



New South Wales

## **Cessnock Local Environmental Plan 1989 (Amendment No 109)**

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*. (NEW0000012-2)

FRANK SARTOR, M.P.,  
Minister for Planning

## 2007 No 176

Clause 1 Cessnock Local Environmental Plan 1989 (Amendment No 109)

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## Cessnock Local Environmental Plan 1989 (Amendment No 109)

under the

Environmental Planning and Assessment Act 1979

### 1 Name of plan

This plan is *Cessnock Local Environmental Plan 1989 (Amendment No 109)*.

### 2 Aims of plan

The aims of this plan are as follows:

- (a) to amend *Cessnock Local Environmental Plan 1989 (the 1989 plan)* to remove clause 12 (4) which enables subdivision of land within Zone No 1 (a) for the purpose of creating lots commonly known as “concessional lots”, and
- (b) to amend the definition of **existing holding** in the 1989 plan and other provisions that refer to that term so as to acknowledge entitlements to erect dwelling-houses on certain lots lawfully created for that purpose, and
- (c) to clarify that, except in specified circumstances, consent will not be granted to the erection of a dwelling-house on a lot created as the result of a road closure, road widening or road realignment if the lot does not comply with the relevant minimum lot size for the erection of a dwelling-house under the 1989 plan, and
- (d) to allow Cessnock City Council to require, as a condition of consent granted for the erection of a dwelling-house or dual occupancy on an existing holding, the consolidation of part or all of the existing holding, and
- (e) to amend a number of provisions in the 1989 plan to address operational issues relating to existing holdings and dwelling entitlements (including in relation to dual occupancy development).

### 3 Land to which plan applies

This plan applies to all land within Zones Nos 1 (a) (Rural “A” Zone), 1 (c) (Rural-Residential/Rural (Small Holdings) Zone), 1 (cl) (Rural (Small Holdings) Zone), 1 (c2) (Rural (Small Holdings) Zone), 1 (v)

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(Rural (Vineyards) Zone) and 2 (b) (Village Zone) under *Cessnock Local Environmental Plan 1989*.

**4 Relationship to other environmental planning instruments**

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

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Schedule 1 Amendments

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### Schedule 1 Amendments

(Clause 4)

#### [1] Clause 5 Definitions

Omit the definition of *existing holding* from clause 5 (1). Insert instead:

*existing holding* means any of the following areas of land:

- (a) the area of a lot, portion or parcel of land as it was as at 31 December 1984 or, if at that date the owner of the lot, portion or parcel also owned one or more adjoining or adjacent lots, portions or parcels, the aggregation of the areas of all of those lots, portions and parcels as they were at that date,
- (b) the area of a holding referred to in paragraph (a) that has been affected since 31 December 1984 only by a subdivision of a type referred to in clause 11 (2) or 12 (3),
- (c) the area of a lot lawfully created:
  - (i) under clause 12 (4) (before the repeal of that subclause by *Cessnock Local Environmental Plan 1989 (Amendment No 109)*), or
  - (ii) by a subdivision for the purpose of a dwelling-house or for another purpose that included the ancillary erection of a dwelling-house, pursuant to an objection under *State Environmental Planning Policy No 1—Development Standards* to a provision of this plan (other than clause 11 (4)).

#### [2] Clause 7A Saving of certain development applications

Insert at the end of the list of amending plans in clause 7A (2):

*Cessnock Local Environmental Plan 1989 (Amendment No 109)*

#### [3] Clauses 11A and 11B

Insert after clause 11:

##### 11A Dwelling-houses—general

- (1) Except as provided by subclause (2), and despite any other provision of this plan, consent must not be granted to the erection of a dwelling-house on a lot created as a result of a road closure, road widening or road realignment the area of which is less than the minimum area prescribed by this plan for the erection of a dwelling-house on the lot.

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- (2) Consent may be granted to the erection of a dwelling-house on a residue lot created as a result of a road closure, road widening or road realignment the area of which is less than the minimum area prescribed by this plan for the erection of a dwelling-house on the lot if a right to erect a dwelling-house existed on the original area of land the subject of the subdivision by which the residue lot was created.

**11B Dwelling-houses—consolidation of existing holdings**

If consent is granted for the erection or creation of a dwelling-house or a dual occupancy on land comprising an existing holding, the consent authority may impose a condition of consent that requires the consolidation of some or all of the lots, portions or parcels that comprise the existing holding.

**[4] Clause 12 Subdivision of land within Zone No 1 (a)**

Omit clause 12 (4)–(6).

