note.

[13] Clause 17 General requirements for exempt development

Omit clause 17(3)(g), including the note. Insert instead—

- (g) must not involve the removal or pruning of a tree or other vegetation that requires a permit or approval, unless the removal or pruning is undertaken in accordance with a permit or approval, and

Note— A permit or approval may be granted under *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

[14] Clause 17(3)(i) and (j)

Insert at the end of clause 17(3)(h)—

, and

- (i) must not be carried out on land that is in a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016* or declared critical habitat under the *Fisheries Management Act 1994*, Part 7A, and
- (j) must not be carried out on land in a wilderness area within the meaning of the *Wilderness Act 1987*.

[15] Clause 18 Exempt development for Schedule 1 purposes carried out by public authorities in connection with educational establishments

Omit clause 18(a). Insert instead—

- (a) it is carried out by or on behalf of a public authority in connection with—
 - (i) an existing educational establishment, or
 - (ii) existing campus student accommodation on land within the boundaries of the educational establishment.

[16] Clause 19 General requirements for complying development

Omit clause 19(2)(e), including the note. Insert instead—

- (e) not involve the removal or pruning of a tree or other vegetation that requires a permit or approval, unless the removal or pruning is undertaken in accordance with a permit or approval, and

Note— A permit or approval may be granted under *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

[17] Clause 19(4), note 2

Omit “\$20 million for the purpose of alterations or additions to”.

Insert instead “\$50 million for the purposes of the erection of a building, or alterations or additions to an existing building, at”.

[18] Clauses 20, 38(2), 48(2), 49(5) and 55(2)

Omit “development consent” wherever occurring. Insert instead “approval”.

[19] Clause 21 General conditions of complying development certificates

Omit “Office of Environment and Heritage” from clause 21(10)(b).

Insert instead “Secretary of the Department of Premier and Cabinet”.

[20] Clause 24A

Insert after clause 24—

24A Centre-based child care facility—floor space ratio

- (1) Development consent must not be granted for the purposes of a centre-based child care facility in Zone R2 Low Density Residential if the floor space ratio for the building on the site of the facility exceeds 0.5:1.
- (2) This clause does not apply if another environmental planning instrument or a development control plan sets a maximum floor space ratio for the centre-based child care facility.

[21] Clause 30 Home-based child care—complying development

Omit “a lot that is wholly or partly” from clause 30(3).

[22] Clause 30(3)(d)

Insert “on which the development is carried out (the *relevant lot*)” after “the lot”.

[23] Clause 30(3)(e)(i)

Omit the subparagraph. Insert instead—

- (i) a reticulated water supply connection to the relevant lot and a fire hydrant within 70m of the part of the development carried out on bush fire prone land, or

[24] Clause 30(3)(e)(ii) and (g)–(j)

Omit “the lot” wherever occurring. Insert instead “the relevant lot”.

[25] Clauses 31(3), 32(3), 36(3), 39(4), 40(3), 46(2)(b), 49(6), 53(2)(b) and (3) and 56(4)

Omit “most recent development consent” wherever occurring.

Insert instead “development consent currently operating”.

[26] Clause 33, heading

Omit the heading. Insert instead—

33 Interpretation

[27] Clause 33(2)

Insert at the end of the clause—

- (2) In this Part, development for the purposes of a school does not include development for the purposes of campus student accommodation.

[28] Clause 34

Omit the clause. Insert instead—

34 Development for purposes of campus student accommodation

- (1) Despite clause 33(2), development for the purposes of campus student accommodation may be carried out by a person with development consent on land within the boundaries of the school.
- (2) Development consent must not be granted if the development involves the subdivision of land.
- (3) Development consent must not be granted unless the consent authority has considered the design quality of the development, evaluated in accordance with the design quality principles set out in Schedule 4.

- (4) For the purposes of subclause (3), a reference in Schedule 4 to a school is taken to include a reference to campus student accommodation.

[29] Clauses 35(11), 45(7) and 52(7)

Omit the subclauses.

[30] Clause 36 Schools—development permitted without consent

Omit “1 storey” wherever occurring in clause 36(1)(a)(i)–(iii).

Insert instead “2 storeys”.

