



New South Wales

Muswellbrook Local Environmental Plan 2009

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, pursuant to section 33A of the *Environmental Planning and Assessment Act 1979*, adopt the mandatory provisions of the *Standard Instrument (Local Environmental Plans) Order 2006* and prescribe matters required or permitted by that Order so as to make a local environmental plan as follows. (S07/011149-1)

KRISTINA KENEALLY, MP
Minister for Planning

2009 No 129

Muswellbrook Local Environmental Plan 2009

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Clause 1.1 Muswellbrook Local Environmental Plan 2009

Part 1 Preliminary

Muswellbrook Local Environmental Plan 2009

under the

Environmental Planning and Assessment Act 1979

Part 1 Preliminary

1.1 Name of Plan

This Plan is *Muswellbrook Local Environmental Plan 2009*.

1.2 Aims of Plan

- (1) This Plan aims to make local environmental planning provisions for land in Muswellbrook in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to encourage the proper management of the natural and human-made resources of Muswellbrook by protecting, enhancing or conserving:
 - (i) productive agricultural land, and
 - (ii) timber, minerals, soils, water and other natural resources, and
 - (iii) areas of significance for nature conservation, and
 - (iv) areas of high scenic or recreational value, and
 - (v) places and buildings of archaeological or heritage significance,
 - (b) to manage the urban areas of Muswellbrook by strengthening retail hierarchies and employment opportunities, promoting appropriate tourism development, guiding affordable urban form and providing for the protection of heritage items and precincts,
 - (c) to promote ecologically sustainable urban and rural development,
 - (d) to manage development in flood-prone areas by ensuring any obstruction, re-direction or pollution of flood waters will not have adverse consequences for the environment or increase the risk of endangering life or property,
 - (e) to enhance the urban amenity and habitat for flora and fauna,

- (f) to protect and conserve:
 - (i) soil stability by controlling development in accordance with land capability, and
 - (ii) remnant native vegetation, and
 - (iii) water resources, water quality and wetland areas, natural flow patterns and their catchments and buffer areas,
- (g) to provide a secure future for agriculture by expanding Muswellbrook's economic base and minimising the loss or fragmentation of productive agricultural land,
- (h) to allow flexibility in the planning framework so as to encourage orderly, economic and equitable development while safeguarding the community's interests and residential amenity, and to achieve the objectives of each zone mentioned in Part 2 of this Plan.

1.3 Land to which Plan applies

This Plan applies to the land identified on the Land Application Map.

1.4 Definitions

The Dictionary at the end of this Plan defines words and expressions for the purposes of this Plan.

1.5 Notes

Notes in this Plan are provided for guidance and do not form part of this Plan.

1.6 Consent authority

The consent authority for the purposes of this Plan is (subject to the Act) the Council.

1.7 Maps

- (1) A reference in this Plan to a named map adopted by this Plan is a reference to a map by that name:
 - (a) approved by the Minister when the map is adopted, and
 - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Plan to any such named map is a reference to the relevant part or aspect of the single map.

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Clause 1.8 Muswellbrook Local Environmental Plan 2009

Part 1 Preliminary

- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Plan, a map may be in, and may be kept and made available in, electronic or paper form, or both.

Note. The maps adopted by this Plan are to be made available on the official NSW legislation website in connection with this Plan. Requirements relating to the maps are set out in the documents entitled *Standard technical requirements for LEP maps* and *Standard requirements for LEP GIS data* which are available on the Department of Planning's website.

1.8 Repeal of other local planning instruments applying to land

- (1) All local environmental plans and deemed environmental planning instruments applying only to the land to which this Plan applies are repealed.

Note. The instruments repealed under this provision include the *Muswellbrook Local Environmental Plan 1985*.

- (2) All local environmental plans and deemed environmental planning instruments applying to the land to which this Plan applies and to other land cease to apply to the land to which this Plan applies.

1.8A Savings provision relating to pending development applications

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

1.9 Application of SEPPs and REPs

- (1) This Plan is subject to the provisions of any State environmental planning policy and any regional environmental plan that prevail over this Plan as provided by section 36 of the Act.

Note. Section 36 of the Act generally provides that SEPPs prevail over REPs and REPs prevail over LEPs. However, a LEP may (by an additional provision included in the Plan) displace or amend a SEPP or REP to deal specifically with the relationship between this Plan and the SEPP or REP.

- (2) The following State environmental planning policies and regional environmental plans (or provisions) do not apply to the land to which this Plan applies:

State Environmental Planning Policy No 1—Development Standards
State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development
(clause 6 and Parts 3 and 4)

*State Environmental Planning Policy No 60—Exempt and Complying
Development*

Hunter Regional Environmental Plan 1989 (Heritage)

1.9A Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land within any zone to be carried out in accordance with this Plan or with a development consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.
- (2) This clause does not apply:
 - (a) to a covenant imposed by the Council or that the Council requires to be imposed, or
 - (b) to any prescribed instrument within the meaning of section 183A of the *Crown Lands Act 1989*, or
 - (c) to any conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
 - (d) to any Trust agreement within the meaning of the *Nature Conservation Trust Act 2001*, or
 - (e) to any property vegetation plan within the meaning of the *Native Vegetation Act 2003*, or
 - (f) to any biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*, or
 - (g) to any planning agreement within the meaning of Division 6 of Part 4 of the Act.
- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (4) Under section 28 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).

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Clause 2.1 Muswellbrook Local Environmental Plan 2009

Part 2 Permitted or prohibited development

Part 2 Permitted or prohibited development

2.1 Land use zones

The land use zones under this Plan are as follows:

Rural Zones

RU1 Primary Production

RU3 Forestry

RU5 Village

Residential Zones

R1 General Residential

R5 Large Lot Residential

Business Zones

B2 Local Centre

Industrial Zones

IN1 General Industrial

IN2 Light Industrial

Special Purpose Zones

SP2 Infrastructure

Recreation Zones

RE1 Public Recreation

RE2 Private Recreation

Environment Protection Zones

E1 National Parks and Nature Reserves

E3 Environmental Management

Waterway Zones

W1 Natural Waterways

2.2 Zoning of land to which Plan applies

For the purposes of this Plan, land is within the zones shown on the Land Zoning Map.

2.3 Zone objectives and land use table

- (1) The Table at the end of this Part specifies for each zone:
 - (a) the objectives for development, and
 - (b) development that may be carried out without consent, and
 - (c) development that may be carried out only with consent, and
 - (d) development that is prohibited.

- (2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.
- (3) In the Table at the end of this Part:
 - (a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and
 - (b) a reference to a type of building or other thing does not include (despite any definition in this Plan) a reference to a type of building or other thing referred to separately in the Table in relation to the same zone.
- (4) This clause is subject to the other provisions of this Plan.

Notes.

- 1 Schedule 1 sets out additional permitted uses for particular land.
- 2 Schedule 2 sets out exempt development (which is generally exempt from both Parts 4 and 5 of the Act). Development in the land use table that may be carried out without consent is nevertheless subject to the environmental assessment and approval requirements of Part 5 of the Act or, if applicable, Part 3A of the Act.
- 3 Schedule 3 sets out complying development (for which a complying development certificate may be issued as an alternative to obtaining development consent).
- 4 Clause 2.6 requires consent for subdivision of land.
- 5 Part 5 contains other provisions which require consent for particular development.

2.4 Unzoned land

- (1) Development may be carried out on unzoned land only with consent.
- (2) Before granting consent, the consent authority:
 - (a) must consider whether the development will impact on adjoining zoned land and, if so, consider the objectives for development in the zones of the adjoining land, and
 - (b) must be satisfied that the development is appropriate and is compatible with permissible land uses in any such adjoining land.

2.5 Additional permitted uses for particular land

- (1) Development on particular land that is described or referred to in Schedule 1 may be carried out:
 - (a) with consent, or
 - (b) if the Schedule so provides—without consent,
 in accordance with the conditions (if any) specified in that Schedule in relation to that development.

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Clause 2.6 Muswellbrook Local Environmental Plan 2009

Part 2 Permitted or prohibited development

- (2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.

2.6 Subdivision—consent requirements

- (1) Land to which this Plan applies may be subdivided, but only with consent.
- (2) However, consent is not required for a subdivision for the purpose only of any one or more of the following:
- (a) widening a public road,
 - (b) a minor realignment of boundaries that does not create:
 - (i) additional lots or the opportunity for additional dwellings, or
 - (ii) lots that are smaller than the minimum size shown on the Lot Size Map in relation to the land concerned,
 - (c) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,
 - (d) rectifying an encroachment on a lot,
 - (e) creating a public reserve,
 - (f) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

Note. If a subdivision is exempt development, the Act enables the subdivision to be carried out without consent.

2.6A Demolition requires consent

The demolition of a building or work may be carried out only with consent.

Note. If the demolition of a building or work is identified in the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* as exempt development, the Act enables it to be carried out without consent.

2.6B Temporary use of land

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.
- (2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary purpose for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.

-
- (3) Development consent must not be granted unless the consent authority is satisfied that:
- (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and
 - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
 - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and
 - (d) at the end of the temporary use period the site will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.
- (4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or housing estate may exceed 52 days (whether or not consecutive days) in any period of 12 months.
- (5) Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).

Land Use Table

Note. This Table does not provide an exhaustive list of all uses that may be permissible in a particular zone. Other uses may be provided for elsewhere in this Plan or in other planning instruments such as the *State Environmental Planning Policy (Infrastructure) 2007* and the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

Zone RU1 Primary Production

1 Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To protect the agricultural potential of rural land not identified for alternative land use, and to minimise the cost to the community of providing, extending and maintaining public amenities and services.

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Clause 2.6B Muswellbrook Local Environmental Plan 2009

Part 2 Land Use Table

- To maintain the rural landscape character of the land in the long term.
- To ensure that development for the purpose of extractive industries, underground mines (other than surface works associated with underground mines) or open cut mines (other than open cut mines from the surface of the flood plain), will not:
 - (a) destroy or impair the agricultural production potential of the land or, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface, or
 - (b) detrimentally affect in any way the quantity, flow and quality of water in either subterranean or surface water systems, or
 - (c) visually intrude into its surroundings, except by way of suitable screening.
- To protect or conserve (or both):
 - (a) soil stability by controlling development in accordance with land capability, and
 - (b) trees and other vegetation, and
 - (c) water resources, water quality and wetland areas, and their catchments and buffer areas, and
 - (d) valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits.

2 Permitted without consent

Extensive agriculture; Home occupations; Intensive livestock agriculture (for horses only); Intensive plant agriculture

3 Permitted with consent

Air transport facilities; Airstrips; Animal boarding or training establishments; Aquaculture; Cellar door premises; Cemeteries; Community facilities; Crematoria; Depots; Drainage; Dwelling houses; Earthworks; Educational establishments; Environmental facilities; Environmental protection works; Extractive industries; Farm buildings; Flood mitigation works; Forestry; Function centres; Group homes; Hazardous industries; Hazardous storage establishments; Health consulting rooms; Helipads; Highway service centres; Home-based child care; Home businesses; Home industries; Industrial retail outlets; Information and education facilities; Intensive livestock agriculture (other than for horses); Kiosks; Landscape and garden supplies; Mining; Moveable dwellings; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (major);

Recreation facilities (outdoor); Research stations; Restaurants; Restriction facilities; Roads; Roadside stalls; Rural industries; Rural supplies; Rural worker's dwellings; Secondary dwellings; Service stations; Sewerage systems; Signage; Storage premises; Take away food and drink premises; Tourist and visitor accommodation; Transport depots; Truck depots; Turf farming; Veterinary hospitals; Waste disposal facilities; Water supply systems

4 Prohibited

Any development not specified in item 2 or 3

Zone RU3 Forestry

1 Objectives of zone

- To enable development for forestry purposes.
- To enable other development that is compatible with forestry land uses.

2 Permitted without consent

Uses authorised under the *Forestry Act 1916*; Roads

3 Permitted with consent

Drainage; Earthworks; Environmental facilities; Environmental protection works; Flood mitigation works; Intensive plant agriculture; Research stations

4 Prohibited

Any development not specified in item 2 or 3

Zone RU5 Village

1 Objectives of zone

- To provide for a range of land uses, services and facilities that are associated with a rural village.
- To allow more flexibility in the development of the town of Denman and village of Sandy Hollow.
- To allow for future development of residential, commercial or low-impact land use within the town of Denman and village of Sandy Hollow.
- To ensure that non-residential uses do not result in adverse amenity impacts on residential premises.

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Clause 2.6B Muswellbrook Local Environmental Plan 2009

Part 2 Land Use Table

- To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development.

2 Permitted without consent

Home occupations

3 Permitted with consent

Amusement centres; Attached dwellings; Boarding houses; Business premises; Car parks; Caravan parks; Child care centres; Community facilities; Drainage; Dual occupancies; Dwelling houses; Earthworks; Educational establishments; Entertainment facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Function centres; Funeral chapels; Funeral homes; Group homes; Health services facilities; Highway service centres; Home-based child care; Home businesses; Home industries; Hostels; Information and education facilities; Landscape and garden supplies; Mortuaries; Moveable dwellings; Multi dwelling housing; Neighbourhood shops; Office premises; Passenger transport facilities; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Research stations; Residential flat buildings; Retail premises; Roads; Rural supplies; Schools; Secondary dwellings; Semi-detached dwellings; Seniors housing; Service stations; Sewage reticulation systems; Shop top housing; Signage; Storage premises; Tank-based aquaculture; Timber and building supplies; Tourist and visitor accommodation; Vehicle repair stations; Vehicle sales or hire premises; Veterinary hospitals; Water recycling facilities; Water supply systems; Wholesale supplies

4 Prohibited

Restricted premises; Any other development not specified in item 2 or 3

Zone R1 General Residential

1 Objectives of zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To enable sensitive infill development of other housing types.
- To allow people to carry out a reasonable range of activities from their homes, where such activities do not adversely affect the living environment of neighbours.

-
- To promote the principles of ecological sustainable development including energy and water efficient subdivision and housing design.
 - To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development.
 - To ensure that development is carried out in a way that is compatible with the flood risk of the area.

2 Permitted without consent

Home occupations

3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Child care centres; Community facilities; Drainage; Dual occupancies; Dwelling houses; Earthworks; Educational establishments; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Hostels; Kiosks; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Residential flat buildings; Roads; Secondary dwellings; Semi-detached dwellings; Seniors housing; Sewage reticulation systems; Shop top housing; Tank-based aquaculture; Water recycling facilities; Water supply systems

4 Prohibited

Any development not specified in item 2 or 3

Zone R5 Large Lot Residential

1 Objectives of zone

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
- To ensure that large residential allotments do not hinder the proper and orderly development of urban areas in the future.
- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

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Clause 2.6B Muswellbrook Local Environmental Plan 2009

Part 2 Land Use Table

2 Permitted without consent

Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Building identification signs; Business identification signs; Child care centres; Community facilities; Drainage; Dwelling houses; Earthworks; Environmental facilities; Environmental protection works; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Horticulture; Moveable dwellings; Recreation areas; Roads; Secondary dwellings; Sewage reticulation systems; Tank-based aquaculture; Water recycling facilities; Water supply systems

4 Prohibited

Any development not specified in item 2 or 3

Zone B2 Local Centre

1 Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To maintain the status and encourage the future growth of the Muswellbrook established business centre as a retail, service, commercial and administrative centre while maintaining the centre's compact form.
- To enable a wide range of land uses that are associated with, ancillary to, or supportive of the retail and service functions of a business centre.
- To maintain the heritage character and value and streetscape of the business centre of Muswellbrook.
- To support business development by way of the provisions of parking and other civic facilities.

2 Permitted without consent

Home occupations

3 Permitted with consent

Amusement centres; Boarding houses; Bulky goods premises; Business premises; Car parks; Child care centres; Community facilities; Drainage; Earthworks; Educational establishments; Entertainment facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Function centres; Funeral chapels; Funeral homes; Health services facilities; Highway service centres; Hostels; Information and education facilities; Mortuaries; Office premises; Passenger transport facilities; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Registered clubs; Research stations; Restricted premises; Retail premises; Roads; Rural supplies; Service stations; Sewage reticulation systems; Sex services premises; Shop top housing; Signage; Storage premises; Tank-based aquaculture; Tourist and visitor accommodation; Vehicle repair stations; Vehicle sales or hire premises; Veterinary hospitals; Water recycling facilities; Water reticulation systems; Wholesale supplies

4 Prohibited

Any development not specified in item 2 or 3

Zone IN1 General Industrial**1 Objectives of zone**

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To recognise existing industries and to encourage the establishment of new industries so as to expand the local employment base, and to minimise any adverse effects of industry on residential communities.
- To accommodate larger industries or those which potentially could create nuisance in locations separated from residential areas but accessible to the workforce.
- To enable development that is associated with, ancillary to, or supportive of industry or industrial employees.

2 Permitted without consent

Nil

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Clause 2.6B Muswellbrook Local Environmental Plan 2009

Part 2 Land Use Table

3 Permitted with consent

Air transport facilities; Car parks; Community facilities; Crematoria; Depots; Drainage; Earthworks; Environmental facilities; Environmental protection works; Flood mitigation works; Freight transport facilities; Heavy industries; Helipads; Industrial retail outlets; Information and education facilities; Kiosks; Light industries; Liquid fuel depots; Neighbourhood shops; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Roads; Rural industries; Service stations; Sewerage systems; Sex services premises; Signage; Storage premises; Take away food and drink premises; Tank-based aquaculture; Timber and building supplies; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Vehicle sales or hire premises; Warehouse or distribution centres; Waste or resource management facilities; Water supply systems; Wholesale supplies

4 Prohibited

Any development not specified in item 2 or 3

Zone IN2 Light Industrial

1 Objectives of zone

- To provide a wide range of light industrial, warehouse and related land uses.
- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To recognise existing industries and to accommodate new industries that by their nature are compatible with any residential development in the vicinity.
- To enable development that is associated with, ancillary to, or supportive of industry.
- To encourage new industry that will reinforce Muswellbrook's economic base.

