



New South Wales

Maclean Local Environmental Plan 2001

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Urban Affairs and Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*.
(G99/00205/PC)

ANDREW REFSHAUGE, M.P.,

Minister for Urban Affairs and Planning

Sydney, 2 May 2001

2001 No 307

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Part 1 Preliminary

1 Name of plan

This plan is *Maclean Local Environmental Plan 2001*.

2 Aims, objectives etc

The aims of this plan are:

- (a) to make a local environmental plan for the local government area of Maclean that is divided into separate sets of provisions for different zones, and
- (b) to simplify and clarify all provisions formerly applying to rural zones, and
- (c) to restrict subdivision in rural zones and limit additional dwelling entitlements in Zones Nos 1 (a) (the Rural (Agricultural Protection) Zone) and 1 (b) (the Rural (General Rural Land) Zone), and
- (d) to delete the average lot size requirement in Zone No 1 (s) (the Rural (Small Holdings) Zone) and introduce a minimum lot size of 1.5 hectares, and
- (e) to prohibit tourist facilities in Zones Nos 1 (b) (the Rural (General Rural Land) Zone), 1 (r) (the Rural (Residential) Zone) and 1 (s) (the Rural (Small Holdings) Zone).

3 Land to which plan applies

This plan applies to land situated in the local government area of Maclean as shown by heavy black edging on the map marked "Maclean Local Environmental Plan 1992 (Amendment No 32)" deposited in the office of the Council.

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4 Relationship to other environmental planning instruments

- (1) This plan repeals *Maclean Local Environmental Plan 1992*.
- (2) *State Environmental Planning Policy No 4—Development Without Consent* is amended by omitting from Schedule 1 (Ancillary or incidental development involving acid sulfate soils excepted from clause 10) the words “Clause 46 of *Maclean Local Environmental Plan 1992*” and by inserting instead the words “Clause 18 of *Maclean Local Environmental Plan 2001*”.

5 Adoption of Environmental Planning and Assessment Model Provisions 1980

For the purposes of this plan, the *Environmental Planning and Assessment Model Provisions 1980* are adopted, except for clauses 4 (1), 15, 31 and 33.

6 Consent authority

Subject to the Act, the Council is the consent authority for the purposes of this plan.

7 Dictionary

- (1) In this plan:

Aboriginal conservation area means a site of special significance with respect to Aboriginal culture, including natural landscape features with mythological or spiritual significance, resource sites, ceremonial grounds, sites containing Aboriginal relics, and the like.

acid sulfate soils means actual or potential acid sulphate soils, as defined in the *Acid Sulfate Soils Assessment and Management Guidelines*.

Acid Sulfate Soils Assessment Guidelines means the *Acid Sulfate Soils Assessment Guidelines* as published from time to time by the NSW Acid Sulfate Soils Management Advisory Committee and adopted by the Director.

Acid Sulfate Soils Planning Maps means the series of maps marked “Maclean Local Environmental Plan 1992 (Amendment No 31) Acid Sulfate Soils Planning Maps”.

advertisement means a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.

advertising structure means a structure used or to be used principally for the display of an advertisement.

agriculture includes horticulture and the use of land for any purpose of husbandry, including the keeping or breeding of livestock, poultry, or bees, and the growing of fruit, vegetables and the like, but does not include aquaculture.

alter, in relation to a heritage item, means:

- (a) make structural changes to the outside of the heritage item, building or work, or
- (b) make non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item, building or work, other than changes that maintain the existing detail, fabric, finish or appearance of the outside of the heritage item, building or work.

ancillary removal of native vegetation means:

- (a) the destruction or removal of any plant declared to be a noxious weed by order under the *Noxious Weeds Act 1993*, by means not likely, in the opinion of the Council, to be significantly detrimental to the native ecosystem, or
- (b) the incidental destruction or removal of native plants lying adjacent to any such noxious weeds occurring unavoidably during the process of destroying or removing those noxious weeds, or
- (c) the destruction or removal of native plants, within 3 metres of the boundary between the lands owned or occupied by different persons, for the purpose of erecting or maintaining a dividing fence between those lands, or
- (d) the destruction or removal of native plants, within 0.5 metre of the boundary between the lands owned or occupied by different persons, for the purpose of enabling a survey to be carried out along that boundary by a surveyor registered under the *Surveyors Act 1929*.

appointed day means the day on which this plan takes effect.

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aquaculture means the efficient and sustainable commercial cultivation of the resources of the sea or inland waters and includes farms established by the inundation, or further inundation, by water of an area of land for the propagation or rearing of marine or estuarine fish or plants or other organisms (including crustaceans, oysters and seaweed) which, when carried out, would be sufficient to maintain an average family in average seasons and circumstances, but does not include commercial fishing.

arterial road means:

- (a) land that is an existing road indicated on the map by a broken black line between parallel continuous heavy black lines, or
- (b) land indicated on the map by hatching perpendicular to the centreline, being hatching:
 - (i) between intermittent black lines, or
 - (ii) between heavy black lines between Oyster Channel and Coldstream Street, Yamba.

bulk store means a building or place used for the bulk storage of goods, where the goods stored or to be stored are not required for use in a shop or commercial premises on the same parcel of land in the same ownership.

bulky goods retailing means use of a building or place for the sale by retail or auction, or the hire or display, of items (whether goods or materials) which are of such a size, shape or weight as to require:

- (a) a large area for handling, storage or display, or
- (b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading items into their vehicles after purchase,

but does not include use of a building or place for the sale of foodstuffs or clothing.

bus depot means a building or place used for the servicing, repair and garaging of buses and other vehicles used for the purposes of a bus transport undertaking.

bus station means a building or place used as a terminal for the assembly and dispersal of passengers travelling by bus.

bus stop means a minor roadside structure or locality used for the setting down and picking up of passengers travelling by bus.

bushfire control means bushfire mitigation or suppression works, or the construction and maintenance of fire trails and the erection of structures and buildings appurtenant to the operation of rural fire brigades formed or organised by the Council under section 15 of the *Rural Fires Act 1997*.

business identification sign means an advertisement that provides information relating to the goods or services provided at the premises or place to which it is fixed, and that does not exceed 0.75 square metre in area.

car repair station means a building or place used for the purpose of carrying out repairs to motor vehicles or agricultural machinery, not being:

- (a) body building, or
- (b) panel beating which involves dismantling, or
- (c) spray painting other than of a touching-up character.

caravan park means land used for the accommodation of caravans or other moveable dwellings within the meaning of the *Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995*.

caretaker's dwelling means a dwelling which is on land on which there is already erected a building used for commercial or industrial purposes.

child care centre means a building or place which is used (whether or not for profit) for the purpose of educating, minding or caring for children (whether or not any of the children are related to the owner or operator), but only if the following conditions are satisfied:

- (a) the children number 6 or more, are under 6 years of age, and do not attend a government school, or a registered non-government school, within the meaning of the *Education Act 1990*, and
- (b) the building or place does not provide residential care for any of the children (other than those related to the owner or operator).

clear felling means the clearing of all or most of the native trees on any parcel of land so that not more than 25 trees per hectare remain over the area of the parcel on a scattered or clustered basis. For the purposes of this definition, a ***parcel of land*** means adjoining or adjacent land held in the same ownership at any time.

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clearing, in relation to land, means the destruction of, or removal in any manner of, native vegetation (trees, saplings, seedlings or shrubs) growing on the land, but does not include ancillary removal of native vegetation.

club means a building used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic or other lawful purposes whether of the same or a different kind and whether or not the whole or a part of such a building is the premises of a club registered under the *Registered Clubs Act 1976*.

cluster farming means the commercial farming of land by a group of owners of that land where the major agricultural activity is managed in common.

cluster housing means 3 or more dwellings grouped on a site to take advantage of good building areas or views and to conserve large areas of open space. The number of dwellings on a site area should be no greater than would be allowed if each dwelling was on a separate allotment that could be created in the same zone.

commercial farming means an efficient and sustainable agricultural use of land for which the land is reasonably suited and which, when carried out on the land, would be sufficient to maintain an average family in average seasons and circumstances.

commercial fishing means any taking of fish, oysters or crustaceans the selling of which requires a licence under the *Fisheries Management Act 1994*.

commercial premises means a building or place used as an office or for other business or commercial purposes, but does not include a building or place elsewhere specifically defined in this clause or a building or place used for a purpose elsewhere specifically defined in this clause.

community centre means:

- (a) a building used for the purpose of rest rooms, meeting rooms or indoor recreation, or for providing other similar facilities, or
- (b) a building or place used for the purpose of conducting social functions, child minding, cultural activities, or other similar activities, or
- (c) a building or place used for any combination of those purposes, but does not include a place of assembly.

community development means the development of land in accordance with the *Community Land Development Act 1989* and the *Community Land Management Act 1989*.

community land means land classified as community land within the meaning of the *Local Government Act 1993*.

community purposes means public or community uses, including use for the purpose of churches, community halls, libraries, preschools, museums, fire stations, police stations, telecommunications, post offices and substations.

conventional subdivision means a subdivision of land which is not carried out under the *Strata Schemes (Freehold Development) Act 1973* or the *Community Land Development Act 1989*.

Council means Maclean Shire Council.

dam means a construction on land of an area for the containment of water, by use of earthen walls or walls made of other materials.

demolition, in relation to a heritage item, building or work, means the damaging, defacing, destruction, pulling down or removal of the heritage item, building or work, in whole or in part.

development has the meaning ascribed to it in section 4 of the *Environmental Planning and Assessment Act 1979*.

Director, unless otherwise identified in this plan, means the person appointed and holding office under section 13 of the Act.

dredging means the removal of material from the bed or banks of a river or creek where the activity is part of the construction of a new or deeper navigational area or channel or part of the re-opening of a discontinued navigational area or channel, but does not include maintenance dredging.

dual occupancy means two dwellings on one allotment of land, irrespective of whether the dwellings are attached or detached.

duplex means a building containing two, but not more than two, attached dwellings.

dwelling means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.

dwelling house means a building containing one, but not more than one, dwelling.

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earthworks means the addition to or removal of any solid material on any land, or any other work which will alter the existing ground level or character of the surface of that land, including land filling.

educational establishment means a building used as a school, college, technical college, academy, lecture hall, gallery or museum, but does not include a building used wholly or principally as an institution or child care centre.

environmental education facility means a building or place used for the teaching, researching and dissemination of knowledge in respect of the environment.

extractive industry means:

- (a) the winning of extractive material, or
- (b) an undertaking, not being a mine, which depends for its operations on the winning of extractive material from the land on which it is carried out,

and includes any washing, crushing, grinding, milling or separating into different sizes of that extractive material on that land.

extractive material means sand, gravel, clay, turf, soil, rock, stone or similar substances.

flood means relatively high stream flow which overtops the natural or artificial banks in any part of a stream or river.

flood liable land means land which would be inundated as a result of the standard flood, as determined by the Council.

flood mitigation works means the carrying out or causing to be carried out by a council engaged in flood mitigation works of any work for the purposes of flood mitigation, water conservation or river improvement in pursuance of the provisions of the *Local Government Act 1993*, except:

- (a) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or alteration of buildings so as materially to affect their design or external appearance, or
- (b) the formation or alteration of any means of access to a road.

floodplain means the portion of a river valley, adjacent to the river channel, which is covered with water when the river overflows during floods.

floodways means those areas where a significant volume of water flows during floods only. (They are often aligned with obvious naturally defined channels.) Floodways are areas which, even if only partially blocked, would cause a significant redistribution of flood flow, which may in turn adversely affect other areas. (They are often, but not necessarily, the areas of deeper flow or the areas where higher velocities occur.)

forestry includes arboriculture, silviculture, forest protection, the cutting, dressing and preparation (otherwise than in a sawmill) of wood and other forest products and the establishment of facilities required for the removal of wood and forest products and for forest protection.

general store means a shop which is used for the sale by retail of general merchandise and may include the facilities of a post office.

generating works means a building or place used for the purpose of making or generating gas, electricity or other forms of energy.

guesthouse means a house used to provide travellers with sleeping accommodation and meals, commonly in the style of an overnight bed and breakfast establishment.

health care professional means a person who provides professional health services to members of the public, and includes:

- (a) a podiatrist registered under the *Podiatrists Act 1989*, and
- (b) a chiropractor or osteopath or chiropractor and osteopath registered under the *Chiropractors and Osteopaths Act 1991*, and
- (c) a physiotherapist registered under the *Physiotherapists Registration Act 1945*, and
- (d) an optometrist registered under the *Optometrists Act 1930*.

helipad means an area or place not open to public use which is set apart for the taking off and landing of helicopters.

heliport means an area or place open to the public for use by helicopters and includes terminal buildings and facilities for the parking, servicing and repair of helicopters.

heritage item means a building, work, relic, tree or place described in Schedule 1.

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

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home industry means an industry carried on in a building (other than a dwelling house or a dwelling in a residential flat building) under the following circumstances:

- (a) the building does not occupy floor space exceeding 50 square metres and is erected within the curtilage of the dwelling house or residential flat building occupied by the person carrying on the industry or on adjoining land owned by that person,
- (b) the industry does not:
 - (i) interfere with the amenity of the locality by reason of emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, oil or grit, or otherwise, or
 - (ii) involve exposure to view from any adjacent premises or from a public place of any unsightly matter, or
 - (iii) require the provision of any essential service main of a greater capacity than that available in the locality.

home occupation means an occupation carried on in a dwelling house or a dwelling in a residential flat building by the permanent residents of the dwelling house or dwelling which does not involve:

- (a) anything that would have required registration of the building under the *Factories, Shops and Industries Act 1962* immediately before the repeal of section 11 of that Act, or
- (b) the employment of persons other than those residents, or
- (c) interference with the amenity of the neighbourhood by reason of emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, oil or grit, or otherwise, or
- (d) the display of goods, whether in a window or otherwise, or
- (e) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling house or dwelling to indicate the name and occupation of the resident), or
- (f) the sale of items (whether goods or materials) or the exposure or offer for sale of items, by retail.

horticulture means farming by the cultivation of fruit, vegetables or flowers.

hospital means a building or place (other than an institution) used for the purpose of providing professional health care services (such as preventative or convalescent care, diagnosis, medical or surgical treatment, care for people with developmental disabilities, psychiatric care or counselling and services provided by health care professionals) to people admitted as in-patients (whether or not out-patients are also cared for or treated there), and includes:

- (a) ancillary facilities for the accommodation of nurses or other health care workers, ancillary shops or refreshment rooms 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.

hotel means the premises to which a hotelier's licence granted under the *Liquor Act 1982* relates.

industry means:

- (a) any manufacturing process within the meaning of the *Factories, Shops and Industries Act 1962*, or
- (b) the breaking up or dismantling of any goods or any article for trade or sale or gain or as ancillary to any business,

but does not include an extractive industry.

intensive animal husbandry includes use of cattle feed lots, sheep feed lots, piggeries in which pigs are intensively grown, and commercial poultry operations or other intensive keeping of animals.

junk yard means land used for the collection, storage, abandonment or sale of scrap metals, waste paper, rags, bottles or other scrap materials or goods used for the collecting, dismantling, storage, salvaging or abandonment of automobiles or other vehicles or machinery or for the sale of parts.

kiosk means a building or light open structure used for the sale of newspapers, smallgoods and light refreshments.

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light industry means an industry, not being an offensive or hazardous industry, in which the processes carried on, the transportation involved or the machinery or materials used do not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise.

liquid fuel depot means a depot or place used for the bulk storage for wholesale distribution of petrol, oil, petroleum or other inflammable liquid.

maintenance means the ongoing protective care of the fabric of a heritage item and its setting.

maintenance dredging means the removal of material from the bed of a river or creek where the activity is for the purpose of re-establishing or maintaining shipping and boating channels as are determined by the Council in consultation with the Waterways Authority, Clarence Fishermen's Co-operative Limited and the Director-General of the Department of Agriculture and identified on a map marked "Shipping and Boating Channels".

marina means a pontoon, jetty, pier or similar structure or an artificial waterway designed or adapted so as to be capable of providing a mooring for 3 or more small boats used primarily for pleasure or recreation, or 2 or more commercial or fishing boats, and includes any ancillary works, such as slipways and facilities for the repair and maintenance of boats and provision of fuel, boat accessories, parts and foodstuffs.

mine means any place, open cut, shaft, tunnel, pit, drive, level or other excavation, drift, gutter, lead, vein, lode or reef in or by which any operation is carried on for or in connection with the purpose of obtaining any metal or mineral by any mode or method and any place on which any product of the mine is stacked, stored, crushed or otherwise treated, but does not include a quarry.

mineral sand mine means a mine used for or in connection with obtaining ilmenite, monazite, rutile, zircon or similar minerals.

miscellaneous forestry means operations involving the harvesting of native forests for poles, sleepers, girders, piles, pit props and fencing materials but does not include operations involving:

- (a) the reduction in the canopy of a forest at the appointed day by more than 80 per cent, or

- (b) clearing where the remaining trees are retained in a clustered (rather than scattered) manner, or
- (c) clear felling.

motel means a building or buildings (other than a hotel or residential flat building) substantially used for the overnight accommodation of travellers and vehicles used by them, whether or not the building or buildings are also used for the provision of meals to those travellers or the general public.

motor showroom means a building or place used for the display or sale of motor vehicles, caravans or boats, whether or not motor vehicle accessories, caravan accessories or boat accessories are also sold or displayed there.

native plants means plants indigenous to the North Coast of the State of New South Wales or to South East Queensland, including trees, shrubs, ferns, vines, herbs and grasses indigenous to those areas.

neighbourhood centre means an integrated complex containing shops and commercial premises which serve the local community on a limited scale, with ancillary parking and landscaping, and whether or not it also contains structures or works used for the purpose of bus stations, child care centres, clubs, community centres, dwellings attached to other buildings, hotels, places of assembly, places of public worship, professional consulting rooms, public buildings, recreation, recreation facilities, refreshment rooms, retail plant nurseries, service stations or taverns.

offensive or hazardous industry means an industry which, by reason of the processes involved or the method of manufacture or the nature of the materials used or produced, requires isolation from other buildings.

operational land means land classified as operational land within the meaning of the *Local Government Act 1993*.

place of assembly means a public hall, theatre, cinema, music hall, concert hall, dance hall, open-air theatre, drive-in theatre, music bowl or any other building of a like character used as such and whether used for the purpose of gain or not, but does not include a place of public worship, an institution or an educational establishment.

place of public worship means a church, chapel or other place of public worship or religious instruction or a place used for the purpose of religious training.

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plant depot means a building or place used for the parking or servicing of moveable plant or machinery.

prime crop or pasture land means rural land identified by the Director-General of the Department of Agriculture as Class 1, 2 or 3 of a classification set out in the *Rural Land Evaluation Manual* available from the Department of Agriculture, or other land identified by that Director-General as having agricultural significance.

professional consulting rooms means a room or a number of rooms forming either the whole or part of, attached to or within the curtilage of, a dwelling house and used by not more than three legally qualified medical practitioners or by not more than three dentists within the meaning of the *Dentists Act 1989*, or by not more than three health care professionals, who practise there the profession of medicine, dentistry or health care respectively and, if more than one, practise in partnership, and who employ not more than three employees in connection with that practice.

public 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.

public utility undertaking means any of the following undertakings carried on or permitted or suffered to be carried on by authority of any government department or under the authority of or in pursuance of any Commonwealth or State Act:

- (a) railway, road transport, water transport, air transport, wharf or river undertakings,
- (b) undertakings for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services,
- (c) development required in connection with the installation of telecommunication facilities,

and a reference to a person carrying on a public utility undertaking is to be construed as including a reference to a council, county council, government department, corporation, or authority carrying on the undertaking.

real estate sign means an advertisement in respect of a place or premises to which it is fixed which contains only a notice that the place or premises is or are for sale or letting, together with the particulars of the sale or letting, and:

- (a) is not displayed for more than 14 days after the letting or completion of the sale of the premises or place to which the sign relates, and
- (b) in the case of an advertisement in respect of residential or rural premises relating to letting or sale by private treaty—does not exceed 1.5 metres in length and 1.0 metre in height, and
- (c) in the case of an advertisement in respect of residential or rural premises relating to sale by auction—does not exceed 2.0 metres in length and 1.5 metres in height, and
- (d) in the case of an advertisement in respect of commercial and industrial premises—does not exceed 2.5 metres in length and 2.0 metres in height.

recreation development means development for the purpose of any one or more of the following:

- (a) parks and gardens,
- (b) parking spaces,
- (c) children's playgrounds,
- (d) musical entertainment,
- (e) public refreshment rooms,
- (f) buildings for public entertainment conducted or provided by the Council,
- (g) public entertainment,
- (h) boatsheds for the hire of boats to the public,
- (i) boats for hire to the public,
- (j) seats, shelter sheds, picnic kiosks, and other buildings for the convenience of the public,
- (k) temporary enclosures used for fund raising entertainment or public demonstrations,
- (l) improvements in the embellishment of open space areas,

and may include use of an area by the Council to provide recreational facilities for the physical, cultural or intellectual welfare of the community, or use of an area by a body of persons associated for the purposes of the physical, cultural or intellectual welfare of the community to provide recreational facilities for those persons, but does not include a racecourse or a showground.

