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State Environmental Planning Policy No 33—Hazardous and Offensive Development

Current version for 13 March 1992 to date (accessed 9 April 2010 at 10:20)

Status information



New South Wales

Status information

Currency of version

Current version for 13 March 1992 to date (accessed 9 April 2010 at 10:20).

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes

Authorisation: This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 10 March 1995.



New South Wales

Part 1 Preliminary

1 Name of Policy

This Policy may be cited as *State Environmental Planning Policy No 33—Hazardous and Offensive Development*.

2 Aims, objectives etc

This Policy aims:

- (a) to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and
- (b) to render ineffective a provision of any environmental planning instrument that prohibits development for the purpose of a storage facility on the ground that the facility is hazardous or offensive if it is not a hazardous or offensive storage establishment as defined in this Policy, and
- (c) to require development consent for hazardous or offensive development proposed to be carried out in the Western Division, and
- (d) to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and
- (e) to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and
- (f) to require the advertising of applications to carry out any such development.

3 Definitions of “potentially hazardous industry” and “potentially offensive industry”

In this Policy:

potentially hazardous industry means a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality:

- (a) to human health, life or property, or
 - (b) to the biophysical environment,
- and includes a hazardous industry and a hazardous storage establishment.

potentially offensive industry means a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would emit a polluting discharge (including for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land, and includes an offensive industry and an offensive storage establishment.

4 Other definitions

- (1) In this Policy:

hazardous industry means a development for the purposes of an industry which, when the

development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the development from existing or likely future development on other land in the locality), would pose a significant risk in relation to the locality:

- (a) to human health, life or property, or
- (b) to the biophysical environment.

hazardous storage establishment means any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on the other land in the locality), would pose a significant risk in relation to the locality:

- (a) to human health, life or property, or
- (b) to the biophysical environment.

offensive industry means a development for the purposes of an industry which, when the development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the development from existing or likely future development on other land in the locality), would emit a polluting discharge (including, for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality.

offensive storage establishment means any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on other land in the locality), would emit a polluting discharge (including, for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality.

the Act means the *Environmental Planning and Assessment Act 1979*.

- (2) A reference in this Policy to circulars or guidelines published by the Department of Planning is a reference to circulars or guidelines so published and available for inspection by the public on request at the offices of the Department.

5 Land to which Policy applies

This Policy applies to the State.

6 Relationship with other environmental planning instruments

In the event of an inconsistency between this Policy and another environmental planning instrument (whether made before, on or after the date on which this Policy takes effect) this Policy prevails to the extent of the inconsistency.

Part 2 Hazardous or offensive development

7 New definitions of "hazardous industry" and "offensive industry"

In an environmental planning instrument (whether made before, on, or after the date on which this Policy takes effect) a reference to:

- (a) an offensive or hazardous industry, however defined in that instrument, is to be taken to be a reference to development for the purposes of an industry (as defined in that instrument) that is a hazardous industry or an offensive industry within the meaning of clause 4, and
- (b) an offensive industry, however defined in that instrument, is to be taken to be a reference to development for the purposes of an industry (as defined in that instrument) that is an offensive industry within the meaning of clause 4, and
- (c) a hazardous industry, however defined in that instrument, is to be taken to be a reference to development for the purposes of an industry (as defined in that instrument) that is a hazardous industry within the meaning of clause 4.

8 Consideration of Departmental guidelines

In determining whether a development is:

- (a) a hazardous storage establishment, hazardous industry or other potentially hazardous industry, or
- (b) an offensive storage establishment, offensive industry or other potentially offensive industry,

consideration must be given to current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development.

9 Storage facilities

A provision of an environmental planning instrument which prohibits the carrying out of development for the purposes of, or purposes which include, a storage facility (however the storage facility may be described or referred to in the instrument) on the ground that the storage facility is offensive or hazardous has no effect unless the storage facility is a hazardous storage establishment or an offensive storage establishment as defined in this Policy.

10 Western Division—development consent required

- (1) This clause applies to development defined in clause 3 or 4 which is carried out or proposed to be carried out on land within the Western Division.
- (2) A person may not carry out such development except with the consent of:
 - (a) the council of the area, if the land concerned is within a local government area, or
 - (b) the Western Lands Commissioner, in any other case.
- (3) Nothing in this clause authorises the carrying out of such development if the development is not otherwise permitted.
- (4) In this clause, *Western Division* has the same meaning as in the *Western Lands Act 1991*.

Part 3 Potentially hazardous or potentially offensive development

11 Development to which Part 3 applies

- (1) This Part applies to:
 - (a) development for the purposes of a potentially hazardous industry, and
 - (b) development for the purposes of a potentially offensive industry, and

- (c) development notified, for the purposes of this Part, by the Director in the Gazette as being a potentially hazardous or potentially offensive development.
- (2) This Part does not apply to development the subject of a development application made before the date on which this Policy takes effect.

12 Preparation of preliminary hazard analysis

A person who proposes to make a development application to carry out development for the purposes of a potentially hazardous industry must prepare (or cause to be prepared) a preliminary hazard analysis in accordance with the current circulars or guidelines published by the Department of Planning and submit the analysis with the development application.

13 Matters for consideration by consent authorities

In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development):

- (a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and
- (b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and
- (c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and
- (d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and
- (e) any likely future use of the land surrounding the development.

14 Advertising of applications

Pursuant to section 30 (4) of the Act, the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development to which this Part applies in the same way as those provisions apply to and in respect of designated development.

Historical notes

The following abbreviations are used in the Historical notes:						
Am	amended	LW	legislation website	Sch	Schedule	
Cl	clause	No	number	Schs	Schedules	
Cl	clauses	p	page	Sec	section	
Div	Division	pp	pages	Sees	sections	
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision	
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions	
Ins	inserted	Rep	repealed	Subst	substituted	

Table of amending instruments

State Environmental Planning Policy No 33—Hazardous and Offensive Development published in Gazette No 36 of 13.3.1992, p 1754.

Whole title | Parent Act | Historical versions | Historical notes | Search title



State Environmental Planning Policy No 44—Koala Habitat Protection

Current version for 20 April 2000 to date (accessed 9 April 2010 at 10:21)

Status information



Status information

Currency of version

Current version for 20 April 2000 to date (accessed 9 April 2010 at 10:21).
Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the [Historical notes](#)

Authorisation: This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 26 April 2000.



Part 1 Preliminary

1 Name of Policy

This Policy may be cited as *State Environmental Planning Policy No 44—Koala Habitat Protection*.

2 Commencement

This Policy commences on 13 February 1995.

3 Aims, objectives etc

This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and
- (b) by encouraging the identification of areas of core koala habitat, and
- (c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.

4 Definitions

In this Policy:

core koala habitat means an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population.

guidelines means the guidelines, as in force from time to time, made for the purposes of this Policy by the Director.

potential koala habitat means areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

5 Land to which this Policy applies

- (1) This Policy applies to each local government area listed in Schedule 1.
- (2) However, it does not apply to land dedicated or reserved under the *National Parks and Wildlife Act 1974* or to land dedicated under the *Forestry Act 1916* as a State forest or flora reserve.

Part 2 Development control of koala habitats

6 Land to which this Part applies

This Part applies to land:

- (a) that is land to which this Policy applies, and
- (b) that is land in relation to which a development application has been made, and
- (c) that:
 - (i) has an area of more than 1 hectare, or
 - (ii) has, together with any adjoining land in the same ownership, an area of more than 1 hectare,

whether or not the development application applies to the whole, or only part, of the land.

7 Step 1—Is the land potential koala habitat?

- (1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat.
- (2) A council may satisfy itself as to whether or not land is a potential koala habitat only on information obtained by it, or by the applicant, from a person who is qualified and experienced in tree identification.
- (3) If the council is satisfied:
 - (a) that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or
 - (b) that the land is a potential koala habitat, it must comply with clause 8.

8 Step 2—Is the land core koala habitat?

- (1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies that it is satisfied is a potential koala habitat, it must satisfy itself whether or not the land is a core koala habitat.
- (2) A council may satisfy itself as to whether or not land is a core koala habitat only on information obtained by it, or by the applicant, from a person with appropriate qualifications and experience in biological science and fauna survey and management.
- (3) If the council is satisfied:
 - (a) that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or
 - (b) that the land is a core koala habitat, it must comply with clause 9.

9 Step 3—Can development consent be granted in relation to core koala habitat?

- (1) Before a council may grant consent to a development application for consent to carry out development on land to which this Part applies that it is satisfied is a core koala habitat, there must be a plan of management prepared in accordance with Part 3 that applies to the land.
- (2) The council's determination of the development application must not be inconsistent with the plan of management.

10 Guidelines—matters for consideration

Without limiting clause 17, a council must take the guidelines into consideration in determining an application for consent to carry out development on land to which this Part applies.

Part 3 Plans of management

11 Preparation of plan of management

- (1) A plan of management may be prepared for:
 - (a) the whole of a local government area listed in Schedule 1, or

- (b) a part of such a local government area (including an area of land that is the subject of a development application).

- (2) Anyone (including a council) may prepare a plan of management.
- (3) A plan of management is to be prepared in accordance with the guidelines.

12 Consultation with Director-General of National Parks and Wildlife

A person who prepares a plan of management for the whole of a local government area listed in Schedule 1 must consult the Director-General of National Parks and Wildlife.

13 Approval of plan of management

- (1) A plan of management prepared by the council has no effect unless it is approved by the Director.
- (2) A plan of management prepared by a person other than the council has no effect unless it is approved by the council and by the Director.
- (3) A plan of management takes effect on the day it is approved by the Director or on a later day specified in it for the purpose.

14 Amendment or repeal of plan of management

A plan of management may be amended or repealed by another plan of management prepared and approved in accordance with this Part.

Part 4 Other environmental planning measures

15 Surveys, environmental protection zones and development control plans

In order to give effect to the aims of this Policy, a council of a local government area listed in Schedule 1 should:

- (a) survey the land within its area so as to identify areas of potential koala habitat and core koala habitat, and
- (b) make or amend a local environmental plan:
 - (i) to include land identified as a core koala habitat within an environmental protection zone, or
 - (ii) to identify land that is a core koala habitat and apply special provisions to control the development of that land, and
- (c) give consideration to preparing an appropriate development control plan for land that is or adjoins a core koala habitat.

16 Preparation of local environmental studies

Without affecting the power of the Director to give a direction under section 74 (2) (b) of the *Environmental Planning and Assessment Act 1979* to a council, the Director will consider giving a direction that sections 57 and 61 of that Act are to apply to a draft local environmental plan (with the consequence that the council must prepare an environmental study of the land to which the draft local environmental plan applies) if, under the draft plan, it is proposed to zone (or rezone) land that is a potential koala habitat or a core koala habitat otherwise than as environment protection.

17 Guideline—generally

- (1) In exercising any function under this Policy, a council must take into consideration the guidelines that are relevant to the exercise of the function.
- (2) Anyone may inspect the guidelines free of charge at any office of the Department of Planning during the hours when the office is open to the public.

Schedule 1 Local government areas

(Clauses 5 (1), 11 (1), 12, 16)

Armidale	Liverpool
Ballina	Lockhart
Barraba	Maclean
Bathurst	Maitland
Bega Valley	Manilla
Bellingen	Merrima
Berrigan	Moree Plains
Bingara	Mudgee
Blayney	Mulwaree
Blue Mountains	Murray
Bombala	Muswellbrook
Boorowa	Nambucca
Bourke	Narrabri
Brewarrina	Narrandera
Byron	Narromine
Cabonne	Newcastle
Campbelltown	Nundle
Central Darling	Nymbioda
Cessnock	Oberon
	Parkes
Coolah	Parry
Coona-Monaro	Pittwater
Coonabarabran	Port Stephens
Coonamble	Quirindi
Copmanhurst	Richmond River
Corowa	Rylstone
Crookwell	Scone
Dunaresq	Severn
Dungog	Shoalhaven
Eurobodalla	Singleton
Evans	Snowy River
Forbes	Tallaganda
Gilgandra	Tenterfield
Gloucester	Tumbarumba
Gosford	Turnut
Grafton	Tweed
Great Lakes	Ulmara
Greater Lithgow	Uralla
Greater Taree	Wagga Wagga
Gunnedah	Wakool
Gunning	Walcha
Guyra	Walgett
Hastings	Warren

Hawkesbury	Warragah
Hornsby	Weddin
Hume	Wentworth
Inverell	Windoran
Kempsey	Wingecarribee
Kir-ring-gai	Wollendilly
Kyogle	Wollongong
Lake Macquarie	Wyong
Leeton	Yallaro
Lismore	Yarrowlumla
	Yass

Schedule 2 Feed tree species

(Clause 4)

Scientific Name	Common Name
Eucalyptus tereticornis	Forest red gum
Eucalyptus microcorys	Tallowwood
Eucalyptus punctata	Grey Gum
Eucalyptus viminalis	Ribbon or manna gum
Eucalyptus camaldulensis	River red gum
Eucalyptus laenastoma	Broad leaved scribbly gum
Eucalyptus signata	Scribbly gum
Eucalyptus albens	White box
Eucalyptus populnea	Bimble box or poplar box
Eucalyptus robusta	Swamp mahogany

Historical notes

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Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

State Environmental Planning Policy No 44—Koala Habitat Protection published in Gazette No 49 of 6.1.1995, p 3394, and amended in Gazette No 14 of 10.2.1995, p 788, and as follows:

Coffs Harbour City Local Environmental Plan 2000 (GG No 49 of 20.4.2000, p 3394)

Table of amendments

Sch 1	Am 10.2.1995; 20.4.2000.
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Whole title | Parent Act | Historical versions | Historical notes | Search title

State Environmental Planning Policy No 55—Remediation of Land

Current version for 25 May 2005 to date (accessed 9 April 2010 at 10:22)

Status information



Status information

Currency of version

Current version for 25 May 2005 to date (accessed 9 April 2010 at 10:22).
Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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File last modified 25 May 2005.



1 Name of Policy

This Policy is *State Environmental Planning Policy No 55—Remediation of Land*.

2 Object of this Policy

- (1) The object of this Policy is to provide for a Statewide planning approach to the remediation of contaminated land.
- (2) In particular, this Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:
 - (a) by specifying when consent is required, and when it is not required, for a remediation work, and
 - (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
 - (c) by requiring that a remediation work meet certain standards and notification requirements.

3 Notes

The table of contents and notes in the text of this Policy do not form part of this Policy.

4 Definitions

(1) In this Policy:

category 1 remediation work is defined in clause 9.

category 2 remediation work is defined in clause 14.

contaminated land has the same meaning as it has in Part 7A of the Act.

contaminated land planning guidelines means guidelines under section 145C of the Act.

investigation area means land declared to be an investigation area by a declaration in force under Division 2 of Part 3 of the *Contaminated Land Management Act 1997*.

preliminary investigation, in relation to land, means a preliminary investigation referred to in the contaminated land planning guidelines.

remediation means:

- (a) removing, dispersing, destroying, reducing, mitigating or containing the contamination of any land, or
- (b) eliminating or reducing any hazard arising from the contamination of any land (including by preventing the entry of persons or animals on the land).

Note. This definition of remediation corresponds to parts of the definition of remediation in the *Contaminated Land Management Act 1997*.

remediation order means a remediation order made by the Environment Protection Authority and in force under Part 3 of the *Contaminated Land Management Act 1997*.

remediation site means:

- (a) land declared to be a remediation site by a declaration in force under Division 3 of Part 3 of the *Contaminated Land Management Act 1997*, or
- (b) premises:

- (i) in respect of which there is in force a notice under section 35 of the *Environmentally Hazardous Chemicals Act 1985* requiring prescribed remedial action to be taken, or

- (ii) that are the subject of prescribed remedial action (whether being undertaken by the Environment Protection Authority or by another public authority at the direction of that Authority) under section 36 of that Act.

the Act means the *Environmental Planning and Assessment Act 1979*.

unincorporated area means such parts of the Western Division of New South Wales as are not within a local government area.

- (2) A reference in this Policy to a remediation work carried out or to be carried out on any land includes a reference to a remediation work carried out or to be carried out in, over or under the land concerned.

5 Land to which this Policy applies

This Policy applies to the whole of the State.

6 Contamination and remediation to be considered in zoning or rezoning proposal

- (1) In preparing an environmental planning instrument, a planning authority is not to include in a particular zone (within the meaning of the instrument) any land specified in subclause (4) if the inclusion of the land in that zone would permit a change of use of the land, unless:

- (a) the planning authority has considered whether the land is contaminated, and
- (b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.

Note. In order to satisfy itself as to paragraph (c), the planning authority may need to include certain provisions in the environmental planning instrument.

- (2) Before including land of a class identified in subclause (4) in a particular zone, the planning authority is to obtain and have regard to a report specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines.
- (3) If a person has requested the planning authority to include land of a class identified in subclause (4) in a particular zone, the planning authority may require the person to furnish the report referred to in subclause (2).
- (4) The following classes of land are identified for the purposes of this clause:
- (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential,

educational, recreational or child care purposes, or for the purposes of a hospital—land:

- (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
- (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

- (5) In this clause, *planning authority* has the same meaning as it has in section 145A of the Act.

7 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless:
- (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

- (4) The land concerned is:

- (a) land that is within an investigation area,
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
- (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

8 Remediation work permissible

- (1) A person may carry out a remediation work in accordance with this Policy, despite any

- provision to the contrary in an environmental planning instrument, except as provided by clause 19 (3).
- (2) A person must not carry out a category 1 remediation work except with the consent of the consent authority.
 - (3) A person may carry out a category 2 remediation work without the consent of the consent authority.
 - (4) A person who carries out a remediation work must ensure that clause 16 (if it applies) and clauses 17 and 18 are complied with in relation to the work.

Note. See clause 19 for the relationship of this Policy to other environmental planning instruments.

9 Category 1 remediation work: work needing consent

For the purposes of this Policy, a category 1 remediation work is a remediation work (not being a work to which clause 14 (b) applies) that is:

- (a) designated development, or
- (b) carried out or to be carried out on land declared to be a critical habitat, or
- (c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community, or
- (d) development for which another State environmental planning policy or a regional environmental plan requires development consent, or
- (e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument:
 - (i) coastal protection,
 - (ii) conservation or heritage conservation,
 - (iii) habitat area, habitat protection area, habitat or wildlife corridor,
 - (iv) environment protection,
 - (v) escarpment, escarpment protection or escarpment preservation,
 - (vi) floodway,
 - (vii) littoral rainforest,
 - (viii) nature reserve,
 - (ix) scenic area or scenic protection,
 - (x) wetland, or
- (f) carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the council for any local government area in which the land is situated (or if the land is within the unincorporated area, the Western Lands Commissioner).

Note. See section 5A of the *Environmental Planning and Assessment Act 1979* for the factors to be taken into account in assessing whether there is likely to be a significant effect as referred to in paragraph (c) above. The terms used in that paragraph are defined in that Act by reference to both the *Threatened Species Conservation Act 1995* and the *Fisheries Management Act 1994*.

10 Consent authority in relation to remediation works

- (1) The consent authority in relation to a development application for consent to carry out a remediation work is:
 - (a) the person or authority that, in accordance with a provision made by an environmental planning instrument that applies to the land, is the consent authority for the development, or
 - (b) in default of any such provision:
 - (i) the council for the local government area in which the land is situated, or
 - (ii) the Western Lands Commissioner, if the land is within the unincorporated area.
 - (2) (Repealed)
- ## 11 (Repealed)
- ## 12 Refusal of consent to category 1 remediation work
- (1) The consent authority must not refuse development consent for a category 1 remediation work unless the authority is satisfied that there would be a more significant risk of harm to human health or some other aspect of the environment from the carrying out of the work than there would be from the use of the land concerned (in the absence of the work) for any purpose for which it may lawfully be used.
 - (2) Nothing in this clause prevents the consent authority from refusing consent to a development application if:
 - (a) by operation of an environmental planning instrument or section 79B (3) of the Act, the development application may not be determined by the granting of consent without the concurrence of a specified person, and
 - (b) that concurrence is not given.

13 Advertising of development application

- (1) A category 1 remediation work is identified as advertised development, unless the remediation work is:
 - (a) designated development, or
 - (b) State significant development.
- (2) Pursuant to section 29A of the Act, the period specified in clause 65 (5) (d) of the *Environmental Planning and Assessment Regulation 1994* is extended to 30 days in relation to development identified as advertised development by this clause.

Note. Development identified by subclause (1) as advertised development is **other advertised development** within the meaning of Part 6 of the *Environmental Planning and Assessment Regulation 1994*. That Part provides for a period of 14 days for the inspection of a development application (and the documents accompanying the application) relating to other advertised development. However, section 29A of the *Environmental Planning and Assessment Act 1979* allows an environmental planning instrument to add to or extend (but not replace or reduce) the provisions of the regulations concerning the notification and advertising of development and the making of submissions relating to advertised development. The period allowed by subclause (2) is the period of 30 days after publication in a newspaper of a notice concerning the application and the making of submissions in relation to it. That period is the same period as applies to all other development that involves public participation (eg designated development).

14 Category 2 remediation work: work not needing consent

For the purposes of this Policy, a category 2 remediation work is:

- (a) a remediation work that is not a work of a kind described in clause 9 (a)–(f), or
- (b) a remediation work (whether or not it is a work of a kind described in clause 9 (a)–(f)) that:
 - (i) by the terms of a remediation order, is required to be commenced before the expiry of the usual period under the *Contaminated Land Management Act 1997* for lodgment of an appeal against the order, or
 - (ii) may be carried out without consent under another State environmental planning policy or a regional environmental plan (as referred to in clause 19 (4) and (5)), or
 - (iii) is carried out or to be carried out by or on behalf of the Director-General of the Department of Agriculture on land contaminated by the use of a cattle dip under a program implemented in accordance with the recommendations or advice of the Board of Tick Control under Part 2 of the *Stock Diseases Act 1923*, or
 - (iv) is carried out or to be carried out under the Public Land Remediation Program administered by the Broken Hill Environmental Lead Centre.

Note. The usual period for lodgment of an appeal is 21 days or a period prescribed instead by regulations made under the *Contaminated Land Management Act 1997*.

15 Remediation work that is ancillary to other development

- (1) A remediation work that would of itself be a category 2 remediation work but which is ancillary to designated development that requires development consent may, as an applicant chooses:
 - (a) be made part of the subject of the development application for the designated development instead of being made the subject of a separate development application, or
 - (b) be treated as a category 2 remediation work.
- (2) However, a category 1 remediation work must be treated as such even if it is ancillary to development that may be carried out without consent.
- (3) A remediation work that would of itself be a category 1 remediation work and constitute designated development does not, just because it is ancillary to other development:
 - (a) render the latter development designated development, or
 - (b) cause that development to become a development for which development consent is required.

16 Prior notice of category 2 remediation work

- (1) A person who proposes to carry out a category 2 remediation work on any land must give notice of the proposed work to the council for the local government area in which the land is situated (or, if the land is within the unincorporated area, to the Western Lands Commissioner).
- (2) The notice must be given:
 - (a) at least 30 days before the commencement of the work, except in the case of a work

referred to in clause 14 (b), and

- (b) in the case of a work referred to in clause 14 (b)—no later than the day before the commencement of the work.
- (3) The notice must:
 - (a) be in writing, and
 - (b) provide the name, address and telephone number of the person who has the duty of ensuring that the notice is given, and
 - (c) briefly describe the remediation work, and
 - (d) show why the person considers that the work is category 2 remediation work by reference to clauses 9, 14 and (if it applies) 15 (1), and
 - (e) specify, by reference to its property description and street address (if any), the land on which the work is to be carried out, and
 - (f) provide a map of the location of the land, and
 - (g) provide estimates of the dates for the commencement and completion of the work.

17 Guidelines and notices: all remediation work

- (1) All remediation work must, in addition to complying with any requirement under the Act or any other law, be carried out in accordance with:
 - (a) the contaminated land planning guidelines, and
 - (b) the guidelines (if any) in force under the *Contaminated Land Management Act 1997*, and
 - (c) in the case of a category 1 remediation work—a plan of remediation, as approved by the consent authority, prepared in accordance with the contaminated land planning guidelines.
- (2) A notice of completion of remediation work on any land must be given to the council for the local government area in which the land is situated (or, if the land is within the unincorporated area, to the Western Lands Commissioner).
- (3) The notice is to be given within 30 days after the completion of the work.
- (4) A copy of the notice must also be given within the same period to the consent authority, if consent was required for the remediation work and the consent authority is not one of the authorities referred to in subclause (2).

18 Notice of completion of remediation work

The notice required by clause 17 (2) must:

- (a) be in writing prepared and signed by the person who carried out the work, and
- (b) provide the person's name, address and business telephone number, and
- (c) provide details of the person's qualifications to carry out the work, and
- (d) specify, by reference to its property description and street address (if any), the land on which the work was carried out, and

- (e) provide a map of the location of the land, and
- (f) state when the work was completed, and
- (g) specify the uses of the land, and the substances, that contaminated it in such a way as to present a risk of harm to human health or some other aspect of the environment, and
- (h) specify the uses of the land immediately before the work started, and
- (i) briefly describe the method of remediation used in the work, and
- (j) specify the guidelines that were complied with in the work, and
- (k) specify the standard of remediation achieved (in the light of the use proposed for the land), and
- (l) show in what manner the work (if a category 1 remediation work) complied with the conditions of the relevant development consent, and
- (m) state what action must be maintained in relation to the land after the completion of the remediation work if the standard of remediation achieved is to be maintained.

Note. A site audit statement (within the meaning of Part 4 of the *Contaminated Land Management Act 1997*) may be given in partial compliance with this requirement.

19 Relationship to other environmental planning instruments

- (1) If this Policy is inconsistent with another State environmental planning policy, a regional environmental plan or a local environmental plan (whether made before or after this Policy), this Policy prevails, except as provided by this clause and section 36 (4) of the Act.
- (2) Nothing in this Policy applies to a remediation work that is development to which *State Environmental Planning Policy No 38—Olympic Games and Related Projects* applies.
- (3) If a provision of another State environmental planning policy or of a regional environmental plan, whether made before or after this Policy, requires development consent for a remediation work, a provision of this Policy that permits the carrying out of the work without development consent does not prevail over that provision.
- (4) If a provision of another State environmental planning policy or of a regional environmental plan, whether made before or after this Policy, permits a remediation work without development consent, a requirement in this Policy to obtain development consent to carry out the work does not prevail over that provision.

- (5) However, subclause (4) does not apply in respect of any of the provisions of *State Environmental Planning Policy No 4—Development Without Consent*, except clauses 11, 11A, 11C and 11E (in so far as clause 11E applies to the development specified in clause 11E (1) (a)) of that Policy.

- (6) Clauses 16–18 apply to any remediation work according to the category of the work under this Policy even if another State environmental planning policy or a regional environmental plan also applies to the work.

20 Transitional provisions

- (1) Of the provisions of this Policy:
 - (a) only clauses 17 and 18 apply to a remediation work that was the subject of a development application that was lodged with a consent authority, but not finally

determined, before the commencement of this Policy (unless the applicant notifies the consent authority that it wishes the entire Policy to apply to the application), and

- (b) only clause 18 applies to a category 1 remediation work that did not, before the commencement of this Policy, require development consent and that was begun before the commencement of this Policy.

- (2) This Policy does not apply to a remediation work proposed to be carried out under Part 5 of the Act and in respect of which, at the commencement of this Policy, an environmental impact statement has been prepared in respect of the work and has commenced to be exhibited.

21 Clean-up notice remediation—special provision

- (1) This Policy does not apply to or in respect of anything done for the purpose of complying with a clean-up notice, except as provided by this clause.
- (2) Any development or activity carried out for the purpose of complying with a clean-up notice:
 - (a) may be carried out without development consent, and
 - (b) to the extent that it involves carrying out any remediation work, must be carried out in accordance with clause 17 (1) (paragraph (c) excepted).
- (3) In this clause, *clean-up notice* means:
 - (a) a notice given under section 91 of the *Protection of the Environment Operations Act 1997* that is specified in Schedule 1, or
 - (b) if a notice so specified has been varied under section 110 of that Act, the notice as varied for the time being.

- (4) If this clause is inconsistent with another State environmental planning policy, a regional environmental plan or a local environmental plan (whether made before or after this clause), this clause prevails, subject to section 36 (4) of the Act.

(Clause 21)

Schedule 1 Specified clean-up notices

Notice No 1030236 dated 26 September 2003 and addressed to Orica Australia Pty Ltd

Historical notes

The following abbreviations are used in the Historical notes:

Am amended	LW legislation website	Sch Schedules	Schedule
CI clause	No number	Schs sections	Schedule
CI clauses	p page	Sec section	section
Div Division	pp pages	Secs sections	sections
Divs Divisions	Reg Regulation	Subdiv Subdivision	Subdivision
GG Government Gazette	Regs Regulations	Subdivs Subdivisions	Subdivisions
Ins inserted	Rep repealed	Subst substituted	substituted

Table of amending instruments

State Environmental Planning Policy No 55—Remediation of Land published in Gazette No 126 of 28.8.1998. p 6962 and amended as follows:

State Environmental Planning Policy No 55—Remediation of Land (Amendment No 1) (GG No 126 of 30.7.2004, p 6195)	
2005 (194)	State Environmental Planning Policy (State Significant Development) 2005. GG No 60 of 25.5.2005, p 1785. Date of commencement, on gazetal.

Table of amendments

Cl 4	Am 2005 (194), Sch 4.15 [1].
Cl 6	Am 30.7.2004.
Cl 10	Am 2005 (194), Sch 4.15 [2] [3].
Cl 11	Rep 2005 (194), Sch 4.15 [4].
Cl 17	Am 30.7.2004.
Cl 21	Ins 30.7.2004.
Sch 1	Ins 30.7.2004.



Whole title | Parent Act | Historical versions | Historical notes | Search title

State Environmental Planning Policy (Infrastructure) 2007

Current version for 20 November 2009 to date (accessed 9 April 2010 at 10:40)

Status information



Status information

Currency of version

Current version for 20 November 2009 to date (accessed 9 April 2010 at 10:40).
Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes

Authorisation: This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 20 November 2009.



Part 1 Preliminary

Note. Nothing in this Policy (except clause 9) affects any requirement under another Act to obtain an approval, licence or permit for or concurrence to any development of a kind specified in Part 3. Examples of Acts imposing such requirements include the *Fisheries Management Act 1994*, *Forestry*

1 Name of Policy

This Policy is *State Environmental Planning Policy (Infrastructure) 2007*.

2 Aim of Policy

The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by:

- (a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and
- (b) providing greater flexibility in the location of infrastructure and service facilities, and
- (c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and
- (d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and
- (e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and
- (f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.

3 Commencement of Policy

This Policy commences on 1 January 2008.

4 Land to which Policy applies

Except as otherwise provided by this Policy, this Policy applies to the State.

5 Interpretation—general

- (1) A word or expression used in this Policy has the same meaning as it has in the Standard Instrument unless it is otherwise defined in this Policy.

- (2) In this Policy:

associated public transport facilities for a railway station, public ferry wharf or road means such of the following as are integrated or associated with the station, wharf or road:

- (a) car parks intended for use by commuters,
- (b) public transport interchanges (being locations intended for use by commuters to transfer between and to different kinds of public transport such as buses, trains and ferries),

- (c) bus bays (being locations that are set aside for buses to stop or park for the purpose of picking up and setting down passengers),

- (d) bus layovers.

Blue Book means *Managing Urban Stormwater: Soils & Construction* (4th edition,

Landcom, 2004), commonly referred to as the “Blue Book” and as in force at the commencement of this Policy.

bus layover means a location set aside for buses to park during periods between bus journeys.

Note. Bus layovers may (but need not) have amenities for bus drivers to use during periods between bus journeys.

consent:

- (a) when used in relation to the carrying out of development without consent, means development consent and any other type of consent, licence, permission, approval or authorisation that is required by or under an environmental planning instrument, and
- (b) when used in any other context, means development consent.

Note.

As a result of paragraph (a) of the definition of **consent**, development that this Policy provides may be carried out without development consent may also be carried out without any other consent, licence, permission, approval or authorisation that would otherwise be required by another environmental planning instrument (such as an approval to remove a tree that is subject to a tree preservation order).

Development that does not require consent under Part 4 of the Act and is not a project to which Part 3A of the Act applies or exempt development will be subject to the environmental assessment and approval requirements of Part 5 of the Act.

consent authority has the same meaning as it has in the Act.

Note.

The Act defines **consent authority** as follows:

consent authority, in relation to a development application or an application for a complying development certificate, means:

- (a) the council having the function to determine the application, or
- (b) if a provision of the *Environmental Planning and Assessment Act 1979*, the regulations under that Act or an environmental planning instrument specifies a Minister or public authority (other than a council) as having the function to determine the application—that Minister or public authority, as the case may be.

emergency works means works for the purpose of maintaining or restoring infrastructure facilities or equipment in order to ensure public safety or to protect buildings or the environment due to:

- (a) a sudden natural event, including a storm, flood, tree fall, bush fire, land slip or coastal inundation, or
- (b) accident, equipment failure or structural collapse, or
- (c) damage caused by vandalism or arson,

provided the works involve no greater disturbance to soil or vegetation than necessary and are carried out in accordance with all applicable requirements of the Blue Book.

environmental management works means:

- (a) works for the purpose of avoiding, reducing, minimising or managing the

environmental effects of development (including effects on water, soil, air, biodiversity, traffic or amenity), and

- (b) environmental protection works.

heritage conservation area means land identified as a heritage conservation area or place of Aboriginal significance (or by a similar description) in an environmental planning instrument.

heritage significance means historic, scientific, cultural, social, archaeological, natural or aesthetic significance.

local heritage item means:

- (a) a place, building, work, relic, tree, archaeological site or Aboriginal object that is identified as a heritage item (or by a similar description) in a local or regional environmental plan, or
- (b) an item of local heritage significance, as defined by the *Heritage Act 1977*, that is the subject of an interim heritage order in force under that Act or is listed as an item of local heritage significance on the State Heritage Inventory under that Act.

public authority:

- (a) has the same meaning as it has in the Act, and
- (b) in respect of development connected with rail corridors or railway infrastructure facilities, includes the Australian Rail Track Corporation Limited (ACN 081 455 754).

railway station includes any station for a metro railway (within the meaning of the *Transport Administration Act 1988*).

site compatibility certificate means a certificate issued under clause 19 (5).

Standard Instrument means the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* made under the Act.

State heritage item means an item of State heritage significance, as defined by the *Heritage Act 1977*, that is the subject of an interim heritage order in force under that Act or listed on the State Heritage Register under that Act.

State land means:

- (a) Crown land within the meaning of the *Crown Lands Act 1989*, or
- (b) any other land of the Crown or vested in a Minister on behalf of the Crown, or
- (c) land owned by a public authority other than a council.

the Act means the *Environmental Planning and Assessment Act 1979*.

written notice includes notice by electronic mail or facsimile.

- (3) If this Policy provides that development for a particular purpose that may be carried out without consent includes **construction works**, the following works or activities are (subject to and without limiting that provision) taken to be construction works if they are carried

out for that purpose:

- (a) accessways,
- (b) temporary construction yards,
- (c) temporary lay-down areas for materials or equipment,
- (d) temporary structures,
- (e) conduct of investigations,
- (f) clearing of vegetation (including any necessary cutting, lopping, ringbarking or removal of trees) and associated rectification and landscaping,
- (g) demolition,
- (h) relocation or removal of infrastructure,
- (i) extraction of extractive materials at the construction site solely for the purpose of the construction.

(4) If this Policy provides that development for a particular purpose that may be carried out without consent includes *routine maintenance works*, the following works or activities are (subject to and without limiting that provision) taken to be routine maintenance works if they are carried out for that purpose:

- (a) routine repairs to or replacement of equipment or assets,
 - (b) temporary construction yards,
 - (c) clearing of vegetation (including any necessary cutting, lopping, ringbarking or removal of trees) and associated rectification and landscaping.
- (5) Notes included in this Policy are provided for guidance and do not form part of this Policy.

6 Interpretation—references to equivalent land use zones

(1) A reference in this Policy to a land use zone that is equivalent to a named land use zone is a reference to a land use zone under an environmental planning instrument that is not made as provided by section 33A (2) of the Act:

- (a) that the Director-General has determined under clause 1.6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* is a land use zone in which equivalent land uses are permitted to those permitted in that named land use zone, or
 - (b) if no such determination has been made in respect of the particular zone, that is a land use zone in which (in the opinion of the relevant authority) equivalent land uses are permitted to those permitted in that named land use zone.
- (2) An assessment made by a relevant authority under subclause (1) (b) applies only in respect of the particular development that is proposed to be carried out and more than one such assessment may be made in respect of the same land use zone.

(3) In this clause, *relevant authority* means:

- (a) the public authority proposing to carry out the development, or on whose behalf the development is proposed to be carried out, or

(b) if the development is to be carried out by or on behalf of a person other than a public authority, the Director-General.

Note. Land use zones that are named in this Policy are those set out in the standard instrument.

7 Interpretation—references to maps

(1) A reference in this Policy to a named map adopted by this Policy 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 Policy 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.

8 Relationship to other environmental planning instruments

Note. This clause is subject to section 36 (4) of the Act.

(1) Except as provided by subclause (2), if there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

Note. Subclause (1) does not prevent a local environmental plan from making provision about development of a kind specified in Part 3 in a particular zone if the provisions of this Policy dealing with development of that kind do not apply in that zone.

(2) Except as provided by subclause (3), if there is an inconsistency between this Policy and any of the following environmental planning instruments, the other instrument prevails to the extent of the inconsistency:

- (a) *State Environmental Planning Policy No 14—Coastal Wetlands*,
 - (b) *State Environmental Planning Policy No 26—Littoral Rainforests*,
 - (c) *State Environmental Planning Policy (Major Projects) 2005*.
- (3) Clauses 41 (2) (b), 79 (2) (b) and 94 (2) (b) of this Policy prevail over the following environmental planning instruments to the extent of any inconsistency:
- (a) *State Environmental Planning Policy No 14—Coastal Wetlands*,
 - (b) *State Environmental Planning Policy No 26—Littoral Rainforests*.

Note. Development may only be carried out on land to which SEPP 14 or SEPP 26 applies under clauses 41 (2) (b), 79 (2) (b) and 94 (2) (b) of this Policy if any adverse effect on the land is minimised.

9 Suspension of laws

(1) The Acts, regulations and provisions of Acts specified below in relation to particular development to which this Policy applies do not apply to that development to the extent necessary to enable the development to be carried out in accordance with this Policy or

with a consent granted under the Act:

- (a) development to which clause 7 (1) of *State Environmental Planning Policy No 54—Northside Storage Tunnel* applied immediately before its repeal—item 2 of Part A of the Table to section 68 of the *Local Government Act 1993*,
- (b) development to which clause 7 (2) of *State Environmental Planning Policy No 54—Northside Storage Tunnel* applied immediately before its repeal—so much of the *National Parks and Wildlife Act 1974* and the regulations made under that Act as would prevent or restrict the continued operation of the Northside Storage Tunnel (as defined by clause 105),
- (c) development to which clause 9 (1) of *State Environmental Planning Policy No 63—Major Transport Projects* applied immediately before its repeal—section 68 of the *Local Government Act 1993* and sections 86, 87 and 91 (b) of the *Public Works Act 1912*,
- (d) development to which clause 8 (1) of *State Environmental Planning Policy (Sydney Metropolitan Water Supply) 2004* applied immediately before its repeal—Part 4 and Divisions 8 and 9 of Part 6 of the *Heritage Act 1977*,
- (e) development to which clause 9 (1) of *State Environmental Planning Policy (Sydney Metropolitan Water Supply) 2004* applied immediately before its repeal:

- (i) the *Fisheries Management Act 1994* and the regulations made under that Act, and
- (ii) section 68 of the *Local Government Act 1993*, and
- (iii) so much of the *National Parks and Wildlife Act 1974* and the regulations made under that Act as would prevent or restrict the laying, maintenance, repair or use of seawater inlet and outlet pipelines and tunnelling under Botany Bay National Park, or to a sewer line, for a desalination plant (including a pilot plant) on the Kurnell Peninsula.

- (2) This clause does not affect the rights or interests of any public authority under any registered instrument.

- (3) In accordance with section 28 of the *Environmental Planning and Assessment Act 1979*, before the making of this Policy, the Governor approved the making of this clause with the concurrence in writing of the Ministers administering the Acts referred to in subclause (1).

10 Amendment and repeal of other environmental planning instruments

- (1) The environmental planning instruments specified in Schedule 4 are repealed.
- (2) The environmental planning instruments specified in Schedule 5 are amended as set out in that Schedule.
- (3) Schedule 5 is repealed on the day following the day on which this Policy commences.

11 Savings provision

- (1) This Policy does not apply to or in respect of:
 - (a) the determination of a development application made under Part 4 of the Act, but not finally determined before the commencement of this Policy, or
 - (b) the determination of a project application made under Part 3A of the Act, but not finally determined before the commencement of this Policy, or

- (c) the carrying out of an activity for which an approval was granted under Part 5 of the Act before the commencement of this Policy, if the carrying out of the activity under that approval begins within 2 years after that commencement, or
- (d) the determination of an application for an approval for an activity made under Part 5 of the Act within 2 years before the commencement of this Policy but not finally determined before that commencement, or
- (e) the carrying out of an activity for which an approval was granted in response to an application referred to in paragraph (d) if the carrying out of the activity under that approval begins within 2 years after the grant of the approval, or
- (f) the carrying out of an activity for which the proponent is also the determining authority and in relation to which an environmental assessment under Part 5 of the Act has been completed if the carrying out of the activity is commenced within 2 years after the completion of the assessment.

- (2) In this clause:

activity and *approval* have the same meanings as they have in Part 5 of the Act.

project has the same meaning as it has in Part 3A of the Act.

project application means:

- (a) an application for approval of a concept plan, or
- (b) an application for approval to carry out a project (or a part or aspect of a project), or
- (c) an application for approval of a concept plan and to carry out a project (or a part or aspect of a project).

12 Review of Policy

The Minister must ensure that the provisions of this Policy are reviewed:

- (a) as soon as practicable after the first anniversary of the commencement of this Policy, and
- (b) at least every 5 years after that commencement.

Part 2 General

Division 1 Consultation

13 Consultation with councils—development with impacts on council-related infrastructure or services

- (1) This clause applies to development carried out by or on behalf of a public authority that this Policy provides may be carried out without consent if, in the opinion of the public authority, the development:
 - (a) will have a substantial impact on stormwater management services provided by a council, or
 - (b) is likely to generate traffic to an extent that will strain the capacity of the road system in a local government area, or
 - (c) involves connection to, and a substantial impact on the capacity of, any part of a sewerage system owned by a council, or

- (d) involves connection to, and use of a substantial volume of water from, any part of a water supply system owned by a council, or
 - (e) involves the installation of a temporary structure on, or the enclosing of, a public place that is under a council's management or control that is likely to cause a disruption to pedestrian or vehicular traffic that is not minor or inconsequential, or
 - (f) involves excavation that is not minor or inconsequential of the surface of, or a footpath adjacent to, a road for which a council is the roads authority under the *Roads Act 1993* (if the public authority that is carrying out the development, or on whose behalf it is being carried out, is not responsible for the maintenance of the road or footpath).
- (2) A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies unless the authority or the person has:
- (a) given written notice of the intention to carry out the development to the council for the area in which the land is located, and
 - (b) taken into consideration any response to the notice that is received from the council within 21 days after the notice is given.