2 Permitted without consent

Nil

3 Permitted with consent

Agricultural produce industries; Air transport facilities; Community facilities; Depots; Drainage; Earthworks; Environmental facilities; Environmental protection works; Flood mitigation works; Freight transport facilities; Industrial retail outlets; Information and education facilities; Kiosks; Landscape and garden supplies; Light industries; Neighbourhood shops; Public administration buildings; Recreation areas; Recreation facilities (indoor); Resource recovery facilities; Roads; Service stations; Sewerage systems; Sex services premises; Signage; Storage premises; Take away food and drink premises; Tank-based aquaculture; Timber and building supplies; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Vehicle sales or hire premises; Warehouse or distribution centres; Waste or resource transfer stations; Water supply systems; Wholesale supplies

4 Prohibited

Any development not specified in item 2 or 3

Zone SP2 Infrastructure**1 Objectives of zone**

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.
- To recognise existing railway land and to enable future development for railway and associated purposes.
- To prohibit advertising hoardings on railway land.
- To recognise major roads and to enable future development and expansion of major road networks and associated purposes.
- To recognise existing land and to enable future development for utility undertakings and associated purposes.

2 Permitted without consent

Nil

3 Permitted with consent

The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose; Roads

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Clause 2.6B Muswellbrook Local Environmental Plan 2009

Part 2 Land Use Table

4 Prohibited

Any development not specified in item 2 or 3

Zone RE1 Public Recreation

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To encourage the development of public open spaces in a way that addresses the community's diverse recreation needs.
- To identify land that is suitable for future public recreation use and that can be brought into public ownership as a consequence of development contributions.
- To provide linked open space for ecosystem continuity, local community recreation, off-road transport and waterway protection.
- To provide space for integrated stormwater treatment devices for flow and water quality management, whilst enhancing urban and rural amenity.

2 Permitted without consent

Environmental facilities; Environmental protection works

3 Permitted with consent

Air transport facilities; Aquaculture; Caravan parks; Child care centres; Community facilities; Drainage; Earthworks; Educational establishments; Entertainment facilities; Flood mitigation works; Food and drink premises; Function centres; Information and education facilities; Kiosks; Markets; Public administration buildings; Public utility undertakings; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Roads; Sewage reticulation systems; Signage; Water recycling facilities; Water supply systems

4 Prohibited

Any development not specified in item 2 or 3

Zone RE2 Private Recreation

1 Objectives of zone

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To encourage the development of public open spaces in a way that addresses the community's diverse recreation needs.

2 Permitted without consent

Nil

3 Permitted with consent

Air transport facilities; Aquaculture; Caravan parks; Child care centres; Community facilities; Drainage; Earthworks; Educational establishments; Entertainment facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Food and drink premises; Function centres; Information and education facilities; Kiosks; Markets; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Roads; Sewage reticulation systems; Signage; Water recycling facilities; Water supply systems

4 Prohibited

Any development not specified in item 2 or 3

Zone E1 National Parks and Nature Reserves

1 Objectives of zone

- To enable the management and appropriate use of land that is reserved under the *National Parks and Wildlife Act 1974* or that is acquired under Part 11 of that Act.
- To enable uses authorised under the *National Parks and Wildlife Act 1974*.
- To identify land that is to be reserved under the *National Parks and Wildlife Act 1974* and to protect the environmental significance of that land.

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Clause 2.6B Muswellbrook Local Environmental Plan 2009

Part 2 Land Use Table

2 Permitted without consent

Uses authorised under the *National Parks and Wildlife Act 1974*

3 Permitted with consent

Nil

4 Prohibited

Any development not specified in item 2 or 3

Zone E3 Environmental Management

Note. *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* may apply to land within this zone.

1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To maintain, or improve in the long term, the ecological values of existing remnant vegetation of significance including wooded hilltops, river valley systems, major scenic corridors and other local features of scenic attraction.
- To limit development that is visually intrusive and ensure compatibility with the existing landscape character.
- To allow agricultural activities that will not have an adverse impact on the environmental and scenic quality of the existing landscape.
- To promote ecologically sustainable development.
- To ensure that development in this zone on land that adjoins land in the land zoned E1 National Parks and Nature Reserves is compatible with the objectives for that zone.

2 Permitted without consent

Extensive agriculture (for the purposes of grazing livestock or bee keeping); Home occupations

3 Permitted with consent

Air transport facilities; Animal boarding or training establishments; Aquaculture (other than pond-based aquaculture); Bed and breakfast accommodation; Cellar door premises; Drainage; Dwelling houses; Earthworks; Environmental facilities; Environmental protection works; Extensive agriculture (for the purposes of the production of crops or

fodder (including irrigated pasture and fodder crops)); Farm buildings; Farm stay accommodation; Flood mitigation works; Home-based child care; Home businesses; Home industries; Information and education facilities; Intensive plant agriculture; Moveable dwellings; Recreation areas; Recreation facilities (outdoor); Research stations; Roads; Rural worker's dwellings; Secondary dwellings; Sewerage systems; Water supply systems

4 Prohibited

Industries; Multi dwelling housing; Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

Zone W1 Natural Waterways

1 Objectives of zone

- To protect the ecological and scenic values of natural waterways.
- To prevent development that would have an adverse effect on the natural values of waterways in this zone.
- To provide for sustainable fishing industries and recreational fishing.
- To ensure that opportunities for public access and use of aquatic resources for commercial and recreational fishing and aquaculture activities are maintained and enhanced.
- To ensure that development maintains and enhances the integrity of the water quality, ecosystem, health and biodiversity in or adjacent to key fish habitats.

2 Permitted without consent

Nil

3 Permitted with consent

Aquaculture; Drainage; Earthworks; Environmental facilities; Environmental protection works; Flood mitigation works; Recreation areas; Roads; Water recreation structures

4 Prohibited

Business premises; Canal estate development; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

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Clause 3.1 Muswellbrook Local Environmental Plan 2009

Part 3 Exempt and complying development

Part 3 Exempt and complying development

3.1 Exempt development

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

The section states that exempt development:

- (a) must be of minimal environmental impact, and
 - (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
 - (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).
- (1) The objective of this clause is to identify development of minimal environmental impact as exempt development.
 - (2) Development specified in Schedule 2 that meets the standards for the development contained in that Schedule and that complies with the requirements of this Part is exempt development.
 - (3) To be exempt development, the development:
 - (a) must meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (b) must not, if it relates to an existing building, cause the building to contravene the *Building Code of Australia*, and
 - (c) must not be designated development, and
 - (d) must not be carried out on land that comprises, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977* or that is subject to an interim heritage order under the *Heritage Act 1977*, and
 - (e) must not be carried out in an environmentally sensitive area for exempt or complying development (as defined in clause 3.3).
 - (4) Development that relates to an existing building that is classified under the *Building Code of Australia* as class 1b or class 2–9 is exempt development only if:
 - (a) the building has a current fire safety certificate or fire safety statement, or
 - (b) no fire safety measures are currently implemented, required or proposed for the building.
 - (4A) A heading to an item in Schedule 2 is taken to be part of that Schedule.

3.2 Complying development

Note. Under section 76A of the Act, development consent for the carrying out of complying development may be obtained by the issue of a complying development certificate.

The section states that development cannot be complying development if:

- (a) it is on land that is critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), or
 - (b) it is on land within a wilderness area (identified under the *Wilderness Act 1987*), or
 - (c) the development is designated development, or
 - (d) the development is on land that comprises, or on which there is, an item of environmental heritage (that is listed on the State Heritage Register or in Schedule 5 to this Plan or that is subject to an interim heritage order under the *Heritage Act 1977*), or
 - (e) the development requires concurrence (except a concurrence of the Director-General of the Department of Environment and Climate Change in respect of development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat (identified under the *Threatened Species Conservation Act 1995*), or
 - (f) the development is on land identified as an environmentally sensitive area.
- (1) The objective of this clause is to identify development as complying development.
 - (2) Development specified in Part 1 of Schedule 3 that is carried out in compliance with:
 - (a) the development standards specified in relation to that development, and
 - (b) the requirements of this Part,
 is complying development.

Note. See also clause 5.8 (3) which provides that the conversion of fire alarms is complying development in certain circumstances.
 - (3) To be complying development, the development must:
 - (a) be permissible, with consent, in the zone in which it is carried out, and
 - (b) meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (c) have an approval, if required by the *Local Government Act 1993*, from the Council for an on-site effluent disposal system if the development is undertaken on unsewered land.
 - (4) A complying development certificate for development specified in Part 1 of Schedule 3 is subject to the conditions (if any) set out in Part 2 of that Schedule.

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Clause 3.3 Muswellbrook Local Environmental Plan 2009

Part 3 Exempt and complying development

(4A) A heading to an item in Schedule 3 is taken to be part of that Schedule.

3.3 Environmentally sensitive areas excluded

(1) Exempt or complying development must not be carried out on any environmentally sensitive area for exempt or complying development.

(2) For the purposes of this clause:

environmentally sensitive area for exempt or complying development means any of the following:

- (a) the coastal waters of the State,
- (b) a coastal lake,
- (c) land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies,
- (d) land reserved as an aquatic reserve under the *Fisheries Management Act 1994* or as a marine park under the *Marine Parks Act 1997*,
- (e) land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention,
- (f) land within 100 metres of land to which paragraph (c), (d) or (e) applies,
- (g) land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance,
- (h) land reserved as a state conservation area under the *National Parks and Wildlife Act 1974*,
- (i) land reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes,
- (j) land identified as being critical habitat under the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*.

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4.1 Minimum subdivision lot size

- (1) The objectives of this clause are as follows:
 - (a) to ensure that new subdivisions reflect characteristic lot sizes and patterns in the surrounding locality,
 - (b) to ensure that lot sizes that create a dwelling entitlement are consistent with lot sizes on adjoining lands,
 - (c) to ensure that lot sizes have a practical and efficient layout to meet intended use,
 - (d) to prevent the fragmentation of rural lands.
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.
- (4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

4.2 Rural subdivision

- (1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.
- (2) This clause applies to the following rural zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape,
 - (c) Zone RU4 Rural Small Holdings,
 - (d) Zone RU6 Transition.
- (3) Land in a zone to which this clause applies may, with consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size shown on the Lot Size Map in relation to that land.
- (4) However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.

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Clause 4.3 Muswellbrook Local Environmental Plan 2009

Part 4 Principal development standards

- (5) A dwelling cannot be erected on such a lot.

Note 1. A dwelling includes a rural worker's dwelling (see definition of that term in the Dictionary).

Note 2. This Plan does not include Zone RU2, RU4 or RU6.

4.3 Height of buildings

- (1) The objectives of this clause are as follows:
- (a) to limit the height of buildings,
 - (b) to promote development that is compatible with the height of surrounding development and conforms to and reflects natural landforms by stepping development on sloping land to follow the natural gradient,
 - (c) to promote the retention and, if appropriate, sharing of existing views,
 - (d) to maintain solar access to new and existing dwellings and public recreation areas and to promote solar access to new buildings,
 - (e) to maintain privacy for residents of existing dwellings and promote privacy for residents of new buildings.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

4.4 Floor space ratio

- (1) The objectives of this clause are as follows:
- (a) to ensure a degree of equity in relation to development potential for sites of different sizes and for sites located in different parts of Muswellbrook,
 - (b) to ensure that proposals for new buildings are assessed with due regard to the context of surrounding development,
 - (c) to ensure that the bulk and scale of proposed buildings are compatible with surrounding (or intended future) development,
 - (d) to provide sufficient floor space for high quality development for the foreseeable future,
 - (e) to regulate density of development and generation of vehicular and pedestrian traffic,
 - (f) to ensure the preservation of reasonable amenity on surrounding land.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

4.5 Calculation of floor space ratio and site area

(1) Objectives

The objectives of this clause are as follows:

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

(2) Definition of “floor space ratio”

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

(3) Site area

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

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

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

(4) Exclusions from site area

The following land must be excluded from the site area:

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

(5) Strata subdivisions

The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only

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to the extent that it does not overlap with another lot already included in the site area calculation.

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

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

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

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

(8) **Existing buildings**

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

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

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

(10) **Covenants affect consolidated sites**

If:

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

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

(11) **Definition**

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

4.6 Exceptions to development standards

- (1) The objectives of this clause are:
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

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- (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) Consent must not be granted under this clause for a subdivision of land in Zone RU1, RU2, RU3, RU4, RU6, R5, E3 or E4 if:
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow consent to be granted for development that would contravene any of the following:
 - (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
 - (c) clause 5.4.
- (8A) This clause does not allow consent to be granted for development that would contravene clause 6.1, 6.2, 7.4 or 7.5.

Part 5 Miscellaneous provisions

5.1 Relevant acquisition authority

- (1) The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991* (**the owner-initiated acquisition provisions**).

Note. If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant authority, section 23 of the *Land Acquisition (Just Terms Compensation) Act 1991* requires the authority to acquire the land.

- (2) The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).

Type of land shown on Map	Authority of the State
Zone RE1 Public Recreation and marked "Local open space"	Council
Zone RE1 Public Recreation and marked "Regional open space"	The corporation constituted under section 8 of the Act
Zone SP2 Infrastructure and marked "Classified road"	Roads and Traffic Authority
Zone E1 National Parks and Nature Reserves and marked "National Park"	Minister administering the <i>National Parks and Wildlife Act 1974</i>

Note. If land, other than land specified in the Table to subclause (2), is required to be acquired under the owner-initiated acquisition provisions, the Minister for Planning is required to take action to enable the designation of the acquiring authority under this Part. Pending the designation of the acquiring authority for that land, the acquiring authority is to be the authority determined by order of the Minister for Planning (see section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

- (3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.

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Clause 5.2 Muswellbrook Local Environmental Plan 2009

Part 5 Miscellaneous provisions

5.2 Classification and reclassification of public land

- (1) The objective of this clause is to enable the Council to classify or reclassify public land as “operational land” or “community land” in accordance with Part 2 of Chapter 6 of the *Local Government Act 1993*.
Note. Under the *Local Government Act 1993*, “public land” is generally land vested in or under the control of a council (other than roads, Crown reserves and commons). The classification or reclassification of public land may also be made by a resolution of the Council under section 31, 32 or 33 of the *Local Government Act 1993*. Section 30 of that Act enables this Plan to discharge trusts on which public reserves are held if the land is reclassified under this Plan as operational land.
- (2) The public land described in Part 1 or Part 2 of Schedule 4 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*.
- (3) The public land described in Part 3 of Schedule 4 is classified, or reclassified, as community land for the purposes of the *Local Government Act 1993*.
- (4) The public land described in Part 1 of Schedule 4:
 - (a) does not cease to be a public reserve to the extent (if any) that it is a public reserve, and
 - (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants that affected the land before its classification, or reclassification, as operational land.
- (5) The public land described in Part 2 of Schedule 4, to the extent (if any) that it is a public reserve, ceases to be a public reserve when the description of the land is inserted into that Part and is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except:
 - (a) those (if any) specified for the land in Column 3 of Part 2 of Schedule 4, and
 - (b) any reservations that except land out of the Crown grant relating to the land, and
 - (c) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).

Note. In accordance with section 30 (2) of the *Local Government Act 1993*, the approval of the Governor to subclause (5) applying to the public land concerned is required before the description of the land is inserted in Part 2 of Schedule 4.

5.3 Development near zone boundaries

- (1) The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on

the other side of a zone boundary would enable a more logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.

- (2) This clause applies to so much of any land that is within the relevant distance of a boundary between any 2 zones. The relevant distance is 30 metres.
- (3) This clause does not apply to:
 - (a) land zoned RE1 Public Recreation, E1 National Parks and Nature Reserves, E2 Environmental Conservation, E3 Environmental Management or W1 Natural Waterways, or
 - (b) land within the coastal zone, or
 - (c) land proposed to be developed for the purpose of sex services or restricted premises.
- (4) Despite the provisions of this Plan relating to the purposes for which development may be carried out, consent may be granted to development of land to which this clause applies for any purpose that may be carried out in the adjoining zone, but only if the consent authority is satisfied that:
 - (a) the development is not inconsistent with the objectives for development in both zones, and
 - (b) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.
- (5) The clause does not prescribe a development standard that may be varied under this Plan.

5.4 Controls relating to miscellaneous permissible uses

(1) Bed and breakfast accommodation

If development for the purposes of bed and breakfast accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than 5 bedrooms.

(2) Home businesses

If development for the purposes of a home business is permitted under this Plan, the carrying on of the business must not involve the use of more than 50 square metres of floor area.

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Clause 5.5 Muswellbrook Local Environmental Plan 2009

Part 5 Miscellaneous provisions

(3) **Home industries**

If development for the purposes of a home industry is permitted under this Plan, the carrying on of the light industry must not involve the use of more than 50 square metres of floor area.