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recreation establishment means a health farm, religious retreat house, rest home, youth camp and the like but does not include a building or place elsewhere specifically defined in this clause or a building or place used or intended for use for a purpose elsewhere specifically defined in this clause.

recreation facility means a building or place used for indoor recreation, a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley, fun parlour or any other building of a like character used for recreation, and whether used for the purpose of gain or not, but does not include a place of assembly.

recreational fishing means the taking of fish for personal consumption and not for sale.

refreshment room means a restaurant, café, tea room, eating house or the like.

relic means any deposit, object or material evidence (terrestrial or underwater) relating to the use or settlement of the local government area of Maclean which is 50 or more years old.

residential flat building means a building containing 3 or more dwellings on one allotment of land.

retail plant nursery means a building or place used for both the growing and retail selling of plants, whether or not ancillary products are also sold there.

road transport terminal means a building or place used for the principal purpose of the bulk handling of goods for transport by road, and includes facilities for the loading and unloading of vehicles used to transport those goods and for the parking, servicing and repair of those vehicles.

roadside stall means a building or place not exceeding 20 square metres in floor space or area respectively where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail.

rural industry means handling, treating, processing or packing of primary products, and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality.

rural tourist facility means a building or place on a farm (which may include a refreshment room and limited tourist accommodation, including serviced apartments) which is used to provide tourists with a rural education and experience concerning the growing, production or processing of rural products which are grown or cultivated on that farm.

(For the purpose of this definition, a **farm** means an area of adjoining or adjacent land held in the same ownership and in use for agricultural or forestry purposes.)

rural worker's dwelling means a dwelling which is on land on which there is already erected a dwelling and which is occupied by persons engaged in a rural occupation on that land.

sawmill means a mill handling, cutting and processing timber from logs or baulks.

selective logging means operations involving the logging of native forests for sawlogs, but does not include operations involving:

- (a) the reduction in the canopy of a forest at the appointed day by more than 80 per cent, or
- (b) clearing where the remaining trees are retained in a clustered (rather than scattered) manner, or
- (c) clear felling.

service station means a building or place used for the fuelling of motor vehicles involving the sale by retail 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) washing and greasing of motor vehicles,
- (c) installation of accessories,
- (d) repairing and servicing of motor vehicles involving the use of hand tools (other than repairing and servicing which involves top overhaul of motors, body building, panel beating, spray painting or suspension, transmission or chassis restoration).

shop means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause.

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the map means the map marked “Maclean Local Environmental Plan 1992 (Amendment No 32)”, as amended by the maps (or, if any sheets of maps are specified, by the specified sheets of the maps) marked as follows:

Maclean Local Environmental Plan 1992 (Amendment No 30)

Maclean Local Environmental Plan 1992 (Amendment No 33)

Maclean Local Environmental Plan 1992 (Amendment No 34)

Maclean Local Environmental Plan 1992 (Amendment No 35)

total destination resort means a resort which, in the opinion of the Council, is a large self-contained tourist-oriented complex providing a wide, all inclusive range of facilities comprising shops, holiday accommodation and recreational components.

tourist facility means an establishment providing for holiday accommodation or recreation and may include backpackers’ accommodation, bed and breakfast accommodation, boat landing facilities, boat sheds, camping grounds, caravan parks, guest houses, holiday cabins, hotels, houseboats, marinas, motels, playgrounds, recreation facilities, refreshment rooms, serviced apartments, kiosks, water sport facilities or clubs used in conjunction with holiday accommodation or recreation, but does not include a total destination resort.

transport terminal means a building or place used as an airline terminal, a road transport terminal or a bus depot.

tree preservation order means a tree preservation order referred to in clause 8 of the *Environmental Planning and Assessment Model Provisions 1980*, as adopted by this plan, and includes such an order made before the appointed day.

utility installation means a building or work used by a public utility undertaking, but does not include a building designed wholly or principally as administrative or business premises or as a showroom.

warehouse means a building or place used for the storage of goods, merchandise or materials pending their sale and distribution to persons engaged in the retail trade.

- (2) In this plan:
- (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for that purpose, and

- (b) a reference to a map is a reference to a map deposited in the office of the Council, and
 - (c) a reference to land within a zone specified in the Table to clause 31, 46, 53, 57 or 65 is a reference to land shown on the map in the manner indicated in clause 24 as the means of identifying land of the zone so specified.
- (3) Notes in, and the list of contents of, this plan do not form part of the plan.

8 Suspension of certain covenants etc

- (1) For the purpose of enabling development to be carried out in accordance with this plan (as in force at the time the development is carried out) or in accordance with a consent granted under the Act, the operation of any agreement, covenant or similar instrument which purports to impose restrictions on the carrying out of development on the land to which this plan applies, to the extent necessary to serve that purpose, shall not apply to any such development.
- (2) Nothing in subclause (1) affects the rights or interests of any public authority pursuant to any registered instrument.
- (3) Pursuant to section 28 of the Act, before the making of this clause the Governor approved of subclauses (1) and (2).

9 Development of land near boundaries of adjoining zones

- (1) This clause applies to land which is within 20 metres of a boundary between two zones, excluding Zones Nos 6 (c), 7 (a), 7 (b), 7 (c) and 7 (e).
- (2) Regardless of any other provision of this plan, development may, with development consent, be carried out on land to which this clause applies for any purpose for which development may be carried out in the adjoining zone, where the consent authority is satisfied that the development will not have an adverse impact on the surrounding land use or other development.

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10 Bushfire hazard

Consent must not be granted to the carrying out of development on land within the local government area of Maclean in respect of which a bushfire hazard has been identified in the *Maclean Shire Local Environmental Study 1989*, deposited in the office of the Council, unless the Council is satisfied that adequate provision has been or will be made for the reduction of bushfire hazard on the land.

11 Flood liable land

- (1) Consent must not be granted to the erection of a building or the carrying out of a work on land to which this plan applies if, in the opinion of the consent authority:
 - (a) the land is within a floodway, and
 - (b) the carrying out of the development is likely:
 - (i) to adversely impede the flow of floodwaters on that land or land in its immediate vicinity, or
 - (ii) to imperil the safety of persons on that land or land in its immediate vicinity in the event of those lands being inundated with floodwaters, or
 - (iii) to aggravate the consequence of floodwaters lying on that land or land in its immediate vicinity with regard to erosion, siltation or the destruction of vegetation, or
 - (iv) to have an adverse effect on the water table of that land or of land in its immediate vicinity.
- (2) Consent must not be granted to the erection of a dwelling on flood liable land unless the floor level of the living accommodation of the dwelling is located:
 - (a) in the case of land within Zone No 2 (a), 2 (b), 2 (t), 3 (a) or 4 (a) that is within the town of Iluka or Yamba, at least 0.3 metre above the 1 in 100 year flood level adopted by the Council, and
 - (b) in the case of all other land, at least 0.5 metre above the 1 in 100 year flood level adopted by the Council.
- (3) Where an application is received by the consent authority for consent to carry out development which affects flood mitigation works carried out by the Clarence River County Council, the consent authority shall, before determining the application:

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- (a) forward particulars of the application to the Clarence River County Council, and
 - (b) take into consideration any representations received from the Clarence River County Council in respect of the application within 21 days after the forwarding of those particulars to that County Council.

12 Development in the vicinity of waterways

- (1) Consent must not be granted to the carrying out of development for any purpose on land identified by the Council on a map kept by the Council for the purposes of this clause and within such distance as may be determined by the Council of the mean high water mark (or, where there is no mean high water mark, of the bank) of any tidal or non-tidal waterway within the local government area of Maclean.
- (2) In determining a distance for the purposes of this clause, the Council shall have regard to:
 - (a) the preservation of the scenic quality of foreshores, and
 - (b) minimising the risk of pollution of waterways, and
 - (c) the protection of foreshore ecosystems.
- (3) Nothing in subclause (1) prevents consent from being granted to the development of land referred to in subclause (1) for the purpose of a jetty, pier or similar structure capable of providing a mooring for one commercial or recreational fishing boat, agriculture (other than animal boarding, breeding or training establishments, intensive animal husbandry or poultry farming establishments), boat launching ramps, commercial fishing, drainage, picnic grounds, recreational fishing or roads.

13 Development within the coastal zone

Before granting consent for any development in the coastal zone as defined in the *NSW Coastal Policy 1997*, the consent authority must take into consideration the design and location principles as set out in Table 3 entitled “Design and Location Principles for Consideration in LEPs, DCPs and Development Control” in the *NSW Coastal Policy 1997*.

Note. The coastal zone includes a one kilometre strip along the coastline, three nautical miles seaward and all coastal rivers, lakes, lagoons, estuaries and islands. Land within one kilometre of coastal rivers, lakes, lagoons, estuaries and islands is included in the coastal zone.

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14 Foreshore building line

- (1) The Council may, by resolution, fix a line (in this clause called a *foreshore building line*) in respect of any land fronting any bay, river, creek, lake, lagoon, harbour or ocean.
- (2) A foreshore building line shall, when fixed in accordance with subclause (1), be marked on a plan or clearly described in the resolution and the plan or resolution shall be available for inspection by the public during office hours at the office of the Council.
- (3) The Council may by resolution alter or abolish any foreshore building line.
- (4) A building shall not be erected between a foreshore building line and a bay, river, creek, lake, lagoon, harbour or ocean in respect of which the line is fixed.

15 Development within river bank erosion localities

- (1) This clause applies to all land adjacent to the Clarence River, as shown edged with heavy black broken and unbroken lines on the map marked “Maclean Local Environmental Plan 1992 (Amendment No 7)”. That map is referred to in this clause as *the river bank map*.
- (2) The aims of this clause are:
 - (a) to identify land at Palmers Island fronting the Clarence River or its tributaries which is subject to a risk of major river bank erosion, and
 - (b) to restrict development on any such land, and
 - (c) to allow more detailed provisions to be made by means of a development control plan for the control of development of any such land.
- (3) A person must not carry out any development on, or subdivide, land to which this clause applies, except with development consent.
- (4) Consent must not be granted to the erection of a building on land to which this clause applies shown cross-hatched and edged with a broken black line on the river bank map.

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- (5) However, a person may, with development consent, repair or rebuild a building erected before this clause commenced on land to which subclause (4) applies, but only if the building has been partially destroyed by accident or by damage caused otherwise than by river bank erosion. If any such building is totally destroyed, its rebuilding is prohibited.
- (6) Consent may be granted to such repairing or rebuilding only if:
- (a) the total floor area of the building after it has been carried out will be no greater than its total floor area prior to the accident or damage, and
 - (b) where possible, the building will be relocated (when it is rebuilt or repaired) to a location on the land as far as is practicable from the river bank erosion escarpment, and
 - (c) the repairing or rebuilding will be carried out within 12 months after the date when the accident or damage occurred.
- (7) Consent must not be granted to the carrying out of any development on, or subdivision of, land to which this clause applies shown stippled and edged with a broken black line on the river bank map unless the consent authority has taken into consideration the following:
- (a) the likelihood of the proposed development adversely affecting, or being adversely affected by, river bank erosion and flooding,
 - (b) the need to relocate buildings in the long-term,
 - (c) the need for the proposed development to be limited to a specified period of time,
 - (d) the nature, bulk and intensity of the proposed development,
 - (e) the provisions of any development control plan relating to development of the land or other land in the locality,
 - (f) whether adequate safeguards and measures have been or will be in place to protect the environment and mitigate the risk of property damage or loss of life as a result of river bank erosion and flooding,
 - (g) whether satisfactory arrangements will be made for access, during a flood and after river bank erosion, to and from the site of any building or work resulting from the proposed development.

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- (8) A person may carry out development to protect land to which this clause applies from river bank erosion or flooding only with development consent.

16 Exempt development

- (1) Development listed in Schedule 3 is exempt development, except as provided by subclauses (2) and (3).
- (2) Development is not exempt development if it is to be carried out on land that:
- (a) is identified as being within a Special Emphasis Area (being land to which clause 39 applies), or
 - (b) is the site of any building, work, relic, place or tree that is a heritage item, or
 - (c) is an Aboriginal place under the *National Parks and Wildlife Act 1974*, or
 - (d) is within Zone No 1 (f) (the Rural (Forests) Zone), or
 - (e) is within Zone No 1 (w) (the Rural (Waterway) Zone), or
 - (f) is within Zone No 7 (a) (the Environmental Protection (Ecological Significance) Zone), or
 - (g) is within Zone No 7 (b) (the Environmental Protection (Conservation/Habitat) Zone), or
 - (h) is within Zone No 7 (c) (the Environmental Protection (Coastal Foreshore) Zone), or
 - (i) is within Zone No 8 (a) (the National Parks Zone), or
 - (j) is within Zone No 8 (b) (the Proposed National Parks Zone), or
 - (k) 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
 - (l) is an aquatic reserve declared under the *Fisheries Management Act 1994*.
- (3) Development is exempt development only if:
- (a) it complies with the relevant standards for exemption listed in Schedule 3, and
 - (b) it complies with the deemed-to-satisfy provisions of the *Building Code of Australia* relevant to the development, and

- (c) if it involves the erection of a structure, it is constructed of new materials, unless otherwise specified in the standards for exemption contained in Schedule 3, and
- (d) it does not involve the erection of any buildings or structures over an existing easement or sewer main, and
- (e) it does not contravene any conditions of any development consent applicable to the land.

Note. Section 76 (3) of the *Environmental Planning and Assessment Act 1979* says development can not be exempt development if it is carried out on land:

- (a) that is critical habitat (within the meaning of the *Threatened Species Conservation Act 1995*), or
- (b) that is within a wilderness area (within the meaning of the *Wilderness Act 1987*).

17 Complying development

- (1) Development listed in Schedule 4 is complying development, except as provided by subclauses (2) and (3).
- (2) Development is not complying development if it is to be carried out on land that:
 - (a) immediately adjoins a heritage item, or
 - (b) is an Aboriginal place under the *National Parks and Wildlife Act 1974*, or
 - (c) is within Zone No 1 (f) (the Rural (Forests) Zone), or
 - (d) is within Zone No 1 (w) (the Rural (Waterway) Zone), or
 - (e) is within Zone No 7 (a) (the Environmental Protection (Ecological Significance) Zone), or
 - (f) is within Zone No 7 (b) (the Environmental Protection (Conservation/Habitat) Zone), or
 - (g) is within Zone No 7 (c) (the Environmental Protection (Coastal Foreshore) Zone), or
 - (h) is within Zone No 8 (a) (the National Parks Zone), or
 - (i) is within Zone No 8 (b) (the Proposed National Parks Zone), or
 - (j) 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
 - (k) is an aquatic reserve declared under the *Fisheries Management Act 1994*, or

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- (l) is identified as being within a Special Emphasis Area (being land to which clause 39 applies), or
- (m) is land to which clause 15 applies (land in the area of Palmers Island village), or
- (n) is land identified on the Acid Sulfate Soils Planning Maps (being land that is subject to clause 18 of this plan), or
- (o) is land to which the *Angourie Building Height Envelope Development Control Plan* applies, or
- (p) is land within Zone No 2 (a) (the Residential (Low Density) Zone) in Pilot Street, Yamba, or
- (q) is land which was previously used as a cattle tick dip or service station or on any other contaminated site identified on a register kept by the Council.

Note. Section 76A (6) of the *Environmental Planning and Assessment Act 1979* says development can not be complying development if it is carried out on land:

- (a) that is critical habitat (within the meaning of the *Threatened Species Conservation Act 1995*), or
 - (b) that is within a wilderness area (within the meaning of the *Wilderness Act 1987*), or
 - (c) that comprises, or on which there is, an item of the environmental heritage to which an order under the *Heritage Act 1977* applies or that is identified as such an item in an environmental planning instrument, or
 - (d) that is identified as an environmentally sensitive area in the environmental planning instrument providing for the complying development.
- (3) Development is complying development only if:
- (a) it complies with the relevant development standards listed in Schedule 4, and
 - (b) it complies with the deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (c) it does not contravene any conditions of any development consent applicable to the land, and
 - (d) it does not require the removal of a tree or trees protected by a tree preservation order.

Note. Section 76A (6) of the *Environmental Planning and Assessment Act 1979* says the following development can not be complying development:

- (a) State significant development (within the meaning of that Act),
- (b) designated development (within the meaning of that Act),
- (c) any development, if consent for it requires the concurrence of a person other than the consent authority or the Director-General of National Parks and Wildlife, as referred to in section 79B (3) of that Act.

18 Development on land identified on Acid Sulfate Soils Planning Maps**(1) Consent usually required**

A person must not, without development consent, carry out works described in the following Table on land of the class specified for those works, except as provided by subclauses (3), (4) and (8).

Table

Class of land as shown on Acid Sulfate Soils Planning Maps	Works
1	Any works
2	<ul style="list-style-type: none"> • Works below natural ground surface • Works likely to lower the watertable
3	<ul style="list-style-type: none"> • Works more than 1 metre below natural ground surface • Works likely to lower the watertable to a depth of more than 1 metre below the natural ground surface
4	<ul style="list-style-type: none"> • Works more than 2 metres below natural ground surface • Works likely to lower the watertable to a depth of more than 2 metres below the natural ground surface
5	Works which are likely to lower the watertable below 1 metre AHD on the adjacent Class 1, 2, 3 or 4 land

(2) For the purposes of the Table to subclause (1), *works* includes:

- (a) any disturbance of more than one tonne of soil (such as occurs in carrying out agriculture, the construction or maintenance of drains, extractive industries, dredging, the construction of artificial waterbodies (including canals, dams and detention basins) or foundations, or flood mitigation works), or
- (b) any other works that are likely to lower the watertable.

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(3) **Exception following preliminary assessment**

This clause does not require consent for the carrying out of works if:

- (a) a copy of a preliminary assessment of the proposed works undertaken in accordance with the *Acid Sulfate Soils Assessment Guidelines* has been given to the Council, and
- (b) the Council has provided written advice to the person proposing to carry out the works confirming that the results of the preliminary assessment indicate the proposed works do not require the preparation of a management plan prepared in accordance with the *Acid Sulfate Soils Assessment Guidelines*.

