



New South Wales

Standard Instrument (Local Environmental Plans) Amendment Order 2006

under the

Environmental Planning and Assessment Act 1979

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, CVO, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 33A of the *Environmental Planning and Assessment Act 1979*, make the following Order.

Dated, this 30th day of August 2006.

By Her Excellency's Command,

FRANK SARTOR, M.P.,
Minister for Planning

Explanatory note

The object of this Order is to amend the standard instrument prescribed for principal local environmental plans as follows:

- (a) to provide additional provisions for the purposes of the application of floor space ratios to development sites, particularly sites consisting of 2 or more lots or including community land or public places,
- (b) to substitute the provision permitting the owner-initiated acquisition of land reserved for public purposes with a provision identifying the authority of the State that is to be the relevant acquiring authority under the owner-initiated provisions of the *Land Acquisition (Just Terms Compensation) Act 1991*, as a result of amendments to the *Environmental Planning and Assessment Act 1979*,
- (c) to continue, in connection with that substitution, the provision for the concurrence of the Roads and Traffic Authority to be obtained to development on land reserved for the purposes of a classified road,

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- (d) to make other minor amendments, statute law revision amendments and consequential amendments.

This Order is made under section 33A of the *Environmental Planning and Assessment Act 1979*.

**Standard Instrument (Local Environmental Plans)
Amendment Order 2006**

under the

Environmental Planning and Assessment Act 1979

1 Name of Order

This Order is the *Standard Instrument (Local Environmental Plans) Amendment Order 2006*.

2 Amendment of Standard Instrument (Local Environmental Plans) Order 2006

The standard instrument prescribed by *Standard Instrument (Local Environmental Plans) Order 2006* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Clause 7 Maps [compulsory]

Insert “or aspect” after “part” in clause 7 (2).

[2] Land Use Table at the end of Part 2

Omit “activities” from item 3 of the matter relating to Zone RU1 Primary Production.

Insert instead “industries”.

[3] Land Use Table

Transfer “Places of public worship” in item 3 of the matter relating to Zone R4 High Density Residential to its correct position in alphabetical order in that item.

[4] Land Use Table

Omit “Standard industries;” from item 3 of the matter relating to Zone IN1 General Industrial.

[5] Land Use Table

Omit “orientated” from item 1 of the matter relating to Zone SP3 Tourist.

Insert instead “oriented”.

[6] Land Use Table

Omit “Moorings” wherever occurring in the directions in the matter relating to Zone W2 Recreational Waterways and Zone W3 Working Waterways.

[7] Clause 23

Insert after clause 22:

23 Calculation of floor space ratio and site area [optional]

(1) Objectives

The objectives of this clause are as follows:

- (a) to define *floor space ratio*,

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- (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:
- (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
 - (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and
 - (iii) require community land and public places to be dealt with separately.

(2) **Definition of “floor space ratio”**

The *floor space ratio* of buildings on a site is the ratio of the total floor space area of all buildings within the site to the site area.

(3) **Site area**

In determining the site area of proposed development for the purpose of applying a floor space ratio, the *site area* is taken to be:

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or
- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

(4) **Exclusions from site area**

The following land must be excluded from the site area:

- (a) land on which the proposed development is prohibited, whether under this Plan or any other law,
- (b) community land or a public place (except as provided by subclause (7)).

(5) **Strata subdivisions**

The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only to the extent that it does not overlap with another lot already included in the site area calculation.

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(6) **Only significant development to be included**

The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.

(7) **Certain public land to be separately considered**

For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.

(8) **Existing buildings**

The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.

(9) **Covenants to prevent “double dipping”**

When consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the restricted lot) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted lot.

(10) **Covenants affect consolidated sites**

If:

- (a) a covenant of the kind referred to in subclause (9) applies to any land (*affected land*), and
- (b) proposed development relates to the affected land and other land that together comprise the site of the proposed development,

the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Plan is reduced by the quantity of floor space area the covenant prevents being created on the affected land.

(11) **Definition**

In this clause, *public place* has the same meaning as it has in the *Local Government Act 1993*.

[8] **Clause 23**

Renumber as clause 24.

[9] **Clauses 25 and 26**

Omit existing clause 24. Insert instead:

25 Land acquisition within certain zones [compulsory]

- (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 Map	Authority of the State
Zone RE1 Public Recreation and marked "Local open space"	Council
Zone RE1 Public Recreation and marked "Regional open space"	The corporation constituted under section 8 of the Act
Zone SP2 Infrastructure and marked "Classified road"	Roads and Traffic Authority

Direction. Land is required to be shown on the Land Reservation Acquisition Map if it is expressly set apart by the Plan exclusively for a public purpose referred to in section 26 (1) (c) of the Act. However, any such land that is held by an authority of the State, or by a public company or a subsidiary of a public company (within the meaning of the *Corporations Act 2001* of the Commonwealth) is not required to be shown on that Map. An authority of the State is to be listed for all land

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shown on the Land Reservation Acquisition Map, but the land is not to be so reserved and the authority listed unless the authority consents to its being listed.

