

Department of Planning and Environment

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Update of the Dark Sky Planning Guideline and related planning controls

Explanation of intended effect

September 2022





Acknowledgement of Country

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Introduction

The Dark Sky Planning Guideline informs development controls that apply to land within the 4 local government areas surrounding Siding Springs Observatory (Coonamble, Dubbo, Gilgandra and Warrumbungle), and the assessment of significant development within 200 kilometres of the observatory.

The NSW Department of Planning and Environment released the guideline in June 2016 and it has been received well by the community and other stakeholders. However, since that time, stakeholders have alerted the department to several improvements that we could make to the guideline and related controls. We are now updating the guideline and planning controls to ensure they remain fit for purpose.

The project supports Objective 22 of the draft Central West and Orana Regional Plan 2041: Protect Australia's First Dark Sky Park. The observatory has over 40 telescopes and is one of few in the world that can observe the whole southern-hemisphere sky. It is critical to our understanding of the universe and the scientific endeavours of Australian and international astronomers. Each year the observatory attracts over 24,000 visitors and injects more than \$5 million directly into the local economy. Its continued operation is dependent on the dark night sky being free from light pollution.

As part of the review, the department is proposing changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP). The changes will give applicants and councils greater flexibility when carrying out and assessing minor works, while continuing to protect observation conditions at the observatory and lessen the effects of light pollution. We will also include more detailed information in the guideline on how to reduce the effects of obtrusive lighting.

The department is proposing these amendments in response to feedback received from the observatory and 4 councils surrounding the observatory. The proposed amendments aim to strike the right balance between enabling certain developments to be carried out as exempt development, while also ensuring there are adequate controls in place to ensure the observatory can continue to carry out its important work.

Legislative framework

The guideline is supported by environmental planning controls for development on land surrounding the observatory.

Environmental Planning and Assessment Regulation 2021

Under the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation), when a consent authority (for example, a council) determines a development application for development near the observatory, it must consider the Dark Sky Planning Guideline (clause 61(3)).

This applies to:

- all development applications in the local government areas (LGAs) of Coonamble, Gilgandra or Warrumbungle Shire
- all development applications in the part of Dubbo Regional LGA that was formerly in the City of Dubbo
- state-significant development, designated development, and regionally significant development within 200 km of the Siding Spring Observatory.

Standard Instrument – Principal Local Environmental Plan 2006

Local environmental plans (LEPs) guide planning decisions for local government areas through zoning and development controls. LEPs are based on standard provisions that are set out in the *Standard Instrument – Principal Environmental Plan 2006* (Standard Instrument).

Cl. 5.14 of the Standard Instrument is an optional clause designed to protect observing conditions at the observatory by promoting lighting practices that minimise light pollution. It has been adopted into the LEPs of Dubbo Regional, Warrumbungle Shire, Coonamble Shire and Gilgandra Shire councils. It includes limits on the types of development that can be carried out, based on how far it is from the observatory. The clause contains controls including that:

- development consent is required for all lit development on land less than 18 km from the observatory
- development consent must not be granted for development less than 18 km from the observatory if the development is likely to exceed certain thresholds, including lumen (brightness) limits
- lit development within 18 km of the observatory must incorporate designs that minimise light pollution and prevent the escape of light through skylights, windows and other openings

- development consent must not be granted for development on land more than 18 km from the observatory if it is likely to emit light of 1 million lumens or more (except with agreement from the Planning Secretary)
- consultation with the observatory is required for certain types of lit development.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The Codes SEPP provides exempt and complying development pathways for different types of developments to be carried out without the need to lodge a development application. This is meant to speed up the approval process for relatively straightforward, minor works.

Except as provided by cl. 1.16A, exempt development under the Codes SEPP does not apply to land that is less than 18 km from the observatory. Cl. 1.16A notes that certain exempt provisions apply within 18 km of the observatory. However, the clause prevents exempt development being carried out if it has any form of lighting and is one of the types of developments listed in cl. 1.16A(b).

Cl. 1.18(g) of the Codes SEPP bans the construction or installation of a skylight or a roof or window as complying development on land within the 4 LGAs surrounding the observatory.