(4) **Exception for cane land**

In the case of land used for the cultivation of cane, this clause does not require consent for the carrying out of works if:

- (a) a “Production Area Entitlement” with the NSW Sugar Milling Cooperative Ltd applies to this land at the time of carrying out the works, and
- (b) the works are carried out in accordance with a drainage management plan lodged with and endorsed by the NSW Sugar Milling Cooperative Ltd, and
- (c) the drainage management plan has been prepared in accordance with the *Sugar Industry Best Practice Guidelines*, a copy of which is available from the office of the Council, and
- (d) the *Sugar Industry Best Practice Guidelines* have been approved by the Director in consultation with the NSW Acid Sulfate Soils Management Advisory Committee (ASSMAC) and the Department of Agriculture and have been adopted by the Council, and
- (e) the works are not carried out on any land within Zone No 7 (a) (the Environmental Protection (Ecological Significance) Zone) or land identified as a Special Emphasis Area (being land to which clause 39 applies), and
- (f) the Council has not served a notice on the person carrying out or using the works, or published a notice in a newspaper circulating in the locality of the works, requiring that the carrying out or use of the works must cease or that development consent must be obtained prior to the carrying out or further use of the works.

- (5) An annual review of drainage management plans and works to which subclause (4) relates is to be carried out by NSW Sugar Milling Cooperative Limited to a standard satisfactory to the Council and the Cooperative is to provide the Council with a copy of the results of the review immediately after it has been carried out. The Council may issue a notice under subclause (4) (f) relating to any one or more of those works if either of those requirements is not complied with.
- (6) **Considerations for consent authority**
A consent required by this clause must not be granted unless the consent authority has considered:
- (a) the adequacy of an acid sulfate soils management plan prepared for the proposed development in accordance with the *Acid Sulfate Soils Assessment Guidelines*, and
 - (b) the likelihood of the proposed development resulting in the discharge of acid water, and
 - (c) any comments received from the Department of Land and Water Conservation within 21 days of the consent authority having sent that Department a copy of the development application and the related acid sulfate soils management plan.
- (7) **Public authorities**
This clause requires consent for development to be carried out by councils, county councils or drainage unions notwithstanding:
- (a) the provisions of clause 35 of the *Environmental Planning and Assessment Model Provisions 1980*, as adopted by this plan, and
 - (b) clause 10 of *State Environmental Planning Policy No 4—Development Without Consent*.
- (8) **Special provisions for Council and county councils**
Regardless of the provisions of subclause (7), the following types of development may be carried out by the Council or a county council without development consent:
- (a) development consisting of emergency work, and
 - (b) development consisting of routine maintenance, and
 - (c) development consisting of minor work,
- and development ancillary to that development, such as the carrying out of excavation work, the construction of accessways and the provision of power supplies.

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(9) Where the Council or a county council carries out development described in subclause (8) and encounters, or is reasonably likely to encounter, acid sulfate soils or potential acid sulfate soils, the Council or county council shall properly deal with those soils in accordance with the *Acid Sulfate Soils Assessment Guidelines* so as to minimise the actual or potential impact to the environment arising from the disturbance of the soils.

(10) In this clause:

Council's works means such works as are owned or controlled by the Council.

county council has the same meaning as in the *Local Government Act 1993*.

emergency work means the repair or replacement of any part of the Council's works or the works of a county council:

- (a) because it has been (or is being) damaged by a natural disaster, an accident, an act of vandalism or a like occurrence, or
- (b) because it has ceased to function or suddenly ceased to function adequately,

and includes work reasonably necessary to prevent or limit any further damage or malfunction.

minor work means new work carried out by the Council or a county council, but not drainage work, which has a value of less than \$20,000.

routine maintenance means the periodic inspection, cleaning, repair and replacement of the Council's works or the works of a county council, but does not include work that would result in an increase in the design capacity of any part of those works or necessitate the deepening of the capacity of existing works, except where one tonne, or less, of soil is disturbed.

works of a county council means such works as are owned or controlled by a county council.

19 Development along main or arterial roads

(1) Where land has a frontage to a main or arterial road indicated on the map, consent must not be granted to the carrying out of the following development on the land:

- (a) development for the purpose of:
- boarding-houses, bulk stores, car repair stations, caravan parks, commercial premises, educational establishments, hospitals, hotels, industries (other than home or rural industries), institutions, junk yards, liquid fuel depots, mines, motels, motor showrooms, offensive or hazardous industries, places of assembly, places of public worship, recreation establishments, recreation facilities, refreshment rooms, residential flat buildings, retail plant nurseries, roadside stalls (except for a roadside stall fronting a main or arterial road which is not a State highway or within 200 metres of a State highway), sawmills, service stations, shops, stock and sales yards, taverns, timber yards, transport terminals, warehouses—unless access to the land is to be provided to a road other than the main or arterial road and the access to that road is located in excess of 90 metres (measured along the road alignment of the connecting road) from the alignment of the arterial road,
- (b) a subdivision, where access is intended onto the main or arterial road, except that (subject to subclause (3)) consent may be granted where no other alternative access is available and, if the main or arterial road is controlled by the RTA, the consent authority has received the concurrence of the Chief Executive of the RTA and taken into consideration the Chief Executive's comments,
- (c) development for the purpose of advertisements and advertising structures, except that consent may be granted to:
- (i) the erection on land of an advertising structure displaying notices relating only to the purpose for which the land is used, or
 - (ii) the display of advertisements and the erection of advertising structures on land identified by the Council (after consultation with the RTA where the main or arterial road is controlled by the RTA) as suitable. Such advertising may only relate to the purpose of directing the travelling public to tourist areas or tourist facilities, and may include the advertisement of community services and community facilities relevant to the tourist.

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- (2) In deciding whether to grant concurrence under subclause (1) (b), the Chief Executive of the RTA shall take into consideration:
- (a) whether the development by its nature, intensity or the volume and type of traffic likely to be generated is likely to constitute a traffic hazard or to materially reduce the capacity and efficiency of the main or arterial road to carry traffic, and
 - (b) whether the development is of a type, whether or not related to the characteristics of the land on which it is proposed to be carried out, that justifies a location in proximity to a main or arterial road, and
 - (c) whether the location, standard and design of access points, and on-site arrangements for vehicle movement and parking, ensure that through traffic movements on the main or arterial road will not be impeded, and
 - (d) the extent to which the development might prejudice future improvements or realignment of the main or arterial road.
- (3) In determining any application for consent to carry out development on land which has a frontage to a main or arterial road, the consent authority shall have regard, without limiting the matters specified in section 79C of the Act, to the following principles:
- (a) Development should be of a type compatible with the maintenance and enhancement (as far as is practicable) of the existing scenic character of the locality.
 - (b) Development should not generate significant additional traffic or create or increase ribbon development directly along the main or arterial road, relative to the capacity and safety of the road.
 - (c) The creation of vehicular access to the main or arterial road should be minimised and, where no alternative exists, the location and treatment of the access should minimise potential traffic hazards.
 - (d) Any buildings should be sited and designed to be of an appropriate scale, so as to maintain the character of the area, to minimise disturbance to the landscape, not to intrude into the skyline, and to maintain overall building development that is consistent with the character of the area.

- (e) Any building should be set back from the nearest alignment of the main or arterial road at a distance to be determined by the consent authority having regard to:
 - (i) the nature, scale and function of the building, and
 - (ii) the maximisation of sight distance for drivers, including visibility of points of access, and
 - (iii) the minimisation of distractions to drivers, and
 - (iv) any possible future need to alter the road alignment.

20 Guesthouse development along main or arterial roads

- (1) This clause applies to development for the purpose of a guesthouse on land having frontage to a main or arterial road:
 - (a) where the land abuts a road with a speed limit greater than 80 kilometres per hour, or
 - (b) where the land abuts a road with a speed limit of 80 or less kilometres per hour and:
 - (i) the guesthouse has a total floor area exceeding 300 square metres, or
 - (ii) the guesthouse can ordinarily accommodate more than 12 persons (residents and guests) at any one time.
- (2) Consent may be granted to the carrying out of development for the purpose of a guesthouse on land to which this clause applies only if access to the land is to be provided to a road other than the main or arterial road and the access to that road is located in excess of 90 metres (measured along the road alignment of the connecting road) from the alignment of the main or arterial road.
- (3) In this clause:

guesthouse means a house used to provide travellers with sleeping accommodation and meals, commonly in the style of an overnight bed and breakfast establishment.

21 Acquisition of land for road purposes

- (1) The owner of land:
 - (a) indicated on the map by medium grey shading, or
 - (b) indicated on the map by horizontal and vertical cross-hatching, and extending as road widening or relocation between Oyster Channel and Coldstream Street, Yamba,

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may, by notice in writing, require:

- (c) in the case of land referred to in paragraph (a), the RTA, or
 - (d) in the case of land referred to in paragraph (b), the Council, to acquire the land.
- (2) On receipt of a notice relating to land referred to in subclause (1) the public authority concerned shall acquire the land.
- (3) On receipt of a notice relating to land referred to in subclause (1) (a), the RTA must acquire the land if:
- (a) the land is vacant, or
 - (b) the land is not vacant but:
 - (i) the land is included in the 5-year works program of the RTA current at the time of receipt of the notice, or
 - (ii) the RTA has decided not to give concurrence under subclause (4) to an application for consent to the carrying out of development on the land, or
 - (iii) the RTA is of the opinion that the owner of the land will suffer hardship if the land is not acquired within a reasonable time,
- but the RTA is not required to acquire the land if it might reasonably be required to be dedicated for a public road.
- (4) Before its acquisition by the RTA, a person may, with development consent granted with the concurrence of the RTA, carry out development on land referred to in subclause (1) (a):
- (a) for a purpose for which development may be carried out on land in an adjoining zone, or
 - (b) for any other purpose which is compatible with development which may be carried out in an adjoining zone.
- (5) In deciding whether to grant concurrence to the carrying out of development in accordance with this clause, the RTA must take the following matters into consideration:
- (a) the need to carry out development on the land for the purposes for which the road is reserved,
 - (b) the imminence of acquisition,
 - (c) the likely additional cost to the RTA resulting from the carrying out of the development.

-
- (6) Land referred to in subclause (1) (a) or (1) (b) and acquired under this clause may be developed with development consent, for any purpose, until such time as it is required for the purpose for which it was acquired.
- (7) The Council is not required to acquire land, the subject of a notice referred to in subclause (1), if the land is required to be dedicated to the Council as a condition of an existing development consent or subdivision approval.
- (8) Where, in the opinion of the Council, development cannot be carried out on land referred to in subclause (1) (b) for road purposes within a reasonable time after the appointed day, consent may be granted to the carrying out of development on the land for any other purpose.
- (9) Nothing in subclause (2) requires the Council to acquire land referred to in subclause (1) (b) while a consent is in force to the carrying out of development on that land.
- (10) Notwithstanding subclause (2) and without affecting subclauses (7), (8) and (9), the Council is not required to acquire land the subject of a notice referred to in subclause (1) unless:
- (a) a development application has, since the land last became subject to this clause, been made in respect of the land, and
 - (b) the development the subject of the development application consists of development for a purpose for which development could have been carried out on the land (whether or not with development consent) immediately before the land last became subject to this clause, and
 - (c) the Council has refused its consent to the development application.
- (11) In this clause:
- RTA** means the Roads and Traffic Authority constituted under the *Transport Administration Act 1988*.
- vacant land** means land on which, immediately before the day on which a notice under subclause (1) is given, there were no buildings, other than fences.

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Part 1 Preliminary

22 Development for certain additional purposes permitted on specific land

Nothing in this plan prevents a person, with development consent, from carrying out development on land referred to in Schedule 2 and identified on the map marked “Maclean Local Environmental Plan 2001 (Schedule 2 properties)” if the development is specified in relation to that land in that Schedule, subject to such conditions, if any, as are so specified.

23 Classification and reclassification of public land as operational land

The public land described in Schedule 5 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*.

24 Zones indicated on the map

The following zones apply as identified on the map:

Rural Zones

Zone No 1 (a), Rural (Agricultural Protection) Zone—uncoloured with heavy black edging and lettered “1 (a)”.

Zone No 1 (b), Rural (General Rural Land) Zone—uncoloured with heavy black edging and lettered “1 (b)”.

Zone No 1 (f), Rural (Forests) Zone—uncoloured with heavy black edging and lettered “1 (f)”.

Zone No 1 (i), Rural (Investigation) Zone—uncoloured with heavy black edging and lettered “1 (i)”.

Zone No 1 (r), Rural (Residential) Zone—uncoloured with heavy black edging and lettered “1 (r)”.

Zone No 1 (s), Rural (Small Holdings) Zone—uncoloured with heavy black edging and lettered “1 (s)”.

Zone No 1 (t), Rural (Tourist) Zone—uncoloured with heavy black edging and lettered “1 (t)”.

Zone No 1 (w), Rural (Waterway) Zone—uncoloured with heavy black edging and lettered “1 (w)”.

Residential Zones

Zone No 2 (a), Residential (Low Density) Zone—uncoloured with heavy black edging and lettered “2 (a)”.

Zone No 2 (b), Residential (Medium Density) Zone—uncoloured with heavy black edging and lettered “2 (b)”.

Zone No 2 (t), Residential (Tourism) Zone—uncoloured with heavy black edging and lettered “2 (t)”.

Business Zone

Zone No 3 (a), Business Zone—uncoloured with heavy black edging and lettered “3 (a)”.

Industrial Zone

Zone No 4 (a), Industrial Zone—uncoloured with heavy black edging and lettered “4 (a)”.

Special Uses Zone

Zone No 5 (a), Special Uses Zone—uncoloured with heavy black edging and lettered “5 (a)”.

Open Space Zones

Zone No 6 (a), Open Space Zone—uncoloured with heavy black edging and lettered “6 (a)”.

Zone No 6 (b), Proposed Open Space Zone—uncoloured with heavy black edging and lettered “6 (b)”.

Zone No 6 (c), Open Space Buffer Zone—uncoloured with heavy black edging and lettered “6 (c)”.

Environmental Protection Zones

Zone No 7 (a), Environmental Protection (Ecological Significance) Zone—uncoloured with heavy black edging and lettered “7 (a)”.

Zone No 7 (b), Environmental Protection (Conservation/Habitat) Zone—uncoloured with heavy black edging and lettered “7 (b)”.

Zone No 7 (c), Environmental Protection (Coastal Foreshore) Zone—uncoloured with heavy black edging and lettered “7 (c)”.

Zone No 7 (e), Environmental Protection (Escarpment/Scenic) Zone—uncoloured with heavy black edging and lettered “7 (e)”.

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Part 1 Preliminary

National Parks Zones

Zone No 8 (a), National Parks Zone—uncoloured with heavy black edging and lettered “8 (a)”.

Zone No 8 (b), Proposed National Parks Zone—uncoloured with heavy black edging and lettered “8 (b)”.

Part 2 Heritage items

25 Heritage items

The aims of this Part are:

- (a) to conserve the environmental heritage of the local government area of Maclean, and
- (b) to integrate heritage conservation into the planning and development control processes, and
- (c) to provide for public involvement in the matters relating to the conservation of the area's environmental heritage, and
- (d) to ensure that new development is undertaken in a manner that is sympathetic to and does not detract from the heritage significance of heritage items and their settings, as well as streetscapes and landscapes of the area and the distinctive character that they impart to the area.

26 Development control of heritage items

- (1) A person shall not, in respect of a building, work, relic, place or tree that is a heritage item:
 - (a) demolish or alter the building or work, or
 - (b) damage or move the relic or excavate for the purpose of exposing the relic, or
 - (c) damage or despoil the place or tree, or
 - (d) erect a building on or subdivide land on which the building, work or relic is situated or that comprises the place, or
 - (e) damage any tree on land on which the building, work or relic is situated or on the land which comprises the place,except with development consent.
- (2) Consent must not be granted to a development application required by subclause (1) unless the consent authority 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 of its setting.

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Clause 26 Maclean Local Environmental Plan 2001

Part 2 Heritage items

- (3) The consent authority may decline to grant a consent required by subclause (1) unless it has considered a conservation plan to enable it to fully consider the heritage significance of the item and the impact of the proposed development on the significance of the item and its setting.
- (4) Notwithstanding subclause (1), development consent shall not be required for:
 - (a) routine lopping and maintenance of trees, or
 - (b) removal of trees for reasons of public safety, or
 - (c) ancillary removal of native vegetation.

27 Development in the vicinity of heritage items

Consent must not be granted to an application to carry out development on land in the vicinity of a heritage item unless the consent authority has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.

28 Conservation incentives relating to heritage items

- (1) Nothing in this plan prevents consent being granted to the use of a building that is a heritage item or of the land on which any such building is erected, where the consent authority is satisfied that:
 - (a) the use would have little or no adverse effect on the amenity of the area, and
 - (b) conservation of the building depends on granting consent as referred to in this subclause.
- (2) When considering an application for consent to erect a building on land on which there is situated a building which is a heritage item, the consent authority may:
 - (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,

exclude from its calculation of the floor space of the buildings erected on the land the floor space of the item, but only if the consent authority is satisfied that the conservation of the building depends on its granting the exclusion.

- (3) Nothing in this plan prevents consent being granted to the subdivision of an allotment of land which is within a rural zone and which contains a building or structure which is a heritage item so as to create, around the item, an allotment which has an area of not more than 2,000 square metres if the consent authority is satisfied that the subdivision will assist conservation of the heritage item.

29 Heritage advertisements and notifications

- (1) Except as provided by subclause (2):
- (a) the following is advertised development—the demolition of a building or work that is a heritage item and a use of a building or land referred to in clause 28 that, but for that clause, would be prohibited under this plan, and
 - (b) where a person makes an application for consent to demolish a building or work that is a heritage item, the consent must not be granted until 28 days after the consent authority has notified the Secretary of the Heritage Council of its intention to do so.
- (2) Subclause (1) does not apply to the partial demolition of a heritage item or a building or work within a heritage conservation area if, in the opinion of the consent authority, the partial demolition will be of a minor nature and will not adversely affect the heritage significance of the heritage item, building or work in relation to the environmental heritage of the local government area of Maclean.

30 Aboriginal conservation areas

- (1) The Council shall maintain a register of Aboriginal conservation areas and relics as notified to the Council from time to time by the National Parks and Wildlife Service, where the Service has previously notified the property owner involved.
- (2) The Aboriginal conservation areas and relics identified in the report prepared by Denis Byrne, MA, MAACAI, and entitled “Aboriginal Archaeological Sites in the Shire of Maclean: A Heritage Study” are to be included in that register.
- (3) An application for consent to carry out development, on land identified in Map 1 or 2 of the publication referred to in subclause (2) as being an Aboriginal archaeological site or within an Archaeological Management Class 1 area, must not be granted until the consent authority has considered:

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Clause 30 Maclean Local Environmental Plan 2001

Part 2 Heritage items

- (a) a conservation plan which includes an assessment of how the proposed development would affect the conservation of the item, and
 - (b) if the carrying out of the development is required to be authorised by an excavation permit under Division 9 of Part 6 of the *Heritage Act 1977*, a copy of such a permit authorising the carrying out of the development.
- (4) Clauses 26 and 29 do not apply to a building, work, relic or place that is a heritage item if it is the subject of an interim heritage order within the meaning of the *Heritage Act 1977*.

Part 3 Rural zone provisions

31 Rural zones applying in this plan, zone objectives and development control table

- (1) The following rural zones apply as identified on the map:
 - 1 (a) Rural (Agricultural Protection)
 - 1 (b) Rural (General Rural Land)
 - 1 (f) Rural (Forests)
 - 1 (i) Rural (Investigation)
 - 1 (r) Rural (Residential)
 - 1 (s) Rural (Small Holdings)
 - 1 (t) Rural (Tourist)
 - 1 (w) Rural (Waterway)
- (2) The aims of a zone are set out in the Table to this clause under the heading "Aim of zone".
- (3) The objectives 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.
- (4) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the development:
 - (a) that may be carried out without development consent, and
 - (b) that may be carried out only with development consent, and
 - (c) that is prohibited,
 is specified in that Table under the headings "Without development consent", "Only with development consent" and "Prohibited", respectively, appearing in the matter relating to the zone.
- (5) Except as otherwise provided by this plan, consent must not be granted to the carrying out of development on land to which this plan applies unless the consent authority is satisfied that the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

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Clause 31 Maclean Local Environmental Plan 2001

Part 3 Rural zone provisions

Table

Zone No 1 (a) Rural (Agricultural Protection) Zone

1 Aim of zone

The primary aims of this zone are to protect, reserve and encourage the use of land in this zone for agriculture and uses compatible with agriculture.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to conserve the productive potential of prime crop or pasture land, and
- (b) to provide for new forms of agricultural development, and changing patterns of existing agricultural development, and
- (c) to ensure that commercial farming is not affected adversely by incompatible uses which impair its long term sustainability, and
- (d) to avoid degradation and alienation of prime agricultural land, and
- (e) to enable rural tourism, which does not adversely affect the productive potential of the land, and
- (f) to exclude urban development on all prime crop or pasture land, and
- (g) to restrict the subdivision of prime crop or pasture land, and
- (h) to encourage conservation in farming practices, and
- (i) to control the clearing of vegetation and encourage the retention of vegetation.