(4) **Industrial retail outlets**

If development for the purposes of an industrial retail outlet is permitted under this Plan, the retail floor area must not exceed:

- (a) 25% of the combined gross floor area of the industrial retail outlet and the building or place on which the relevant industry is carried out, or
 - (b) 500 square metres,
- whichever is the lesser.

(5) **Farm stay accommodation**

If development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than 5 bedrooms.

(6) **Kiosks**

If development for the purposes of a kiosk is permitted under this Plan, the gross floor area must not exceed 50 square metres.

(7) **Neighbourhood shops**

If development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed 100 square metres.

(8) **Roadside stalls**

If development for the purposes of a roadside stall is permitted under this Plan, the gross floor area must not exceed 20 square metres.

(9) **Secondary dwellings**

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,
- (b) 25% of the total floor area of both the self-contained dwelling and the principal dwelling.

5.5 Development within the coastal zone

Not applicable.

5.6 Architectural roof features

- (1) The objectives of this clause are:
 - (a) to allow for minor departures from applicable height controls, and
 - (b) to ensure that architectural roof features do not result in adverse visual and amenity impacts upon adjoining premises, and
 - (c) to ensure that architectural roof features are considered in the design of buildings and form an integral part of the building design.
- (2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with consent.
- (3) Development consent must not be granted to any such development unless the consent authority is satisfied that:
 - (a) the architectural roof feature:
 - (i) comprises a decorative element on the uppermost portion of a building, and
 - (ii) is not an advertising structure, and
 - (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and
 - (iv) will cause minimal overshadowing, and
 - (b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

5.7 Development below mean high water mark

Not applicable.

5.8 Conversion of fire alarms

- (1) This clause applies to a fire alarm system that can be monitored by New South Wales Fire Brigades or by a private service provider.
- (2) The following development may be carried out, but only with consent:
 - (a) converting a fire alarm system from connection with the alarm monitoring system of New South Wales Fire Brigades to connection with the alarm monitoring system of a private service provider,
 - (b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection

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- with the alarm monitoring system of another private service provider,
- (c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.
- (3) Development to which subclause (2) applies is complying development if it consists only of:
- (a) internal alterations to a building, or
- (b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm x 100mm x 100mm.
- (4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.
- (5) In this clause:
private service provider means a person or body that has entered into an agreement that is in force with New South Wales Fire Brigades to monitor fire alarm systems.

5.9 Preservation of trees or vegetation

Not adopted.

5.10 Heritage conservation

Note. Heritage items, heritage conservation areas and archaeological sites (if any) are shown on the Heritage Map. The location and nature of any such item, area or site is also described in Schedule 5.

(1) Objectives

The objectives of this clause are:

- (a) to conserve the environmental heritage of Muswellbrook, and
- (b) to conserve the heritage significance of heritage items and heritage conservation areas including associated fabric, settings and views, and
- (c) to conserve archaeological sites, and
- (d) to conserve places of Aboriginal heritage significance.

(2) Requirement for consent

Development consent is required for any of the following:

- (a) demolishing or moving a heritage item or a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item or a building, work, relic, tree or place within a heritage conservation area, including (in the case of a building) making changes to the detail, fabric, finish or appearance of its exterior,
- (c) altering a heritage item that is a building by making structural changes to its interior,
- (d) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (e) disturbing or excavating a heritage conservation area that is a place of Aboriginal heritage significance,
- (f) erecting a building on land on which a heritage item is located or that is within a heritage conservation area,
- (g) subdividing land on which a heritage item is located or that is within a heritage conservation area.

(3) When consent not required

However, consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:
 - (i) is of a minor nature, or is for the maintenance of the heritage item, archaeological site, or a building, work, relic, tree or place within a heritage conservation area, and
 - (ii) would not adversely affect the significance of the heritage item, archaeological site or heritage conservation area, or
- (b) the development is in a cemetery or burial ground and the proposed development:
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to a place of Aboriginal heritage significance, or

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Part 5 Miscellaneous provisions

- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (d) the development is exempt development.

(4) **Effect on heritage significance**

The consent authority must, before granting consent under this clause, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned. This subclause applies regardless of whether a heritage impact statement is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) **Heritage impact assessment**

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

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

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

(6) **Heritage conservation management plans**

The consent authority may require, after considering the significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) **Archaeological sites**

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(8) **Places of Aboriginal heritage significance**

The consent authority must, before granting consent under this clause to the carrying out of development in a place of Aboriginal heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place, and
- (b) notify the local Aboriginal communities (in such way as it thinks appropriate) about the application and take into consideration any response received within 28 days after the notice is sent.

(9) **Demolition of item of State significance**

The consent authority must, before granting consent for the demolition of a heritage item identified in Schedule 5 as being of State significance (other than an item listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council about the application, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(10) **Conservation incentives**

The consent authority may grant consent to development for any purpose of a building that is a heritage item, or of the land on which such a building is erected, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage conservation management plan that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage conservation management plan is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

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Clause 5.11 Muswellbrook Local Environmental Plan 2009

Part 5 Miscellaneous provisions

5.11 Bush fire hazard reduction

Bush fire hazard reduction work authorised by the *Rural Fires Act 1997* may be carried out on any land without consent.

Note. The *Rural Fires Act 1997* also makes provision relating to the carrying out of development on bush fire prone land.

5.12 Infrastructure development and use of existing buildings of the Crown

- (1) This Plan does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried out without consent under the *State Environmental Planning Policy (Infrastructure) 2007*.
- (2) This Plan does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

Part 6 Urban release areas

6.1 Arrangements for designated State public infrastructure

- (1) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.
- (2) Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.
- (3) Subclause (2) does not apply to:
 - (a) any lot identified in the certificate as a residue lot, or
 - (b) any lot created by a subdivision previously consented to in accordance with this clause, or
 - (c) any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or
 - (d) a subdivision for the purpose only of rectifying an encroachment on any existing lot.
- (4) This clause does not apply to land in an urban release area if all or part of the land is in a special contributions area (as defined by section 93C of the Act).

6.2 Public utility infrastructure

- (1) Development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.
- (2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.

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Clause 6.3 Muswellbrook Local Environmental Plan 2009

Part 6 Urban release areas

6.3 Development control plan

- (1) The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.
- (2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.
- (3) The development control plan must provide for all of the following:
 - (a) a staging plan for the timely and efficient release of urban land making provision for necessary infrastructure and sequencing,
 - (b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,
 - (c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,
 - (d) a network of passive and active recreational areas,
 - (e) stormwater and water quality management controls,
 - (f) amelioration of natural and environmental hazards, including bushfire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,
 - (g) detailed urban design controls for significant development sites,
 - (h) measures to encourage higher density living around transport, open space and service nodes,
 - (i) measures to accommodate and control appropriate neighbourhood commercial and retail uses,
 - (j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.
- (4) Subclause (2) does not apply to any of the following development:
 - (a) a subdivision for the purpose of a realignment of boundaries that does not create additional lots,
 - (b) a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,

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- (c) a subdivision of land in a zone in which the erection of structures is prohibited,
 - (d) proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.

6.4 Relationship between Part and remainder of Plan

A provision of this Part prevails over any other provision of this Plan to the extent of any inconsistency.

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Clause 7.1 Muswellbrook Local Environmental Plan 2009

Part 7 Additional local provisions

Part 7 Additional local provisions

7.1 Environmentally sensitive land—biodiversity

- (1) The objective of this clause is to protect, maintain and improve the diversity of landscapes, including:
 - (a) protecting the biological diversity of native fauna and flora, and
 - (b) protecting ecological processes necessary for their continued existence, and
 - (c) encouraging the recovery of threatened species, communities and populations and their habitats.
- (2) This clause applies to land identified as “environmentally sensitive land—biodiversity” on the Environmentally Sensitive Land Map.
- (3) Development consent must not be granted for development on environmentally sensitive land—biodiversity unless the consent authority is satisfied that the development satisfies the objective of this clause and:
 - (a) the development is designed and will be located and managed to avoid any potential adverse environmental impact, or
 - (b) if a potential adverse environmental impact cannot be avoided, the development:
 - (i) is designed and located so as to have minimum adverse impact, and
 - (ii) incorporates effective measures to remedy or mitigate any adverse impact caused.

7.2 Subdivision in Zone RU1 Primary Production and Zone E3 Environmental Management

- (1) The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.
- (2) This clause applies to land in Zone RU1 Primary Production and Zone E3 Environmental Management that is used, or proposed to be used, for residential accommodation or tourist and visitor accommodation.
- (3) Development consent must not be granted to the subdivision of a lot in a strata plan or community title scheme on land to which this clause applies.

7.3 Controls relating to rural worker's dwellings

- (1) The objectives of this clause are as follows:
 - (a) to ensure that rural worker's dwellings permitted on land in rural zones are erected only because of a genuine long-term need for the dwellings,
 - (b) to ensure that the erection of rural worker's dwellings is relevant to the nature of the land uses occurring on the land.
- (2) Development consent must not be granted for the purpose of erecting rural worker's dwellings on land in a rural zone unless the consent authority is satisfied of the following:
 - (a) that the existing or future uses of the land are of a nature and scale that will require the ongoing employment of additional rural workers on a permanent or seasonal basis,
 - (b) that the nature of the existing or future uses of the land is such that, if workers would be required to live off-site, there would be a significant adverse impact to the relevant agricultural or rural industry,
 - (c) that the number of proposed rural worker's dwellings is compatible with the nature and scale of existing or future uses of the land,
 - (d) that the proposed dwelling will be located on the same lot as the principal residence and share existing access.

7.4 Subdivision in Zone R1 General Residential and Zone RU5 Village

- (1) This clause applies to a subdivision of any land that requires development consent and is in Zone R1 General Residential or Zone RU5 Village.
- (2) Development consent must not be granted for subdivision development on the land to which this clause applies until the land is adequately serviced with water and sewerage, or arrangements satisfactory to the consent authority have been made to service it.

7.5 Erection of dwelling houses on land in certain rural and environmental protection zones

- (1) This clause applies to any of the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU3 Forestry,
 - (c) Zone E3 Environmental Management.

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Clause 7.5 Muswellbrook Local Environmental Plan 2009

Part 7 Additional local provisions

- (2) Development consent must not be granted for the erection of a dwelling house on a lot in a zone to which this clause applies, and on which no dwelling house has been erected, unless the lot is:
- (a) a lot created in accordance with clause 4.1, or
 - (b) a lot created before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or
 - (c) a lot created before this Plan commenced that is at least the minimum lot size specified for that lot by the Lot Size Map, or
 - (d) a lot for which subdivision approval was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible immediately before that commencement, or
 - (e) an existing holding.

Note. A dwelling cannot be erected on a lot created under clause 9 of State Environmental Planning Policy (Rural Lands) 2008 or clause 4.2.

- (3) Despite any other provision of this clause, development consent may be granted for the erection of a dwelling house on land in a zone to which this clause applies if:
- (a) there is a lawfully erected dwelling house on the land and the dwelling house to be erected is intended only to replace the existing dwelling house, or
 - (b) the land would have been a lot or a holding referred to in subclause (2) had it not been affected by:
 - (i) a minor realignment of its boundaries that did not create an additional lot, or
 - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose.

- (4) In this clause:

existing holding means all adjoining land, even if separated by a road or railway, held in the same ownership:

- (a) on 11 April 1974, and
- (b) at the time of lodging a development application for the erection of a dwelling house under this clause,

and includes any other land adjoining that land acquired by the owner since 11 April 1974.

Note. The owner in whose ownership all the land is at the time the application is lodged need not be the same person as the owner in whose ownership all the land was on the stated date.

Schedule 1 Additional permitted uses

(Clause 2.5)

1 Use of certain land at 142–144 Sydney Street, Muswellbrook

- (1) This clause applies to land at 142–144 Sydney Street, Muswellbrook, being Lots 2 and 3, DP 220375 and Lot 21, DP 22107.
- (2) Development for the purpose of a vehicle repair station is permitted with consent.

2 Subdivision of certain land at 5052 Jerry's Plains Road, Denman

- (1) This clause applies to land at 5052 Jerry's Plains Road, Denman, being Lot 137, DP 730142.
- (2) Development for the purposes of subdivision creating 1 lot with an area of 6ha for the purposes of an information and education facility is permitted with consent.

3 Use of certain land at New England Highway, Muswellbrook

- (1) This clause applies to land at New England Highway, Muswellbrook, being Lot 4, DP 1103173.
- (2) Development for the purpose of serviced apartments is permitted with consent.

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Schedule 2 Exempt development

Schedule 2 Exempt development

(Clause 3.1)

Note 1. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* specifies exempt development under that Policy. The Policy has State-wide application.

Note 2. Exempt development may be carried out without the need for development consent under the Act. Such development is not exempt from any approval, licence, permit or authority that is required under any other Act and adjoining owners' property rights and the common law still apply.

Advertising structures

- (1) Must not cover mechanical ventilation inlet or outlet vents.
- (2) Advertising panels (business identification signs or building identification signs) must comply with the following:
 - (a) Maximum area—1m².
 - (b) Only 1 per property.
 - (c) Must be secure and stable.
- (3) An A-frame sign on private land used in conjunction with an existing premises for which consent has been granted on land that is in Zone B2 Local Centre, must comply with the following:
 - (a) Only 1 per property.
 - (b) Must not involve any live or recorded entertainment including music, broadcast programs, flashing lights or the like.
 - (c) Area must immediately adjoin the premises and not obstruct access to the premises or to any adjacent premises.
 - (d) Maximum display area (on each side)—0.5m².
 - (e) Must be secure and stable.
 - (f) Must not involve construction work.
 - (g) Must be temporary and must be removed at the close of business.
- (4) Change of message on existing sign must comply with the following:
 - (a) Sign must have been previously consented to by the consent authority or erected as exempt development.
 - (b) Must not change signage illumination.
 - (c) New message must comply with any content requirements of any existing consent.
 - (d) Must not change dimensions of sign.
- (5) Fascia sign must comply with the following:

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- (a) Must be attached to an existing fascia and fixed flush with the fascia.
 - (b) Must not extend above or below the fascia or return end of the awning.
 - (c) Must not be illuminated.
 - (d) Only 1 per property.
- (6) Flush wall sign must comply with the following:
- (a) Maximum area— 2.5m^2 .
 - (b) Must be securely fixed to an existing wall.
 - (c) Maximum height—3.5m above ground level (existing).
 - (d) Must not be illuminated.
 - (e) Only 1 per property in Zone R1 General Residential and Zone RU5 Village.
 - (f) Maximum of 2 per property in all other zones.
 - (g) Must contain only a reference to identify the subject premises or a description of the subject premises, activities or professional affiliations of the occupation conducted in the building to which the sign is attached.
- (7) Pole or pylon sign must comply with the following:
- (a) Maximum height—6m.
 - (b) Maximum area of advertising panel (per side)— 2.5m^2 .
 - (c) Only 1 per property.
 - (d) May only be in industrial zones.
 - (e) Must be built in accordance with engineer's certification for the structure and footings.
- (8) Real estate sign must comply with the following:
- (a) Maximum area (per side):
 - (i) single dwelling house— 2.5m^2 .
 - (ii) multi-dwelling development of less than 10 dwelling houses— 5m^2 .
 - (iii) multi-dwelling development of 10 or more dwelling houses— 10m^2 .
 - (iv) commercial building— 5m^2 .
 - (v) rural property— 10m^2 .
 - (vi) subdivision of less than 20 lots— 10m^2 .
 - (vii) subdivision of 20 lots or more— 15m^2 .
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Schedule 2 Exempt development

- (b) Must not be erected until development approval for the building or subdivision has been granted.
 - (c) Maximum return—0.2m.
 - (d) Must contain only a notice that the building or site to which it is fixed is for sale or for let.
 - (e) Maximum of 1 sign for each property or subdivision stage.
 - (f) Must not be illuminated.
 - (g) Must be removed within 14 days of the sale of the property or in the case of subdivisions, when 90% of lots are sold, or within 5 years, whichever occurs first.
 - (h) Maximum height—8m.
 - (i) Only 1 directional sign with a maximum area of 1m² is allowed in Zone RU1 Primary Production to direct people to the site or for auction or inspection purposes.
 - (j) Must not interfere with sight distances for vehicles approaching intersections.
- (9) Temporary sign (including a sign announcing an authorised local event for religious, educational, cultural, political, social or recreational purposes) must comply with the following:
- (a) Maximum height—3m.
 - (b) Sign must not be higher than building it is mounted on.
 - (c) Maximum area—3m².
 - (d) Must not be illuminated.
 - (e) Any sponsor's names or logos must be less prominent than the message.
 - (f) Must not be displayed earlier than 28 days before an event.
 - (g) Must not be displayed later than 14 days after an event.
- (10) Top hamper sign (including a sign attached to the transom of a doorway or display window of a building) must comply with the following:
- (a) Must be fixed flush to the wall.
 - (b) Must be securely fixed.
 - (c) Must not extend below the head of the doorway or window to which it is attached.
 - (d) Must not extend more than 0.2m beyond any building alignment.
 - (e) Must not be illuminated.
- (11) Under awning sign must comply with the following:
- (a) May only be located in Zone B2 Local Centre.

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- (b) Must not be less than 2.6m from the ground or footpath to the underside of the sign.
 - (c) Maximum length—2.5m.
 - (d) Only 1 per property.
 - (e) Must be securely fixed to awning.
 - (f) Must not project beyond the awning.
 - (g) Must be erected horizontal to the ground.
 - (h) Must be located more than 3m from another under awning sign.
- (12) Window sign (including a sign displayed on a shop window) must comply with the following:
- (a) May only be located in Zone B2 Local Centre and industrial zones.
 - (b) Must not cover more than 75% of shop window.
 - (c) Must not be illuminated.
 - (d) Must be located on ground level facade.
 - (e) Only 1 per shop window.
- (13) Must not be on a heritage item.