14 Consultation with councils—development with impacts on local heritage

- (1) This clause applies to development carried out by or on behalf of a public authority if the development:
- (a) is likely to have an impact that is not minor or inconsequential on a local heritage item (other than a local heritage item that is also a State heritage item) or a heritage conservation area, and
 - (b) is development that this Policy provides may be carried out without consent.
- (2) A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies unless the authority or the person has:
- (a) had an assessment of the impact prepared, and
 - (b) given written notice of the intention to carry out the development, with a copy of the assessment, to the council for the area in which the heritage item or heritage conservation area (or the relevant part of such an area) is located, and
 - (c) taken into consideration any response to the notice that is received from the council within 21 days after the notice is given.

15 Consultation with councils—development with impacts on flood liable land

- (1) In this clause, *flood liable land* means land that is susceptible to flooding by the probable maximum flood event, identified in accordance with the principles set out in the manual entitled *Floodplain Development Manual: the management of flood liable land* published by the New South Wales Government and as in force from time to time.
- (2) A public authority, or a person acting on behalf of a public authority, must not carry out, on flood liable land, development that this Policy provides may be carried out without consent and that will change flood patterns other than to a minor extent unless the authority or person has:
- (a) given written notice of the intention to carry out the development to the council for the area in which the land is located, and

- (b) taken into consideration any response to the notice that is received from the council within 21 days after the notice is given.

16 Consultation with public authorities other than councils

- (1) A public authority, or a person acting on behalf of a public authority, must not carry out specified development that this Policy provides may be carried out without consent unless the authority or person has:
- (a) given written notice of the intention to carry out the development to the specified authority in relation to the development, and
 - (b) taken into consideration any response to the notice that is received from that authority within 21 days after the notice is given.
- (2) For the purposes of subclause (1), the following development is *specified development* and the following authorities are *specified authorities* in relation to that development:
- (a) development adjacent to land reserved under the *National Parks and Wildlife Act 1974*—the Department of Environment and Climate Change,
 - (b) development adjacent to a marine park declared under the *Marine Parks Act 1997*—the Marine Parks Authority,
 - (c) development adjacent to an aquatic reserve declared under the *Fisheries Management Act 1994*—the Department of Environment and Climate Change,
 - (d) development in the foreshore area within the meaning of the *Sydney Harbour Foreshore Authority Act 1998*—the Sydney Harbour Foreshore Authority,
 - (e) development comprising a fixed or floating structure in or over navigable waters—the Maritime Authority of NSW,
 - (f) development for the purposes of an educational establishment, health services facility, correctional centre or group home, or for residential purposes, in an area that is bush fire prone land (as defined by the Act)—the NSW Rural Fire Service.
- Note.** The Act defines *bush fire prone land*, in relation to an area, as land recorded for the time being as bush fire prone land on a map certified as referred to in section 146 (2) of the Act.
- Note.** When carrying out development of a kind referred to in paragraph (f), consideration should be given to the publication of the NSW Rural Fire Service *Planning for Bush Fire Protection 2006*.
- 17 Exceptions**
- (1) Clauses 13–16 do not apply with respect to development to the extent that:
- (a) they would require notice of the intention to carry out the development to be given to a council or public authority from whom an approval is required in order for the development to be carried out lawfully, or
 - (b) they would require notice to be given to a council or public authority with whom the public authority that is carrying out the development, or on whose behalf it is being carried out, has an agreed consultation protocol that applies to the development, or
 - (c) they would require notice to be given to a council or public authority that is carrying out the development or on whose behalf it is being carried out, or
 - (d) the development is exempt development or complying development under any

environmental planning instrument (including this Policy), or

(e) the development comprises emergency works, or

(f) the development is carried out in accordance with a code of practice approved by the Minister for the purposes of this clause and published in the Gazette.

(2) In this clause:

approval means any licence, permission or any form of authorisation, other than development consent, under any other law.

consultation protocol means an arrangement that:

- (a) is about when and how the parties to the arrangement will consult one another about proposed development, and
- (b) is recorded in writing, and
- (c) is approved in writing on behalf of any public authority that is a party to the arrangement by a person who is authorised to do so.

Division 2 Additional uses of State land

Note. Consent for development under this Division may be granted only if the development is the subject of a certificate of the Director-General certifying that the development is compatible with surrounding land uses. The provisions of this Division extend to the classes of development specified in clauses 57 (2) and 62 (1).

18 Additional uses of certain State land permitted

(1) This clause applies to State land unless:

- (a) the land is subject to a standard local environmental plan made as provided by section 33A (2) of the Act, or
- (b) the land is:
 - (i) zoned for conservation purposes under an environmental planning instrument, or
 - (ii) a State forest, flora reserve or timber reserve under the *Forestry Act 1916*, or
 - (iii) reserved under the *National Parks and Wildlife Act 1974*, or
 - (iv) reserved under the *Crown Lands Act 1989* for a public purpose that, in the opinion of the Director-General, is an environmental protection or nature conservation purpose.

(2) If development for a particular purpose is permitted (with or without consent) on land by the zoning of that land, development for that purpose may be carried out on any adjacent State land to which this clause applies:

- (a) with consent, if the development is permitted on the land with consent, or
- (b) without consent, if the development is permitted on the land without consent, despite the provisions of any local environmental plan that applies to that State land.

Note. Development includes subdivision of land—see the definition of **development** in the Act.

(3) Consent must not be granted for development that this clause provides may be carried out with consent unless the consent authority is satisfied that the Director-General has certified

in a site compatibility certificate that, in the Director-General's opinion, the development is compatible with the surrounding land uses.

Note. A site compatibility certificate is not required for development that this clause provides may be carried out without consent.

(4) This clause does not:

- (a) prevent a consent authority from:
 - (i) granting consent for development on a site by reference to site and design features that are more stringent than those identified in a site compatibility certificate for the same site, or
 - (ii) refusing to grant consent for development by reference to the consent authority's own assessment of the compatibility of the development with the surrounding land uses, or
- (b) otherwise limit the matters to which a consent authority may have regard in determining a development application for development to which this clause applies.
- (5) This clause applies regardless of whether the State land and the adjacent land concerned are subject to the same or different environmental planning instruments.
- (6) Land is adjacent to other land for the purpose of this clause even if it is separated from that other land by a road, or road related area, as defined by the *Road Transport (General) Act 2005*.
- (7) In this clause, a reference to land **zoned for conservation purposes** means land in any of the following land use zones or in a land use zone that is equivalent to any of those zones:
 - (a) RE1 Public Recreation,
 - (b) E1 National Parks and Nature Reserves,
 - (c) E2 Environmental Conservation,
 - (d) W1 Natural Waterways.

Division 3 Site compatibility certificates

19 Site compatibility certificates

(1) An application for a site compatibility certificate for the purpose of clause 18, 57 (3) or 63C (2) (a) may be made to the Director-General:

- (a) by the owner of the land on which the development is proposed to be carried out, or
- (b) by any other person with the consent of the owner of that land.

(2) An application under this section:

- (a) must be in writing in the form approved by the Director-General, and
 - (b) must be accompanied by such documents and information as the Director-General may require, and
 - (c) must be accompanied by such fee, if any, as is prescribed by the regulations.
- (3) The Director-General may request further documents and information to be furnished in connection with an application under this section.

- (4) Within 7 days after the application is made, the Director-General must provide a copy of the application to the council for the area in which the development concerned is proposed to be carried out, unless the Director-General refuses, before those 7 days have elapsed, to issue a certificate.
- (5) Subject to subclause (6), the Director-General may determine the application by issuing a certificate or refusing to do so.
- (6) The Director-General must not issue a certificate unless the Director-General:
- has taken into account any comments received from the council within 14 days after the application for the certificate was made, and
 - is of the opinion that the development concerned is compatible with the surrounding land uses having regard to the following matters:
 - the existing uses and approved uses of land in the vicinity of the development,
 - the impact that the development (including its bulk and scale) is likely to have on the existing uses, approved uses and uses that, in the opinion of the Director-General, are likely to be the preferred future uses of that land,
 - the services and infrastructure that are or will be available to meet the demands arising from the development, and
 - is of the opinion that the development concerned is not likely to have an adverse effect on the environment and does not cause any unacceptable environmental risks to the land.
- (7) A certificate may certify that the development to which it relates is compatible with the surrounding land uses only if it satisfies certain requirements specified in the certificate.
- (8) A certificate continues to apply to the land in respect of which it was issued despite any change in the ownership of that land.
- (9) A certificate is valid for 5 years or such other period specified in the certificate.

Division 4 Exempt development

20 Exempt development

Note. Under section 76 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act.

The section states that exempt development:

- must be of minimal environmental impact, and
- cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
- cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).

- (1) Development for a purpose specified in Schedule 1 is exempt development if:

- it is carried out by or on behalf of a public authority, and
- it meets the development standards for the development specified in Schedule 1, and
- it complies with the requirements of this clause.

- (2) To be exempt development, the development:

- must meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
- if it is carried out in relation to an existing building, must not cause the building to contravene the *Building Code of Australia*, and
- must be carried out in accordance with all relevant requirements of the Blue Book, and
- must involve no more than minimal impact on the environment or amenity of the surrounding area, and
- if it is likely to affect a State or local heritage item or a heritage conservation area, must involve no more than minimal impact on the heritage significance of the item or area.

Note. Other provisions of this Policy identify kinds of development that are exempt development if they meet the requirements of subclause (2).

Part 3 Development controls

Division 1 Air transport facilities

21 Definitions

In this Division:

air transport facility means an airport, or a heliport that is not part of an airport, and includes associated communication and air traffic control facilities or structures.

airport means a place used for the landing, taking off, parking, maintenance or repair of aeroplanes (including associated buildings, installations, facilities and movement areas and any heliport that is part of the airport).

heliport has the same meaning as it has in the Standard Instrument.

Note.

The Standard Instrument defines *heliport* as follows:

heliport means a place open to the public used for the taking off and landing of helicopters whether or not it includes:

- a terminal building, or
- facilities for the parking, storage or repair of helicopters.

22 Development permitted without consent

- (1) Development for the purpose of an airport may be carried out by or on behalf of a public authority without consent on land in any of the following land use zones or in a land use zone that is equivalent to any of those zones:

- RU1 Primary Production,
- RU2 Rural Landscape,
- IN4 Working Waterfront,
- SP1 Special Activities,

- (e) SP2 Infrastructure,
- (f) W2 Recreational Waterways,
- (g) W3 Working Waterways.

(2) Development for the purpose of an air transport facility, being a heliport that is not part of an airport, may be carried out by or on behalf of a public authority without consent on land in any of the following land use zones or in a land use zone that is equivalent to any of these zones:

- (a) RU1 Primary Production,
- (b) RU2 Rural Landscape,
- (c) RU4 Rural Small Holdings,
- (d) IN1 General Industrial,
- (e) IN2 Light Industrial,
- (f) IN3 Heavy Industrial,
- (g) IN4 Working Waterfront,
- (h) SP1 Special Activities,
- (i) SP2 Infrastructure,
- (j) W2 Recreational Waterways,
- (k) W3 Working Waterways.

(3) A reference in this clause to development for the purpose of an air transport facility includes a reference to development for any of the following purposes if the development is in connection with an air transport facility:

- (a) construction works,
- (b) fencing, drainage or vegetation management.

23 Development permitted with consent

Development for any of the following purposes may be carried out with consent on land within the boundaries of an existing air transport facility, if the development is ancillary to the air transport facility:

- (a) passenger terminals,
- (b) facilities for the receipt, forwarding or storage of freight,
- (c) hangars for aircraft storage, maintenance and repair,
- (d) premises for retail, business, recreational, residential or industrial uses.

Division 2 Correctional centres

24 Definition

In this Division:

correctional centre means:

(a) any premises declared to be a correctional centre by a proclamation in force under section 225 of the *Crimes (Administration of Sentences) Act 1999*, including any juvenile correctional centre or periodic detention centre, and

(b) any premises declared to be a detention centre by an order in force under section 5 (1) of the *Children (Detention Centres) Act 1987*,

but does not include any police station or court cell complex in which a person is held in custody in accordance with any Act.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU2 Rural Landscape,
- (b) RU4 Rural Small Holdings,
- (c) RU6 Transition,
- (d) B4 Mixed Use,
- (e) SP1 Special Activities,
- (f) SP2 Infrastructure.

25 Development permitted with consent

(1) Development for the purpose of correctional centres may be carried out by or on behalf of a public authority with consent on land in a prescribed zone.

(2) Development for the purpose of a correctional centre may be carried out by or on behalf of a public authority with consent on Lot 1, DP 740367 in the vicinity of Windsor in the City of Penrith.

(3) A reference in this clause to development for the purpose of correctional centres includes a reference to development for any of the following purposes if the development is associated with a correctional centre:

- (a) accommodation for staff,
- (b) administration buildings,
- (c) car parks for visitors and staff,
- (d) educational establishments,
- (e) group homes (as defined by clause 59),
- (f) health services facilities (as defined by clause 56),
- (g) industries,
- (h) recreational facilities.

26 Development permitted without consent

Development for any of the following purposes may be carried out by or on behalf of a public authority without consent on land within a prescribed zone if the development is in connection with an existing correctional centre:

- (a) transitional group homes that each contain not more than 5 bedrooms and accommodate fewer residents than the number equal to the number calculated by multiplying the number of bedrooms in the home by 2,
- (b) sporting facilities or additions to sporting facilities, if the development does not involve clearing of more than 2 hectares of native vegetation,
- (c) demolition of buildings,
- (d) replacement of accommodation, administration or other facilities in, or minor alterations of or additions to, a correctional centre, if the development does not allow for an increase in:
 - (i) the number of persons accommodated at the centre, or
 - (ii) the number of staff employed at the centre,
 that is greater than 10 per cent (compared with the average of each of those numbers for the 12 month period immediately prior to the commencement of the development).

Division 3 Educational establishments

27 Definitions

In this Division:

educational establishment has the same meaning as it has in the Standard Instrument.

Note.

The term *educational establishment* is defined by the Standard Instrument as follows:

educational establishment means a building or place used for education (including teaching), being:

- (a) a school, or
- (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU2 Rural Landscape,
- (b) RU4 Rural Small Holdings,
- (c) RU5 Village,
- (d) RU6 Transition,
- (e) R1 General Residential,
- (f) R2 Low Density Residential,
- (g) R3 Medium Density Residential,
- (h) R4 High Density Residential,
- (i) R5 Large Lot Residential,
- (j) B1 Neighbourhood Centre,

- (k) B2 Local Centre,
- (l) B3 Commercial Core,
- (m) B4 Mixed Use,
- (n) B5 Business Development,
- (o) B6 Enterprise Corridor,
- (p) B7 Business Park,
- (q) SP1 Special Activities,
- (r) SP2 Infrastructure,
- (s) E4 Environmental Living.

school has the same meaning as it has in the Standard Instrument.

Note. The term *school* is defined by the Standard Instrument as follows:

school means a government school or non-government school within the meaning of the *Schools Act 1990*.

TAFE establishment has the same meaning as it does in the *Technical and Further Education Commission Act 1990*.

28 Development permitted with consent

- (1) Development for the purpose of educational establishments may be carried out by or on behalf of a public authority with consent on land in a prescribed zone.

(1A) Development for the purpose of educational establishments may be carried out by or on behalf of a person other than a public authority with consent on land in a prescribed zone.

(1B) Subclause (1A) ceases to have effect 3 years after the commencement of that subclause.

(1C) Development for a purpose specified in clause 31A (1) may be carried out by any person with consent on land on which there is an existing school or TAFE establishment.

- (2) Development for any of the following purposes may be carried out by any person with consent on any of the following land:

- (a) development for the purpose of educational establishments—on land on which there is an existing educational establishment,
- (b) development for the purpose of the expansion of existing educational establishments—on land adjacent to the existing educational establishment.

(3) An educational establishment (including any part of its site and any of its facilities) may be used, with consent, for any community purpose, whether or not it is a commercial use of the establishment.

(4) Subclause (3) does not require consent to carry out development on land if that development could, but for this Policy, be carried out on that land without consent.

29 Development permitted without consent

- (1) Development for any of the following purposes may be carried out by or on behalf of a

public authority without consent on land in a prescribed zone if the development is in connection with an existing educational establishment:

- (a) construction, operation or maintenance, more than 5m from any property boundary, of:
 - (i) a library or an administration building that is not more than one storey high, or
 - (ii) a portable classroom that is not more than one storey high, or
 - (iii) a permanent classroom that is not more than one storey high to replace an existing portable classroom and that is used for substantially the same purpose as the portable classroom, or
 - (iv) a tuckshop, cafeteria or bookshop to provide for students and staff that is not more than one storey high, or
 - (v) a sporting field, tennis court, basketball court or any other type of court used for sport, and associated awnings or canopies, if the development does not involve clearing of more than 2 hectares of native vegetation, or
 - (vi) a car park that is not more than one storey high, or
 - (vii) a toilet block, or
 - (viii) if the development is on bush fire prone land or if the educational establishment is, or contains, a heritage item—an outdoor learning or play area and associated awnings or canopies,
- (b) minor alterations or additions, such as:
 - (i) internal fitouts, or
 - (ii) alterations or additions to address occupational health and safety requirements or to provide access for people with a disability,
 - (c) restoration, replacement or repair of damaged facilities,
 - (d) demolition of buildings or structures,
 - (e) environmental management works.

(2) However, subclause (1) only applies to development that:

- (a) does not allow for an increase in:
 - (i) the number of students at the educational establishment, or
 - (ii) the number of staff employed at the establishment,
 that is greater than 10 per cent (compared with the average of each of those numbers for the 12 month period immediately prior to the commencement of the development), and
 - (b) will not necessitate an alteration of transport or traffic arrangements.
- (3) Development for the purpose of a portable one storey classroom may be carried out by any person without consent on land on which a school is located, if the classroom is located more than 5m from any property boundary.

30 Notification of carrying out of certain development without consent

- (1) This clause applies to development to which clause 29 (1) (a) or (3) applies that is not a project to which Part 3A of the Act applies.
- (2) Before development to which this clause applies is carried out, the proponent of the development must:
 - (a) give written notice of the intention to carry out the development to the council for the area in which the land is located (unless the proponent is that council) and to the occupiers of adjoining land, and
 - (b) take into consideration any response to the notice that is received within 21 days after the notice is given.

31 Exempt development

- (1) Development for any of the following purposes is exempt development if it is in connection with an existing educational establishment and complies with clause 20 (2) (Exempt development):

- (a) an awning or canopy that is not within 5m of any property boundary,
- (b) the removal or lopping of a tree because the tree poses a risk to human health or safety or if the removal or lopping is in accordance with the State government publication *School Facilities Standards—Landscape Standard—Version 22* (March 2002).

Note. A copy of the *School Facilities Standards—Landscape Standard—Version 22* is available for inspection by the public free of charge at the head office of the Department of Planning—see clause 32.

- (2) Development for a purpose specified in Schedule 1 that is carried out by a person other than a public authority is exempt development if:
 - (a) it is carried out on land within the boundaries of an existing educational establishment, and
 - (b) it meets the development standards for the development specified in Schedule 1, and
 - (c) it complies with clause 20 (2) (Exempt development).

Note. Clause 20 (1) covers development carried out by or on behalf of a public authority.

31A Complying development—existing schools and TAFE establishments

- (1) Development carried out by or on behalf of any person on land within the boundaries of an existing school or TAFE establishment is complying development if:

- (a) it is carried out for the purpose of the construction of, or alterations or additions to, any of the following:
 - (i) a library or an administration building,
 - (ii) a gym, indoor sporting facility or hall,
 - (iii) a classroom, lecture theatre, laboratory, trade or training facility,
 - (iv) a tuckshop, cafeteria, bookshop or child care facility to provide for students or staff (or both),
 - (v) a hall with associated covered outdoor learning area or tuck shop,
 - (vi) if the development is not on bush fire prone land or if the educational

establishment is not, or does not contain, a heritage item—an outdoor learning or play area and associated awnings or canopies,

(vii) a car park, and

(b) it complies with the requirements of this clause.

(1A) Development carried out by or on behalf of any person on land within the boundaries of an existing school or TAFE establishment is complying development if the development is an alteration or addition referred to in subclause (1) and is carried out for the purposes of a change of use from an existing use to another use specified in that subclause.

(2) To be complying development, the development must:

(a) be permissible, with consent, in the zone in which it is carried out, and

(b) meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and

(c) not be carried out within 1m of any public sewer except with the written approval of the authority that has management or control of the main.

Note. Section 76A of the Act also provides that certain development cannot be complying development.

(3) (Repealed)

(4) The following are the development standards for complying development under this clause:

(a) **Building height standard.** The building height of a building must not exceed 12m.

(b) **Side and rear setback standard.** A building must be located at least 5m from any side or rear boundary of the land.

(c) **Materials standard.** Any new external walls or roof of a building must be constructed of non-reflective material.

(d) **Noise standard.** A building to be used for the purpose of a gym, indoor sporting facility or hall that is located less than 20m from a common boundary with land zoned residential must be designed to meet the acoustic performance elements contained in item 11.05.e of the State government publication *School Facilities Standards—Design Standard—Version 1/09/2006*.

(e) **Overshadowing standard.** A building must not overshadow any adjoining residential property so that:

(i) solar access to any habitable room on the adjoining property is reduced to less than the minimum level (being 2 hours of solar access between 9 am and 3 pm at the winter solstice) or is reduced in any manner (if solar access to any habitable room on the adjoining property is already below the minimum level), or

(ii) solar access to the principal private open space of the adjoining property is reduced to less than the minimum level (being 3 hours of solar access to not less than 50% of that principal private open space between 9 am and 3 pm at the winter solstice) or is reduced in any manner (if solar access to the principal private open space of the adjoining property is already below the minimum level).

31B (Repealed)

31C Complying development certificates

A complying development certificate for development that is complying development under this Division is subject to the following conditions:

(a) development must be carried out in accordance with the plans and specifications to which the complying development certificate relates,

(b) any demolition work must be carried out in accordance with *AS 2601—2001 The Demolition of Structures*, published by Standards Australia on 13 September 2001,

(c) run-off and erosion controls must be implemented in accordance with the plans to which the complying development certificate relates (before any disturbance to the soil at the site) and maintained throughout the period of the works,

(d) any removal or topping of vegetation must be carried out in accordance with State government publication *School Facilities Standards—Landscape Standard—Version 22 (March 2002)*,

(e) development must be carried out in accordance with all relevant requirements of the *Blue Book*,

(f) building materials and equipment must be stored wholly within the work site,

(g) work must be carried out only between 7 am and 7 pm, Monday to Friday, and between 8 am and 4 pm on a Saturday,

(h) work must not be carried out on a Sunday or public holiday,

(i) before a building is occupied, a certificate of compliance, if required, must be obtained from the local water supply and sewer authority.

32 Determination of development applications

(1) (Repealed)

(2) Before determining a development application for development for the purposes of a school, the consent authority must take into consideration all relevant standards in the following State government publications (as in force on the commencement of this Policy):

(a) *School Facilities Standards—Landscape Standard—Version 22 (March 2002)*,

(b) *Schools Facilities Standards—Design Standard (Version 1/09/2006)*,

(c) *Schools Facilities Standards—Specification Standard (Version 01/11/2008)*.

(3) If there is an inconsistency between a standard referred to in subclause (2) and a provision of a development control plan, the standard prevails to the extent of the inconsistency.

(4) Copies of the standards referred to in subclause (2) are available for inspection by the public at the head office of the Department of Planning and such other offices of the Department (if any) as the Director-General may determine.

(5) If a development application has been made before the commencement of the amendment to this clause by *State Environmental Planning Policy (Infrastructure) Amendment (Group Homes) 2009*, and the application has not been finally determined before that commencement, the application must be determined as if that amendment had not been made.

Division 4 Electricity generating works

33 Definitions

In this Division:

electricity generating works has the same meaning as it has in the Standard Instrument.

Note.

The term *electricity generating works* is defined by the Standard Instrument as follows:

electricity generating works means a building or place used for the purpose of making or generating electricity.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU1 Primary Production,
- (b) RU2 Rural Landscape,
- (c) RU3 Forestry,
- (d) RU4 Rural Small Holdings,
- (e) IN1 General Industrial,
- (f) IN3 Heavy Industrial,
- (g) SP1 Special Activities,
- (h) SP2 Infrastructure.

waste or resource management facility has the same meaning as it has in Division 23 of this Part (Waste or resource management facilities).

34 Development permitted with consent

- (1) Development for the purpose of electricity generating works may be carried out by any person with consent on land in a prescribed zone.
- (2) Development for the purpose of a back-up electricity generating plant that operates for not more than 200 hours in any year may be carried out by any person with consent on any land.
- (3) Development for the purpose of, or resulting in, a change of fuel source of an existing coal or gas fired generating works by a proportion of more than 5 per cent in any 12 month period may only be carried out with consent.
- (4) If, under any environmental planning instrument (including this Policy), development for the purpose of:
 - (a) industry, or
 - (b) a waste or resource management facility,
 may be carried out on land with consent, development for the purpose of electricity generating works that generate energy from waste, or from gas generated by waste, may also be carried out by any person with consent on that land.

35 Other development permitted with consent where electricity generating works permitted

If, under any environmental planning instrument (including this Policy), development for the

purpose of coal-fired or gas-fired electricity generating works may be carried out on land with consent, development for the purpose of industry may also be carried out by any person with consent on that land if the industry:

- (a) is located close to the works, and
- (b) provides opportunities for energy efficiency or co-generation in the operation of the works.

36 Development permitted without consent

- (1) Development for the purpose of the generation or distribution of hydro-electric power using existing dam infrastructure may be carried out by or on behalf of a public authority without consent on any land.
- (2) If, under any environmental planning instrument (including this Policy), development for the purpose of sewage treatment works may be carried out on land without consent, development for the purpose of electricity generating works that generate energy from waste, or from gas generated by waste, may also be carried out by any person without consent on that land.

37 Complying development

Development for the purpose of a photovoltaic system or solar hot water system that is associated with an existing building for which the system generates electricity or hot water is complying development on any land if the development:

- (a) does not necessitate the removal of trees from near the building to ensure solar energy is available, and
- (b) does not create excessive glare or reflection onto any adjacent building, and
- (c) does not block views or otherwise adversely affect any adjacent property, and
- (d) is not located on a building that is a State or local heritage item or is in a heritage conservation area.

Note. Some development for the purpose of photovoltaic systems or solar hot water systems is exempt development—see clause 39.

38 Prohibited development

Development on any land for the purpose of electricity generating works that burn native forest bio-material (within the meaning of clause 57L of the *Protection of the Environment Operations (General) Regulation 1998*) is prohibited.

39 Exempt development

- (1) Development for the purpose of a photovoltaic system or solar hot water system for a building is exempt development if it complies with clause 20 (2) (Exempt development) and all of the following requirements are met:

- (a) the system is integrated into the building or is flush or parallel with the surface of its roof,
- (b) the development does not:
 - (i) reduce the structural integrity of, or involve structural alterations to, the building, or
 - (ii) necessitate the removal of trees from near the building to ensure that solar energy

is available for the system,

- (c) on average, over any 5 year period, at least 75 per cent of the electricity generated by the system in a 12 month period is used in or for the building,
- (d) the system is not located on a building that is a State or local heritage item or is in a heritage conservation area.

(2) Development for the purpose of a wind monitoring tower used in connection with the investigation or determination of the feasibility of a wind farm is exempt development if:

- (a) it complies with clause 20 (2) (Exempt development), and
- (b) the tower:
 - (i) is erected in accordance with the manufacturer's specifications, and
 - (ii) has a height of not more than 110m, and
 - (iii) is removed within 30 months after its erection is completed, and
- (c) the site of the tower:

- (i) is enclosed by a fence that prevents unauthorised entry to the site, and
- (ii) is not within 100m of any public road, and
- (iii) is not within 1 km of any other wind monitoring tower or a school, and
- (iv) is not within 1 km of any dwelling except with the prior written permission of the owner of the dwelling, and
- (v) is not within 500m of any State heritage item, and
- (vi) does not affect a significant view to or from any such item that is identified in a conservation management plan (as defined by clause 3 of the *Heritage Regulation 2005*) for the item, and

(d) before the tower is erected, the Civil Aviation Safety Authority (established under the *Civil Aviation Act 1988* of the Commonwealth) is notified in writing of:

- (i) the tower's "as constructed" longitude and latitude co-ordinates, and
- (ii) the ground level elevation at the base of the tower, referenced to the Australian Height Datum, and
- (iii) the height from ground level (existing) to the topmost point of the tower (including all attachments), and
- (iv) the elevation to the top of the tower (including all attachments), referenced to the Australian Height Datum, and
- (v) the date on which it is proposed to remove the tower.

Division 5 Electricity transmission or distribution

Subdivision 1 Electricity transmission or distribution networks

40 Definitions

In this Division:

electricity supply authority means a person or body engaged in the distribution of electricity to the public or in the generation of electricity for supply, directly or indirectly, to the public, whether by statute, franchise agreement or otherwise, and includes:

- (a) an energy services corporation within the meaning of the *Energy Services Corporations Act 1993*, and
- (b) a transmission operator or distribution network service provider (in each case within the meaning of the *Electricity Supply Act 1995*), and
- (c) Rail Corporation New South Wales constituted under the *Transport Administration Act 1988*, and
- (d) the Water Administration Ministerial Corporation constituted under the *Water Management Act 2000*.

electricity transmission or distribution network includes the following components:

- (a) above or below ground electricity transmission or distribution lines (and related bridges, cables, conductors, conduits, poles, towers, trenches, tunnels, ventilation and access structures),
- (b) above or below ground electricity kiosks or electricity substations, feeder pillars or transformer housing, substation yards or substation buildings.

safety risks means risks of electrocution, fire risks, risks relating to voltage rises or risks to the integrity of an electricity transmission or distribution network.

41 Development permitted without consent

(1) Development for the purpose of an electricity transmission or distribution network may be carried out by or on behalf of an electricity supply authority or public authority without consent on any land. However, such development may be carried out without consent on land reserved under the *National Parks and Wildlife Act 1974* only if the development:

- (a) is authorised by or under that Act, or
- (b) is, or is the subject of, an existing interest within the meaning of section 39 of that Act, or
- (c) is carried out on land to which that Act applies over which an easement has been granted and is not contrary to the terms or nature of the easement, or
- (d) is an electricity work to which section 53 of the *Electricity Supply Act 1995* applies.

(2) In this clause, a reference to development for the purpose of an electricity transmission or distribution network includes a reference to development for any of the following purposes if the development is in connection with such a network:

- (a) construction works (whether or not in a heritage conservation area), including:
 - (i) laying and installation of cables and cable pits, co-location of cabling and erection of ventilation and access structures, bridges and tunnel adits, and construction of a tunnel or conduit for an underground cable, and
- (ii) alteration, demolition or relocation of a local heritage item, and
- (iii) alteration or relocation of a State heritage item,

- (b) emergency works, or routine maintenance works, on the site of an existing component of a network or on land that is adjacent to such a site (whether or not the works are on land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies but, if they are on such land, only if any adverse effect on the land is restricted to the minimum possible to allow the works to be carried out),
- (c) environmental management works,
- (d) establishment of a new substation or an increase in the area of existing substation yards or the installation of equipment, plant or structures in existing substation yards or substation buildings,
- (e) above or below ground co-location of telecommunications cabling and associated structures,
- (f) an electricity generating unit to provide temporary support to the network at a substation or maintenance depot, but only if the combined capacity of all units at the substation or maintenance depot does not exceed 5 megawatts and none of the units is operated, or is intended to be operated, for more than 200 hours in any 12 month period.

42 Notification of electricity substation development

- (1) This clause applies to development that:

- (a) is carried out by or on behalf of an electricity supply authority or public authority, and
- (b) is for the purpose of a new or existing electricity substation of any voltage (including any associated yard, control building or building for housing plant), and
- (c) is not a project to which Part 3A of the Act applies.

- (2) Before development to which this clause applies is carried out, the electricity supply authority or public authority must:

- (a) give written notice of the intention to carry out the development to the council for the area in which the land is located (unless the authority is that council) and to the occupiers of adjoining land, and
- (b) take into consideration any response to the notice that is received within 21 days after the notice is given.

43 Exempt development

Development for any of the following purposes is exempt development if the development is in connection with an electricity transmission or distribution network and complies with clause 20 (2) (Exempt development):

- (a) installation of cables in existing conduits if the installation involves no greater soil or vegetation disturbance than necessary,
- (b) maintenance, repair, replacement or realignment of poles or of associated support structures for electricity lines that have a capacity of less than 33 kV, if:
 - (i) the primary purpose of the development is not to increase the capacity of the network, and
 - (ii) in the case of replacement, the replacement materials are similar to the materials being

replaced or, if timber pole structures are being replaced, they are replaced with similar sized steel or concrete structures,

- (c) installation, maintenance, repair, replacement or upgrading of above or below ground service lines with a capacity of less than 33 kV that connect premises to the network,
- (d) installation, maintenance, repair or replacement of the following:
 - (i) existing plant or equipment in an existing fenced area or in an existing building (including pillars with a capacity of less than 33 kV, fuses, control points, switches, regulators and protection equipment, but not including outdoor installation of equipment with a capacity of 33 kV or more),
 - (ii) street lighting if the lighting minimises light spill and artificial sky glow in accordance with AS/NZS 1158:2007, *Lighting for Roads and Public Spaces*,
 - (iii) electricity metering,
 - (iv) electrical conductors on existing structures, if the development will not result in an increase in the capacity of the network,
- (e) maintenance of existing access tracks in easements or rights of way, or on land subject to section 53 of the *Electricity Supply Act 1995*, if it is required to facilitate the maintenance or repair of electricity lines,
- (f) maintenance, repair or replacement of pole substations, if:
 - (i) the development will not result in any increase in the capacity of the network, and
 - (ii) in the case of replacement of materials, the replacement materials are similar to the materials being replaced and the replacement does not involve any structural alterations,
- (g) demolition and removal of electricity works in accordance with the relevant provisions of AS 2601—2001, *Demolition of structures* (not including works associated with substations containing equipment that has a capacity of 33 kV or more or at sites where soil is likely to be contaminated),
- (h) emergency works to maintain or restore a supply of electricity,
- (i) construction, maintenance or realignment of security fencing with a height of not more than 3.2m above ground level (existing),
- (j) investigations (including geotechnical and other testing, surveying and sampling) above or below the surface of the ground, if the investigations:
 - (i) involve no greater soil or vegetation disturbance than necessary, and
 - (ii) do not result in an increase in stormwater drainage or run-off from the sites concerned,
- (k) vegetation management complying with a tree management plan prepared in accordance with clause 103 of the *Electricity Supply (General) Regulation 2001* or vegetation management that is exempted under clause 21 of the *Native Vegetation Regulation 2005*,
- (l) environmental management works in an existing fenced area or in an existing building.

Subdivision 2 Development likely to affect an electricity transmission or distribution network

44 Excavation—corridors in City of Sydney

- (1) This clause applies to a development application (or an application for modification of a consent) for development that involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is within 10m (measured radially) of the centreline of any of the following electricity supply corridors (or parts of such corridors):
- (a) the part of the Picnic Point to Haymarket corridor (as approved by the Minister on 1 February 2002) that runs between Sydney Park and Haymarket,
 - (b) the Haymarket to Surry Hills corridor (as approved by the Minister on 21 December 2001),
 - (c) the City West Cable Tunnel corridor (as approved by the Minister on 21 February 2007).

Note. Copies of the Minister's determinations are available on the website of the Department of Planning.

- (2) Before determining an application to which this clause applies, the consent authority must:
- (a) give written notice of the application to the electricity supply authority for the area in which the development is to be carried out, and
 - (b) take into consideration any response to the notice that is received within 21 days after the notice is given, and
 - (c) be satisfied that any safety risks associated with the development or modification to which the application relates have been identified, and
 - (d) take those risks into consideration.

45 Determination of development applications—other development

- (1) This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following:
- (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
 - (b) development carried out:
 - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or
 - (ii) immediately adjacent to an electricity substation, or
 - (iii) within 5m of an exposed overhead electricity power line,
 - (c) installation of a swimming pool any part of which is:
 - (i) within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or
 - (ii) within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,
 - (d) development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.
- (2) Before determining a development application (or an application for modification of a

consent) for development to which this clause applies, the consent authority must:

- (a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and
- (b) take into consideration any response to the notice that is received within 21 days after the notice is given.

Division 6 Emergency services facilities and bush fire hazard reduction

46 Definitions

In this Division:

bush fire hazard reduction work means:

- (a) the establishment or maintenance of fire breaks on land, and
 - (b) the controlled application of appropriate fire regimes or other means for the reduction or modification of available fuels within a predetermined area to mitigate against the spread of a bush fire,
- but does not include construction of a track, trail or road.

emergency services facility means a building or place (including a helipad) used in connection with the provision of emergency services by an emergency services organisation.

emergency services organisation means:

- (a) the Ambulance Service of New South Wales,
- (b) New South Wales Fire Brigades,
- (c) the NSW Rural Fire Service,
- (d) the NSW Police Force,
- (e) the State Emergency Service,
- (f) the New South Wales Volunteer Rescue Association Incorporated,
- (g) the New South Wales Mines Rescue Brigade established under the *Coal Industry Act 2001*,
- (h) an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU1 Primary Production,
- (b) RU2 Rural Landscape,
- (c) RU3 Forestry,
- (d) RU4 Rural Small Holdings,
- (e) RU5 Village,
- (f) B2 Local Centre,

- (g) B3 Commercial Core,
- (h) B4 Mixed Use,
- (i) B5 Business Development,
- (j) B6 Enterprise Corridor,
- (k) B7 Business Park,
- (l) IN1 General Industrial,
- (m) IN3 Heavy Industrial,
- (n) IN4 Working Waterfront,
- (o) SP1 Special Activities,
- (p) SP2 Infrastructure,

47 Development permitted with consent

Development for the purpose of an emergency services facility may be carried out with consent in a prescribed zone by or on behalf of an emergency services organisation that is not a public authority.

48 Development permitted without consent

- (1) Development for the purpose of an emergency services facility may be carried out by or on behalf of a public authority without consent in a prescribed zone. However, such development may be carried out on land reserved under the *National Parks and Wildlife Act 1974* only if it is authorised by or under that Act.
- (2) Development for any of the following purposes may be carried out by or on behalf of an emergency services organisation without consent on any land:
 - (a) minor alterations of or additions to an existing emergency services facility, such as internal fitouts or works for safety or security purposes,
 - (b) restoration of an emergency services facility due to damage,
 - (c) demolition of an emergency services facility.
- (3) Development for the purpose of bush fire hazard reduction work or the construction of fire trails may be carried out by any person without consent on any land if the development:
 - (a) is not on land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies, and
 - (b) is consistent with a bush fire risk management plan within the meaning of the *Rural Fires Act 1997* that applies to the area or locality in which the development is proposed to be carried out.

Note. The *Rural Fires Act 1997* makes certain bush fire risk management work exempt development.

Division 7 Flood mitigation work

49 Definition

In this Division:

flood mitigation work has the same meaning as it has in the Standard Instrument.

Note.

The Standard Instrument defines *flood mitigation work* as follows:

flood mitigation work means work designed and constructed for the express purpose of mitigating flood impacts. It involves changing the characteristics of flood behaviour to alter the level, location, volume, speed or timing of flood waters to mitigate flood impacts. Types of works may include excavation, construction or enlargement of any fill, wall or levee that will alter riverine flood behaviour, local overland flooding, or tidal action so as to mitigate flood impacts.

Note. Examples of flood mitigation work include levees, barrages, causeways, cuttings, embankments, floodgates and detention basins.

50 Development permitted without consent

- (1) Development for the purpose of flood mitigation work may be carried out by or on behalf of a public authority without consent on any land.
- (2) A reference in this clause to development for the purpose of flood mitigation work includes a reference to development for any of the following purposes if the development is in connection with flood mitigation work:
 - (a) construction works,
 - (b) routine maintenance works,
 - (c) environmental management works.

Division 8 Forestry

Note. This Division does not apply in relation to forestry to which a forest agreement or integrated forestry operations approval under the *Forestry and National Park Estate Act 1998* applies—see section 36 of that Act. See also the *Native Vegetation Act 2003* in relation to the clearing of native vegetation.

51 Definition

In this Division:

forestry has the same meaning as it has in the Standard Instrument.

Note.

The Standard Instrument defines *forestry* (by reference to the *Forestry and National Park Estate Act 1998*) to mean:

- (a) logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or
- (b) forest products operations, namely, the harvesting of products of trees, shrubs and other vegetation (other than timber) that are of economic value, or
- (c) on-going forest management operations, namely, activities relating to the management of land for timber production such as thinning, bush fire hazard reduction, bee-keeping, grazing and other silvicultural activities, or
- (d) ancillary road construction, namely, the provision of roads and fire trails, and the maintenance of existing railways, to enable or assist in the above operations.

52 Development permitted without consent

- (1) Development for the purpose of forestry may be carried out by or on behalf of a public authority without consent on land in Zone RU3 Forestry or an equivalent land use zone.
- (2) A reference in this clause to development for the purpose of forestry includes a reference to development for any of the following purposes:
- (a) operation of portable timber mills,
 - (b) harvesting of products of cultural value from trees, shrubs and other vegetation,
 - (c) forest management activities relating to matters such as Aboriginal cultural heritage, forestry research and forest conservation,
 - (d) environmental management works (such as weed and pest control),
 - (e) facilities and works associated with forestry (such as landscaping, recycled water and biosolids reuse schemes, maintenance depots and bushfire lookouts),
 - (f) outdoor recreational facilities and related amenities for visitors to forests (such as viewing platforms, toilet facilities and garbage collection areas),
 - (g) construction and maintenance of roads, tracks and fire trails to enable or assist anything mentioned in paragraphs (a)–(f).

Division 9 Gas transmission or distribution

Subdivision 1 Gas pipelines

53 Development permitted without consent

- (1) Development for the purpose of a gas pipeline may be carried out by any person without consent on any land if the pipeline is subject to a licence under the *Pipelines Act 1967* or a licence or authorisation under the *Gas Supply Act 1996*.
- (2) Development for the purpose of a gas pipeline may be carried out by or on behalf of a public authority without consent on any land.
- (3) However, subclauses (1) and (2) apply with respect to land in Zone E1 National Parks and Nature Reserves or an equivalent land use zone only if the development:
- (a) is authorised by or under the *National Parks and Wildlife Act 1974*, or
 - (b) is, or is the subject of, an existing interest within the meaning of section 39 of that Act, or
 - (c) is carried out on land to which that Act applies over which an easement has been granted and is not contrary to the terms or nature of the easement.
- (4) In this clause, a reference to development for the purpose of a gas pipeline includes a reference to development for any of the following purposes if the development is in connection with a gas pipeline:
- (a) construction works,
 - (b) emergency works or routine maintenance works.