3 Without development consent

Development for the purpose of:

agriculture (other than intensive animal husbandry); ancillary removal of native vegetation; bushfire control; clearing not included in item 4; dams with a capacity of 2 megalitres or less, or dams requiring licensing under Part 2 of the *Water Act 1912*; flood mitigation works; forestry; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

aquaculture; bus stations; clear felling; clearing allowed only with consent under clause 40; cluster farming; dams not included in item 3; duplexes; dwelling houses; general stores; home industries; intensive animal husbandry; liquid fuel depots; professional consulting rooms; roadside stalls; rural industries; rural tourist facilities; rural workers' dwellings.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:

caravan parks; commercial premises; educational establishments; institutions; motor showrooms; places of assembly; recreation vehicle areas; residential flat buildings; shops (other than general stores); taverns; total destination resorts; tourist facilities; transport terminals; units for aged persons; warehouses.

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Part 3 Rural zone provisions

Zone No 1 (b) Rural (General Rural Land) Zone

1 Aim of zone

The primary aims of this zone are to reserve rural land and encourage the use of rural land in this zone for agriculture and for uses compatible with agriculture.

2 Objectives of zone

The objectives are:

- (a) to conserve the productive potential of rural land, and
- (b) to provide for new forms of agricultural development, and changing patterns of existing agricultural development, and
- (c) to restrict the subdivision of agricultural land to ensure that suitable land is not withdrawn from production and that the potential for land to be productive is not diminished, and
- (d) to enable rural tourism, which does not adversely affect the productive potential of the land, and
- (e) to exclude urban development, and
- (f) to encourage conservation in farming practices, and
- (g) to control the clearing of vegetation and encourage the retention of vegetation.

3 Without development consent

Development for the purpose of:

agriculture (other than intensive animal husbandry); ancillary removal of native vegetation; bushfire control; clearing not included in item 4; dams with a capacity of 2 megalitres or less, or dams requiring licensing under Part 2 of the *Water Act 1912*; flood mitigation works; forestry; horticulture; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

aquaculture; bus stations; caravan parks; clear felling; clearing allowed with consent under clause 40; cluster farming; community development; dams not included in item 3; duplexes; dwelling houses; environmental education facilities; extractive industries; general stores; home industries; industries; intensive animal husbandry; liquid fuel depots; mineral sand mining; mining; professional consulting rooms; public buildings; recreation development; recreation establishments; recreation facilities; roadside stalls; rural industries; rural tourist facilities; rural workers' dwellings; sawmills; stock and sale yards; transport terminals.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:

car repair stations; commercial premises; institutions; junk yards; motor showrooms; offensive or hazardous industries; residential flat buildings; shops (other than general stores); taverns; total destination resorts; tourist facilities; units for aged persons.

Zone No 1 (f) Rural (Forests) Zone

1 Aim of zone

The primary aim of this zone is to set aside land which is reserved under the *Forestry Act 1916*.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to enable the development of land within this zone for forestry purposes, and

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Part 3 Rural zone provisions

- (b) to enable the development of land for other purposes where it can be demonstrated by the applicant that suitable land or buildings for the proposed purposes are not available elsewhere and that such purposes will not detrimentally affect forestry operations or nearby land.

3 Without development consent

Development for the purpose of:

agriculture (other than horticulture or intensive animal husbandry); any land use authorised by or under the *Forestry Act 1916* and any ancillary or incidental land use; bus stops; bushfire control; dams with a capacity of 2 megalitres or less, or dams requiring licensing under Part 2 of the *Water Act 1912*; flood mitigation works; public utility undertakings.

Exempt development.

4 Only with development consent

Development that will not adversely affect the usefulness of the land for the purposes of forestry.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Any development not included in item 3 or 4.

Zone No 1 (i) Rural (Investigation) Zone

1 Aim of zone

The primary aim of this zone is to set aside land which may be needed in the future for various uses and will be investigated with respect to its suitability and the environmental consequences associated with the release of the land for any particular use.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to prohibit development which could prejudice the possible future release of land within this zone for conservation or other purposes prior to carrying out detailed investigations, and
- (b) to permit development where it can be demonstrated by the applicant that suitable land or buildings for the proposed development are not available elsewhere and that such development would not detrimentally affect the potential for the land to be rezoned, or the nature of nearby land.

3 Without development consent

Development for the purpose of:

agriculture (other than intensive animal husbandry); ancillary removal of native vegetation; bushfire control; dams with a capacity of 2 megalitres or less, or dams requiring licensing under Part 2 of the *Water Act 1912*; flood mitigation works; forestry; horticulture; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

clearing allowed with consent under clause 40; dwelling houses; home industries; rural workers' dwellings.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

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Part 3 Rural zone provisions

5 Prohibited

Development for the purpose of:

bulk stores; industries (other than home industries or rural industries); intensive animal husbandry; liquid fuel depots; motor showrooms; offensive or hazardous industries; sawmills, not including sawmills operated as portable and temporary mills; total destination resorts; tourist facilities; warehouses.

Zone No 1 (r) Rural (Residential) Zone

1 Aim of zone

The primary aim of this zone is to provide suitable rural land where residential development may occur.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to encourage development for the purpose of closer rural settlement on land which is suitable for such a purpose, and
- (b) to ensure that development maintains the rural character of the locality and minimises disturbance to the landscape through construction of buildings and structures, clearing, earthworks and access roads, and
- (c) to enable a range of activities and land uses associated with the residential occupation of land, and
- (d) to discourage or prohibit development not compatible with the predominantly rural nature of the zone, and
- (e) to encourage rural-residential subdivision which does not place unreasonable and uneconomic demands on the provision or extension of services and facilities, and
- (f) to adequately protect any areas or sites of conservation value and provide vegetation and fauna corridors.

3 Without development consent

Development for the purpose of:

agriculture (other than intensive animal husbandry or horticulture); ancillary removal of native vegetation; bushfire control; clearing not included in item 4; dams with a capacity of 1 megalitre or less, or dams requiring licensing under Part 2 of the *Water Act 1912*; flood mitigation works; forestry; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

boarding-houses; bus stations; child care centres; clear felling; clearing allowed only with consent under clause 40; community centres; community development; dams not included in item 3; duplexes; dwelling houses; general stores; home industries; neighbourhood centres; professional consulting rooms; public buildings; recreation development; recreation establishments; recreation facilities; retail plant nurseries; roadside stalls; rural industries; rural tourist facilities; rural workers' dwellings.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:

bulk stores; industries (other than home industries or rural industries); intensive animal husbandry; liquid fuel depots; motor showrooms; offensive or hazardous industries; sawmills, not including sawmills operated as portable and temporary mills; taverns; total destination resorts; tourist facilities; warehouses.

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Part 3 Rural zone provisions

Zone No 1 (s) Rural (Small Holdings) Zone

1 Aim of zone

The primary aim of this zone is to provide suitable rural land where small holdings may be developed in either close proximity to rural-residential subdivision or in areas some distance from rural villages or towns within the local government area of Maclean.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to encourage development for the purpose of closer rural settlement on lots of a size suitable for small-scale rural activities, and
- (b) to ensure that development maintains the rural character of the locality and minimises disturbance to the landscape through construction of buildings and structures, clearing, earthworks and access roads, and
- (c) to enable a range of activities and land uses associated with small-scale rural activities, and
- (d) to discourage or prohibit development not compatible with the predominantly rural nature of the zone, and
- (e) to encourage small-scale rural subdivision which does not place unreasonable and uneconomic demands on the provision or extension of services and facilities, and
- (f) to adequately protect any areas or sites of conservation value and provide vegetation and fauna corridors.

3 Without development consent

Development for the purpose of:

agriculture (other than intensive animal husbandry or horticulture); ancillary removal of native vegetation; bushfire control; clearing not included in item 4; dams with a capacity of 1 megalitre or less, or dams requiring licensing under Part 2 of the *Water Act 1912*; flood mitigation works; forestry; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

boarding-houses; bus stations; child care centres; clear felling; clearing allowed only with consent under clause 40; community centres; community development; dams not included in item 3; duplexes; dwelling houses; general stores; home industries; neighbourhood centres; professional consulting rooms; public buildings; recreation development; recreation establishments; recreation facilities; retail plant nurseries; roadside stalls; rural industries; rural tourist facilities; rural workers' dwellings.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:

car repair stations; intensive animal husbandry; junk yards; offensive or hazardous industries; motor showrooms; sawmills not including sawmills operated as portable and temporary mills; taverns; total destination resorts; tourist facilities.

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Part 3 Rural zone provisions

Zone No 1 (t) Rural (Tourist) Zone

1 Aim of zone

The primary aim of this zone is to promote tourism as a major contributor to the diversification and strength of the local government area of Maclean.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to encourage tourism activity that will complement the existing natural and constructed features of the area and be of benefit to the area's economy, and
- (b) to encourage a range of tourist facilities in the area in localities where it would not result in the degradation of environmental or agricultural features of the area, and
- (c) to encourage the location of tourist facilities so that they may benefit from existing road services, physical service infrastructure, other tourist attractions, natural features and urban facilities, and
- (d) to permit tourism development and uses associated with, ancillary to, or supportive of, tourism development, including retailing and service facilities where such facilities are an integral part of the tourism development and are of a scale appropriate to the needs of that development.

3 Without development consent

Development for the purpose of:

agriculture (other than intensive animal husbandry or horticulture); ancillary removal of native vegetation; bushfire control; clearing not included in item 4; dams having a capacity of 1 megalitre or less, or dams requiring licensing under Part 2 of the *Water Act 1912*; flood mitigation works; forestry; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

boarding-houses; bus stations; caravan parks; child care centres; clear felling; clearing allowed only with consent under clause 40; clubs; commercial premises; community development; dams not included in item 3; dredging; duplexes; dwelling houses; environmental education facilities; helipads; heliports; horticulture; hotels; maintenance dredging; marinas; motels; neighbourhood centres; public buildings; recreation development; recreation establishments; recreation facilities; serviced apartments; shops; taverns; tourist facilities.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:

aquaculture; bulk stores; extractive industries; industries; intensive animal husbandry; junk yards; liquid fuel depots; motor showrooms; offensive or hazardous industries; rural industries; sawmills, not including sawmills operated as portable and temporary mills; stock and sale yards; total destination resorts; warehouses.

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Part 3 Rural zone provisions

Zone No 1 (w) Rural (Waterway) Zone

1 Aim of zone

The primary aim of this zone is to identify and protect land which constitutes a fish habitat.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to enable the development of land within this zone for recreational and commercial fishing purposes on sound ecological principles, and
- (b) to enable the carrying out of works related to the commercial and recreational fishing use of the Clarence River and its tributaries, and
- (c) to enable the carrying out of public utility undertakings, being water transport undertakings or wharf or river undertakings, and
- (d) to enable the recreational use of the Clarence River and its tributaries within this zone, and
- (e) to protect the ecological and aesthetic values of waterways within this zone, and
- (f) to enable tourism and other commercial activities which will have no detrimental impact on the ecological and aesthetic values of waterways within this zone.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; commercial fishing; flood mitigation works; jetties with a maximum of 2 vessels used for private use; maintenance dredging; public utility undertakings; recreational fishing; water based recreational uses (except water based recreational activities involving the use of hired equipment other than boats hired for recreational fishing purposes).

4 Only with development consent

Any development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Nil.

32 Subdivision of land within rural zones

- (1) This clause applies to the subdivision of land within Zone No 1 (a), 1 (b) or 1 (i).
- (2) In the case of land within Zone No 1 (a), 1 (b) or 1 (i) that the consent authority is satisfied will be used for the purpose of commercial farming or aquaculture, the minimum area of land capable of being used for those purposes within each allotment to be created by the subdivision is to be not less than:
 - (a) 50 hectares, if the allotment is to be used for agriculture, and
 - (b) 20 hectares, if the allotment is to be used for aquaculture, and
 - (c) 40 hectares, if the allotment is to be used for sugarcane farming.
- (3) Notwithstanding subclause (2), consent may be granted to the adjustment of the boundaries between two lots on land in Zone No 1 (a) or 1 (b) to create one small and one large lot provided:
 - (a) no additional allotments are created, and
 - (b) no additional dwelling entitlements are created, and
 - (c) at the time of the subdivision under this subclause, a dwelling house exists on the land comprising the smaller allotment to be created, and
 - (d) it can be demonstrated that the subdivision will result in an increase in the potential agricultural productivity or economic viability of the land overall, and
 - (e) the land comprising the larger lot to be created by the subdivision is and will, after the subdivision, be required to be used for the purpose of commercial farming or aquaculture, and
 - (f) one allotment created by the subdivision meets the requirements of subclause (2), and

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- (g) one allotment created under the provisions of this subclause has an area of no more than 1.5 hectares, and
 - (h) a minimum buffer of 50 metres exists between the dwelling house on the smaller lot and any boundary with any property used for agriculture or aquaculture, and
 - (i) the subdivision is not of an allotment already created under this subclause.
- (4) In deciding whether to grant consent to a subdivision to which this clause applies, the consent authority shall take the following matters into consideration:
- (a) the area and quality of each proposed allotment and its potential agricultural productivity,
 - (b) the likely effects (both economic and otherwise) that the proposed subdivision will have on agricultural industries in the locality and the resources employed by or in connection with those industries,
 - (c) the likely effects (both economic and otherwise) that the proposed subdivision will have on the use and development of other land and resources in the locality,
 - (d) whether there are any reasonable alternatives to the proposed subdivision in the circumstances,
 - (e) the effect of the existence of, or the erection of, a dwelling,
 - (f) the cumulative effect of similar proposals if consent is granted for allotments that comply with subclause (2),
 - (g) the likelihood of each proposed allotment remaining available for efficient agricultural use,
 - (h) any relevant matter established by a development control plan that applies to the land,
 - (i) the availability of access and the provision of services to each proposed allotment.

33 Subdivision of land within two or more zones

- (1) If an allotment of land is partly within a rural zone and partly within an environmental protection zone, consent may be granted to a subdivision of the allotment only if:
- (a) the requirements for subdivision in the rural zone are met for the land within that zone, and

-
- (b) any building to be erected on the land is located within the rural zone, or on an allotment of not less than 100 hectares in an environmental protection zone.
- (2) If an allotment of land is partly within a rural zone and partly within an environmental protection zone, consent must not be granted to a subdivision of the land which creates an allotment wholly within an environmental protection zone unless:
 - (a) the allotment created has an area of not less than 100 hectares, and
 - (b) the consent authority has taken the matters listed in clause 58 (3) into consideration.
 - (3) If an allotment of land is partly within a rural zone and partly within a residential zone, consent may be granted to a subdivision of the allotment only if:
 - (a) the requirements for subdivision in the residential zone are met for the land within that zone, and
 - (b) any building to be erected on the land is located within the residential zone, or on an allotment that complies with clause 32 (2) within a rural zone.
 - (4) If an allotment of land is partly within a rural zone and partly within a residential zone, consent must not be granted to a subdivision of land which creates an allotment wholly within a rural zone unless:
 - (a) the allotment created satisfies the requirements of clause 32 for allotments in rural zones, and
 - (b) the consent authority has taken the matters listed in clause 32 (4) into consideration.
- 34 Subdivision in rural zones otherwise than for the purpose of commercial farming, dwelling houses, duplexes, forestry or rural workers' dwellings**
- Where land within a rural zone:
- (a) was lawfully used before the appointed day for a purpose other than commercial farming, a dwelling house, a duplex, forestry or a rural worker's dwelling, or

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- (b) may be lawfully used for a purpose other than commercial farming, a dwelling house, a duplex, forestry or a rural worker's dwelling by reason of a development consent granted in respect of that use,

consent may be granted to the subdivision of that land if the consent authority is satisfied that the allotment created by the subdivision will be used for the purpose for which it was lawfully used before the appointed day or allowed by the consent.

35 Subdivision of land within Zones Nos 1 (r) and 1 (s)

- (1) Consent may be granted to the subdivision of land in Zone No 1 (r) or 1 (s) only where the consent authority is satisfied that the land is capable of being used for the purpose of erecting a dwelling house or a duplex and the area of the allotment to be created by the subdivision is not less than:
 - (a) 4,000 square metres within Zone No 1 (r), or
 - (b) 1.5 hectares within Zone No 1 (s).
- (2) The total number of lots created under this clause in any five year period shall not exceed the number specified by the Council and agreed to by the Director in accordance with the *Maclean Shire Council Land Release Strategy*, a copy of which is deposited in the office of the Council.

36 Dwelling houses and duplexes in rural zones

Consent must not be granted to the erection of a dwelling house or a duplex on an allotment of land in a rural zone unless that allotment:

- (a) has an area of not less than 40 hectares, or
- (b) comprises an allotment created by a subdivision in accordance with clause 32, 33 or 35, or
- (c) comprises an allotment on which a dwelling house could have been erected immediately prior to the appointed day and which could have been created in accordance with the provisions of clause 32, 33 or 35 if those provisions were in force at the time that the allotment was created, or
- (d) comprises an allotment of land that was consented to or approved by the Council prior to the appointed day and on which a dwelling house could have been lawfully erected immediately prior to the appointed day.

37 Rural workers' dwellings

- (1) On an allotment of land used for commercial farming within a rural zone consent may be granted to the erection of a rural worker's dwelling, or the alteration of an existing dwelling house or building so as to create a rural worker's dwelling, provided:
 - (a) the consent authority is satisfied that the purpose for which the allotment is to be used could not be fully realised without the presence on that land of an additional residence, and
 - (b) the proposed use of the land generates sufficient income to support both the owner and additional employee, and
 - (c) no additional access to a public road is required from the land, and
 - (d) in the opinion of the consent authority, the additional dwelling to be erected will promote the objectives of the zone, and
 - (e) in the opinion of the consent authority, any proposed dwelling will not interfere with the purpose for which the land and neighbouring land is being used, either through the alienation of productive resources or creating the potential for conflict, and
 - (f) the additional dwelling is to be of a transportable type so that the dwelling can be removed and relocated should the additional dwelling be no longer essential for the efficient and productive operation of the farm.
- (2) Consent shall not be granted to the subdivision of land on which an additional dwelling house has been erected in pursuance of this clause except in accordance with this plan.

38 Development within Mangrove Creek Catchment Area

- (1) The Mangrove Creek Catchment Area is shown by diagonal hatching on the map. All development in this area, other than on land within Zone No 1 (f), requires development consent.
- (2) Consent must not be granted to the carrying out of development on land within the Mangrove Creek Catchment Area unless the consent authority has determined that the impact of the development on the quality of water in any waterway within or passing through the area would not be adverse. In determining the impact the following should be considered:

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- (a) the risk of soil erosion, and
 - (b) the risk of water pollution, and
 - (c) any potential for siltation.
- (3) The consent authority may grant such a consent only if it has notified the Director-General of the Department of Land and Water Conservation and the Lower Clarence County Council of the development proposal and taken into consideration any advice received from that Director-General or county council within 28 days after the notice was sent.
- (4) The Forestry Commission of New South Wales shall notify the Council of any substantial development it proposes to carry out on the land to which this clause applies and may carry out the development only after taking into consideration any comments received from the Council within 28 days after the notice was sent.

