



New South Wales

Newcastle Local Environmental Plan 2003 (Amendment No 4)

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*. (NEW0006055/PC)

KRISTINA KENEALLY, MP
Minister for Planning

2009 No 136

Clause 1 Newcastle Local Environmental Plan 2003 (Amendment No 4)

Newcastle Local Environmental Plan 2003 (Amendment No 4)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Newcastle Local Environmental Plan 2003 (Amendment No 4)*.

2 Aims of plan

This plan aims to amend *Newcastle Local Environmental Plan 2003 (the 2003 plan)*:

- (a) to clarify the meaning of, and make statute law revision amendments to, certain provisions, and
- (b) to clarify, replace or omit certain definitions, and
- (c) to correct minor mapping anomalies and make minor zoning alterations, and
- (d) to bring the land that was deferred matter within the meaning of section 70 (4) of *Environmental Planning and Assessment Act 1979*, being part of Kooragang Island, under the 2003 plan, and
- (e) to achieve consistency within the City of Newcastle in relation to exempt and complying development by replacing Schedules 1–3 with two schedules that are equivalent to those that apply in *Newcastle City Centre Local Environmental Plan 2008*, but excluding exempt development to which *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* applies, and
- (f) to reclassify a former council library site in Cowper Street, Wallsend, from community land to operational land within the meaning of the *Local Government Act 1993*, and
- (g) to insert additional heritage items.

3 Land to which plan applies

This plan applies to all land to which *Newcastle Local Environmental Plan 2003* applies.

4 Repeal of Newcastle Local Environmental Plan 1987

Newcastle Local Environmental Plan 1987 is repealed.

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[1] Clause 2 Land to which plan applies

Omit clause 2 (2). Insert instead:

- (2) This plan does not apply to land to which *Newcastle City Centre Local Environmental Plan 2008* applies.

[2] Clause 4 Context and relationship to other environmental planning instruments

Omit clause 4 (3) (a).

[3] Clause 5 Aims and general objectives

Omit “to achieve those aims”.

[4] Clause 5

Omit “Development should:” wherever occurring.

Insert instead “The objectives are to:”.

[5] Clause 10 Exempt development

Omit “Development listed”. Insert instead “Development specified”.

[6] Clause 10 (b)

Omit “Column 2 of”.

[7] Clause 10 (f)

Omit the paragraph. Insert instead:

- (f) it is not carried out on flood prone land unless otherwise stated in Schedule 1, and

[8] Clause 11 Complying development

Omit “Development listed in”.

Insert instead “Development specified in Part 1 of”.

[9] Clause 11 (b)

Omit “the development standards and any other requirements specified in Column 2”.

Insert instead “any requirements specified in Part 1”.

[10] Clause 11 (f)

Omit the paragraph. Insert instead:

- (f) it is not carried out on flood prone land unless otherwise stated in Schedule 2, and

[11] Clause 12 Conditions for complying development

Omit “Schedule 3”. Insert instead “Part 2 of Schedule 2”.

[12] Clause 16 Zonings

Omit “mines” from item 5 of the matter relating to Zone 2 (a) in the Table to the clause.

Insert instead “mines” in alphabetical order.

[13] Clause 16, Table

Omit “which are not appropriate in, and” from item 2 (c) of the matter relating to Zone 4 (a).

[14] Clause 16, Table

Omit item 2 (b) of the matter relating to Zone 4 (c). Insert instead:

- (b) To allow commercial, retail or other development only where it is:
 - (i) ancillary to the use of land within this zone for industrial, research, service or storage purposes, or
 - (ii) primarily intended to provide personal services and community facilities to persons occupied or employed in activities otherwise permitted in this zone or for the benefit of the local community.
- (c) To ensure that any such commercial, retail or other development is unlikely to be prejudicial:
 - (i) to employment-generating activities, or
 - (ii) to the viability of existing commercial centres.

[15] Clause 17 Subdivision

Omit “in” at the end of clause 17 (3). Insert instead “included”.

[16] Clause 17 (4)

Insert “6 (a),” after “1 (a),” wherever occurring.