54 Exempt development

- (1) Development for any of the following purposes is exempt development if the development is in connection with a pipeline that is the subject of a licence or authorisation under the

Gas Supply Act 1996 and complies with clause 20 (2) (Exempt development):

- (a) installation, maintenance, repair or replacement of:
 - (i) gas metering at gas customers' premises, or
 - (ii) gas customer service lines connecting customers' premises to a gas distribution network,
 - (b) maintenance or emergency works or routine maintenance to protect the pipeline, the environment or the public, if the works involve no greater soil or vegetation disturbance than necessary.
- (2) Development for any of the following purposes is exempt development if the development is in connection with a gas pipeline that is the subject of a licence under the *Pipelines Act 1967* and complies with clause 20 (2) (Exempt development):
- (a) maintenance or emergency works to protect the pipeline, the environment or the public, if the works involve no greater soil or vegetation disturbance than necessary,
 - (b) installation, maintenance, repair, realignment or replacement of security fencing with a height of not more than 3.2m above ground level (existing),
 - (c) installation, maintenance, repair or replacement of:
 - (i) pipeline markers, if they involve no greater soil or vegetation disturbance than necessary, or
 - (ii) temporary fencing around work sites or open excavations, or,
 - (iii) temporary structures associated with site compounds for construction or maintenance projects (such as demountable buildings) but only if any temporary building is not more than one storey high, or
 - (iv) cathodic protection systems, or
 - (v) controls over access to gas control facilities or to associated roads and facilities,
 - (d) maintenance or repair of:
 - (i) existing access tracks or gates along pipeline corridors, if the maintenance or repair involves no greater soil or vegetation disturbance than necessary, or
 - (ii) gas control facilities (including painting, servicing or replacement of existing equipment and repairs or minor alterations to enclosures or buildings),
 - (e) excavations to expose pipelines for inspection or testing, and the creation of temporary stockpiles associated with pipeline maintenance or repair, if:
 - (i) measures to control stockpile erosion or movement of sediment from the stockpiles are in place, and
 - (ii) there is no greater soil or vegetation disturbance than necessary.

Subdivision 2 Development in gas pipeline corridors

55 Development adjacent to corridor

- (1) Before determining an application (or any application for modification of a consent) for development adjacent to a gas pipeline corridor, the consent authority must:

(a) be satisfied that the potential safety risks or risks to the integrity of the pipeline that are associated with the development or modification to which the application relates have been identified, and

(b) take those risks into consideration.

(2) In this clause, *gas pipeline corridor* means any land:

- (a) within the licence area of a gas pipeline licensed under the *Pipelines Act 1967*, or
- (b) within 20m (measured radially) of the centreline of any of the following gas pipelines:
 - (i) Central West Pipeline System and Central Ranges Pipeline System,
 - (ii) Eastern Gas Pipeline,
 - (iii) Moomba to Sydney Pipeline System,
 - (iv) Wilton to Newcastle Pipeline,
 - (v) Wilton to Wollongong Pipeline,
 - (vi) Culcairn to Victoria Interconnect Pipeline,
 - (vii) Hoskinstown to Australian Capital Territory Pipeline.

Division 10 Health services facilities

56 Definitions

In this Division:

health services facility means a facility used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease or injury to persons, and includes the following:

- (a) day surgeries and medical centres,
- (b) community health service facilities,
- (c) health consulting rooms,
- (d) facilities for the transport of patients, including helipads and ambulance facilities,
- (e) hospitals.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU4 Rural Small Holdings,
- (b) RU5 Village,
- (c) RU6 Transition,
- (d) R1 General Residential,
- (e) R3 Medium Density Residential,
- (f) R4 High Density Residential,
- (g) R5 Large Lot Residential,

- (h) B2 Local Centre,
- (i) B3 Commercial Core,
- (j) B4 Mixed Use,
- (k) B5 Business Development,
- (l) B6 Enterprise Corridor,
- (m) B7 Business Park,
- (n) SP1 Special Activities,
- (o) SP2 Infrastructure.

57 Development permitted with consent

- (1) Development for the purpose of health services facilities may be carried out by any person with consent on land in a prescribed zone.
- (2) Development for any of the following purposes may be carried out by or on behalf of a public authority with consent on State land that is in a land use zone identified by another environmental planning instrument as a "special use" zone for a health services facility:
 - (a) biotechnology research or development industries,
 - (b) business premises or retail facilities to cater for patients, staff or visitors,
 - (c) multi dwelling housing.
- (3) Consent must not be granted for development of a kind referred to in subclause (2) unless the consent authority is satisfied that the Director-General has certified in a site compatibility certificate that, in the Director-General's opinion, the development is compatible with the surrounding land uses.

(4) Nothing in this clause:

- (a) prevents a consent authority from:
 - (i) granting consent for development on a site by reference to site and design features that are more stringent than those identified in a site compatibility certificate for the same site, or
 - (ii) refusing to grant consent for development by reference to the consent authority's own assessment of the compatibility of the development with the surrounding land uses, or
- (b) otherwise limits the matters to which a consent authority may have regard in determining a development application for development of a kind referred to in subclause (2).

58 Development permitted without consent

- (1) Development for any of the following purposes may be carried out by or on behalf of a public authority without consent on land in a prescribed zone:
 - (a) minor alterations of, or additions to an existing hospital, including internal fitouts or provision of access for persons with a disability,

- (b) restoration or replacement of accommodation, administration or other facilities within an existing hospital,
- (c) demolition of buildings if the development is in connection with a health services facility.
- (2) Development of a kind referred to in subclause (1) may only be carried out without consent under that subclause if the development will not allow for an increase in:
- (a) the number of patients accommodated at the facility, or
- (b) the number of staff employed at the facility,
- that is greater than 10 per cent (compared with the average of each of those numbers for the 12 month period immediately prior to the commencement of the development).

Division 11

58A–63F(Repealed)

Division 12 Parks and other public reserves

64 Definition

In this Division:

public reserve has the same meaning as it has in the *Local Government Act 1993*, but does not include a Crown reserve that is dedicated or reserved for a public cemetery.

65 Development permitted without consent

- (1) Development for any purpose may be carried out without consent:
- (a) on land reserved under the *National Parks and Wildlife Act 1974*, if the development is in the exercise of a function under that Act, or
- (b) on land declared under the *Marine Parks Act 1997* to be a marine park if the development is in the exercise of a function under that Act, or
- (c) on land declared under the *Fisheries Management Act 1994* to be an aquatic reserve if the development is in the exercise of a function under that Act.
- (2) Development for any purpose may be carried out without consent:
- (a) on Trust lands within the meaning of the *Centennial Park and Moore Park Trust Act 1983*, by or on behalf of the Centennial Park and Moore Park Trust, or
- (b) on trust lands within the meaning of the *Parramatta Park Trust Act 2001*, by or on behalf of the Parramatta Park Trust, or
- (c) (Repealed)
- (d) in the case of land that is a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*, by or on behalf of the Director-General of the Department of Lands, a trustee of the reserve or (if appointed under that Act to manage the reserve) the Ministerial Corporation constituted under that Act or an administrator,
- if the development is for the purposes of implementing a plan of management adopted for the land under the Act referred to above in relation to the land.

- (3) Development for any of the following purposes may be carried out by or on behalf of a council without consent on a public reserve under the control of or vested in the council:
- (a) roads, cycleways, single storey car parks, ticketing facilities and viewing platforms,
- (b) outdoor recreational facilities, including playing fields, but not including grandstands,
- (c) information facilities such as visitors' centres and information boards,
- (d) lighting, if light spill and artificial sky glow is minimised in accordance with AS/NZS 1158: 2007, *Lighting for Roads and Public Spaces*,
- (e) landscaping, including irrigation schemes (whether they use recycled or other water),
- (f) amenity facilities,
- (g) maintenance depots,
- (h) environmental management works.

66 Exempt development

- (1) Development for any of the following purposes is exempt development if it is carried out by or on behalf of a public authority in connection with a public reserve or on land referred to in clause 65 (1), and if it complies with clause 20 (2) (Exempt development):
- (a) construction, maintenance and repair of:
- (i) walking tracks, boardwalks and raised walking paths, ramps, minor pedestrian bridges, stairways, gates, seats, barbecues, shelters and shade structures,
- (ii) viewing platforms with an area not exceeding 100m², or
- (iii) sporting facilities, including goal posts, sight screens and fences, if the visual impact of the development on surrounding land uses is minimal, or
- (iv) play equipment where adequate safety provisions (including soft landing surfaces) are provided, but only if any structure is at least 1.2m away from any fence,
- (b) routine maintenance (including earthworks associated with playing field regrading or landscaping and maintenance of existing access roads).
- (2) Development of a kind referred to in subclause (1) is exempt development if it is carried out on land referred to in clause 65 (2) by or on behalf of the person specified in respect of that land in that subclause, if the development:
- (a) complies with clause 20 (2) (Exempt development), and
- (b) involves no greater disturbance of native vegetation than necessary, and
- (c) does not result in an increase in stormwater run-off or erosion, and
- (d) for the purposes of implementing a plan of management adopted for the land under the Act referred to in clause 65 (2) in relation to the land.

Division 13 Port, wharf or boating facilities

67 Definitions

In this Division:

facilities includes:

- (a) facilities for the embarkation or disembarkation of passengers onto or from any vessels, including public ferry wharves, and
- (b) facilities for the loading or unloading of freight onto or from vessels and associated receipt, land transport and storage facilities, and
- (c) wharves for commercial fishing operations, and
- (d) refuelling, launching, berthing, mooring, storage or maintenance facilities for any vessel, and
- (e) sea walls or training walls, and
- (f) administration buildings, communication, security and power supply facilities, roads, rail lines, pipelines, fencing, lighting or car parks.

freight includes livestock, containers, liquids, materials, plant and equipment, vehicles and vessels.

navigation and emergency response facilities means facilities for:

- (a) water traffic control, safe navigation and other safety purposes (such as beacons, navigation towers, lighthouses, buoys, marine markers, pilot stations, breakwaters or training walls), and
- (b) emergency response, including rescue stations and emergency communication facilities.

Port Botany area means the area shown in Figure 2 of *City of Botany Bay Development Control Plan for Exempt and Complying Development* (as adopted by the Council of the City of Botany in March 2005).

Port Botany guidelines means the *Exempt and Complying Development Guidelines for Port Botany* (Sydney Ports Corporation, December 2005).

Port Corporation means a Port Corporation established under the *Ports and Maritime Administration Act 1995*.

port facilities means facilities at, or on land in the vicinity of, a designated port (within the meaning of section 47 of the *Ports and Maritime Administration Act 1995*) used in connection with the carrying of freight and persons by water from one port to another for business or commercial purposes.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) B4 Mixed Use,
- (b) IN1 General Industrial,
- (c) IN3 Heavy Industrial,
- (d) IN4 Working Waterfront,
- (e) SP1 Special Activities,
- (f) SP2 Infrastructure,

- (g) SP3 Tourist,
- (h) RE1 Public Recreation,
- (i) W2 Recreational Waterways,
- (j) W3 Working Waterways,

and includes any waterbody that is unzoned under any environmental planning instrument.

public ferry wharf means a wharf or any associated facilities used for the purposes of public passenger services provided by ferries.

wharf or boating facilities means a wharf, or facilities associated with a wharf or boating, that are not port facilities.

68 Development permitted without consent

(1) Development for the purpose of port facilities may be carried out:

- (a) by or on behalf of a Port Corporation or the Maritime Authority of NSW without consent on land in a prescribed zone or on any other land, providing the development is directly related to an existing port facility, and
- (b) by or on behalf of any other public authority without consent on land in a prescribed zone.

(2) Development for any of the following purposes may be carried out by or on behalf of a public authority without consent on any land or on unzoned land:

- (a) navigation and emergency response facilities,
- (b) environmental management works associated with a port, wharf or boating facility.

(3) Subdivision of land in the area of a port managed by a Port Corporation, being subdivision that is required to facilitate operations at the port, may be carried out by a Port Corporation without consent.

(4) Development for the purpose of wharf or boating facilities may be carried out by or on behalf of a public authority without consent on any land. However, such development may be carried out on land reserved under the *National Parks and Wildlife Act 1974* only if the development is authorised by or under that Act.

(4A) Development for the purposes of associated public transport facilities for a public ferry wharf may be carried out by or on behalf of a public authority without consent on any land. However, such development may be carried out on land reserved under the *National Parks and Wildlife Act 1974* only if the development is authorised by or under that Act.

(5) In this clause, a reference to development for the purpose of port facilities, navigation facilities, wharf or boating facilities or associated public transport facilities for a public ferry wharf includes a reference to the operation of such a facility and to development for any of the following purposes if the development is in connection with such facilities:

- (a) construction works (including dredging and land reclamation, if it is required for the construction of facilities),
- (b) routine maintenance works (including dredging, or bed profile levelling, of existing navigation channels if it is for safety reasons or in connection with existing facilities),

- (c) environmental management works,
- (d) alteration, demolition or relocation of a local heritage item,
- (e) alteration or relocation of a State heritage item.

69 Development permitted with consent

- (1) Development on land within a port facility or within a public ferry wharf, being development:
 - (a) for the purposes of the erection, reconstruction, alteration or use of a structure associated with retail premises, business premises or industrial premises that are not directly related to the operation of the port, and
 - (b) that is not development of a kind referred to in clause 68,
 may be carried out by any person with consent on land in a prescribed zone or on unzoned land.
- (2) Subdivision of any land in the area of a port managed by a Port Corporation (other than subdivision referred to in clause 68) may be carried out by any person with consent.
- (3) Development for the purpose of dredging (other than dredging referred to in clause 68) may be carried out by any person with consent on any land.

70 Exempt development

Development for any of the following purposes is exempt development if it is lawfully carried out on land at a port facility at a designated port managed by a Port Corporation or the Maritime Authority of NSW and complies with clause 20 (2) (Exempt development):

- (a) awnings or canopies,
- (b) adjustment of boundaries between lots or consolidation of lots, if it will not result in:
 - (i) a change in the area of any lot by more than 10 per cent, or
 - (ii) the creation of an additional lot or of a legal right to erect a building on a lot, or
- (iii) a reduction in vehicular access to any lot, in loading and unloading areas on any lot or in areas used for car parks, or
- (iv) a breach of any requirements under an environmental planning instrument relating to a minimum area of open space or of landscaping, or
- (v) a lot that depends on the use of the services provided to, or utilities of, another lot,
- (c) building alterations, including:
 - (i) non-structural alterations to the exteriors of buildings (such as painting, plastering, cement rendering, cladding, attaching fittings and decorative work), and
 - (ii) interior alterations to buildings that do not affect the load bearing capacity of any load bearing component of a building, and
 - (iii) any work involving the removal of asbestos, asbestos cement or lead paint, if the removal complies with the WorkCover Authority's *Your guide to working with asbestos: Safety guidelines and requirements for work involving asbestos* (March 2003),

- (d) demolition of any shed, kiosk, garage, roof structure, ceiling, partition, stairs, ducts, internal walls, fencing, flagpole or advertising structure, or of any building the erection of which is exempt development under this Policy, if:
 - (i) it is not a State or local heritage item or part of such an item or in a heritage conservation area, and
 - (ii) in the case of a shed, kiosk or garage, it has a gross floor area not exceeding 500m², and
 - (iii) the demolition is carried out in accordance with AS 2601—2001, *Demolition of structures*,
- (e) emergency services equipment (including replacement or augmentation of fire systems, pumphouses, fire water tanks and other essential fire safety facilities),
- (f) a flagpole that:
 - (i) has a height above ground level (existing) of not more than 30m, and
 - (ii) is not located within 20m of any boundary of a property that is used for residential purposes, and
 - (iii) does not display any commercial advertisements for or about any party other than the occupier of the Port Corporation or a lessor of the site from the Port Corporation,
- (g) hail netting that:
 - (i) has a height above ground level (existing) of not more than 12m, and
 - (ii) is dark in colour,
- (h) landscaping, paving or a car park that:
 - (i) is ancillary or incidental to a lawful use of the land on which it is carried out or located, and
 - (ii) is designed so that any surface water run-off is directed to the stormwater management system, and
 - (iii) in the case of landscaping on land in the Port Botany area, complies with the Port Botany guidelines,
- (i) marking out of internal private roads that are not connected to a public road,
- (j) structures for external lighting with a height above ground level (existing) of not more than 35m,
- (k) pedestrian ramps, pathways and non-mechanical stairways,
- (l) pollution control facilities, occupational health and safety measures and environmental management works (including such facilities and works associated with liquid petroleum gas storage containers or fuel storage tanks) that satisfy any applicable pollution control provisions and guidelines and are not inconsistent with, or in contravention of, an existing development consent or undertaken for the purpose of remediating contaminated land,
- (m) retaining walls (not including sea walls) that:
 - (i) provide for the retaining of fill to a height above ground level (existing) of not more than 2m and excavation to a depth below ground level (existing) of not more than 1m,

and

- (ii) are constructed so as to not impede the natural flow of stormwater or surface water run-off,

(n) scaffolding that:

- (i) complies with AS/NZS 1576.1:1995, *Scaffolding—General Requirements*, and
- (ii) is removed as soon as is practicable without compromising public health or safety,

- (o) security fencing or security boom gate (whether or not installed along a road frontage) that has a height (in the case of a security fence) of not more than 3.5m,

(p) security cameras,

(q) directional or safety signs that:

- (i) comply with AS 1319—1994, *Safety signs for the occupational environment* and AS 4282—1997, *Control of the obtrusive effects of outdoor lighting*, and

- (ii) in the case of signs on land in the Port Botany area, comply with the Port Botany guidelines,

(r) public notices that:

- (i) are displayed by a public authority, and
- (ii) contain only warning, safety, security or instructive information (whether or not conveyed by a graphic), and

- (iii) in the case of notices on land in the Port Botany area, comply with the Port Botany guidelines,

(s) business identification signs that:

- (i) are flush to or painted on a wall, and
- (ii) have an area of not more than 25m², and
- (iii) are not more than 10m wide or long, and
- (iv) if flush to a wall, do not project more than 0.3m out from the wall and do not extend vertically above or laterally beyond the wall, and
- (v) are not illuminated, and

- (vi) relate to the business carried out on the land,

(t) a change in the display on an existing sign that does not involve a change in the area, form or shape of the sign,

(u) a temporary structure if:

- (i) the structure is used for a period totalling not more than 12 months, and
- (ii) any car parks and directional or safety signage associated with the use of the structure is located on the same site as the structure, and
- (iii) any waste associated with use of the structure is disposed of lawfully, and
- (v) utilities and service facilities that have a height of not more than 10m above ground level

(existing), including pipelines (but not including pipelines for fuel or hazardous materials or pipelines that are the subject of a licence under the *Pipelines Act 1967* or above ground or overhead power facilities).

71 Complying development

(1) Subject to subclause (2), development for any of the following purposes is complying development if it is lawfully carried out on land in the area of a port managed by a Port Corporation:

- (a) addition to or alteration of a building (being office premises or a shed, garage or kiosk) that does not result in:

- (i) the gross floor area of the building being the lesser of 25 per cent or 500m² greater than it was immediately before the commencement of this Policy, or

- (ii) the building having a height (including the addition or alteration) of more than 12m above ground level (existing),

- (b) a new canteen, kiosk or amenity facility:

- (i) that has a gross floor area of not more than 500m², and

- (ii) that has a height of not more than 12m above ground level (existing), and

- (iii) in which all food preparation areas comply with the *National Code for the Construction and Fitout of Food Premises* (Australian Institute of Environmental Health, 1993),

- (c) demolition, carried out in accordance with AS 2601—2001 *Demolition of structures*, of sheds, garages or kiosks (with a gross floor area of not more than 2,000m², in each case), roof structures, ceilings, stairs, ducts, internal walls, fencing or flagpoles, or of any building the erection of which is exempt or complying development under this Policy,

- (d) fences or gates (including security boom gates) that:

- (i) have a height (when closed, in the case of boom gates) of not more than 5m above ground level (existing), and

- (ii) in the case of fences or gates on land in the Port Botany area, comply with the Port Botany guidelines,

- (e) buildings (including switch rooms or security booths) or sheds that:

- (i) have a floor space area of not more than 500m², and

- (ii) are one storey high and have a height above ground level (existing) of not more than 10m, and

- (iii) are not within 10m of any boundary,

- (f) retaining walls (other than seawalls) that:

- (i) have a height of not more than 3m above ground level (existing), and

- (ii) if they have a height of more than 1m, are certified by a structural engineer as having a satisfactory design and structure and as having been constructed in accordance with the specifications of that design, and

(iii) comply with:

- (A) AS 3700 Supp 1—2004, *Masonry structures—Commentary (Supplement to AS 3700—2001)*, and
- (B) AS/NZS 1170.1 Supp 1:2002, *Structural design actions—Permanent, imposed and other actions—Commentary (Supplement to AS/NZS 1170.1:2002)*, and
- (C) if the structure is made of timber, AS 1720:1—1997/Amdt 1—1998, *Timber structures (known as the SAA Timber Structures Code)—Design methods*,

(g) removal of existing cranes, replacement of existing cranes with smaller cranes or with cranes of the same capacity, or installation of crane rails for an existing crane, if:

- (i) the development is not inconsistent with or in contravention of an existing consent, and
- (ii) in the case of the replacement of cranes or installation of crane rails, the new cranes or crane rails are certified by a structural engineer as having a satisfactory design and as having been erected or installed in accordance with the specifications of that design,
- (h) liquid petroleum gas storage containers:

- (i) together have a capacity to store, at any one time, a total of not more than 3 tonnes of gas for each business, and
- (ii) comply with all relevant requirements of the *Australian Dangerous Goods Code* prepared by the National Transport Commission, as in force on the commencement of this Policy,

(i) fuel storage tanks that:

- (i) together have a capacity to store, at any one time, a total of not more than 50,000 litres of fuel for each business, and
- (ii) comply with all relevant requirements of the *Australian Dangerous Goods Code* prepared by the National Transport Commission, as in force on the commencement of this Policy,

(j) fire water tanks that together have a capacity to store, at any one time, a total of not more than 1,500 tonnes of water for each business,

(k) rainwater, grey water or bilge water tanks that together have a capacity to store a total of not more than 20,000 tonnes of water for each business,

(l) new or replacement paving, if the area being paved is not more than 5,000m² and the development is not inconsistent with or in contravention of an existing consent,

(m) satellite dishes or telecommunications facilities, if:

- (i) the development will result in there being not more than one dish or one facility on the site at any one time, and
- (ii) the dish or facility is made of non-reflective materials, has a height of not more than 12m above ground level (existing) and a diameter of not more than 3m,

(2) To be complying development, development referred to in subclause (1) must:

- (a) be permissible, with consent, in the zone in which it is carried out, and

- (b) meet relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
- (c) if the development is undertaken on unsewered land, be the subject of an approval, if required by the *Local Government Act 1993*, from the relevant council for an on-site effluent disposal system, and
- (d) not be carried out within 1m of any public sewer main except with the written approval of the authority that has management or control of the main.

Note. Section 76A (6) of the Act also provides that certain development cannot be complying development.

- (3) Subclause (2) (c) does not apply if the development is carried by a public authority.

72 Complying development certificate conditions

A complying development certificate for development referred to in clause 71 is subject to the following conditions:

- (a) any construction or demolition work must be carried out only between 7.00 am and 6.00 pm Monday to Friday and 7.00 am and 5.00 pm on Saturdays,
- (b) construction or demolition work must not be carried out on a Sunday or a public holiday,
- (c) at the following stages, the principal certifying authority must be given the following survey certificates prepared by a registered land surveyor:
 - (i) before any form work below the ground floor slab is completed or (if there is no such form work) before the concrete is poured for the ground floor slab—a survey certificate showing the location of the structure relative to the boundaries,
 - (ii) at the completion of the lowest floor—a survey certificate confirming that levels are in accordance with the certificate (with the levels relating to data on the certificate),
- (d) before a building is occupied, a certificate of compliance, if required, must be obtained from the local water supply and sewer authority,
- (e) any public land or public place must be protected from any obstruction, inconvenience or damage that might otherwise be caused by the development,
- (f) to prevent soil erosion, water pollution or the discharge of loose sediment onto surrounding land, run-off and erosion controls must be implemented before construction,
- (g) to control dust emissions from the site, suitable screens or barricades must be erected prior to any demolition, excavation or building work,
- (h) if lead dust, asbestos or other contaminants are present on the site, appropriate measures to minimise associated hazards must be implemented,
- (i) following removal of any friable asbestos from the site, a certificate from a suitably qualified person must be provided to the principal certifying authority certifying that no such asbestos remains on site and a copy of the certificate must be forwarded to the relevant Port Corporation, the Department of Planning and the council before any other work begins.

73 Development for purpose of Port Kembla Coal Terminal

- (1) This clause applies to development for the purpose of the Port Kembla Coal Terminal (*the terminal*), being development for the purposes of the construction and operation of a coal loader and associated facilities as set out in the Environmental Impact Statement (Report

No PWD 78011) (except in so far as that Statement is inconsistent with the provisions of this clause), and as amended by the location of the stockpiles 25m further south.

Note. Copies of the environmental impact statement are available for inspection in the office of the Wollongong City Council and the head office of the Department of Planning.

- (2) Development to which this clause applies may be carried out without consent if it is carried out in accordance with conditions (1) and (4)-(16) of the development consent granted by Wollongong City Council on 25 June 1979 in response to development application numbered D79/44 and the requirements of this clause.

Note. Copies of the consent are available for inspection in the office of the Wollongong City Council and the head office of the Department of Planning.

- (3) Coal or coke hauled to the terminal must be hauled there by rail, except as provided by subclause (4).

- (4) Coal or coke may be hauled to the terminal by road if it is delivered to the terminal:

- (a) between 7.00 am and 6.00 pm on a day other than a Sunday or a public holiday, if it is being delivered from any of the Appin, Avondale, Cordeaux, Dendrobium, Glenlee, Gujarat NRE No 1 (formerly South Bulli) or West Cliff collieries, or
- (b) from any colliery other than a colliery specified in paragraph (a), if it is delivered to the terminal during a period of rail transport disruption of which the manager of the terminal has been notified by the chief executive of Rail Corporation New South Wales and haulage by road is necessary for the colliery to meet shipping requirements during that period, or
- (c) at any time other than a time specified in paragraph (a), if:
 - (i) it is to be loaded directly onto a waiting vessel, or
 - (ii) it is being hauled from the steelworks adjacent to the terminal via Tom Thumb Road, or
 - (iii) the Director-General considers that there is an emergency and authorises the haulage in writing, or
- (d) in accordance with an authorisation of the Director-General authorising haulage for a period of not more than three months, or
- (e) in accordance with an approval under Part 3A of the Act.

- (5) A copy of any authorisation by the Director-General under this clause is to be made available to the public free of charge on the website of the Department of Planning.

Division 14 Public administration buildings and buildings of the Crown

74 Definitions

In this Division:

infrastructure facility means development that is the subject of development controls under another Division of this Part.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) B3 Commercial Core,

- (b) B4 Mixed Use,
- (c) B5 Business Development,
- (d) B6 Enterprise Corridor,
- (e) B7 Business Park,
- (f) SP1 Special Activities,
- (g) SP2 Infrastructure.

public administration building has the same meaning as it has in the Standard Instrument.

Note.

The Standard Instrument defines *public administration building* as follows:

public administration building means a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a council or an organisation established for public purposes, and includes a courthouse or a police station.

75 Existing buildings of the Crown

This Policy does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

76 Development permitted with consent

- (1) Development for the purpose of public administration buildings may be carried out by or on behalf of a public authority with consent on land in a prescribed zone.
- (2) Development for the purpose of public administration buildings that are ancillary to and located on the same land as another infrastructure facility may be carried out by or on behalf of a public authority with consent if:
 - (a) the development application for the public administration building is determined at the same time as the development application for the infrastructure facility, and development for the public administration building is to be carried out at the same time as development for the infrastructure facility, or
 - (b) development for the purposes of the public administration building is to be carried out on land on which an existing infrastructure facility is located.

77 Development permitted without consent

- (1) Development for any of the following purposes may be carried out by or on behalf of a public authority without consent:
 - (a) minor alterations of or additions to a public administration building such as internal fitouts, provision of access for persons with a disability, or for safety or security purposes,
 - (b) restoration of a damaged public administration building,
 - (c) demolition of a public administration building.
- (2) Development for the purpose of a public administration building that is ancillary to and located on the same land as an infrastructure facility may be carried out by or on behalf of a public authority without consent if:

- (a) development for the purpose of the infrastructure facility may be carried out without consent on that land, and
- (b) the approval of the activity (within the meaning of Part 5 of the Act) includes an approval for the public administration building, and development for the public administration building is to be carried out at the same time as development for the infrastructure facility.

Division 15 Railways

Subdivision 1 Rail infrastructure facilities

78 Definitions

In this Division:

ARTC means Australian Rail Track Corporation Ltd (ACN 081 455 754).

ARTC arrangement means a lease, licence agreement or other arrangement under Part 8A of the *Transport Administration Act 1988*.

freight includes livestock, containers, liquids, materials, plant and equipment, vehicles and vessels.

Interim Metro Corridor means land shown on a rail corridors map as:

- (a) CBD Metro (Zone A—Above Ground Including Cut & Cover Tunnel), or
- (b) CBD Metro (Zone B—Tunnel), or
- (c) CBD Metro Station Extent.

interim rail corridor means the Interim Metro Corridor or the Interim Rail Link Corridor.

Interim Rail Link Corridor means land shown on a rail corridors map as:

- (a) CBD Rail Link (Zone B—Tunnel), or
- (b) South West Rail Link (Zone A—Above Ground Including Cut & Cover Tunnel), or
- (c) South West Rail Link (Zone B—Tunnel).

major development has the same meaning it has in Part 4 of the *City of Sydney Act 1988*.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) IN1 General Industrial,
- (b) IN2 Light Industrial,
- (c) IN3 Heavy Industrial,
- (d) SP1 Special Activities,
- (e) SP2 Infrastructure.

rail authority for an interim rail corridor means:

- (a) in relation to the Interim Metro Corridor—Sydney Metro, and

- (b) in relation to the Interim Rail Link Corridor—RailCorp.

rail authority for the rail corridor means:

- (a) in relation to a rail corridor that is owned by ARTC or is the subject of an ARTC arrangement—ARTC, and
- (a1) in relation to a rail corridor that is owned, leased, managed or controlled by Sydney Metro—Sydney Metro, and
- (b) in relation to any other rail corridor—RailCorp.

rail corridor means land:

- (a) that is owned, leased, managed or controlled by a public authority for the purpose of a railway or rail infrastructure facilities, or
- (b) that is zoned under an environmental planning instrument predominantly or solely for development for the purpose of a railway or rail infrastructure facilities, or
- (c) in respect of which the Minister has granted approval under Part 3A or (before its repeal) Division 4 of Part 5 of the Act for the carrying out of development (or for a concept plan for a project comprising or including development) for the purpose of a railway or rail infrastructure facilities.

Note. Copies of the Minister's approvals are available on the website of the Department of Planning.

rail corridors map means the maps marked as follows and held in the head office of the Department of Planning:

- (a) State Environmental Planning Policy (Infrastructure) 2007—Interim Rail Corridor—CBD Rail Link & CBD Metro,
- (b) State Environmental Planning Policy (Infrastructure) 2007—Interim Rail Corridor—South West Rail Link.

rail infrastructure facilities include:

- (a) railway tracks, associated track structures, cuttings, drainage systems, fences, tunnels, ventilation shafts, emergency accessways, bridges, embankments, level crossings and roads, pedestrian and cycleway facilities, and
- (b) signalling, train control, communication and security systems, and
- (c) power supply (including overhead power supply) systems, and
- (d) railway stations, station platforms and areas in a station complex that commuters use to get access to the platforms, and
- (e) public amenities for commuters, and
- (f) associated public transport facilities for railway stations, and
- (g) maintenance, repair and stabling facilities for rolling stock, and
- (h) refuelling depots, garages, maintenance facilities and storage facilities that are for the purposes of a railway, and

(i) railway workers' facilities, and

(j) rail freight terminals, sidings and freight intermodal facilities,

but do not include buildings or works that are for residential, retail or business purposes and unrelated to railway purposes.

RailCorp means Rail Corporation New South Wales constituted under the *Transport Administration Act 1988*.

Sydney Metro means Sydney Metro constituted under the *Transport Administration Act 1988*.

79 Development permitted without consent—rail infrastructure facilities generally

(1) Development for the purpose of a railway or rail infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land. However, such development may be carried out without consent on land reserved under the *National Parks and Wildlife Act 1974* only if the development:

- (a) is authorised by or under that Act, or
- (b) is, or is the subject of, an existing interest within the meaning of section 39 of that Act, or
- (c) is on land to which that Act applies over which an easement has been granted and is not contrary to the terms or nature of the easement.

(2) In this clause, a reference to development for the purpose of a railway or rail infrastructure facilities includes a reference to operation of a railway and to development for any of the following purposes if the development is in connection with a railway or rail infrastructure facilities:

- (a) construction works (whether or not in a heritage conservation area), including:
 - (i) temporary crushing plants or concrete batching plants, if they are used solely in connection with railway construction and in or adjacent to a rail corridor, and
 - (ii) track support earthworks, and
 - (iii) alteration, demolition or relocation of a local heritage item, and
 - (iv) alteration or relocation of a State heritage item, and
- (v) temporary buildings, or facilities for the management of railway construction, that are in or adjacent to a rail corridor,
- (b) emergency works, or routine maintenance works, carried out in the rail corridor of an existing railway or on land that is adjacent to such a corridor (including on land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies but, if they are on such land, only if any adverse effect on the land is restricted to the minimum possible to allow the works to be carried out),
- (c) maintenance or repair of an existing rail infrastructure facility,
- (d) environmental management works.

80 Development permitted without consent—particular rail infrastructure facilities

Development for the purpose of any of the following railways or railway projects as described in Schedule 2 may be carried out by or on behalf of a public authority without consent on any land:

- (a) the Sydney Airport Rail Link,
- (b) the Parramatta Rail Link,
- (c) the Southern Sydney Freight Line,
- (d) the Rail Clearways Program.

81 Development permitted with consent

Development for any of the following purposes, being development that is not development of a kind referred to in clause 79, may be carried out by any person with consent on land in a prescribed zone:

- (a) rail freight terminals, rail freight sidings or rail freight intermodal facilities,
- (b) residential, retail or business premises in a rail corridor if the development is wholly or partly above a railway station,
- (c) retail or business premises in a railway station complex, including areas in the complex that commuters use to gain access to station platforms,
- (d) car parks that are intended to be used by commuters but that are not owned, leased, managed or controlled by a public authority,
- (e) bus interchanges that are integrated or associated with railway stations but that are not owned, leased, managed or controlled by a public authority.

82 Exempt development

Development for any of the following purposes is exempt development if it is carried out by or on behalf of a public authority, is in connection with a railway or rail infrastructure facilities and complies with clause 20 (2) (Exempt development), involves no greater disturbance to the ground or vegetation than necessary, and does not result in an increase in stormwater drainage or run-off from the site concerned:

- (a) investigation (including geotechnical and other testing, surveying and sampling) at, above or below the surface of the ground,
- (b) routine maintenance (including removal of graffiti or debris, repair or replacement of lighting, mechanical systems, electrical equipment or air monitoring equipment and replacement of screening of overhead bridges),
- (c) emergency works to protect railway infrastructure facilities, the environment or the public,
- (d) maintenance, repair or replacement of identification, directional or safety signs that does not involve a change in their location or size,
- (e) maintenance of existing access roads,
- (f) slope stability works that are required for safety reasons,
- (g) erection and maintenance of safety barriers,
- (h) construction, maintenance or realignment of security fencing with a height of not more than 3.2m above ground level (existing),

- (i) reconstruction, maintenance or repair of culverts or drains that is required because of flood damage or high stormwater flows,
- (j) upgrading or maintenance of landscaping, or vegetation management, that:
 - (i) does not involve construction works, and
 - (ii) involves the replacement (if any) of existing materials with similar materials only,
- (k) installation, maintenance or replacement of temporary structures or signs, being structures or signs associated with alternative transport arrangements necessitated by rail track work or railway maintenance and that are removed as soon as practicable.

83 Light rail

This Division does not apply to or in respect of light rail systems or light rail services (within the meaning of the *Transport Administration Act 1988*).

Note. Section 104P of the *Transport Administration Act 1988* provides that development for the purposes of a light rail system:

- (a) is an activity within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*, and
- (b) may be carried out without the need for development consent under Part 4 of that Act.

Subdivision 2 Development in rail corridors

Note. This Subdivision contains provisions requiring the notification of certain development to ARTC, Sydney Metro or RailCorp. See also clause 45.

84 Development involving access via level crossings

- (1) This clause applies to development that involves:
 - (a) a new level crossing, or
 - (b) the conversion into a public road of a private access road across a level crossing, or
 - (c) a likely significant increase in the total number of vehicles or the number of trucks using a level crossing that is in the vicinity of the development.
- (2) Before determining a development application for development to which this clause applies, the consent authority must:
 - (a) within 7 days after the application is made, give written notice of the application to the chief executive officer of the rail authority for the rail corridor, and
 - (b) take into consideration:
 - (i) any response to the notice that is received within 21 days after the notice is given, and
 - (ii) the implications of the development for traffic safety including the costs of ensuring an appropriate level of safety, having regard to existing traffic characteristics and any likely change in traffic at level crossings as a result of the development, and
 - (iii) the feasibility of access for the development that does not involve use of level crossings.
- (3) Subject to subclause (5), the consent authority must not grant consent to development to

which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor,

- (4) In determining whether to provide concurrence, the chief executive officer must take into account:
 - (a) any rail safety or operational issues associated with the aspects of the development, and
 - (b) the implications of the development for traffic safety including the cost of ensuring an appropriate level of safety, having regard to existing traffic and any likely change in traffic at level crossings as a result of the development.
- (5) The consent authority may grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor if:
 - (a) the consent authority has given the chief executive officer notice of the development application, and
 - (b) 21 days have passed since that notice was given and the chief executive officer has not granted or refused to grant concurrence.
- (6) The consent authority must provide the rail authority for the rail corridor with a copy of the determination of the application within 7 days after the determination is made.
- (7) In this clause:

level crossing means a level crossing over railway lines.

traffic includes rail, road and pedestrian traffic.

85 Development immediately adjacent to rail corridors

- (1) This clause applies to development on land that is or immediately adjacent to a rail corridor, if the development:
 - (a) is likely to have an adverse effect on rail safety, or
 - (b) involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or
 - (c) involves the use of a crane in air space above any rail corridor.
- (2) Before determining a development application for development to which this clause applies, the consent authority must:
 - (a) within 7 days after the application is made, give written notice of the application to the chief executive officer of the rail authority for the rail corridor, and
 - (b) take into consideration:
 - (i) any response to the notice that is received within 21 days after the notice is given, and
 - (ii) any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.
- (1) This clause applies to development (other than development to which clause 88 applies)

86 Excavation in, above or adjacent to rail corridors

that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land:

- (a) within or above a rail corridor, or
- (b) within 25m (measured horizontally) of a rail corridor, or
- (c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.

(2) Before determining a development application for development to which this clause applies, the consent authority must:

- (a) within 7 days after the application is made, give written notice of the application to the chief executive officer of the rail authority for the rail corridor, and
- (b) take into consideration:
 - (i) any response to the notice that is received within 21 days after the notice is given, and
 - (ii) any guidelines issued by the Director-General for the purposes of this clause and published in the Gazette.

(3) Subject to subclause (4), the consent authority must not grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor to which the development application relates, unless that rail authority is ARIC.

(4) In deciding whether to provide concurrence, the chief executive officer must take into account:

- (a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:
 - (i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and
 - (ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and
- (b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.

(5) The consent authority may grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor if:

- (a) the consent authority has given the chief executive officer notice of the development application, and
- (b) 21 days have passed since giving the notice and the chief executive officer has not granted or refused to grant concurrence.

87 Impact of rail noise or vibration on non-rail development

(1) This clause applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration:

- (a) a building for residential use,
- (b) a place of public worship,
- (c) a hospital,
- (d) an educational establishment or child care centre.

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the building—35 dB(A) at any time between 10.00 pm and 7.00 am,
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

88 Development within or adjacent to interim rail corridor

(1) This clause applies to development that is:

- (a) in the area marked "Zone A" on a rail corridors map and has a capital investment value of more than \$200,000, or

- (b) in the area marked "Zone B" on a rail corridors map and:

- (i) involves the penetration of ground to a depth of at least 2m below ground level (existing), or
- (ii) has a capital investment value of more than \$200,000 and involves the erection of a structure that is 10 or more metres high or an increase in the height of a structure so that it is more than 10m.

(2) This clause also applies to development on land within 25 metres of that part of the Interim Rail Link Corridor shown on the map marked "State Environmental Planning Policy (Infrastructure) 2007—Interim Rail Corridor—South West Rail Link", but only in relation to a development application lodged before 31 December 2010.

(3) Before determining a development application to which this clause applies, the consent authority must give written notice of the application to the rail authority for the interim rail corridor in which the development is to be carried out (*the relevant rail authority*) within 7 days after the application is made.

(4) Except as provided by subclause (6), consent must not be granted to development to which this clause applies without the concurrence of the chief executive officer of the relevant rail authority.

(5) In determining whether to provide concurrence, the chief executive officer of the relevant rail authority is to take into account the likely effect of the development on:

- (a) the practicability and cost of carrying out rail expansion projects on the land in the future, and
- (b) without limiting paragraph (a), the structural integrity or safety of, or ability to operate, such a project, and

- (c) without limiting paragraph (a), the land acquisition costs and the costs of construction, operation or maintenance of such a project.
- (6) The consent authority may grant consent to development to which this clause applies without the concurrence of the chief executive officer of the relevant rail authority if:
 - (a) the consent authority has given the chief executive officer notice of the development application, and
 - (b) 21 days have passed since that notice was given and the chief executive officer has not granted or refused to grant concurrence.
- (7) The consent authority must provide the relevant rail authority with a copy of the determination of the application within 7 days after the determination is made.

88A Major development within Interim Metro Corridor

- (1) This clause applies to land within the City of Sydney that is within the Interim Metro Corridor.
- (2) A consent authority must:
 - (a) give written notice of an application for consent to major development on land to which this clause applies to Sydney Metro within 7 days of receiving the application, and
 - (b) before determining the application, take into account any submissions made by Sydney Metro within 21 days after giving the notice.
- (3) A consent authority must not grant consent to major development on land to which this clause applies if the development would have an adverse effect on the viability of the proposed metro, including by increasing the likely cost of developing the proposed metro.
- (4) For the purposes of determining whether a proposed major development could have an adverse effect on the viability of the proposed metro, a consent authority may rely on a certificate issued by Sydney Metro that certifies whether or not there would be any such adverse effect.
- (5) The consent authority must provide Sydney Metro with a copy of the determination of the application within 7 days after the determination is made.

88B Development near proposed metro stations

- (1) This clause applies to land shown as CBD Metro Station Extent on a rail corridors map and land that is adjacent to that land.
- (2) A consent authority must not grant consent to development on land to which this clause applies unless it has taken into consideration:
 - (a) whether the proposed development will adversely affect the development and operation of a proposed metro station, including by impeding access to, or egress from, the proposed metro station, and
 - (b) whether the proposed development will encourage the increased use of public transport.

88C Development near proposed Rozelle Metro Station

- (1) This clause applies to land shown as CBD Metro Station Extent on the rail corridors map

and marked "Rozelle" and land that is adjacent to that land.

- (2) A consent authority must:
 - (a) give written notice of an application for consent to development on land to which this clause applies to Sydney Metro within 7 days of receiving the application, and
 - (b) before determining the application, take into account any submissions made by Sydney Metro within 21 days after giving the notice.
- (3) The consent authority must provide Sydney Metro with a copy of the determination of the application within 7 days after the determination is made.
- (4) This clause applies only in respect of a development application that is lodged before 31 December 2010.