39 Special Emphasis Areas

- (1) Special Emphasis Areas are shown by horizontal hatching on the map. The aim of this clause is to ensure that the wetlands identified as Special Emphasis Areas are preserved and conserved.
- (2) All development in the Special Emphasis Areas, with the exception of uses listed in subclause (3), requires consent.
- (3) A person may, without consent, ringbark, cut down, lop, top, injure or destroy any tree on land to which this clause applies which:
- (a) is less than 2 metres high and has a girth of less than 0.15 metre at a height of 0.4 metre from the ground, or
 - (b) is dying, dead or has become dangerous,
- unless the tree:
- (c) is a protected native plant within the meaning of the *National Parks and Wildlife Act 1974*, or
 - (d) is on State protected land within the meaning of the *Native Vegetation Conservation Act 1997*, or
 - (e) is located within 20 metres of a watercourse.
- (4) Consent must not be granted to development within a Special Emphasis Area for the purpose of a building.

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- (5) In determining a development application that proposes development on land within a Special Emphasis Area, the consent authority must consider the following matters:
- (a) the environmental effects of the proposed development, including the effects on:
 - (i) the growth of native plant communities, and
 - (ii) the survival of native wildlife populations, and
 - (iii) the provision and quality of habitats for both indigenous and migratory species, and
 - (iv) the surface and groundwater characteristics of the site on which the development is proposed to be carried out and of the surrounding area, including acidity, salinity and water quality,
 - (b) whether feasible alternatives to the proposed development (either on other land or by other means) exist,
 - (c) whether adequate safeguards and rehabilitation measures have been or will be taken in respect of the effect of the proposal on the wetland,
 - (d) whether the development is essential for the reasonable economic use of the land, the provision of utility services or to reduce the risk of bushfires,
 - (e) whether the development is proposed to be carried out in a manner which minimises:
 - (i) visual and scenic impact, and
 - (ii) the risk of soil erosion (including erosion by wind), and
 - (iii) the risk of water pollution, through increased siltation or otherwise, and
 - (iv) the destruction of rare or locally important vegetation systems,
 - (f) the public interest (if any) in the carrying out of the proposal compared with the public interest in the preservation of the wetland.

40 Clearing controls

- (1) On land within Zone No 1 (a) or 1 (b), clearing of native vegetation in the following circumstances requires consent:
 - (a) clear felling, or
 - (b) clearing within 20 metres of a watercourse, either tidal and non-tidal, or

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- (c) clearing of trees protected by a tree preservation order.
- (2) On land within Zone No 1 (i), 1 (r), 1 (s) or 1 (t), all clearing of native vegetation requires consent, other than clearing authorised under the *Rural Fires Act 1997* or the *State Emergency and Rescue Management Act 1989*, or clearing according to a bush fire management plan under the *Rural Fires Act 1997*.
- (3) For the purposes of this clause, **clearing** does not include:
 - (a) ancillary removal of native vegetation, or
 - (b) clearing required in association with flood mitigation works.

Note. Development consent for clearing may be required under the *Native Vegetation Conservation Act 1997*. Consult with the Department of Land and Water Conservation regarding requirements.

41 Rural tourist facility controls

- (1) Consent must not be granted to the carrying out of development for the purpose of a rural tourist facility unless:
 - (a) any tourist accommodation to be provided is ancillary to the principal and continuing use of the land for the purpose of agriculture and guests can take part in the carrying on of the agricultural activity, and
 - (b) the development is compatible with existing and neighbouring land uses and is, wherever possible, either located on land which is not prime crop or pasture land or is contained within a small area, and
 - (c) the maximum accommodation capacity is 20 persons.
- (2) A rural tourist facility shall not provide permanent accommodation.
- (3) Consent must not be granted to the carrying out of development on land for the purpose of a rural tourist facility unless the consent authority has considered the following matters:
 - (a) the natural features and ecosystems worthy of preservation or protection within or adjacent to the land, and
 - (b) the siting and design of the development so as to ensure that the development is not detrimental to the visual and social amenity of the area, and
 - (c) the adequacy of water and sewerage services for the development, and
 - (d) any significant environmental hazards.

- (4) Consent must not be granted to the subdivision of land used as a rural tourist facility.

42 Development within Zone No 1 (i)

Consent must not be granted to the carrying out of development on land within Zone No 1 (i) unless the consent authority has considered the following matters in relation to the future use of the land:

- (a) the land capability of the land, and
- (b) the demand for the development of the land, and
- (c) whether the land can be serviced with water, sewerage and local roads, and the likely future road network, and
- (d) the *Clarence Valley Settlement Strategy* available from the office of the Council, and
- (e) the conservation value of the land.

43 Development of land for mineral sand mining

- (1) This clause applies to land within Zone No 1 (a), 1 (b), 1 (f), 1 (i), 1 (r) or 1 (s).
- (2) Consent must not be granted to development for the purpose of mineral sand mining, except with the concurrence of the Director.
- (3) In determining whether to grant concurrence, the Director shall take into consideration the likelihood of the proposed development:
 - (a) adversely affecting the behaviour, or being adversely affected by the behaviour, of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
 - (b) adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or floodplain of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
 - (c) adversely affecting the landscape, vegetation or scenic quality of the locality.

44 Development of certain land at Brooms Head within Zone No 1 (i)

- (1) This clause applies to land in the vicinity of Cakora Point, Brooms Head, within Zone No 1 (i), as shown by diagonal hatching on the map.

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- (2) Consent must not be granted to the subdivision of land to which this clause applies unless a reticulated sewage treatment and effluent disposal system or other sewage treatment and effluent disposal system approved by the Council after consultation with the Department of Land and Water Conservation and the Environment Protection Authority will be provided to each allotment to be created by that subdivision or arrangements satisfactory to the Council have been made for the provision of that system.

45 Economic geological resources

- (1) This clause applies to:
- (a) development on land within Zone No 1 (a), 1 (b), 1 (f), 1 (t) or 1 (w) recorded at the office of the Council as having potential peat deposits, sand (including heavy mineral, construction and silica sand), Walloon coal measures (outcrop) and Redcliff coal measures (outcrop), and
 - (b) development which the Council, after consultation with the Director-General of the Department of Mineral Resources, considers would adversely affect or compromise the extraction of a geological resource described in paragraph (a).
- (2) The consent authority shall, before determining any application for consent to carry out development to which this clause applies, refer the application to the Director-General of the Department of Mineral Resources for comment.
- (3) The consent authority, in deciding whether to grant consent to development to which this clause applies, shall take into consideration the following matters:
- (a) any comments made to the consent authority by the Director-General of the Department of Mineral Resources within 40 days after the application was forwarded to that Director-General,
 - (b) the likelihood of the proposed development adversely affecting, or being adversely affected by, the geological resource,
 - (c) the likelihood of the proposed development, when considered in aggregation with all development affecting the geological resource, adversely affecting the geological resource,
 - (d) the potential for the geological resource to be extracted prior to or concurrently with the development,

- (e) the extent to which the development will compromise the potential for extraction of the geological resource.
- (4) The consent authority may decline to grant a development application for consent to the carrying out of development to which this clause applies unless it has considered a geological survey, prepared by a qualified and experienced geologist. The survey shall be carried out in consultation with the Council and the Director-General of the Department of Mineral Resources and shall contain such information as is specified by the Council and that Director-General.

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Clause 46 Maclean Local Environmental Plan 2001

Part 4 Residential, business and industrial zone provisions

Part 4 Residential, business and industrial zone provisions

46 Residential, business and industrial zones applying in this plan, zone objectives and development control table

- (1) The following residential, business and industrial zones apply as identified on the map:
 - 2 (a) Residential (Low Density)
 - 2 (b) Residential (Medium Density)
 - 2 (t) Residential (Tourism)
 - 3 (a) Business
 - 4 (a) Industrial
- (2) The aims of a zone are set out in the Table to this clause under the heading “Aim of zone”.
- (3) The objectives 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.
- (4) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the development:
 - (a) that may be carried out without development consent, and
 - (b) that may be carried out only with development consent, and
 - (c) that is prohibited,is specified in that Table under the headings “Without development consent”, “Only with development consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.
- (5) Except as otherwise provided by this plan, consent must not be granted to the carrying out of development on land to which this plan applies unless the consent authority is satisfied that the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Table

Zone No 2 (a) Residential (Low Density) Zone

1 Aim of zone

The primary aim of this zone is to enable the provision of housing, characterised by low density residential development.

2 Objectives of zone

The particular objectives of this zone are to enable:

- (a) the provision of low density housing, and
- (b) a residential environment free from any adverse impact from commercial and industrial uses, and
- (c) the provision of community uses, such as child care centres, of a compatible scale, bulk, height and design, which do not detract from the amenity and character of the residential area, and
- (d) adequate provision for water and effluent disposal.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; bushfire control; flood mitigation works; jetties with a maximum of 2 vessels used for private use; maintenance dredging; public utility undertakings.

Exempt development.

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Part 4 Residential, business and industrial zone provisions

4 Only with development consent

Development for the purpose of:

child care centres; clearing; cluster housing; dual occupancies; dwelling houses; home industries; places of public worship; utility installations (other than gas holders or generating works).

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:

advertisements, excluding business identification signs; advertising structures, excluding those displaying business identification signs.

Any other development not included in item 3 or 4.

Zone No 2 (b) Residential (Medium Density) Zone

1 Aim of zone

The primary aim of this zone is to enable medium density housing in order to provide a range of housing options to meet different housing needs within the community.

2 Objectives of zone

The particular objectives of this zone are:

- (a) provision of well designed housing at a higher residential density than in Zone No 2 (a), and
- (b) location of medium density housing in areas close to services and facilities, including recreational, community, commercial and employment opportunities, and
- (c) provision of community facilities, such as child care centres, of a compatible scale, bulk, height and design, which do not detract from the amenity and character of the residential area, and

- (d) a medium density residential environment free from any adverse impact of commercial and industrial uses, and
- (e) adequate provision for water and effluent disposal.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; bushfire control; flood mitigation works; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

child care centres; clearing; cluster housing; dual occupancies; dwelling houses; home industries; places of public worship; utility installations (other than gas holders or generating works).

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:

advertisements, excluding business identification signs; advertising structures, excluding those displaying business identification signs.

Any other development not included in item 3 or 4.

Zone No 2 (t) Residential (Tourism) Zone

1 Aim of zone

The primary aim of this zone is to enable the provision of tourist facilities and high density residential accommodation and associated facilities.

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2 Objectives of zone

The particular objectives of this zone are:

- (a) development of a diverse tourism industry to strengthen the local economic base of the local government area of Maclean, which does not detract from the natural, social and built environment, and
- (b) provision of tourist facilities, recreation facilities and high density residential development and associated uses without adverse impact on surrounding development, and
- (c) provision of employment opportunities and economic benefits, and
- (d) adequate provision for water and effluent disposal.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; bushfire control; flood mitigation works; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

advertisements; advertising structures; caravan parks; child care centres; clearing; clubs; dual occupancies; dwelling houses; guest houses; home industries; hotels; marinas; motels; recreation establishments; recreation facilities; refreshment rooms; residential flat buildings; tourist facilities.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:
total destination resorts.

Zone No 3 (a) Business Zone

1 Aim of zone

The primary aim of this zone is to enable the provision of a range of retail and commercial activities and employment opportunities to meet the needs of the local government area's population and visitors.

2 Objectives of zone

The particular objectives of this zone are:

- (a) well designed commercial and retail development which will enhance the appearance, function and viability of commercial and retail areas, and
- (b) to provide development which is associated with, ancillary to, or supportive of, commercial or retail development, and
- (c) adequate provision for water and effluent disposal.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; bushfire control; clearing; flood mitigation works; jetties with a maximum of 2 vessels used for private use; open space; public utility undertakings; roads.

Exempt development.

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Clause 46 Maclean Local Environmental Plan 2001

Part 4 Residential, business and industrial zone provisions

4 Only with development consent

Development for the purpose of:

advertisements; advertising structures; bus stations; car parking; car repair stations; child care centres; clubs; commercial premises; community centres; dwelling houses, dual occupancies and residential flat buildings, but only in conjunction with shops or commercial premises; educational establishments; home industries; hotels; motels; motor showrooms; places of assembly; places of public worship; professional consulting rooms; public buildings; recreation facilities; refreshment rooms; service stations; shops; tourist facilities.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Nil.

Zone No 4 (a) Industrial Zone

1 Aim of zone

The primary aim of this zone is to enable industrial development and related uses which produce a range of goods and services and provides employment without adversely affecting adjoining land, or air or water quality.

2 Objectives of zone

The particular objectives of this zone are:

- (a) development for industrial purposes and other purposes which are ancillary or supportive of existing or future industrial development, and
- (b) development for the purpose of bulky goods retailing and warehousing, and

- (c) industrial development which does not pollute or adversely affect adjoining land, air or water quality or the health, or safety of residents, and
- (d) adequate provision for water and effluent disposal.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; bushfire control; flood mitigation works; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

advertisements; advertising structures; bulk stores; bulky goods retailing; bus depots; bus stations; car repair stations; caretakers' dwellings; clearing, commercial premises; general stores; industries other than offensive or hazardous industries or extractive industries; junk yards; light industries; liquid fuel depots; motor showrooms; offices ancillary to another permissible use; places of public worship; plant depots; recreation establishments; recreation facilities; retail plant nurseries; rural industries; service stations; transport terminals; warehouses; utility installations.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:

extractive industries; offensive and hazardous industries.

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Clause 47 Maclean Local Environmental Plan 2001

Part 4 Residential, business and industrial zone provisions

47 Subdivision controls in residential, business and industrial zones

All subdivisions in any residential, business or industrial zone which are not exempt development require development consent.

48 Subdivision of land within two or more zones

- (1) If an allotment of land is partly within a rural zone and partly within a residential zone, consent may be granted to the subdivision of the allotment only if:
 - (a) the requirements for subdivision in the residential zone are met for the land within that zone, and
 - (b) any building to be erected on the land is located within the residential zone, or on an allotment that complies with clause 32 (2) within a rural zone.
- (2) If an allotment of land is partly within a rural zone and partly within a residential zone, consent must not be granted to a subdivision of land which creates an allotment wholly within a rural zone unless:
 - (a) the allotment created satisfies the requirements of clause 32 for allotments in rural zones, and
 - (b) the consent authority has taken the matters listed in clause 32 (4) into consideration.
- (3) If an allotment of land is partly within a residential zone and partly within an environmental protection zone, consent may be granted to a subdivision of the allotment only if:
 - (a) the requirements for subdivision in the residential zone are met for the land within that zone, and
 - (b) any building to be erected on the land is located within the residential zone, or on an allotment of not less than 100 hectares in an environmental protection zone.
- (4) If an allotment of land is partly within a residential zone and partly within an environmental protection zone, consent must not be granted to a subdivision of the land which creates an allotment wholly within an environmental protection zone unless:
 - (a) the allotment created has an area of not less than 100 hectares, and
 - (b) the consent authority has taken the matters listed in clause 58 (3) into consideration.

49 Development of land within Zone No 3 (a)—River Street, Maclean, between Wharf Street and Howard Street (Main Street Precinct)

- (1) A person must not, without consent, alter or demolish a building or part of a building fronting River Street within Zone No 3 (a), except where the proposed development is consistent with the *Maclean Centre Development Control Plan* adopted by the Council on 14 June 2000.
- (2) Consent must not be granted for any redevelopment proposals for such buildings, including proposals for new fenestration and signage, unless the consent authority is satisfied that the redevelopment will be consistent with the principles of the *Maclean Centre Development Control Plan* adopted by the Council on 14 June 2000.
- (3) Redevelopment of the site consisting of Lot 69 DP 305625 and Lots 1 and 2 DP 592739 should incorporate the following principles:
 - (a) provision of an attractive facade incorporating active retail uses at the ground floor fronting River Street,
 - (b) refurbishment of the historic western facade and opening up of this part of the site fronting the river,
 - (c) provision of mixed uses, including shops, cafes, restaurants and offices.

50 Development of land within Zone No 3 (a)—River Street, Maclean, between Cameron and Wharf Streets (Southern Town Approach)

Consent must not be granted to development on land within Zone No 3 (a) situated at River Street, Maclean, between Cameron Street and Wharf Street, unless the consent authority:

- (a) is satisfied that the development is in harmony with the streetscape of that locality and its function as an entry point to the town centre, having regard to the bulk, height, design and roof form of, and the materials to be used in, any proposed building, and to signage and use of residential setbacks in relation to the proposed development, and
- (b) has considered how refurbishment of any older style of existing dwelling can be encouraged.

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Part 4 Residential, business and industrial zone provisions

51 Development of land within Zone No 3 (a)—16 Wooli Street, Yamba

The alteration, removal or demolition of the existing church building on land within Zone No 3 (a), being Lot 13 DP 8280 and known as 16 Wooli Street, Yamba, is not to be carried out without development consent.

52 Development of certain land at Brooms Head and Iluka

- (1) This clause applies to land in the vicinity of Cakora Point, Brooms Head and Iluka, as shown by diagonal hatching on the map.
- (2) Consent must not be granted to the subdivision of land to which this clause applies unless a reticulated sewage treatment and effluent disposal system or other sewage treatment and effluent disposal system, approved by the Council after consultation with the Director-General of the Department of Land and Water Conservation and the Environment Protection Authority, will be provided to each allotment to be created by that subdivision or arrangements satisfactory to the Council have been made for the provision of that system.

Part 5 Special use and open space zone provisions

53 Special use and open space zones applying in this plan, zone objectives and development control table

- (1) The following special use and open space zones apply as identified on the map:
 - 5 (a) Special Uses
 - 6 (a) Open Space
 - 6 (b) Proposed Open Space
 - 6 (c) Open Space Buffer
- (2) The aims of a zone are set out in the Table to this clause under the heading “Aim of zone”.
- (3) The objectives 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.
- (4) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the development:
 - (a) that may be carried out without development consent, and
 - (b) that may be carried out only with development consent, and
 - (c) that is prohibited,is specified in that Table under the headings “Without development consent”, “Only with development consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.
- (5) Except as otherwise provided by this plan, consent must not be granted to the carrying out of development on land to which this plan applies unless the consent authority is satisfied that the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

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Part 5 Special use and open space zone provisions

Table

Zone No 5 (a) Special Uses Zone

1 Aim of zone

The primary aim of this zone is to set aside land held, used or intended for acquisition for a particular public or community purpose.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to recognise existing public land use requirements, and
- (b) to enable further land to be utilised for public use as the demand warrants it, and
- (c) to enable the development of land for other purposes where it can be demonstrated by the applicant that the proposed purposes will not affect the usefulness of the land for the purpose for which the land has been zoned, and
- (d) to enable the development of uses ancillary or incidental to the purposes for which land within the zone is used.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; bushfire control; clearing not included in item 4; flood mitigation works; jetties with a maximum of 2 vessels used for private use; public utility undertakings.

Exempt development.

4 Only with development consent

Development for the purpose of:

clearing allowed only with consent by a tree preservation order; community purposes; the land use indicated on the map in brackets and any land use ancillary or incidental to the indicated land use.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Nil.

Zone No 6 (a) Open Space Zone

1 Aim of zone

The primary aim of this zone is to set aside land that is currently used or is available to be used for the purposes of public open space.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to ensure that there is adequate provision of open space to meet the present open space and recreational needs of all residents, and
- (b) to enable the development of land within this zone for purposes associated with recreation, and
- (c) to provide opportunities to enhance the total environmental quality of the local government area of Maclean, and
- (d) to ensure that there is adequate provision of both active and passive open space to serve the present and future recreational needs of residents and visitors.