Aquaculture

- (1) Must only be located in the following zones:
 - (a) RU1 Primary Production,
 - (b) RU5 Village,
 - (c) R1 General Residential,
 - (d) R5 Large Lot Residential,
 - (e) B2 Local Centre,
 - (f) IN1 General Industrial,
 - (g) IN2 Light Industrial,
 - (h) RE1 Public Recreation,
 - (i) RE2 Private Recreation.
- (2) Maximum total volume of all tanks—10,000 litres.

Automatic teller machines (B2, RU5, IN1 and IN2 zones only)

- (1) If facing a public footpath or street, must provide capacity for queuing and the free movement of pedestrians must not be hindered.
- (2) Must not be free-standing.

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- (3) Must include provision for the surveillance of people using the machine (for example, by way of a closed circuit television camera).
- (4) Must include provision for lighting the area around the machine.
- (5) Must include a receptacle for the disposal of transaction slips.
- (6) Must not be on a heritage item.

Bollards erected for security purposes to existing business premises, office premises or shop

- (1) Maximum height—1.2m.
- (2) Maximum diameter—0.5m.
- (3) The design and finish of the bollards must complement the existing building or site and must be consistent in character with adjacent street furniture.

Bridge and road maintenance (RU1, E3 and W1 zones only)

- (1) Must be existing bridge or road.
- (2) Works must not involve altering widths or other dimensions of the existing bridge or road.

Building alterations (new external windows, glazed areas and doors)—residential premises

- (1) Must comply with the following:
 - (a) AS 1288—2006, *Glass in buildings—Selection and installation*,
 - (b) AS/NZS 2208—1996, *Safety glazing materials in buildings*.
- (2) Structural support members must not be removed.
- (3) Must not reduce the area provided for light and ventilation.
- (4) Must not compromise swimming pool barrier.
- (5) Privacy and security—if a proposed window is in a habitable room and will allow an outlook to a window of a habitable room in a neighbouring dwelling house and the distance between the two windows is less than 9m, the proposed window:
 - (a) must be offset from its edge to the edge of the other window by a distance of 1m, and
 - (b) must have a sill height of 1.5m above ground level (existing), and
 - (c) must have fixed obscure glazing in any part of the window below 1.5m above ground level (existing).

- (6) Must not be on a heritage item.
- (7) Does not include replacement of windows, glazed areas and doors.

Change the use of a premises (or part of a premises) from a business premises to another business premises

- (1) Previous use must have been a lawful use.
- (2) Must comply with any existing conditions of consent.
- (3) New use must be a permissible use in the relevant zone.
- (4) New use must not change approved area of premises.
- (5) New use must not extend existing hours of operation.
- (6) New use must be consistent with any condition of consent of the existing use relating to the following:
 - (a) the maintenance of landscaping,
 - (b) the parking of vehicles,
 - (c) the provision of space for the loading or unloading of goods or vehicles.

Change the use of a premises (or part of a premises) from a retail premises to another retail premises

- (1) Must not involve a different use of the building from a non-food shop to a shop used for the preparation of food for sale or consumption.
- (2) Previous use must have been a lawful use.
- (3) New use must comply with any existing condition of consent.
- (4) New use must be a permissible use in the relevant zone.
- (5) New use must not change approved area of premises.
- (6) New use must not extend existing hours of operation.
- (7) Restricted publications must not be exhibited or sold.
- (8) Objects primarily concerned with sexual behaviour must not be exhibited.
- (9) The curtilage of the shop must not be used for storage or display purposes without necessary approvals.
- (10) New use must be consistent with any condition of consent of the existing use relating to the following:
 - (a) the maintenance of landscaping,
 - (b) the parking of vehicles,

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- (c) the provision of space for the loading or unloading of goods or vehicles.

Change the use of a building (or part of a building) from an industry to a light industry

- (1) Previous use must have been a lawful use.
- (2) New use must comply with any existing condition of consent.
- (3) New use must be a permissible use in the zone.
- (4) New use must not change approved area of premises.
- (5) New use must not extend existing hours of operation.
- (6) New use must not exceed 500m² in total floor area.
- (7) Building must have rear service access or access to off-street loading facilities.
- (8) The curtilage of the building must not be used for storage or display purposes.
- (9) New use must be consistent with any condition of consent of the existing use relating to the following:
 - (a) the maintenance of landscaping,
 - (b) the parking of vehicles,
 - (c) the provision of space for the loading or unloading of goods or vehicles.
- (10) New use must not result in any premises being used for potentially hazardous industry or offensive industries.

Dams (RU1 zone only)

- (1) Embankment fill batter grades must not be steeper than 1:2.5 (vertical:horizontal).
- (2) Minimum distance from property boundary at closest point—10m.
- (3) Minimum fill embankment crest width—3m.
- (4) Minimum height difference between the embankment crest level and the spillway level—1m.
- (5) Maximum fill embankment height—3m (measured from ground level (existing) immediately down slope of the embankment to the top of the embankment crest level).
- (6) No trees must be removed or damaged as a result of the dam construction.

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- (7) Maximum water storage capacity—3 megalitres.

Filming

- (1) **Note.** Provision repealed under the *Standard Instrument (Local Environmental Plans) Order 2006*.
- (2) May only be carried out on land:
- (a) on which there is a heritage item, or
 - (b) within a heritage conservation area, or
 - (c) identified in clause 3.3 as an environmentally sensitive area for exempt development,
- if the filming does not involve or result in any of the following:
- (d) any changes or additions that are not merely superficial and temporary to any part of a heritage item, a heritage conservation area or an environmentally sensitive area,
 - (e) the mounting or fixing of any object or article on any part of such an item or area (including any building or structure),
 - (f) the movement, parking or standing of any vehicle or equipment on or over any part of such an item or area that is not specifically designed for the movement, parking or standing of a vehicle or equipment on or over it,
 - (g) any changes to the vegetation on, or level of, such an item or area or any changes to any other natural or physical feature of the item or area.
- (3) Must not create significant interference with the neighbourhood.
- (4) The person carrying out the filming must obtain a policy of insurance that adequately covers the public liability of the person in respect of the filming for an amount of not less than \$10,000,000.
- (5) If the filming is carried out on private land, the filming must not be carried out for more than 30 days within a 12-month period at the particular location.
- (6) A filming management plan must be prepared and lodged with the consent authority for the location at least 5 days before the commencement of filming at the location. The plan must contain the following information and be accompanied by the following documents (without limiting the information or documents that may be submitted):
- (a) the name, address and telephone number of the person carrying out the filming (such as a production company) and of the producer for the filming,

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- (b) a brief description of the filming to be carried out (for example, a television commercial, a television series, a feature film or a documentary),
- (c) the proposed location of the filming,
- (d) the proposed commencement and completion dates for the filming at the location,
- (e) the proposed daily length of filming at the location,
- (f) the number of persons to be involved in the filming,
- (g) details of any temporary structures (for example, tents or marquees) to be erected or used at the location for the purposes of the filming,
- (h) the type of filming equipment to be used in the filming (such as a hand-held or mounted camera),
- (i) proposed arrangements for parking vehicles associated with the filming during the filming,
- (j) whether there will be any disruption to the location of the filming or the surrounding area and the amenity of the neighbourhood (for example, by the discharge of firearms or explosives, the production of offensive noise, vibrations, disruption to traffic flow or the release of smells, fumes, vapour, steam, soot, ash, dust, waste water, grit or oil),
- (k) whether the filming will involve the use of outdoor lighting or any other special effects equipment,
- (l) a copy of the public liability insurance policy that covers the filming at the location,
- (m) a copy of any approval given by a public or local authority to carry out an activity associated with the proposed filming at the location, such as the following:
 - (i) an approval by the Roads and Traffic Authority for the closure of a road,
 - (ii) an approval by the Council for the erection or use of a temporary structure, closure of a road or a public footpath, or a restriction in pedestrian access,
 - (iii) an approval by the Environment Protection Authority for an open fire,
 - (iv) an approval by the NSW Police Force for the discharge of firearms,
 - (v) an approval by the Department of Lands for the use of Crown land,

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- (n) details of any temporary alteration or addition to any building or work at the location for the purposes of the filming.
- (7) The person carrying out the filming must, at least 5 days before the commencement of filming at the particular location, give notice in writing (by way of a letter-box drop) of the filming to residents within a 50m radius of the location. The notice must contain the following information:
- (a) the name and telephone number of the person carrying out the filming (such as a production company) and of a contact representative of that person,
 - (b) a brief description of the filming to be carried out at the location, and any proposed disruptions to the location or the surrounding area or the amenity of the neighbourhood,
 - (c) the proposed commencement and completion dates for the filming at the location,
 - (d) the proposed daily length of filming at the location.

Minor internal alterations—retail or industrial premises (not including premises involving the preparation of food for sale or consumption)

- (1) If a retail building, existing floor area must not exceed 200m².
- (2) If an industrial building, existing floor area must not exceed 500m².
- (3) Must not compromise fire safety or affect accessibility to a fire exit.
- (4) Must not include changes to the configuration of rooms whether by removal of walls or other means of structural support.
- (5) Use must be an existing lawful use.
- (6) Must not extend hours of operation outside existing hours of operation.
- (7) Proposed use must be consistent with any condition of consent of the existing use relating to:
 - (a) the maintenance of landscaping, or
 - (b) the parking of vehicles, or
 - (c) the provision of space for the loading or unloading of goods or vehicles.
- (8) The curtilage of the premises must not be used for storage or display purposes.
- (9) Must not change mechanical or natural ventilation.
- (10) Must not be on a heritage item.

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Minor external alterations or building works (other than a dwelling)

- (1) Must only comprise non-structural alterations to the exterior of a building such as painting, plastering, cement rendering, cladding, attaching fittings and decorative work.
- (2) Roofing and wall cladding materials must be constructed of low reflective, factory pre-coloured materials.
- (3) Must not compromise the making of, or an alteration to the size of, any opening in a wall or roof of a building, such as a doorway, window or skylight (except in accordance with specific provisions relating to skylights).
- (4) If located on bush fire prone land, must be of non-combustible material.
- (5) Must not be on a heritage item.

Moveable dwelling installation (including caravans)—on an approved site

- (1) Must be in a caravan park, camping ground or manufactured home estate that has the required development consent and operating approval.
- (2) Must not be on bush fire prone land.

Moveable dwelling installation (including caravans)—on land other than approved sites

- (1) Must not involve more than 2 caravans or campervans on any land.
- (2) Must not be occupied for more than 2 days at a time and not more than 60 days in total in any 12-month period.
- (3) If located on land on which a dwelling house is situated, must be occupied only by the owner of the dwelling or members of the owners household.
- (4) If only located on pastoral or agricultural land, must be occupied seasonally by persons employed in pastoral or agricultural operations on the land.
- (5) Occupant must have continuous access to approved toilet, laundry and shower facilities.
- (6) Must not be on bush fire prone land.

Rainwater tanks

Note. Rainwater tanks are exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Only that Policy applies.

- (1) Must not be installed or erected on land:

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- (a) that is within a heritage conservation area or within the curtilage of a heritage item, or
 - (b) that is within 40m of a perennial watercourse identified by a 1:50,000 topographic map held by the Department of Lands, or
 - (c) the surface of which has a slope greater than 18 degrees from the horizontal, or
 - (d) that is a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.
- (2) Must be located:
- (a) behind the front alignment to the street of the building to which the tank is connected (or in the case of a building on a corner block, behind both the street front and the street side alignments of the building), and
 - (b) at least 450mm from any property boundary.
- (3) Must not be installed or erected:
- (a) over or immediately adjacent to a water main or sewer main unless it is installed in accordance with any requirements of the public authority that has responsibility for the main, or
 - (b) over any structure or fitting used by a public authority to maintain a water main or sewer main, or
 - (c) on a footing of any building or other structure, including a retaining wall.
- (4) The installation or erection of the rainwater tank must not:
- (a) require a tree to be removed, or
 - (b) involve the excavation of more than 1m from the existing ground level, or the filling of more than 1m above the existing ground level.
- (5) Subject to this clause, the capacity of the rainwater tank, or the combined capacity of the tanks, on a lot must not exceed 10,000L (or in the case of a tank or tanks used for an educational establishment, 25,000L).
- (6) The rainwater tank must:
- (a) be designed to capture and store roof water from gutters or downpipes on a building, and
 - (b) be fitted with a first-flush device, being a device that causes the initial run-off of any rain to bypass the tank to reduce pollutants entering the tank, and

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Schedule 2 Exempt development

- (c) be structurally sound, and
 - (d) be prefabricated, or be constructed from prefabricated elements that were designed and manufactured for the purpose of the construction of a rainwater tank, and
 - (e) be assembled and installed in accordance with the manufacturer's or tank designer's specifications, and
 - (f) be installed and maintained (including any stand for the tank) in accordance with any requirements of the public authority that has responsibility for the supply of water to the premises on which the tank is installed, and
 - (g) be enclosed, and any inlet to the tank must be screened or filtered, to prevent the entry of foreign matter or creatures, and
 - (h) be maintained at all times so as not to cause a nuisance with respect to mosquito breeding or overland flow of water, and
 - (i) have a sign affixed to it clearly stating that the water in the tank is rainwater.
- (7) The rainwater tank must not:
- (a) collect water from a source other than gutters or downpipes on a building or a water supply service pipe, or
 - (b) exceed 3m in height above ground level, including any stand for the tank.
- (8) Any overflow from the rainwater tank must be directed into an existing stormwater system.
- (9) Any plumbing work undertaken on or for the rainwater tank that affects a water supply service pipe or a water main must be undertaken:
- (a) with the consent of the public authority that has responsibility for the water supply service pipe or water main, and
 - (b) in accordance with any requirements by the public authority for the plumbing work, and
 - (c) by a licensed plumber in accordance with the *New South Wales Code of Practice for Plumbing and Drainage* produced by the Committee on Uniformity of Plumbing and Drainage Regulations in NSW.
- (10) Any motorised or electric pump used to draw water from the rainwater tank or to transfer water between rainwater tanks:
- (a) must not create an offensive noise, and
 - (b) in the case of a permanent electric pump, must be installed by a licensed electrician.

Rural earthworks (RU1 and E3 zones only)

- (1) Levelling of land to a maximum depth of 300mm.
- (2) Maximum area—250m².
- (3) Includes excavation associated with current development approvals, such as for a dwelling, shed or retaining wall, or backfilling of minor dams.

Satellite TV dishes

Note. Satellite TV dishes are exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. Only that Policy applies.

- (1) Must not be installed or erected:
 - (a) on land within a heritage conservation area or within the curtilage of a heritage item, or
 - (b) less than 1m from any easement or sewer main.
- (2) Must be installed or erected wholly within the boundaries of a property.
- (3) If roof mounted, must have a diameter not exceeding 90cm (excluding any projecting feed element) and its height at any point must not exceed the highest point of the roof (if the roof is peaked) or 1.2m above the roof (if the roof is flat).
- (4) If ground mounted, must have a diameter not exceeding 90cm (excluding any projecting feed element) and its height must not exceed 1.2m above the highest point of the roof of the dwelling on which, or adjacent to which, it is erected.
- (5) If installed or erected on land within a Business or Industrial zone, must comply with the following:
 - (a) if roof mounted, must have a diameter not exceeding 1.8m (excluding any projecting feed element) and its height at any point must not exceed 1.8m above the highest point of the roof structure,
 - (b) if ground mounted, must have a diameter not exceeding 1.8m (excluding any projecting feed element) and its height must not exceed 1.8m above the highest point of the roof of any building on which, or adjacent to which, it is erected.
- (6) Must be installed in accordance with the manufacturer's specifications and any relevant standard specified by Standards Australia.
- (7) Must not affect the structural integrity of any building on which it is erected.

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Silos (RU1 zone only)

- (1) Must be associated with primary production activities occurring on the subject land.
- (2) Must be constructed of prefabricated metal.
- (3) Must be transported to the site as a single unit, excluding ancillary attachments.
- (4) Must be freestanding and must not rely on other structures for support.
- (5) Must be erected in accordance with the manufacturer's specifications or engineer's certification.
- (6) Must not be erected within 20m of the street boundary.
- (7) Minimum setback to property boundary being equivalent to the height of the silo plus 1m.
- (8) Must not encroach on any registered easements.

Solid fuel heaters

Must only be installed in residential dwellings.

Tennis court for private or non-commercial use on a rural zoned property and associated with a dwelling house

- (1) Site must be greater than 1ha.
- (2) Must not have lighting.
- (3) Only 1 court per property.
- (4) Must not interfere with any approved on-site effluent disposal or treatment system.
- (5) Maximum cut and fill—600mm.
- (6) Stormwater must be disposed of without causing nuisance to adjoining premises.
- (7) Must be located behind front setback of dwelling from street.
- (8) Must be located at least 1,500mm from any manhole, riser, inspection shaft or the like.

Tents or marquees used solely for filming purposes

- (1) May only be used in connection with filming that is exempt development.
- (2) Total floor area of all tents or marquees on location at the same time must not exceed 200m².