89 Review of land within interim rail corridors

The Minister must, in consultation with the Minister for Transport, as soon as practicable after 17 February 2010 and every 2 years after that, review the interim rail corridors to determine whether any of the land included in a corridor should be excluded from the operation of this Policy on the basis that the land is no longer required for railway purposes.

Division 16 Research stations

90 Definitions

In this Division:

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU1 Primary Production,
- (b) RU2 Rural Landscape,
- (c) RU3 Forestry,
- (d) RU4 Rural Small Holdings,
- (e) RU5 Village,
- (f) IN4 Working Waterfront,
- (g) SP1 Special Activities,
- (h) SP2 Infrastructure,
- (i) W2 Recreational Waterways,
- (j) W3 Working Waterways.

research station means a facility operated by a public authority for the principal purpose of agricultural, environmental, fisheries, forestry, minerals or soil conservation research, and includes any associated facility for education, training, administration or accommodation.

91 Development permitted with consent

Development for the purpose of research stations may be carried out by or on behalf of a public authority with consent on land in a prescribed zone.

92 Development permitted without consent

Development for any of the following purposes connected with an existing research station may be carried out by or on behalf of a public authority without consent on land in a prescribed zone:

- (a) maintenance or operation of the research station,
 - (b) replacement of buildings,
 - (c) demolition of buildings,
 - (d) minor alterations of or additions to the research station,
- if the development does not involve the clearing of more than 2 hectares of native vegetation.

Division 17 Roads and traffic

Subdivision 1 Road infrastructure facilities

93 Definitions

In this Division:

AS 1428.2 means AS:1428.2—1992, *Design for access and mobility—Enhanced and additional requirements—Buildings and facilities*.

classified road has the same meaning as it has in the Standard Instrument.

Note.

The Standard Instrument defines *classified road* (by reference to the *Roads Act 1993*) to mean any of the following:

- (a) a main road,
- (b) a highway,
- (c) a freeway,
- (d) a controlled access road,
- (e) a secondary road,
- (f) a tourist road,
- (g) a tollway,
- (h) a transitway,
- (i) a State work.

See the *Roads Act 1993* for the meanings of the terms listed above.

Disability Standards means *Disability Standards for Accessible Public Transport 2002* made under the *Disability Discrimination Act 1992* of the Commonwealth.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) B4 Mixed Use,
- (b) B6 Enterprise Corridor,

- (c) IN1 General Industrial,
- (d) IN2 Light Industrial,
- (e) IN3 Heavy Industrial,
- (f) SP1 Special Activities,
- (g) SP2 Infrastructure.

public road means:

- (a) any road that is opened or dedicated as a public road, whether under the *Roads Act 1993* or any other Act or law, and
- (b) any road that is declared to be a public road for the purposes of the *Roads Act 1993*.

road corridor means:

- (a) land that is used for the purposes of a road or road infrastructure facilities and owned or managed by a public authority, or
- (b) any land in respect of which the Minister has granted approval under Part 3A or (before its repeal) Division 4 of Part 5 of the Act for the carrying out of development for the purpose of a road or road infrastructure facilities.

road infrastructure facilities includes:

- (a) tunnels, ventilation shafts, emergency accessways, vehicle or pedestrian bridges, causeways, road-ferries, retaining walls, toll plazas, toll booths, security systems, bus lanes, transit lanes, transitways, transitway stations, rest areas and road related areas (within the meaning of the *Road Transport (General) Act 2005*), and
- (a1) associated public transport facilities for roads used to convey passengers by means of regular bus services within the meaning of the *Passenger Transport Act 1990*, and
- (a2) bus layovers that are integrated or associated with roads (whether or not the roads are used to convey passengers by means of regular bus services within the meaning of the *Passenger Transport Act 1990*), and
- (b) traffic control facilities (as defined by the *Transport Administration Act 1988*), RTA road safety training facilities and safety works.

RTA means the Roads and Traffic Authority constituted under the *Transport Administration Act 1988*.

STA means the State Transit Authority of New South Wales constituted under the *Transport Administration Act 1988*.

94 Development permitted without consent—general

- (1) Development for the purpose of a road or road infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land. However, such development may be carried out without consent on land reserved under the *National Parks and Wildlife Act 1974* only if the development:

- (a) is authorised by or under the *National Parks and Wildlife Act 1974*, or

- (b) is, or is the subject of, an existing interest within the meaning of section 39 of that Act, or
- (c) is on land to which that Act applies over which an easement has been granted and is not contrary to the terms or nature of the easement.

(2) In this clause and clause 96, a reference to development for the purpose of *road infrastructure facilities* includes a reference to development for any of the following purposes if the development is in connection with a road or road infrastructure facilities:

- (a) construction works (whether or not in a heritage conservation area), including:
 - (i) temporary buildings or facilities for the management of construction, if they are in or adjacent to a road corridor, and
 - (ii) creation of embankments, and
 - (iii) extraction of extractive materials and stockpiling of those materials, if:
 - (A) the extraction and stockpiling are ancillary to road construction, or
 - (B) the materials are used solely for road construction and the extraction and stockpiling take place in or adjacent to a road corridor, and
- (v) temporary crushing or concrete batching plants, if they are used solely for road construction and are on or adjacent to a road corridor, and
- (v) temporary roads that are used solely during road construction,
- (b) emergency works, or routine maintenance works, carried out on an existing public road or on land that is adjacent to such a road (including on land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies but, if they are on such land, only if any adverse effect on the land is restricted to the minimum possible to allow the works to be carried out),
- (c) alterations or additions to an existing road (such as widening, duplication or reconstruction of lanes, changing the alignment or strengthening of the road),
- (d) environmental management works, if the works are in or adjacent to a road corridor.

95 Development permitted without consent—particular roads or road projects

Development for the purpose of any of the following roads or road projects (as described in Schedule 2) may be carried out by or on behalf of a public authority without consent:

- (a) the Eastern Distributor,
- (b) the Cross City Tunnel,
- (c) the Lane Cove Tunnel,
- (d) the Tugun Bypass,
- (e) the Liverpool—Parramatta Transitway,
- (f) the North-West Sydney Transitway Network.

96 Development permitted with consent

- (1) Development for the purpose of a road or road infrastructure facilities (other than

development referred to in clause 94 (1) or 95) may be carried out by any person with consent on land within a special area within the meaning of the *Sydney Water Catchment Management Act 1998*.

- (2) Development for any of the following purposes may be carried out by any person with consent on land in a prescribed zone:

- (a) transitway parking stations,
- (b) bus depots,
- (c) permanent road maintenance depots and associated infrastructure (such as garages, fuel sheds, tool houses, storage yards and workers' amenities).

97 Exempt development

- (1) Development for any of the following purposes is exempt development if it is carried out by or on behalf of a public authority in connection with a road or road infrastructure facilities and complies with clause 20 (2) (Exempt development):

- (a) construction, maintenance or repair of bus stops or bus shelters (but not including any commercial advertising on them) in an area serviced by STA buses, if the stops or shelters:
 - (i) are consistent with the *Bus Stop Style Guide* (State Transit Authority, 1999), and
 - (ii) comply with the development standards, and other requirements, relating to bus stops and shelters in a relevant development control plan, and
 - (iii) any associated kerb construction, access paths and ramps, lighting and signage complies with AS:1428.2 and the Disability Standards,
- (b) construction, maintenance or repair of bus stops or shelters (but not including any commercial advertising on them) outside an area serviced by STA buses, if:
 - (i) they have a height above the footpath of not more than 3.2m, and
 - (ii) they have only non-reflective finishes, and
 - (iii) they do not obstruct the line of sight of vehicular traffic or pedestrian traffic, and
 - (iv) they comply with the development standards, and other requirements, relating to bus stops and shelters in a relevant development control plan, and
 - (v) any associated kerb construction, access paths and ramps, lighting and signage complies with AS:1428.2 and the Disability Standards,
- (c) erection, installation, maintenance, reconstruction, repair or replacement of any of the following, and any associated landscaping works:
 - (i) security fencing with a height above ground level (existing) of not more than 3.2m,
 - (ii) safety barriers or systems, including Jersey barriers,
 - (iii) directional, safety or other advisory signs relating to road works or the use of existing road infrastructure facilities,
 - (iv) pedestrian and cyclist facilities (such as footpaths, street lighting, kerb adjustments and ramps, pedestrian fences, refuges, holding rails, and bollards),
 - (v) slope stability works that are required for safety reasons and minor road safety

improvements,

- (vi) minor road pavement or shoulder work (such as patching, grading, re-sheeting, sealing and re-sealing),
- (vii) street furniture (such as seats, bins and directional signs) and any associated kerb construction, access paths and ramps, lighting and signage that complies with AS:1428.2 and the Disability Standards,
- (viii) removal from or addition to existing traffic lights of items such as signal displays, loops or buttons,
- (ix) roadside facilities and rest areas, if the development does not involve the installation of toilets and involves no greater disturbance to the ground or vegetation than necessary,
- (x) street lighting, if any replacement involves the replacement of existing materials with similar materials only and if the lighting minimises light spill and artificial sky glow in accordance with AS/NZS 1158:2007, *Lighting for Roads and Public Spaces*,
- (xi) pavement and road surface markings (such as bus lane markings), lane delineators, electric pavement lights, detection loops and traffic counters,
- (xii) kerb and guttering,
- (xiii) culverts, drains and other works to improve the quality or control of stormwater runoff,
- (d) repair or replacement of lighting, mechanical systems, electrical equipment or air monitoring equipment, replacement of screening of overhead bridges and removal of graffiti or debris,
- (e) emergency works to protect a road or road infrastructure facilities, the environment or the public, but only if they involve no greater disturbance to soil or vegetation than necessary,
- (f) upgrading or maintenance of landscaping, or vegetation management (such as weed spraying, slashing and pruning), that:
 - (i) does not involve construction works, and
 - (ii) involves the replacement (if any) of existing materials with similar materials only,
- (g) installation, replacement or maintenance of temporary structures (such as temporary bus stops, bus shelters or signs) that are associated with alternative transport arrangements necessitated by road works or road maintenance or repair and that are removed as soon as practicable,
- (h) investigation (including geotechnical and other testing, surveying and sampling) at, above or below the surface of the ground, but only if the investigation:
 - (i) involves no greater disturbance to the ground or vegetation than necessary, and
 - (ii) does not result in any increase in stormwater drainage or run-off from the site concerned.

(2) In this clause:

relevant development control plan means, in relation to a development, stop or bus shelter, a

development control plan (as in force on the commencement of this Policy) that has been adopted by the council for the local government area in which the stop or shelter is located.

Subdivision 2 Development in or adjacent to road corridors and road reservations

98 Development other than road facilities on public roads

- (1) Development may be carried out with consent on a public road that is unzoned land for any purpose that may be carried out (either with or without consent) on land adjoining the road.
- (2) Development for any purpose may be carried out by a public authority without consent on a public road that is unzoned land.

99 Highway service centres in road corridors

Development for the purpose of a highway service centre may be carried out in a road corridor for a freeway, tollway or national highway only with consent.

100 Development on proposed classified road

- (1) Consent for development for any of the following purposes on land reserved for the purposes of a classified road (but before the land is declared to be a classified road) may be granted only with the concurrence of the chief executive officer of the RTA:

- (a) subdivision that results in the creation of an additional lot with dwelling entitlements,
 - (b) development with a capital investment value greater than \$150,000,
 - (c) development for the purpose of dwellings that are, or any other building that is, to be held under strata title.
- (2) Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must:
- (a) give written notice of the application to the chief executive officer of the RTA within 7 days after the application is made, and
 - (b) take into consideration any response to the notice that is received within 21 days after the notice is given.

- (3) In deciding whether to grant concurrence to proposed development under this clause, the chief executive officer of the RTA must take the following matters into consideration:

- (a) the need to carry out development 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.
- (4) The consent authority must give the RTA a copy of the determination of the application within 7 days after the determination is made.
- (5) The consent authority may grant consent to development to which this clause applies without the concurrence of the chief executive officer of the RTA if:
- (a) the consent authority has given the chief executive officer notice of the development application, and

- (b) 21 days have passed since giving the notice and the chief executive officer has not granted or refused to grant the concurrence.

101 Development with frontage to classified road

- (1) The objectives of this clause are:
- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and
 - (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.
- (2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and
 - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
 - (i) the design of the vehicular access to the land, or
 - (ii) the emission of smoke or dust from the development, or
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
 - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

102 Impact of road noise or vibration on non-road development

- (1) This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RTA) and that the consent authority considers is likely to be adversely affected by road noise or vibration:
- (a) a building for residential use,
 - (b) a place of public worship,
 - (c) a hospital,
 - (d) an educational establishment or child care centre.
- (2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.
- (3) If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:
- (a) in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,

- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

- (4) In this clause, *freeway*, *tollway* and *transitway* have the same meanings as they have in the *Roads Act 1993*.

103 Excavation in or immediately adjacent to corridors

- (1) This clause applies to development that involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is the road corridor of any of the following roads or road projects (as described in Schedule 2):
- (a) the Eastern Distributor,
 - (b) the Cross City Tunnel,
 - (c) the Lane Cove Tunnel,
 - (d) the Tugun Bypass,
 - (e) the Liverpool—Parramatta Transitway,
 - (f) the North-West Sydney Transitway Network.
- (2) Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must:
- (a) give written notice of the application to the RTA within 7 days after the application is made, and
 - (b) take into consideration:
 - (i) any response to the notice that is received within 21 days after the notice is given, and
 - (ii) any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette, and
 - (iii) any implications of the ground penetration for the structural integrity of the road or project, and
 - (iv) any cost implications for the road or project of the ground penetration.
- (3) The consent authority must provide the RTA with a copy of the determination of the application within 7 days after the determination is made.

104 Traffic-generating development

- (1) This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves:
- (a) new premises of the relevant size or capacity, or
 - (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.
- (2) In this clause, *relevant size or capacity* means:
- (a) in relation to development on a site that has direct vehicular or pedestrian access to any road—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

- (b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.

(3) Before determining a development application for development to which this clause applies, the consent authority must:

- (a) give written notice of the application to the RTA within 7 days after the application is made, and
- (b) take into consideration:
 - (i) any submission that the RTA provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RTA advises that it will not be making a submission), and
 - (ii) the accessibility of the site concerned, including:
 - (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and
 - (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and
 - (iii) any potential traffic safety, road congestion or parking implications of the development.
- (4) The consent authority must give the RTA a copy of the determination of the application within 7 days after the determination is made.

Division 18 Sewerage systems

105 Definitions

In this Division:

biosolids treatment facility means a facility for the treatment of biosolids from a sewage treatment plant or from a water recycling facility.

Northside Storage Tunnel means:

- (a) a tunnel running from Thorn Street, Hunters Hill to the North Head Sewage Treatment Plant, Manly, and
- (b) a branch tunnel to Scotts Creek, and
- (c) branch bores to two outlets at Tarban Creek, namely, the Huntley's Point submain and the Woolwich submain, and
- (d) a branch shaft to South Willoughby, and
- (e) a branch tunnel to Shelly Beach.

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU1 Primary Production,

- (b) RU2 Rural Landscape,
- (c) RU4 Rural Small Holdings,
- (d) IN1 General Industrial,
- (e) IN3 Heavy Industrial,
- (f) SP1 Special Activities,
- (g) SP2 Infrastructure.

sewage reticulation system means a facility for the collection and transfer of sewage to a sewage treatment plant or water recycling facility for treatment, or transfer of the treated water for use or disposal, including associated:

- (a) pipelines and tunnels, and
- (b) pumping stations, and
- (c) dosing facilities, and
- (d) odour control works, and
- (e) sewage overflow structures, and
- (f) vent stacks.

sewage treatment plant means a facility for the treatment and disposal of sewage, whether or not the facility supplies recycled water for use as an alternative water supply.

sewerage system means a biosolids treatment facility, sewage reticulation system, sewage treatment plant, water recycling facility, or any combination of these.

water recycling facility means a facility for the treatment of sewage effluent, stormwater or waste water for use as an alternative supply to mains water, groundwater or river water (including sewer mining works), whether the facility stands alone or is associated with other development, and includes associated:

- (a) retention structures, and
- (b) treatment works, and
- (c) irrigation schemes.

106 Development permitted with or without consent

- (1) Development for the purpose of sewage treatment plants or biosolids treatment facilities may be carried out:

- (a) by or on behalf of a public authority or any person licensed under the *Water Industry Competition Act 2006* without consent on land in a prescribed zone, and
- (b) by any other person with consent on land in a prescribed zone.

- (2) Development for the purpose of water recycling facilities may be carried out:

- (a) by or on behalf of a public authority or any person licensed under the *Water Industry Competition Act 2006* without consent on land in a prescribed zone, and

- (b) by any other person with consent on land in a prescribed zone or on any land where the development is ancillary to an existing land use.

However, such development may be carried out on land reserved under the *National Parks and Wildlife Act 1974* only if the development is authorised by or under that Act.

- (3) Development for the purpose of sewage reticulation systems may be carried out:

- (a) by or on behalf of a public authority or any person licensed under the *Water Industry Competition Act 2006* without consent on any land, and

- (b) by any other person with consent on any land.

However, such development may be carried out on land reserved under the *National Parks and Wildlife Act 1974* only if the development is authorised by or under that Act.

- (4) Development for the purpose of the Northside Storage Tunnel may be carried out by or on behalf of Sydney Water Corporation without consent on land in any of the following local government areas:

- (a) Hunters Hill,
- (b) Lane Cove,
- (c) Leichhardt,
- (d) Manly,
- (e) Mosman,
- (f) North Sydney,
- (g) Willoughby.

- (5) A reference in this Division to development for the purpose of a sewerage system of any kind includes a reference to development for any of the following purposes if the development is in connection with the sewerage system:

- (a) pumping stations, pipelines and tunnels,
- (b) temporary storage and transfer works to reticulate sewage or treated effluent,
- (c) effluent and biosolids reuse schemes,
- (d) power supply to the development,
- (e) energy generating works,
- (f) construction works,
- (g) routine maintenance works,
- (h) environmental management works.

107 Exempt development

Development for any of the following purposes carried out by or on behalf of a public authority is exempt development if the development is in connection with a sewerage system and complies with clause 20 (2) (Exempt development):

- (a) emergency works or emergency maintenance or repairs to protect a sewerage system, if

they involve no greater soil or vegetation disturbance than necessary,

- (b) investigation for system development or to establish the condition or safety of existing infrastructure (including geotechnical and other testing, surveying and sampling) at, above or below the surface of the ground, if the investigation:

- (i) involves no greater disturbance to the ground or vegetation than necessary, and
- (ii) does not result in any increase in stormwater drainage or run-off from the site concerned,

- (c) routine maintenance or associated landscaping works, including the following, if any disturbance to soil or vegetation is no greater than necessary:

- (i) removal of litter or debris from stormwater quality improvement devices,
- (ii) harvesting of macrophytes associated with a treatment system,
- (iii) excavations to expose a pipeline for inspection or testing and the creation of temporary stockpiles associated with pipeline maintenance, repair or replacement,
- (iv) flushing or relining of a pipeline if access is by a manhole,
- (v) maintenance of access tracks along corridors, pipelines and other infrastructure,
- (vi) painting, servicing or minor alteration of existing equipment,
- (vii) alterations to existing enclosures or buildings,
- (viii) maintenance, repair, renewal or replacement of pumping station components other than for the purpose of substantially increasing the capacity of the pumping station or structural alteration,
- (d) installation, maintenance or repair of a trunk drainage channel, pipeline marker or cathodic protection system,
- (e) works for safety or security, such as:
 - (i) construction, maintenance or realignment of security fencing that has a height above ground level (existing) of not more than 3.2m, or
 - (ii) temporary fencing around work sites or around open excavations, or
 - (iii) maintenance or repair of existing gates or installation of new gates,
- (f) temporary structures associated with maintenance projects, but only if the structure has only one storey.

Division 19 Soil conservation works

108 Definition

In this Division:

soil conservation works means development necessary:

- (a) to avoid, manage or mitigate the effects of salinity, acid sulfate soils, acid soils or sodic soils, or
- (b) to avoid, manage or mitigate the effects of erosion.

109 Development permitted without consent

- (1) Development for the purpose of soil conservation works may be carried out by or on behalf of a public authority without consent on any land.
- (2) A reference in this clause to development for the purpose of soil conservation works includes a reference to development for any of the following purposes if the development is in connection with soil conservation works:
 - (a) construction works,
 - (b) routine maintenance works,
 - (c) emergency works, including works associated with landslides,
 - (d) environmental management works.

Division 20 Stormwater management systems

110 Definition

In this Division:

stormwater management system means:

- (a) works for the collection, detention, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and
- (b) stormwater quality control devices (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and
- (c) stormwater reuse schemes.

111 Development permitted without consent

- (1) Development for the purpose of stormwater management systems may be carried out by or on behalf of a public authority without consent on any land.
- (2) A reference in this clause to development for the purpose of stormwater management systems includes a reference to development for any of the following purposes if the development is in connection with a stormwater management system:
 - (a) construction works,
 - (b) routine maintenance works, including maintenance dredging to remove sediment build-up in a stormwater canal or at exit points into natural waterways that affects the efficiency of the stormwater management system,
 - (c) environmental management works.

112 Exempt development

Development for any of the following purposes carried out by or on behalf of a public authority is exempt development if the development is in connection with a stormwater management system and complies with clause 20 (2) (Exempt development) if the development involves no greater soil or vegetation disturbance than necessary and does not involve any increase in stormwater drainage or run-off from the site concerned:

- (a) emergency works or emergency maintenance or repairs to protect a stormwater

management system,

- (b) investigation for system development or to establish the condition or safety of existing infrastructure (including geotechnical and other testing, surveying and sampling) at, above or below the surface of the ground,
- (c) routine maintenance or associated landscaping works, including the following:
 - (i) removal of litter or debris from stormwater quality improvement devices,
 - (ii) harvesting of macrophytes associated with a treatment system,
 - (iii) excavations to expose a pipeline for inspection or testing and temporary stockpiles associated with pipeline maintenance or repair,
 - (iv) flushing or relining of a pipeline where access is by a manhole,
 - (v) maintenance of access tracks along corridors, pipelines and other infrastructure,
 - (vi) painting, servicing or minor alteration of existing equipment,
 - (vii) alterations to existing enclosures or buildings,
- (d) installation, maintenance, repair or replacement of a trunk drainage channel, pipeline marker or cathodic protection system,
- (e) works for safety or security, such as:
 - (i) construction, maintenance or realignment of security fencing that has a height above ground level (existing) of not more than 3.2m, or
 - (ii) temporary fencing around work sites or around open excavations, or
 - (iii) maintenance or repair of existing gates or installation of new gates,
- (f) temporary structures associated with maintenance projects, but only if the structure has only one storey.

Division 21 Telecommunications and other communication facilities

Note. Installation of a telecommunications facility of a kind identified as a low-impact facility in the *Telecommunications (Low-impact Facilities) Determination 1997* of the Commonwealth may be exempt from State laws under Schedule 3 to the *Telecommunications Act 1997* of the Commonwealth.

113 Definitions

In this Division:

ACIF Code means the Australian Communications Industry Forum Industry Code entitled *ACIF C524:2004 External Communication Cable Networks*.

subscriber connection means an installation for the sole purpose of connecting premises to a line forming part of a telecommunications network.

telecommunications facility means:

- (a) any part of the infrastructure of a telecommunications network, or
- (b) any line, cable, optical fibre, equipment, apparatus, tower, mast, antenna, dish, tunnel, duct, hole, pit, pole or other structure in connection with a telecommunications network.

telecommunications network has the same definition as it has in the Standard Instrument.

Note.

The Standard Instrument defines *telecommunications network* as follows:

telecommunications network means a system, or series of systems, that carries, or is capable of carrying, communications by means of guided or unguided electromagnetic energy, or both.

114 Development permitted without consent

- (1) Development for the purposes of telecommunications facilities (including radio facilities) may be carried out by a public authority without consent on any land.
- (2) Before a public authority undertakes the development of a tower or mast under this clause, the public authority must:
 - (a) give written notice of its intention to carry out the development to the council of the area in which the land is located (unless the authority is that council) and to the occupiers of any adjoining land, and
 - (b) take into consideration any response to the notice that is received within 21 days after the notice is given.
- (3) Development for the purpose of co-locating telecommunications network cables on electricity poles or with underground electricity facilities, other than subscriber connections, may be carried out by any person without consent on any land.
- (4) Development for the purpose of subscriber connections, other than development of a kind specified in clause 116 (1) (a), may be carried out by any person without consent on any land unless the subscriber's premises, or any land traversed by the connection, is a State or local heritage item or is located in a heritage conservation area.
- (5) To the extent that the development under this clause involves the erection of an aerial cable by a person other than a public authority, the erection of the cable must be consistent with the ACIF Code.

115 Development permitted with consent

- (1) Development for the purposes of telecommunications facilities, other than development in clause 114, may be carried out by any person with consent on any land.
- (2) To the extent that the development under this clause involves the erection of an aerial cable, the erection of the cable must be consistent with the ACIF Code.

116 Exempt development

Development for any of the following purposes is exempt development if it is carried out by any person on any land in connection with a telecommunications facility and complies with clause 20 (2):

- (a) a subscriber connection that is co-located with an underground or above ground electricity supply connection and is consistent with the ACIF Code,
- (b) a satellite dish that:
 - (i) is erected wholly within the boundaries of a property,
 - (ii) is installed in accordance with the instructions of the manufacturer and any relevant standard imposed by Standards Australia,

- (iii) does not affect the structural integrity of any building on which it is erected,
- (iv) if mounted on a dwelling:
 - (A) has a maximum diameter of 90cm (excluding any projecting feed element), and
 - (B) has a height that does not exceed the highest point of the roof (if the roof is peaked) or 1.2m above the roof (if the roof is flat),
- (v) if mounted on the ground adjacent to a dwelling:
 - (A) has a maximum diameter of 90cm (excluding any projecting feed element), and
 - (B) has a maximum height of 1.2m above ground level.
- (vi) if mounted on a building on land zoned commercial or industrial under an environmental planning instrument:
 - (A) has a maximum diameter of 1.8m (excluding any projecting feed element), and
 - (B) has a height that does not exceed 2.4m above the highest point of the roof structure,
- (vii) if mounted on the ground on land zoned commercial or industrial under an environmental planning instrument:
 - (A) has a maximum diameter of 1.8m (excluding any projecting feed element), and
 - (B) has a maximum height of 2.4m above ground level.

Division 22 Travelling stock reserves

117 Definitions

In this Division:

rural lands protection board means a rural lands protection board constituted under Part 6 of the *Rural Lands Protection Act 1998*.

travelling stock reserve has the same meaning as it has in the *Rural Lands Protection Act 1998*.

Note.

The *Rural Lands Protection Act 1998* defines *travelling stock reserve* as follows:

travelling stock reserve means:

- (a) any route or camping place reserved for travelling stock route or camping place under the *Crown Lands Act 1989*, or
- (b) any reserve for travelling stock, water reserve, reserve for access or crossing (where the reserve is for the purpose of providing travelling stock with access to or a crossing of water, whether expressly notified for that purpose or not), or
- (c) any stock watering place.

118 Development permitted without consent

- (1) Development for the purpose of maintaining or managing a travelling stock reserve, other than development of a kind specified in clause 119, may be carried out by or on behalf of a public authority or a rural lands protection board without consent on land within the

reserve.

(2) Subclause (1) does not authorise the carrying out of development for any of the following purposes:

- (a) the erection of a building or the reconstruction or alteration of a building so as materially to affect its design or purpose,
- (b) any development designed to change the use or purpose of the reserve.

119 Development permitted with consent

Development for any of the following purposes may be carried out with consent by or on behalf of a public authority or a rural lands protection board on land within a travelling stock reserve:

- (a) the erection of buildings, or the reconstruction or alteration of buildings in such a way as to materially affect their design or purpose,
- (b) any development designed to change the use or purpose of the travelling stock reserve.

Division 23 Waste or resource management facilities

120 Definitions

In this Division:

prescribed zone means any of the following land use zones or a land use zone that is equivalent to any of those zones:

- (a) RU1 Primary Production,
- (b) RU2 Rural Landscape,
- (c) IN1 General Industrial,
- (d) IN3 Heavy Industrial,
- (e) SP1 Special Activities,
- (f) SP2 Infrastructure.

resource recovery facility means a facility for the recovery of resources from waste, including such works or activities as separating and sorting, processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from waste gases and water treatment, but not including re-manufacture of material or goods or disposal of the material by landfill or incineration.

waste disposal facility means a facility for the disposal of waste by landfill, incineration or other means, including associated works or activities such as recycling, resource recovery and other resource management activities, energy generation from waste gases, leachate management, odour control and the winning of extractive material to generate a void for disposal of waste or to cover waste after its disposal.

waste or resource management facility means a waste or resource transfer station, a resource recovery facility or a waste disposal facility.

waste or resource transfer station means a facility for the collection and transfer of waste material or resources, including the receipt, sorting, compacting, temporary storage and distribution of waste or resources and the loading or unloading of waste or resources onto or

from road or rail transport.

121 Development permitted with consent

- (1) Development for the purpose of waste or resource management facilities, other than development referred to in subclause (2), may be carried out by any person with consent on land in a prescribed zone.
- (2) Development for the purposes of a waste or resource transfer station may be carried out by any person with consent on:
 - (a) land in a prescribed zone, or
 - (b) land in any of the following land use zones or equivalent land use zones:
 - (i) B5 Business Development,
 - (ii) B6 Enterprise Corridor,
 - (iii) IN2 Light Industrial,
 - (iv) IN4 Working Waterfront, or
- (c) land on which development for any of the following purposes is permitted with consent under any environmental planning instrument:
 - (i) industry,
 - (ii) business premises or retail premises,
 - (iii) freight transport facilities.
- (3) Development for the purpose of the recycling of construction and demolition material, or the disposal of virgin excavated natural material (as defined by the *Protection of the Environment Operations Act 1997*) or clean fill, may be carried out by any person with consent on land on which development for the purpose of industries, extractive industries or mining may be carried out with consent under any environmental planning instrument.

122 Additional permitted uses—Castlereagh Liquid Waste Disposal Depot

- (1) In this clause:

depot means the Castlereagh Liquid Waste Disposal Depot.

depot site means the land shown edged heavy black on the map marked "State Environmental Planning Policy (Infrastructure) 2007—Castlereagh Liquid Waste Disposal Depot" held in the head office of the Department of Planning.

- (2) Development for the purposes of monitoring or mitigating pollution as a result of the operation of the depot, may be carried out by any person without consent on the depot site.
- (3) Development for any of the following purposes may be carried out by any person with consent on the depot site:
 - (a) rehabilitation of land,
 - (b) disposal of inert waste,
 - (c) resource recovery or recycling facilities.

123 Determination of development applications

In determining a development application for development for the purpose of the construction, operation or maintenance of a landfill for the disposal of waste, including putrescible waste, the consent authority must take the following matters into consideration:

- (a) whether a justifiable demand exists for the landfill, having regard to the provisions of the *NSW Waste Avoidance and Resource Recovery Strategy* and the waste disposal data provided from time to time by the Department of Environment and Climate Change,
- (b) whether the location of the development is consistent with any regional planning strategies or locational principles included in the publication *EIS Guideline: Landfilling* (Department of Planning, 1996), as in force from time to time,
- (c) the views of relevant public authorities and councils responsible for the area from which the waste material is proposed to be sourced.

Division 24 Water supply systems

124 Definitions

In this Division:

water reticulation system means a facility for the transport of water, including pipes, tunnels, canals, bores, pumping stations, related electricity infrastructure, dosing facilities and water supply reservoirs.

water storage facility means a dam, weir or reservoir for the collection and storage of water, and includes associated monitoring or gauging equipment.

water supply system means a water reticulation system, water storage facility, water treatment facility, or any combination of these.

water treatment facility means a facility for the treatment of water (such as a desalination plant or a recycled or reclaimed water plant) whether the water produced is potable or not, and includes residuals treatment, storage and disposal facilities, but does not include a water recycling facility within the meaning of Division 18 (Sewerage systems).

125 Development permitted without consent

- (1) Development for the purpose of water reticulation systems may be carried out by or on behalf of a public authority without consent on any land.
- (2) Development for the purpose of water storage facilities, including development for any of the following purposes, may be carried out by or on behalf of a public authority without consent on land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone SP1 Special Activities, Zone SP2 Infrastructure or an equivalent land use zone:
 - (a) catchment management works,
 - (b) public recreational facilities associated with a water storage facility.
- (3) Development for the purpose of water treatment facilities may be carried out by or on behalf of a public authority without consent on land in any of the following land use zones:
 - (a) RU1 Primary Production,
 - (b) RU2 Rural Landscape,
 - (c) RU4 Rural Small Holdings,
 - (d) IN1 General Industrial,

- (e) IN3 Heavy Industrial,
- (f) SP1 Special Activities,
- (g) SP2 Infrastructure.

(4) Development for the purpose of a water supply system may be carried out on land reserved under the *National Parks and Wildlife Act 1974* only if it is authorised by or under that Act.

(5) In this Division, a reference to development for the purpose of a water supply system of any kind includes a reference to development for any of the following purposes if the development is in connection with the water supply system:

- (a) dams, reservoirs, weirs, levees, spillways and fishways,
- (b) catchment management works,
- (c) groundwater investigation works, groundwater bore stations, borefields, minewater works and the like,
- (d) access ways,
- (e) water intakes, pumping stations, pipelines, channels, tunnels, canals and aqueducts,
- (f) gauging and monitoring equipment,
- (g) power supply to the water supply system,
- (h) hydro-electric power generation equipment and associated connections to the electricity network,
- (i) construction works,
- (j) emergency works and routine maintenance works,
- (k) environmental management works.

(6) Development for any of the following purposes may be carried out by or on behalf of the Sydney Catchment Authority without consent on any land:

- (a) investigations into the availability of groundwater (including mine water), extraction of groundwater or mine water, and associated water reticulation systems,
- (b) development to enable access to deep water extraction in dams within the Sydney Catchment Authority's area of operations under the *Sydney Water Catchment Management Act 1998*, including investigations, associated works or equipment and construction works and other water supply infrastructure, such as the Megarity's Creek Water Pumping Station and other Warragamba Emergency Scheme works.

126 Development permitted without consent—desalination plants

Development for the purpose of a desalination plant or a pilot desalination plant, including development for any of the following purposes, may be carried out by or on behalf of Sydney Water Corporation without consent on any land:

- (a) the Kurnell Desalination Plant (as declared to be a critical infrastructure project by Schedule 5 to *State Environmental Planning Policy (Major Projects) 2005*),
- (b) a pilot desalination plant on the Kurnell Peninsula.

127 Exempt development

Development for the following purposes carried out by or on behalf of a public authority is exempt development if the development is in connection with a water supply system and complies with clause 20 (2) (Exempt development) and if it involves no greater soil or vegetation disturbance than necessary and no increase in stormwater drainage or run-off from the site:

- (a) emergency works or emergency maintenance or repairs to protect a water supply system,
- (b) geotechnical or other testing, surveying, sampling or investigation (whether taking place at, above or below the surface of the ground) required for system development or to establish the condition or safety of existing infrastructure,
- (c) routine maintenance or associated landscaping works,
- (d) removal of litter or debris from stormwater quality improvement devices,
- (e) harvesting of macrophytes associated with a treatment system,
- (f) excavations to expose a pipeline for inspection or testing and temporary stockpiles associated with pipeline maintenance, repair or replacement,
- (g) installation, repair or maintenance of a trunk drainage channel or pipeline marker,
- (h) installation, repair, maintenance or replacement of a cathodic protection system,
- (i) flushing or relining of a pipeline where access is by a manhole,
- (j) maintenance of access tracks along or to corridors, pipelines and other infrastructure,
- (k) painting, servicing or minor alteration of existing equipment,
- (l) alterations to existing enclosures or buildings,
- (m) maintenance, repair, renewal and replacement of pump station components otherwise than for the purpose of substantially increasing capacity and not involving structural alteration,
- (n) works for safety or security, such as:
 - (i) construction, maintenance or realignment of security fencing that has a height above ground level (existing) of not more than 3.2m, or
 - (ii) temporary fencing around work sites or around open excavations, or
 - (iii) maintenance or repair of existing gates or installation of new gates,
- (o) temporary structures associated with maintenance projects, but only if the structure has only one storey,
- (p) public recreational facilities within a drinking water catchment area.

Division 25 Waterway or foreshore management activities

128 Definition

In this Division:

waterway or foreshore management activities means:

- (a) riparian corridor and bank management, including erosion control, bank stabilisation, reslagging, weed management, revegetation and the creation of foreshore access ways, and
- (b) instream management or dredging to rehabilitate aquatic habitat or to maintain or restore environmental flows or tidal flows for ecological purposes, and
- (c) coastal management and beach nourishment, including erosion control, dune or foreshore stabilisation works, headland management, weed management, revegetation activities and foreshore access ways.

129 Development permitted without consent

- (1) Development for the purpose of waterway or foreshore management activities may be carried out by or on behalf of a public authority without consent on any land.
- (2) In this clause, a reference to development for the purpose of waterway or foreshore management activities includes a reference to development for any of the following purposes if the development is in connection with waterway or foreshore management activities:
 - (a) construction works,
 - (b) routine maintenance works,
 - (c) emergency works, including works required as a result of flooding, storms or coastal erosion,
 - (d) environmental management works.
- (3) Development for the purpose of temporary works for or associated with drought relief may be carried out by or on behalf of a public authority without consent, but only if the development is:
 - (a) carried out on land publicly identified by the Minister for Primary Industries as being in drought, and
 - (b) removed, and the area rehabilitated, within 4 months after the date on which the area is no longer so identified.

Note. Areas of NSW that are in drought are identified on the website of the Department of Primary Industries.

Division 26 Special provisions

130 Riding for the disabled centre to be complying development

- (1) Subject to subclause (2), the following development for the purposes of a horse riding facility for people with disabilities, on the land known as 118–120 Culloden Road, Marsfield, being Lots 652 and 653, DP752035, is complying development:
 - (a) construction or alteration of, or addition to, a single unenclosed covered arena structure, if:
 - (i) it has a total area, inside the structure, of not more than 1600m², and
 - (ii) it is not within 9m of any boundary of the site, and
 - (iii) the roof of the structure is less than 8.2m in height, with support poles of less than 6m height and constructed of non-reflective material,

- (b) construction or alteration of, or addition to, a single office premises, if:
- the footprint of the built area of the office, at ground level (finished), is less than 220m², and
 - they have 2 storeys or less, and
 - the external walls and roof are constructed of non-reflective material,
- (c) construction or alteration of, or addition to, horse yards and stables, if:
- the horse yards have a total area of not more than 3,150m², and
 - the area of each horse yard is not more than 330m², and
 - each horse yard is not within 6m of any boundary of the site, and
 - the stable is not within 25m of any boundary of the site, and
 - the stable is not more than one storey, and
 - the external walls and roof are constructed of non-reflective material,
- (d) car parking that is situated at ground level and that is not enclosed.
- (2) To be complying development, development referred to in subclause (1) must:
- be permissible, with consent, in the zone in which it is carried out, and
 - meet relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - comply with the requirements of any tree preservation order under any other environmental planning instrument applicable to the land, and
- Note.** Division 3 of Part 5 of Schedule 2 to the *Local Government (General) Regulation 2005* also contains requirements with which the development must comply in relation to the keeping of horses.
- not be carried out within 1m of any public sewer main except with the written approval of the authority that has management or control of the main, and
 - comply with the waste management and minimisation and stormwater management requirements under the *City of Ryde Development Control Plan 2006*, as in force at the commencement of this clause, and
- (f) in the case of buildings, be constructed in accordance with level 1 construction under Australian Standard AS 3959—1999, *Construction of buildings in bushfire-prone areas*.

Note. Section 76A (6) of the Act also provides that certain development cannot be complying development.

131 Complying development certificate conditions for riding for disabled centre

A complying development certificate for development referred to in clause 130 is subject to the following conditions:

- any construction or demolition work must be carried out only between 7.00am and 7.00pm Monday to Friday and 8.00am and 4.00pm on Saturdays,
- construction or demolition work must not be carried out on a Sunday or a public holiday,

- to prevent soil erosion, water pollution or the discharge of loose sediment onto surrounding land, run-off and erosion controls must be implemented before construction,
- to control dust emissions from the site, suitable screens or barricades must be erected prior to any demolition, excavation or building work,
- construction or demolition work must be carried out so as to protect existing trees on the site,
- building materials, plant, equipment and waste used in or arising from construction or demolition work must not be placed or stored on a public footpath or road adjacent to the site,
- any public land or public place must be protected from any obstruction, inconvenience or damage that might otherwise be caused by the development,
- before the facility commences to operate, a certificate of compliance, if required, must be obtained from the relevant water supply or sewer authority,
- the horse riding facility is to operate only between 7.30am and 5.00pm, but the office premises may operate until 10.00pm,
- there are not to be more than 10 horses and stables at the facility.

Schedule 1 Exempt development—general

(clause 20 (2))

Development purpose	Development standards
General provisions	
Access ramps for persons with a disability	- Ramps must provide access to public transport, outdoor recreational areas or the ground floor of buildings or car parks. - Grade must not exceed 1:14 and must comply with AS 1428.1–2001, <i>Design for access and mobility – General requirements for access New building work</i>.
Aerials and antennae (not including satellite dishes)	- Ramp structures must not create a traffic or pedestrian hazard or be part of a State or local heritage item. - Must not result in more than 3 per building (whether solely aerials, solely antennae or a combination of aerials and antennae).
Air conditioning units	- Height must not exceed 6m above ground level (existing) or above an existing building. - Must have a Minimum Energy Performance Standard consistent with AS/NZS 3823.2:2005, <i>Performance of electrical appliances Airconditioners and heat pumps – Energy labelling and minimum energy performance standard (MEPS) requirements</i>. - Noise level must not exceed 54dB(A) above ambient background noise level measured at property boundary. - Surface area must not exceed 20m² (except for an educational establishment). - Height must not exceed 2.4m above ground level (existing).
Awnings, canopies, pergolas and storm blinds	Must maintain all required boundary setbacks for the associated building and no part of structure must be within 900mm of any property boundary.
Building external alterations including re-cladding roofs or walls	Must involve only repair or renovation, or painting, plastering or other decoration, of building.