The Codes SEPP also contains a Siding Springs clause for several housing and industrial and business codes. This sets development standards for complying development to be carried out within the 4 LGAs. The Siding Springs clause currently applies to:

- 3B Low Rise Housing Diversity Code
- 3C Greenfield Housing Code
- 3D Inland Code
- 5 Industrial and Business Alterations Code
- 5A industrial and Business Buildings Code.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The *State Environmental Planning Policy (Transport and Infrastructure) 2021* specifies that the director of the observatory must be consulted if:

- an infrastructure development (cl. 2.15(2)(d)), or
- development of educational establishments and childcare facilities (cl. 3.12(2)(c))

is carried out on land within the Dark Sky Region that may increase the amount of artificial light in the night sky.

The Dark Sky Region is defined as land within 200 km of the observatory.

State Environmental Planning Policy (Housing) 2021

The *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) contains development standards for outside light fittings for secondary dwellings (granny flats) and group homes built as complying development near Siding Spring observatory. It also sets out that provisions within the SEPP for caravan parks and manufactured home estates do not apply within 18 km of the observatory.

Initial evaluation

In October and November 2021, the department held 2 consultation sessions with the observatory, government agencies and the 4 councils surrounding the observatory. We held the sessions to get feedback from key stakeholders on how the guideline was working for them and how it could be improved.

This complemented feedback that the department received throughout the years of the guideline's operation. As well as considering the feedback we received as part of the consultation sessions, the department did a desktop review of the legislative provisions detailed above.

Key findings

Feedback was mostly supportive of the guideline and found that it and the associated legislative provisions were effective in minimising light pollution in the Dark Sky Region. However, there were some matters raised that needed more analysis. These included:

- an increased workload for some councils because cl. 1.16A(b) of the Codes SEPP excluded certain developments from the exempt development pathway. This was cited as a drain on council resources and expensive for applicants, who would instead have to submit a development application.
- concerns about the effects of illuminated signs within 18 km of the observatory, including roadwork signs, advertising and building identification signs
- concerns about the potential for light spill from skylights, which if not fitted with a proper blind or other control measure, could negatively affect observation conditions at night
- a request for more educational materials for the public, builders and councils about the guideline and how to minimise light pollution when carrying out developments.

Other changes to the guideline have also been suggested, which are mostly minor. The significant changes proposed are detailed later in this document.

Proposed amendments

Codes SEPP

The department proposes making several changes to the Codes SEPP. These are designed to give applicants greater flexibility to carry out certain exempt development works, while also ensuring developments which have the potential to negatively affect observation conditions are properly assessed. These are detailed in Table 1 to Table 4.

Table 1. Cl. 1.16A(b): Amended wording

Cl. 1.16A(b) of Codes SEPP	Explanation
<p>Description</p>	<p>Clause 1.16A of the Codes SEPP sets the requirements for exempt development within 18 km of the observatory. This bans exempt development from being carried out if it has any form of lighting and if it is a development listed under cl. 1.16A(b).</p> <p>As currently worded, cl. 1.16A can be interpreted that developments listed under cl. 1.16A(b) can still be carried out as exempt development, if they do not have any form of lighting (as required by cl. 1.16A(a)). This was not how the clause was intended to be interpreted.</p>
<p>Proposed amendment</p>	<p>The department proposes to amend cl. 1.16A(b) to make it clear that developments listed in the subclause are not exempt development, regardless of whether they have lighting or not (within 18 km of the observatory).</p>
<p>Effect of proposed amendment</p>	<p>This change will clarify that developments listed under cl. 1.16A cannot be carried out as exempt development, regardless of whether they have lighting.</p>
<p>Justification</p>	<p>The amendment makes clear that developments that have the potential to negatively affect the night sky cannot be carried out as exempt development within 18 km of the observatory. The department proposes making this change together with the amendment detailed below.</p>