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[17] Clause 26B

Insert after clause 26A:

26B 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.

[18] Clause 27 Heritage assessment

Insert “, including demolition work,” after “work” in clause 27 (1).

[19] Clause 27 (2)

Omit “The assessment”.

Insert instead “Where the consent authority is satisfied that the carrying out of the proposed development is likely to, or may, affect the heritage significance of the heritage item or the heritage conservation area, the assessment”.

[20] Clause 33 Heading

Insert “or heritage conservation area” after “item”.

[21] Clause 36 Land in Zone 4 (c) at Mayfield West

Omit “Part 4” from the definition of *environmental envelope* in clause 36 (2).

Insert instead “Part D”.

[22] Clause 36 (4) (b) and (7)

Omit “Environment Protection Authority” wherever occurring.

Insert instead “Department of Environment and Climate Change”.

[23] Clause 36 (9)

Omit “Estate Management Company”.

Insert instead “Community Association”.

[24] Clause 37 Definitions

Insert in alphabetical order in clause 37 (1):

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.

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.

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 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.

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.

circumference breast height means the girth of the supporting stem of a tree at a height of 1.4 metres above ground level (existing) measured at the trunk centre, and so as to contain the outermost projection of any flanges or buttresses.

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

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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.

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.

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) a waste disposal land fill operation.

flood prone land means land that is at or below 0.5 metre above the 1% annual exceedance probability flood level.

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

mezzanine means an intermediate floor within a room.

Newcastle Development Control Plan 2005 means Newcastle Development Control Plan 2005 adopted by the Council, as in force on the commencement of *Newcastle Local Environmental Plan 2003 (Amendment No 4)*.

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.

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

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- (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*.

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.

[25] Clause 37 (1), definition of “agriculture”

Omit “but, in Part 2, does not include”.

Insert instead “but does not include the clearing of land or”.

[26] Clause 37 (1), definitions of “animal establishment”, “bulky goods retail outlet”, commercial premises”, “community facility” and “shop”

Omit “, in Part 2,” wherever occurring.

[27] Clause 37 (1), definitions of “arborist”, “Landscape Structure Plan” and “tree”

Omit the definitions.

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[28] Clause 37 (1), definitions of “eco-tourism facility”, “industry”, “local shop” and “serviced apartments”

Omit the definitions. Insert instead in alphabetical order:

eco-tourism facility means any nature-based tourism facility that involves education and interpretation of the natural or cultural environment and that is managed so as to be ecologically sustainable. It may include staff quarters or minimal impact, low scale tourist accommodation that is compatible with the environment.

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.

local shop means a shop that:

- (a) is of a nature and size that is suitable to serve a surrounding population of approximately 5,000 people, and
- (b) is not a bulky goods retail outlet, convenience shop or sex aid establishment.

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.

[29] Clause 37 (1), definition of “heritage item”

Insert “, tree” after “archaeological site” in paragraph (a).

[30] Clause 37 (1), definition of “pruning”

Omit “1996”. Insert instead “2007”.

[31] Clause 37 (1), definition of “zoning map”

Insert in appropriate order:

Newcastle Local Environmental Plan 2003 (Amendment No 4)—Sheets 1–14 and 16

[32] Schedules 1 and 2

Omit Schedules 1–3. Insert instead:

Schedule 1 Exempt development

(Clause 10)

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

Note 2. The removal of trees to enable the carrying out of any other development listed in this Schedule may be exempt development under clause 28 of this Schedule or complying development under clause 5 of Schedule 2 or may require a development consent under clause 14 of this plan.

1 Building alterations

Note. This development, if carried out on a dwelling, is exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. From 27 February 2009 only that Policy applies in relation to building alterations to dwellings.

(1) Premises

The alterations must not be carried out on any of the following premises:

- (a) premises used as a hairdressing or beauty salon,
- (b) premises on which skin penetration procedures (within the meaning of section 51 of the *Public Health Act 1991*) are carried out,
- (c) premises used for the sale of food, or the storage or handling of food for sale.