- Must not result in enlargement or extension of building or increase in load-bearing capacity of any load-bearing component of building.
- Any re-cladding must involve only replacing existing materials with similar materials and not involve structural alterations.
- Must be non-structural alterations to existing building only, such as:
 - (i) replacement of doors, wall, ceiling or floor linings or deteriorated frame members with equivalent or improved quality materials, or
 - (ii) inclusion of built-in fixtures.
- Must not affect load-bearing capacity of any load-bearing component of building.
- Work must not compromise fire safety or affect accessibility of any fire exit.
- Bush fire protection—maintenance of existing fire trails or asset protection zones or installation or maintenance of gates and associated structures on such trails or zones
 - Fire trails must be recorded as such on a Bush Fire Management Committee Fire Trail Register.
 - Asset protection work must be consistent with the NSW Rural Fire Service publication *Standards for Asset Protection Zones*.
 - Maintenance works must not result in any change of alignment of fire trails or asset protection zones.
 - Must be open (unenclosed) car parking (but may include associated gates including security booths and boom gates).
 - Surface area must not exceed 20m².
 - Height must not exceed 2.4m above ground level (existing).
 - Must be located behind any relevant building setback.
 - Must be no part of structure within 500mm of any side or rear boundary.
- Stormwater drainage or run-off must be via connection to existing stormwater system.
- Surface area must not exceed 10m².
- Finished surface level must not be more than 1m above ground level (existing).
- Boundary setbacks for existing building to be maintained.
- Must be carried out in accordance with AS 2601—2001, *Demolition of structures* and must not cover an area of more than 100m².
- Demolition of buildings or structures (unless part of a heritage item or within a heritage conservation area) the erection of which is exempt development under this Policy
- Fences—erection of security fences
 - Must be for infrastructure facility and erected along road frontage or non-road boundary.
 - Height must not exceed 2.15m above ground level (existing).
 - Must be constructed so as not to prevent natural flow of stormwater drainage or run-off.
 - [f in a residential zone, height of boundary fence must not exceed 1.8m above ground level (existing) if behind front building line and 1.2m if forward of that line.
- Fences (other than security fences or fences covered by the *Swimming Pools Act 1992*)

Fire fighting emergency equipment—construction or maintenance of emergency equipment including replacement or augmentation of fire systems and fire water tanks

Flagpoles

- Must not include masonry construction to a height of more than 900mm above ground level (existing).
- Height must not exceed 6m above ground level (existing) or above an existing building.
- Must not display commercial advertising.
- Flagpole structure and any attached flag must not project over public road.
- Must not encroach onto footpath or public thoroughfare.
- Must be removed immediately on completion of work if removal will not give rise to safety risk.

Hoardings to restrict unauthorised entry to construction sites—erection in conjunction with erection or demolition of, or carrying out of alterations or additions to, a building or carrying out of maintenance or repairs (for which, in each case, any required consent has been obtained)

Landscaping (including paving and turfing and access tracks) carried out in conjunction with other development which is exempt under this Policy

Lighting—construction or maintenance

- Construction and maintenance of external lighting if light spill is contained within site and in accordance with AS 4282—1997, *Control of the obtrusive effects of outdoor lighting*.

- Construction and maintenance of lighting at or in vicinity of air transport facilities if consistent with *Manual of Standards (MOS) Part 139—Aerodromes* published by the Civil Aviation Safety Authority (established under *Civil Aviation Act 1988* of the Commonwealth).

Offices—portable

- Height must not exceed 1 storey.

- Setbacks must be in accordance with any applicable setback provisions of development control plan applying to site.

- Height (including any stand) must not exceed 2.4m above ground level (existing).

Rainwater and bore water tanks

- No part of structure must be within 450mm of any property boundary or situated no closer to street than any associated building.

- Rainwater tank must be fitted with first-flush device that causes initial run-off of any rain to bypass tank to reduce pollutants entering tank.

- Installation must not involve excavation of more than 1m from ground level (existing), or filling of more than 1m above ground level (existing).

- Must not be installed over any structure or fittings used by public authority to maintain water or sewer main.

- Must be sign affixed to tank, clearly stating that water in tank is rainwater or bore water (as appropriate).

- Must not provide for retaining of fill to height above ground level (existing) of more than 2m or excavation to depth below ground level (existing) of more than 1m.

Retaining walls

- Scaffolding—erection in conjunction with erection or demolition of, or carrying out of alterations or additions to, a building or carrying out of maintenance or repairs (for which, in each case, any required consent has been obtained)
- Security cameras—installation for security purposes
- Sheds
- Must not prevent the natural flow of stormwater drainage/run-off.
- Must not encroach onto footpath or public thoroughfare.
- Temporary fencing must be provided to restrict unauthorised access to site if scaffolding is within 3m of any boundary.
- Must be removed immediately on completion of work if removal will not give rise to safety risk.
- Must be free-standing, prefabricated and constructed of non-reflective materials.
- Development must not result in shed with a total floor area exceeding 30m².
- Height must not exceed 2.5m above ground level (existing).
- Must be located in rear of infrastructure facility.
- Area of skylight must not exceed 2m².
- Must not be located within 900mm of any property boundary or within 900mm of any wall separating attached dwellings.
- Work must not reduce structural integrity of building or involve structural alterations.
- Surface area must not exceed 3.5m².
- Must be located wholly within property boundary or be attached to existing boundary fence and not projecting more than 100mm from fence.
- Obrusive effects of outdoor lighting must be controlled in accordance with AS 4282–1997, *Control of the obtrusive effects of outdoor lighting*.
- Must be consistent with road safety policies and guidelines on outdoor advertising approved by the Director-General for the purpose of this provision and published in the Gazette.
- Surface area must not exceed 3.5m².
- Must be located wholly within property boundary.
- Must not be displayed earlier than 28 days before event and must be removed within 14 days after event.
- Obrusive effects of outdoor lighting must be controlled in accordance with AS 4282–1997 *Control of the obtrusive effects of outdoor lighting*.
- Must not result in:
 - (i) creation of any additional lot or legal right to erect dwelling, or
 - (ii) creation of lot that depends on use of services provided to, or utilities of, another lot, or
 - (iii) change in area of any lot by more than 10 per cent, or
 - (iv) increased bush fire risk to existing buildings.

Schedule 1A (Repealed)

Schedule 2 Railways, roads and associated projects

(Clauses 80, 95 and 103)

1 Cross City Tunnel

A tollway comprising twin 2 lane tunnels from William Street, Sydney, near the eastern end of the Kings Cross Tunnel to the Western Distributor near Harbour Street.

2 Eastern Distributor

A roadway linking the Cahill Expressway, Woolloomooloo, to Mill Pond Road, Botany, including associated works and facilities.

3 Lane Cove Tunnel

A transport system comprising the following:

- (a) dual road tunnels that generally follow the alignment of Epping Road from just east of the intersection of Epping Road and Mowbray Road West to the Gore Hill Freeway, east of the Pacific Highway,
- (b) a 2-lane bridge over the Lane Cove River adjacent to the south side of the existing bridge,
- (c) modifications, including widening to some sections, to Epping Road between Wicks Road and the Gore Hill Freeway and adjustments to lanes connecting with the M2 Motorway,
- (d) modifications to the Gore Hill Freeway including widening between the Pacific Highway and Reserve Road and beneath the Willoughby Road overpass at Naremburn,
- (e) associated ramps between the tunnel and Epping Road and between the tunnel and the Pacific Highway,
- (f) north-facing ramps between Falcon Street and the Warringah Freeway,
- (g) a ramp between the eastbound tunnel and the Gore Hill Freeway,
- (h) modifications to existing ramps between the Pacific Highway and the Gore Hill Freeway,
- (i) 2 ventilation stacks, 1 near the eastern end of the tunnel and 1 near the western end of the tunnel.

The project includes all associated and ancillary works, activities, uses, structures or facilities including (but not limited to) works, activities, uses, structures or facilities for the provision of dedicated bus lanes or transit lanes on Epping Road, Longueville Road and the Gore Hill Freeway, and pedestrian and cycle facilities on Epping Road, Longueville Road and the Gore Hill Freeway.

4 Liverpool—Parramatta Transitway

A passenger transport system between Liverpool and Parramatta via Bonnyrigg, Wetherill Park, Smithfield and Wentworthville.

5 North-West Sydney Transitway Network

Links of a passenger transport system between:

- (a) Blacktown and Castle Hill via Kings Park, Kings Langley, Acacia Gardens, Glenwood, Parklea, Stanhope Gardens and Kellyville, and
- (b) Parramatta and Rouse Hill (Mungie Park) via Westmead, Wentworthville, Old

Toongabbie, Toongabbie, Winston Hills, Seven Hills, Baulkham Hills, Kings Langley, Bella Vista, Glenwood, Kellyville and Stanhope Gardens.

6 Parramatta Rail Link

A heavy railway from Parramatta to Chatswood. The project would commence in the general vicinity of the Main Western Railway line west of Parramatta Station and would then proceed via Parramatta, Camellia, Carlingford, Epping, the vicinity of Macquarie University, the vicinity of Delhi Road, the vicinity of the University of Technology Kuring-gai Campus to Chatswood (including a bridge over or a tunnel under the Lane Cove River).

7 Rail Clearways Program

The following 10 railway system upgrade major projects within the Sydney metropolitan area, known collectively as the "Rail Clearways Program":

- (a) **Hornsby Upgrading**
Additional rail line, station works upgrade and extension of Hornsby stabling yard.
- (b) **Cronulla Upgrading**
Upgrading of the Cronulla Line, alterations to Cronulla, Kirrawee, Woolooware and Sutherland Stations and the reconfiguration of stabling.
- (c) **Lidcombe Upgrading**
Upgrading Lidcombe Station and track changes (including a turnback line).
- (d) **Homebush Upgrading**
Upgrading Homebush Station and track changes (including a turnback line).
- (e) **Kingsgrove to Revesby Upgrading**
Upgrading Revesby Station, additional tracks between and in the vicinity of Kingsgrove to Revesby Stations and any associated station works.
- (f) **Quakers Hill to Vineyard Upgrading**
Construction of stations, upgrading of stations, relocation of stations, additional tracks between and in the vicinity of Quakers Hill to Vineyard Stations.
- (g) **Carlingford Line Upgrading**
Track changes including construction of a passing loop and the upgrading of Rydalmere Station.
- (h) **Sydenham-Erskineville Upgrading**
Track changes including construction of two additional rail lines from Sydenham to Erskineville, upgrading Sydenham, St Peters and Erskineville Stations and modifications to road bridges.
- (i) **Liverpool Upgrading**
Upgrading Liverpool Station, reconfiguration of stabling and changes to track (including a turnback line).
- (j) **Macarthur Upgrading**
Upgrading Macarthur Station, reconfiguration of stabling and changes to track (including a turnback line).

8 Southern Sydney Freight Line

Development for the purposes of the Southern Sydney Freight Line, being a rail track adjacent to the Main South line between east of Sefton Park junction and south of Macarthur via Cabramatta, and all infrastructure and services that form part of the new line.

9 Sydney Airport Rail Link

A railway linking the domestic and international terminals at Sydney (Kingsford Smith) Airport with the Sydney Central Business District and the East Hills railway line in the vicinity of Turrella.

10 Tugun Bypass

A 4-lane dual carriageway freeway with provision to upgrade to 6 traffic lanes in the future. The bypass would run to the south and west of the Gold Coast Airport runway generally between the NSW-Queensland border (in the vicinity of Boyd Street) to join with the Pacific Highway at West Tweed Heads (in the vicinity of Kennedy Drive), a distance of approximately 4.1 km.

Schedule 3 Traffic generating development to be referred to the RTA

(Clause 104)

Column 1 Purpose of development	Column 2 Size or capacity—site with access to any road	Column 3 Size or capacity—site with access to classified road or to road that connects to classified road (if access within 90m of connection, measured along alignment of connecting road)
Note.		
The development may be the erection of new premises or the enlargement or extension of existing premises		
Apartment or residential flat building	300 or more dwellings	75 or more dwellings
Area used exclusively for parking or any other development having ancillary parking accommodation	200 or more motor vehicles	50 or more motor vehicles
Commercial premises	10,000m ² in area	2,500m ² in area
Commercial premises and industry	15,000 m ² in area	4,000m ² in area
Drive-in theatres	200 or more motor vehicles	50 or more motor vehicles
Drive-in take away food outlets	200 or more motor vehicles	Any size or capacity
Educational establishments	50 or more students	
Freight intermodal facilities and freight terminals	Any size or capacity	
Heliports, airports or aerodromes	Any size or capacity	
Hospital	200 or more beds	100 or more beds
Industry	20,000m ² in area	5,000m ² in area
Landfill, recycling facilities, waste transfer station	Any size or capacity	
Motor showrooms	200 or more motor vehicles	50 or more motor vehicles
Parking	200 or more motor vehicles	50 or more motor vehicles
Places of assembly or places of public worship	200 or more motor vehicles	50 or more motor vehicles
Premises licensed under the <i>Liquor Act 1982</i> or the <i>Registered Clubs Act 1976</i>	200 or more motor vehicles	50 or more motor vehicles
Refreshment rooms	200 or more motor vehicles	300m ²
Roadside stalls, where only primary products produced on the property on which the building or place is situated are exposed or offered for sale	200 or more motor vehicles	Any size or capacity

Services stations (including service stations which have retail outlets)	200 or more motor vehicles	Any size or capacity
Shops	2,000m ²	500m ²
Shops and commercial premises	4,000m ²	1,000m ²
Subdivision of land	200 or more allotments where the subdivision includes the opening of a public road	50 or more allotments
Tourist facilities, recreation facilities, showgrounds or sportsgrounds	200 or more motor vehicles	50 or more motor vehicles
Transport terminals, bulk stores, container depots or liquid fuel depots	8,000m ²	
Any other purpose	200 or more motor vehicles	

Schedule 4 Repeals

(Clause 10 (1))

State Environmental Planning Policy No 3—Castlereagh Liquid Waste Disposal Depot

State Environmental Planning Policy No 7—Port Kembla Coal Loader

State Environmental Planning Policy No 8—Surplus Public Land

State Environmental Planning Policy No 9—Group Homes

State Environmental Planning Policy No 11—Traffic Generating Developments

State Environmental Planning Policy No 16—Tertiary Institutions

State Environmental Planning Policy No 27—Prison Sites

State Environmental Planning Policy No 31—Sydney (Kingsford Smith) Airport

State Environmental Planning Policy No 35—Maintenance Dredging of Tidal Waterways

State Environmental Planning Policy No 43—New Southern Railway

State Environmental Planning Policy No 48—Major Putrescible Landfill Sites

State Environmental Planning Policy No 51—Eastern Distributor

State Environmental Planning Policy No 54—Northside Storage Tunnel

State Environmental Planning Policy No 61—Exempt and Complying Development for White Bay and Glebe Island Ports

State Environmental Planning Policy No 63—Major Transport Projects

State Environmental Planning Policy No 67—Macquarie Generation Industrial Development Strategy

State Environmental Planning Policy No 69—Major Electricity Supply Projects

State Environmental Planning Policy No 72—Linear Telecommunications Development—Broadband

State Environmental Planning Policy (ARTC Rail Infrastructure) 2004

State Environmental Planning Policy (Sydney Metropolitan Water Supply) 2004

Schedule 5 (Repealed)

Historical notes

The following abbreviations are used in the Historical notes:

Aim	amended	LW	legislation website	Sch	Schedule
CI	clause	No	number	Schs	Schedules
CII	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulations	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

State Environmental Planning Policy (Infrastructure) 2007 (641). GG No 185 of 21.12.2007. p 10003. Date of commencement, 1.1.2008, cl 3. This Policy has been amended by cl 10 (3) of this Policy and as follows:

2008 No 62 Statute Law (Miscellaneous Provisions) Act 2008. Assented to 1.7.2008.

Date of commencement of Sch 2.53, assent, sec 2 (2).

(456) State Environmental Planning Policy (Infrastructure) 2007 (Amendment No 1). GG No 132 of 17.10.2008, page 10004.

Date of commencement, on gazettal.

(461) State Environmental Planning Policy (Infrastructure) Amendment (Schools and TAFE Establishments) 2008. GG No 134 of 24.10.2008, page 10356.

Date of commencement, on gazettal.

(572) State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. GG No 157 of 12.12.2008, p 12142.

Sch 1.3 was not commenced and was repealed by State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Amendment No 1) (2009-74).

2009 (61) State Environmental Planning Policy (Infrastructure) Amendment (Schools, Affordable Housing and Metro Rail) 2009. LW 20.2.2009.

Date of commencement, on publication on LW.

(91) State Environmental Planning Policy (Western Sydney Parklands) 2009. LW 6.3.2009.

Date of commencement, on publication on LW.

(137) State Environmental Planning Policy (Infrastructure) Amendment (Group Homes) 2009. LW 24.4.2009.

Date of commencement, on publication on LW.

(327) State Environmental Planning Policy (Infrastructure) Amendment (Educational Establishments) 2009. LW 10.7.2009.

Date of commencement, on publication on LW, cl 2.

(364) State Environmental Planning Policy (Affordable Rental Housing) 2009. LW 31.7.2009.

Date of commencement of Sch 3.6, on publication on LW, cl 2 (1).

(434) State Environmental Planning Policy (Infrastructure) Amendment (Associated Public Transport Facilities) 2009. LW 28.8.2009.

Date of commencement, on publication on LW, cl 2.

(536) State Environmental Planning Policy (Infrastructure) Amendment (Riding for the Disabled Centre) 2009. LW 20.11.2009.

Date of commencement, on publication on LW, cl 2.

Table of amendments

CI 5	Am 2009 (434), Sch 1 [1].
CI 6	Am 2009 (61), Sch 1 [1] [2]. Subst 2009 (434), Sch 1 [2].
CI 19	Am 2009 (61), Sch 1 [3].
CI 27	Am 2008 (461), Sch 1 [1]; 2009 (61), Sch 1 [4].
CI 28	Am 2009 (61), Sch 1 [5]; 2009 (327), Sch 1 [1].

Cl 29	Am 2008 (461), Sch 1 [2] [3]; 2009 (327), Sch 1 [2] [3].
Cl 31	Am 2008 (461), Sch 1 [4].
Cl 31A	Ins 2008 (461), Sch 1 [5]; Am 2009 (61), Sch 1 [6]; 2009 (327), Sch 1 [4]–[6].
Cl 31B	Ins 2008 (461), Sch 1 [5]; Rep 2009 (61), Sch 1 [7].
Cl 31C	Ins 2008 (461), Sch 1 [5].
Cl 32	Am 2009 (61), Sch 1 [8] [9]; 2009 (137), Sch 1 [1] [2].
Part 3, heading	Am 2009 (61), Sch 1 [10].
Part 3, Div 11	Rep 2009 (364), Sch 3.6 [1].
Part 3, Div 11, Subdiv 1 (cf 58A)	Ins 2009 (61), Sch 1 [11]; Rep 2009 (364), Sch 3.6 [1].
Part 3, Div 11, Subdiv 2, heading	Ins 2009 (61), Sch 1 [11]; Subst 2009 (137), Sch 1 [3]; Rep 2009 (364), Sch 3.6 [1].
Part 3, Div 11, Subdiv 2	Ins 2009 (61), Sch 1 [11]; Subst 2009 (137), Sch 1 [3]; Rep 2009 (364), Sch 3.6 [1].
Cl 59	Am 2009 (61), Sch 1 [12] [13]; Subst 2009 (137), Sch 1 [3]; Rep 2009 (364), Sch 3.6 [1].
Cl 60, 61	Subst 2009 (137), Sch 1 [3]; Rep 2009 (364), Sch 3.6 [1].
Cl 62	Rep 2009 (61), Sch 1 [14]; Ins 2009 (137), Sch 1 [3]; Rep 2009 (364), Sch 3.6 [1].
Cl 62A	Ins 2009 (137), Sch 1 [3]; Rep 2009 (364), Sch 3.6 [1].
Cl 63	Subst 2009 (137), Sch 1 [3]; Rep 2009 (364), Sch 3.6 [1].
Part 3, Div 11, Subdivs 3, 4 (cf 63A–63F)	Ins 2009 (61), Sch 1 [15]; Rep 2009 (364), Sch 3.6 [1].
Cl 65	Am 2009 (91), Sch 3.13.
Cl 68	Am 2009 (434), Sch 1 [3] [4].
Cl 70	Am 2008 No 62, Sch 2.53 [1].
Cl 78	Am 2009 (61), Sch 1 [16] [17]; 2009 (434), Sch 1 [5].
Part 3, Div 15, Subdiv 2, note	Subst 2009 (61), Sch 1 [18].
Cl 88	Am 2009 (61), Sch 1 [19]–[22].
Cl 88A–88C	Ins 2009 (61), Sch 1 [23].
Cl 89	Am 2009 (61), Sch 1 [24].
Cl 93	Am 2009 (434), Sch 1 [6].
Cl 117	Am 2008 No 62, Sch 2.53 [2].
Part 3, Div 26	Ins 2008 (456), Sch 1.
Cl 130	Ins 2008 (456), Sch 1; Am 2009 (536), Sch 1 [1]–[4].
Cl 131	Ins 2008 (456), Sch 1.
Sch 1	Am 2009 (327), Sch 1 [7].
Sch 1A	Ins 2009 (137), Sch 1 [4]; Rep 2009 (364), Sch 3.6 [2].
Sch 5	Rep 2007 (641), cl 10 (3).

Whole title | Parent Act | Historical versions | Historical notes | Search title

Orange Local Environmental Plan 2000

Current version for 5 March 2010 to date (accessed 9 April 2010 at 10:45)

Status information



New South Wales

Status information

Currency of version

Current version for 5 March 2010 to date (accessed 9 April 2010 at 10:45).
Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes

Authorisation: This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 5 March 2010.



New South Wales

Part 1 Preliminary

1 Name of plan

This plan is *Orange Local Environmental Plan 2000*.

2 Aims of plan

The aims of this plan are to:

- (a) encourage development which complements and enhances the character of the City,
- (b) provide for a range of development opportunities which contribute to the social, economic and environmental resources of the City in a manner that allows present and future generations to meet their needs by implementing the principles for ecologically sustainable development,
- (c) conserve and enhance the water resources on which the City depends, particularly water supply catchments,
- (d) manage rural land as an environmental resource that provides economic and social benefits for the City,
- (e) provide a range of housing choices in planned urban and rural locations to meet population demands,
- (f) recognise and manage valued environmental heritage, landscape and scenic features of the City,
- (g) manage development in the vicinity of major industry and utilities for the benefit of the community,
- (h) improve accessibility within and around the urban area of Orange by providing for traffic relief routes.

3 Area where this plan applies

This plan applies to all land within the City of Orange.

4 Effect of this plan on other plans

- (1) This plan repeals all local environmental plans which applied to land within the City of Orange immediately before the day this plan takes effect.
- (2) This plan amends *State Environmental Planning Policy No 4—Development Without Consent* by inserting the following words in alphabetical order in Schedule 2 (Land excepted from clauses 6–10):

City of Orange

- (3) Environmental planning instruments as in force immediately before the appointed day continue to apply to a development application if:
 - (a) the application was made but had not been finally determined before the appointed day, and
 - (b) the proposed development is prohibited by provisions of this plan but could, with consent, have been carried out in accordance with those instruments in force at that time.
- (4) This clause does not operate so as to reclassify, or to alter, repeal or revoke the classification of any land classified as operational land prior to the appointed day under the *Local Government Act 1993*.

5 Consent authority

The Council is the consent authority for the purposes of this plan.

6 Relationship of this plan with covenants and other instruments

- (1) Any agreement, covenant or similar instrument which controls development that is otherwise permitted to be carried out either with or without consent under this plan does not apply to the extent necessary to allow that development.
- (2) Subclause (1) does not affect that part, if any, of any agreement, covenant or similar instrument that controls development according to density, floor space, site coverage, setbacks, external materials, fencing, building height, building location, car parking requirements, solar access, or the like.
- (3) Nothing in subclause (1) affects the rights or interests of the Council or any other public authority under any registered instrument.
- (4) In accordance with section 28 of the Act, the Governor approved of subclauses (1)–(3) before this plan was made.

7 Use of terms in this plan

- (1) In this plan:
 - (a) a reference to a building, work or place used for a purpose includes a reference to a building, work or place proposed to be used for the purpose, and
 - (b) terms used in this plan which are defined in Part 14 have the meanings given in that Part, and
 - (c) a reference to a map is a reference to a map kept in the office of the Council.
- (2) The list of contents of this plan and any notes in this plan do not form part of this plan.

Part 2 General provisions

8 General considerations for development

Before determining an application for consent to development, where relevant, consideration shall be given by the consent authority to:

- (a) the potential of that development to impact on:
 - (i) water quality of waterbodies, and
 - (ii) groundwater resources, and
 - (iii) the ability of rural land to be used for primary production, and
 - (iv) soil resources, and
 - (v) mineral resources, mines and extractive industries, and
 - (vi) existing vegetation, native flora and fauna, and
- (b) the cumulative impact on the environment of:
 - (i) the development, and
 - (ii) other development in the vicinity of the proposed development, and

- (c) the impact on the scenic, landscape or urban character of the area, and
- (d) the impact of development on energy conservation, and
- (e) the impact of the development on waste generation, and
- (f) any measures necessary to mitigate any of these impacts.

9 Temporary use of land

- (1) Consent may be granted to the temporary use of land, not being designated development, subject to subclause (2) and despite any other provision of this plan, for a maximum period of 52 days, whether consecutive or not, in any one year.
- (2) Development to which this clause applies may be granted consent only if, in the opinion of the consent authority:
 - (a) appropriate arrangements will be made for the provision of utility services, vehicular and pedestrian access, parking and restoration of the site to the condition prevailing immediately before the carrying out of the proposed use, and
 - (b) it would be compatible with the character and amenity of the locality during and immediately after the carrying out of the proposed use, and
 - (c) the environment will be protected from any potential adverse impacts resulting from the development, and
 - (d) the development would not adversely affect the viability of land uses in business zones, and
 - (e) the development is appropriate as temporary development, and
 - (f) the period for carrying out the development is reasonable.

10 Additional uses

Despite any other provision of this plan, development may be carried out, with the consent of the Council, on land identified in Schedule 1 if it is specified for that land in that Schedule, subject to any conditions that may be specified for the development in that Schedule.

11 Land classified or reclassified as operational land

- (1) Public land is classified or reclassified as operational land under this plan pursuant to Chapter 6 of the *Local Government Act 1993*, if it is specified in Schedule 2.
- (2) On the commencement of this plan the land described in Part 1 of Schedule 2, if it is a public reserve ceases to be a public reserve, and is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land except for:
 - (a) any reservations that except land out of a Crown grant relating to the land, and
 - (b) reservations of minerals (within the meaning of the *Crown Lands Act 1989*), and
 - (c) any conditions of a development consent relating to the land, and
 - (d) any easements or rights of way affecting the land.
- (3) In accordance with section 30 of the *Local Government Act 1993*, a parcel of land described in Part 2 of Schedule 2, to the extent (if any) that it is a public reserve, ceases to be a public reserve on the commencement of the relevant amending plan and, by the

operation of that plan, is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for:

- (a) any reservations that except land out of a Crown grant relating to the land, and
- (b) reservations of minerals (within the meaning of the *Crown Lands Act 1989*), and
- (c) any conditions of a development consent relating to the land, and
- (d) any easements or rights of way affecting the land.

(4) Before the relevant amending plan that inserted the description of a parcel of land into Part 2 of Schedule 2 was made, the Governor approved of subclauses (3) and (5) applying to the land.

(5) In this clause, *the relevant amending plan*, in relation to a parcel of land described in Part 2 of Schedule 2, is the local environmental plan that inserted the description of the land in that Part.

(6) Land described in Part 1 of Schedule 2 is not affected by the amendments made by the *Local Government Amendment (Community Land Management) Act 1998* to section 30 of the *Local Government Act 1993*.

(7) Matter under the Column headed "Use when reclassified" is merely indicative of how the land was intended to be used following its reclassification.

Part 3 Special environmental considerations

12 Objectives of the special environmental considerations

The objectives of this Part are:

- (a) to protect the City's water resources, and
- (b) to minimise the impact of development on the continued operation of existing major industry, utilities and infrastructure on which the City depends, and
- (c) to ensure that land is adequately serviced prior to use, and
- (d) to minimise the impact of development on the environment, and
- (e) to minimise the impact of development on the operation of existing and proposed major roads.

13 Sewage disposal

Before determining an application for consent to development that will result in the generation of sewage or other effluent, consideration shall be given by the consent authority to:

- (a) whether the site of the proposed development should be connected to public sewerage facilities and, if so, whether the land is capable of being connected to public sewerage facilities either now or in the future, and
- (b) the suitability of the site for on-site disposal of effluent and the ability of the effluent disposal system to function effectively over the long term without causing adverse effects on adjoining land, where public sewerage facilities are not to be provided to the land, and
- (c) the likely effect of any on-site effluent disposal area on:
 - (i) any waterbodies in the vicinity, or water supply catchments, and

- (ii) groundwater resources, and
- (iii) seasonally waterlogged soils, and
- (d) the cumulative environmental impacts of all on-site systems or works in the area with respect to water quality, soil degradation or odour, and
- (e) the potential for recycling and beneficial reuse of effluent on the land or land in the vicinity, and
- (f) the adequacy of the wet weather storage capacity of the proposed effluent systems or works, and
- (g) the proposed means of monitoring and reporting on the performance of the effluent systems or works.

14 Development in the vicinity of major industry and utility installations

Before determining an application for consent to development in or within the area shown on the map by red hatching, the consent authority must consider the suitability of the development in relation to:

- (a) the prospective effects of odour, noise, dust, fumes and visibility from any offensive industries, utility installations, waste disposal areas or extractive industries in the vicinity, and
- (b) the effectiveness of all measures employed and proposed to be employed according to the best available technology (not entailing excessive cost) to reduce or minimise the impact of offensive industries, utility installations, waste disposal areas or extractive industries in the vicinity.

15 Land shaping

(1) Development consent is required for land shaping unless:

- (a) it is carried out as exempt development, or
- (b) it comprises soil conservation works undertaken for, or authorised by, the Department of Land and Water Conservation, or
- (c) the consent authority is satisfied that the proposed development is of a minor nature.

(2) Prior to determining an application for consent to development for the purposes of land shaping, consideration must be given by the consent authority to:

- (a) the potential for the development to impact on:
 - (i) a water body, or
 - (ii) ground water quality and resources, or
 - (iii) stormwater drainage, or
 - (iv) flooding, or
 - (v) private property or public land, and
- (b) measures required to mitigate possible impacts.

16 Contaminated land

(1) Before the consent authority determines an application for consent to development on land which has been identified to the satisfaction of the consent authority as being contaminated land or in the consent authority's opinion is likely to be contaminated land:

- (a) the type and extent of the land contamination must be identified to the satisfaction of the consent authority, and
 - (b) a plan for remediation must be prepared according to the contamination identified on the land to the satisfaction of the consent authority.
- (2) When consent is granted to development on land subject to this plan, conditions may be imposed which:

- (a) require further investigation, sampling and testing of the site area, and
- (b) require remediation to be carried out to an appropriate standard, and
- (c) require evidence that remediation has been carried out in accordance with the plan of remediation and to the appropriate standard.

(3) Nothing in this clause affects the application of *State Environmental Planning Policy No 55—Remediation of Land*.

17 Scenic areas

(1) The objective of this clause is to ensure development of scenic areas complements the natural and modified landscape character of areas recognised as contributing to highly valued scenic and landscape qualities of the City.

(2) This clause applies to a scenic area which is identified by green hatching on the map.

(3) Before granting consent for development of land within a scenic area, the consent authority must be satisfied that the proposed development will blend into the landscape through the use of appropriate siting and design, external materials and colours, and by retaining existing trees, including remnant vegetation, and enhancing the skyline when viewed either from the urban area of Orange or from public places in the vicinity of the land.

Part 4 Zones and development

18 Zones which apply

A description of how each zone is depicted on the map is listed below:

Column 1	Column 2
Zones	Map colour
<i>Rural:</i>	
Zone 1 (a)—General Farming	light brown
Zone 1 (c)—Rural Residential	khaki
<i>Residential:</i>	
Zone 2 (a)—Urban Residential	pink
Zone 2 (d)—Urban Transition	brown
Zone 2 (v)—Village	scarlet
<i>Business:</i>	
Zone 3 (a)—Regional Centre	light blue
Zone 3 (b)—Business Services	mid blue
Zone 3 (c)—Bulk Retail	dark blue
<i>Industrial:</i>	

Zone 4—Industry and Employment	purple
<i>Special Use:</i>	
Zone 5 (a)—Public Purposes	yellow
Zone 5 (b)—Distributor Roads	grey
<i>Open Space:</i>	
Zone 6—Open Space and Recreation	green
<i>Rural Environment Protection:</i>	
Zone 7—Water Supply Catchments	orange

19 Categories of development that apply

This plan provides that development will be in one of the following categories of development:

- (a) development that does not require development consent (which includes exempt development),
- (b) local development that requires development consent and comprises complying development,
- (c) other local development that requires development consent (which includes advertised development),
- (d) prohibited development.

20 Exempt development

(1) Development of minimal environmental impact listed in Part 16.1 of DCP 2004 is *exempt development*.

(2) Development is exempt development only if:

- (a) it does not cause interference with the amenity of the neighbourhood because of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and
 - (b) it complies with any deemed-to-satisfy provisions of the *Building Code of Australia* relevant to the development, and
 - (c) it complies with any relevant development standards and requirements set for the development by this plan and by DCP 2004, and
 - (d) it does not contravene any condition of a development consent applying to the land, and
 - (e) it does not obstruct drainage of the site on which it is carried out, and
 - (f) it does not restrict any vehicular access to or from the site, and
 - (g) it complies with the requirements of the Council applying to the land for building adjacent to or over sewer mains, and
 - (h) it does not require a tree to be removed, and
 - (i) it is carried out behind the building line, where it is carried out in a heritage conservation area, except in the case of boundary fences that would comprise exempt development in the absence of this paragraph.
- (3) Development is not exempt development if it is carried out on land that:

- (a) is an Aboriginal place under the *National Parks and Wildlife Act 1974*, or
- (b) is reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna or geological formations or for other environmental protection purposes, or
- (c) is an aquatic reserve declared under the *Fisheries Management Act 1994*.

Notes.

- (1) Exempt development does not require assessment under Part 5 of the Act.
- (2) Section 76 (3) of the Act says that exempt development cannot be carried out on land that is:
 - (a) critical habitat (within the meaning of the *Threatened Species Conservation Act 1995*), or
 - (b) within a wilderness area (within the meaning of the *Wilderness Act 1987*).

21 Development that does not require consent

- (1) The following development does NOT require development consent:

- (a) exempt development, or
- (b) development listed in Schedule 4, or
- (c) development identified, by the clause imposing general controls for the particular zone in which it is to be carried out, as development which may be carried out without consent, or
- (d) development specified as development which may be carried out without consent in any other provision of this plan.

- (2) Development may be carried out without consent only if, where the development consists of or includes the erection of a building:

- (a) it meets the deemed-to-satisfy requirements of the *Building Code of Australia*, and
- (b) the building is erected in accordance with the manufacturer's instructions and any relevant Australian Standards, in the case of a prefabricated building or building assembled from a kit, and
- (c) the building is constructed of new materials, unless otherwise allowed by this plan, and
- (d) the building is not situated over a sewer main or within an easement, unless in accordance with the terms of the easement.

- (3) Nothing in this plan prohibits, restricts or requires development consent for, or allows the consent authority to prohibit or restrict, the use of existing buildings of the Crown by the Crown or the carrying out by public authorities of any development described in Schedule 4 (1).

Note. Development that does not require consent may still require assessment under Part 5 of the Act, unless it is exempt development.

22 Complying development

- (1) Development listed in Part 16.2 of DCP 2004 is *complying development*.

- (2) Development is *complying development* only if:

- (a) it complies with the deemed-to-satisfy provisions of the *Building Code of Australia* relevant to the development, and

- (b) it is local development of a kind that can be carried out with consent on the land on which it is proposed, and
- (b1) it is not an existing use, as defined in section 106 of the Act, and
- (c) it complies with the relevant development standards and requirements set for the development by this plan and by DCP 2004, and
- (d) it is consistent with any recovery plan or threat abatement plan in force under the *Threatened Species Conservation Act 1995* that apply to the land, and
- (e) it does not contravene any condition of a development consent applying to the land, and
- (f) it is more than 1 metre from any easement or public sewer main, or complies with any requirements specified by the appropriate sewer authority for building over sewers, and
- (g) it has an approval (if required by the *Local Government Act 1993*) from the council for an on-site effluent disposal system if the development is undertaken on unsewered land.

- (3) Development is not complying development if it is carried out on land that:

- (a) is identified in this or any other environmental planning instrument, or in DCP 2004, as bushfire prone, flood liable or contaminated land or land subject to subsidence, slip or erosion, or
- (b) comprises the site of a heritage item listed in Schedule 8, or
- (c) is an Aboriginal place under the *National Parks and Wildlife Act 1974*, or
- (d) is reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna or geological formations or for other environmental protection purposes, or
- (e) is within an environmentally sensitive area comprising land which is:
 - (i) adjacent to land on which major industries or utility installations are carried out, being land shown on the map by red hatching, or
 - (ii) land adjacent to Orange Botanic Gardens to which clause 48 applies (shown by green hatching on the map), or
 - (iii) land to which clause 72 applies (shown by blue hatching on the map), or
 - (iv) within the Lucknow Heritage Conservation Area shown by crimson vertical hatching on the map in and around the Village of Lucknow, or
- (f) is an aquatic reserve declared under the *Fisheries Management Act 1994*.

- (4) A complying development certificate issued for any such development is to be subject to the conditions for the development specified in Part 16.3 of DCP 2004, as in force when the certificate is issued.

Notes.

- (1) An application may be made to the Council or an accredited certifier for a complying development certificate.
- (2) A complying development certificate can not be issued for development on land identified as an environmentally sensitive area.

23 Advertised development

- (1) Development described in Schedule 6 is declared to be *advertised development* for the purposes of the Act.
- (2) Subclause (1) does not make any subdivision advertised development.

24 The zones

- (1) Unless otherwise provided by this plan, the clause imposing general controls for each zone specifies:
 - (a) the objectives of the zone,
 - (b) the development, in addition to development listed in Schedule 4, which may be carried out without consent in that zone, and
 - (c) the development that may be carried out only with consent in that zone.
- (2) Development specified in the clause imposing general controls for a particular zone as development that may be carried out only with consent and highlighted in bold lettering is *complying development*, subject to clause 22.
- (3) Prior to determining an application for consent under this plan, the consent authority shall consider how the development meets:
 - (a) the general aims of this plan, and
 - (b) the specific objectives of the zone in which it is proposed to be carried out, and
 - (c) any other relevant objectives and requirements of this plan.
- (4) Despite any other provision of this plan (except clause 21 (3)), *designated development* may be carried out within a zone only with the consent of the consent authority.

25 Prohibited development

- (1) Development is prohibited on land to which this plan applies if it does NOT comprise:
 - (a) exempt development identified by clause 20, or
 - (b) other development identified by clause 21 as being allowed to be carried out without consent, or
 - (c) development listed in the clause imposing general controls for the zone in which the land is situated, as development which may be carried out either with or without consent.
- (2) For the purposes of clauses imposing general controls for zones, the use or construction of aircraft facilities or helicopter landing sites in conjunction with a dwelling are not development for the purpose of the dwelling.

26 Development near zone boundaries

- (1) Development may be carried out with consent on land that is not within Zone 7 and that adjoins land within another zone if the development is allowed with or without consent within the other zone.
- (2) Subclause (1) does not allow subdivision of land within a zone which would result in lots with areas less than the minimum area applicable to the zone.

- (3) Subclause (1) does not apply to land separated from land within a different zone by unzoned land.
- (4) Consent may be granted for development, as referred to in subclause (1), only if, in the opinion of the consent authority:
 - (a) the development is desirable due to planning, design, ownership, servicing or similar requirements relating to the optimum development of the land, and
 - (b) the development would not have an adverse impact on:
 - (i) a waterbody, or
 - (ii) the amenity of a residential area, and
 - (c) an area of land, sufficient and suitable for development allowed within the adjoining zone, is provided in the zone within which the development is carried out.

27 Unzoned land

Development may be carried out with development consent on land shown uncoloured on the map if it may be carried out either with or without consent on adjoining zoned land.

28 Subdivision

- (1) Subdivision may be carried out within any zone, but only with development consent.
- (2) A subdivision certificate may be issued by an accredited certifier for a subdivision which:
 - (a) comprises complying development, or
 - (b) involves subdivision works which have been carried out in accordance with quality assurance procedures that have been approved by the Council prior to the commencement of the subdivision works relating to the subdivision.

Part 5 Rural Zones

29 General controls for Zone 1 (a) (General Farming Zone)

(1) Zone objective

The objective of Zone 1 (a) is to provide for an area with an open rural character comprising agriculture, other primary industries and development consistent with a rural location, and which includes some rural living opportunities that do not reduce the potential for productive primary industries.

(2) In Zone 1 (a), the following:

- (a) is allowed without consent:

Development for the purpose of:

agriculture

Exempt development,
- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

abattoirs

advertisements associated with the use of the land

institutions

intensive horticulture

aircraft facilities
animal establishments
bed and breakfast accommodation
caravan parks
community facilities
convenience stores
dams
dual occupancies
dwelling houses
educational establishments
energy generation
entertainment establishments
extractive industries
forestry
group homes
guest houses
hazardous storage establishments
helicopter landing sites
heliports
holiday accommodation
home businesses
hospitals

intensive livestock industries
land shaping
materials recycling centre
mines
motels
offensive industries
offensive storage facilities
outbuildings
plant nurseries
recreation areas
recreation facilities
research facilities
restaurants
road transport terminals
roads
rural industries
sawmills
shops used primarily for selling art and crafts
stock selling centres
transport depots
utility installations
veterinary clinics
waste management facilities

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

30 General controls for Zone 1 (c) (Rural Residential Zone)

(1) Zone objective

The zone objective of Zone 1 (c) is to provide for rural lifestyle opportunities and complementary uses on small holdings with close proximity to the Orange urban area, which are compatible with the environmental characteristics of the land.

(2) In Zone 1 (c), the following:

- (a) is allowed without consent:

Development for the purpose of:

agriculture

Exempt development,

- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements associated with the use of the land
animal establishments
home businesses
holiday accommodation

bed and breakfast accommodation

communication facilities
community facilities
convenience stores
intensive horticulture
land shaping
outbuildings
plant nurseries

dams
dual occupancies
dwelling houses
educational establishments
forestry
group homes
guest houses
recreation areas
recreation facilities
restaurants
roads
shops for the purposes of selling art and craft
utility installations
veterinary clinics

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

31 Minimum allotment sizes in rural areas

- (1) Land in Zone 1 (a) or 1 (c) may be subdivided if each allotment created has an area not less than the area specified for each zone as follows:

Zone	Minimum area of allotment
1 (a)	100 hectares (subject to subclauses (2) and (3)) 40 hectares (if subclause (2) applies) 16 hectares (if subclause (3) applies)
1 (c)	2 hectares (subject to subclause (5))

- (2) Land in Zone 1 (a) may be subdivided to create an allotment of less than 100 hectares but not less than 40 hectares if:

- (a) the consent authority is satisfied the allotment will be used for the purpose of agriculture, and
(b) the consent authority is satisfied that the proposed allotment will be used for sustainable agricultural production in accordance with a farm plan, and
(c) the applicant demonstrates to the consent authority that the creation of the allotment will not diminish the potential of the land or any other land to be used for agriculture.

- (3) Land in Zone 1 (a) may be subdivided to create an allotment of less than 40 hectares but not less than 16 hectares if:

- (a) the consent authority is satisfied the allotment will be used for the purpose of agriculture comprising horticulture or viticulture, and
(b) the allotment is being used, or arrangements have been made to the satisfaction of the consent authority for the use of the allotment as a productive horticultural or viticultural enterprise that is or will contribute to the agricultural output of the area, and
(c) the applicant demonstrates to the consent authority that the creation of the allotment will not diminish the potential of the land or any other land to be used for agriculture.

- (4) Land in Zone 1 (a) may be subdivided to create an allotment of any area if the consent authority is satisfied that the allotment will be used for a purpose permitted on the land, other than agriculture or dwellings.

