



New South Wales

# **Cessnock Local Environmental Plan 1989 (Amendment No 80)**

under the

**Environmental Planning and Assessment Act 1979**

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (N00/00271/S69)

FRANK SARTOR, M.P.,  
Minister for Planning

## 2006 No 232

Clause 1 Cessnock Local Environmental Plan 1989 (Amendment No 80)

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### **Cessnock Local Environmental Plan 1989 (Amendment No 80)**

under the

Environmental Planning and Assessment Act 1979

#### **1 Name of plan**

This plan is *Cessnock Local Environmental Plan 1989 (Amendment No 80)*.

#### **2 Aims of plan**

The aims of this plan are:

- (a) to create a new zone under *Cessnock Local Environmental Plan 1989* that introduces land use planning controls to assist in the conservation of the Bow Wow Creek Gorge Catchment, and
- (b) to rezone certain land to the new zone, and
- (c) to introduce special provisions to minimise the impact of development on habitat corridors, including on the associated habitat value of those corridors, lying between Aberdare State Forest and Werakata National Park in the north and Heaton State Forest and Watagans National Park in the south, and
- (d) to regulate development within the land to which the plan applies.

#### **3 Land to which plan applies**

This plan applies:

- (a) to the extent that it rezones land—to the land shown edged heavy black on the map marked “Cessnock Local Environmental Plan 1989 (Amendment No 80)” deposited in the office of the Council of the City of Cessnock, and
- (b) to the extent that it does other things—to all land to which *Cessnock Local Environmental Plan 1989* applies.

#### **4 Amendment of Cessnock Local Environmental Plan 1989**

*Cessnock Local Environmental Plan 1989* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 4)

### [1] Clause 5 Definitions

Insert in alphabetical order in clause 5 (1):

*clearing* means damage to, or the destruction of, a tree, shrub or other plant on land (other than any damage or destruction exempted by a tree preservation order made by the Council) and includes the poisoning, severing, ringbarking or lopping of branches, limbs, stems or trunks of a tree, shrub or other plant.

*native vegetation* means any of the following types of indigenous vegetation:

- (a) trees,
- (b) understorey plants,
- (c) groundcover,
- (d) plants occurring in a wetland,

and includes aquatic, estuarine and marine vegetation.

### [2] Clause 5 (1), definition of “environmental facilities”

Omit the definition. Insert instead:

*environmental facilities* means structures or works that provide for nature or scientific study or display or interpretation facilities (such as walking tracks, board walks, observation decks or bird hides).

### [3] Clause 5 (1), definition of “the map”

Insert in appropriate order:

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### [4] Clause 8 Zones indicated on the map

Insert after the matter relating to Zone No 1 (a1):

Zone No 1 (bwc) (Bow Wow Creek Gorge Catchment)—edged heavy black and lettered “1 (bwc)”.

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### [5] Clause 9 Zone objectives and development control table

Insert after the matter relating to Zone No 1 (a1) in the Table to the clause:

#### **Zone No 1 (bwc) Bow Wow Creek Gorge Catchment Zone**

##### **1 Objectives of zone**

The objectives of this zone are:

- (a) to conserve the biological diversity of the Bow Wow Creek Gorge Catchment, and
- (b) to conserve the native ecosystems of the Bow Wow Creek Gorge Catchment, and
- (c) to prohibit development that would adversely impact on the conservation of the native ecosystems and biological diversity of the Bow Wow Creek Gorge Catchment, and
- (d) to minimise the clearing of native vegetation, and
- (e) to facilitate the movement and survival of native fauna and flora by conserving habitat corridors, and
- (f) to minimise the impact of development on the water quality and quantity of Bow Wow Creek, downstream creeks and river systems, and
- (g) to protect the geological significance of the Bow Wow Creek Gorge, and
- (h) to protect the Aboriginal heritage values of land within the Bow Wow Creek Gorge Catchment, and
- (i) to protect the scenic qualities of land within the Bow Wow Creek Gorge Catchment.

##### **2 Without consent**

Agriculture (other than animal boarding, breeding or training establishments, feed lots, pig keeping establishments or poultry farming establishments).

##### **3 Only with consent**

Attached dual occupancies; bed and breakfast accommodation; dams; dwelling-houses; environmental facilities; picnic areas; roads; tourist accommodation buildings; tourist accommodation units; utility installations.

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**4 Prohibited**

Any purpose other than a purpose included in item 2 or 3.

**[6] Clause 10 General development principles—rural and environmental protection zones and Hunter Employment Zone**

Insert “1 (bwc),” after “1 (a1),” in clause 10 (1).