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- (3) Must be located within at least 3m from any boundary adjoining a public road and at least 1m from any other boundary.
 - (4) Must have the following number of exits arranged so as to afford a ready means of egress from all parts of the tent or marquee to open space or a road:
 - (a) 1 exit if the floor area of the tent or marquee does not exceed 25m²,
 - (b) 2 exits in any other case.
 - (5) Width of each exit must be at least:
 - (a) 800mm if the floor area of the tent or marquee is less than 150m², or
 - (b) 1m in any other case.
 - (6) Height of the walls must not exceed:
 - (a) 4m if erected on private land, or
 - (b) 5m in any other case.
 - (7) Height as measured from the surface on which the tent or marquee is erected to the highest point of the tent or marquee must not exceed 6m.
 - (8) Must resist loads determined in accordance with the following Australian and New Zealand Standards entitled:
 - (a) AS/NZS 1170.0:2002, *Structural design actions—General principles*,
 - (b) AS/NZS 1170.1:2002, *Structural design actions—Permanent, imposed and other actions*,
 - (c) AS/NZS 1170.2:2002, *Structural design actions—Wind actions*.
 - (9) Must not remain at the location more than 2 days after the completion of the filming at the location.

Temporary structures (other than tents and marquees), and temporary alterations or additions to buildings or works, solely for filming purposes

- (1) May only be erected, used, altered or added to in connection with filming that is exempt development.
- (2) Temporary structure must not be at the location for more than 30 days within a 12-month period.
- (3) Alteration or addition to the building or work must not remain in place for more than 30 days within a 12-month period.
- (4) Temporary structure, or building or work in its altered or added to form, must not be accessible to the public.

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Schedule 2 Exempt development

Water heaters (excluding solar systems)

- (1) Must be a replacement or new installation.
- (2) Must not reduce the structural integrity of the building or involve structural alterations.
- (3) Must be installed by a licensed tradesperson.
- (4) Must be installed in accordance with the manufacturer's specifications.
- (5) Must include tempering device set so as to deliver water at the required temperature.
- (6) Must be located in side or rear yard.
- (7) Must be located at least 1,500mm from any manhole, riser, inspection shaft or the like.

Schedule 3 Complying development

(Clause 3.2)

Note 1. *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* specifies complying development and the complying development conditions for that development under that Policy. The Policy has State-wide application.

Note 2. Information relevant to this Part is also contained in the Act, the *Environmental Planning and Assessment Regulation 2000*, the *Protection of the Environment Operations Act 1997* and the *Roads Act 1993*.

Part 1 Types of development

Change of use—retail and business premises

- (1) Involves a change of use from:
 - (a) retail premises to business premises, or
 - (b) business premises to retail premises, or
 - (c) an office to a shop, or
 - (d) a shop to an office.
- (2) Involves internal alterations or fit out (and any necessary demolition associated with the alterations).
- (3) New use must be permissible within the zone.
- (4) New use must comply with any existing development consent conditions.
- (5) New use must not be for hairdressing, skin penetration or food preparation.
- (6) New use must not change existing arrangements for access, parking, loading and waste disposal.
- (7) All loading and unloading activities must be undertaken within specified areas within the site.
- (8) Must not increase intensity of use, including noise generation, hours of operation and traffic generation.
- (9) Must not increase the fire load in the structure.
- (10) Must not be for drug use rehabilitation clinic, including methadone clinics.
- (11) Total floor area involved must not be more than 200m² and must not increase the gross floor area of the building.
- (12) The proposed building must not be located over any sewer main or manhole.

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Schedule 3 Complying development

- (13) Disabled access must be available to the building in accordance AS 1428.1—2001, *Design for access and mobility—General requirements for access—New building work*.
- (14) Noise levels must not exceed 5dBA above the ambient background noise level measured at the boundary of the lot.

Industrial buildings (including minor additions and ancillary structures to existing industrial buildings)

- (1) Additional floor area created must not exceed 50m² and must not be used for manufacturing, industrial or like activity.
- (2) Additional external areas must not be occupied for the purpose of storage or manufacturing or any like activity.
- (3) The total floor area of the building on the site involved must not be more than 2,000m².
- (4) Must not involve a change of building use.
- (5) Must comply with any existing development consent conditions.
- (6) **Setbacks**
 - (a) Each part of the structure must have a front setback of not less than 10m.
 - (b) Each part of the structure must have side and rear setbacks of not less than 3m.
- (7) **Building height and materials**
 - (a) The height of any walls must not be more than 8.5m, not including a parapet.
 - (b) Parapets may extend a maximum of 1.2m above the intersection of the wall and the roof.
 - (c) Roof pitch must not be more than 10 degrees.
 - (d) The site must not be cut or filled greater than 500mm.
 - (e) Cladding and materials used in construction must be new and must have low reflective properties and must be factory pre-coloured.
 - (f) Security fencing must not be greater than 1.8m in height.
- (8) **Drainage**
 - (a) All roof and surface water must be drained to the street and discharged to the consent authority's nearest stormwater drainage system in accordance with an engineer's design.
 - (b) The drainage system must be designed for a 10 year return period, with excess flows designed to flow overland to the street.

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- (9) Garbage and storage areas must be on site and behind the building line of the property.
 - (10) A landscaping strip of at least 3m (if reticulated sewer is provided) or 6m (if there is no sewer) to each street frontage must be planted and maintained with canopy trees and shrubs with a maximum width of 7m for the driveway.
 - (11) Must not change existing arrangements for access, parking spaces, loading and waste disposal.
 - (12) Stormwater must be disposed of by way of:
 - (a) a registered stormwater easement, or
 - (b) an inter allotment stormwater pit located within the property boundary, or
 - (c) a pipe that connects to the kerb and gutter, or
 - (d) an existing approved stormwater drain on site.

Part 2 Complying development certificate conditions

Note 1. Complying development must comply with the requirements of the Act, the *Environmental Planning and Assessment Regulation 2000* and the conditions listed in this Part.

Note 2. A contributions plan setting out the contribution requirements towards the provision or improvement of public amenities or public services may specify that an accredited certifier must, under section 94EC of the Act, impose a condition on a complying development certificate requiring the payment of a monetary contribution in accordance with that plan.

Division 1 Conditions applying before works commence

Protection of adjoining areas

- (1) A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of works if the works:
 - (a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
 - (b) could cause damage to adjoining lands by falling objects, or
 - (c) involve the enclosure of a public place or part of a public place.
- (2) A temporary fence must be covered in cyclone wire mesh if it adjoins or is on a public place.
- (3) A temporary hoarding, fence or awning must not be erected on public land or a road unless the relevant authority has approved of the works.

Note. Approval in relation to public land may be granted under the *Local Government Act 1993*. Approval in relation to a road may be granted under the *Roads Act 1993*.

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Schedule 3 Complying development

Toilet facilities

- (1) Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.
- (2) Each toilet must:
 - (a) be a standard flushing toilet connected to a public sewer, or
 - (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
 - (c) be a temporary chemical closet approved under the *Local Government Act 1993*.

Garbage receptacle

- (1) A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed.
- (2) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.

Division 2 Conditions applying during the works

Note. The *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Noise Control) Regulation 2008* contain provisions relating to noise.

Hours

Construction or demolition may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction or demolition is to be carried out at any time on a Sunday or a public holiday.

Compliance with plans

Works must be carried out in accordance with the plans and specifications to which the complying development certificate relates.

Sedimentation and erosion controls

Run-off and erosion controls must be effectively maintained until the site has been stabilised and landscaped.

Maintenance of site

- (1) Building materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- (2) Demolition materials and waste materials must be disposed of at a waste management facility.

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- (3) The work site must be left clear of waste and debris at the completion of the works.

Division 3 Construction requirements

Utility services

If the complying development requires alteration to, or the relocation of, utility services on the lot on which the complying development is carried out, the complying development is not complete until all such works are carried out.

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Schedule 4 Classification and reclassification of public land

Schedule 4 Classification and reclassification of public land

(Clause 5.2)

Part 1 Land classified, or reclassified, as operational land—no interests changed

Column 1	Column 2
Locality	Description
Nil	Nil

Part 2 Land classified, or reclassified, as operational land—interests changed

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged
Kayuga	Lot 266, DP 750926, Dorset Road	
Muswellbrook	Lots 95 and 96, DP 38328, Dumaresq Street	

Part 3 Land classified, or reclassified, as community land

Column 1	Column 2
Locality	Description
Nil	Nil

Schedule 5 Environmental heritage

(Clause 5.10)

Part 1 Heritage items

Suburb	Item name	Address	Property description	Significance	Item no
Baerami	Baerami Creek Shale Mines and Retort	Baerami Creek Road	Wollemi National Park	State	Bear/R005
Baerami	Goulburn River National Park	Goulburn River	Goulburn River National Park	State	1
Baerami	Wollemi National Park	Wollemi	Wollemi National Park	State	2
Baerami	Baerami Homestead (including pedestrian bridge)	300 Baerami Creek Road	Lot 11, DP 844666	Local	Bear/R006
Baerami	Baerami School of Arts	1361 Bylong Valley Way	Lot 115, DP 728996	Local	Bear/R004
Bengalla	Keys Family Private Cemetery	Bengalla Road	Lot 1, DP 236668	Local	Beng/R001
Bengalla	Bengalla Homestead	183 Bengalla Road	Lot 1, DP 236668	Local	Beng/R002
Bengalla	Dalmar Stud	690 Bengalla Road	Lots 19–21, DP 563495	Local	Beng/R004
Bengalla	Overdene	79 Overdene Road	Lot 1, DP 735667	Local	Beng/R003
Bengalla	Blunt's Butter Factory	179 Overton Road	Lot 1, DP 735667	Local	Beng/R005
Denman	Former Private Hospital	5 Crinoline Street	Lot 4, DP 150126	Local	Denm/R024
Denman	"Glenmunro" slab kitchen	4372 Jerry's Plains Road	Lot 34, DP 752441	Local	Denm/R004
Denman	Original Royal Hotel	Ogilvie Street	Part Portion 5, Lot 10, DP 131315	Local	Denm/R025
Denman	Martindale	1150 Martindale Road	Lot 149, DP 257372	Local	Denm/R014

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Schedule 5 Environmental heritage

Suburb	Item name	Address	Property description	Significance	Item no
Denman	Masonic Lodge	18 Jerdan Street	Lot 1, DP 151236	Local	Denm/R021
Denman	Merton	4833 Jerry's Plains Road	Lot 10, DP 618867	State	Denm/R001
Denman	Merton Cemetery	5052 Jerry's Plains Road	Lot 137, DP 730142	Local	Denm/R002
Denman	Piercefield	1532–1618 Denman Road	Lot 21, DP 235356	State	Denm/R016
Denman	Railway Terminus Site	Turner Street	Lot 2, DP 597403	Local	Denm/R019
Denman	Rumbo Bush School	“Mayland”	Lot 41, DP 752441	Local	Denm/R003
Denman	Woodlands Stud	3933 Jerry's Plains Road	Lot 7, DP 42602	State	Denm/R015
Denman	Yarrawa Bridge over Hunter River	Yarrawa Road	Bridge	Local	Denm/R027
Denman	Pickering	221 Mangoola Road	Lots 89 and 90, DP 818690	Local	Denm/R013
Denman	Denman Hotel	1–5 Ogilvie Street (corner of Palace Street)	Lot 60, DP 1077497	Local	Denm/R011
Denman	Royal Hotel	10 Ogilvie Street (corner of Palace Street)	Sec 11, DP 758351	Local	Denm/R012
Denman	Memorial Hall	30 Ogilvie Street	Lot 1, DP 152143	Local	Denm/R026
Denman	Former CBC Bank	35 Ogilvie Street	Lot 1, DP 507192	Local	Denm/R010
Denman	Bakery	49 Ogilvie Street	Alt A DP 155189	Local	Denm/R023
Denman	Timber Cottage	12 Palace Street	Lot 31, DP 630367	Local	Denm/R009
Denman	Former Anglican Church Rectory	21 Palace Street	Lot 1, DP 758351	Local	Denm/R005b
Denman	St Matthias Anglican Church	23–25 Palace Street	Lot 2107, DP 864033	Local	Denm/R005a

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Environmental heritage

Schedule 5

Suburb	Item name	Address	Property description	Significance	Item no
Denman	Former Court House Group—Police Station, Residence and Lockup	23 Palace Street	Lots 227–228, DP 727761	Local	Denm/R006
Denman	Weatherboard Hall	50 Palace Street	Lot 11, Sec 22, DP 758731	Local	Denm/R017
Denman	St Josephs Hall	80 Palace Street	Part Lot 2, DP 594471	Local	Denm/R007a
Denman	Former School Residence	80 Palace Street	Part Lot 2, SP 594471	Local	Denm/R007b
Denman	Army Munitions Base	495 Rosemount Road	Lot 1, DP 849276	Local	Denm/R022
Denman	Rosemount Winery	659 Rosemount Road	Lot 5, DP 753767	Local	Denm/R020
Giants Creek	St Johns Anglican Church	1824 Merriwa Road	Lots 300–301, DP 750963	Local	Gian/R003
Giants Creek	Former School and Residence	1828 Merriwa Road	Lot 107, DP 750963	Local	Gian/R002
Giants Creek	Ellamara	1831 Merriwa Road	Lot 23, DP 1035506	Local	Gian/R001
Hollydeen	Hollydeen Shop	1010 Merriwa Road and corner of Ready Creek Road	Lot 1, DP 382249	Local	Holl/R001
Kayuga	Kayuga Cemetery	30 Stair Street	Lot 1, DP 835733	State	Kayu/R001
Kayuga	Negoa	92 Wilton's Lane	Lot 164, DP 635272	Local	Kayu/R005
Kerrabee	Former Post Office	3179 Bylong Valley Way	Part Lots 4–5, DP 755437	Local	Kerr/R001
Kerrabee	Old Kerrabee Homestead	3179 Bylong Valley Way	Part Lots 4–5, DP 755437	Local	Kerr/R002
Liddell	Fairview	Hebden Road	Lot 311, DP 549456	Local	Lidd/R002
Liddell	Hillcrest	311 Hebden Road	Lot 311, DP 549456	Local	Lidd/R001

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Schedule 5 Environmental heritage

Suburb	Item name	Address	Property description	Significance	Item no
Manobalai	Brogheda	6 Yarraman Road	Lots 2–12, DP 252956; Lot 114, DP 1008972	Local	Mana/R001
Manobalai	Manobalai Nature Reserve	Yarraman Road	Manobolai	Local	3
Muswellbrook	Railway Depot (Roundhouse)	Bell Street	Lot 1, DP 1006378	Local	Musw/R026b
Muswellbrook	Muswellbrook Cemetery	Bowman and Brecht Streets	Lot 7008, DP 1050789	Local	Musw/R049
Muswellbrook	St James Roman Catholic Church	Brook Street	Part Lot 213, DP 839334	Local	Musw/034b
Muswellbrook	Roman Catholic Convent	Brook Street	Part Lot 213, DP 839334	Local	Musw/R034c
Muswellbrook	Kerb and guttering		Brook Street (Bridge street to railway line)	Local	Musw/R055
Muswellbrook	St Albans Anglican Rectory	Corner Hunter's Terrace and Brook Street	Part Lot 1, DP 810740	Local	Musw/R001c
Muswellbrook	Muswellbrook Infants School	Dolahenty Street (corner King Street)	Lot 258, DP 821029	Local	Musw/R047
Muswellbrook	St Johns Presbyterian Church	Hill Street	Lot 21, DP 828480	Local	Musw/R019a
Muswellbrook	Former St Johns Presbyterian Church	Hill Street	Lot 21, DP 828480	Local	Musw/R019b
Muswellbrook	Oak Milk Factory	Hunter Street	Lot 1, DP 995228	Local	Musw/R022
Muswellbrook	Kayuga Bridge	Kayuga Road		State	Musw/R023
Muswellbrook	Muswellbrook High School	King Street	Lot 258, DP 821029	Local	Musw/R046
Muswellbrook	Railway Station	Market Street	Lot 1, DP 1010686	State	Musw/R026a
Muswellbrook	Railway Signal Box	Market Street	Lot 1, DP 1010686	State	Musw/R026c

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Environmental heritage

Schedule 5

Suburb	Item name	Address	Property description	Significance	Item no
Muswellbrook	Simpson Park and Reserve	Market Street (Sydney Street)		Local	Musw/R040a
Muswellbrook	Stone Bridge	Muscle Creek Road	Lot 41, DP 748269	Local	Musw/R018
Muswellbrook	Kerb and guttering	Sydney Street (Maitland Street to Haydon Street)		Local	Musw/R056
Muswellbrook	Fitzgerald/Olympic Park Gates	Wilkinson Avenue	Lot 7010, DP 93327	Local	Musw/R040b
Muswellbrook	Police Station	William Street	Lot 701, DP 93314	Local	Musw/R039
Muswellbrook	Former Butter Factory	14–15 Aberdeen Street	Lot 21, DP 830326	Local	Musw/R029
Muswellbrook	Armitage House	2 Armitage Avenue	Lot 1, DP 367389	Local	Musw/R054
Muswellbrook	Birralee	33 Brentwood Street	Lot 101, DP 563612	Local	Musw/R012
Muswellbrook	Royal Hotel	10–16 Bridge Street	Lot 221, DP 1050954	Local	Musw/R100b
Muswellbrook	Billiards Building	36–40 Bridge Street	Lots 5 and 7, DP 241160	Local	Musw/R100d
Muswellbrook	National Australia Bank Building	46–50 Bridge Street	Lot 259, DP 738307	Local	Musw/R100c
Muswellbrook	Loxton House	140–142 Bridge Street	Lots 1–2, DP 11221	State	Musw/R003
Muswellbrook	Eatons Group St Vincent de Paul Society	174–176 Bridge Street	Part Lot 7, DP 706807	State	Musw/R002b
Muswellbrook	Eatons Hotel	182–184 Bridge Street	Lots 2–3, DP 37789	State	Musw/R002d
Muswellbrook	Taskers Pharmacy	26–28 Bridge Street	Portion 7, DP 37339	Local	Musw/R051
Muswellbrook	Edward Higgens Building	30–32 Bridge Street	Lot 8, DP 779354	Local	Musw/R050
Muswellbrook	School of Arts/Town Hall	3 Bridge Street	Lot 16, Sec 2, DP 752484	Local	Musw/R044
Muswellbrook	Post Office	7 Bridge Street	Lot 17, Sec 2, DP 758740	Local	Musw/R005