- (5) Land in Zone 1 (c) may be subdivided to create allotments with areas of less than 2 hectares where the average area of the lots to be created is not less than 2 hectares if the consent authority is satisfied that:

- (a) the lots will be used for the purpose of dwelling houses, and

- (b) each lot can sustain a dwelling house, taking into account the suitability of the land for construction and sewage management systems, and
- (c) the lot layout provides for the rural character of the area and remnant bushland, if any, to be conserved.

- (6) For the purposes of subclause (5), the average area of lots to be created by a staged subdivision is to be determined by reference to all lots to be created by all stages of the subdivision.

32 Concessional lots from existing holdings

- (1) Notwithstanding clause 31, consent may be granted to the subdivision of land within Zone 1 (a) by which one allotment with an area not greater than 2 hectares is excised from land if:
 - (a) the consent authority is satisfied that the allotment will be excised for the purpose of containing a dwelling house, and
 - (b) the land from which the allotment will be excised is:
 - (i) an existing holding having an area of at least 16 hectares, or
 - (ii) the residue of an existing holding from which, prior to the appointed day, one lot was excised having an area of at least 20 hectares, or
 - (iii) the residue of an existing holding from which, prior to the appointed day, up to two lots were excised with an area of at least 30 hectares each.
- (2) For the purposes of subclause (1) (b) (ii) or (iii), a lot is deemed to have been excised prior to the appointed day where a current development consent issued in accordance with clause 23 of *Orange Local Environmental Plan No 11* but a subdivision certificate had not been issued prior to the appointed day.
- (3) The Council must not grant consent to development referred to in subclause (1) after the date of the third anniversary of the appointed day or such later date as the Minister may, before that third anniversary, notify by order published in the Gazette.

33 Subdivision for managed agriculture

- (1) Consent may be granted to the subdivision of land in Zone 1 (a) to create allotments of any area which are to be used for, and in association with, agriculture for the purpose of horticulture or viticulture, where:
 - (a) the consent authority is satisfied that a farm plan demonstrates that the proposed allotment will be used and managed for sustainable agricultural production, and
 - (b) the lots will be subdivided to create a scheme under the *Community Land Development Act 1989*.
 - (2) The scheme referred to in subclause (1) (b) may contain lots for the purpose of dwelling houses subject to the number of lots not exceeding 1 for every 16 hectares of the total land within the scheme.
- ### 34 Monitoring of rural subdivision activities
- The Council shall maintain:
- (a) a register which records all decisions made for subdivisions in Zone 1 (a) (in accordance with clauses 31, 32 and 33) and Zone 7, and

- (b) a map showing the location of all subdivisions made in accordance with those clauses, and the register and map shall be publicly available for inspection.

35 Dwelling houses in rural zones

- (1) A dwelling house may be erected on vacant land within Zone 1 (a) or 1 (c) where the land:
 - (a) comprises the whole of an existing holding, or
 - (b) is an allotment created in accordance with clause 31 (1), (2), (3) or (5), or
 - (c) is an allotment created in accordance with a development consent granted in accordance with a previous environmental, or deemed environmental planning instrument, being an allotment on which a dwelling could have been erected immediately before the appointed day.
- (2) A dwelling house may be erected on vacant land within Zone 1 (a) where the land:
 - (a) is an allotment created in accordance with clause 32, or
 - (b) has an area of at least 16 hectares and the consent authority is satisfied that the land has been developed and is being used for sustainable horticultural, or viticultural, enterprises, or
 - (c) was created by a subdivision for the purpose of a dwelling house in accordance with clause 33 (2).
- (3) A dwelling house may be erected on land that contains an existing habitable dwelling house where it is intended to replace the existing dwelling house which shall be either demolished or altered so that it may be used for an outbuilding or other use allowed within the zone.

36 Dual occupancy in rural zones

Development for the purpose of a dual occupancy may be carried out, with consent, on land within Zone 1 (a) or 1 (c), but only where:

- (a) both dwellings are and continue to be located on the same lot or parcel, and
- (b) each dwelling is attached, or in close proximity, to the other, and
- (c) the land may be developed for the purpose of a dwelling house in accordance with clause 35.

37 On-site sale of primary produce

Consent may be granted for rural produce, including wine, substantially grown or produced on land within Zone 1 (a) or 1 (c) being offered for sale by the producer where the consent authority is satisfied that:

- (a) the building or place used for the sale of produce is situated wholly within the land, and
- (b) there are adequate parking and manoeuvring areas associated with the building or place used for the sale of produce, and adequate access to a public road, and
- (c) the building or place used for the sale of produce complements the rural character of the locality.

Part 6 Residential Zones

38 General controls for Zone 2 (a) (Urban Residential Zone)

(1) Zone objective

The objective of Zone 2 (a) is to provide for a fully serviced urban residential environment with a range of housing forms and complementary community and business uses taking into account the distinct character of existing and proposed localities within the urban area.

(2) In Zone 2 (a), the following:

(a) is allowed without consent:

Development for the purpose of:
recreation areas on public land

Exempt development,

(b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements associated with the use of the land
agriculture
animal establishments
bed and breakfast accommodation
boarding houses
business premises in Schedule 7
child care centres
communication facilities
community facilities
caravan parks
convenience stores
dams
dual occupancies
dwelling houses
educational establishments
exhibition homes
group homes
guest houses
health consulting rooms
hotels
home businesses
housing for aged or disabled persons
land shaping
motels
outbuildings
places of worship
plant nurseries
recreation areas
recreation facilities
residential units
restaurants
roads
shops in Schedule 7
utility installations
veterinary clinics

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

39 General controls for Zone 2 (d) (Urban Transition Zone)

(1) Zone objective

The zone objective for Zone 2 (d) is to provide for an area with a predominantly rural character comprising housing and complementary uses on rural small holdings in a manner that will not restrict future serviced urban development in accordance with the Council's urban release strategy.

(2) In Zone 2 (d), the following:

(a) is allowed without consent:

Development for the purpose of:

agriculture, recreation areas on public land

Exempt development,

(b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements associated with the use of the land
animal establishments
bed and breakfast accommodation
communication facilities
community facilities
convenience stores
dams
dual occupancies
dwelling houses
educational establishments
group homes
guest houses
home businesses
housing for aged or disabled persons
land shaping
outbuildings
places of public worship
plant nurseries
recreation areas
recreation facilities
restaurants
roads
utility installations
veterinary clinics

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

40 General controls for Zone 2 (v) (Village Zone)

(1) Zone objective

The objective of Zone 2 (v) is to provide for a mix of housing, community uses, business and light industries which combine to provide a distinct village character, while recognising the significance of protecting water quality within the water supply catchment.

(2) In Zone 2 (v), the following:

(a) is allowed without consent:

Development for the purpose of:

agriculture, recreation areas on public land

Exempt development,

(b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements associated with the use of the land
animal establishments
bed and breakfast accommodation
boarding houses
business premises
car parks
caravan parks
child care centres
communication facilities
community facilities
convenience stores
dams
depots
dual occupancies
housing for aged or disabled persons
land shaping
light industries
materials recycling centres
motels
passenger transport terminals
places of worship
plant nurseries
recreation areas
recreation facilities
research facilities
restaurants
road transport terminals
roads

38 General controls for Zone 2 (a) (Urban Residential Zone)

(1) Zone objective

The objective of Zone 2 (a) is to provide for a fully serviced urban residential environment with a range of housing forms and complementary community and business uses taking into account the distinct character of existing and proposed localities within the urban area.

(2) In Zone 2 (a), the following:

(a) is allowed without consent:

Development for the purpose of:
recreation areas on public land

Exempt development,

(b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements associated with the use of the land
agriculture
animal establishments
bed and breakfast accommodation
boarding houses
business premises in Schedule 7
child care centres
communication facilities
community facilities
caravan parks
convenience stores
dams
dual occupancies
dwelling houses
educational establishments
exhibition homes
group homes
guest houses
health consulting rooms
hotels
home businesses
housing for aged or disabled persons
land shaping
motels
outbuildings
places of worship
plant nurseries
recreation areas
recreation facilities
residential units
restaurants
roads
shops in Schedule 7
utility installations
veterinary clinics

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

39 General controls for Zone 2 (d) (Urban Transition Zone)

(1) Zone objective

The zone objective for Zone 2 (d) is to provide for an area with a predominantly rural character comprising housing and complementary uses on rural small holdings in a manner that will not restrict future serviced urban development in accordance with the Council's urban release strategy.

(2) In Zone 2 (d), the following:

(a) is allowed without consent:

Development for the purpose of:

agriculture, recreation areas on public land

dwelling houses
educational establishments
exhibition homes
forestry
group homes
guest house
health consulting rooms
holiday accommodation
home businesses
hotels

rural industries
outbuildings
shops
transport depots
utility installations
veterinary clinics
waste management facilities for the
purposes of transfer stations

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

41 Urban Residential Zone—general considerations

Consent may be granted for development on land within Zone 2 (a) only if, in the opinion of the consent authority:

- (a) the development would be compatible with the existing and likely future character and amenity of the residential locality in terms of:
 - (i) its scale, bulk, design, appearance, height, siting and landscaping, and
 - (ii) traffic generation and car parking, and
 - (iii) noise, dust, light and odour generation, and
 - (iv) privacy and overshadowing, and
 - (v) hours of operation, and
- (b) adequate arrangements have been made for the supply of water, and the disposal of sewage and stormwater, and
- (c) the development incorporates measures for the conservation of energy, and waste management.

42 Development in the Urban Transition Zone

- (1) The objective of this clause is to ensure that subdivision of land in Zone 2 (d) is carried out in a manner that facilitates future urban development.
- (2) Land within Zone 2 (d) may be subdivided by excising an allotment with an area of not less than 2 hectares that is the site of a lawfully erected dwelling house that existed at the appointed day provided that the residue of the allotment has an area of at least 16 hectares or the subdivision enables the residue of the allotment to be consolidated with another allotment to create an allotment or allotments with an area of at least 16 hectares.
- (3) Land within Zone 2 (d) in the area west of Ploughmans Lane in the Suburb of Calare may be subdivided for the purpose of dwelling houses to create lots with areas of at least 2 hectares where:
 - (a) the land is suitable for on-site sewage management systems, and
 - (b) a house site is identified which will not diminish the future development of the land for urban residential purposes.
- (4) Land in Zone 2 (d) in the area west of Ploughmans Lane in the Suburb of Calare may be

subdivided for the purpose of dwelling houses to create allotments with areas less than 2 hectares where the average area of the lots to be created is not less than 2 hectares and where the consent authority is satisfied that:

- (a) each lot can sustain a dwelling house taking into account the suitability of the land for construction and sewage management systems, and
 - (b) the lot layout relates to the site's topographical features, provides for the rural residential character of the area to be maintained pending future urban residential development and for any remnant bushland to be conserved, and
 - (c) a house site is identified which will not diminish the future development of the land for urban residential purposes.
- (5) Land within Zone 2 (d) may be subdivided for the purpose of dwelling houses to create allotments with areas not less than 4,000 square metres where:
- (a) the allotments will be serviced by public sewerage facilities provided by or on behalf of the Council, and
 - (b) a house site is identified on each allotment that will not diminish the future development of the land for urban residential purposes including provision for roads, public utility undertakings, communication facilities and open space.

43 Shops and business premises in residential zones

- (1) Consent may be granted for a shop or business premises in Zone 2 (a) only where:
 - (a) the shop or business premises are listed in Schedule 7, and
 - (b) the consent authority is satisfied that the shop or business premises is required to serve the convenience needs of residents within the surrounding residential area taking into account the number and size of existing shops in the surrounding residential area.
- (2) Development for the purpose of business premises may be carried out only within a neighbourhood centre or established group of shops and business premises.
- (3) Supermarkets, department stores or discount department stores or substantial shopping centres are prohibited within residential zones.

44 Exhibition homes or land sales offices

Consent may be granted for exhibition homes or business premises used for the purpose of a land sales office on land within Zone 2 (a) only if:

- (a) they are designed in such a way that they will not adversely affect the existing and likely future character and amenity of nearby residential areas, and
- (b) they are designed in such a way that they will accommodate the demand for car parking and will not adversely affect traffic movement on nearby residential areas, and
- (c) their use for exhibition or sales is restricted by a condition of development consent to a limited period.

45 Home businesses

- (1) Consent may be granted for a home business in Zone 1 (c), 2 (a) or 2 (d) where:
 - (a) the business is carried out on land upon which is erected a dwelling house, and

- (b) a maximum of 3 people carry out business activities at any one time, including residents, and
- (c) the development is compatible with the character and amenity of the surrounding residential area in terms of:
- (i) traffic generation and car parking, and
 - (ii) design, scale, bulk, height, siting and landscaping, and
 - (iii) hours and method of operation, and
 - (iv) noise, light, dust and odour generation, and
 - (v) privacy, and
 - (vi) overshadowing.
- (2) Despite subclause (1), consent may be granted for a home business on land within Zone 2 (a) shown edged heavy black on Sheet 1 of the map marked "Orange Local Environmental Plan 2000 (Amendment No 6)" only if:
- (a) the requirements set out in subclause (1) (a) and (c) are met in relation to the development, and
 - (b) a maximum of 5 people carry out business activities at any one time, including residents, and
 - (c) the consent authority is satisfied that the development incorporates a high quality of urban design.

46 Dual occupancies and residential units

Consent may be granted for dual occupancies or residential units on land in Zone 2 (a) where:

- (a) the land is situated in an area which is suitable for dual occupancy housing or residential units taking into account the residential character of the area, and
- (b) the development is compatible with the character and amenity of the surrounding residential area in terms of:
 - (i) site area and shape, and
 - (ii) traffic generation and car parking, and
 - (iii) design, scale, bulk, height, siting and landscaping, and
 - (iv) privacy, and
 - (v) overshadowing.

47 Development in the Village of Lucknow

Due to the former mining activity in the Village of Lucknow, consent may be granted for development in the Village of Lucknow and on land adjacent to the Village which is likely to have been used for mining, only where the consent authority has considered a professionally prepared geotechnical report which indicates that the land is suitable for the development and which at least addresses the following:

- (a) the suitability of the land taking into account the effect of the development on mine shafts, mine spoil and other mining relics, and

- (b) the potential of mine subsidence or land contamination to affect the development, and
- (c) measures to ensure that development complements the character of the Village represented by former mining activity and relics.

48 Development in the vicinity of the Orange Botanic Gardens

To ensure that development in the vicinity of the Orange Botanic Gardens complements the setting of the gardens, consent may be granted for a building to be erected in the Scenic Area adjacent to Orange Botanic Gardens, as indicated by green hatching on the map, only if the consent authority is satisfied that:

- (a) it will be located at a sufficient distance from the boundary of the Orange Botanic Gardens, and
- (b) it will have a building height which does not unreasonably intrude on the landscape features and views from the Orange Botanic Gardens.

49 Residential development in Ploughmans Valley Release Area

- (1) This clause applies to land within Zone 2 (a) generally bounded by Forbes Road, Gorman Road and the proposed distributor road route commonly known as "Area 2" in the Ploughmans Valley Release Area.

- (2) To ensure that development takes into account the unique landscape qualities of the Valley and provides suitable separation between houses and arterial roads, consent may be granted only to subdivisions which create large lots adjoining arterial roads and along the western boundary of Zone 2 (a) in the vicinity of the western ridge.

Part 7 Business Zones

50 General Controls for Zone 3 (a) (Regional Centre Zone)

(1) Zone objective

The objective of Zone 3 (a) is to promote development which contributes to the role of the Orange central business district (CBD) as the primary retail and business centre in the City and region. Redevelopment of public car parking areas is essential to ensure the long term viability of the CBD.

- (2) In Zone 3 (a), the following:

- (a) is allowed without consent:

Development for the purpose of:

recreation areas on public land, street furniture including shelters and landscaping in public places undertaken by or on behalf of the Council

Exempt development,

- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements
agribusiness

motels
motor showrooms

bed and breakfast accommodation

boarding houses
bulk retail

offices

passenger transport terminals

business premises
 car parks
 child care centres
 communication facilities
 community facilities
 convenience stores
 depots
dual occupancy
dwelling houses
 educational establishments
 energy generation
 entertainment establishments
 fast food outlets
group homes
 guest houses
health consulting rooms
 home businesses
 hospitals
 hotels
 housing for aged or disabled persons
 land shaping
 light industries
 materials recycling centres

places of worship
 plant hire
 plant nurseries
 public buildings
 recreation areas
 recreation facilities
 registered clubs
 research facilities
 residential units
restaurants
 roads
 service stations
shops
 technology centres
 transport depots
 utility installations
 vehicle repair stations
 veterinary clinics
 warehouses
 waste management facilities for the purposes of waste transfer

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

51 General Controls for Zone 3 (b) (Business Services Zone)

(1) Zone objective

The objective of Zone 3 (b) is to provide a range of commercial activities, primarily professional and trade services, and offices which support but do not detract from the role of the CBD as the primary business centre within the City. In order to protect the role of the CBD, retailing is limited and, as such, shopping centres, bulk retail centres, supermarkets or other major retail facilities are not appropriate within this zone.

(2) In Zone 3 (b), the following:

(a) is allowed without consent:

Development for the purpose of:

recreation areas on public land, street furniture including shelters and landscaping in public places undertaken by or on behalf of the Council

Exempt development,

(b) is allowed only with consent:

Subdivision
 Development for the purpose of:

advertisements
 agribusiness
bed and breakfast accommodation
 boarding houses
 brothels
 materials recycling centres
 motels
 motor showrooms
offices
 passenger transport terminal

business premises
 car parks
 child care centres
 communication facilities
 community facilities
 convenience stores
 dams
 depots
dual occupancies
dwelling houses
 educational establishments
 energy generation
 entertainment establishments
 exhibition homes
 fast food outlets
group homes
 guest houses
health consulting rooms
 home businesses
 hospitals
 hotels
 housing for aged or disabled persons
 land shaping
 light industries

place of public worship
 plant hire
 plant nurseries
 public buildings
 recreation areas
 recreation facilities
 registered clubs
 research facilities
 residential units
restaurants
 road transport terminals
 roads
 service stations
shops
 shops subject to clause 54
 technology centres
 utility installations
 vehicle repair stations
 veterinary hospitals
 warehouses
 waste management facilities for the purposes of recycling or waste transfer

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

51A Development in vicinity of Perc Griffith Way

(1) Consent may be granted for development on land within Zone 3 (b) that is located within the water supply catchment only if:

(a) in the opinion of the consent authority:

(i) the development will not have an adverse impact on the water supply catchment, and

(ii) the development (including any subdivision) provides for the integrated and effective management of stormwater runoff from all buildings and roads and other sealed surfaces (for example pathways and driveways), and

(b) the consent authority is satisfied that the development incorporates appropriate measures to ensure that pollutants (including elevated nutrient levels from stormwater runoff or sewage effluent) do not enter the water supply catchment.

(2) Despite clause 51, consent must not be granted to development for the purpose of dwelling houses, group homes or residential units on land within Zone 3 (b) that is located within the water supply catchment.

(3) Consent may be granted for development on land within Zone 3 (b) adjacent to Perc Griffith Way only if, in the opinion of the consent authority:

(a) the bulk, scale, height and siting of any proposed buildings and the landscaping of the site would contribute to and enhance the character of the area as the "eastern gateway" to Orange, and

- (b) traffic generated from the development will not have an adverse impact on the existing and likely future function of the Mitchell Highway as the major route to and from Orange.

52 General controls for Zone 3 (c) (Bulk Retail Zone)

(1) Zone objective

The objective of Zone 3 (c) is to facilitate the establishment of a limited range and type of retail outlets and associated uses, predominantly large floor space uses, which because of their particular operational requirements are less suited to city centre locations.

(2) In Zone 3 (c), the following:

- (a) is allowed without consent:

Development for the purpose of:

agriculture

Exempt development,

- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements

bulk retail

car parks

caravan parks

child care centres

communication facilities

community facilities

dams

depots

educational establishments

entertainment establishments

exhibition homes

fast food outlets

hotels

land shaping

motels

motor showrooms

passenger transport terminals

places of worship

plant hire

plant nurseries

public buildings

recreation areas

recreation facilities

registered clubs

research facilities

restaurants

roads

service stations

technology centres

utility installations

vehicle repair stations

waste management facilities for the purposes of recycling or waste transfe

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

53 Development within Zone 3 (a) in the Orange CBD

Consent may be granted for development comprising the erection of a building on land within Zone 3 (a) in the Orange CBD, only where the consent authority is satisfied that:

- (a) it encourages continuity in streetscape character through consistent building alignments and heights, facade treatment, and provision of verandahs, awnings or similar means of protection for pedestrians within and adjacent to the land, and
- (b) it can accommodate the demand for car parking, whether by on-site provision or contribution towards public parking facilities, or both.

54 Retailing in Zone 3 (b)

- (1) Consent may be granted for shops within Zone 3 (b) only where the consent authority is satisfied that the development will not detract from the role of the CBD as the major business centre in the City.
- (2) This clause does not allow the establishment of supermarkets, bulk retail centres, department stores or discount department stores or substantial shopping centres or complexes within Zone 3 (b).
- (3) Despite any other provision of this plan, consent must not be granted for the purposes of a shop on land within Zone 3 (b) shown edged heavy black on Sheet 1 of the map marked "Orange Local Environmental Plan 2000 (Amendment No 6)" unless the consent authority is satisfied that the combined gross floor area of all shops to be erected on that land will not exceed 1,000 square metres.

55 Bulk retail in Zone 3 (c)

- (1) Consent may be granted for development for the purpose of bulk retail within Zone 3 (c) only where:

- (a) the sale of items is limited to those specified in paragraph (b), and

- (b) the gross floor area of the part of the building used for the sale, storage and display of each of the following items offered for sale at the bulk retail, is not less than the area shown below:

Bulk retail items	Gross floor area
furniture	500 square metres
electrical goods	500 square metres
toy and sporting equipment	500 square metres
office supplies	500 square metres
hardware and building supplies	500 square metres
outdoor products	500 square metres
floor coverings	250 square metres
automotive parts and accessories	250 square metres
lighting	250 square metres
antiques and second hand goods	250 square metres
kitchen or bathroom showrooms	150 square metres
tiles (floor, ceiling, wall)	150 square metres

- (c) the consent authority is satisfied that the proposed development will not have an adverse impact on the viability of land within Zone 3 (a) in the Orange central business district.
- (2) This clause does not permit the establishment of supermarkets, department stores or specialty stores for the primary purposes of selling food for home consumption, clothes, footwear and fashion accessories within Zone 3 (c).

56 Eastern Gateway Development

- (1) This clause applies to land within Zone 3 (c) situated on the Mitchell Highway comprising Lot 1 DP 153167 and Part Lot 25 DP 750401.
- (2) Consent may be granted for development on the land to which this clause applies only if:
- (a) in the opinion of the consent authority:

- (i) the bulk, scale, height and siting of any proposed buildings and the landscaping of the site of the proposed development would contribute to and enhance the character and amenity of the land as the "eastern gateway" to Orange, and are compatible with the amenity of the nearby residential areas, and
- (ii) the development will not have an adverse impact on the City's drinking water catchment area, and
- (iii) traffic generated by the development and access to the site of the development will not have an adverse impact on the existing and likely future function of the Mitchell Highway as the major transport route to and from Orange, and
- (b) the ratio of the gross floor area of buildings to the site area does not exceed 0.25:1.
- (3) Consent may be granted for restaurants on the land to which this clause applies, in conjunction with a use listed in clause 55 or a fast food outlet, only where in the opinion of the consent authority the restaurant will not have an adverse impact on the role of the CBD or other business centres.

Part 8 Industry and Employment Zone

57 General controls for Zone 4 (Industry and Employment Zone)

(1) Zone objectives

The objectives of Zone 4 are to provide areas for a range of industrial and employment-generating uses, and permit commercial development where it is ancillary to and associated with an industrial or employment-generating use of land within the zone, or it serves the convenience needs of the workforce in the area, provided that commercial development does not have an adverse impact on the continued viability of land within business zones in Orange.

(2) In Zone 4, the following:

- (a) is allowed without consent:

Development for the purpose of:

agriculture, recreation areas on public land provided by or on behalf of the Council, street furniture and landscaping in public places provided or undertaken by or on behalf of the Council

Exempt development,

- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

abattoirs
advertisements
agribusiness
animal establishments
brothels
bulk retail allowed by clause 58
car parks
child care centres
communication facilities
community facilities
convenience stores

light industries
materials recycling centres
motor showrooms
offensive industries
offensive storage facility
offices used in conjunction with another use permissible in the zone
outbuildings
passenger transport terminals
places of worship
plant nurseries

dams
depots
dwelling houses in association with and on the same land as another use allowed in the zone
educational establishments
energy generation
entertainment establishments
exhibition homes
extractive industries
forestry
hazardous industries
hazardous storage establishments
helicopter landing sites
heliports
home businesses
industries
intensive horticulture
land shaping

plant hire
public buildings
recreation areas
recreation facilities
research facilities
road transport facilities
roads
rural industries
sawmills
service stations
shops
stock selling centres
technology centres
transport depots
utility installations
vehicle repair stations
veterinary clinics
warehouses
waste management facilities

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

58 Retailing in industrial areas

- (1) Consent may be granted for a shop in Zone 4 only if:

- (a) the consent authority is of the opinion that the shop will serve the needs of the workforce within the industrial area and will not prejudice the viability and function of zoned business areas, or
- (b) the shop is ancillary to, and situated on the same land as, other purposes permitted in the zone.

- (2) Subclause (1) does not prevent consent from being granted for bulk retail in Zone 4 for the principal purpose of selling:

- (a) agricultural produce, supplies, plant or equipment, or
- (b) building products, or
- (c) motor vehicle parts or accessories or tyres, in which case consent may also be granted for tyre fitting, or
- (d) second hand or office furniture.

59 Development near a residential zone

Consent may be granted for development within Zone 4 which is in the vicinity of land within a residential zone only if, in the opinion of the consent authority, it would be compatible with the character and amenity of the existing and likely future nearby residential areas in terms of:

- (a) its design, siting and landscaping, and
- (b) its methods and hours of operation, traffic generation and car parking, and
- (c) noise, light, dust and odour nuisance, and

- (d) privacy and overshadowing.

Part 9 Special Uses and Roads Zone

60 General controls for Zone 5 (a) (Public Purposes Zone)

(1) Zone objectives

The objectives of Zone 5 (a) are to identify land used or required to be used for a public purpose, including uses undertaken by, on behalf of, or under the authority of a public authority, and to identify land which is used for a purpose which has specific land use requirements not otherwise provided for in adjoining zones.

(2) In Zone 5 (a), the following:

- (a) is allowed without consent:

Development for the purpose of:

agriculture

Exempt development,

Use of a building lawfully erected for, or ancillary to, the particular land use specified on the map.

- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements associated with the use of the land public buildings
car parks recreation areas
communication facilities roads
dams the particular land use specified on the
land shaping map
utility installations

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

61 General controls for Zone 5 (b) (Distributor Roads Zone)

(1) Zone objective

The objective of Zone 5 (b) is to identify land required for proposed roads to provide for an alternate heavy vehicle route around the City Centre and to distribute local traffic through the City. The zone is also intended to protect the land from incompatible development pending the construction of these roads.

(2) In Zone 5 (b), the following:

- (a) is allowed without consent:

Development for the purpose of:

agriculture
roads and associated works
Exempt development,

- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

car parks land shaping
communication facilities recreation areas
dams utility installations

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

62 Land acquisition within Zone 5 (b)

- (1) The owner of land within Zone 5 (b) may, in writing, request the Council to acquire the land.

- (2) On receipt of a request, the Council must make arrangements to acquire the land if:

- (a) the land is included in a 5 year works program of the Council, current at the time of the request to acquire, or
- (b) the Council is of the opinion that the owner of the land will suffer hardship if the land is not acquired within a reasonable time.
- (3) The Council is not required to acquire the land if it might reasonably be required to be dedicated as a condition of consent to the carrying out of development.

63 Use of land within Zone 5 (b)

- (1) Consent may be granted to development on land within Zone 5 (b) prior to its acquisition by the Council:

- (a) if the development may be carried out either with or without consent on land in an adjoining zone, or
- (b) if the development is compatible with development which may be carried out on land in an adjoining zone.

- (2) In considering an application for such a consent, the consent authority must consider:

- (a) the imminence of acquisition, and
- (b) the likely additional cost to the Council resulting from carrying out of the proposed development.
- (3) Consent may be granted to any development of land in Zone 5 (b) if the land is, in the opinion of the consent authority, no longer required for the specified land use shown on the map.

64 Distributor roads

New vehicular access, other than a public road opened with the approval of the Council, must not be created to a road indicated on the map as *restricted access* to a distributor road.

65 Development along transport routes

- (1) Consent may be granted to development on land which adjoins an arterial road only where the consent authority has considered:
- (a) the likely impact of the development, including its visual impact, on the safety,

efficiency and function of the road, and

- (b) whether access can be provided to the site of the development by a road other than an arterial road, and
- (c) the adequacy of the location and design of any access to the road, and
- (d) whether any measures are required to alleviate noise impacts from the adjoining road.
- (2) Consent may be granted to development on land which adjoins Cadia Road, being a principal access route to Cadia Mines, only where the consent authority has considered:
- (a) the likely impact of the development on the safety, efficiency and function of the road, and
- (b) whether any measures are required to be carried out in conjunction with the development to mitigate potential noise impacts from the adjoining road.

66 Use of land at Orange (Spring Hill) Airport

- (1) Consent may be granted to development on land at, adjoining or adjacent to, Orange Airport for aircraft-related purposes, including industries or business premises, or other land uses associated with air transport.
- (2) In considering an application for such a consent, the consent authority must take into account the following:

- (a) the demand for, and availability of utility services,
- (b) whether any measures are necessary to protect the water catchment area from development impacts.

67 Development in the vicinity of Orange (Spring Hill) Airport

- (1) Consent may be granted for development on land in the vicinity of Orange Airport, only where the consent authority has considered:
- (a) the potential impact of the airport on the development to which the application relates, and
- (b) the current *Obstacle Limitation Surfaces Plan for Orange Airport* completed by or on behalf of the airport operator and kept in the office of the Council.
- (2) A building may be erected on land in the vicinity of Orange Airport within the area indicated by red hatching on the map only if the building complies with Australian Standard AS 2021-1994 *Acoustics—Aircraft noise intrusion—Building Siting and Construction*.

Part 10 Open Space and Recreation Zone

68 General controls for Zone 6 (Open Space and Recreation Zone)

- (1) **Zone objective**
The objective of Zone 6 is to ensure that public and private open space meets a range of recreational needs of residents of the City, and enhances and protects the environment of Orange.
- (2) In Zone 6, the following:
- (a) is allowed without consent:

Development for the purpose of:

agriculture, recreation areas on Crown or public land

- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

- advertisements associated with a land use allowed on land other than public land in the zone
- car parks
- caravan parks
- communication facilities
- community facilities
- dams
- forestry
- helicopter landing sites
- holiday accommodation on land other than public land
- motels on land other than public land
- recreation areas on land other than public land
- Crown or public land
- recreation facilities
- registered clubs
- restaurants
- roads
- utility installations

Note. Development indicated in bold in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

69 Land acquisition within Zone 6

- (1) The owner of land within Zone 6 may, in writing, request the Council to acquire the land.
- (2) On receipt of a request the Council must make arrangements to acquire the land, unless the land might reasonably be required to be dedicated as a condition of consent to the carrying out of development.
- (3) This clause does not apply to Crown land held by a public authority for the purpose for which it is reserved or land that is used or is proposed to be developed for recreational purposes by a private or community organisation, such as a club or organisation established for golf, bowls or other sporting or recreational purposes.

70 Use of public land within Zone 6

- (1) Consent may be granted for any development on land within Zone 6 being community land as defined under the *Local Government Act 1993* where the development is consistent with an adopted plan of management prepared in accordance with that Act.
- (2) In assessing a development application for consent to development on community land within Zone 6 the consent authority shall consider:
- (a) the need for the proposed development on that land, and
- (b) the impact of the proposed development on the existing or likely future use of the land, and
- (c) how any proposed building complements the use of the land as public open space, and
- (d) whether public use of, and access to, the site will be affected and to what extent.

Part 11 Rural Environment Protection Zone

71 General controls for Zone 7 (Water Supply Catchments Zone)

(1) **Zone objective**

The objective of Zone 7 is to manage development within those rural areas which comprise water supply catchments in a way that conserves and enhances the City's and district's water resources while maintaining the rural function and character of the area generated by productive primary industries and some living opportunities.

(2) In Zone 7, the following:

- (a) is allowed without consent:

Development for the purpose of:

agriculture

- (b) is allowed only with consent:

Subdivision

Development for the purpose of:

advertisements associated with the use of the land	holiday accommodation
aircraft facilities	home businesses
animal establishments	intensive livestock industry for
bed and breakfast accommodation	aquaculture
caravan parks serviced by public sewerage	land shaping
facilities	mines
communication facilities	offensive industries
community facilities	offensive storage facilities
convenience stores	outbuildings
dams	plant nurseries
depots	recreation areas
dual occupancies	research facilities
dwelling houses	restaurants
energy generation	road transport terminals
extractive industries	roads
forestry	rural industries
group homes	sawmills
guest houses	transport depots
helicopter landing sites	utility installations
heliports	veterinary hospitals

Note. Development indicated in **bold** in the above table may comprise complying development. An application may be made to the Council or an accredited certifier for a complying development certificate.

72 Water quality protection area

Consent must not be granted for development on land shown on the map by blue hatching unless in the opinion of the consent authority:

- (a) the development provides for:
- (i) the stability of streambanks or foreshores of the water body, and
 - (ii) protection and enhancement of aquatic and riparian ecosystems, and
 - (iii) retaining drainage patterns, and
 - (iv) protecting water quality, and

- (v) the needs of existing and potential users of water from that waterbody, and
- (b) the development will not result in:
 - (i) destruction of native riparian vegetation in the area, or
 - (ii) siltation of the water body, or
 - (iii) an on-site sewage management facility being located on the land from which effluent or nutrients are likely to enter the water body.

73 Subdivision and housing

- (1) Clauses 31, 32, 33 and 35 apply to Zone 7 in the same way as these clauses apply to Zone 1 (a).
- (2) Consent may be granted to dual occupancy development on land within Zone 7 only where:
 - (a) each dwelling is attached or in close proximity to the other, and
 - (b) the area of the land is not less than 16 hectares.
- (3) Where land is partly within Zone 7 and partly within another zone, development which includes provision for an on-site sewage management facility shall be situated within that part of the land within a zone other than Zone 7.
- (4) Subclause (3) applies to, but is not limited only to, concessional lots comprising vacant land created in accordance with clause 32 (as applied by subclause (1)), dwelling houses, dual occupancies, group homes and holiday accommodation.
- (5) Clause 32 does not apply to lots 1 and 2 DP 8381, Giles Road, Springside.

73A On-site sale of primary produce

Clause 37 applies to Zone 7 in the same way as it applies to Zones 1 (a) and 1 (c).

73B Aquaculture

Consent may be granted for development for the purpose of aquaculture on land within Zone 7 only if:

- (a) the development does not comprise designated development, and
- (b) in the opinion of the consent authority:
 - (i) the development will not have an adverse impact on the water supply catchment, and
 - (ii) the development provides for an effective on-site waste water management facility to ensure minimal impact on the water supply catchment.

Part 12 Heritage

74 Objectives for heritage conservation

The objectives of this Part are:

- (a) to conserve the environmental heritage of the City of Orange, and
- (b) to provide the opportunity for public information and participation in heritage matters, and
- (c) to ensure that development is consistent with the heritage character of the City of Orange.

75 Heritage items and heritage conservation areas

- (1) Development consent is required, subject to subclause (2), for the following development:

Heritage items

- (a) demolishing or moving a heritage item, or a building, work, relic or tree on the site of a heritage item,
- (b) altering a heritage item by making structural or non-structural changes to its exterior, including changes to the detail, fabric, finish or appearance,
- (c) erecting a building on land, or subdividing land on which a heritage item is located,

Relics

- (d) moving a relic, or excavating land for the purpose of discovering or exposing a relic,
- (e) demolishing, dismantling, moving or altering a relic,

In heritage conservation areas

- (f) demolishing or moving a building, work, relic or place within a heritage conservation area,
- (g) altering a building, work, relic or place within a heritage conservation area by making structural or non-structural changes to its exterior, including changes to the detail, fabric, finish or appearance,
- (h) erecting a building on land, or subdividing land, which is within a heritage conservation area.

- (2) Development consent is not required by this clause if:

- (a) the proposed development is exempt development, or
- (b) the consent authority is satisfied that the proposed development is of a minor nature or consists of maintenance of a heritage item or of a building, work, relic or place within a heritage conservation area and the consent authority is satisfied that the proposed development would not adversely affect the heritage significance of the heritage item or conservation area.

76 Consideration of development affecting heritage items or heritage conservation areas

- (1) When determining a development application required by this Part, the consent authority shall take into account the extent to which the development would have an impact on the heritage significance of heritage items or heritage conservation areas.
- (2) The consent authority may decline to grant consent for development in respect of a heritage item designated in Schedule 8 as having "national", "State" or "regional" significance until it has considered a conservation management plan, explaining the heritage significance of the item and the impact of the proposed development on the significance of the item and its setting.
- (3) Before granting a consent for demolition of a building required by this Part, the consent authority shall consider a plan or description of any building which is proposed to take the

place of the building to be demolished.

Note. The website of the Heritage Branch of the Department of Planning has publications that provide guidance on assessing the impact of proposed development on the heritage significance of items (for example, *Statements of Heritage Impact*).

77 Development in the vicinity of heritage items

The consent authority may grant consent to development affecting land in the vicinity of a heritage item, heritage conservation area, archaeological site or potential archaeological site only after considering an assessment of the impact that the development would have on the heritage significance, curtilage and setting of the item or heritage conservation area as well as the impact of the development on any significant views to or from the heritage item or conservation area.

78 Heritage proposals being advertised development

- (1) The following development for which consent is required by this Part is *advertised development* for the purposes of the Act:
- (a) the complete or substantial demolition of a building or work that is a heritage item,
 - (b) the complete or substantial demolition of any significant feature of a heritage item,
 - (c) the demolition of a building, work, relic or place within a heritage conservation area,
 - (d) the carrying out of any development under clause 79.

(2) (Repealed)

79 Conservation incentives for heritage items

- (1) The consent authority may grant consent to use of a building that is a heritage item for any purpose, or of the land on which a heritage item is situated, even though the use would otherwise be prohibited by this plan, if it is satisfied that the retention of the building or item depends on the granting of consent and:

- (a) the condition of the heritage item is such that the use of the item for any purpose which is permissible in the zone would be impractical or undesirable, and
 - (b) the heritage item requires a substantial amount of capital expenditure (other than maintenance work) in order to conserve its heritage significance, and
 - (c) the proposed use is in accordance with a conservation management plan which is endorsed by the consent authority, and
 - (d) the cost of conservation work identified in the conservation management plan is such that it is not reasonable that any use allowed in the zone would be economically viable for the current or future owner, and
 - (e) the granting of consent to the proposed use would ensure that all necessary conservation work identified in the conservation management plan is carried out, and
 - (f) the proposed use would not adversely affect the heritage significance of the heritage item or its setting, and
 - (g) the proposed use would not adversely affect the amenity of the area, and
 - (h) in all other respects the proposed use complies with the provisions of this plan.
- (2) When considering an application for consent allowed by subclause (1) to erect a building

on land on which a heritage item is to be retained and conserved, the consent authority may exclude the floor space of the building from its calculation of parking spaces for the proposed development if it is satisfied that:

- (a) any proposed carparking area would not adversely affect the heritage significance of the item, and
- (b) any proposed car parking area would not adversely affect the amenity of the area and its streetscape qualities, and
- (c) the conservation of the heritage item depends on the making of the exclusion.

80 Development of archaeological sites

(1) Consent may be granted to the carrying out of development on an archaeological site which has Aboriginal cultural heritage significance or a potential archaeological site that is reasonably likely to have Aboriginal cultural heritage significance only if:

- (a) the consent authority has considered a heritage impact statement of how the proposed development would affect the conservation of the site and any relic known or reasonably likely to be located on the site prepared in accordance with any guidelines notified to it by the Director-General of National Parks and Wildlife, and
- (b) except where the proposed development is integrated development, it has notified the local Aboriginal communities (in such a way as it thinks appropriate) of the development application and taken into consideration any comments received in response within 21 days after the notice was sent, and
- (c) it is satisfied that any necessary consent or permission under the *National Parks and Wildlife Act 1974* has been granted.

(2) Consent may be granted to the carrying out of development on any other archaeological site or a potential archaeological site only if:

- (a) the consent authority has considered a heritage impact statement of how the proposed development would affect the conservation of the site and any relic known or likely to be located at the site, and
- (b) it is satisfied that any necessary excavation permit required by the *Heritage Act 1977* has been granted.

81 Register of potential heritage items

- (1) The Council may list a building, work, tree or place it considers has some heritage significance as a potential heritage item in a register held by the Council.
- (2) Within 12 months after listing a potential heritage item, the Council is to make an assessment of the heritage significance of the item and, if it is satisfied that sufficient heritage significance is established, should take appropriate steps to include it in this plan as a heritage item.
- (3) The Council must remove a potential heritage item from the register 12 months after it has been listed. The building, work, tree or place concerned can not be listed again as a potential heritage item.
- (4) The Council must give public notice in a newspaper circulating in the locality and notify the owner of the land concerned of its intention to list a potential heritage item at least 7 days before it lists the item in the register.

(5) The demolition of a potential heritage item while it is listed in the register is *advertised development* for the purposes of the Act.

(6) This clause does not apply to potential archaeological sites and does not prevent the Council from preparing a draft local environmental plan to include a heritage item in Schedule 8, whether or not the item concerned is or has been a potential heritage item.

Part 13 Advertisements

82 Objectives for advertisements

The objectives for this Part are:

- (a) to ensure that advertisements which are visible from public places are consistent with the character of the locality and do not detract from the amenity of the City of Orange, and
- (b) to provide for minor or temporary advertisements which are likely to have minimal impact on the character of the City.

83 Types of advertisements

(1) For the purposes of this plan, advertisements may take the following forms:

Above awning sign
an advertisement attached to and projecting above the roof of an awning

Fuscia sign
an advertisement attached to the fascia or return of an awning

Flush wall sign
an advertisement on a wall which does not project more than 300 millimetres from that wall

Pole, pylon or free standing sign
a freestanding advertisement which may be erected on one or more poles or pylons

Projecting wall sign
an advertisement on a wall which projects more than 300 millimetres from that wall

Real estate sign
an advertisement that only contains a notice that the place or premises to which it is fixed is or are for sale or letting (together with particulars of the sale or letting) and which is removed within 14 days after the letting or completion of the sale

Temporary sign
an advertisement of a temporary nature that:

- announces any local event of a religious, educational, cultural, political, social or recreational character or relates to any temporary matter in connection with such an event, and

- does not include advertising of a commercial nature except the name of an event's sponsor

Under awning sign
Window sign
an advertisement affixed to the underside of an awning or an advertisement painted on a window or affixed to the inside of a window

(2) For the purposes of this plan, a *business identification sign* comprises an advertisement in a form described in subclause (1) that displays any or all of the following information relating to the place or premises to which it is fixed:

- (a) the identity or a description of the place or the premises,
- (b) the identity or a description of any persons residing or carrying on an occupation at the place or premises,
- (c) particulars of any occupation carried on at the place or premises,

- (d) such directions or cautions as are usual or necessary relating to the place or premises or any occupation carried on there,
- (e) particulars or notifications required or permitted to be displayed by or under any State or Commonwealth Act,
- (f) particulars relating to the type of goods, commodities or services dealt with or provided at the place or premises,
- (g) particulars of any activities held or to be held at the place or premises,
- (h) a reference to an affiliation with a trade, professional or other association relevant to the business conducted at the place or premises.