(2) General

May only be minor non-structural alterations, such as the following:

- (a) plastering or cement rendering,
- (b) attachment of fittings,
- (c) replacement of doors or windows,
- (d) replacement of ceiling, wall or floor linings or decorative work,
- (e) replacement of bathroom,
- (f) installation of kitchen or laundry fixtures,
- (g) carrying out of decorative work.

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(3) **Impact on structure**

Wall, door or window openings must not be enlarged or reduced.

(4) Alterations must not affect the load bearing capacity of any load bearing component of the building.

(5) **Safety**

Any work involving asbestos cement must comply with the following WorkCover Authority guidelines:

- (a) *Working with asbestos: Guide* 2008 (ISBN 0 7310 5159 9),
- (b) *Guide to licence applicants for friable or bonded asbestos* (January 2008).

(6) If paint removal is carried out in conjunction with the alterations, it must be carried out in a manner that prevents possible contamination of air or ground by lead or other toxic compounds.

(7) **Heritage and bush fire prone land**

Must not be carried out on land that comprises or on which there is a heritage item.

(8) Alterations must not be to the exterior of a building in a heritage conservation area or on bush fire prone land.

(9) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

2 Cemeteries and burial grounds

(1) Must only be development comprising:

- (a) the creation of a new grave or monument, or
- (b) an excavation or disturbance of the land for the purpose of carrying out conservation or repair of a monument or grave marker.

(2) **Heritage**

Must not involve disturbance to human remains, to relics in the form of grave goods or to a place of Aboriginal heritage significance.

3 Change of use—local shops, shops, commercial premises and commercial offices**(1) General**

The development is the different use of a building resulting from a change:

- (a) from one type of local shop to another type of local shop, or
- (b) from one type of shop to another type of shop, or
- (c) from one type of commercial premises to another type of commercial premises, or
- (d) from commercial premises to commercial offices, or
- (e) from one type of commercial offices to another type of commercial offices, or
- (f) from commercial offices to commercial premises.

(2) Current use

The current use of the building must be lawful and must not be an existing use (within the meaning of section 106 of the Act).

(3) Proposed use

The proposed use of the premises must not comprise any of the following:

- (a) premises for the sale of food or the storage or handling of food for sale,
- (b) hairdressing or beauty salons,
- (c) premises on which ear piercing, tattooing or other skin penetration procedures (within the meaning of section 51 of the *Public Health Act 1991*) are carried out,
- (d) premises used for the sale or display of publications or objects primarily concerned with sexual activity.

(4) Floor area

The proposed use must not involve any increase in floor area.

(5) Operation

Hours of operation must not extend beyond any existing approved hours.

Note. A current development consent applying to the premises may contain conditions on the permitted hours of operation.

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- (6) If the proposed use is as a shop or as commercial offices, the curtilage of the premises must not be used for storage or display purposes.
- (7) The new use must be carried out in accordance with any conditions of a current development consent relating to the premises, including car parking, loading, vehicular movement, traffic generation, waste management, noise and site landscaping.

4 Maintenance of heritage items or buildings, works, archaeological sites, relics, trees or places within heritage conservation areas

Note. See the definition of *maintenance* in clause 37 (1) of this plan.

(1) General

The applicant has advised the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that is satisfied that the proposed development:

- (a) 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
- (b) would not adversely affect the significance of the heritage item, archaeological site or heritage conservation area.

(2) Flood prone land

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

(3) Replacement or repair of cladding

If the maintenance involves the replacement or repair of wall cladding or roof cladding, must comply with the requirements set out in this Schedule for that kind of development.

5 Native vegetation—clearing

- (1) Does not apply to the clearing of native trees.
- (2) May only be undertaken with the written agreement of the owner of the land on which the native vegetation is located.
- (3) May only involve native vegetation that was previously planted for agriculture, agroforestry, forestry, horticulture or woodlot purposes.

(4) **Threatened species**

Native vegetation must not be, or comprise a part of, a threatened species, population or ecological community listed in:

- (a) Schedule 1, 1A or 2 to the *Threatened Species Conservation Act 1995*, or
- (b) Schedule 4, 4A or 5 to the *Fisheries Management Act 1994*.