[31] Clauses 36(1)(a)(iv)–(vi)

Omit clause 36(1)(a)(iv) and (v). Insert instead—

- (iv) a kiosk or shop selling school-related goods to students and staff, such as books, stationery or school uniforms, that is not more than 2 storeys high, or
- (v) a cafeteria or canteen that is not more than 2 storeys high and carried out in accordance with AS 4674—2004, *Design, construction and fit-out of food premises*, published by Standards Australia on 11 February 2004, or
- (vi) a car park that is not more than 1 storey high,

[32] Clause 36(2) and (2A)

Omit clause 36(2). Insert instead—

- (2) Subclause (1) applies only if the development does not require an alteration of traffic arrangements, for example, a new vehicular access point to the school or a change in location of an existing vehicular access point to the school.
- (2A) Subclause (1)(a) applies only if the development does not result in a prohibited increase in student or staff numbers.

[33] Clause 36(5) and (6)

Insert after clause 36(4)—

- (5) This clause does not apply to development for the purposes of campus student accommodation.
- (6) In this clause—
prohibited increase in student or staff numbers means—
 - (a) an increase in the number of students that the school can accommodate that is more than the greater of 10% or 30 students, compared with the average number of students for the 12 months immediately before the commencement of the development, or
 - (b) an increase in the number of staff employed at the school that is more than 10%, compared with the average number of staff for the 12 months immediately before the commencement of the development.

[34] Clause 38 Existing schools—exempt development

Omit clause 38(1)(h) and (i). Insert instead—

- (h) the use of existing facilities or buildings for the purposes of school-based child care between the hours of 7:00am and 7:00pm on a weekday only, whether or not it is a commercial use of the establishment,

- (i) the use of existing facilities or buildings for the physical, social, cultural or intellectual development or welfare of the community, whether or not it is a commercial use of the establishment,

[35] Clause 38(1)(l)(iii)

Omit “24 months”. Insert instead “48 months”.

[36] Clause 38(4)

Insert at the end of clause 38—

- (4) This clause applies to development for the purposes of existing campus student accommodation on land within the boundaries of the existing school with which the accommodation is associated only.

[37] Clause 39 Existing schools—complying development

Insert “a classroom or” after “including” in clause 39(1)(a)(iii).

[38] Clause 39(1)(a)(iv)

Insert “or canteen” after “cafeteria”.

[39] Clause 39(1)(a)(v)

Omit “bookshop for students or staff (or both)”.

Insert instead “shop selling school-related goods to students and staff, such as books, stationery or school uniforms”.

[40] Clause 39(1), note and (2), notes 1 and 2

Omit the notes.

[41] Clause 39(2A) and (2B)

Insert after clause 39(2)—

- (2A) Development carried out by or on behalf of any person on land within the boundaries of an existing school for the purposes of campus student accommodation is complying development if the development—

- (a) involves only—

- (i) a minor alteration or addition to a building that does not result in an increase in the gross floor area or height of the building, or

Example— Minor alterations and additions include internal fitouts, structural upgrades, or alterations or additions to enable plant or equipment to be installed, to address work health and safety requirements or to provide access for people with a disability.

- (ii) the restoration, replacement or repair of a damaged building that does not result in an increase in the gross floor area or height of the building, and

- (b) complies with this clause.

- (2B) Except as provided by subclause (2A), development for the purposes of campus student accommodation is not complying development under this clause.

[42] Clause 39(3A)

Insert after clause 39(3)—

- (3A) Development that will result in the erection of a building over a registered easement is not complying development under this clause.

[43] Clause 39, notes 1 and 2

Insert at the end of the clause—

Note 1— Complying development must also comply with the general requirements in clause 19.

Note 2— Development to which the *Rural Fires Act 1997*, section 100B(1) applies is not complying development under this Policy.

[44] Clause 43, heading

Omit the heading. Insert instead—

43 Interpretation

[45] Clause 43(2)

Insert at the end of the clause—

- (2) In this Part, development for the purposes of a university does not include development for the purposes of campus student accommodation.

[46] Clause 44

Omit the clause. Insert instead—

44 Development for purposes of campus student accommodation

- (1) Despite clause 43(2), development for the purposes of campus student accommodation may be carried out by a person with development consent on land within the boundaries of the university.
- (2) Development consent must not be granted if the development involves the subdivision of land.
- (3) Development consent must not be granted unless the consent authority has considered the design quality of the development, evaluated in accordance with the design quality principles set out in Schedule 4.
- (4) For the purposes of subclause (3), a reference in Schedule 4 to a school is taken to include a reference to campus student accommodation.

[47] Clause 46 Universities—development permitted without consent

Omit “1 storey” wherever occurring in clause 46(1)(a)(i)–(v).

Insert instead “2 storeys”.

[48] Clauses 46(1)(a)(ii), 49(1)(a)(iii), 53(1)(a)(ii) and 56(1)(a)(iii)

Insert “classroom or” after “including a” wherever occurring.