**[5] Clause 13 Dwelling-houses—Zone No 1 (a)**

Omit clause 13 (1) (a)–(c). Insert instead:

- (a) has an area of not less than 40 hectares, or
- (b) is an existing holding and the Council is satisfied that:
  - (i) there will be adequate vehicular access to the dwelling-house, and
  - (ii) the erection of the dwelling-house will not create or increase ribbon development along a main or arterial road, and
  - (iii) a water supply and facilities for the removal of sewage and drainage are available or, if any such supply or facility is not so available, arrangements satisfactory to the Council have been made for the provision of that supply or facility to the existing holding.

**[6] Clause 13 (5)**

Omit the subclause. Insert instead:

- (5) The Council must not grant consent to development on a lot that was created under clause 12 (4) before the repeal of that subclause by *Cessnock Local Environmental Plan 1989 (Amendment No 109)* (commonly known as a concessional lot) unless satisfied that the lot will be used primarily for the purpose of a dwelling-house.

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Schedule 1 Amendments

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### [7] Clause 14A Dwelling-houses—Zone No 1 (c)

Omit clause 14A (1)–(3). Insert instead:

- (1) Except as provided by subclause (2) or (4) or by clause 24, one, but not more than one, dwelling-house may be erected on land within Zone No 1 (c) that has an area of not less than 4,000 square metres.
- (2) One, but not more than one, dwelling-house may be erected on land within Zone No 1 (c) that has an area of less than 4,000 square metres if the land is an existing holding and the Council is satisfied that:
  - (a) water supply and facilities for the removal of sewage and drainage are available, or
  - (b) where any such supply or facility is not so available, arrangements satisfactory to the Council have been made for the provision of such a supply or facility to the existing holding.

### [8] Clause 14C Dwelling-houses—Zone No 1 (c2)

Omit clause 14C (1)–(3). Insert instead:

- (1) Except as provided by subclause (4) or by clause 24, one, but not more than one, dwelling-house may be erected on land within Zone No 1 (c2) if the land:
  - (a) has an area of not less than 4 hectares, or
  - (b) is an existing holding.

### [9] Clause 16 Dwelling-houses—Zone No 1 (v)

Omit clause 16 (1) (b). Insert instead:

- (b) is an existing holding and the Council is satisfied that:
  - (i) there will be adequate vehicular access to the dwelling-house, and
  - (ii) the erection of the dwelling-house will not create or increase ribbon development along a main or arterial road, and
  - (iii) a water supply and facilities for the removal of sewage and drainage are available or, if any such supply or facility is not so available, arrangements satisfactory to the Council have been made for the provision of such a supply or facility to the existing holding.

**[10] Clause 24 Dual occupancy**

Omit clause 24 (6). Insert instead:

**(6) Additional restrictions on attached dual occupancies in rural zones**

The Council must not grant consent to development resulting in an attached dual occupancy on land within Zone No 1 (a), 1 (c), 1 (c1), 1 (c2) or 1 (v) unless:

- (a) the land:
  - (i) is of an area that is not less than the minimum area prescribed by this plan for the erection of a dwelling-house on the land, or
  - (ii) is an existing holding, and
- (b) the proposed building, as altered, added to or erected, will not exceed 2 storeys in height above ground level, and
- (c) arrangements satisfactory to the Council have been made for the provision of a water supply to each dwelling and for the disposal of sewage and stormwater from each dwelling, and
- (d) the granting of consent would not result in there being more than 2 dwellings on the allotment.

**[11] Clause 46 Development of certain land**

Omit clause 46 (4). Insert instead:

- (4) Except as provided by clause 24, one, but not more than one, dwelling-house may be erected on an allotment of land within Zone No 1 (c1) with the consent of the Council.

**[12] Clause 51 Dwellings within Zone No 2 (b) at Ellalong**

Omit clause 51 (3). Insert instead:

- (3) Despite subclause (2), one, but not more than one, dwelling-house may be erected on an existing holding that is less than 1,500 square metres and comprises land to which this clause applies with the consent of the Council.

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### [13] Clause 65

Insert in appropriate order:

#### **65 Savings provision relating to certain development applications**

- (1) This clause relates to land identified as in the ownership of R.G and J.K. Palmisano (approximately 876.7 ha) on the map entitled “Cessnock City Council Existing Holdings Map At 31st December, 1984”.
- (2) A development application that relates to land to which this clause applies that is lodged with the Council within 1 year after the commencement of *Cessnock Local Environmental Plan 1989 (Amendment No 109)* is to be assessed and determined under the provisions of this plan as if that plan had been exhibited under the Act but had not been made.

BY AUTHORITY

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