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Part 5 Special use and open space zone provisions

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; bushfire control; clearing not included in item 4; drainage; jetties with a maximum of 2 vessels used for private use; public utility undertakings; roads; works for the purposes of landscaping or gardening.

Exempt development.

Recreation development.

4 Only with development consent

Development for the purpose of:

clearing allowed only with consent by a tree preservation order, flood mitigation works, recreation facilities.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Nil.

Zone No 6 (b) Proposed Open Space Zone

1 Aim of zone

The primary aim of this zone is to set aside land that is proposed to be used for public open space purposes.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to reserve land which will be dedicated or required for public open space or public recreation purposes, and
- (b) to prevent the development of land within this zone for purposes that may jeopardise its future use as public open space, and

- (c) to ensure that there is an adequate provision of open space to meet both present and likely future open space and recreational needs of all residents, and
- (d) to provide opportunities to enhance the total environmental quality of the local government area of Maclean, and
- (e) to enable the development of land for other purposes where it can be demonstrated by the applicant that the proposed purposes will not affect the long term usefulness of the land for recreation.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; bushfire control; clearing not included in item 4; drainage; flood mitigation works; jetties with a maximum of 2 vessels used for private use; public utility undertakings; works for the purpose of landscaping or gardening.

Exempt development.

Recreation development.

4 Only with development consent

Development for the purpose of:

clearing allowed only with consent by a tree preservation order; recreation facilities.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Nil.

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Part 5 Special use and open space zone provisions

Zone No 6 (c) Open Space Buffer Zone

1 Aim of zone

The primary aim of this zone is to set aside land, whether in public or private ownership, which will act as a buffer between main or arterial roads and development associated with town or village areas.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to prohibit access from main or arterial roads to adjoining land, and
- (b) to prevent the development of land within this zone for purposes that may jeopardise the movement of traffic safely along the adjoining main or arterial road, and
- (c) to enable the development of land within this zone for the purpose of public utility undertakings or utility installations.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; bushfire control; clearing not included in item 4; flood mitigation works; jetties with a maximum of 2 vessels used for private use; public utility undertakings; utility installations (other than gas holders or generating works); works involved in gardening or landscaping.

Exempt development.

4 Only with development consent

Development for the purpose of:

clearing allowed only with consent by a tree preservation order.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Any development not included in item 3 or 4.

54 Subdivision controls in special use and open space zones

All subdivisions in any special use or open space zone which are not exempt development require development consent.

55 Acquisition of land zoned for open space purposes

- (1) The owner of land within Zone No 6 (b) or 6 (c) may, by notice in writing, require the Council to acquire the land.
- (2) On receipt of a notice the Council shall acquire the land.
- (3) The Council is not required to acquire land, the subject of a notice referred to in subclause (1), if the land is required to be dedicated to the Council as a condition of an existing development consent or subdivision approval.
- (4) Nothing in subclause (2) requires the Council to acquire land within Zone No 6 (b) while a consent is in force to the carrying out of development on that land.
- (5) Notwithstanding subclause (2) and without affecting subclause (3), the Council is not required to acquire land the subject of a notice referred to in subclause (1) unless:
 - (a) a development application has, since the land last became subject to this clause, been made in respect of the land, and
 - (b) the development the subject of the development application consists of development for a purpose for which development could have been carried out on the land (whether or not with development consent) immediately before the land last became subject to this clause, and
 - (c) the Council has refused its consent to the development application.

56 Community use of schools

Nothing in this plan prevents, with the consent of the Council:

- (a) the community use of the facilities and sites of schools, colleges and other educational institutions, or
- (b) the commercial operation of those facilities and sites, or

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Clause 56 Maclean Local Environmental Plan 2001

Part 5 Special use and open space zone provisions

- (c) the carrying out of development for the purpose of community uses on land used for the purpose of schools, colleges or other educational institutions, whether or not the development is ancillary to any such purpose.

Part 6 Environmental protection zone provisions

57 Environmental protection zones applying in this plan, zone objectives and development control table

- (1) The following environmental protection zones apply as identified on the map:
 - 7 (a) Environmental Protection (Ecological Significance)
 - 7 (b) Environmental Protection (Conservation/Habitat)
 - 7 (c) Environmental Protection (Coastal Foreshore)
 - 7 (e) Environmental Protection (Escarpment/Scenic)
- (2) The aims of a zone are set out in the Table to this clause under the heading “Aim of zone”.
- (3) The objectives 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.
- (4) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the development:
 - (a) that may be carried out without development consent, and
 - (b) that may be carried out only with development consent, and
 - (c) that is prohibited,is specified in that Table under the headings “Without development consent”, “Only with development consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.
- (5) Except as otherwise provided by this plan, consent must not be granted to the carrying out of development on land to which this plan applies unless the consent authority is satisfied that the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

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Part 6 Environmental protection zone provisions

Table

Zone No 7 (a) Environmental Protection (Ecological Significance) Zone

1 Aim of zone

The primary aim of this zone is to identify, protect and conserve land which is of particular ecological significance.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to identify all land within the local government area of Maclean covered by *State Environmental Planning Policy No 14—Coastal Wetlands* and *State Environmental Planning Policy No 26—Littoral Rainforests*, and
- (b) to preserve estuarine wetlands and allow them to continue to function as feeding and breeding areas for wildlife, shellfish and fish, and
- (c) to prohibit development within the zone that is likely to have a detrimental effect on the habitat or landscaping qualities or the flood mitigation function of the wetlands, and
- (d) to prohibit the clearing of land, except for the careful control of noxious plants by means not likely to be significantly detrimental to the native ecosystem, and
- (e) to enable the development of land within this zone only where it can be shown that the development will not destroy, damage or compromise the ecological, scenic or scientific attributes of the land.

3 Without development consent

Development for the purpose of:

ancillary removal of native vegetation; commercial fishing; recreational fishing.

4 Only with development consent

Development for the purpose of:

agriculture (other than intensive animal husbandry or horticulture); boat landings (not including boat launching facilities); boat launching facilities or picnic grounds, with associated access roads and parking areas, on land above the usual water level not requiring clear felling; bushfire control; camping on land above the usual water level; clearing; environmental education facilities; home industries; jetties with a maximum of 2 vessels used for private use; protection of the existing ecological environment; public utility undertakings; roads; walkways raised above the ground or water surface, or both, where necessary; utility installations.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Nil.

**Zone No 7 (b) Environmental Protection
(Conservation/ Habitat) Zone**

1 Aim of zone

The primary aim of this zone is to identify, protect and conserve vegetation and wildlife habitats.

2 Objectives of zone

The particular objectives of this zone are:

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Part 6 Environmental protection zone provisions

- (a) to prohibit development within the zone which would adversely affect the habitat and conservation value of the land, and
- (b) to enable the development of land within this zone which would not have an adverse effect on the wildlife habitat.

3 Without development consent

Development for the purpose of:
ancillary removal of native vegetation.

4 Development permissible only with development consent

Development for the purpose of:
agriculture (other than intensive animal husbandry or horticulture); bushfire control; clearing; environmental education facilities; jetties with a maximum of 2 vessels used for private use; public utility undertakings; recreational land uses; roads; utility installations.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Any other development not included in item 3 or 4.

Zone No 7 (c) Environmental Protection (Coastal Foreshore) Zone

1 Aim of zone

The aim of this zone is to identify and protect environmentally sensitive coastal land.

2 Objectives of zone

The objectives of this zone are:

- (a) to enable development for certain purposes where such development does not have a detrimental effect on the habitat, landscape or scenic quality of the locality, and
- (b) to prevent development which would adversely affect, or be adversely affected in both the long and short term by, coastal processes, and
- (c) to protect coastal ecosystem diversity and stability.

3 Without development consent

Development for the purpose of:
ancillary removal of native vegetation.

4 Only with development consent

Development for the purpose of:

agriculture; camping grounds; clearing; dams; drainage; forestry; golf courses; home industries; jetties with a maximum of 2 vessels used for private use; mining; public utility undertakings; roads; utility installations (other than gas holders or generating works).

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Any development not included in item 3 or 4.

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Part 6 Environmental protection zone provisions

Zone No 7 (e) Environmental Protection (Escarpment/Scenic) Zone

1 Aim of zone

The primary aims of this zone are:

- (a) to identify and protect land of high scenic or landscape conservation value in the local government area of Maclean, and
- (b) to minimise soil erosion from the escarpment areas and prevent development in geologically hazardous areas.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to encourage the protection or preservation of the major scenic resources of the local government area of Maclean, and
- (b) to prohibit development within the zone that is likely to have a visually disruptive effect on the scenic quality and visual amenity of that area, and
- (c) in areas of high visual exposure or high scenic quality, to control the choice and colour of building materials, the position and bulk of buildings, access roads and landscaping, and
- (d) to enable development for certain purposes where such development would not have a detrimental effect on the scenic quality and visual amenity of that area or be subjected to any hazards resulting from the geological character of the locality.

3 Without development consent

Development for the purpose of:

agriculture (other than intensive animal husbandry or horticulture); ancillary removal of native vegetation; bushfire control.

Exempt development.

4 Only with development consent

Development for the purpose of:

clearing; cluster farming; dams; duplexes; dwelling houses; forestry; general stores; home industries; jetties with a maximum of 2 vessels used for private use; professional consulting rooms; public buildings; public utility undertakings; recreation establishments; recreation facilities; roadside stalls; rural industries.

Recreation development.

Any other development not included in item 3 or 5.

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Development for the purpose of:

total destination resorts.

58 Subdivision controls in environmental protection zones

- (1) This clause applies to the subdivision of land within Zone No 7 (a), 7 (b), 7 (c) or 7 (e).
- (2) Consent must not be granted to the subdivision of land in an environmental protection zone unless the minimum area of each allotment to be created by the subdivision is not less than 100 hectares.
- (3) In deciding whether to grant consent to such a subdivision, the consent authority shall take the following matters into consideration:
 - (a) the area and quality of the land comprising each proposed allotment and its potential agricultural productivity,

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Clause 58 Maclean Local Environmental Plan 2001

Part 6 Environmental protection zone provisions

- (b) the likely effects (both economic and otherwise) that the proposed subdivision will have on agricultural industries in the area and the resources employed by or in connection with those industries,
- (c) the likely effects (both economic and otherwise) that the proposed subdivision will have on the use and development of other land and resources in the area,
- (d) whether there are any reasonable alternatives to the proposed subdivision in the circumstances,
- (e) the effect of the existence of, or the erection of, a dwelling,
- (f) the cumulative effect of similar proposals if consent is granted pursuant to subclause (2),
- (g) the likelihood of each proposed allotment remaining available for efficient agricultural use,
- (h) any relevant matter established in a development control plan that applies to the land,
- (i) the availability of access and the provision of services to each proposed allotment.

59 Subdivision of land within two or more zones

- (1) If an allotment of land is partly within a rural zone and partly within an environmental protection zone, consent may be granted to the subdivision of the allotment only if:
 - (a) the requirements for subdivision in the rural zone is met for the land within that zone, and
 - (b) any building to be erected on the land is located within the rural zone, or on an allotment of not less than 100 hectares in an environmental protection zone.
- (2) If an allotment of land is partly within a rural zone and partly within an environmental protection zone, consent must not be granted to a subdivision of land which creates an allotment wholly within an environmental protection zone unless:
 - (a) the allotment created has an area of not less than 100 hectares, and
 - (b) the consent authority has taken the matters listed in clause 58 (3) into consideration.

- (3) If an allotment of land is partly within an environmental protection zone and partly within a residential zone, consent may be granted to a subdivision of the allotment only if:
- (a) the requirements for subdivision in the residential zone are met for the land within that zone, and
 - (b) any building to be erected on the land is located within the residential zone, or on an allotment of not less than 100 hectares in an environmental protection zone.
- (4) If an allotment of land is partly within an environmental protection zone and partly within a residential zone, consent must not be granted to a subdivision of the land which creates an allotment wholly within an environmental protection zone unless:
- (a) the allotment created has an area of not less than 100 hectares, and
 - (b) the consent authority has taken the matters listed in clause 58 (3) into consideration.

60 Dwelling houses in environmental protection zones

Consent must not be granted to the erection of a dwelling house on an allotment of land within any environmental protection zone unless that allotment:

- (a) has an area of not less than 40 hectares, or
- (b) comprises an allotment created by a subdivision in accordance with clause 58 or 59 of this plan, or
- (c) comprises an allotment on which a dwelling house could have been erected immediately prior to the appointed day and which could have been created in accordance with the provisions of clause 58 or 59 if those provisions were in force at the time that the allotment was created, or
- (d) comprises an allotment of land that was consented to or approved by the Council prior to the appointed day and on which a dwelling house could have been lawfully erected immediately prior to the appointed day.

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Clause 61 Maclean Local Environmental Plan 2001

Part 6 Environmental protection zone provisions

61 Development within environmental protection zones

- (1) This clause applies to land within an environmental protection zone.
- (2) Consent to the carrying out of development on land to which this clause applies must not be granted unless the consent authority has determined that the impact of the development on:
 - (a) the visual and scenic quality of the area, and
 - (b) the risk of soil erosion and water pollution, and
 - (c) the important vegetation systems and natural wildlife habitats (including wetlands) of the area,would not be substantially adverse.
- (3) Subject to subclause (2), consent must not be granted to the clearing of land to which this clause applies unless the consent authority is satisfied that:
 - (a) the clearing is necessary for the reasonable use of the land or the provision of utility services, or
 - (b) the clearing is necessary to reduce the risk of bushfires.

62 Development within Zone No 7 (c) (the Environmental Protection (Coastal Foreshore) Zone)

- (1) This clause applies to land within Zone No 7 (c).
- (2) Prior to determining a development application for the construction of buildings on land to which this clause applies, the consent authority shall notify the Minister for Land and Water Conservation about the proposal and take into consideration any matters raised by that Minister within 28 days of the notice being sent.
- (3) A person shall not carry out development for any purpose on land shown by vertical hatching on the map within Zone No 7 (c) except with development consent granted with the concurrence of the Director.
- (4) Where the consent authority receives an application for consent to the carrying out of development on land to which subclause (3) applies, it shall, within 7 days of its receipt of the application, forward a copy of the application to the Director-General of the Department of Land and Water Conservation for comment.

- (5) The Director, in deciding whether to grant concurrence to development referred to in subclause (3), shall take into consideration:
- (a) the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes, and
 - (b) the likelihood of the proposed development adversely affecting any dune or beach of the shoreline or foreshore, and
 - (c) the likelihood of the proposed development adversely affecting the landscape or the scenic or environmental quality of the land in the locality, and
 - (d) whether adequate safeguards and rehabilitation measures have been, or will be, taken to protect the environment, and
 - (e) any comments made to the consent authority by the Director-General of the Department of Land and Water Conservation within 28 days of its being sent a copy of the application.

63 Development within Zone No 7 (e) (the Environmental Protection (Escarpment/Scenic) Zone) or on ridgelines

- (1) This clause applies to land within Zone No 7 (e) on or near a ridgeline.
- (2) The Council shall not consent to the carrying out of development on land to which this clause applies where, in the opinion of the consent authority, that development is likely to substantially detract from the visual amenity of the locality, having regard to the cumulative visual effect of the development related to other development that may be anticipated in the locality and in the area generally.
- (3) Before giving its consent to the erection of a building on land to which this clause applies, the consent authority shall make an assessment as to whether it should impose conditions relating to:
 - (a) the use on the external surfaces of the building of prescribed materials, and
 - (b) the number, type and location of existing trees and shrubs which are to be retained and the extent of landscaping to be carried out on the site, and
 - (c) the siting of the proposed building.

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Part 6 Environmental protection zone provisions

(4) In this clause:

external surfaces, in relation to a building or work, includes the external walls and cladding (if any), external doors, external door and window frames, columns, roofs, fences and any surface of that building or work visible from the exterior of that building or work.

prescribed materials means materials with dark tones or dark colouring and of low reflective quality or materials which are painted or similarly treated with dark toned or dark coloured paint or pigment of low reflective quality.

64 Development within Mangrove Creek Catchment Area

- (1) The Mangrove Creek Catchment Area is shown by diagonal hatching on the map. All development in this area, other than on land in Zone No 1 (f), requires development consent.
- (2) Consent must not be granted to the carrying out of development on land within the Mangrove Creek Catchment Area unless the consent authority has determined that the impact of the development on the quality of water within any waterway within or passing through that catchment area would not be adverse. In determining the impact, the following should be considered:
 - (a) the risk of soil erosion, and
 - (b) the risk of water pollution, and
 - (c) any potential for siltation.
- (3) In determining a development application required by this clause, the consent authority must notify the Director-General of the Department of Land and Water Conservation and the Lower Clarence County Council of the proposal and take into consideration any advice received within 28 days of the notice being sent.
- (4) The Forestry Commission of New South Wales shall give the Council notice before carrying out any substantial development on the land to which this clause applies and take into consideration any submission made by the Council within 28 days of the notice being sent.

Part 7 National Parks zone provisions

65 National Parks zones applying in this plan, zone objectives and development control table

- (1) The following National Parks zones apply as identified on the map:
 - 8 (a) National Parks
 - 8 (b) Proposed National Parks
- (2) The aims of a zone are set out in the Table to this clause under the heading "Aim of zone".
- (3) The objectives 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.
- (4) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the development:
 - (a) that may be carried out without development consent, and
 - (b) that may be carried out only with development consent, and
 - (c) that is prohibited,
 is specified in that Table under the headings "Without development consent", "Only with development consent" and "Prohibited", respectively, appearing in the matter relating to the zone.
- (5) Except as otherwise provided by this plan, consent must not be granted to the carrying out of development on land to which this plan applies unless the consent authority is satisfied that the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Table

Zone No 8 (a) National Parks Zone

1 Aim of zone

The primary aims of this zone are to identify land which is reserved or dedicated under the *National Parks and Wildlife Act 1974* and to protect land so identified.

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Part 7 National Parks zone provisions

2 Objectives of zone

The objective is to enable the development of land within this zone for purposes which are authorised under the *National Parks and Wildlife Act 1974*.

3 Without development consent

Any development authorised under the *National Parks and Wildlife Act 1974* or any development ordinarily incidental or ancillary to such development.

4 Only with development consent

Nil.

5 Prohibited

Any development not included in item 3 or 4.

Zone No 8 (b) Proposed National Parks Zone

1 Aim of zone

The primary aims of this zone are to identify land which is proposed to be reserved or dedicated under the *National Parks and Wildlife Act 1974* and to protect land so identified.

2 Objectives of zone

The particular objectives of this zone are:

- (a) to conserve the natural characteristics of the land which is proposed to be acquired for reservation or dedication under the *National Parks and Wildlife Act 1974* as national park or nature reserve, and
- (b) to retain the productive use of such land, providing its conservation value is not impaired.

3 Without development consent

Development for the purpose of:

agriculture (other than cattle feed lots, pig keeping and poultry farming; the clearing of trees or native vegetation, or the erection or use of sheds or other outbuildings, or the carrying out of works, associated with agriculture); uses carried out by or on behalf of the National Parks and Wildlife Service.

4 Only with development consent

Development for the purpose of:

clearing of trees or native vegetation; erection or use of sheds or other outbuildings or the carrying out of works associated with agriculture (other than the clearing of trees or native vegetation); miscellaneous forestry; public utility undertakings; selective logging; utility installations (other than gas holders or generating works).

Note. Consent for development included in this item will be refused if the proposed development is not consistent with the objectives of the zone.

5 Prohibited

Any development not included in item 3 or 4.

66 Acquisition of land for National Park purposes

- (1) The owner of land within Zone No 8 (b) may, by notice in writing, require the Director-General of National Parks and Wildlife to acquire the land.
- (2) On receipt of a notice relating to land referred to in subclause (1) the Director-General of National Parks and Wildlife shall acquire the land.