84 Advertisements requiring consent

Development for the purpose of advertisements, including the erection of structures for the purpose of displaying advertisements, may be carried out on land to which this plan applies only with consent unless otherwise indicated in this plan, and only if the consent authority is satisfied that the advertisement will not interfere with the character and amenity of the locality.

85 Advertisements in high profile areas

Development for the purpose of advertisements that are visible from an arterial road may be carried out on land within Zone 1 (a), 1 (c), 2 (a), 2 (b), 2 (v), 6 or 7 only if they comprise business identification signs or public information signs.

Part 14 Definitions

86 Meanings of terms used to describe development

In this plan:

Abattoir means a building or place used for the slaughter of animals or for the processing of animal bodies or by-products, and includes a knacker.

Advertisement means the display of symbols, messages or other devices for promotional purposes or for conveying information, instructions, directions or the like, whether or not the display includes the erection of a structure or carrying out of a work.

Agribusiness means the use of land associated with food and fibre industries, including research and development, production, processing, marketing, promotion, distribution and associated service industries.

Agriculture means:

- (a) the cultivation of pasture or crops, including cereals, fruit and vegetables and flowers, or
 - (b) the keeping or breeding of livestock, bees, poultry or other birds,
- or a combination of all or some of them, for commercial purposes, but does not include the use of *animal establishments*, or *intensive horticulture* or *intensive livestock industry*.

Aircraft facility means a place used for the taking off and landing of aircraft, whether or not it includes:

- (a) a terminal building, or

- (b) facilities for the parking, storage, refuelling, maintenance or repair of aircraft.

Animal establishment means a building or place used for the breeding, boarding, training or keeping of, or caring for, animals for commercial purposes. It may consist of or include a riding school, horse training facility, cattery or kennels, but not a building or place used for an intensive livestock industry.

Bed and breakfast accommodation means a dwelling where the permanent residents of the dwelling or another dwelling on the same land provide short term accommodation, which may include meals, for paying guests.

Boarding house means a building or place where accommodation, meals and laundry services are provided to long-stay residents of the building or place but does not include a building or place elsewhere specifically defined in this plan.

Brothel means premises habitually used for the purpose of prostitution, whether or not by only one prostitute.

Bulk retail means a building or place used for the sale by retail or auction, or the hire or display, of goods, excluding clothing or food, which require:

- (a) a large area for handling, storage or display, and
- (b) convenient and direct vehicular access designed to enable the goods to be collected by customers after sale.

Bush fire hazard reduction means a reduction or modification (by controlled burning or by mechanical, chemical or manual means) of material that constitutes a bush fire hazard.

Business premises means a building or place in which there is carried on an occupation, profession, service, or trade which provides a service directly and regularly to the public, but does not include a building or place elsewhere specifically defined in this plan.

Caravan park means land (including a camping ground) on which caravans (or tents, holiday cabins and other moveable dwellings) are, or are to be, placed or erected.

Car park means a building or place used for parking vehicles, and any manoeuvring space and access to it, whether operated for gain or not.

Child care centre means a building or place which is used (whether or not for profit) for the purpose of educating, minding or caring primarily for pre-school children (whether or not any of the children are related to the owner or operator).

Communications facility means a building, structure, work or place used primarily for transmitting or receiving signals for the purpose of communications, including radio masts, transmission towers, satellite discs and the like.

Community facility means a building or place used by a public authority, an organisation or group of persons for the physical, social, cultural, or intellectual development or welfare of the local community, but does not include a building or place elsewhere specifically defined in this plan.

Convenience store means a shop selling a variety of small grocery goods, whether or not goods are also available for hire there, or other associated services are provided there for the convenience of customers.

Dam means all works associated with artificial waterbodies, including stormwater retention basins, including filling and an excavation, involved in the permanent or temporary storage of

establishments, but does not include a building or place elsewhere specifically defined in this plan.

Home-based child care service means any service, provided at the premises where the person providing the service resides, for the purpose of educating, minding or caring for up to 7 children (including any children who are related to the person providing the service), but only if:

- (a) the children (other than those related to the person providing the service) do not reside at the premises, and
- (b) the service is licensed within the meaning of the *Family Day Care and Home Based Child Care Services Regulation 1996*.

Home business means the use of a dwelling, an outbuilding or the land within the curtilage of a dwelling, for the purpose of an office, light industry, trade, business or occupation, but only if:

- (a) that use is undertaken by the permanent residents of the dwelling, whether or not others are employed, and
- (b) the use does not interfere unreasonably in any way with the amenity of adjoining properties or the locality in which the dwelling is situated, and
- (c) the use does not involve public display or retail sale of any goods from the premises, and
- (d) the use does not involve a brothel (except in a zone where a brothel may be carried out with consent).

Hospital means a building or place used for the purpose of providing professional health care services (such as preventative or rehabilitative care, diagnosis, medical or surgical treatment, care for people with disabilities, psychiatric care or counselling and services provided by health care professionals) to people who are admitted as in-patients (whether or not out-patient services are also provided), including any:

- (a) ancillary facilities for the accommodation of nurses or other health care workers, ancillary shops or restaurants and ancillary accommodation for persons receiving health care or for their visitors, and
- (b) facilities situated in the building or at the place and used for educational or research purposes, whether or not they are used only by hospital staff or health care workers and whether or not any such use is a commercial use, and includes a building or place that is used exclusively as a day surgery or day procedure centre.

Hotel means a building or place which is licensed for the principal purpose of selling alcohol for consumption on the premises, whether or not accommodation, restaurants or off-licence sales are also provided.

Housing for aged or disabled persons means residential accommodation that may take any building form, which is or is intended to be used as housing for the permanent accommodation of aged persons or disabled persons.

Industry means the manufacturing, assembling, altering, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, processing or adapting of any goods, articles, materials, liquids or gases for commercial purposes, but does not include a purpose elsewhere

specifically defined in this plan.

Institution means a building or place used as a penal or remand centre, or reformative facility.

Intensive horticulture means a building or place used for the artificial propagation or growing of plants, other than orchards or vineyards using traditional agricultural practices, including:

- (a) hydroponics, or
- (b) indoor plant growing including crops, ornamental trees or shrubs, flowers, fruit, nuts or vegetables.

Intensive livestock industry means use of a building or place for the keeping or breeding of livestock or poultry or other birds, which are fed wholly or substantially on prepared or manufactured feed, for commercial purposes, and which may include:

- (a) cattle feed lots,
- (b) aquaculture,
- (c) piggeries,
- (d) poultry farms, and
- (e) worm farms.

but excludes use of a building or place only for drought or similar emergency relief.

Land shaping means all works or activities involved in the placement of fill on land, or an excavation of land, for the purpose of altering the shape, natural form or drainage of land, but which does not result in a dam.

Light industry means an industry in which the processes carried on, or the transportation involved or the machinery or materials used, do not interfere unreasonably with the amenity of the neighbourhood.

Materials recycling facility means a building or place used for collecting, dismantling, storing, or recycling of second-hand or scrap materials for the purpose of resale or reuse.

Mine means the obtaining, by any mode or method, of minerals, metals, petroleum or natural gas and includes the storage, treatment and processing of the material obtained.

Motel means a building or buildings used for overnight or short term accommodation of travellers and their vehicles whether or not meals are also provided to those travellers or the general public but excludes a building or place elsewhere specifically defined in this plan.

Motor showroom means a building or place used for the display or sale of motor vehicles, caravans, agricultural or mining plant and equipment, or boats, whether or not accessories are also sold or displayed there.

Offensive industry means a development for the purposes of an industry which, when the development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including measures to isolate the development from existing or likely future development on other land in the locality), would emit a polluting discharge (including noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality.

Offensive storage facility means any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to reduce or minimise its

impact on the locality have been employed (including measures to isolate the establishment from existing or likely future development on other land in the locality), would emit a polluting discharge (including noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality.

Office means a building or place used for the purpose of administration, clerical, technical, professional or like activities, where dealings with members of the public are not on a direct and regular basis or otherwise than by appointment, but excludes a building or place elsewhere defined in this plan.

Passenger transport terminal means any building or place used for the assembly and dispersal of passengers travelling by any form of transport, including any facilities required for parking, manoeuvring, storing or routine servicing of any vehicle forming part of that undertaking.

Place of worship means a building or place used for the purpose of religious worship, whether or not the building or place is also used for counselling, social events or religious training by a congregation or religious group.

Plant hire means a building or place used to hire out tools, plant and equipment used by industry, builders and "do-it-yourselfers" and for the service and maintenance of the tools, plant and equipment.

Plant nursery means a building or place used for selling plants, whether or not plants are grown or propagated on the premises, or landscape supplies or other landscape and horticultural products are also sold there.

Public building means a building or place used as an office or for administrative or business purposes by or on behalf of a public authority or an organisation established for public purposes.

Recreation area means:

- (a) a children's playground, or
- (b) an area used for sporting activities or facilities, or
- (c) an area provided by or on behalf of the Council for recreational facilities for the community, or
- (d) an area used by a body of persons associated for the purpose of the physical, cultural or intellectual welfare of the community to provide recreational facilities for that purpose and which may include associated club facilities,

but does not include entertainment facilities, racecourses, registered clubs and showgrounds.

Recreation facility means a building or an enclosed area provided for community sport, recreation or leisure activities by the community, whether or not operated for the purpose of gain, and may include:

- (a) a swimming pool, golf course, tennis courts, squash courts, basketball courts, bowling green, bowling alley, gymnasiums, skating rinks and the like, and
- (b) a paint ball park, gun or archery club.

Registered club means a building or place which is used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic or other lawful purposes and

which is, or is intended to be, registered under the *Registered Clubs Act 1976*.

Research facility means a building or place used for the design, testing, research or development associated with mining, agriculture, industrial goods, or commercial products.

Residential units means three or more dwellings (which may be attached or detached) on a single allotment of land, whether or not the allotment is to be subdivided.

Restaurant means a building or place, the principal purpose of which is the provision of food to people for consumption on the premises, whether or not take-away meals are also provided and includes a café, tea rooms, coffee shop and the like.

Road means a public thoroughfare used for the passage of vehicles or animals.

Road transport terminal means a building or place used for the bulk handling of goods for transport by motor vehicle and includes a building or place used for the loading and unloading of containers.

Rural industry means a business undertaking involving:

- (a) the handling, treating, processing or packing of primary products, or
- (b) regular servicing or repairing of plant or equipment used for the purpose of agriculture or a business referred to in paragraph (a).

Sawmill means a mill used for handling, cutting and processing timber from forestry operations.

Serviced apartment means a dwelling which is cleaned and otherwise serviced or maintained on a regular basis by a non-resident owner or manager of the building or an agent.

Service station means a building or place used for the fuelling of vehicles and retail sale of petrol, oil and other petroleum products, whether or not the building or place is also used for any one or more of the following:

- (a) the sale by retail of spare parts and accessories for motor vehicles,
- (b) the cleaning of motor vehicles,
- (c) installation of accessories,
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating or spray painting),
- (e) vehicle and trailer hire,
- (f) the retail selling or hiring of small consumer goods.

Shop means a building or place used for selling items, whether by retail or auction, or for hiring or displaying items for the purpose of selling or hiring, but does not include a building or place specifically defined elsewhere in this plan.

Soil conservation works means works undertaken specifically to protect land and water resources from erosion or sedimentation.

Stock selling centre means a building or place used for the purpose of offering livestock or poultry for sale.

Technology centre means a building or place used for telecommunications or information

technology operations including call centres, Internet service providers, and the like.

Transport depot means a building or place used for the parking or storage of motor vehicles used in connection with a passenger transport undertaking, business, industry or shop.

Utility installation means a building or work used for a utility undertaking.

Utility undertaking means any undertaking carried on for the purpose of:

- (a) railway, road, water or air transport, or wharf or river undertakings, or
- (b) the provision of sewerage or drainage services, or
- (c) the supply of water, hydraulic power, electricity or gas, or
- (d) telecommunications.

Vehicle repair station means a building or place used for the purpose of carrying out repairs, body building, panel beating or spray painting, or selling and fitting of accessories to vehicles or agricultural or mining machinery.

Veterinary clinic means a building or place used for diagnosing or surgically or medically treating animals, whether or not animals are also kept on the premises.

Warehouse means a building or place used for storing, handling or displaying items (whether goods or materials) for distribution to other premises for retail sale or for use in agriculture, business or industries.

Waste management facility means a building or place used to dispose of, store, sort or treat waste by any method and which may include a station used for the temporary storage of waste for transfer to another site for final disposal, permanent storage, reprocessing, recycling, use or reuse.

87 General terms

In this plan:

Alter in relation to a heritage item, or a building or work within a heritage conservation area, means to:

- (a) make structural changes to the outside of the heritage item, building, work or relic, or
- (b) make non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item, building or work, but not changes resulting from the partial alteration or maintenance of the existing detail, fabric, finish or appearance of the outside of the heritage item which are of a minor nature and do not adversely affect the heritage significance of the heritage item, building or work.

Appointed day means the day on which this plan takes effect.

Arterial road means:

- (a) a road declared to be a main road or State highway under the *Roads Act 1993*, or
- (b) a road shown on the map as being within Zone 5 (b), or
- (c) a road shown on the map as a restricted access road.

Contaminated land means land which contains soil that has in it a concentration of chemical substances (including substances listed in the *Australian Dangerous Goods Code*) that is likely to pose an immediate or long term hazard to human health or the environment by making the land:

- (a) unsafe or unfit for habitation or occupation by people or animals, or
- (b) degraded in its capacity to support plant life, or
- (c) otherwise environmentally degraded.

Conservation management plan means a document prepared in accordance with the provisions of the *NSW Heritage Manual* current at the time, which establishes the heritage significance of the item, place or heritage conservation area and identifies conservation policies and management mechanisms that are appropriate to enable that significance to be retained.

Council means the Council of the City of Orange.

DCP 2004 means *Orange Development Control Plan 2004*, as adopted by the Council on 7 June 2007.

Demolish a heritage item or a building, work, relic, tree or place within a heritage conservation area means wholly or partly destroy, dismantle, pull down, damage or remove the heritage item, building, work, relic, tree or place.

Existing holding means:

- (a) an allotment, portion or parcel as it was on 24 January 1964, or
- (b) where 2 or more adjoining or adjacent allotments, portions or parcels of land were held in the same ownership at that date, the aggregation of those allotments, portions or parcels as they were on 24 January 1964.

Floor means that space within a building which is situated between one floor level and the floor level next above or, if there is no floor above, the ceiling or roof above.

Gross floor area means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the outer face of the external enclosing walls as measured at a height of 1,400 millimetres above each floor level, excluding:

- (a) columns, fin walls, sun control devices, and any elements, projections or works outside the general lines of the outer face of the external wall, and
- (b) lift towers, cooling towers, machinery and plant rooms, ancillary storage space and air-conditioning ducts, and
- (c) car parking needed to meet any requirements of the Council and any internal designated vehicular or pedestrian access to it, and
- (d) space for the loading and unloading of goods.

Ground level means the level of a site as if no development has taken place other than any filling of the site to meet a requirement of the Council.

Height, in relation to a building, unless otherwise stated in the plan, means the vertical distance measured between ground level at any point at which the building is sited, and the ceiling of the lowest floor of the building above that point.

Heritage conservation area means an area identified on the map as a heritage conservation area.

Heritage item means a building, work, relic, tree or place specified in Schedule 8.

Heritage significance means historic, scientific, cultural, social archaeological, architectural, natural or aesthetic significance.

Heritage Study Inventory Sheet means a numbered entry in Volume 2 of the Orange Heritage Study held in the office of the Council.

Map means a map deposited in the office of the Council.

Orange Heritage Study means the report with that title in two volumes prepared in 1986 by Hughes Trueman Ludlow, subject to subsequent revision as adopted by Council resolution, held in the office of the Council.

Public sewerage facilities means works managed by or on behalf of the Council for sewerage the urban area of Orange and the villages of Lucknow and Spring Hill.

Relic means any deposit, object or material evidence relating to:

- (a) the use or settlement of the area of the City of Orange, not being Aboriginal habitation, which is more than 50 years old, or
- (b) Aboriginal habitation of that area, before or after its occupation by persons of European extraction, including human remains.

Site area in relation to development, means the area of land to which an application for consent to carry out the development relates, exclusive of any land on which the development is not permitted by this plan.

The Act means the *Environmental Planning and Assessment Act 1979*.

The City means the City of Orange.

The Map means the series of maps marked "Orange Local Environmental Plan 1999", as amended by the maps (or specified sheets of the maps) marked as follows:

Editorial note. The amending maps are not necessarily listed in the order of gazettal or publication on the NSW legislation website. Information about the order of gazettal or publication can be determined by referring to the Historical notes at the end of the plan.

Orange Local Environmental Plan 2000 (Amendment No 1), Sheets 1–4

Orange Local Environmental Plan 2000 (Amendment No 2)

Orange Local Environmental Plan 2000 (Amendment No 3)—Sheets 1–4

Orange Local Environmental Plan 2000 (Amendment No 4)

Orange Local Environmental Plan 2000 (Amendment No 5)

Orange Local Environmental Plan 2000 (Amendment No 6)—Sheet 2

Vacant land where used in relation to the erection of dwelling houses means land that does not already contain a habitable dwelling house.

Waste means any matter or thing whether solid, gaseous, or liquid or a combination of solids, gases or liquids that is discarded or is refuse from processes or uses (such as domestic,

medical, industrial, mining, agricultural or commercial processes or uses).

Water supply catchment means the catchment area prescribed by the responsible water supply authority in association with a public water supply.

Waterbody means:

- (a) a natural waterbody, including a river or stream, whether perennial or intermittent, flowing in a natural channel with an established bed or in a natural channel artificially modifying the course of the river or stream, or
 - (b) an artificial water body, including any constructed waterway, canal, inlet, bay, channel, dam, pond or lake,
- but does not include a dry detention basin or other construction that is only intended to hold water intermittently.

Schedule 1 Additional uses

(Clause 10)

Ref	Address	Property Description	Development
1	2–6 and 26–32 Forbes Rd, Calare	Cor Lot 1 and Lot 2 DP 455129, Lot 2 DP 655379, Lots 111 and DP 801384	Development for the purpose of a motor showroom
2	68 Nile Street, Bowen	Lot 1 DP 730599	Development for the purpose of an administration centre and meeting room for community organisation
3	Phoenix Mine Road, Lucknow	Spl enr lot 28 DP 777373	Subdivision to create 2 lots with a minimum area of 7,100 square metres
4	119 Molong Road, Calare	Proposed lot 190 in resubdivision of lot 90 DP 817052	Development for the purpose of business premises—food catering
5	Ophir Road, Clifton Grove	Lot 1 DP 944229	Subdivision into 2 lots, each with an area of at least 2 hectares and erection of a single dwelling house on each lot created
6	Cargo Road, Calare	Lot 2 DP 539039	Erection of a dwelling house
7	Lysterfield Road, Canobolas	Lots 1 and 2 DP 456785	Erection of one dwelling house on the land comprising lots 1 and 2 as a single holding
8	Cargo Road, Calare	Lot 6 DP 229896	Subdivision to create lots with an average area of not less than 2 hectares, and erection of a single dwelling house on each lot created, subject to all of the land within the lots created draining towards Ploughmans Creek
9	Cadia Road, Springside	Lot 3 DP 571764	Erection of a dwelling house
10	8 Forbes Road, Orange	Pl Lot 3 DP 655804	Development for the purpose of a motor showroom
11	22 and 24 Forbes Road, and 27 Molong Road, Orange	Lots 8 and 9 DP 13996, Lot 1 DP 375760, Lot A DP 383920	Development for the purposes of a motor showroom and carports
12	Shepherd Road, Spring Creek	Lot 25 DP 986204	Development for the purpose of a dwelling ancillary to an existing intensive plant nursery and orchard
13	108–110 Bathurst Road, Orange	Lot 2 DP 152541	Development for the purpose of an office
14	95 Prince Street, Orange	Lot 1 DP 105223	Development for the purpose of an office

- 15 Leeds Parade, Orange Lot 121 DP 7122115 office
Development for the purpose of bulk retail, subject to the condition that the site is provided with vehicular access from Leeds Parade
- 16 48 Peisley Street, Orange Lot 1 DP 591927 Development for the purpose of a liquor store
- 17 168-200 Lone Pine Avenue, Orange Lot 4 DP 270204 Development for the purpose of a discount variety store, being a building or place used for the sale by retail or auction, or the hire or display of a wide range of discounted general merchandise, subject to the following conditions:
(a) the maximum area of the store does not exceed 3,200m²,
(b) the area set aside for the sale of clothing and footwear does not exceed 95m²,
(c) the area set aside for the sale of food and groceries does not exceed 250m²,
(d) convenient and direct vehicular access to the store is provided, being access that is designed to enable the goods to be collected by customers after sale.
- 18 Leeds Parade, Orange Lot 62 DP 790515 Development for the purposes of university student accommodation as is within Zone 1 (a) and shown edged heavy black and marked "University Student Accommodation" on Sheet 1 of the map marked "Orange Local Environmental Plan 2000 (Amendment No 6)"
- 19 179-181 Byng Street, Orange Lot 21 DP 1045603 Development for the purposes of offices

Schedule 2 Land classified as operational land

Part 1

Address	Use when reclassified	Property description
205A, Anson Street/ 22 Sale Street, Orange	Anson-Sale Street Car Park	Lot 21 DP 1001843
	including the Orange Cultural Centre building	Lot 1 DP 529131
		Lot 2 DP 216466
		Lot 13 Sec 8 DP 758817
Kearneys Drive, Bletchington	Future distributor road land	Lot 1 DP 581702
		Lot 52 DP 788488
Rear of 77 Kite Street, Orange being the land having a depth of 35.3 metres from the rear boundary of the land	Anson-Sale Street Car Park	Part of Lot 22 DP 788488
Rear of 79-81 Kite Street, Orange being the land having a depth of 35.5 metres from the	Anson-Sale Street Car Park	Part of Lot 50 DP 700122

Part 2

Address	Use when reclassified	Property description
Bowyer Place, Orange	Residential	Part Lot 104 DP 818264—Orange Local Environmental Plan 2000 (Amendment No 1)
Burrendong Way, Orange	Residential	Part Lot 63 DP 706356—Orange Local Environmental Plan 2000 (Amendment No 1)
2-18 Eyles Street, Orange	Orange Function Centre	Lot 2 DP 507625, Lot 1 DP 995826, Lot 7 DP 995761, Lots 4, 8, 9, 10 and Part Lot 11 Sec 4D DP 979858—Orange Local Environmental Plan 2000 (Amendment No 1)
Ophir Road, Narrambra	Rural land	Lot 2 DP 738366, Lot 4 DP 778788—Orange Local Environmental Plan 2000 (Amendment No 1)
12582 Cargo Road	Residential	Lot 1 DP 214645
17 Leewood Drive	Industrial	Lot 16 DP 255071

52 Leewood Drive	Industrial	Part of Lot 31 DP 255071, as shown edged heavy black and lettered "Operational Land" on Sheet 4 of the map marked "Orange Local Environmental Plan 2000 (Amendment No 3)"
Land adjacent to Ploughman's Creek	Distributor Road	Part of Lot 6 DP 786647, as shown edged heavy black and lettered "Operational Land" on Sheet 5 of the map marked "Orange Local Environmental Plan 2000 (Amendment No 3)"
Sundew Circuit	Residential	Part of Lot 26 DP 261231, as shown edged heavy black and lettered "Operational Land" on Sheet 1 of the map marked "Orange Local Environmental Plan 2000 (Amendment No 3)"

Schedule 3 (Repealed)

Schedule 4 Development that does not require consent

(Clauses 21 and 24)

(1) Development by public authorities

Development by or on behalf of a public authority for the purpose of any of the following but does not involve the erection of a building with a height greater than 3 metres:

- (a) works for the purpose of utility undertakings for the provision of water, sewerage, drainage, electricity or gas services,
- (b) railways on railway land including buildings used for a railway purpose but excluding buildings used for purposes other than railway purposes,
- (c) road works by road authorities on public roads or land reserved for the purposes of public roads,
- (d) air transport undertakings on airport land,
- (e) forestry work by NSW State Forests on Crown land or land owned by NSW State Forests including afforestation, roads, soil conservation works, forest management practices, cutting and marketing of timber and other forestry purposes permitted under relevant Acts,
- (f) improving and maintaining travelling stock, camping and water reserves by a Rural Land Protection Board but which does not include the erection of buildings,
- (g) soil conservation works, afforestation, flood mitigation, water conservation or river improvement by, or on behalf of, the Department of Land and Water Conservation,
- (h) cemetery undertakings by, or on behalf of the Council on cemetery land,
- (i) landscaping recreation areas on public land by, or on behalf of, the Council consistently with a plan of management in accordance with the *Local Government Act 1993*,
- (j) erecting or placing street furniture, shelters, garbage bins and the like on public roads by, for, or with the agreement of, the roads authority.

(2) Subdivision

Subdivision for the purpose of excising an allotment of land which is, or is intended to be used for public purposes, including drainage purposes, bushfire or other rescue service purposes or public conveniences.

(3) Bushfire hazard reduction

Bushfire hazard reduction carried out in accordance with a plan of operations approved by the rural fires authority for the area.

(4) Railway sidings in industrial areas

Development for the purpose of railway sidings servicing land within Zone 4.

(5) Use of Crown reserves

Use of Crown land or Crown reserves for the purpose for which the land is dedicated or reserved, but excluding the erection of buildings or creation of access to a public road.

(6) Farm dams

Development for the purpose of a farm dam:

- (a) on land within Zone 1 (a), 1 (c) or 7, if the dam is required to be licensed under the *Water Act 1912*, or
- (b) if the dam is not required to be licensed under the *Water Act 1912*, constructed on land in Zone 1 (a) with a maximum surface area of 5,000 square metres, or
- (c) on land in Zone 7 (excluding land within the Water Quality Protection Area shown on the map) with a maximum surface area of 5,000 square metres, but only if a pipe with a minimum diameter of 150 millimetres is installed towards the base of the dam wall, which provides for the release of low flows up to the flow capacity of the pipe.

Schedule 5 (Repealed)

Schedule 6 Advertised development

(Clause 23)

- (1) Development for the purpose of the following, but only if carried out on land within Zone 2 (a) or 2 (v):

- (a) animal establishments,
- (b) caravan parks,
- (c) child care centres,
- (d) dual occupancies which are not complying development,
- (e) educational establishments,
- (f) exhibition homes,
- (g) group homes other than complying development,
- (h) guest houses,
- (i) health consulting rooms other than complying development,
- (j) home businesses other than home occupations which are exempt development,
- (k) hotels,
- (l) housing for aged or disabled people,
- (m) motels,

- (n) places of public worship,
- (o) plant nurseries,
- (p) recreation facilities,
- (q) residential units,
- (r) restaurants,
- (s) shops other than shops located in neighbourhood centres,
- (t) veterinary clinics,
- (u) altering, or adding to, an existing use or changing an existing use to another use which would otherwise be prohibited in the Zone.

(2) Development for the purpose of brothels.

Schedule 7 Shops and business premises in residential areas

(Clause 43)

(1) Shops predominantly used as:

- milk bars
- sandwich shops
- pharmacies
- delicatessens
- convenience stores, "minimarts" and the like
- butchers
- newsagencies

(2) Shops selling:

- antiques
- art and craft
- bread, cakes, pies and pastries and the like
- fruit and vegetables
- pet food
- take away food

(3) Business premises in neighbourhood centres of the following kinds:

- laundromats/dry cleaners
- hairdressers, beauticians

(4) Business premises used as a land/home sales office on land or adjacent to land and/or dwellings being offered for sale.

(5) Post offices.

Schedule 8 Heritage items

(Clause 87)

Column 1 Property Title or Description	Column 2 Address/Location	Column 3 Item (including the site unless otherwise specified)	Column 4 Heritage Study Reference	Column 5 Significance
"Duntryleague"	Woodward Street	Mansion, gateway, gatekeeper's lodge, entry avenue and stables, excluding golf course layout	M1	National
"Ammerdown"	Molong Road	Homestead	M11	National
Orange Court House	Lords Place	Court Building	C3	National
"St Josephs"	Byng Street	Church	C269	National
"Holy Trinity"	Byng Street	Church, Rectory	C274	National
		Bluestone Hall	C29	State
			C30	Local
"Mena"	50 Kite Street	Mansion	C372	National
Orange Public School	Kite Street	School Buildings	C381	National
Lands Office Kite Street	Kite Street	State Government offices	C384	National
"Wolaroi"	Bathurst Road	Former mansion (main school building)	M2	State
"Llanello" also known as "Croagh Patrick"	Park Street	Former manison	M3	State
"Clifton Grove"	Clifton Grove Coolabah Drive	Homestead	M4	State
"Rosedale"	Ophir Road	Homestead	M5	State
"Wellwood"	Mitchell Highway	Homestead	M6	State
"Summer Hill"	Mitchell Highway	House and group of Farm buildings	M7	State
"Endsleigh House"	38 Endsleigh Avenue	House	M8	State
"Colwood"	12 McKay Crescent	Homestead	M9	State
"Glenfield"	Forest Road	Country Inn	M10	State
"Maroonbah"	24 Courallie Drive	Mansion	M14	State
"Glengarra"	Mt Pleasant Lane	Homestead	M15	State
"Rosetague"	Canobolas Road	Homestead and curtilage	M27	State
Bloomfield Hospital	Forest Road	"Nymages Lodge" Landscape features: Entry gateway, Elm Avenue and grounds	M28	State
			L4	Local
Orange Railway Station	Pelsley Street	Railway station and pedestrian bridge	M40	State
Wesley Uniting Church	223 Anson Street	Church	C26	State
Orange Town Hall	247-249 Anson Street	Offices—former Town Hall	C28	State
"Newstead"	47-49 Hill Street	Club—former mansion	C84	State
"Knocklong"	73 Hill Street	House	C86	State
HACBS	87 Hill Street	Former Building Society	C91	State
Cook Park	Summer Street	Park	L1	State

"Parkview"	Fernery Blowers Conservatory	C119 C340	State State
"Trebanog"	44 Clinton Street	C139	State
Welcome Inn	79–81 March Street	C213	State
	85 March Street	C214	State
	65 Byng Street	C267	State
Gladstone Hotel	69 Byng Street	C268	State
Metropolitan Hotel	Corner Byng and Anson Streets	C275	State
"Cabally"	60 Byng Street	C293	State
	62 Byng Street	C294	State
"Brownholm"	82 Byng Street	C303	State
"Union Bank"	84 Byng Street	C304	State
"Craigielea"	23 Summer Street	C315	State
"Berrilee"	29 Summer Street	C317	State
	58 Summer Street	C342	State
Orange Post Office	222 Summer Street	C345	State
Palmer's Building	226 Summer Street	C346	State
	56 Kite Street	C374	State
	80 Kite Street	C382	State
	86 Kite Street	C383	State
"Warrenbah"	171 Edward Street	SE32	State
	160 Kite Street	SE51	State
"Bowen Terrace"	3–25 Bathurst Road	E1	State
"Reform Mine"	Mitchell Highway, Lucknow		State
"Narrambla"	Ophir Road	L7	State
Orange Cemetery	Lone Pine Avenue	L9	State
Chinamen's Bend Cemetery	Mitchell Highway	L10	State
Robertson Park	Summer Street	L2	Regional
Newman Park	March Street	L3	Regional
Campbells Corner	Pinnacle Road	L5	Regional
Towac Pinnacle	Pinnacle Road	L6	Regional
CSR Readymix site	Laurel Street, off Racecourse Road	L14	Regional
"Meilyra"	Ploughmans Lane	M12	Local
"Suna Park"	Ophir Road	M13	Local
"Clearview"	Steeles Lane	M16	Local
"Adavale" Gosling Road		M17	Local
Towac Park Racecourse	Timber grandstand, Pavilion, entry avenue	M18	Local
Orange Showground	Leeds Parade	M20	Local
		M21	Local
"Rose", "Shamrock" and "Thistle"	Mitchell Highway, Shadforth	M23	Local
"Rose Cottage"	Canobolas Road	M25	Local
	Canobolas Public School		Local
	"Bloomfield House"		Local
	81 Woodward Street	M29 L8	Local
	91 Woodward Street	M31	Local
	94 Woodward Street	M30	Local
	100 Franklin Road	M32	Local
	102 Franklin Road	M34	Local
	104 Franklin Road	M35	Local
	106 Franklin Road	M36	Local
	154 Moulder Street	M37	Local
	Moulder Street	M38	Local
	138 Peisley Street	M39	Local
	84–88 Peisley Street	M41	Local
	325 Peisley Street	M42	Local
	329 Lords Place	M44	Local
	335 Lords Place	M46	Local
	345 Lords Place	M47	Local
	349 Lords Place	M48	Local
	365 Lords Place	M49	Local
	67 Prince Street	M50	Local
	97 Prince Street	M51	Local
	127–129 Prince Street	M52	Local
	65 Dalton Street	M53	Local
	306 Anson Street	M54	Local
	35 William Street	M55	Local
	38 Autumn Street	M57	Local
	81 Autumn Street	M58	Local
	211 March Street	M59	Local
	March Street	M60	Local
	34 Nile Street	M61	Local
	5 Spring Street	M62	Local
	21 Spring Street	M67	Local
	23 Spring Street	M64	Local
	25 Spring Street	M65	Local
	26 Spring Street	M66	Local
	William Street	M63	Local
	Mitchell Highway, Lucknow	M68	Local
	Mitchell Highway, Lucknow	L11	Local
	Mitchell Highway, also known as "Great Western"	M69	Local

Historical notes

The following abbreviations are used in the Historical notes:

Am amended	LW No	legislation website	Sch Schs	Schedule
Cl clause	p	number	Sec	Schedules
Cll clauses	pp	pages	Secs	section
Div Division	Reg	Regulations	Subdiv	sections
Divs Divisions	Reps	Repealed	Subdivs	Subdivisions
GG Government Gazette	Rep	repealed	Subst	Substitutions
Ins inserted				substituted

Table of amending instruments

Orange Local Environmental Plan 2000 published in Gazette No 57 of 12.5.2000, p 3937 and amended as follows:

Orange Local Environmental Plan 2000 (Amendment No 2) (GG No 225 of 22.11.2002, p 9919)

Orange Local Environmental Plan 2000 (Amendment No 1) (GG No 145 of 19.9.2003, p 9433)

2005 (721) Orange Local Environmental Plan 2000 (Amendment No 4), GG No 139 of 11.11.2005, p 9381.

Date of commencement, on gazettal.

2006 (69) Orange Local Environmental Plan 2000 (Amendment No 3), GG No 27 of 24.2.2006, p 961.

Date of commencement, on gazettal.

2007 (586) Orange Local Environmental Plan 2000 (Amendment No 5), GG No 180 of 7.12.2007, p 9442.

Date of commencement, on gazettal.

2008 (571) State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008, GG No 157 of 12.12.2008, p 11946.

Date of commencement, 15.12.2008, cl 3.

2009 (411) Orange Local Environmental Plan 2000 (Amendment No 6), LW 21.8.2009.

Date of commencement, on publication on LW, cl 2.

2010 (80) Orange Local Environmental Plan 2000 (Amendment No 7), LW 5.3.2010.

Date of commencement, on publication on LW, cl 2.

Table of amendments

Cl 11	Am 2006 (69), Sch 1 [1] [2].
Cl 20	Am 19.9.2003; 2007 (586), Sch 1 [1] [2].
Cl 22	Am 19.9.2003; 2007 (586), Sch 1 [3]–[6].
Cl 31	Am 19.9.2003; 2008 (571), Sch 3.133 [1].
Cl 35	Am 19.9.2003.
Cl 45	Am 2009 (411), Sch 1 [1].
Cl 51	Am 2007 (586), Sch 1 [7].
Cl 54	Am 2009 (411), Sch 1 [2].
Cl 51A	Ins 19.9.2003.
Cl 71	Am 19.9.2003.
Cll 73A, 73B	Ins 19.9.2003.
Cl 76	Am 2008 (571), Sch 3.133 [2].
Cl 78	Am 2008 (571), Sch 3.133 [3].
Cl 80	Am 2008 (571), Sch 3.133 [4] [5].
Cl 87	Am 22.11.2002; 19.9.2003; 2005 (721), cl 4; 2006 (69), Sch 1 [3]; 2007 (586), Sch 1 [8] [9]; 2009 (411), Sch 1 [3].
Sch 1	Am 19.9.2003; 2007 (586), Sch 1 [10]; 2009 (411), Sch 1 [4]; 2010 (80), cl 4.
Sch 2	Am 19.9.2003; 2006 (69), Sch 1 [4].
Sch 3	Am 19.9.2003, Rep 2007 (586), Sch 1 [11].
Sch 5	Rep 2007 (586), Sch 1 [11].
Sch 7	Am 19.9.2003.

Whole title | Parent Act | Historical versions | Historical notes | Search title

Cabonne Local Environmental Plan 1991

Current version for 15 December 2008 to date (accessed 9 April 2010 at 10:42)

Status information



Status information

Currency of version

Current version for 15 December 2008 to date (accessed 9 April 2010 at 10:42). Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes

Authorisation: This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 15 December 2008.



Part 1 Preliminary

1 Name of plan

This plan may be cited as *Cabonne Local Environmental Plan 1991*.

2 Aims, objectives etc

The general aims of this plan are:

- (a) to encourage the proper management, development and conservation of natural and man-made resources within the Shire of Cabonne by protecting, enhancing or conserving:
 - (i) prime crop and pasture land,
 - (ii) timber, mineral, soil, water and other natural resources,
 - (iii) areas of significance for nature conservation,
 - (iv) areas of high scenic or recreational value, and
 - (v) places and buildings of archaeological or heritage significance, including aboriginal relics and places,
- (b) to replace the existing planning controls with a single local environmental plan to help facilitate growth and development of the Shire of Cabonne in a manner which is consistent with the objectives specified in paragraph (a) and which:
 - (i) minimises the cost to the community of fragmented and isolated development of rural land,
 - (ii) facilitates the efficient and effective delivery of amenities and services,
 - (iii) facilitates a range of residential and employment opportunities in accordance with demand,
 - (iv) facilitates farm adjustments, and
 - (v) ensures the efficiency of arterial roads is not adversely affected by development on adjacent lands,
- (c) to give the Council greater responsibility for environmental planning by creating a broad framework of controls and to create opportunity for the more detailed provisions relating to matters of significance only for local environmental planning to be contained in development control plans made by the Council,
- (d) to speed up the planning process,
- (e) to maintain the opportunity for public involvement and participation in the environmental planning and assessment process, and
- (f) to reduce the incidence of damage to areas subject to flooding by restricting development in the flood plain and in the floodways.

3 Land to which plan applies

- (1) This plan applies to all land within the Shire of Cabonne, as shown on the map, with the boundaries as indicated on the map.
- (2) This plan does not apply to Portion 109 of the Parish of Buckenbah.

4 Relationship to other environmental planning instruments

This plan repeals Cabonne Local Environmental Plans Nos 2 to 11 and 13.

5 Definitions

(1) In this plan:

alter, in relation to a heritage item or to a building or work within a conservation area, means:

- (a) the making of structural changes to the outside of the heritage item, building or work, or
- (b) the making of non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item, building or work, not including the maintenance of the existing detail, fabric, finish or appearance of the outside of the heritage item, building or work.

appointed day means the day on which the plan takes effect.

animal boarding or training establishment means a building or place used for the commercial boarding, breeding, keeping or training of animals, and includes riding schools and veterinary clinics.

arterial road means an existing road indicated on the map by heavy broken black lines.

caravan park means land used as sites for movable dwellings including tents and caravans or other vehicles used for temporary or permanent accommodation, and includes any kiosk or other similar facility situated on the land.

Council means the Council of the Shire of Cabonne.

demolition in relation to a building or work, means the damaging, defacing, destruction pulling down or removal of that building or work, in whole or in part.

environmentally sensitive land means land that is shown horizontally hatched with black lines on the map.

existing holding means:

- (a) except as provided by paragraph (b)—the area of a lot, portion or parcel of land as it was at 29 November 1989, or
- (b) where, as at 29 November 1989, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the combined area of those lots, portions or parcels as they were as at 29 November 1989.

flood liable land means land shown diagonally hatched with black lines on the map.

heritage conservation area means an area of heritage significance being land the land edged heavy black and marked "Heritage Conservation Area" on the map.

heritage item means those buildings, works, relics or places of historic, scientific, cultural, social, architectural, archaeological, natural or aesthetic significance to the Shire of Cabonne:

- (a) situated on land shown in a distinctive manner on the map and
- (b) described in Schedule 1.

heritage significance means historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance.

intensive livestock keeping means a building or place in which or on which cattle, sheep, goats, poultry or other livestock are held for the purposes of nurturing by a feeding method other than natural grazing and, without limiting the generality of the foregoing, includes:

- (a) feed lots,
- (b) piggeries,
- (c) poultry farms, and
- (d) fish farming (including crustaceans and oysters),

but does not include an animal boarding or training establishment or the keeping of livestock or poultry intended solely for personal consumption or enjoyment by the owner or occupier of the land.

irrigated agriculture means agricultural production requiring the application of water to crops by utilisation of permanent irrigation systems and includes the following activities: orcharding, propagation, plant breeding, viticulture, ornamental floriculture, intensive vegetable production and landscape horticulture.

maintenance means the continuous protective care of the fabric of a heritage item and its setting.

plantation forest means private forestry involving the establishment of plantations of more than 5 hectares in area in respect of any one property.

prime crop and pasture land means land within an area identified, on a map prepared by or on behalf of the Director-General of the Department of Agriculture and Fisheries and deposited in the office of the Council, as Class 1, Class 2 or Class 3 or as land of merit for special agricultural uses, but does not include land which the Director-General has notified the Council in writing is not prime crop and pasture land for the purposes of this plan.

recreation area means:

- (a) a children's playground,
- (b) an area used for sporting activities or sporting facilities, or
- (c) an area used to provide facilities for recreational activities which promote the physical, cultural or intellectual welfare of persons within the community, being facilities provided by:
 - (i) a public authority, or
 - (ii) a body of persons associated for the purposes of the physical, cultural or intellectual welfare of persons within the community,

but does not include a racecourse or a showground.

relic means any deposit, object or material evidence (terrestrial or underwater) relating to the use or settlement of the Shire of Cabonne which is 50 or more years old.

the map means the map marked "Cabonne Local Environmental Plan 1991", as amended by the maps (or specified sheets of the maps) marked as follows:

Editorial note. The amending maps are not necessarily listed in the order of gazettal. Information about the order of gazettal can be determined by referring to the Historical notes at the end of the plan.