Table 2. Cl. 1.16A(b): Lifting exempt development restrictions

Cl. 1.16A(b) of Codes SEPP	Explanation
<p>Description</p>	<p>Cl. 1.16A(b) lists the types of developments that cannot be carried out as exempt development within 18 km of the observatory:</p> <ul style="list-style-type: none"> i. Subdivision 6 Balconies, decks, patios, pergolas, terraces and verandahs ii. Subdivision 10 Carports iii. Subdivision 10A Change of use of premises iv. Subdivision 10B Change of use of places of public worship v. Subdivision 16 Farm buildings (other than stock holding yards, grain silos and grain bunkers) vi. Subdivision 16A Stock holding yards not used for sale of stock vii. Subdivision 16B Grain silos and grain bunkers viii. Subdivision 24 Landscaping structures ix. Subdivision 27 Minor building alterations (external) x. Subdivision 27A Mobile food and drink outlets xi. Subdivision 37 Skylights, roof windows and ventilators.
<p>Proposed amendment</p>	<p>The department proposes to remove several developments from 1.16A(b) so only the following remain:</p> <ul style="list-style-type: none"> • Subdivision 10A Change of use of premises • Subdivision 10B: Change of use of places of public worship • Subdivision 27A: Mobile food truck and drink outlets • Subdivision 37: Skylights, roof windows and ventilators.
<p>Effect of proposed amendment</p>	<p>Removing certain developments from 1.16A(b) will mean that they can be carried out as exempt development within 18 km of the observatory, if they do not have any lighting.</p>

Cl. 1.16A(b) of Codes SEPP	Explanation
<p>Justification</p>	<p>Removing these developments will reduce development application (DA) caseloads for councils and financial costs for applicants. Developments that incorporate lighting will still be subject to the DA process because of cl. 1.16A(a).</p> <p>We have kept the developments under cl. 1.16A(b) for the following reasons:</p> <ul style="list-style-type: none"> • Change of use: This will give oversight when updating old buildings to new lighting standards. • Mobile food trucks: Mobile food trucks are temporary in nature, almost always incorporate lighting in their design and can operate late at night. Retaining mobile food trucks under cl. 1.16A(b) adds an extra layer of control beyond that provided by 1.16A(a) and will ensure applicants are aware they must have development consent to operate within 18 km of the observatory. • Skylights: Retaining skylights under cl. 1.16A(b) is necessary as it could be argued they do not have any form of lighting in their design, meaning that cl. 1.16A(a) could be challenged on this basis.

Table 3. Dubbo Regional LEP 2022

References to Dubbo Regional Council in the Codes SEPP	Explanation
<p>Description</p>	<p>In March 2022, Dubbo Regional Council consolidated the Dubbo Local Environmental Plan 2011 and Wellington Local Environment Plan 2012 into the Dubbo Regional LEP 2022.</p> <p>Throughout the Codes SEPP, where referring to land surrounding the observatory, there are several references to ‘the local government area of Dubbo Regional that was formerly in the City of Dubbo’. Similar references are made in the Environmental Planning and Assessment Regulation 2021, clause 61(3)(a), and other planning instruments such as <i>State Environmental Planning Policy (Housing) 2021</i>, clause 59.</p>
<p>Proposed amendment</p>	<p>The department will replace all references to ‘the local government area of Dubbo Regional that was formerly in the City of Dubbo’ with ‘Dubbo Regional Council’ in clauses related to the Siding Spring Observatory.</p>

References to Dubbo Regional Council in the Codes SEPP	Explanation
Effect of proposed amendment	<p>When the Dark Sky Region Map was made in 2016, Dubbo City Council and Wellington Council existed as separate LGAs. Shortly thereafter, they were merged to become Dubbo Regional Council. However, council kept 2 separate LEPs applying to the former boundaries of each council area.</p> <p>Currently, the Siding Springs clauses in the Codes SEPP only apply to the boundaries set out in the former Dubbo LEP 2011. The proposed amendment will expand the area to the newly formed Dubbo Regional LEP 2022, which encompasses the former Wellington LEP 2012. The department will make similar changes to the EP&A Regulation and other planning instruments such as the Housing SEPP.</p>
Justification	The department proposes making this change to ensure consistency with the boundaries set out in the newly created Dubbo Regional LEP 2022. In Dubbo Regional LEP 2022, the controls in clause 5.14 relating to protecting the dark sky apply to all the LGA.