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Schedule 5 Environmental heritage

Suburb	Item name	Address	Property description	Significance	Item no
Muswellbrook	Former Picture Theatre	17 Bridge Street	Lot 51, DP 850159	Local	Musw/R100e
Muswellbrook	Westpac Bank Building	19 Bridge Street	Lot 60, DP 847718	Local	Musw/R100a
Muswellbrook	Shop Front	34 Bridge Street	Lot 9, DP 241160	Local	Musw/R009
Muswellbrook	Former Campbell's and Co Store	52 Bridge Street	Lot 201, DP 736071	Local	Musw/R008
Muswellbrook	Campbell's Corner	60 Bridge Street	Lot 101, DP 606303	Local	Musw/R100f
Muswellbrook	Masonic Lodge	75 Bridge Street	Lot 1, DP 558793	Local	Musw/R006
Muswellbrook	Uniting Church	110 Bridge Street	Lot 401, DP 816923	Local	Musw/R007
Muswellbrook	Weidmann Cottage	126 Bridge Street	Lot 7, DP 71755	State	Musw/R004
Muswellbrook	Eatons Group shop building	172 Bridge Street	Part Lot 7, DP 706807	State	Musw/R002a
Muswellbrook	Eatons Group House	178 Bridge Street	Part Lot 7, DP 706807	State	Musw/R002c
Muswellbrook	Kildonan	208 Bridge Street	Lot 1, DP 79520	Local	Musw/R011
Muswellbrook	St Albans Anglican Church	20 Brook Street	Lot 20, DP 758740	State	Musw/R001a
Muswellbrook	Koombahla Villa	23 Cook Street	Alternate A, DP 376002	Local	Musw/R013
Muswellbrook	Yammanic	307 Denman Road	Lot 1, DP 235996; Lot 13, DP 236687; Lot 151, DP 740809	Local	Musw/R017
Muswellbrook	Balmoral	310 Denman Road	Lot 14, DP 236687	Local	Musw/R014
Muswellbrook	Edinglassie	710 Denman Road	Part Lot 15, DP 228159	State	Musw/R015
Muswellbrook	Rous Lench	710 Denman Road	Part Lot 15, DP 228159; Lot 141, DP 533001	State	Musw/R016

Muswellbrook Local Environmental Plan 2009

Environmental heritage

Schedule 5

Suburb	Item name	Address	Property description	Significance	Item no
Muswellbrook	Beer Homestead	721 Edderton Road	Part Lots 4 and 8, DP 29950	Local	Musw/R058
Muswellbrook	Belmont	721 Edderton Road	Part Lots 4 and 8, DP 29950	Local	Musw/R060
Muswellbrook	Edderton Homestead	1477 Edderton Road	Lot 1, DP 1004725	Local	Musw/R057
Muswellbrook	Plashett Homestead	1477 Edderton Road	Lot 2, DP 616024	Local	Musw/R062
Muswellbrook	“Skellatar” (St Mary’s Catholic School)	17 Fitzgerald Avenue	Lot 18, DP 865736	Local	Musw/R037
Muswellbrook	Minch’s Wine Shop	18 Foley Street	Lot 72, DP 714227	Local	Musw/R052
Muswellbrook	Former Presbyterian Manse	106 Hill Street	Lot 20, DP 828480	Local	Musw/R019c
Muswellbrook	Timber Cottage	129 Hill Street	Lots 7 and 30, DP 3069	Local	Musw/R020
Muswellbrook	House	9–11 Hunter’s Terrace	Alternate A and B, DP 151538	Local	Musw/R061
Muswellbrook	Brighton Villa	12 Hunter Terrace	Lot 1, DP 784046	Local	Musw/R021
Muswellbrook	St Albans Sunday School	15 Hunter Terrace	Part Lot 1, DP 810740	Local	Musw/R001b
Muswellbrook	Hennor	18–20 Maitland Street	Lot 3, DP 518666; Lot 12, DP 519525	Local	Musw/R024
Muswellbrook	Railway Hotel	10–14 Market Street	Lot 7, DP 833145	Local	Musw/R038
Muswellbrook	Muswellbrook Hotel	46 Market Street	Lot 14, Sec 10, DP 758740	Local	Musw/R045
Muswellbrook	House	5 Midanga Avenue	Lot 141, DP 862505	Local	Musw/R053
Muswellbrook	Gelston	409 Sandy Creek Road	Lots 1 and 2, DP 593335; Lot 165, DP 571192	Local	Musw/R027
Muswellbrook	Lime Kiln—“E.I.E.I.O”	540 Sandy Creek Road	Lot 165, DP 633737	Local	Musw/R059

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Schedule 5 Environmental heritage

Suburb	Item name	Address	Property description	Significance	Item no
Muswellbrook	St James Roman Catholic Presbytery	4 Sowerby Street	Lot 10, DP 665235	Local	Musw/R034a
Muswellbrook	Atherstone	5 Sowerby Street	Lot 712, DP 851702	Local	Musw/R031
Muswellbrook	Former Hospital	37 Sowerby Street	Lot 4, DP 719055	Local	Musw/R032
Muswellbrook	St Heliers	70 St Heliers Road	Lot 23, DP 220328	Local	Musw/R028
Muswellbrook	Former Royal Hotel	1 Sydney Street	Lot 1, DP 67742	Local	Musw/R036
Muswellbrook	Former Barber Shop	7 Sydney Street	Lot 1, DP 797354	Local	Musw/R035
Muswellbrook	Prince of Wales Tavern	28–30 Sydney Street	Lot 5, Sec 5, Lots 1 and 2, DP 219434	Local	Musw/R042
Muswellbrook	Valley Hotel/Motel	33 Sydney Street	Lot 61, DP 733294	Local	Musw/R041
Muswellbrook	Shamrock Hotel	30 William Street	Lot 1, DP 340887	Local	Musw/R043
Muswellbrook	Muswellbrook Brick Works	Muswellbrook Common	Lot 101, DP 578075	Local	Musw/R030
Sandy Hollow	Shale Oil Retorts	1590 Merriwa Road	Lot 200, DP 1005305	Local	Sand/R001
Wybong	Wybong Cemetery	Yarraman Road	Lot 1, DP 750959	Local	Wybo/R001

Part 2 Heritage conservation areas

Name of heritage conservation area	Identification on heritage map	Significance	Map reference
Business Heritage Conservation Area	Shown by a red outline with red hatching and labelled "A"	Local	HER 024
Denman Heritage Conservation Area	Shown by a red outline with red hatching and labelled "B"	Local	HER 013
Residential Heritage Conservation Area	Shown by a red outline with red hatching and labelled "C"	Local	HER 024

Dictionary

(Clause 1.4)

Aboriginal object means any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

acid sulfate soils means naturally occurring sediments and soils containing iron sulfides (principally pyrite) or their precursors or oxidation products, whose exposure to oxygen leads to the generation of sulfuric acid (for example, by drainage or excavation).

Acid Sulfate Soils Manual means the manual by that name published by the Acid Sulfate Soils Management Advisory Committee and made publicly available.

advertisement has the same meaning as in the Act.

Note. The term is defined as 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 has the same meaning as in the Act.

Note. The term is defined as a structure used or to be used principally for the display of an advertisement.

affordable housing has the same meaning as in the Act.

Note. The term is defined as housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

agricultural produce industry means an industry involving the handling, treating, processing or packing of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

agriculture means any of the following:

- (a) animal boarding or training establishments,
- (b) aquaculture,
- (c) extensive agriculture,
- (d) farm forestry,
- (e) intensive livestock agriculture,
- (f) intensive plant agriculture.

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

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

airstrip means a single runway for the landing, taking off or parking of aeroplanes for private aviation only, but does not include an airport, heliport or helipad.

amusement centre means a building or place (not being part of a pub or registered club) used principally for playing:

- (a) billiards, pool or other like games, or
- (b) electronic or mechanical amusement devices, such as pinball machines, computer or video games and the like.

animal boarding or training establishment means a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital.

aquaculture has the same meaning as in the *Fisheries Management Act 1994*.

Note. The term is defined as follows:

aquaculture means:

- (a) cultivating fish or marine vegetation for the purposes of harvesting the fish or marine vegetation or their progeny with a view to sale, or
- (b) keeping fish or marine vegetation in a confined area for a commercial purpose (such as a fish-out pond),

but does not include:

- (c) keeping anything in a pet shop for sale or in an aquarium for exhibition (including an aquarium operated commercially), or
- (d) anything done for the purposes of maintaining a collection of fish or marine vegetation otherwise than for a commercial purpose, or
- (e) any other thing prescribed by the regulations (made under the *Fisheries Management Act 1994*).

This Dictionary also contains definitions of ***natural water-based aquaculture***, ***pond-based aquaculture*** and ***tank-based aquaculture***.

archaeological site means an area of land:

- (a) shown on the Heritage Map as an archaeological site, and
- (b) the location and nature of which is described in Schedule 5, and
- (c) that contains one or more relics.

attached dwelling means a building containing 3 or more dwellings, where:

- (a) each dwelling is attached to another dwelling by a common wall, and
- (b) each of the dwellings is on its own lot of land (not being an individual lot in a strata plan or community title scheme), and
- (c) none of the dwellings is located above any part of another dwelling.

attic means any habitable space, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like.

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backpackers' accommodation means tourist and visitor accommodation:

- (a) that has shared facilities, such as a communal bathroom, kitchen or laundry, and
- (b) that will generally provide accommodation on a bed basis (rather than by room).

basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

bed and breakfast accommodation means tourist and visitor accommodation comprising a dwelling (and any ancillary buildings and parking) where the accommodation is provided by the permanent residents of the dwelling and:

- (a) meals are provided for guests only, and
- (b) cooking facilities for the preparation of meals are not provided within guests' rooms, and
- (c) dormitory-style accommodation is not provided.

Note. See clause 5.4 for controls relating to the number of bedrooms.

biodiversity means biological diversity.

biological diversity has the same meaning as in the *Threatened Species Conservation Act 1995*.

Note. The term is defined as follows:

biological diversity means the diversity of life and is made up of the following 3 components:

- (a) genetic diversity—the variety of genes (or units of heredity) in any population,
- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities or ecosystems.

biosolid waste application means the application of sludge or other semi-solid products of human sewage treatment plants to land for the purpose of improving land productivity, that is undertaken in accordance with the NSW Environment Protection Authority's guidelines titled *Environmental Guidelines: Use and Disposal of Biosolids Products* (EPA 1997) and *Addendum to Environmental Guidelines: Use and Disposal of Biosolids Products* (EPA 2000a).

biosolids treatment facility means a building or place used as a facility for the treatment of biosolids from a sewage treatment plant or from a water recycling facility.

boarding house means a building:

- (a) that is wholly or partly let in lodgings, and
- (b) that provides lodgers with a principal place of residence for 3 months or more, and
- (c) that generally has shared facilities, such as a communal bathroom, kitchen or laundry, and

(d) that has rooms that accommodate one or more lodgers, but does not include backpackers' accommodation, a group home, a serviced apartment, seniors housing or hotel or motel accommodation.

boat launching ramp means a structure designed primarily for the launching of trailer borne recreational vessels, and includes associated car parking facilities.

boat repair facility means any facility (including a building or other structure) used primarily for the construction, maintenance or repair of boats, whether or not including the storage, sale or hire of boats, but does not include a marina or boat shed.

boat shed means a building or other structure used for the storage and routine maintenance of a boat or boats and that is associated with a private dwelling or non-profit organisation, and includes any skid used in connection with the building or other structure.

brothel has the same meaning as in the Act.

building has the same meaning as in the Act.

Note. The term is defined to include part of a building and any structure or part of a structure, but not including a manufactured home, a moveable dwelling or associated structure (or part of a manufactured home, moveable dwelling or associated structure).

building height (or **height of building**) means the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

building identification sign means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol, but that does not include general advertising of products, goods or services.

building line or **setback** means the horizontal distance between the property boundary or other stated boundary (measured at 90 degrees from the boundary) and:

- (a) a building wall, or
- (b) the outside face of any balcony, deck or the like, or
- (c) the supporting posts of a carport or verandah roof,

whichever distance is the shortest.

bulky goods premises means a building or place used primarily for the sale by retail, wholesale or auction of (or for the hire or display of) bulky goods, being goods that are of such size or weight as to require:

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

but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods.

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bush fire hazard reduction work has the same meaning as in the *Rural Fires Act 1997*.

Note. The term is defined as follows:

bush fire hazard reduction work means:

- (a) the establishment or maintenance of fire breaks on land, and
- (b) the controlled application of appropriate fire regimes or other means for the reduction or modification of available fuels within a predetermined area to mitigate against the spread of a bush fire,

but does not include construction of a track, trail or road.

bush fire prone land has the same meaning as in the Act.

Note. The term is defined, in relation to an area, as land recorded for the time being as bush fire prone land on a map for the area certified as referred to in section 146 (2) of the Act.

bush fire risk management plan means a plan prepared under Division 4 of Part 3 of the *Rural Fires Act 1997* for the purpose referred to in section 54 of that Act.

business identification sign means a sign:

- (a) that indicates:
 - (i) the name of the person or business, and
 - (ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and
- (b) that may include the address of the premises or place and a logo or other symbol that identifies the business,

but that does not include any advertising relating to a person who does not carry on business at the premises or place.

business premises means a building or place at or on which:

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis,

and may include, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, medical centres, betting agencies and the like, but does not include sex services premises.

canal estate development means development that incorporates wholly or in part a constructed canal, or other waterway or waterbody, that is inundated by or drains to a natural waterway or natural waterbody by surface water or groundwater movement (not being works of drainage, or for the supply or treatment of water, that are constructed by or with the authority of a person or body responsible for those functions and that are limited to the minimal reasonable size and capacity to meet a demonstrated need for the works), and that either:

- (a) includes the construction of dwellings (which may include tourist and visitor accommodation) of a kind other than, or in addition to:
 - (i) dwellings that are permitted on rural land, and
 - (ii) dwellings that are used for caretaker or staff purposes, or

-
- (b) requires the use of a sufficient depth of fill material to raise the level of all or part of that land on which the dwellings are (or are proposed to be) located in order to comply with requirements relating to residential development on flood prone land.

car park means a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not.

caravan park means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

catchment action plan has the same meaning as in the *Catchment Management Authorities Act 2003*.

Note. The term is defined as a catchment action plan of an authority that has been approved by the Minister under Part 4 of the *Catchment Management Authorities Act 2003*.

cellar door premises means retail premises that sell wine by retail and that are situated on land on which there is a commercial vineyard, where all of the wine offered for sale is produced in a winery situated on that land or is produced predominantly from grapes grown in the surrounding area.

cemetery means a building or place for the interment of deceased persons or their ashes.

charter and tourism boating facility means any facility (including a building or other structure) used for charter boating or tourism boating purposes, being a facility that is used only by the operators of the facility and that has a direct structural connection between the foreshore and the waterway, but does not include a marina.

child care centre means a building or place used for the supervision and care of children that:

- (a) provides long day care, pre-school care, occasional child care or out-of-school-hours care, and
- (b) does not provide overnight accommodation for children other than those related to the owner or operator of the centre,

but does not include:

- (c) a building or place used for home-based child care, or
- (d) an out-of-home care service provided by an agency or organisation accredited by the NSW Office of the Children's Guardian, or
- (e) a baby-sitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
- (f) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised, or
- (g) a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium), by or on behalf of

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the person conducting the facility, to care for children while the children's parents are using the facility, or

- (h) a service that is concerned primarily with the provision of:
 - (i) lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or
 - (ii) private tutoring, or
- (i) a school, or
- (j) a service provided at exempt premises (within the meaning of Chapter 12 of the *Children and Young Persons (Care and Protection) Act 1998*), such as hospitals, but only if the service is established, registered or licensed as part of the institution operating on those premises.

classified road has the same meaning as in the *Roads Act 1993*.

Note. The term is defined as follows:

classified road means any of the following:

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

(see *Roads Act 1993* for meanings of these terms).

clearing native vegetation has the same meaning as in the *Native Vegetation Act 2003*.

Note. The term is defined as follows:

clearing native vegetation means any one or more of the following:

- (a) cutting down, felling, thinning, logging or removing native vegetation,
- (b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.

(See Division 3 of Part 3 of the *Native Vegetation Act 2003* for the exclusion of routine agricultural management and other farming activities from constituting the clearing of native vegetation if the landholder can establish that any clearing was carried out for the purpose of those activities.)

coastal foreshore means land with frontage to a beach, estuary, coastal lake, headland, cliff or rock platform.

coastal lake means a body of water specified in Schedule 1 to the *State Environmental Planning Policy No 71—Coastal Protection*.

coastal waters of the State—see section 58 of the *Interpretation Act 1987*.

coastal zone has the same meaning as in the *Coastal Protection Act 1979*.