67 Development of land within Zone No 8 (b)

Before granting consent to the carrying out of development within Zone No 8 (b), the consent authority shall:

- (a) forward particulars of the development application to the National Parks and Wildlife Service, and

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Part 7 National Parks zone provisions

- (b) take into consideration any representations received from the Director-General of National Parks and Wildlife in respect of the application within 40 days after the forwarding of those particulars to the Service.

Schedule 1 Heritage items

(Clause 7 (1))

- 1 Aboriginal archaeological sites referred to in the Register of Aboriginal Conservation Areas and Relics deposited in the office of the Council.
- 2 The following buildings or other structures:

Item No #	Property description	Heritage item	Ref No*
1	Lot 11, DP 592199, Clarence Street, Brushgrove	Post Office	2
2	Lot 2, Section 10, DP 758172, Clarence Street, Brushgrove	Old Police Station and Residence	3
3	Lot 14, DP 392, Chatsworth Road, Chatsworth Island	Anglican Church	7
4	Lot 11, DP 804169, Chatsworth Road, Chatsworth Island	Residence	8
5	Lot 165, DP 751373, Chatsworth Road, Chatsworth Island	Primary School, Residence	9 10
6	Lot 2, DP 571949, Chatsworth Road, Chatsworth Island	Residence	11
7	Lot 2, DP 223663, Chatsworth Road, Chatsworth Island	Residence	12
8	Lot 1, DP 22413, Chatsworth Road, Chatsworth Island	Residence and shop	13
9	Lot 4, DP 605338, Chatsworth Road, Chatsworth Island	Residence	14
10	Lot 1, DP 818005, Morpeth Street, Harwood	School Residence, School	19 21
11	Lot 1, DP 565575, River Street, Harwood	Residence	22
12	Lot 10, Section 3, DP 758604, Bridge Street, Lawrence	School of Arts Building	29

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Schedule 1 Heritage items

Item No #	Property description	Heritage item	Ref No*
13	Lot 21, DP 839199, Bridge Street, Lawrence	Baptist Church	30
14	Lot 2, Section 63, DP 758604, Farnell Street, Lawrence	Residence	32
15	Lots 6, 7 and 8, Section 16, DP 758604, High Street, Lawrence	Anglican Church	35
16	Lot 1, DP 563060, Church Street, Maclean	Residence	37
17	Lots 6 and 7, Section 5, DP 758631, Church Street, Maclean	Uniting Church	38
18	Lot 2, DP 350425, Woodford Street, Maclean	Residence	39
19	Lot 2, DP 625612, Clarence Street, Maclean	Residence	40
20	Lot 1, DP 417654, Clyde Street, Maclean	Residence (Old Shop)	42
21	Lot 1, DP 501255, Jubilee Street, Townsend	Residence	43
22	Lots 3 and 7, Section 1A, DP 758631, McNaughton Place, Maclean	Court House	44
23	Lot 6, Section 1A, DP 758631, McNaughton Place, Maclean	Police Station	45
24	Lots 3 and 4, Section 1, DP 1666, Oban Street, Maclean	Residence	47
25	Lot 20, DP 333, River Street, Maclean	Offices	49
26	Lot 7, DP 13714, River Street, Maclean	Shop Facade	50

Item No #	Property description	Heritage item	Ref No*
27	Lot 100, DP 711006, River Street, Maclean	Office Building	51
28	Lot 1, DP 177120, River Street, Maclean	Office Building	52
29	Lot 1, DP 774885, River Street, Maclean	Post Office	53
30	Lot 1, DP 799272, River Street, Maclean	Shop and residence	54
31	Lot 1, DP 533016, River Street, Maclean	Residence	56
32	Lot 2, DP 603403, River Street, Maclean	Hotel	59
33	Lot 5, DP 235925, Howard Street, Maclean	Residence	61
34	Lot 1, DP 361835, River Street, Maclean	Residence	63
35	Lot 21, DP 818102, River Street, Maclean	Shop	65
36	Lot 1, DP 302317, River Street, Maclean	Residence	67
37	Lot 101, DP 702870, Short Street, Maclean	Residence	69
38	Lot 86, DP 13075, Short Street, Maclean	Residence	70
39	Lot 4, Section 9, DP 758631, McIntyres Lane, Maclean	Catholic Rectory Catholic Convent Catholic Church	72 74 90
40	Lot 5, DP 593268, Stanley Street, Maclean	Duplex (Old Brewery)	73
41	Lot 2, DP 512409, Woodford Street, Maclean	Residence	77

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Schedule 1 Heritage items

Item No #	Property description	Heritage item	Ref No*
42	Lot 1, DP 578513, Union Street, Maclean	Old Operating Theatre, Maclean Hospital	78
43	Lot 1, DP 796851, Short Street, Maclean	Baptist Church	80
44	Lot 11, DP 853183, Wharf Street, Maclean	Free Presbyterian Church	82
45	Lot 2, DP 416054, Wharf Street, Maclean	Baptist Manse	83
46	Lot 12, DP 853183, Wharf Street, Maclean	Presbyterian Manse	84
47	Lot 1, DP 204306, Wharf Street, Maclean	Residence	85
48	Lot 8, Section 19, DP 758631, Grafton Street, Maclean	Stone Cottage Museum	86
49	Lot 2, DP 340210, Wharf Street, Maclean	Residence	87
50	Lot 4, Section 11, DP 758631, Wharf Street, Maclean	Anglican Rectory	88
51	Lot 1, DP 796977, Woodford Street, Maclean	Maclean Public School 1902	89
52	Lot 2, DP 718965, River Road, Palmers Island	Residence	95
53	Lot 2, DP 568278, Adams Street, Woombah	Old Woombah School	96A
54	Lot 184, DP 704231, River Street, Yamba	Storey House Museum	101
55	Lot 5, Section 9, DP 759130, Woolli Street, Yamba	Residence and 2 Norfolk Island pine trees (<i>Araucaria heterophylla</i>)	107
56	Lot 25, DP 661428, North Arm Drive, Chatsworth Island	Residence	113

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Heritage items

Schedule 1

Item No #	Property description	Heritage item	Ref No*
57	Lot 181, DP 751388, James Creek Road, James Creek	Residence Residence	114 115
58	Lot 1, DP 409477, River Road, Palmers Island	Residence	118
59	Lot 20, DP 714069, Yamba Road, Palmers Island	Residence Silo Building	119 120
60	Lot 21, DP 838061, Yamba Road, Palmers Island	Residence (Wynyabbie House)	121
61	Lot 1, DP 109044, Yamba Road, Palmers Island	Residence	122
62	Lot 4, DP 592835, Yamba Road, Palmers Island	Residence	123
63	Lot 187, DP 751388, Yamba Road, Palmers Island	Silo Building	124
64	Lot 1, DP 518888 and Lot 1, DP 232301, Pacific Highway, Tyndale	Residence	126
65	Lot 2, DP 586049, Pacific Highway, Tyndale	Residence	127
66	Lot 2, DP 573649, Pacific Highway, Tyndale	Residence	128
67	Part Lot 131, DP 751373, Warregah Island Road, Warregah Island	Residence	130
68	Lot 141, DP 751373 and Lot 1, DP 958822, Warregah Island Road, Warregah Island	Residence	131
69	Lots 15 and 141, DP 751392, Woodford Dale Road, Woodford	Residence	133
70	Lot 28 and Part Lot 29, DP 751392, South Arm School Road, South Arm	Residence	134

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Schedule 1 Heritage items

Item No #	Property description	Heritage item	Ref No*
71	Lot 58, DP 751382, Tullymorgan Reserve, Tullymorgan	Buildings and structures	
72		Old bridge over Shark Creek on the Pacific Highway	
73		McFarlane Bridge over South Arm near Maclean	

Note.

Item No # refers to the number used to identify the heritage items on the maps marked "Maclean Local Environmental Plan 2001 (Schedule 1 properties)". The area identified on the maps marked "Maclean Local Environmental Plan 2001 (Schedule 1 properties)" shows the land on which a heritage item is situated. Property descriptions are as at the date of gazettal of *Maclean Local Environmental Plan 2001*. Property descriptions may change over time.

Ref No* refers to the Reference Number given to the building or structure in the *Maclean Shire Local Environmental Study 1989*, under the section "Architectural Heritage".

Schedule 2 Additional development

(Clause 22)

Map reference	Land	Development for the purpose of the following:
1	Lot 276, DP 751377, Pringles Way, Lawrence	A dwelling house or 2 attached dwellings
2	Lots 59 and 104, DP 751356, Old Ferry Road, Ashby	A dwelling house or 2 attached dwellings
3	Lot 2, DP 339553, Wooli Street, Yamba	Commercial premises
4	Lot B, DP 333887, Little High Street, Yamba	Shop
5	Lot 138, DP 751395, Wooli Street, Yamba	Funeral parlour
6	Lot 2, DP 520149, Yamba Road, Yamba	Shops
7	Lots 25 and 26, Section 7, DP 566, Richmond Street, Lawrence	Retail plant nursery
8	Lot 30, DP 635326, Havelock Street, Lawrence	Printing shop
9	Lots 8, 9 and 10, Section 3, DP 564 and Lot 111, DP 611537, Bridge Street, Lawrence	Service station and car repair station
10	Lot 8, Section 10, DP 758535, Spenser Street, Iluka	Restaurant
11	Lot 11, Section 10, DP 758535, Spenser Street, Iluka	Fishing tackle shop and take-away food shop

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Schedule 2 Additional development

Map reference	Land	Development for the purpose of the following:
12	Lot 2, DP 551000, Spenser Street, Iluka	Service station
13	Lot 1, DP 551000, Young Street, Iluka	Shop
14	Lot 22, DP 619756, Rannoch Avenue, Maclean	Sports centre
15	Lot 31, DP 627, Argyle Street, Maclean	Bus depot
16	Lot 2, DP 867018, Church Street, Maclean	Tyre repair business
17	Lot 11, DP 827039, 109–117 River Street, Maclean	Service station and car repair station
18	Lot 1, DP 622022 and Lot Y, DP 414356, 51–55 River Street, Maclean	Commercial fishing activities including, but not limited to, storage and processing of fish
19	Lot 2, DP 387172, 49 River Street, Maclean	Administration in connection with the adjoining commercial fishing activities
20	Lot B, DP 376038, 59 River Street, Maclean	Funeral parlour and mortuary
21	Lot 9, Section 6, DP 759119, Middle Street, Woombah	Bakery and pie manufacturing
22	Lots 1 and 2, Section 6, DP 759119, Adams Street, Woombah	Coffee processing
23	Lot 6, Section 6, DP 759119, Middle Street, Woombah	Coffee plantation and shop

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Additional development

Schedule 2

Map reference	Land	Development for the purpose of the following:
24	Lot 102, DP 616467, Morpeth Street, Harwood	Open air display of tractors and machinery
25	Lot 4, DP 19456, Lots 5A and 5B, DP 376103, Ocean Street, Yamba	One dwelling house on each allotment

Note. Property descriptions are as at the date of gazettal of *Maclean Local Environmental Plan 2001*. The area identified on the maps marked "Maclean Local Environmental Plan 2001 (Schedule 2 properties)" shows the land to which clause 22 applies. Property descriptions may change over time.

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Schedule 3 Exempt development

Schedule 3 Exempt development

(Clause 16)

Development consisting of the erection or carrying out of the following:

Access ramps for the disabled

- Maximum height 1m above ground level.
- Maximum grade 1:14 and otherwise complies with *AS 1428.1-1998—Design for access and mobility—General requirements for access—New building work*.
- Located within the property.
- Structurally adequate construction.

Advertising structures and signs

Note. See in alphabetical order:
business identification signs
fascia signs
real estate signs
street signs
temporary signs
under awning signs

All advertisements (except as otherwise provided in this Schedule)

- The advertisement is within a building including signs behind the glass line of a shop window.
- The advertisement is within a site and is not visible from outside that site.
- Complies with the Council's *Development Control Plan—Outdoor Advertising*.

Aerials/antennae/microwave antennae
(not including satellite dishes—dealt with separately below)

- Must be attached to a dwelling.
- Maximum height of 3m above the roof line.
- Clearance from power lines in accordance with NorthPower's requirements.

Air conditioning units for dwellings
(attached to external wall or ground mounted)

- Located a minimum of 3m off any property boundary.
- Building work must not reduce the structural integrity of the building.
- Any opening created is adequately weatherproofed.
- Noise level to comply with the Environment Protection Authority's *Environmental Noise Control Manual (1994)*.

Development consisting of the erection or carrying out of the following:**Standards for exemption**

Awnings, canopies and storm blinds on dwellings

- Maximum area 10m².
- Located wholly within property boundaries and within any setbacks applying to the property.

Note. Window awnings/blinds can encroach over building line.

Barbecues

- Maximum area of 2m².
- Maximum height of 2.6m.
- No closer than 1.2m to a property boundary.
- Located in rear yard or no closer to front of property than 900mm behind the dwelling's front alignment.

Bird aviaries
(for domestic purposes only, and not for the keeping of poultry)

- Maximum area 10m².
- Maximum height 2.4m.
- Located in rear yard and no closer than 900mm from an adjoining property boundary.
- Located 3m clear of any adjoining habitable room or dwelling.
- Structurally adequate construction.

Boundary adjustment to rectify an encroachment

- No additional allotments are created.
- No additional dwelling entitlements are created.

Building site sheds, offices and associated amenities buildings

- Erected wholly within the boundaries of the allotment in conjunction with development for which consent has been granted.
- To be removed immediately after completion of the building and prior to occupation.
- The shed, office or other building must not be used for residential purposes or for the storage and handling of inflammable materials.

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Schedule 3 Exempt development

Development consisting of the erection or carrying out of the following:

Standards for exemption

Bus stops and shelters

- Must be suitably designed and constructed by or for the Council.
- Structurally adequate construction.
- Not obstruct the line of sight of vehicular traffic.
- A maximum height of 2.7m above the footpath.
- Have an area of less than 10m².
- Non reflective surface finishes.
- Access to shelter must not include any steps or grade greater than 1:14.

Business identification signs

- Maximum size of 0.75m².
- One advertisement per premises.
- Must be attached to a building or fence or on the boundary.
- Must not be illuminated.
- Must not display a trade name.

Cabanas/gazebos, greenhouses

- Maximum area 10m².
- Maximum height 2.4m.
- Rear of yard only.
- Roofwater to be disposed of without causing nuisance to adjoining properties.

Change of use of a building:
A different use of a building resulting from a change of its use from one type of commercial premises to another type of commercial premises

- There is no net increase in the gross leasable floor area of the building being used for commercial purposes.
- The new use complies with any existing conditions of development consent relating to parking, advertising structures or advertisements and maintenance of landscaping.
- The former use must be an existing legal use.
- No extension of hours outside existing hours of operation.
- The new use does not involve the preparation of food for sale or consumption.

Development consisting of the erection or carrying out of the following:**Standards for exemption**

Change of use of a building:

A different use of a building resulting from a change of its use from one type of light industry to another type of light industry

- There is no net increase in the gross leasable floor area of the building being used for industrial purposes. The new use complies with any existing conditions of development consent relating to parking, advertising structures or advertisements and maintenance or landscaping.
- The use must be an existing legal use.
- The new use will not result in any premises being used for potentially hazardous or offensive industries as defined by *State Environmental Planning Policy No 33—Hazardous and Offensive Development*.
- The new use does not involve the preparation, packaging or distribution of food for sale or consumption.
- The development complies with the Council's *Development Control Plan for Industrial Development*.

Change of use of a building:

A different use of a building resulting from a change of its use from one type of shop to another type of shop (not a being a shop where food is prepared for sale or consumption)

- There is no net increase in the gross leasable floor area of the building being used for a shop.
- The new use complies with any existing conditions of development consent relating to parking, advertising structures or advertisements and maintenance or landscaping.
- Publications within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth are not exhibited or sold.
- Objects primarily concerned with sexual behaviour are not exhibited.

Clothes hoist/lines

- Installed to manufacturer's specifications.

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Schedule 3 Exempt development

Development consisting of the erection or carrying out of the following:

Standards for exemption

Decks (unroofed and attached to dwellings)

- Maximum area 10m²
- Maximum width 1.5m.
- Finished surface level not greater than 1m above existing ground level.
- Boundary setbacks comply with the Council's *Development Control Plan for Residential Development*.

Demolition of a building/structure

- Consent has been granted to the demolition as it is required or authorised by a condition of development consent, **or** An order to demolish has been issued by the Council under section 121B of the *Environmental Planning and Assessment Act 1979*, **or** Erection of the building to be demolished is exempt development.
- Demolition to be carried out in accordance with *AS 2601-1991—The demolition of structures*.
- Any work must comply with WorkCover Authority requirements relating to:
 - work involving the removal of lead, and
 - avoiding lead contamination from paint.
- Work involving asbestos cement is to comply with the WorkCover Authority's *Short Guide to Working with Asbestos*.

Driveways and pathways other than over public land

- Structurally adequate construction on a uniformly stable foundation with adequate reinforcement.
- May not be elevated or suspended above natural ground level.
- Stormwater not to be directed onto adjoining property.
- Must not affect provision of utility services and infrastructure.
- Maximum grade does not exceed 25% and a maximum change of grade of 13%.

Fascia signs

- Wholly contained within the fascia.
- Securely fixed.
- Not internally illuminated.

Development consisting of the erection or carrying out of the following:**Standards for exemption**

Fences:

All fences

- Constructed in accordance with the *Dividing Fences Act 1991* (and if appropriate the *Swimming Pools Act 1992* and regulations under that Act).
- All fences are to be constructed so that they do not prevent the natural flow of stormwater drainage/runoff.

Front boundary fences—those in front of the front building line

- Maximum height 1.2m.
- If corner allotment, fences are not to exceed 900mm in height within 6 metres of the corner boundary of the lot which marks the junction of the 2 streets. The remainder of the street boundary fences are not to exceed 1.2m in height, in the case of the shorter frontage and 1.8m in the case of the longer frontage.
- Structurally stable with adequate footings.
- Designed in accordance with sound engineering principles.

Side and rear boundary fences—those behind the front building line

- Maximum height 1.8m.
- Structurally stable with adequate footings.
- Designed in accordance with sound engineering principles.

Masonry

- Maximum height 1m.
- To comply with relevant standards of Standards Australia.

Electric

- Not to be erected in urban areas or adjoining a public road or place.

Fencing in koala habitat areas

- Designed to allow free passage of ground animals.

Flagpoles

- Maximum height 6m above ground level.
- Must be structurally adequate.
- Installed to manufacturer's specifications.
- Only one per site.

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Schedule 3 Exempt development

Development consisting of the erection or carrying out of the following:

Standards for exemption

Garden sheds

- Maximum floor area 10m².
- Maximum height 2.1m.
- Rear yard only.
- Installed to manufacturer's specifications.
- Roof water is to be disposed of without causing a nuisance to adjoining premises.

Goal posts, sight screens and similar ancillary sporting structures on public sporting or playing fields (excluding grandstands, dressing sheds and other substantial structures)

- Construction by or for the Council and installed in accordance with any relevant standards of Standards Australia and the *Building Code of Australia*.
- Structurally adequate construction.

Home occupation in a dwelling (does not include bed and breakfast accommodation)

- The activity is carried out by a permanent resident of the dwelling.
- The activity does not involve the employment of any persons other than residents of the dwelling.
- No goods are displayed or offered for sale.
- No advertising structures or advertisements are erected other than a business identification sign.

Jetties/wharfs on land within Zone No 1 (w) or 2 (a) being Council or private waterways within the Yamba canal estates

- Structurally adequate construction.
- Maximum jetty length 8m, maximum jetty and pontoon length—13m, maximum pontoon width 5m.
- Compliance with requirements of:
 - (a) Department of Land and Water Conservation,
 - (b) Waterways Authority,
 - (c) NSW Fisheries,where applicable.
- In Council owned waterways, a Council licence is in force for the structure.

Letter box (free standing or in "banks")

- Maximum height of 1.2m above ground level.
- Sufficient boxes to provide one for each occupation of the premises.
- Appropriate numbering for each one to be visible from street alignment.
- Structurally stable with adequate footings.