Table 4. Housing Alterations Code

Housing Alterations Code	Explanation
Description	Part 4 of the Codes SEPP is the Housing Alterations Code, which provides a complying development pathway for reasonably minor alterations to buildings, including external alterations.
Proposed amendment	The department will add a clause on development standards for land near the Siding Springs Observatory, similar to the clauses in other codes which address this, such as clause 3.6.
Effect of proposed amendment	This will add development standards for housing alterations being carried out in accordance with the code when in the 4 LGAs surrounding the observatory.
Justification	The department proposes making this change to ensure consistency with the other housing codes and to ensure housing alterations being carried out on land near the observatory will not negatively affect the night sky.

Guideline

The department proposes making several changes to the guideline. Most of these are minor. The more significant amendments are detailed in Table 5 to Table 7.

Table 5. Skylights

Adding a section on skylights	Explanation
<p>Description</p>	<p>Through the consultation process, the observatory raised concerns about the effect of skylights not fitted with a blind, or light control measures.</p> <p>Cl. 5.14(6) of the Standard Instrument states that skylights within 18 km of the observatory must have designs that minimise light pollution and measures that prevent the escape of light at night. The Codes SEPP also does not allow skylights as exempt or complying development within the 4 LGAs surrounding the observatory.</p> <p>The guideline briefly mentions skylights and how to minimise light escape.</p>
<p>Proposed amendment</p>	<p>The department is proposing to include a dedicated section on skylights in the guideline. This will give more details on the types of designs that minimise light pollution and will also refer to the relevant controls in the Standard Instrument and Codes SEPP.</p>
<p>Effect of proposed amendment</p>	<p>The amendment will give councils and applicants clearer guidance on what is required when installing skylights on land surrounding the observatory.</p>
<p>Justification</p>	<p>Light spill from skylights may add to the artificial sky glow and hinder the work of the observatory. Giving clearer advice on the requirements for skylights in the guideline will complement the legislative provisions in the Codes SEPP and Standard Instrument.</p>

Table 6. Illuminated signs

Adding advice on illuminated signs	Explanation
<p>Description</p>	<p>Through the consultation process, the observatory raised concerns about the negative effect illuminated signs can have on the night sky within 18 km of the observatory.</p> <p>Cl. 5.14 of the Standard Instrument requires development consent for all lit development within 18 km of the observatory, meaning that any illuminated sign in this area must be assessed.</p> <p>The guideline refers to internationally accepted limits for maximum luminance of illuminated signage.</p>

Adding advice on illuminated signs	Explanation
Proposed amendment	The department is proposing to give more detailed information in the guideline on good lighting practices for different types of illuminated signs, including how to minimise upward light spill.
Effect of proposed amendment	The amendment will give councils and applicants clearer guidance on how illuminated signs may negatively affect observation conditions and how to reduce artificial light glow.
Justification	Illuminated signs can negatively affect observation conditions when near the observatory. Including good design practices in the guideline will ensure consent authorities are informed about how illuminated signs should be constructed when they assess applications.

Table 7. Model conditions of consent

Adding model conditions of consent	Explanation
Description	Stakeholders told us that model conditions of development consent would help to ensure developments manage any potential light pollution in a consistent and effective way.
Proposed amendment	The department is proposing to provide model conditions of consent as an appendix to the guideline. These could cover restrictions on lighting to be used in the development and promote good lighting practices.
Effect of proposed amendment	The model conditions will be optional conditions that councils can place on development consents to ensure the development mitigates against light pollution.
Justification	The model conditions will provide consistency in how development consent conditions deal with effects on the night sky. They will make assessment easier for councils and indicate to applicants what type of conditions will be placed on consents for lighting. The department will develop the model conditions in consultation with the observatory.

Have your say

The department is exhibiting this explanation of intended effect in line with its Community Participation Plan.

To make a submission on the policy proposal, please visit the [Planning Portal site](#) and complete the submission form.