[49] Clause 46(1)(a)(vi)

Omit the subparagraph.

[50] Clause 46(1)(a)(ix) and (x)

Insert at the end of clause 46(1)(a)(viii)—

, or

- (ix) a kiosk or shop selling university-related goods to students and staff, such as books, stationery or university merchandise, that is not more than 2 storeys high, or
- (x) a cafeteria or canteen that is not more than 2 storeys high and carried out in accordance with AS 4674—2004, *Design, construction and fit-out of food premises*, published by Standards Australia on 11 February 2004,

[51] Clause 46(3A)

Insert after clause 46(3)—

- (3A) This clause does not apply to development for the purposes of campus student accommodation.

[52] Clause 48(4)

Insert at the end of clause 48—

- (4) This clause applies to development for the purposes of existing campus student accommodation on land within the boundaries of the existing university with which the accommodation is associated only.

[53] Clause 49 Existing universities—complying development

Omit the notes to clause 49(1) and (2).

[54] Clause 49(2A) and (2B)

Insert after clause 49(2)—

- (2A) Development carried out by or on behalf of any person on land within the boundaries of an existing university for the purposes of campus student accommodation is complying development if the development—
 - (a) involves only—
 - (i) a minor alteration or addition to a building that does not result in an increase in the gross floor area or height of the building, or
Example—Minor alterations and additions include internal fitouts, structural upgrades, or alterations or additions to enable plant or equipment to be installed, to address work health and safety requirements or to provide access for people with a disability.
 - (ii) the restoration, replacement or repair of a damaged building that does not result in an increase in the gross floor area or height of the building, and
 - (b) complies with this clause.
- (2B) Except as provided by subclause (2A), development for the purposes of campus student accommodation is not complying development under this clause.

[55] Clause 49, note

Insert at the end of the clause—

Note—Complying development must also comply with the general requirements in clause 19.

[56] Clause 50, heading

Omit the heading. Insert instead—

50 Interpretation

[57] Clause 50(2)

Insert at the end of the clause—

- (2) In this Part, development for the purposes of a TAFE establishment does not include development for the purposes of campus student accommodation.

[58] Clause 51

Omit the clause. Insert instead—

51 Development for purposes of campus student accommodation

- (1) Despite clause 50(2), development for the purposes of campus student accommodation may be carried out by a person with development consent on land within the boundaries of the TAFE establishment.
- (2) Development consent must not be granted if the development involves the subdivision of land.
- (3) Development consent must not be granted unless the consent authority has considered the design quality of the development, evaluated in accordance with the design quality principles set out in Schedule 4.
- (4) For the purposes of subclause (3), a reference in Schedule 4 to a school is taken to include a reference to campus student accommodation.

[59] Clause 53 TAFE establishments—development permitted without consent

Omit “1 storey” wherever occurring in clause 53(1)(a)(i)–(iv) and (vi)–(viii).

Insert instead “2 storeys”.

[60] Clause 53(4A)

Insert after clause 53(4)—

- (4A) This clause does not apply to development for the purposes of campus student accommodation.

[61] Clause 55 Existing TAFE establishments—exempt development

Insert at the end of the clause—

- (4) This clause applies to development for the purposes of existing campus student accommodation on land within the boundaries of the existing TAFE establishment with which the accommodation is associated only.

[62] Clause 56 Existing TAFE establishments—complying development

Omit the notes to clause 56(1) and (2).

[63] Clause 56(2A) and (2B)

Insert after clause 56(2)—

- (2A) Development carried out by or on behalf of any person on land within the boundaries of an existing TAFE establishment for the purposes of campus student accommodation is complying development if the development—
 - (a) involves only—
 - (i) a minor alteration or addition to a building that does not result in an increase in the gross floor area or height of the building, or
Example—Minor alterations and additions include internal fitouts, structural upgrades, or alterations or additions to enable plant or

equipment to be installed, to address work health and safety requirements or to provide access for people with a disability.

- (ii) the restoration, replacement or repair of a damaged building that does not result in an increase in the gross floor area or height of the building, and

(b) complies with this clause.

- (2B) Except as provided by subclause (2A), development for the purposes of campus student accommodation is not complying development under this clause.

[64] Clause 56(3A)

Insert after clause 56(3)—

- (3A) Development that will result in the erection of a building over a registered easement is not complying development under this clause.

[65] Clause 56, note

Insert at the end of the clause—

Note— Complying development must also comply with the general requirements in clause 19.