**[7] Clause 11 Subdivision of land—general**

Insert “, 1 (bwc)” after “(1) (a)” in clause 11 (2) (d).

**[8] Clauses 13A and 13B**

Insert after clause 13:

**13A Subdivision of land within Zone No 1 (bwc)**

- (1) The subdivision of land within Zone No 1 (bwc) is prohibited.
- (2) Subclause (1) does not prohibit the subdivision of land by adjustment or relocation of common boundaries unless:
  - (a) any additional lots are created by the subdivision, or
  - (b) as a consequence of the subdivision, the further subdivision of a lot becomes permissible under this plan, or
  - (c) as a consequence of the subdivision, the number of dwelling-houses permitted to be erected on the land under this plan exceeds the total number permissible under this plan prior to that subdivision.

**13B Dwelling-houses within Zone No 1 (bwc)**

- (1) The Council may consent to the erection of one, but not more than one, dwelling-house on land comprising a lot within Zone No 1 (bwc), but only if:
  - (a) the land has an area of not less than 40 hectares, and
  - (b) there is no existing dwelling-house on the land.
- (2) Subclause (1) (a) does not prevent the erection of one, but not more than one, dwelling-house on land having an area of less than 40 hectares if the land:
  - (a) is vacant land that was previously subdivided under clause 12 (4) when the land was within Zone No 1 (a), including any residue of an existing holding after that subdivision, or
  - (b) is vacant land comprising the whole of an existing holding.

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- (3) Subclause (1) (b) does not prevent the erection of a dwelling-house on land on which there is an existing dwelling-house if the dwelling-house to be erected:
- (a) is intended to replace the existing dwelling-house, and
  - (b) is not occupied until the existing dwelling-house is demolished or its occupation for the purposes of human habitation has permanently ceased.

**[9] Clause 17C Earthworks within Zone No 1 (bwc) and Zone No 7 (b)**

Insert “Zone No 1 (bwc) or” after “within” in clause 17C (2).

**[10] Clause 20 Clearing**

Omit clause 20 (1).

**[11] Clause 20 (3A)**

Omit “subclauses (1),”. Insert instead “subclause”.

**[12] Clause 20 (4)**

Omit “(1) or”.

**[13] Clause 20 (8)**

Omit “a person” where first occurring. Insert instead “A person”.

**[14] Clause 20 (9)**

Insert after clause 20 (8):

- (9) This clause does not apply to land to which clause 20B applies.

**[15] Clause 20A Clearing of land within Zone No 4 (h), 5 (a) or 7 (b)**

Omit clause 20A (1).

**[16] Clause 20B**

Insert after clause 20A:

**20B Development (including clearing) on land within Bow Wow Creek Gorge Catchment and habitat corridors**

- (1) This clause applies to:
- (a) land within Zone No 1 (bwc), and
  - (b) land shown by horizontal hatching on the map marked “Cessnock Local Environmental Plan 1989 (Amendment No 80)”.

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- (2) Despite any other provisions of this plan, clearing on land to which this clause applies may be carried out only with consent. However, any such clearing comprising the following may be carried out without consent:
- (a) clearing for the purposes of air navigation safety,
  - (b) bush fire hazard reduction work carried out in accordance with the *Rural Fires Act 1997*,
  - (c) clearing for the purposes of land surveying or geotechnical or similar investigation,
  - (d) clearing of noxious weeds within the meaning of the *Noxious Weeds Act 1993*,
  - (e) the removal or trimming of trees in accordance with the *Electricity Supply (General) Regulation 2001* or the *Electricity Supply (Safety and Network Management) Regulation 2002*,
  - (f) the removal or lopping of a tree or other vegetation by a roads authority in accordance with the *Roads Act 1993*,
  - (g) clearing for telecommunication supply purposes,
  - (h) clearing to give effect to development in accordance with consent,
  - (i) the removal of trees or parts of trees for use as fenceposts on the land from which they are removed,
  - (j) the slashing of vegetation to maintain lawfully cleared land.
- (3) The Council must not consent to development on land to which this clause applies that involves clearing of native vegetation unless the Council is satisfied that the development cannot be appropriately carried out on other areas of the site that have already been cleared.
- (4) The Council must not consent to clearing of native vegetation on land to which this clause applies unless it has considered any impact of that clearing on the following:
- (a) the quality and quantity of water in the Bow Wow Creek Gorge Catchment,
  - (b) riparian vegetation,
  - (c) habitat values and habitat corridors,
  - (d) the visual amenity of Bow Wow Creek Gorge,
  - (e) slopes greater than 15 degrees,