Note 1. The terms *clearing* and *native vegetation* are defined in clause 37 of this plan.

Note 2. Clearing of native vegetation is also provided for under other legislation, including the *Rural Fires Act 1997*.

6 Public roads—construction of footpaths, footpath crossings, kerb crossings or stormwater drainage connections

Note. The carrying out of works on a public road requires consent of the appropriate roads authority (usually the Council) under the *Roads Act 1993*.

(1) **Damage**

Any damage caused to kerb, guttering or footways during carrying out of works must be rectified in accordance with any requirements of the appropriate roads authority under the *Roads Act 1993*.

(2) **Storage of construction materials on roads or public reserves**

No part of a public road is to be used for storage of construction materials without the authorisation of the appropriate roads authority under the *Roads Act 1993*.

(3) No part of a public reserve is to be used for storage of construction materials without the authorisation of the Council.

(4) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

(5) **Water pollution**

Adequate measures must be carried out to prevent sediment or other pollutants from entering drains or watercourses.

(6) **Stormwater**

Works must not restrict flow of stormwater.

(7) Overland stormwater flow must not be diverted as a result of the works over land to buildings (such as garages and dwellings).

(8) Works must not restrict access to stormwater pipelines.

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7 Signs—business identification

- (1) **Number**
Maximum of one business identification sign per premises.
- (2) **Siting**
No freestanding signs on a public road (including the footway of a public road).
- (3) Signs may be suspended from a building over the footway of a public road and, in that case, must be located no closer than 3.6 metres from the edge of the kerb and at least 2.6 metres above ground level (existing).
- (4) **Dimensions**
Maximum area—1 square metre.
- (5) **Heritage**
Must not be located on land that comprises or on which there is a heritage item.

8 Tree pruning

- (1) Includes pruning of trees located on flood prone land.
- (2) Pruning must be undertaken in accordance with:
 - (a) the tree management provisions contained in Element 4.10 of *Newcastle Development Control Plan 2005*, and
 - (b) Australian Standard AS 4373—2007, *Pruning of amenity trees*.
- (3) **Heritage**
Tree must not be a heritage item that is listed in Schedule 6.
- (4) **Threatened species**
Tree must not be, or comprise a part of, a threatened species, population or ecological community listed in:
 - (a) Schedule 1, 1A or 2 to the *Threatened Species Conservation Act 1995*, or
 - (b) Schedule 4, 4A or 5 to the *Fisheries Management Act 1994*.

Note 1. The term *pruning* is defined in clause 37 (1) of this plan.

Note 2. Removal and pruning of trees is also provided for under other legislation, including the *Electricity Supply Act 1995*, the *Local Government Act 1993* (in relation to trees on council land), the *Roads*

Act 1993, the Rural Fires Act 1997 and the Trees (Disputes Between Neighbours) Act 2006.

Note 3. Removal or interference with a tree on a public road requires the consent of the appropriate roads authority under the *Roads Act 1993*.

9 Tree removal

- (1) Includes removal of trees located on flood prone land.
- (2) Removal of a tree may only be undertaken, with the written agreement of the owner of the land on which the tree is located, if any of the following circumstances apply to the tree:
 - (a) must be of a species that is a noxious weed under the *Noxious Weeds Act 1993*,
 - (b) must have a circumference breast height not greater than 450 millimetres for a single trunk tree or not greater than 300 millimetres for each trunk of a multi-trunk tree,
 - (c) must be dead and not provide a habitat for hollow-dependent fauna,
 - (d) must be located within 3 metres of the wall of the principal building (excluding carports, pergolas, fences, retaining walls and the like) on the land on which it is situated or on adjacent land, measured from the closest point of the trunk to the footings of the building.
- (3) Removal must be completed in one operation and any remaining stump must be no higher than 1.4 metres.
- (4) Retention of the tree must not have been a condition of a development consent.
- (5) **Heritage**
Tree must not be a heritage item that is listed in Schedule 6.
- (6) **Threatened species**
Tree must not be, or comprise a part of, a threatened species, population or ecological community listed in:
 - (a) Schedule 1, 1A or 2 to the *Threatened Species Conservation Act 1995*, or
 - (b) Schedule 4, 4A or 5 to the *Fisheries Management Act 1994*.