Note. The term is defined as follows:

coastal zone means:

- (a) the area within the coastal waters of the State as defined in Part 10 of the *Interpretation Act 1987* (including any land within those waters), and
- (b) the area of land and the waters that lie between the western boundary of the coastal zone (as shown on the maps outlining the coastal zone) and the landward boundary of the coastal waters of the State, and
- (c) the seabed (if any) and the subsoil beneath, and the airspace above, the areas referred to in paragraphs (a) and (b).

The coastal zone consists of the area between the western boundary of the coastal zone shown on the maps outlining the coastal zone and the outermost boundary of the coastal waters of the State. The coastal waters of the State extend, generally, to 3 nautical miles from the coastline of the State.

community facility means a building or place:

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community,

but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

community land has the same meaning as in the *Local Government Act 1993*.

correctional centre means:

- (a) any premises declared to be a correctional centre by a proclamation in force under section 225 of the *Crimes (Administration of Sentences) Act 1999*, including any juvenile correctional centre or periodic detention centre, and
- (b) any premises declared to be a detention centre by an order in force under section 5 (1) of the *Children (Detention Centres) Act 1987*,

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

Council means the Muswellbrook Shire Council.

crematorium means a building in which deceased persons or pets are cremated, and includes a funeral chapel.

Crown reserve means:

- (a) a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*, or
- (b) a common within the meaning of the *Commons Management Act 1989*, or
- (c) lands within the meaning of the *Trustees of Schools of Arts Enabling Act 1902*,

but does not include land that forms any part of a reserve under Part 5 of the *Crown Lands Act 1989* provided for accommodation.

curtilage, in relation to a heritage item or conservation area, means the area of land (including land covered by water) surrounding a heritage item, a heritage

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conservation area, or building, work or place within a heritage conservation area, that contributes to its heritage significance.

dairy (pasture-based) means a dairy where the only restriction facilities present are the milking sheds and holding yards and where cattle are constrained for no more than 10 hours in any 24 hour period (excluding during any period of drought or similar emergency relief).

demolish, in relation to a heritage item, or a building, work, relic or tree within a heritage conservation area, means wholly or partly destroy, dismantle or deface the heritage item or the building, work, relic or tree.

depot means a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use.

designated State public infrastructure means public facilities or services that are provided or financed by the State (or if provided or financed by the private sector, to the extent of any financial or in-kind contribution by the State) of the following kinds:

- (a) State and regional roads,
- (b) bus interchanges and bus lanes,
- (c) land required for regional open space,
- (d) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).

drainage means any activity that intentionally alters the hydrological regime of any locality by facilitating the removal of surface or ground water. It may include the construction, deepening, extending, opening, installation or laying of any canal, drain or pipe, either on the land or in such a manner as to encourage drainage of adjoining land.

dual occupancy means 2 dwellings (whether attached or detached) on one lot of land (not being an individual lot in a strata plan or community title scheme), but does not include a secondary dwelling.

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 only one dwelling.

earthworks means excavation or filling.

ecologically sustainable development has the same meaning as in the Act.

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

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

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

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

emergency services organisation means any of the following:

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

entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub, nightclub or registered club.

environmental facility means a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, board walks, observation decks, bird hides or the like, and associated display structures.

environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like.

Environmentally Sensitive Land Map means the Muswellbrook Local Environmental Plan 2009 Environmentally Sensitive Land Map.

estuary has the same meaning as in the *Water Management Act 2000*.

Note. The term is defined as follows:

estuary means:

- (a) any part of a river whose level is periodically or intermittently affected by coastal tides, or
- (b) any lake or other partially enclosed body of water that is periodically or intermittently open to the sea, or
- (c) anything declared by the regulations (under the *Water Management Act 2000*) to be an estuary,

but does not include anything declared by the regulations (under the *Water Management Act 2000*) not to be an estuary.

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excavation means the removal of soil or rock, whether moved to another part of the same site or to another site, but does not include garden landscaping that does not significantly alter the shape, natural form or drainage of the land.

exhibition home means a dwelling built for the purposes of the public exhibition and marketing of new dwellings, whether or not it is intended to be sold as a private dwelling after its use for those purposes is completed, and includes any associated sales or home finance office or place used for displays.

exhibition village means 2 or more exhibition homes and associated buildings and places used for house and land sales, site offices, advisory services, car parking, food and drink sales and other associated purposes.

extensive agriculture means:

- (a) the production of crops or fodder (including irrigated pasture and fodder crops), or
- (b) the grazing of livestock, or
- (c) bee keeping,

for commercial purposes, but does not include any of the following:

- (d) animal boarding or training establishments,
- (e) aquaculture,
- (f) farm forestry,
- (g) intensive livestock agriculture,
- (h) intensive plant agriculture.

extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

extractive material means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the *Mining Act 1992*.

farm building means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.

farm stay accommodation means tourist and visitor accommodation provided to paying guests on a working farm as a secondary business to primary production.

Note. See clause 5.4 for controls relating to the number of bedrooms.

feedlot means a confined or restricted area used to rear and fatten cattle, sheep or other animals for the purpose of meat production, fed (wholly or substantially) on prepared and manufactured feed, but does not include a poultry farm, dairy or piggery.

fill means the depositing of soil, rock or other similar extractive material obtained from the same or another site, but does not include:

- (a) the depositing of topsoil or feature rock imported to the site that is intended for use in garden landscaping, turf or garden bed establishment or top dressing of lawns and that does not significantly alter the shape, natural form or drainage of the land, or
- (b) the use of land as a waste disposal facility.

filming means recording images (whether on film or video tape or electronically or by other means) for exhibition or broadcast (such as by cinema, television or the internet or by other means), but does not include:

- (a) still photography, or
- (b) recording images of a wedding ceremony or other private celebration or event principally for the purpose of making a record for the participants in the ceremony, celebration or event, or
- (c) recording images as a visitor or tourist for non-commercial purposes, or
- (d) recording for the immediate purposes of a television program that provides information by way of current affairs or daily news.

fish has the same meaning as in the *Fisheries Management Act 1994*.

Note. The term is defined as follows:

Definition of “fish”

- (1) **Fish** means marine, estuarine or freshwater fish or other aquatic animal life at any stage of their life history (whether alive or dead).
- (2) **Fish** includes:
 - (a) oysters and other aquatic molluscs, and
 - (b) crustaceans, and
 - (c) echinoderms, and
 - (d) beachworms and other aquatic polychaetes.
- (3) **Fish** also includes any part of a fish.
- (4) However, **fish** does not include whales, mammals, reptiles, birds, amphibians or other things excluded from the definition by the regulations under the *Fisheries Management Act 1994*.

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

floor space ratio—see clause 4.5.

Floor Space Ratio Map means the Muswellbrook Local Environmental Plan 2009 Floor Space Ratio Map.

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food and drink premises means retail premises used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes restaurants, cafes, take away food and drink premises, milk bars and pubs.

forestry has the same meaning as ***forestry operations*** in the *Forestry and National Park Estate Act 1998*.

Note. The term is defined as follows:

forestry operations means:

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

freight transport facility means a facility used principally for the bulk handling of goods for transport by road, rail, air or sea, including any facility for the loading and unloading of vehicles, aircraft, vessels or containers used to transport those goods and for the parking, holding, servicing or repair of those vehicles, aircraft or vessels or for the engines or carriages involved.

function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

funeral chapel means premises used to arrange, conduct and cater for funerals and memorial services, and includes facilities for the short-term storage, dressing and viewing of bodies of deceased persons, but does not include premises with mortuary facilities.

funeral home means premises used to arrange and conduct funerals and memorial services, and includes facilities for the short-term storage, dressing and viewing of bodies of deceased persons and premises with mortuary facilities.

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and

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- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

ground level (existing) means the existing level of a site at any point.

ground level (finished) means, for any point on a site, the ground surface after completion of any earthworks (excluding any excavation for a basement, footings or the like) for which consent has been granted or that is exempt development.

ground level (mean) means, for any site on which a building is situated or proposed, one half of the sum of the highest and lowest levels at ground level (finished) of the outer surface of the external walls of the building.

group home means a dwelling that is a permanent group home or a transitional group home.

group home (permanent) or permanent group home means a dwelling:

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and
- (b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,

but does not include development to which *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* applies.

group home (transitional) or transitional group home means a dwelling:

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and
- (b) that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide half-way accommodation for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people,

but does not include development to which *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* applies.

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

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

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

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

headland includes a promontory extending from the general line of the coastline into a large body of water, such as a sea, coastal lake or bay.

health care professional means any person registered under an Act for the purpose of providing health care.

health consulting rooms means a medical centre that comprises one or more rooms within (or within the curtilage of) a dwelling house used by not more than 3 health care professionals who practise in partnership (if there is more than one such professional) who provide professional health care services to members of the public.

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

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

heavy industry means an industry that requires separation from other land uses because of the nature of the processes involved, or the materials used, stored or produced. It may consist of or include a hazardous or offensive industry or involve the use of a hazardous or offensive storage establishment.

Height of Buildings Map means the Muswellbrook Local Environmental Plan 2009 Height of Buildings Map.

helipad means a place not open to the public used for the taking off and landing of helicopters.

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

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

heritage conservation area means an area of land:

- (a) shown on the Heritage Map as a heritage conservation area or as a place of Aboriginal heritage significance, and
 - (b) the location and nature of which is described in Schedule 5,
- and includes any heritage items situated on or within that area.

heritage conservation management plan means a document prepared in accordance with guidelines prepared by the Department of Planning that documents the heritage significance of an item, place or heritage conservation area and identifies conservation policies and management mechanisms that are appropriate to enable that significance to be retained.

heritage impact statement means a document consisting of:

- (a) a statement demonstrating the heritage significance of a heritage item, archaeological site, place of Aboriginal heritage significance or other heritage conservation area, and
- (b) an assessment of the impact that proposed development will have on that significance, and
- (c) proposals for measures to minimise that impact.

heritage item means a building, work, archaeological site, tree, place or Aboriginal object:

- (a) shown on the Heritage Map as a heritage item, and
- (b) the location and nature of which is described in Schedule 5, and
- (c) specified in an inventory of heritage items that is available at the office of the Council.

Heritage Map means the Muswellbrook Local Environmental Plan 2009 Heritage Map.

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

highway service centre means a building or place used as a facility to provide refreshments and vehicle services to highway users, and which may include any one or more of the following:

- (a) restaurants or take away food and drink premises,
- (b) service stations and facilities for emergency vehicle towing and repairs,

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- (c) parking for vehicles,
- (d) rest areas and public amenities.

home-based child care means a dwelling used by a resident of the dwelling for the supervision and care of one or more children and that satisfies the following conditions:

- (a) the service is appropriately licensed within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*,
- (b) the number of children (including children related to the carer or licensee) does not at any one time exceed 7 children under the age of 12 years, including no more than 5 who do not ordinarily attend school.

home business means a business carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling that does not involve:

- (a) the employment of more than 2 persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or
- (d) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling to indicate the name of the resident and the business carried on in the dwelling), or
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building,

but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.

Note. See clause 5.4 for controls relating to the floor area used to carry on the business.

home industry means a light industry carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling that does not involve:

- (a) the employment of more than 2 persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or
- (d) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling to indicate the name of the resident and the light industry carried on in the dwelling), or

-
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building, but does not include bed and breakfast accommodation or sex services premises.

Note. See clause 5.4 for controls relating to the floor area used to carry on the light industry.

home occupation means an occupation carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling that does not involve:

- (a) the employment of persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the display of goods, whether in a window or otherwise, or
- (d) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling to indicate the name of the resident and the occupation carried on in the dwelling), or
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include bed and breakfast accommodation, a brothel or home occupation (sex services).

home occupation (sex services) means the provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling, by no more than 2 permanent residents of the dwelling and that does not involve:

- (a) the employment of persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or
- (c) the exhibition of any notice, advertisement or sign, or
- (d) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include a home business or sex services premises.

horticulture means the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include retail sales or viticulture.

hospital means a building or place used for the purpose of providing professional health care services (such as preventative or convalescent care, diagnosis, medical or surgical treatment, psychiatric care or care for people with disabilities, or counselling 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 ancillary facilities for (or that consist of) any of the following:

- (a) day surgery, day procedures or health consulting rooms,
- (b) accommodation for nurses or other health care workers,

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- (c) accommodation for persons receiving health care or for their visitors,
- (d) shops or refreshment rooms,
- (e) transport of patients, including helipads, ambulance facilities and car parking,
- (f) educational purposes or any other health-related use,
- (g) research purposes (whether or not it is carried out by hospital staff or health care workers or for commercial purposes),
- (h) chapels,
- (i) hospices,
- (j) mortuaries.

hostel means premises that are generally staffed by social workers or support providers and at which:

- (a) residential accommodation is provided in dormitories, or on a single or shared basis, or by a combination of them, and
- (b) cooking, dining, laundering, cleaning and other facilities are provided on a shared basis.

hotel or motel accommodation means tourist and visitor accommodation (whether or not licensed premises under the *Liquor Act 2007*):

- (a) comprising rooms or self-contained suites, and
- (b) that may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

industrial retail outlet means a building or place that:

- (a) is used in conjunction with an industry (including a light industry) but not in conjunction with a warehouse or distribution centre, and
- (b) is situated on the land on which the industry is carried out, and
- (c) is used for the display or sale (whether by retail or wholesale) of only those goods that have been manufactured on the land on which the industry is carried out.

Note. See clause 5.4 for controls relating to the retail floor area.

industry means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing or adapting, or the research and development of any goods, chemical substances, food, agricultural or beverage products, or articles for commercial purposes, but does not include extractive industry or a mine.

information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

intensive livestock agriculture means the keeping or breeding, for commercial purposes, of cattle, poultry, goats, horses or other livestock, that are fed wholly or substantially on externally-sourced feed, and includes the operation of feed lots, piggeries, poultry farms or restricted dairies, but does not include the operation of facilities for drought or similar emergency relief or extensive agriculture or aquaculture.

intensive plant agriculture means any of the following carried out for commercial purposes:

- (a) the cultivation of irrigated crops (other than irrigated pasture or fodder crops),
- (b) horticulture,
- (c) turf farming,
- (d) viticulture.

jetty means a horizontal decked walkway providing access from the shore to the waterway and is generally constructed on a piered or piled foundation.

kiosk means retail premises used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like.

Note. See clause 5.4 for controls relating to the gross floor area.

Land Application Map means the Muswellbrook Local Environmental Plan 2009 Land Application Map.

Land Reservation Acquisition Map means the Muswellbrook Local Environmental Plan 2009 Land Reservation Acquisition Map.

Land Zoning Map means the Muswellbrook Local Environmental Plan 2009 Land Zoning Map.

landscape and garden supplies means a building or place where trees, shrubs, plants, bulbs, seeds and propagating material are offered for sale (whether by retail or wholesale), and may include the sale of landscape supplies (including earth products or other landscape and horticulture products) and the carrying out of horticulture.

landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

light industry means an industry, not being a hazardous or offensive industry or involving use of a hazardous or offensive storage establishment, 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 storage premises that are used for the bulk storage for wholesale distribution of petrol, oil, petroleum or other inflammable liquid and at which no retail trade is conducted.

livestock processing industry means an industry that involves the commercial production of products derived from the slaughter of animals (including poultry) or the processing of skins or wool of animals, derived principally from surrounding

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districts, and includes such activities as abattoirs, knackeries, tanneries, woolscours and rendering plants.

Lot Size Map means the Muswellbrook Local Environmental Plan 2009 Lot Size Map.

maintenance, in relation to a heritage item or a building, work, archaeological site, tree or place within a heritage conservation area, means ongoing protective care. It does not include the removal or disturbance of existing fabric, alterations, such as carrying out extensions or additions, or the introduction of new materials or technology.

marina means a permanent boat storage facility (whether located wholly on land, wholly on the waterway or partly on land and partly on the waterway) together with any associated facilities, including:

- (a) any facility for the construction, repair, maintenance, storage, sale or hire of boats, and
- (b) any facility for providing fuelling, sewage pump-out or other services for boats, and
- (c) any facility for launching or landing boats, such as slipways or hoists, and
- (d) any associated car parking, commercial, tourist or recreational or club facility that is ancillary to a boat storage facility, and
- (e) any associated single mooring.

market means retail premises comprising an open-air area or an existing building used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.

mean high water mark means the position where the plane of the mean high water level of all ordinary local high tides intersects the foreshore, being 1.44m above the zero of Fort Denison Tide Gauge and 0.515m Australian Height Datum.

medical centre means business premises used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals, and may include the ancillary provision of other health services.

mezzanine means an intermediate floor within a room.

mine means any place (including any excavation) where an operation is carried on for mining of any mineral by any method and any place on which any mining related work is carried out, but does not include a place used only for extractive industry.

mine subsidence district means a mine subsidence district proclaimed under section 15 of the *Mine Subsidence Compensation Act 1961*.

mining means mining carried out under the *Mining Act 1992* or the recovery of minerals under the *Offshore Minerals Act 1999*, and includes:

- (a) the construction, operation and decommissioning of associated works, and

(b) the rehabilitation of land affected by mining.

mixed use development means a building or place comprising 2 or more different land uses.

mooring means a detached or freestanding apparatus located on or in a waterway and that is capable of securing a vessel.

mortuary means premises that are used, or intended to be used, for the receiving, preparation, embalming and storage of bodies of deceased persons pending their interment or cremation.

moveable dwelling has the same meaning as in the *Local Government Act 1993*.