Cabonne Local Environmental Plan 1991 (Amendment No 1)
 Cabonne Local Environmental Plan 1991 (Amendment No 5)
 Cabonne Local Environmental Plan 1991 (Amendment No 10)
 Cabonne Local Environmental Plan 1991 (Amendment No 12)
 Cabonne Local Environmental Plan 1991 (Amendment No 14)
 Cabonne Local Environmental Plan 1991 (Amendment No 17)
 Cabonne Local Environmental Plan 1991 (Amendment No 18)
 Cabonne Local Environmental Plan 1991 (Amendment No 20)

tree includes a sapling and a shrub.

vacant means devoid of dwellings.

wetland means land shown on the map by parallel broken lines within a heritage conservation area.

(2) In this plan, a reference to the destruction of a tree, is a reference to ringbarking, cutting down, felling, poisoning, lopping, removing or otherwise destroying or injuring a tree.

(3) In this plan:

- (a) a reference to a map is a reference to a map deposited in the office of the Council, and
- (b) a reference to a building or placed used for a purpose includes a reference to a building or a place intended to be used for the purpose.

(4) Notes in this plan do not form part of this plan.

6 Adoption of Model Provisions

The *Environmental Planning and Assessment Model Provisions 1980* (except for the definition of *arterial road* and *map* in clause 4 (1), and except for clauses 15, 29, 32 and 33) are adopted for the purposes of this plan.

7 Consent authority

The Council shall be the consent authority for the purpose of this plan.

Part 2 Zones

8 Zones indicated on the map

For the purposes of this plan, land to which this plan applies shall be within a zone specified hereunder if the land is shown on the map in the manner specified hereunder in relation to that zone:

Zone No 1 (a) (General Rural)—edged heavy black and lettered “1 (a)”.

Zone No 1 (c) (Rural Small Holdings)—edged heavy black and lettered “1 (c)”.

Zone No 1 (f) (Forestry)—edged heavy black and lettered “1 (f)”.

Zone No 2 (v) (Village or Urban)—edged heavy black and lettered “v”.

Zone No 7 (c) (Environmental Protection—Water Catchments)—edged heavy black and lettered “7 (c)”.

Zone No 8 (National Parks and Nature Reserves Zone)—edged heavy black and lettered “8”.

9 Zone objectives and development control table

(1) The objective of a zone are set out in the table to this clause under the heading “Objectives of zone” appearing in the matter relating to the zone.

(2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the purposes (if any) for which:

(a) development may be carried out without development consent,

(b) development may be carried out only with development consent, and

(c) development is prohibited,

are specified under the headings “Without development consent”, “Only with development consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.

(3) Except as otherwise provided by this plan, the Council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Table

Zone No 1 (a) (General Rural)

1 Objectives of zone

The objective of this zone is to promote the proper management and utilisation of resources by:

(a) protecting, enhancing and conserving:

(i) agricultural land in a manner which sustains its efficient and effective agricultural production potential,

(ii) soil stability by controlling and locating development in accordance with soil capability,

(iii) forests of existing and potential commercial value for timber production,

(iv) valuable deposits of minerals, coal, petroleum and extractive materials by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits,

(v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is significant to scenic amenity or natural wildlife habitat or is likely to control land degradation,

(vi) water resources for use in the public interest,

(vii) areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitat, and

(viii) places and buildings of archaeological or heritage significance, including the protection of Aboriginal relics and places,

(b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,

(c) ensuring that any allotment created for intensive agricultural purposes is potentially and physically capable, on its own, of sustaining a range of such purposes or other agricultural purposes as a commercial agricultural operation suitable to the locality,

(d) facilitating farm adjustments,

(e) minimising the cost to the community of:

(i) fragmented and isolated development of rural land, and

(ii) providing, extending and maintaining public amenities and services,

(f) providing land for future urban development, for rural residential development and for development for other non-agricultural purposes, in accordance with the need for that development,

(g) providing for a range of rural living styles in appropriate locations within the area to which this plan applies, and

(h) encouraging the establishment of rural and related industries within the area to which this plan applies.

2 Without development consent

Agriculture (other than dwellings and intensive livestock keeping); forestry (other than ancillary dwellings and plantation forests).

3 Only with development consent

Any purpose other than a purpose included in item 2 or 4.

4 Prohibited

Motor showrooms; residential flat buildings; shops (other than general stores, wineries or craft shops).

Zone No 1 (c) (Rural Small Holdings)

1 Objectives of zone

The objective of this zone is to promote development of land identified as suitable for rural residential or hobby farm development.

2 Without development consent

Agriculture (other than dwellings and intensive livestock keeping).

3 Only with development consent

Any purpose other than a purpose included in item 2 or 4.

4 Prohibited

Caravan parks; hotels; industries (other than rural, light or home industries); motels; motor showrooms; residential flat buildings; shops (other than general stores).

Zone No 1 (f) (Forestry)

1 Objectives of zone

The objectives of this zone are:

(a) to identify land managed by the Forestry Commission under the *Forestry Act 1916*, and

(b) to preserve those existing forests within the Shire of Cabonne.

2 Without development consent

Any purpose authorised under the *Forestry Act 1916*.

3 Only with development consent

Any purpose other than a purpose included in item 2.

4 Prohibited

Nil.

Zone No 2 (v) (Village or Urban)

1 Objectives of zone

The objective of this zone is to promote development in existing towns and villages in a manner which is compatible with their urban function.

2 Without development consent

Nil.

3 Only with development consent

Any purpose other than a purpose included in item 4.

4 Prohibited

Extractive industries; intensive livestock keeping; mines; offensive and hazardous industries.

Zone No 7 (c) Environmental Protection—Water Catchments

1 Objectives of zone

The objectives of this zone are:

(a) to protect and conserve the catchments of the Molong and Borenore Dams so that water quality is maintained and enhanced in order that the water is fit for human consumption,

(b) to maintain the scenic quality of the Towac Valley, and

(c) to promote the proper management and utilisation of agricultural resources by:

(i) protecting, enhancing and conserving:

- agricultural land in a manner which sustains its efficient and effective agricultural production potential,

- soil stability by controlling and locating development in accordance with soil

capability,

- forests of existing and potential commercial value for timber production,
 - valuable deposits of minerals, coal, petroleum and extractive materials by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits,
 - trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is significant to scenic amenity or natural wildlife habitat or is likely to control land degradation,
 - water resources for use in the public interest,
 - areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitat, and
 - places and buildings of archaeological or heritage significance, including the protection of Aboriginal relics and places,
- (ii) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture,
- (iii) ensuring that any allotment created for intensive agricultural purposes is potentially and physically capable, on its own, of sustaining a range of such purposes or other agricultural purposes as a commercial agricultural operation suitable to the locality,
- (iv) facilitating farm adjustments,
- (v) minimising the cost to the community of:
- fragmented and isolated development of rural land, and
 - providing, extending and maintaining public amenities and services, and
- (vi) providing land for future urban development, for rural residential development and for development for other non-agricultural purposes, in accordance with the need for that development,
- (vii) providing for a range of rural living styles in appropriate locations within the area to which the plan applies, and
- (viii) encouraging the establishment of rural and related industries within the area to which the plan applies.

2 Without development consent

Agriculture (other than intensive livestock keeping, dwellings or new intensive horticultural enterprises of more than 20 hectares in area).

3 Only with development consent

Any purpose other than a purpose included in Item 2 or 4.

4 Prohibited

Caravan parks; industries (other than rural industries or home industries); intensive livestock keeping; motor showrooms; offensive or hazardous industries; residential flat buildings; sewerage treatment plants; shops (other than general stores not exceeding 100 square metres of floor area); stock and sale yards.

Zone No 8 (National Parks and Nature Reserves Zone)

1 Objectives of zone

The objective of this zone is to identify those lands included in national parks, nature reserves, aboriginal areas and state recreation areas as advised by the Director of the National Parks and Wildlife Service.

2 Without development consent

Any purpose authorised under the *National Parks and Wildlife Act 1974* or any purpose ancillary or incidental to such purpose.

3 Only with development consent

Nil.

4 Prohibited

Any purpose other than a purpose included in item 2.

Part 3 Special provisions

10 General considerations for development within rural zones

(1) The Council shall not consent to an application to carry out development on land within Zone No 1 (a), 1 (c) or 7 (c) unless it has made an assessment, where relevant, of the effect of the carrying out of that development on:

- (a) the present and potential use of the land for the purposes of agriculture,
 - (b) vegetation, timber production, land capability (including soil resources and soil stability), water resources (including the quality and stability of water courses and ground water storage and riparian rights),
 - (c) the future recovery of known or prospective areas of valuable deposits of minerals, coal, petroleum, sand gravel or other extractive materials,
 - (d) the protection of areas of significance for nature conservation or of high scenic or recreational value, and places and buildings of archaeological or heritage significance, including aboriginal relics and places,
 - (e) the cost of providing, extending and maintaining public amenities and services to the development, and
 - (f) future expansion of settlements in the vicinity,
- and the Council is satisfied that the development will not have an adverse effect on the long term use, for sustained agricultural production, of any prime crop and pasture land.
- (2) In assessing the effect referred to in subclause (1), the Council shall have regard not only to the land the subject of the application but also to land in the vicinity.

(3) Subclause (1) does not apply to:

- (a) an addition to a building or work,
- (b) development ancillary to a purpose for which land may be used with the consent of the Council under this plan, and
- (c) the erection of a dwelling-house on an allotment of land created in accordance with this plan for the purpose of a dwelling-house.

11 Subdivision of land generally

- (1) A person shall not subdivide land to which this plan applies except with the consent of the Council.
- (2) The Council shall not consent to an application to subdivide land within Zone No 1 (a), 1 (c) or 7 (c) unless it has obtained all relevant information in relation to, and made an assessment of:
 - (a) the primary purpose for which each allotment to be created by the subdivision is intended to be used,
 - (b) whether any allotment to be created by the subdivision is intended to be used primarily for the purpose of agriculture,
 - (c) whether a dwelling-house is intended to be erected on any allotment to be created by the subdivision and the approximate location of any such dwelling-house, and
 - (d) whether any proposed allotment contains an existing dwelling-house and the location of any such dwelling-house.

12 Subdivision for the purposes of agriculture in Zones Nos 1 (a) and 7 (c)

- (1) This clause applies to land within zone No 1 (a) or 7 (c).
- (2) Subject to subclause (3), the Council may consent to the creation of an allotment of any area if the Council is satisfied that the allotment will be used for the purposes of agriculture.
- (3) The Council shall not grant consent to the creation of an allotment referred to in subclause (2) if the allotment has an area of less than 100 hectares and there is already a dwelling-house on that allotment.
- (4) Notwithstanding subclause (3), the Council may consent to the creation of one but not more than one allotment referred to in subclause (2) for the purposes of agriculture from an existing holding on which a dwelling-house stands if that dwelling-house was lawfully erected on that land on or before the appointed day.

Note. Clause 9 of the *State Environmental Planning Policy (Rural Lands) 2008* enables subdivision of lots smaller than allowed by this plan for the purposes of primary production.

13 Subdivision for the purposes of intensive livestock keeping or irrigated agriculture and dwelling-house in Zones Nos 1 (a) and 7 (c)

- (1) The Council may consent to the subdivision of land within Zone No 1 (a) or 7 (c) for the purposes of creating one or more allotments (each having an area of not less than 10 hectares in Zone No 1 (a) and not less than 20 hectares in Zone No 7 (c)) if the Council is satisfied that each allotment so created will be used for the purposes of irrigated agriculture and a dwelling-house.
- (2) The Council may consent to the subdivision only if:
 - (a) the objectives of the relevant zone are met, and
 - (b) the subject land is developed as a viable irrigated agricultural operation or the Council can impose suitable conditions to ensure such development is effected.
- (3) In ensuring such viability, the Council will require evidence from the applicant of the following:

- net value of production,
 - an adequate and lawful source of piped or impounded water,
 - methods of ensuring minimal adverse impacts on the locality,
 - the suitability of the allotment or allotments to accommodate a dwelling-house.
- (4) The Council may consent to the subdivision of land within Zone No 1 (a) for the purposes of creating one or more allotments (each not less than 10 hectares) if the Council is satisfied that each allotment so created is for the purposes of intensive livestock keeping or the purposes of intensive livestock keeping and a dwelling-house.
 - (5) In the case of an application in respect of intensive livestock keeping and a dwelling-house the Council may consent to the subdivision only if:
 - (a) the objectives of the zone are met,
 - (b) the subject land is developed as a viable intensive livestock keeping operation or the Council can impose suitable conditions to ensure such development is effected.
 - (6) In ensuring such viability, the Council will require evidence from the applicant of the following:
 - net value of production,
 - an adequate and lawful source of piped or impounded water,
 - methods of ensuring minimal adverse impacts on the locality with particular emphasis on the management of wastes and noise,
 - the suitability of the allotment or allotments to accommodate a dwelling-house.

14 (Repealed)

15 Subdivision for other purposes in Zones Nos 1 (a) and 7 (c)

- (1) The Council shall not consent to an application to subdivide land within Zone No 1 (a) or 7 (c) if the Council is satisfied that any allotment to be created by the subdivision is to be used primarily for purposes other than agriculture or a dwelling-house, unless in the opinion of the Council:
 - (a) the allotment will not compromise prime crop and pasture land,
 - (b) the area of each allotment to be created by the subdivision is appropriate having regard to the purpose for which it is being created, and
 - (c) any allotment so created within Zone No 7 (c) will not adversely affect water quality and landscape values.
- (2) Nothing in subclause (1) prevents the Council from granting consent to an application to subdivide land to create an allotment the Council is satisfied will be used primarily for a purpose other than agriculture or a dwelling-house if the Council is satisfied:
 - (a) the purpose for which the allotment is to be used involves the supply of goods or services for which there is a demand in the locality,
 - (b) no other land in the locality could reasonably be used for that purpose, and
 - (c) the level of demand for the goods or services which are to be supplied from the

allotment and the extent to which that allotment is proposed to be used to meet that demand justifies the creation of the allotment notwithstanding its agricultural value.

16 Subdivision for the purposes of dwellings in Zone No 1 (c)

- (1) The Council shall not consent to an application to subdivide land within Zone No 1 (c) unless the area of each allotment which Council is satisfied will be used primarily for the purposes of a dwelling-house has an area of 0.4 hectares or more.
- (1A) This subclause applies to land within the investigation areas identified on Map A to the *Cabonne Rural Settlement Strategy 1999*, that is within Zone No 1 (c), and that was so zoned after the Council adopted that Strategy.
- Despite subclause (1), the Council must not consent to an application to subdivide land to which this subclause applies unless the area of each allotment which the Council is satisfied will be used primarily for the purposes of a dwelling-house has an area of 2 hectares or more.
- (1B) A reference in subclause (1A) to the *Cabonne Rural Settlement Strategy 1999* is a reference to the document so entitled that was adopted by the Council on 17 May 1999.
- (1C) Despite subclause (1), the Council must not consent to an application to subdivide land shown edged heavy black and lettered "1 (c)" on the map marked "Cabonne Local Environmental Plan 1991 (Amendment No 20)" unless the Council is satisfied that:
 - (a) the total number of allotments that may be created by the subdivision of land in accordance with this subclause will not exceed 22, and
 - (b) each allotment proposed to be created by the subdivision will have an area of 2 hectares or more and will be used primarily for the purposes of a dwelling-house, and
 - (c) the land has not previously been subdivided in accordance with this subclause.
- (2) The Council shall not grant consent to the subdivision of land under subclause (1), (1A) or (1C) unless it has made an assessment of:
 - (a) the land capability (including soil resources and soil stability), natural constraints and hazards of the land to be subdivided in relation to the density of the allotments proposed to be created,
 - (b) the desirability of providing a range and mixture of allotment sizes,
 - (c) the availability of reticulated water services or, if those services are unavailable, the capacity of the land to provide an adequate domestic water supply without adversely affecting the existing surrounding and downstream water supply,
 - (d) the capability of the land to accommodate septic disposal of household waste,
 - (e) the standard and capacity of public roads serving the land relative to the likely volume of traffic to be generated as a consequence of the density of the subdivision, and the means available to improve roads to a standard appropriate to the level of traffic likely to be generated,
 - (f) the availability of other services and social services relative to the likely demand for those services and the costs of their provision,
 - (g) the likely impact the development will have on other land, and, in particular, on land located between the land to be subdivided and major public roads and utility services,

- (h) whether any source of pollution in the locality requires larger allotments to enable separation of dwellings from that source,
- (i) the need to maintain a semi rural character in the area, and
- (j) the purpose for which the land is to be used after subdivision.

17 Subdivision of land in Zone No 2 (v)

- (1) A person shall not subdivide land within Zone No 2 (v) to create an allotment which the Council is satisfied will be used for the purpose of a dwelling-house unless the allotment has an area of 500 square metres or more (in the case of areas of the Shire of Cabonne serviced by sewer) and 2000 square metres or more (in the case of areas of the Shire of Cabonne serviced by septic tank).
 - (2) The shape and frontage of the allotment is to be to the satisfaction of Council, having regard to its use as a dwelling site.
 - (3) In assessing an application for subdivision for dwelling purposes in zone number 2 (v) the Council shall have regard to:
 - (a) the nature and topography of the land to be subdivided in relation to the density of the allotments proposed to be created,
 - (b) the desirability of providing a range and mixture of allotment sizes,
 - (c) whether the design of each allotment to be created by the subdivision is satisfactory for the economic provision of services, and
 - (d) the impact of the subdivision on the future development of the village.
- #### 18 Dwelling-houses in Zones Nos 1 (a), 1 (c) and 7 (c)
- (1) Subject to subclause (2), a person shall not erect a dwelling-house on vacant land within Zone No 1 (a), 1 (c) or 7 (c) unless:
 - (a) the land has an area of 100 hectares or more (or, in the case of land within Zone No 1 (c), the land has an area of 0.4 hectares or more), or
 - (b) the land comprises:
 - (i) the whole of an existing holding,
 - (ii) an allotment created for a purpose (other than agriculture) in accordance with this plan, or
 - (iii) an allotment created in accordance with a consent granted before the appointed day, being an allotment on which a dwelling could have been erected immediately before the appointed day, or
 - (iv) a viable intensive agricultural holding which is established either in accordance with a subdivision consent referred to in clause 13 or on an existing allotment in accordance with the requirements specified in clause 13 (2) (a) and (b), or
 - (v) land as described in Schedule 2.
 - (2) The Council may consent to the erection of a dwelling-house in land within Zone No 1 (a) or 7 (c) where:
 - (a) the dwelling-house is ancillary to the use of the land for another purpose, and

(b) the Council is satisfied that:

- (i) the land could not reasonably be used for that primary purpose without the erection of that dwelling-house, and
- (ii) the dwelling house is to be located so as to minimise any adverse effect on the use of the land for that primary purpose.

(3) Subject to subclause (1), in the case of any parcel having an area of less than 2 hectares, the Council will need to be satisfied that the allotment contains an adequate area for the on-site disposal of wastes.

18A Dwelling entitlements on existing concessional lots

The amendment to this plan by the *State Environmental Planning Policy (Rural Lands) 2008* does not affect any entitlement arising under a provision of this plan (as in force before that amendment) to erect a dwelling-house on a lot, if:

- (a) the lot was created before that commencement, or
- (b) development consent to the creation of the lot was applied for, or granted, before that commencement.

19 Erection of additional dwellings in Zones Nos 1 (a), 1 (c) and 7 (c)

(1) The Council may consent to the erection of 1 but not more than 1, additional dwelling for every 40 hectares of land within Zone No 1 (a) or 7 (c) (including the alteration of an existing dwelling to create 2 dwellings) where:

- (a) a dwelling-house could be erected on the land in accordance with clause 18,
- (b) no additional access to a public road is required from the land,
- (c) separate ownership of the proposed dwelling could only be achieved by a subdivision of the land,
- (d) in the opinion of the Council, the dwelling to be erected on that land will not interfere with the purpose for which the land is being used, and
- (e) the dwelling will not compromise prime crop and pasture land.

(2) The Council may consent to the erection of a second dwelling within Zone No 1 (c), or within Zone No 1 (a) or 7 (c) on a holding of less than 40 hectares, provided that:

- (a) the Council is satisfied that adequate capacity exists for the on-site disposal of wastes and to provide adequate services to the second dwelling,
- (b) a dwelling-house could be erected on the land in accordance with clause 18,
- (c) no additional access to a public road is required from the land,
- (d) separate ownership of the proposed dwelling-house could only be achieved by subdivision of the land,
- (e) in the opinion of the Council, the dwelling to be erected on that land will not interfere with the purpose for which the land is being used, and
- (f) the dwelling will not compromise prime crop and pasture land.

(3) The Council shall not consent to the subdivision of land on which one additional dwelling

is erected in pursuance of this clause except in accordance with this plan.

20 Dwellings in Zone No 7 (c)

In addition to the requirements of clauses 18 and 19, no dwelling-houses on land within Zone No 7 (c) are to be sited within 400 metres of a waterway unless the Council is satisfied that adequate arrangements have been made to protect the catchment.

21 Development along arterial roads

(1) The Council shall not grant consent to an application to carry out development on land which has frontage to an arterial road unless, in the opinion of the Council:

- (a) access to that land is provided by a road other than the arterial road, wherever practicable, and
- (b) the safety and efficiency of the arterial road will not be adversely affected by:
 - (i) the design of the access to the proposed development,
 - (ii) the emission of smoke or dust from the proposed development, or
 - (iii) the nature, volume or frequency of vehicles using the arterial road to gain access to the proposed development.

(2) The Council shall not consent to the development of land within Zone No 1 (a) or 1 (c) for any purpose listed in Schedule 3 if the development of the land for the purpose will have direct access to:

- (a) an arterial road, or
- (b) a road connecting an arterial road if access to the land is within 90 metres (measured along the road alignment of the connecting road) of the alignment of the arterial road.

22 Flood liable land

(1) A person shall not erect a building or carry out work for any purpose on flood liable land except with the consent of the Council.

(2) The Council shall not grant consent to the erection of a building or the carrying out of a work on flood liable land if, in the opinion of the Council, the carrying out of the development is likely:

- (a) to impede the flow of flood waters on that land or adjacent land,
- (b) to imperil the safety of persons on that land or adjacent land in the event of the land being inundated with flood waters,
- (c) to aggravate the consequences of flood waters flowing on that land or adjacent land with regard to erosion, siltation and the destruction of vegetation, or
- (d) to have an adverse effect on the water table of that land or adjacent land.

23 Bushfire hazard

The Council shall not grant consent to the subdivision of land or to the erection of a building on land which is subject to bushfire hazards because of the vegetation on the land or on any adjacent land unless, in the opinion of the Council:

- (a) adequate provision is made for access for fire fighting vehicles,

- (b) adequate safeguards are adopted in the form of fire breaks, reserves and fire radiation zones, and
- (c) adequate water supplies are available for fire fighting purposes.

24 Access

A person (other than the Council) shall not construct a road which has access to an existing public road except with the consent of the Council.

25 Applications that must be advertised

The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development for the purposes specified in Schedule 4 in the same way as those provisions apply to and in respect of designated development.

26 Residential development in Zone No 2 (v)

- (1) A person shall not erect a dwelling house, boarding house or residential flat building within Zone No 2 (v) except with the consent of the Council.
- (2) The Council shall not consent to an application to erect a dwelling house within Zone No 2 (v) except on an allotment of land which was created:
 - (a) in accordance with clause 17, or
 - (b) by a subdivision carried out before the appointed day to create an allotment on which a dwelling house could have been erected before the appointed day (provided that in the case of small allotments in areas which are not serviced by sewer, the Council is satisfied that adequate area exists within the allotment for the on-site disposal of wastes).

27 Heritage items

- (1) A person shall not in respect of a building, work, relic or place that is a heritage item:
 - (a) demolish or alter that building or work,
 - (b) damage or despoil that relic or place or any part of that relic or place,
 - (c) excavate any land for the purpose of exposing or removing that relic,
 - (d) erect a building on the land on which that building, work or relic is situated or the land which comprises that place,
 - (e) subdivide the land on which that building, work or relic is situated or the land which comprises that place, or
 - (f) damage any tree on land which forms part of the curtilage of the building work or relic or is situated on land which comprises that place,
 except with the consent of the Council.
- (2) The Council shall not grant a consent required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the item and any stylistic or horticultural features and its setting.

Note. The website of the Heritage Branch of the Department of Planning has publications that provide guidance on assessing the impact of proposed development on the heritage

significance of items (for example, *Statements of Heritage Impact*).

28 Development in the vicinity of heritage items

The Council shall not grant consent to an application to carry out development in the vicinity of a heritage item unless it has made an assessment of the affect which the carrying out of that development will have on the heritage significance of the item and its setting.

29 Heritage conservation area

- (1) A person shall not, in respect of a heritage conservation area:
 - (a) demolish, extend or change the outside of a building or work within that area, including changes to the outside of the building or work that involve the repair of the painting, plastering or other decoration to the outside of the building or work,
 - (b) damage or despoil a relic or part of a relic within that area,
 - (c) excavate any land for the purpose of exposing or removing a relic within that area,
 - (d) erect a building within that area, or
 - (e) subdivide the land within that area,
 except with the consent of the Council.
- (2) The Council shall not grant a consent required by subclause (1) unless it has made an assessment of:
 - (a) the extent to which the carrying out of the development in accordance with the consent would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the conservation area, and
 - (b) whether a refusal to grant consent would constitute a danger to the users or occupiers of that land or the public.

- (3) The Council shall not grant a consent required by subclause (1), being consent to the erection of a new building or to the alteration of the exterior of an existing building, unless the Council has made an assessment of:
 - (a) the pitch and form of the roof,
 - (b) the style, size, proportion and position of the openings for windows and doors,
 - (c) whether the colour, texture, style, size and type of finish of the materials to be used on the exterior of the building are compatible with the materials used in the existing buildings in the conservation area, and
 - (d) any other architectural feature characteristic of other existing buildings in the conservation area.

30 Advertising of heritage applications

- (1) The provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:
 - (a) the demolition of a building or work within a conservation area, or
 - (b) the demolition of a building or work that is a heritage item,
 in the same way as those provisions apply to and in respect of designated development.

(2), (3) (Repealed)

- (4) Subclause (1) does not apply to the partial demolition of a building or work where, in the opinion of the Council, the partial demolition is of a minor nature and does not adversely affect the heritage significance of the building or work as part of the environmental heritage of the Shire of Cabonne.

31 Conservation incentives relating to heritage items

- (1) Nothing in this plan prevents the Council from granting consent to:
- (a) the use for any purpose of a building within a conservation area or of the land on which that building is erected, or
 - (b) the use for any purpose of a building that is a heritage item or of the land on which that building is erected,
- where the Council is satisfied that:
- (c) the use would have little or no adverse effect on the amenity of the area, and
 - (d) conservation of the building depends on the Council granting consent in pursuance of this subclause.

- (2) The Council, when considering an application to erect a building on land on which there is a building which is a heritage item, may exclude from its calculation of the floor space of the buildings erected on the land the floor space of the heritage item:

- (a) for the purpose of determining the floor space ratio, and
- (b) for the purpose of determining the number of parking spaces to be provided on the site, but only if the Council is satisfied that the conservation of the building depends upon the Council granting an exclusion in pursuance of this subclause.

32 Dual occupancy in the village zone

- (1) This clause applies to land within Zone No 2 (v).
- (2) A person may, with the consent of the Council, alter a dwelling-house so as to create 2 dwellings or erect a second dwelling on the one allotment.

33 Variation of zone boundaries

- (1) Where a boundary between 2 zones (as indicated on the map) does not correspond with a cadastral boundary, the Council may determine a precise boundary following survey.
- (2) In determining a zone boundary under subclause (1), the Council shall have regard to the characteristics of the land as indicated by the survey, and the relationship of those characteristics to the objectives of the zones on either side of the boundary.
- (3) A boundary fixed under this clause shall generally approximate the position indicated on the map.
- (4) Where a zone boundary is fixed under this clause, land shall be deemed to be within the appropriate zone as determined by the Council.

34 Temporary accommodation

The Council may grant consent to the carrying out of development for the purposes of

temporary accommodation (including hostels, caravan parks and construction camps) on any land to which this plan applies if the Council is satisfied that:

- (a) the development, by virtue of its location, scale, site landscaping and treatment (and temporary nature) is unlikely to significantly conflict with the purpose of the zone applying to the land on which the development is proposed to be carried out,
- (b) appropriate arrangements have been made for water supply, sewage disposal and stormwater drainage, other utility services, access and parking on that land, and
- (c) the development is unlikely to interfere with the amenity of any neighbouring residence.

35 Advertising structures

- (1) A person shall not use or erect an advertising structure on land to which this plan applies without the consent of the Council.

- (2) On land to which this plan applies, a person shall not use or erect an advertising structure for the purpose of displaying any advertisement, other than an advertisement:

- (a) which relates to that land, or to premises situated on that land, and
- (b) which specifies one or more of the following particulars:
 - (i) the purpose for which the land or premises is or are used,
 - (ii) the identification of a person residing or carrying on an occupation or business on the land or premises,
 - (iii) a description of an occupation or business referred to in subparagraph (ii),
 - (iv) particulars of the goods or services dealt with or provided on the land or premises.

- (3) Notwithstanding subclause (2), the Council may grant consent to a person to erect an advertising structure on land to which this plan applies, except within road reserves in Zone No 1 (a), 1 (c) or 7 (c), for the purpose of displaying an advertisement directing the travelling public to places of agricultural, scientific, cultural, historical or scenic interest.

- (4) The Council shall not grant consent as referred to in subclause (2) or (3) unless it is satisfied that the advertising structure will not interfere with the amenity of the area and that the safety of the travelling public will not be endangered by the erection of that structure.

- (5) Notwithstanding subclauses (2) and (3), this clause shall not apply to advertising structures and advertisements erected within information bays erected by or approved by the Council.

36 Environmentally sensitive land

- (1) A person shall not carry out development on environmentally sensitive land for the purposes of:

- (a) intensive livestock keeping,
- (b) junk yards,
- (c) liquid fuel depots,
- (d) offensive or hazardous industries,
- (e) sawmills or

- (f) stock and sales yards.

(2) A person shall not cause tree destruction to:

- (a) more than 1 hectare of environmentally sensitive land, or
 - (b) more than 5 per cent of a holding, where that 5 per cent comprises environmentally sensitive land, whichever is less, except with the consent of the Council.
- (3) The Council shall not consent to an application made in accordance with subclause (2) unless, in the opinion of the Council, the destruction of trees on the land will be carried out in a manner which, in respect of that land and adjacent land, minimises:
- (a) the risk of soil erosion or other land degradation,
 - (b) the loss of scenic amenity, and
 - (c) the loss of important vegetation systems and natural wildlife habitats.

37 Subdivision of certain land in Spring Hill and in the vicinity of Fannings Lane, Orange

- (1) This clause applies to the two parcels of land shown edged heavy black on the map marked "Cabonne Local Environmental Plan 1991 (Amendment No 4)", being Lots 43, 44, 46 and part Lot 45, DP 750387, and Portions 18, 58, 59 and 80, Parish of Anson.
- (2) The Council may consent to the creation of one, but not more than one, additional allotment that the Council is satisfied will be used for the purpose of a dwelling house from each parcel of land to which this clause applies but only if the Council is satisfied that:
- (a) each such allotment has an area of not less than 0.4 hectares and generally not more than 5 hectares (unless justified on the grounds of water supply or agricultural buffer, or both), and
 - (a1) each such allotment does not compromise prime crop and pasture land, and
 - (a2) the creation of each such allotment is unlikely to adversely affect the existing and potential capability of the land and adjacent land to produce food or fibre, and
 - (a3) the creation of each such allotment is unlikely to generate additional servicing costs beyond those that can be met by the developer, and
 - (b) the residue of the existing holding from which the additional allotment is created is incorporated into one allotment.
- ### 38 Development of certain land—north of Castle Street, Molong
- (1) This clause applies to land situated in the town of Molong, north of Castle Street, as shown edged heavy black and lettered "V" on the map marked "Cabonne Local Environmental Plan 1991 (Amendment No 5)".
- (2) Despite any other provision of this plan, a person may carry out development on land to which this clause applies only with the consent of the Council.
- (3) The Council may grant consent to the development of an allotment of land to which this clause applies only if:

- (a) in the case of an allotment for which a reticulated sewerage system is available, any dwelling-house that will result from carrying out the development is required to be connected to the reticulated sewerage system, and
- (b) in the case of any other allotment:
 - (i) the allotment has an area of not less than 1500 square metres and the Council is satisfied that sufficient area will be available for on-site treatment of septic waste, and
 - (ii) the siting of any buildings or works that will result from the carrying out of development will not constrain future development of the land when a reticulated sewerage system becomes available for the land, and
- (c) the Council is satisfied that adequate arrangements have been or will be made to service the development with roads, drainage and a reticulated water supply.

39 Development of certain land near Mullion Creek

- (1) This clause applies to land situated near Mullion Creek, as shown edged heavy black on the map marked "Cabonne Local Environmental Plan 1991 (Amendment No 6)".
- (2) Despite any other provision of this plan, such development may be carried out, but only with the consent of the Council, as will result in a maximum of 4 allotments being created within Lot 1 DP 600986 on each of which a dwelling is situated.
- (3) The Council may consent to the development allowed by this clause only if:
- (a) the Council is satisfied (whether by the imposition of conditions on the grant of that consent or otherwise) that development of the land for rural residential purposes will not have an adverse environmental impact on Caleula Creek, and
 - (b) (Repealed)
- (4) If the Council consents to the subdivision of Lot 1 DP 600986 to create 4 allotments, the holding comprising Portions 8, 184, 185, 250, 267 and part Portions 223 and 245 Parish of Mulyan and Portions 73, 84 and Part Portions 5 and 8 Parish of Larras lake is taken not to be an existing holding for the purposes of any provision of this plan that provides any concession relating to subdivision or the erection of dwellings because land is the whole or part of an existing holding.

40 Development of certain land in Byng

- (1) This clause applies to land shown edged heavy black on the map marked "Cabonne Local Environmental Plan 1991—Amendment No 7" being the whole of lots 2, 3 and 4, Section 8, Parish of Byng, Lane Street, Byng.
- (2) Despite any other provision of this plan, one, but only one, dwelling-house may be erected on the land to which this clause applies but only with the consent of the Council and only after all of the land has been consolidated into one lot.

41 Classification and reclassification of public land as operational land

- (1) The public land described in Schedule 5 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*, subject to this clause.
- (2) Land described in Part 1 of Schedule 5:
- (a) to the extent (if any) that the land is a public reserve, does not cease to be a public

reserve, and

- (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants by which it was affected before its classification, or reclassification, as the case requires, as operational land.
- (3) Land described in Columns 1 and 2 of Part 2 of Schedule 5, to the extent (if any) that it is a public reserve, ceases to be a public reserve on the commencement of the relevant amending plan and, by the operation of that plan, is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land except:
- (a) those (if any) specified for the land in Column 3 of Part 2 of Schedule 5, and
- (b) any reservations that except land out of a Crown grant relating to the land, and
- (c) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).
- (4) In this clause, *the relevant amending plan*, in relation to land described in Part 2 of Schedule 5, means the local environmental plan that inserted the land description in that Part.
- (5) Before the relevant amending plan inserted a description of land into Part 2 of Schedule 5, the Governor approved of subclause (3) applying to the land.

Schedule 1 Heritage items

	Land description	(Clause 5)
BORENORE Former Hotel Borenore Caves	(Ass 49) Lot 2, DP 623620 Ph Barton All that part of Reserve No 81412 within the Parish of Barton	
BYNG	(Ass 1115.1) Pt Por 11 Ph Anson (Ass 10.2) Lot 2, DP 70872 Ph Anson (Ass 1142) Por 108/111 Ph Byng (Ass 11) Lot 3 DP 70872 Ph Anson	
"Springfield Homestead" and outbuildings "Pendarves Homestead" and outbuildings Wesleyan Chapel "Bookannon Homestead"	(Ass 1524) Lot 100, DP 576778 Ph Clarendon	
CADIA Cadia copper mine, including Cornish engine house and ruins (including boiler house, chimney and working yard) CHEESEMAN'S CREEK "Boree Nyrang Homestead" Former Post Office/Hotel CUDAL	(Ass 457) Lot 1, DP 595175 Ph Boree Nyrang (Ass 340.11) Lot 168, DP 601997 Ph Boree Nyrang	
Main Street Former CBC Bank Former EW Gordon Stores (Council Building) Roman Catholic Church Parker Road "Boree Cabonne Homestead" CUMNOCK Bruce Street Bruce Memorial Church	(Ass 2580) Lot 5, Sec 9, Main Street Cudal (Ass 2618) Lot 3, Sec 4, Main Street Cudal (Ass 2591) Lot 16, Sec 14, Main Street Cudal (Ass 325) Pt Por 221 Ph Boree Cabonne (Ass 930) Lot 12, Sec 3, Bruce Street Cumnock	

Cnr Obley and Black Streets building Obley Street Former CBC Bank	(Ass 1044) Pt Por 61, Lot 1, DP 249418, Obley Street, Cumnock (Ass 1045) Pt Por 61, Lot 2, DP 228211, Obley Street, Cumnock (Ass 2732) Lot 2, DP 775359 Ph Dilga (Ass 2712) DP 976453, Ph Dilga (Ass 626) Pt Por 2, Ph Buckinbah outbuildings EMU SWAMP "Woodville Homestead" GUYONG EAST Mitchell Highway Church of England and Cemetery Former Church of England rectory "Quinton" Former Methodist Church "Hillview Homestead" Former schoolroom with residence LARRAS LEE Mitchell Highway "Claremont Homestead" "Larras Lake Homestead" MOLONG Edward Street Court House Police residence Adjoining Court House and Police station House Gidley Street Historic Museum Haslam's Mill Molong Street House (Former Quinn's residence) Former Quinn's stables Watson Street Railway Station Euchareena Road Cole House Slart House TOOGONG Eugowra Road The Barracks Formerly Court House/Police Barracks Post Office Formerly Royal Hotel MOUNT CANABOLAS PARKLANDS OPHIR MEMORIAL RECREATION RESERVE	(Ass 1044) Pt Por 61, Lot 1, DP 249418, Obley Street, Cumnock (Ass 1045) Pt Por 61, Lot 2, DP 228211, Obley Street, Cumnock (Ass 2732) Lot 2, DP 775359 Ph Dilga (Ass 2712) DP 976453, Ph Dilga (Ass 626) Pt Por 2, Ph Buckinbah outbuildings EMU SWAMP (Ass 15) Por 13, Ph Anson (Ass 2416) Sec 15, Ph Colville (Ass 2380) Por 158, Ph Colville (Ass 5103) Pt Por 14A, Ph Shadforth (Ass 1117.1) Por 59, Ph Byng (Ass 2417-2419) Unnumbered Por, Ph Colville (Ass 5195) Pt Por 38, Ph Three Rivers (Ass 2422) Pt Por 1, Ph Copper Hill (Ass 5716) Lot 1, Sec 16, Edward St Molong (Ass 5716) Lot 22, Sec 16, Edward St Molong (Ass 5716) Lot 22, Sec 16, Edward St Molong (Ass 4161) Lot 9, Sec 37, Gidley Street Molong (Ass 4177.01) Lot 1, DP 717788, Gidley St Molong (Ass 4382) Pt Lot 5, Sec 37, Molong St Molong (Ass 4524) Pt Lot 5, Sec 37, Molong St Molong (Ass 4008) Lots 37-40 and 60, Sec A Molong (Ass 4556) Lots 41-44, 59 and Pt 45 (B), Sec A Molong (Ass 5277) Lot 2, Sec 20, Ph Toogong (Ass 5273) Lot 1 and 9, Sec 18, Ph Toogong Reserves No 81412 for Public Recreation
Schedule 2		
Portion 93, Parish of Cargo. Lots 5-7, DP 807450		(Clause 18)

Portion 5, Parish of Cargo
Portion 153, Parish of Canobolas
Proposed Lot 10, comprising the consolidation of Lots 7-9, DP 259264
Schedule 3 Restricted development fronting arterial roads

- Bulk stores
- Caravan parks
- Car repair stations
- Clubs
- Commercial premises
- Education establishments
- Hospitals
- Hotels
- Industries (other than home, rural or extractive industries)
- Institutions
- Junk yards
- Liquid fuel depots
- Mines
- Motels
- Places of public assembly
- Places of public worship
- Recreation establishments
- Recreation facilities
- Refreshment rooms
- Retail plant nurseries
- Roadside stalls
- Saw mills
- Service stations
- Stock and Sales yards
- Warehouses

Schedule 4 Development which must be advertised

- Boarding houses
- Bulk stores
- Caravan parks
- Car repair stations
- Commercial premises
- Drive in take-away food shops
- Generating works
- Industries
- Light industries
- Liquid fuel depots
- Motels
- Motor showrooms
- Residential flat buildings
- Road transport terminals
- Sawmills
- Service stations
- Tourist facilities
- Transport terminals
- Units for aged persons

Utility installations
Warehouses

Schedule 5 Classification and reclassification of public land as operational land
(Clause 41)

Part 1 Interests not changed

Locality	Description
Molong	Lot 10, DP 1034198, as shown edged heavy black on the map marked "Cabonne Local Environmental Plan 1991 (Amendment No 22)".
Euchareena Road	

Part 2 Interests changed

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cl	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

2005 (570)	Cabonne Local Environmental Plan 1991 (Amendment No 22), GG No 116 of 16.9.2005, p 7486. Date of commencement, on gazetal.
2008 (50)	Cabonne Local Environmental Plan 1991 (Amendment No 20), GG No 26 of 29.2.2008, p 1289. Date of commencement, on gazetal.
(128)	State Environmental Planning Policy (Rural Lands) 2008, GG No 50 of 9.5.2008, p 3734. Date of commencement, on gazetal.
No 62	Statute Law (Miscellaneous Provisions) Act 2008, Assented to 1.7.2008. Date of commencement of Sch 2.5, assent, sec 2 (2).
(571)	State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008, GG No 157 of 12.12.2008, p 11946. Date of commencement, 15.12.2008, cl 3.

Table of amendments

Cl 3	Am 31.3.2000.
Cl 5	Am 7.5.1993; 5.8.1994; 30.7.1999; 19.5.2000; 18.5.2001; 7.6.2002; 24.1.2003; 2008 (50), Sch 1 [1]; 2008 (128), Sch 1.11 [1].
Cl 6	Am 6.6.2003.
Cl 9, table	Am 7.5.1993.
Cl 12	Am 2008 (128), Sch 1.11 [2].
Cl 13	Am 2008 (571), Sch 3.27 [1] [2].
Cl 14	Am 19.7.1996. Rep 2008 (128), Sch 1.11 [3].
Cl 16	Am 14.6.2002; 2008 (50), Sch 1 [2] [3].
Cl 18A	Ins 2008 (128), Sch 1.11 [4].
Cl 27	Am 2008 (571), Sch 3.27 [3].
Cl 30	Am 2008 (571), Sch 3.27 [4] [5].
Cl 35	Am 19.7.1996.
Cl 37	Ins 25.2.1994, Am 2008 (128), Sch 1.11 [5].
Cl 38	Ins 5.8.1994.
Cl 39	Ins 4.8.1995, Am 2008 (571), Sch 3.27 [6].
Cl 40	Ins 19.7.1996.
Cl 41	Ins 2005 (570), Sch 1 [1].
Sch 1	Am 2008 No 62, Sch 2.5.
Sch 2	Am 7.5.1993.
Sch 3	Am 6.6.2003.
Sch 5	Ins 2005 (570), Sch 1 [2].