Note 1. The terms **circumference breast height** and **remove** are defined in clause 37 (1) of this plan.

Note 2. Removal and pruning of trees is also provided for under other legislation, including the *Electricity Supply Act 1995*, the *Local Government Act 1993* (in relation to trees on council land), the *Roads*

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Act 1993, the Rural Fires Act 1997 and the Trees (Disputes Between Neighbours) Act 2006.

Note 3. Removal or interference with a tree on a public road requires the consent of the appropriate roads authority under the *Roads Act 1993*.

10 Use of public land or a public road for an exhibition, meeting or community event

Note. In the case of Crown land or land vested in or under the control of the council, permission must be sought from the council or other authority responsible for managing the land concerned before any development (including exempt development) is carried out on the land. Where the land is a public road, permission must be sought from the appropriate roads authority under the *Roads Act 1993* (usually the council).

Under section 68 of the *Local Government Act 1993*, certain activities carried out on community land require approval from the council.

(1) Definition

In this clause:

community event has the same meaning as in *State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007*.

(2) Plans of management

Must be consistent with any plan of management under the *Local Government Act 1993* or the *Crown Lands Act 1989* that applies to the land.

(3) Temporary structures

The erection and use of any temporary structure for the purposes of the exhibition, meeting or community event must be exempt development or complying development under *State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007*.

(4) Bush fire prone land

The exhibition, meeting or community event must not be carried out on bush fire prone land.

(5) Flood prone land

May be carried out on flood prone land if the relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

Schedule 2 Complying development

(Clause 11)

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

Part 1 Types of development

1 Change of use—from shops and warehouses

(1) **General**

The development is the different use of a building resulting from a change:

- (a) from one type of shop to another type of shop or to commercial offices or commercial premises, or
- (b) from one type of warehouse to another type of warehouse.

(2) **Current use**

The current use of the building must be lawful and must not be an existing use (as defined in section 106 of the Act).

(3) **Proposed development or use**

The proposed development may include structural alterations, but only to the interior of the premises concerned.

- (4) The proposed premises must not comprise premises for the sale of food or the storage or handling of food for sale.

(5) **Floor area**

The proposed use must not involve any increase in floor area.

(6) **Operation**

Hours of operation must not extend beyond any existing approved hours.

Note. A current development consent applying to the premises may contain conditions on the permitted hours of operation.

- (7) If the proposed use is as commercial offices, the curtilage of the premises must not be used for storage or display purposes.

(8) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

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2 Dwelling-houses and associated outbuildings

Note. Works ancillary to the development allowed by this clause, such as landscaping, the installation of driveways, paving, drainage, filling, excavation and the laying of underground services may be carried out as exempt development. See the entry for ancillary works external to a building in Schedule 1.

Works on public roads, such as footpath crossings, kerb crossings or stormwater drainage connections for dwelling-houses may also be carried out as exempt development. See the entry for public roads in Schedule 1.

(1) **General**

The development involves one of the following:

- (a) the erection of a new dwelling-house,
- (b) the alteration of or addition to an existing dwelling-house,
- (c) the erection of a carport or garage ancillary to an existing dwelling-house,
- (d) the erection of any other kind of outbuilding (other than a swimming pool) ancillary to an existing dwelling-house,
- (e) demolition of a building of a kind referred to in paragraphs (a)–(d) prior to the carrying out of development referred to in any of those paragraphs.

(2) **Site area**

The development does not result in more than one dwelling on the relevant lot.

- (3) May only be carried out on land in Zone 2 (a) or 2 (b) that has gravity drainage to a public drainage system.

(4) **Siting**

Any external wall of the resulting building must be at least 0.9 metre from any side or rear property boundary.

- (5) The outside of any new eaves or gutter must be at least 0.675 metre from any side or rear property boundary.

- (6) Minimum setback from boundary of secondary street frontage on corner lot—2.5 metres.

- (7) Minimum setback from any other boundary with a street—5 metres.