- (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.

26 Development on proposed classified road [compulsory]

- (1) Consent for development on land reserved for the purposes of a classified road may, before the land becomes a classified road, be granted only if:
 - (a) the development is carried out with the concurrence of the Roads and Traffic Authority (*the RTA*), and
 - (b) the development is of a kind, or is compatible with development of a kind, that may be carried out on land in an adjoining zone.
- (2) In deciding whether to grant concurrence to proposed development under this clause, the RTA must take the following matters into consideration:
 - (a) the need to carry out development on the land for the purposes of a classified road or a proposed classified road,
 - (b) the imminence of acquisition of the land by the RTA,
 - (c) the likely additional cost to the RTA resulting from the carrying out of the proposed development.

[10] Clauses 27–38

Renumber existing clauses 25–36 as clauses 27–38.

[11] Renumbered clause 27 Classification and reclassification of public land [compulsory]

Insert “,” after “public reserve” where firstly occurring in renumbered clause 27 (5).

[12] Renumbered clause 34 Preservation of trees or vegetation [optional]

Omit “a routine agricultural management activity within the meaning of that Act carried out on land to which that Act applies” from renumbered clause 34 (8) (a).

Insert instead “otherwise permitted under Division 2 or 3 of Part 3 of that Act”.

[13] Renumbered clause 34 (8) (b)

Insert after renumbered clause 34 (8) (a):

- (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause, or

[14] Renumbered clause 34 (8)

Renumber existing subclause (8) (b)–(d) as subclause (8) (c)–(e).

[15] Renumbered clause 35 Heritage conservation [compulsory]

Omit renumbered clause 35 (4). Insert instead:

(4) Heritage impact assessment

The consent authority may, before granting consent to any development on land:

- (a) on which a heritage item is situated, or
- (b) within a heritage conservation area, or
- (c) within the vicinity of land referred to in paragraph (a) or (b),

require a heritage impact statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

[16] Renumbered clause 37 Development for group homes [compulsory]

Omit renumbered clause 37 (2).

Insert instead:

- (2) If development for the purpose of a dwelling house or a dwelling in a residential flat building may lawfully be carried out in accordance with this Plan, development for the purposes of a group home may, subject to this clause, be carried out.

[17] Renumbered clause 37 (3)–(5) and (7)

Omit “erect or use” wherever occurring.

Insert instead “carry out development for the purposes of”.

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- [18] **Renumbered clause 38 Crown development and public utilities [compulsory]**
Omit “, School Forest Trust” from renumbered clause 38 (10).
- [19] **Renumbered clause 38 (10)**
Omit “reading”. Insert instead “the construction of roads”.
- [20] **Dictionary**
Omit “published by the Director-General” from the definition of *Acid Sulfate Soils Guidelines*.
Insert instead “approved for the purposes of this definition by the Director-General and made publicly available”.
- [21] **Dictionary, definition of “floor space ratio”**
Omit the definition. Insert instead:
floor space ratio—see clause 23.
- [22] **Dictionary, definition of “liquid fuel depot”**
Transfer the definition to its correct position in alphabetical order in the Dictionary.
- [23] **Dictionary, definitions of “local heritage significance” and “maintenance”**
Omit “historical” wherever occurring.
- [24] **Dictionary, definitions of “non-potable water” and “potable water”**
Omit “health and aesthetic values set out in the Australian Drinking Water Guidelines issued”.
Insert instead “standards or values for drinking water recommended”.
- [25] **Dictionary, definition of “public hall”**
Omit the definition.
- [26] **Dictionary, definition of “retail premises”**
Insert “(” before “or whether also”.
- [27] **Dictionary, definition of “sensitive coastal location”**
Omit “, an estuary or a coastal lake” from paragraph (a).
Insert insert “or an estuary”.

[28] Dictionary, definition of “sensitive coastal location”

Insert after paragraph (a):

(b) a coastal lake,

[29] Dictionary, definition of “sensitive coastal location”

Renumber existing paragraphs (b)–(g) as paragraphs (c)–(h).

[30] Dictionary, definition of “site area”

Omit the definition. Insert instead:

site area means the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other.

Note. The effect of this definition is varied by clause 23 for the purpose of the determination of permitted floor space area for proposed development.

[31] Dictionary, definition of “standard industry”

Omit the definition.