[66] Schedule 1 Exempt development—general

Insert in appropriate order in the matter under the heading **General provisions**—

- | | |
|---|---|
| Geotechnical investigations and other testing, surveying and sampling for the purposes of the design or assessment of proposed development or for the purposes of system development or determining the safety or condition of infrastructure | <ul style="list-style-type: none">• Must not involve greater disturbance of the ground or vegetation than is necessary.• Must not result in an increase in stormwater drainage or run-off from the site concerned. |
|---|---|

[67] Schedule 2, clause 3 and Schedule 3, clause 4

Insert “or environmental” after “residential” wherever occurring.

[68] Schedule 2 Schools—complying development

Omit “an industrial or a business zone” wherever occurring in clause 3.

Insert instead “any other zone”.

[69] Schedule 2, clause 6 and Schedule 3, clause 7(b)

Omit “lot boundary” wherever occurring. Insert instead “property boundary”.

[70] Schedule 2, clause 9(a) and Schedule 3, clause 10(a)

Omit the paragraphs. Insert instead—

- (a) the landscaped area located along the part of the common boundary adjacent to the new building must be 3m wide,

[71] Schedule 2, clause 10(3)

Omit the subclause. Insert instead—

- (3) This clause does not apply if the development uses an existing garbage and waste storage area, whether or not the area complies with this clause, that has capacity.

[72] Schedule 3 Universities and TAFE establishments—complying development

Omit clause 11(3). Insert instead—

- (3) This clause does not apply if the development uses an existing garbage and waste storage area, whether or not the area complies with this clause, that has capacity.

[73] Schedule 3, clause 14(1)(a)

Omit “a lot that is wholly or partly”.

[74] Schedule 3, clause 14(2)

Omit the subclause. Insert instead—

- (2) The development may be carried out only if—
- (a) the development conforms to the specifications and requirements of *Planning for Bush Fire Protection* that are relevant to the development, and
 - (b) the lot on which the development is carried out (the *relevant lot*) has direct access to a public road or a road vested in or maintained by the council, and
 - (c) a reticulated water supply is connected to the relevant lot, and
 - (d) a fire hydrant is located within 70m of the part of the development carried out on bush fire prone land, and
 - (e) mains electricity is connected to the relevant lot, and
 - (f) reticulated or bottled gas on the relevant lot is installed and maintained in accordance with AS/NZS 1596:2014, *The storage and handling of LP Gas* and the requirements of relevant authorities, for example, the requirement that metal piping must be used, and
 - (g) gas cylinders on the relevant lot that are within 10m of a dwelling—
 - (i) have the release valves directed away from the dwelling, and
 - (ii) are enclosed on the hazard side of the installation, and
 - (iii) have metal connections to and from the cylinders, and
 - (h) there are no polymer sheathed flexible gas supply lines to gas meters adjacent to a dwelling on the relevant lot or an adjoining lot.

Note— The requirements relating to the construction of buildings in bush fire prone areas set out in the *Building Code of Australia* also apply.

[75] Schedule 5 Savings and transitional provisions

Insert after clause 2—

3 State Environmental Planning Policy (Educational Establishments and Child Care Facilities) Amendment 2021

An amendment to this Policy made by the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) Amendment 2021* does not apply to the following applications made but not finally determined before the commencement of that Policy—

- (a) a development application,

- (b) an application for a complying development certificate,
- (c) an application by a proponent for a determining authority's approval of an activity under the Act, Part 5.

[76] Schedule 6 Amendment of environmental planning instruments

Repeal the Schedule.

Schedule 2 Amendment of State Environmental Planning Policy (State and Regional Development) 2011

Schedule 1 State significant development—general

Omit clause 15. Insert instead—

15 Educational establishments

- (1) Development that has a capital investment value of more than \$20 million that—
 - (a) is for the purpose of a new school, or
 - (b) involves the erection of a building for an existing school on land that, immediately before the commencement of the development, was not used for the purposes of a school.
- (2) Development for the purposes of the erection of a building, or alterations or additions to an existing building, at an existing school that has a capital investment value of more than \$50 million.
- (3) Development for the purposes of a tertiary institution, including an associated research facility, that has a capital investment value of more than \$50 million.
- (4) This clause does not apply to development that consists only of development for the purposes of campus student accommodation within the site of a school or tertiary institution.
- (5) This clause, as in force immediately before the commencement of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) Amendment 2021*, Schedule 2 continues to apply to a development application made but not finally determined before the commencement.
- (6) In this clause—

campus student accommodation has the same meaning as in *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

tertiary institution has the same meaning as in *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.