- (8) Must not encroach on any easement, pipeline or watercourse.

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- (9) **Number of storeys—dwelling-houses and outbuildings**
Any proposed dwelling-house or outbuilding may only be a single storey building.
- (10) **Additions**
Any addition to a dwelling-house may only be to the ground floor of the dwelling-house.
- (11) **Streetscape**
Dwelling-houses facing a public road must have at least a front door or window of a habitable room facing the road.
- (12) The combined width of all proposed garages or carports facing a public road must not be more than the lesser of:
(a) 6 metres, or
(b) 40 per cent of the width of the frontage.
- (13) **Bulk and scale**
Maximum height of underside of eaves—3.5 metres above ground level (existing).
- (14) Maximum roof pitch—30 degrees.
- (15) Any roof openings must be flush with the roof pitch.
- (16) Maximum floor area of any carport, garage or other outbuilding—40 square metres.
- (17) **Safety**
Any work involving asbestos cement must comply with the following WorkCover Authority guidelines:
(a) *Working with asbestos: Guide 2008* (ISBN 0 7310 5159 9),
(b) *Guide to licence applicants for friable or bonded asbestos* (January 2008).
- (18) **Solar access**
The building or structure must comply with Element 5.1.5 of *Newcastle Development Control Plan 2005*.

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(19) **Privacy**

If a new window in a habitable room allows an outlook to a window in a habitable room of an adjoining dwelling and the two windows are less than 9 metres apart:

- (a) the new window must be offset, from its edge to the edge of the window in the adjoining dwelling, by a distance of at least 0.5 metre, or
- (b) the new window must have a sill height of at least 1.5 metres above floor level, or
- (c) any part of the new window less than 1.5 metres above floor level must have fixed obscure glazing.

(20) **Car parking**

At least one car parking space must be provided for a new dwelling.

(21) **Landscaping**

The percentage of the area of the relevant lot comprising surfaces that are permeable to rainwater must be at least 20 per cent after the development is carried out.

(22) **Utilities**

The lot must be connected to a reticulated sewerage system operated by the Hunter Water Corporation.

(23) **Stormwater**

The flow of stormwater must not be restricted.

(24) The development must comply with applicable requirements in Element 4.5 of *Newcastle Development Control Plan 2005*.

(25) **Waste**

The development must comply with applicable requirements in Element 4.6 of *Newcastle Development Control Plan 2005*.

(26) **Bush fire prone land**

The development must not be carried out on bush fire prone land.

(27) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

(28) **Trees**

The development must not involve the removal of a tree identified as significant on any approved subdivision plan applying to the land.

Note. The removal of trees to enable the carrying out of any of the development listed in this Schedule may be exempt development under Schedule 1, or complying development under this Schedule or may require development consent under clause 14 of this plan.

3 Strata subdivision

(1) **General**

The development comprises subdivision for the purpose of creating a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* in relation to a building for which an occupation certificate has been issued.

(2) **Parking**

Parking spaces must be allocated to units in accordance with the terms of any existing development consent applying to the premises.

(3) Visitor parking required to be provided under the terms of any existing development consent applying to the premises must be located within common property.

(4) **Development lots**

The strata plan must not include any development lot, as defined in the *Strata Schemes (Freehold Development) Act 1973*.

4 Swimming pools ancillary to dwelling-houses

Note. Swimming pools are subject to requirements under the *Swimming Pools Act 1992*.

Decks may be installed around swimming pools as exempt development (see Schedule 1).

(1) **Siting**

Inside edge of the pool must be at least 1 metre from side and rear property boundaries.

(2) Must not be located between the dwelling-house and the street alignment.

(3) Must not encroach on any easement, pipeline or watercourse.

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(4) **Bulk and scale**

All decking around the pool must be no more than 1 metre above ground level (existing) at any point and a minimum of 0.9 metre from side and rear property boundaries.

(5) **Landscaping**

The percentage of the area of the relevant lot comprising surfaces that are permeable to rainwater must be at least 20 per cent following installation.

(6) **Drainage**

Must not impede existing site drainage or restrict or divert stormwater or floodwaters.