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- (f) threatened species, populations or ecological communities (within the meaning of the Act),
  - (g) listed migratory species, listed threatened species or listed threatened ecological communities within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth.
- (5) The Council must not consent to clearing of native vegetation on land to which this clause applies unless the conditions of that consent:
- (a) require that an equivalent amount of native vegetation to the amount of native vegetation to be cleared be re-established and maintained on another part or parts of the site (being a part or parts of the site that, in the opinion of the Council, are strategic), and
  - (b) specify the composition of the native vegetation to be re-established and maintained, being a composition determined by the Council after consideration of *Development Control Plan No 57—Bow Wow Creek Gorge Catchment and Habitat Corridors*.
- (6) Subclause (5) does not apply in relation to land that is fully vegetated with native vegetation.

**Note.** A person who receives consent from the Council to the clearing of native vegetation under this plan may not be relieved from obtaining authorisation under Acts other than the *Environmental Planning and Assessment Act 1979*.

### [17] **Clause 24 Dual occupancy**

Insert “1 (bwc),” after “1 (a),” in clause 24 (2) and (6) wherever occurring.

### [18] **Clauses 62–64**

Insert after clause 61:

#### **62 Land within Bow Wow Creek Gorge Catchment and Habitat Corridors—development generally**

- (1) This clause applies to:
  - (a) land within Zone No 1 (bwc), and
  - (b) land shown by horizontal hatching on the map marked “Cessnock Local Environmental Plan 1989 (Amendment No 80)”.



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- (2) Before granting consent to development on land to which this clause applies, the Council must consider *Development Control Plan No 57—Bow Wow Creek Gorge Catchment and Habitat Corridors*.
  - (3) Before granting consent to development on land to which this clause applies, the Council must have regard to whether the development may be carried out on areas of the site that do not have established native vegetation on them.
  - (4) The Council must not consent to development on land to which this clause applies unless the Council is satisfied that the development:
    - (a) is designed to minimise disturbance to the existing structure and species composition of native vegetation communities, and
    - (b) will allow native fauna and flora to breed, disperse, colonise or migrate (whether seasonally or nomadically) by:
      - (i) being carried out on areas of the site that have already been cleared (unless the Council is satisfied that the development cannot be appropriately carried out on other areas of the site that have already been cleared), and
      - (ii) adequate provision being made, satisfactory to the Council, for protection from the threat of bushfire, and
      - (iii) the clustering of development and the minimisation of any driveways, and
      - (iv) landscaping with local native species, and
      - (v) designing and erecting any fences so that fauna movement is neither impaired nor restricted, and
      - (vi) minimising the use of any herbicides and pesticides.

### **63 Land within Zone No 1 (bwc)—Tourism**

- (1) This clause applies to land within Zone No 1 (bwc).
- (2) The Council must not consent to the carrying out of development for the purposes of tourist accommodation buildings on land to which this clause applies unless any lot on which the development is proposed to be carried out has an area of not less than 10 hectares.

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- (3) The Council must not consent to tourist development on land to which this clause applies that results in there being more than 2 tourist accommodation buildings or 2 tourist accommodation units on a lot.
- (4) Despite subclause (3), the Council may consent to development referred to in that subclause if:
  - (a) the Council is satisfied that:
    - (i) the development will fully comply with the requirements for the maintenance of existing habitat corridors under *Development Control Plan No 57—Bow Wow Creek Gorge Catchment and Habitat Corridors* (as adopted by the Council on 19 May 2004), or
    - (ii) a minimum of 900 native trees or shrubs per tourist accommodation unit will be established and maintained in accordance with that development control plan, and
  - (b) the number of tourist accommodation units or tourist accommodation buildings proposed to be located on the lot does not exceed the maximum number set out in the Table to this subclause.

**Table**

<b>Area of lot (hectares)</b>	<b>Maximum number tourist accommodation units with habitat enhancement</b>	<b>Maximum number tourist accommodation buildings with habitat enhancement</b>
10 ha and greater but less than 40 ha	4	4
40 ha and greater	8	6

- (5) The Council must not consent to the erection of tourist accommodation units, including the erection of those allowed under subclause (3), as staged development pursuant to section 80 (5) of the Act, unless it is satisfied that at least 2 tourist accommodation units will be erected in the first stage of the development.

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**64 Land within Zone No 1 (bwc)—Aboriginal heritage**

- (1) This clause applies to land within Zone No 1 (bwc).
- (2) The Council must not consent to development on land to which this clause applies unless the Council has considered the potential impact of the proposed development on any Aboriginal heritage values of the site and locality.