Note. The term is defined as follows:

moveable dwelling means:

- (a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or
- (b) a manufactured home, or
- (c) any conveyance, structure or thing of a class or description prescribed by the regulations (under the *Local Government Act 1993*) for the purposes of this definition.

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land (not being an individual lot in a strata plan or community title scheme) each with access at ground level, but does not include a residential flat building.

native fauna means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, whether vertebrate (including fish) or invertebrate and in any stage of biological development, but does not include humans.

native flora means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, and marine vegetation within the meaning of Part 7A of the *Fisheries Management Act 1994*.

native vegetation has the same meaning as in the *Native Vegetation Act 2003*.

Note. The term is defined as follows:

Meaning of “native vegetation”

- (1) **Native vegetation** means any of the following types of indigenous vegetation:
 - (a) trees (including any sapling or shrub, or any scrub),
 - (b) understorey plants,
 - (c) groundcover (being any type of herbaceous vegetation),
 - (d) plants occurring in a wetland.
- (2) Vegetation is **indigenous** if it is of a species of vegetation, or if it comprises species of vegetation, that existed in the State before European settlement.
- (3) **Native vegetation** does not include any mangroves, seagrasses or any other type of marine vegetation to which section 205 of the *Fisheries Management Act 1994* applies.

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natural water-based aquaculture means aquaculture undertaken in natural waterbodies (including any part of the aquaculture undertaken in tanks, ponds or other facilities such as during hatchery or depuration phases).

Note. Typical natural water-based aquaculture is fin fish culture in cages and oyster, mussel or scallop culture on or in racks, lines or cages.

navigable waterway means any waterway that is from time to time capable of navigation and is open to or used by the public for navigation, but does not include flood waters that have temporarily flowed over the established bank of a watercourse.

neighbourhood shop means retail premises used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

Note. See clause 5.4 for controls relating to the retail floor area.

nightclub means premises specified in a nightclub licence under the *Liquor Act 1982*.

non-potable water means water that does not meet the standards or values for drinking water recommended from time to time by the National Health and Medical Research Council.

NSW Coastal Policy means the publication titled *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*, published by the Government.

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

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

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

operational land has the same meaning as in the *Local Government Act 1993*.

parking space means a space dedicated for the parking of a motor vehicle, including any manoeuvring space and access to it, but does not include a car park.

passenger transport facility means a building or place used for the assembly or dispersal of passengers by any form of transport, including facilities required for parking, manoeuvring, storage or routine servicing of any vehicle that uses the building or place.

place of Aboriginal heritage significance means an area of land shown on the Heritage Map that is:

- (a) the site of one or more Aboriginal objects or a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people. It can (but need not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or
- (b) a natural Aboriginal sacred site or other sacred feature. It includes natural features such as creeks or mountains of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance.

place of public entertainment has the same meaning as in the Act.

Note. The term is defined as follows:

place of public entertainment means:

- (a) any theatre or cinema (including a drive-in or open-air theatre or cinema) that is used or intended to be used for the purpose of providing public entertainment, or
- (b) any premises the subject of a licence under the *Liquor Act 1982* or a certificate of registration under the *Registered Clubs Act 1976*, that are used or intended to be used for the purpose of providing entertainment, including public entertainment, but not including amusement provided by means of an approved gaming machine within the meaning of the *Gaming Machines Act 2001*, or
- (c) any public hall that is used or intended to be used for the purpose of providing public entertainment.

place of public worship means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.

pond-based aquaculture means aquaculture undertaken in structures that are constructed by excavating and reshaping earth, which may be earthen or lined, and includes any part of the aquaculture undertaken in tanks, such as during the hatchery or pre-market conditioning phases, but does not include natural water-based aquaculture.

Note. Typical pond-based aquaculture is the pond culture of prawns, yabbies or silver perch.

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port facilities means any of the following facilities at or in the vicinity of a designated port within the meaning of section 47 of the *Ports and Maritime Administration Act 1995*:

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

potable water means water that meets the standards or values for drinking water recommended from time to time by the National Health and Medical Research Council.

private open space means an area external to a building (including an area of land, terrace, balcony or deck) that is used for private outdoor purposes ancillary to the use of the building.

property vegetation plan has the same meaning as in the *Native Vegetation Act 2003*.

Note. The term is defined as follows:

property vegetation plan means a property vegetation plan that has been approved under Part 4 of the *Native Vegetation Act 2003*.

pub means licensed premises under the *Liquor Act 2007* the principal purpose of which is the sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold on the premises.

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

public authority has the same meaning as in the Act.

public entertainment has the same meaning as in the Act.

Note. The term is defined as follows:

public entertainment means entertainment to which admission may ordinarily be gained by members of the public on payment of money or other consideration:

- (a) whether or not some (but not all) persons are admitted free of charge, and
- (b) whether or not the money or other consideration is demanded:
 - (i) as a charge for a meal or other refreshment before admission is granted, or
 - (ii) as a charge for the entertainment after admission is granted.

public land has the same meaning as in the *Local Government Act 1993*.

Note. The term is defined as follows:

public land means any land (including a public reserve) vested in or under the control of the council, but does not include:

- (a) a public road, or
- (b) land to which the *Crown Lands Act 1989* applies, or
- (c) a common, or
- (d) land subject to the *Trustees of Schools of Arts Enabling Act 1902*, or
- (e) a regional park under the *National Parks and Wildlife Act 1974*.

public reserve has the same meaning as in the *Local Government Act 1993*.

public utility infrastructure, in relation to an urban release area, includes infrastructure for any of the following:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage.

public utility undertaking means any of the following undertakings carried on or permitted to be carried on by or 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,

and a reference to a person carrying on a public utility undertaking includes a reference to a council, electricity supply authority, Government Department, corporation, firm or authority carrying on the undertaking.

rainwater tank means a tank designed for the storage of rainwater gathered on the land on which the tank is situated.

recreation area means a place used for outdoor recreation that is normally open to the public, and includes:

- (a) a children's playground, or
- (b) an area used for community sporting activities, or
- (c) a public park, reserve or garden or the like,

and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).

recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation,

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but does not include an entertainment facility, a recreation facility (major) or a registered club.

recreation facility (major) means a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people whether regularly or periodically, and includes sports stadiums, showgrounds, racecourses and motor racing tracks.

recreation facility (outdoor) means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

Reduced Level (RL) means height above the Australian Height Datum, being the datum surface approximating mean sea level that was adopted by the National Mapping Council of Australia in May 1971.

registered club means a club in respect of which a certificate of registration under the *Registered Clubs Act 1976* is in force.

relic means any deposit, object or other material evidence of human habitation:

- (a) that relates to the settlement of the area of Muswellbrook, not being Aboriginal settlement, and
- (b) that is more than 50 years old, and
- (c) that is a fixture or is wholly or partly within the ground.

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

residential accommodation means a building or place used predominantly as a place of residence, but does not include tourist and visitor accommodation.

residential care facility means accommodation for seniors (people aged 55 years or more) or people with a disability that includes:

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

not being a dwelling, hospital or psychiatric facility.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

resource recovery facility means a building or place used for the recovery of resources from waste, including works or activities such as separating and sorting,

processing or treating the waste, temporary storage, transfer or sale of recovered resources, energy generation from gases and water treatment, but not including re-manufacture or disposal of the material by landfill or incineration.

restaurant means a building or place the principal purpose of which is the provision of food or beverages to people for consumption on the premises and that may also provide takeaway meals and beverages.

restricted dairy means a dairy (other than a dairy (pasture-based)) where restriction facilities are present in addition to milking sheds and holding yards, and where cattle have access to grazing for less than 10 hours in any 24 hour period (excluding during periods of drought or similar emergency relief). A restricted dairy may comprise the whole or part of a restriction facility.

restricted premises means business premises or retail premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises but does not include hotel or motel accommodation, a pub, home occupation (sex services) or sex services premises.

restriction facilities means facilities where animals are constrained for management purposes, including milking sheds, pads, feed stalls, holding yards and paddocks where the number of livestock exceeds the ability of vegetation to recover from the effects of grazing in a normal growing season, but does not include facilities for drought or similar emergency relief.

retail premises means a building or place used for the purpose of selling items by retail, or for hiring or displaying items for the purpose of selling them by retail or hiring them out, whether the items are goods or materials (or whether also sold by wholesale).

road means a public road or a private road within the meaning of the *Roads Act 1993*, and includes a classified road.

roadside stall means a place or temporary structure used for retail selling of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.

Note. See clause 5.4 for controls relating to the gross floor area.

rural industry means an industry that involves the handling, treating, production, processing or packing of animal or plant agricultural products, and includes:

- (a) agricultural produce industry, or
- (b) livestock processing industry, or
- (c) use of composting facilities and works (including to produce mushroom substrate), or
- (d) use of sawmill or log processing works, or
- (e) use of stock and sale yards, or
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise,

undertaken for commercial purposes.

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rural supplies means a building or place used for the display, sale (whether by retail or wholesale) or hire of stockfeeds, grains, seed, fertilizers, veterinary supplies and other goods or materials used in farming and primary industry production.

rural worker's dwelling means a dwelling, ancillary to a dwelling house on the same landholding, used as the principal place of residence by persons employed for the purpose of agriculture or a rural industry on that land.

sawmill or log processing works means a building or place used for handling, cutting, chipping, pulping or otherwise processing logs, baulks, branches or stumps, principally derived from surrounding districts, into timber or other products derived from wood.

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

secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the **principal dwelling**), and
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling.

Note. See clause 5.4 for controls relating to the total floor area.

self-storage units means storage premises that consist of individual enclosed compartments for storing goods or materials (other than hazardous or offensive goods or materials).

semi-detached dwelling means a dwelling that is on its own lot of land (not being an individual lot in a strata plan or community title scheme) and is attached to only one other dwelling.

seniors housing means residential accommodation that consists of:

- (a) a residential care facility, or
- (b) a hostel, or
- (c) a group of self-contained dwellings, or
- (d) a combination of these,

and that is, or is intended to be, used permanently for:

- (e) seniors or people who have a disability, or
- (f) people who live in the same household with seniors or people who have a disability, or
- (g) staff employed to assist in the administration of the residential accommodation or in the provision of services to persons living in the accommodation,

but does not include a hospital.

service station means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:

- (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,
- (b) the cleaning of motor vehicles,
- (c) installation of accessories,
- (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),
- (e) the ancillary retail selling or hiring of general merchandise or services or both.

serviced apartment means a building or part of a building providing self-contained tourist and visitor accommodation that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

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

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

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

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

sex services means sexual acts or sexual services in exchange for payment.

sex services premises means a brothel, but does not include home occupation (sex services).

shop means retail premises that sell groceries, personal care products, clothing, music, homewares, stationery, electrical goods or other items of general merchandise, and may include a neighbourhood shop, but does not include food and drink premises or restricted premises.

shop top housing means one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises.

signage means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes:

- (a) building identification signs, and

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- (b) business identification signs, and
- (c) advertisements,

but does not include traffic signs or traffic control facilities.

site area means the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other, but does not include the area of any land on which development is not permitted to be carried out under this Plan.

Note. The effect of this definition is varied by clause 4.5 for the purpose of the determination of permitted floor space area for proposed development.

site coverage means the proportion of a site area covered by buildings. However, the following are not included for the purpose of calculating site coverage:

- (a) any basement,
- (b) any part of an awning that is outside the outer walls of a building and that adjoins the street frontage or other site boundary,
- (c) any eaves,
- (d) unenclosed balconies, decks, pergolas and the like.

spa pool has the same meaning as in the *Swimming Pools Act 1992*.

Note. The term is defined to include any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like.

stock and sale yard means a building or place used on a commercial basis for the purpose of offering livestock or poultry for sale and may be used for the short-term storage and watering of stock.

storage premises means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any business premises or retail premises on the same parcel of land.

storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) a space that contains only a lift shaft, stairway or meter room, or
- (b) a mezzanine, or
- (c) an attic.

swimming pool has the same meaning as in the *Swimming Pools Act 1992*.

Note. The term is defined as follows:

swimming pool means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth of 300 millimetres or more, and
- (b) that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity,

and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations made under the *Swimming Pools Act 1992* not to be a swimming pool for the purposes of that Act.

take away food and drink premises means food and drink premises that are predominantly used for the preparation and sale of food or drink (or both) for immediate consumption away from the premises.

tank-based aquaculture means aquaculture utilising structures that are constructed from materials such as fibreglass, plastics, concrete, glass or metals, are usually situated either wholly or partly above ground, and may be contained within a purpose built farm or industrial style sheds or plastic covered hothouse to assist in controlling environmental factors.

telecommunications facility means:

- (a) any part of the infrastructure of a telecommunications network, or
- (b) any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or to be used, in or in connection with a telecommunications network.

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

temporary structure has the same meaning as in the Act.

Note. The term is defined as follows:

temporary structure includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure.

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

timber and building supplies means a building or place used for the display, sale (whether by retail or wholesale) or hire of goods or materials that are used in the construction and maintenance of buildings.

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes hotel or motel accommodation, serviced apartments, bed and breakfast accommodation and backpackers' accommodation.

transport depot means a building or place used for the parking or servicing of motor powered or motor drawn vehicles used in connection with a passenger transport undertaking, business, industry or shop.

truck depot means a building or place used for the servicing and parking of trucks, earthmoving machinery and the like.

turf farming means the commercial cultivation of turf for sale and the removal of turf for that purpose.

urban release area means the area of land as shown hatched and lettered "Urban Release Area" on the Urban Release Area Map.

Urban Release Area Map means the Muswellbrook Local Environmental Plan 2009 Urban Release Area Map.

vehicle body repair workshop means a building or place used for the repair of vehicles or agricultural machinery, involving body building, panel building, panel beating, spray painting or chassis restoration.

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vehicle repair station means a building or place used for the purpose of carrying out repairs or the selling of, and fitting of accessories to, vehicles or agricultural machinery, but does not include a vehicle body repair workshop.

vehicle sales or hire premises means a building or place used for the display, sale (whether by retail or wholesale) or hire of motor vehicles, caravans, boats, trailers, agricultural machinery and the like, whether or not accessories are sold or displayed there.

veterinary hospital means a building or place used for diagnosing or surgically or medically treating animals, whether or not animals are kept on the premises for the purpose of treatment.

viticulture means the cultivation of grapes for commercial purposes for use in the production of fresh or dried fruit or wine.

warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made.

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

waste management facility means a facility used for the storage, treatment, purifying or disposal of waste, whether or not it is also used for the sorting, processing, recycling, recovering, use or reuse of material from that waste, and whether or not any such operations are carried out on a commercial basis. It may include but is not limited to:

- (a) an extractive industry ancillary to, required for or associated with the preparation or remediation of the site for such storage, treatment, purifying or disposal, and
- (b) eco-generating works ancillary to or associated with such storage, treatment, purifying or disposal.

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

waste or resource transfer station means a building or place used for the collection and transfer of waste material or resources, including the receipt, sorting, compacting, temporary storage and distribution of waste or resources and the loading or unloading of waste or resources onto or from road or rail transport.

water recreation structure means a structure used primarily for recreational purposes that has a direct structural connection between the shore and the waterway, and may include a pier, wharf, jetty or boat launching ramp.

water recycling facility means a building or place used for the treatment of sewage effluent, stormwater or waste water for use as an alternative supply to mains water, groundwater or river water (including, in particular, sewer mining works), whether

the facility stands alone or is associated with other development, and includes associated:

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

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

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

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

water treatment facility means a building or place used for the treatment of water (such as a desalination plant or a recycled or reclaimed water plant) whether the water produced is potable or not, and includes residuals treatment, storage and disposal facilities, but does not include a water recycling facility.

waterbody means a waterbody (artificial) or waterbody (natural).

waterbody (artificial) or **artificial waterbody** means an artificial body of water, including any constructed waterway, canal, inlet, bay, channel, dam, pond, lake or artificial wetland, but does not include a dry detention basin or other stormwater management construction that is only intended to hold water intermittently.

waterbody (natural) or **natural waterbody** means a natural body of water, whether perennial or intermittent, fresh, brackish or saline, the course of which may have been artificially modified or diverted onto a new course, and includes a river, creek, stream, lake, lagoon, natural wetland, estuary, bay, inlet or tidal waters (including the sea).

watercourse means any river, creek, stream or chain of ponds, whether artificially modified or not, in which water usually flows, either continuously or intermittently, in a defined bed or channel, but does not include a waterbody (artificial).

waterway means the whole or any part of a watercourse, wetland, waterbody (artificial) or waterbody (natural).

wetland means:

- (a) natural wetland, including marshes, mangroves, backwaters, billabongs, swamps, sedgelands, wet meadows or wet heathlands that form a shallow waterbody (up to 2 metres in depth) when inundated cyclically, intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities, or
- (b) artificial wetland, including marshes, swamps, wet meadows, sedgelands or wet heathlands that form a shallow waterbody (up to 2 metres in depth) when

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inundated cyclically, intermittently or permanently with water, and are constructed and vegetated with wetland plant communities.

wholesale supplies means a building or place used for the display, sale or hire of goods or materials by wholesale only to businesses that have an Australian Business Number registered under the *A New Tax System (Australian Business Number) Act 1999* of the Commonwealth.