(7) Perimeter drainage around the pool must be designed so as to direct water away from adjoining properties.

(8) Wastewater from the pool's filtration system must discharge to:

- (a) a reticulated sewerage system operated by the Hunter Water Corporation, or
- (b) in the case of land not serviced by that sewerage system—a waste treatment device that is the subject of an approval under Chapter 7 of the *Local Government Act 1993*.

(9) **Flood prone land**

May be carried out on flood prone land if the relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

5 **Tree removal**

(1) Applies to tree removal, other than tree removal that is exempt development, that complies with the tree management provisions contained in Element 4.10 of *Newcastle Development Control Plan 2005*.

(2) Includes tree removal on flood prone land.

(3) Does not apply to tree removal that is carried out pursuant to a development consent.

(4) **Heritage**

Tree must not be a heritage item, or located on land that contains a heritage item, that is listed in Schedule 6.

(5) **Threatened species**

Tree must not be, or comprise a part of, a threatened species, population or ecological community listed in:

- (a) Schedule 1, 1A or 2 to the *Threatened Species Conservation Act 1995*, or
- (b) Schedule 4, 4A or 5 to the *Fisheries Management Act 1994*.

Note 1. The term **remove** is defined in clause 37 (1) of this plan.

Note 2. Removal and pruning of trees is also provided for under other legislation, including the *Electricity Supply Act 1995*, the *Local Government Act 1993* (in relation to trees on council land), the *Roads Act 1993*, the *Rural Fires Act 1997* and the *Trees (Disputes Between Neighbours) Act 2006*.

Note 3. Removal or interference with a tree on a public road requires the consent of the appropriate roads authority under the *Roads Act 1993*.

Part 2 Complying development certificate conditions

Note. Conditions are also prescribed by the regulations made under the Act.

Division 1 Change of use

6 Hours of operation

Hours of operation must not extend beyond any existing approved hours.

Note. A current development consent applying to the premises may contain conditions on the permitted hours of operation.

7 Conditions of another development consent

The new use must be carried out in accordance with any conditions of a current development consent relating to the premises, including car parking, loading, vehicular movement, traffic generation, waste management, noise and site landscaping.

8 Use of curtilage

The curtilage of commercial offices must not be used for storage or display purposes.

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Division 2 Building work, demolition and installation of swimming pools

9 Before work begins

The person having the benefit of the complying development certificate must give any occupier of adjoining premises at least 2 days' notice before work begins.

Note. See also section 86 of the Act, which requires certain steps to be taken before the erection of a building begins. These include the principal certifying authority notifying the Council of his or her appointment.

10 Site management

- (1) Run-off and erosion controls must be implemented to prevent erosion, water pollution or the discharge of loose sediment on surrounding land by:
 - (a) diverting uncontaminated run-off around cleared or disturbed areas, and
 - (b) erecting and maintaining a silt fence to prevent debris escaping into drainage systems or waterways, and
 - (c) preventing tracking of sediment by vehicles onto roads, and
 - (d) stockpiling topsoil, excavated material, construction and landscaping supplies and debris within the site.

Note. Under the *Protection of the Environment Operations Act 1997*, it is an offence to pollute any waters.

- (2) Any removal or disturbance of vegetation or topsoil must be confined to within 3 metres of the proposed building.

11 Hours of work

- (1) Demolition or construction work that is audible within adjoining premises may be carried out only between the following hours:
 - (a) Monday–Friday—7.00am and 6.00pm,
 - (b) Saturday—8.00am and 1.00pm.
- (2) No such work may be carried out at any time on a Sunday or a public holiday.

12 Public roads and reserves

- (1) Any damage caused to kerbs, guttering or footways during carrying out of work must be rectified in accordance with any requirements of the appropriate roads authority under the *Roads Act 1993*.

- (2) No part of any public road is to be used for storage of construction materials without the approval of the appropriate roads authority under the *Roads Act 1993*.
- (3) No part of any public reserve is to be used for storage of construction materials without the authorisation of the Council.

13 On-site toilet

A temporary on-site toilet or access to an existing toilet on site must be provided to the site before the commencement of work.