Development consisting of the erection or carrying out of the following:**Standards for exemption**

Minor internal alterations to:

(a) domestic single dwellings

- Non-structural work only, such as:
 - replacement of doors, wall, ceiling or floor linings, or deteriorated frame members, with equivalent or improved quality materials,
 - renovations of bathrooms or kitchens or inclusion of built-in fixtures, such as vanities, cupboards and wardrobes.
- Applies only to alterations or renovations to previously completed buildings.
- Work not to include changes to the configuration of rooms whether by removal of existing walls or partitions or by other means.
- Work not to cause reduced window arrangements for light or ventilation, reduced doorways for egress purposes or involve enclosure of open areas.

(b) commercial/industrial premises (does not include premises used for the preparation of food for sale or consumption)

- Non-structural work such as shelving or displays or benches or partitions that do not provide structural support to any part of the building.
- Existing floor area of commercial building not to exceed 200m².
- Existing floor area of industrial building not to exceed 500m².
- Work must not compromise fire safety or affect accessibility to a fire exit.
- Work must not include changes to the configuration of rooms whether by removal of walls or other means of structural support.
- Use must be an existing legal use.
- Does not involve plumbing or drainage works.

Note. The WorkCover Authority has advised that:

- care should be taken in work involving the removal of lead paint to avoid lead contamination,
- work involving asbestos cement is to comply with the WorkCover Authority's *Short Guide to Working with Asbestos*.

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Schedule 3 Exempt development

Development consisting of the erection or carrying out of the following:

Standards for exemption

Park and street furniture, seats, bins, picnic tables, minor shelters (not including bus shelters) on land under the control of the Council

- Construction by or for the Council and designed, fabricated and installed in accordance with relevant standards of Standards Australia and the *Building Code of Australia*.
- Land under the control of the Council.
- Where applicable, to be in accordance with any streetscape plans adopted by the Council.

Pergola (open roof and sides)

- Maximum area 20m².
- Maximum height 2.4m.
- Minimum side or rear boundary setback of 900mm.
- Located behind the front building line.
- Maximum of 1 per dwelling.

Playground equipment (including cubby houses—see below) non-commercial use

Residential use

- Maximum height of 2.1m.
- Maximum ground coverage of 10m².

Non-residential use

- Maximum height of 2.1m.
- Maximum ground coverage of 10m².

All equipment

- Must be installed in accordance with manufacturer's specifications and comply with relevant Australian Standards (*AS 1924.1-1981, AS 1924.2-1981, AS/NZS 4422:1996 and AS/NZS 4486.1:1997*).

Cubby houses

- Maximum height of 2.1m.
- Maximum area 10m².
- Installed to manufacturer's specifications.
- Structurally adequate construction on a uniformly stable foundation.

Development consisting of the erection or carrying out of the following:**Standards for exemption**

Real estate sign on land for sale or lease

- For sale advertisement—maximum size: 1.5m x 1.0m.
- Auction advertisements—maximum size: 1.5m x 2.0m.
- On commercial or industrial premises—maximum size: 2.5m x 2.0m.
- Holiday letting agent advertisements—as per requirements for a business identification sign.

Recladding of roofs or walls (or repair/maintenance of damaged materials)

- Replace existing materials with similar materials.
- Recladding not to involve structural alterations.
- Must comply with WorkCover Authority requirements regarding the removal of any lead paint.
- Any works involving asbestos cement must comply with the WorkCover Authority's *Short Guide to Working with Asbestos*.

Retaining walls (located at least 1m inside property boundaries)

- Maximum height 600mm.
- Masonry walls to comply with: *AS 3700-1998—Masonry structures*, *AS 3600-1994—Concrete structures*, *AS 1170.1-1989*, *AS 1170.2-1989* and *AS 1170.4-1993—Loading Code*.
- Timber walls to comply with: *AS 1720.1-1997*, *AS 1720.2-1990* and *AS 1720.4-1990—Timber structures*, *AS 1170.1-1989*, *AS 1170.2-1989* and *AS 1170.4-1993—Loading Code*.
- All retaining walls are to be constructed so that they do not prevent the natural flow of stormwater drainage/run off.
- Adequate drainage lines to be provided behind wall.
- Footings in proximity to sewer main or easement for stormwater to comply with the Council's policies.

Satellite dishes

- For domestic use only.
- Up to 600mm in diameter.
- Not to protrude above roof ridge line.
- Located at the rear of the premises.

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Schedule 3 Exempt development

Development consisting of the erection or carrying out of the following:

Standards for exemption

Skylight roof windows—non-opening (including solartube or similar type installation)

- Maximum area of skylight 1m².
- Not more than one installation per 25m² of roof area.
- Located not less than 900mm from a property boundary and not less than 900mm from a wall separating attached dwellings.
- The building work must not reduce the structural integrity of the building or involve structural alterations.
- Any opening created by the installation to be adequately waterproofed.
- Installation to manufacturer's specifications.

Solar water heaters

- Installed to manufacturer's specifications and requirements.
- Installed by a licensed tradesperson.
- The building work must not reduce the structural integrity of the building or involve structural alterations.
- Any opening created by the installation must be adequately waterproofed.
- Installations must be flush with a roof alignment.

Street signs comprising name plates, directional signs and advance traffic warning signs

- Construction by or for the Council.
- Must be structurally sound.
- To be designed, fabricated and installed in accordance with the relevant standards of Standards Australia.

Temporary sign

- The sign is not erected over a public road.
- The sign is for a religious, social, cultural, educational or recreational event.
- No commercial advertising other than the sponsor's name (max 25% of sign area for this purpose).
- Is displayed no earlier than 42 days before the event and is removed within 7 days after the event.

The use of a building for public meetings

- The building is a Class 9b building under the *Building Code of Australia*.

Development consisting of the erection or carrying out of the following:

Standards for exemption

Under awning signs

- Maximum size of 2.5m x 0.5m.
- Tops and bottom edges horizontal to the ground with a 2.6m clearance.
- Not to extend beyond awning.
- Securely fixed.
- May be illuminated.

Water heaters (excluding solar systems)

- Replacement or new installations.
- Installed by a licensed tradesperson.
- The building work must not reduce the structural integrity of the building or involve structural alterations.

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Schedule 3 Exempt development

Development consisting of the erection or carrying out of the following:

Standards for exemption

Water tanks at or above ground level in:

General Standards (Rural Areas and Urban Areas)

- Tank stand is not to rest on footing of building or rely upon wall for support.
- Not to be installed where water is for drinking purposes and the collecting roof has lead flashings.
- Where reticulated water provided, tank shall not be interconnected with any systems supplying drinking water unless fitted with mechanical backflow prevention devices in accordance with *AS/NZS 2845.1:1998*, *AS 2845.2-1996* and *AS 2845.3-1993*.
- All tank/tank stand installations to be structurally sound and comply with manufacturer's and/or designer's specifications.
- Protection to prevent entry of foreign/animal matter and to preclude or discourage mosquitoes.

(a) rural areas (land within Zone No 1 (a), 1 (b), 1 (i), 1 (r), 1 (s) or 1 (t)), or

Additional Standards (Rural Areas)

- Maximum 40,000 litre capacity per tank.
- Maximum height of 2.4m.
- Situated no closer to a street than an associated dwelling.

(b) urban areas (land within Zone No 2 (a), 2 (b), 2 (t), 3 (a) or 4 (a))

Additional Standards (Urban Areas)

- Maximum installed height above ground level of 1.8m, including any stand (maximum stand height of 450mm).
- Maximum storage capacity of 10,000 litres.
- Located in the rear yard/or no closer to the street than the front alignment of a dwelling.
- Overflow to be connected to stormwater system and not cause a nuisance to neighbours.
- Any associated pump is not to create a noise nuisance to adjoining residents.

Development consisting of the erection or carrying out of the following:

Windows, glazed areas and external doors

Standards for exemption

- Replacement in residential premises with materials that comply with:
 - (a) *AS 2047-1999—Windows in buildings—Selection and installation,*
 - (b) *AS/NZS 2208:1996—Safety glazing materials in buildings.*
- No reduction in the area provided for light and ventilation.
- Structural support members are not removed.

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Schedule 4 Complying development

Schedule 4 Complying development

(Clause 17)

Development consisting of the erection or carrying out of the following:

Advertising structures and advertisements on land within Zone No 4 (a)

Bed and breakfast accommodation ie the use of an existing lawfully constructed single detached dwelling on a single lot by its permanent residents for the temporary accommodation of visitors for commercial purposes on land zoned 1 (a), 1 (b), 1 (i), 1 (r), 1 (s), 1 (t), 2 (a), 2 (b), 2 (t), 3 (a) or 7 (e)

Boundary adjustment in:

(a) rural areas (land zoned 1 (a), 1 (b), 1 (i), 1 (r), 1 (s) or 1 (t))

Standards for compliance

- Meets the requirements of the Council's *Development Control Plan—Outdoor Advertising*, as in force on the appointed day.
- Access to the building is obtained via a road other than the Pacific Highway.
- A maximum of three bedrooms is used as guest accommodation.
- A minimum of one bathroom is provided for every two bedrooms (or part thereof) used as guest accommodation.
- Installation of a smoke detection system that complies with *AS 3786-1993—Smoke alarms* and *AS/NZS 3000:2000—Electrical installations* (known as the *Australian/New Zealand Wiring Rules*).
- A fire extinguisher and fire blanket in the kitchen.
- No additional allotments are created.
- No additional dwelling entitlements are created.
- Any proposed boundaries are located a minimum of 6m from any existing on-site effluent disposal areas.
- No more than 10% variation in allotment areas.
- Front building alignment is maintained as existing or minimum 10m.

Development consisting of the erection or carrying out of the following:

- (b) urban areas (land zoned 2 (a), 2 (b), 2 (t), 3 (a), 4 (a), 5 (a), 6 (a), 6 (b), 6 (c) or 7 (e))

Standards for compliance

- No additional allotments are created.
- No additional dwelling entitlements are created.
- A minimum side setback of 0.9m and a minimum rear setback of 3m is maintained between the proposed boundary and any single storey dwelling.
- A minimum side setback of 1.5m and a minimum rear setback of 3m is maintained between the proposed boundary and any two storey dwelling to a height of 12m.
- A minimum side setback of 3m and a minimum rear setback of 3m is maintained between the proposed boundary and any dwelling in excess of 12m in height.
- Any proposed boundaries are located a minimum of 6m from any existing on-site effluent disposal areas.
- Is consistent with any existing consents applying to the land.

Dual occupancies, duplexes and extensions

- Dual occupancy dwellings in Zone No 2 (a), 2 (b) or 2 (t), or
- Alterations and additions, carports, garages and ancillary or incidental buildings in Zone No 1 (r), 1 (s), 2 (a), 2 (b) or 2 (t):

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Schedule 4 Complying development

Development consisting of the erection or carrying out of the following:

Standards for compliance

(a) in any of those zones

General standards

- Minimum area of allotment is 560m² in the 2 (b) and 2 (t) zones, and 800m² in the 2 (a) zone.
- The development complies with the Council's *Development Control Plan for Residential Development*, as in force on the appointed day.
- A proposed dual occupancy is connected to the Council's sewerage system.
- The floor levels of dwellings and extensions to habitable areas shall comply with the Council's *Floodplain Development Manual*, the Council's draft *Floodplain Management Manual*, as in force on the appointed day, and clause 2.F.3 of the Council's *Local Approvals Policy*, as amended on 13 May 1998.
- The maximum height of dwellings is one storey ie no greater than 6.5m at the ridge and 4m at the top plate.
- The minimum rear setback of the building shall be 3m or the setback indicated on the map attached to any development control plan applying to the land or setback indicated on any specific consent or approval for a subdivision.
- The minimum front building alignment is 6m or the setback indicated on the map attached to any development control plan applying to the land and, for corner allotments a minimum setback of 3.5m to the secondary frontage.
- The external wall of each dwelling, including the leading edge of any balcony, terrace, deck or the like, shall be set back a minimum 900mm from the side boundary (excluding encroachments permitted under 3.7.1.7, or open carports under 3.7.1.6 in Volume 1A of the *Building Code of Australia*).
- Balconies, terraces, decks and the like greater than 1m above existing ground level and setback between 900mm and 1500mm from the side boundary must be provided with a minimum 1.5m high privacy screen.

Development consisting of the erection or carrying out of the following:

Standards for compliance

- Detached ancillary buildings are to have a minimum side and rear boundary clearance of 600mm and are to comply with Part 3.7.1 in Volume 1A of the *Building Code of Australia* (if applicable).
- The maximum height of the external walls (not including gables) of detached ancillary buildings is not to exceed 2.7m from natural ground level to the underside of the eaves and 3.6m to the top of the roof ridgeline.
- The maximum area of detached ancillary buildings shall be 54m².
- Carports and garages facing a public street or accessway must not be more than 8.6m, or 50% of the frontage, wide whichever is the lesser.
- Buildings with slab on ground construction shall not exceed a maximum cut and fill of 1m measured vertically above the natural ground level 1m outside the perimeter of the external walls of the building. This does not apply to buildings where the cut and fill is fully retained within or by the external walls of the building.
- Compliance with the *Strata Schemes Management Act 1996* (if applicable).
- Stormwater from the building and surface water from the land surrounding any structures must be diverted to the street drainage system or an easement to drain water.

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Schedule 4 Complying development

Development consisting of the erection or carrying out of the following:

Standards for compliance

(b) in urban residential areas (land zoned 2 (a))

Additional standards (Zone No 2 (a))

- Minimum allotment area of 800m².
- Minimum landscaped area of the site shall be 45%.

(c) in urban residential areas (land zoned 2 (b) and 2 (t))

Additional standards (Zones Nos 2 (b) and 2 (t))

- Minimum landscaped area of the site shall be 35%.

(d) in rural residential areas (land zoned 1 (r) and 1 (s))

Additional standards (Zones Nos 1 (r) and 1 (s))

- No structure is to be constructed down slope nor within 6m of any on-site effluent disposal system.

Dwelling houses and extensions

- Detached dwellings in Zone No 2 (a), 2 (b) or 2 (t), or
- Alterations and additions, carports and garages and ancillary or incidental development in Zone No 1 (r), 1 (s), 2 (a), 2 (b) or 2 (t):

Development consisting of the erection or carrying out of the following:

(a) in any of those zones

Standards for compliance

General standards

- Minimum area of allotment is 560m².
- The proposed dwelling is being connected to the Council's sewerage system.
- The development complies with the Council's *Development Control Plan for Residential Development*, as in force on the appointed day.
- The floor levels of dwellings and extensions shall comply with the Council's *Floodplain Development Manual*, the Council's draft *Floodplain Management Manual*, as in force on the appointed day, and clause 2.F.3 of the Council's *Local Approvals Policy*, as amended on 13 May 1998.
- The maximum height of the dwellings is one storey ie no greater than 6.5m at the ridge and 4m at the top plate.
- The minimum rear setback of the building shall be 3m or the setback indicated on the map attached to any development control plan applying to the land or the setback indicated on any specific consent or approval for a subdivision.
- The minimum front building alignment is 6m or the setback indicated on the map attached to any development control plan applying to the land and, for corner allotments, a minimum setback of 3.5m to the secondary frontage.
- The external wall of the dwelling, including the leading edge of any balcony, terrace, deck or the like, shall be set back a minimum 900mm from the side boundary (excluding encroachments permitted under 3.7.1.7, or open carports under 3.7.1.6, in Volume 1A of the *Building Code of Australia*).

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Schedule 4

Complying development

Development consisting of the erection or carrying out of the following:

Standards for compliance

- Balconies, terraces, decks and the like greater than 1m above existing ground level and setback between 900mm and 1500mm from the side boundary must be provided with a minimum 1.5m high privacy screen.
- Detached ancillary buildings are to have a minimum side and rear boundary clearance of 600mm and are to comply with Part 3.7.1 in Volume 1A of the *Building Code of Australia* (if applicable).
- The maximum height of the external walls (not including gables) of detached ancillary buildings is not to exceed 2.7m from natural ground level to the underside of the eaves and 3.6m to the top of the roof ridgeline.
- The maximum area of detached ancillary buildings shall be 54m².
- Carports and garages facing a public street or accessway must not be more than 6.3m, or 50% of the frontage, wide whichever is the lesser.
- Buildings with slab on ground construction shall not exceed a maximum cut and fill of 1m measured vertically above the natural ground level 1m outside the perimeter of the external walls of the building. This does not apply to buildings where the cut and fill is fully retained within or by the external walls of the building.
- Stormwater from the building and surface water from the land surrounding any structures must be diverted to the street drainage system or an easement to drain water.

(b) in rural residential areas (land zoned 1 (r) and 1 (s))

Additional standards (Zones Nos 1 (r) and 1 (s))

- No structure is to be constructed down slope nor within 6m of any onsite effluent disposal system.

Development consisting of the erection or carrying out of the following:

Standards for compliance

Granny flat

A second dwelling on a lot attached to an existing dwelling in Zone No 2 (a), 2 (b) or 2 (t)

- The development complies with the Council's *Development Control Plan for Residential Development*, as in force on the appointed day.
- Floor area is less than 60m².
- The property is connected to the Council's sewerage system.

New use of a building resulting from change of use of a building on land zoned 2 (t), 3 (a) or 4 (a).
A different use of a building resulting from a change of its use from a lawfully used shop that is not a food shop (a shop where food is prepared for sale or consumption) to a food shop

- There is no net increase in the gross leasable floor area of the building being used for commercial purposes.
- The shop fit-out complies with the requirements of the *Food Act 1989* and the *National Code for the Construction and Fitout of Food Premises*.
- The building complies with any existing conditions of development consent relating to parking, advertising structures or advertisements.

New use of a building resulting from change of use of a building on land zoned 2 (t), 3 (a) or 4 (a) from a lawfully used shop to an office or from a lawfully used office to a shop

- There is no increase in the total floor area of the building.

Subdivision that:

- (a) opens or widens a public road, or
- (b) makes a minor adjustment to a boundary between allotments which does not involve the creation of an additional dwelling entitlement, or
- (c) creates a public reserve, or
- (d) consolidates allotments, or
- (e) excises land which is or is intended to be used for public purposes, including drainage purposes, bushfire brigade or other rescue service purposes or public conveniences.

- Is consistent with any existing consents applying to the land.

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Schedule 4 Complying development

Development consisting of the erection or carrying out of the following:

Standards for compliance

Strata subdivision

- Separate services are provided to each residence.

Swimming pools, ancillary to a dwelling, for private use only, and on lots over 450m²

- The pool is not between the dwelling and the primary street frontage.
- All coping or decking around the pool is not more than 500mm above the natural ground level.
- The pool water line is at least 1.5m from the side and rear boundaries.
- The noise level of any filtration equipment or pumps does not exceed 5dB(A) above the ambient background level measured at the property boundary.
- All aspects of the pool and surrounding structures comply with the *Swimming Pool Act 1992* and regulations made under that Act and *AS 1926-1986-Fences and Gates for Private Swimming Pools, AS/NZS 1838:1994-Swimming pools-Premoulded fibre-reinforced plastics-Design and fabrication* and *AS/NZS 1839:1994-Swimming pools-Premoulded fibre-reinforced plastics-Installations* or *AS 2783-1992-Use of reinforced concrete for small swimming pools*.
- In unsewered areas, the pool is not to be located downslope nor within 6 metres of any onsite effluent disposal area.

Note. A separate approval is required for disposal of swimming pool waste water in unsewered areas.

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Classification and reclassification of public land as operational land

Schedule 5

**Schedule 5 Classification and reclassification of public
land as operational land**

(Clause 23)

Palmers Island

Lot 3, DP 603599, fronting the Clarence River, as shown by heavy black edging on the map marked “Maclean Local Environmental Plan 1992 (Amendment No 26)”.