14 Asbestos

Any work involving asbestos cement must comply with the following WorkCover Authority guidelines:

- (a) *Working with asbestos: Guide 2008* (ISBN 0 7310 5159 9),
- (b) *Guide to licence applicants for friable or bonded asbestos* (January 2008).

15 Street trees

- (1) Prior to commencement of the development, all necessary steps must be taken to protect street trees (including their root systems) from disturbance or damage as a result of the development, including the installation of protective chain link fencing as required.
- (2) Any damage caused to street trees as a result of the development is to be rectified.

16 Additional provisions applying to demolition of a building

Any demolition of a building must be carried out in accordance with:

- (a) Australian Standard AS 2601—2001, *Demolition of structures*, and
- (b) any applicable requirements of the WorkCover Authority.

17 Additional provisions applying to swimming pools

- (1) Noise emissions from any filtration equipment or pumps must not be audible inside any dwelling on an adjoining lot between 10.00pm and 7.00am on weekdays, and between 10.00pm and 8.00am on Saturdays, Sundays and public holidays. At all other times, noise levels must not exceed 5dBA above ambient background noise level measured at the boundary of the relevant lot.

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- (2) Any relevant provisions of the *Swimming Pools Act 1992* and regulations under that Act must be complied with.

Division 3 Tree removal

18 Site management

- (1) Run-off and erosion controls must be implemented to prevent erosion, water pollution or the discharge of loose sediment on surrounding land by:
- (a) diverting uncontaminated run-off around cleared or disturbed areas, and
 - (b) erecting and maintaining a silt fence to prevent debris escaping into drainage systems or waterways, and
 - (c) preventing tracking of sediment by vehicles onto roads, and
 - (d) stockpiling topsoil, excavated material, construction and landscaping supplies and debris within the site.
- Note.** Under the *Protection of the Environment Operations Act 1997* it is an offence to pollute any waters.
- (2) Any removal or disturbance of vegetation (other than the tree) or topsoil is to be minimised.

19 Hours of work

- (1) Work that is audible within adjoining premises may be carried out only between the following hours:
- (a) Monday–Friday—7.00am and 6.00pm,
 - (b) Saturday—8.00am and 1.00pm.
- (2) No such work may be carried out at any time on a Sunday or a public holiday.

20 Public roads and reserves

- (1) Any damage caused to kerbs, guttering or footways during the carrying out of works must be rectified in accordance with any requirements of the appropriate roads authority under the *Roads Act 1993*.
- (2) No part of any public road is to be used for storage of construction materials without the approval of the appropriate roads authority under the *Roads Act 1993*.
- (3) No part of any public reserve is to be used for storage of construction materials without the authorisation of the Council.

21 Replacement trees

Where practicable, a suitable replacement tree is to be planted on the property concerned in accordance with Element 4.10 of *Newcastle Development Control Plan 2005*.

22 Safe work practices

The work must comply with the WorkCover Authority's *Code of Practice For The Amenity Tree Industry* (ISBN 0 7310 8738 0, August 1998).

23 Disposal of trees

Trees and stumps are to be:

- (a) disposed of at a waste management facility, or
- (b) recycled, or
- (c) disposed of as fire wood.

[33] Schedule 5 Classification and reclassification of public land as operational land

Insert at the end of Part 2 of the Schedule:

Part Lot 6, Sec 1, DP 29, known as 67 Cowper Street, Wallsend, as shown edged heavy black on Sheet 15 of the map marked "Newcastle Local Environmental Plan 2003 (Amendment No 4)".

[34] Schedule 6 Heritage items and heritage conservation areas

Insert in alphabetical order of suburb and alphabetical and numerical order of street name and number and alphabetical order of item name, under the headings "**Suburb**", "**Item name**", "**Address**", "**Property description**" and "**Significance**", respectively:

Bar Beach	Former King Edwards Girls Home	313 Darby Street	Lot 11 DP 1082583, Lot 2665 DP 755247	Local
Bar Beach	Shed	334A Darby Street	Lot 100 DP 883543	Local
Bar Beach	Reid Park Tennis Clubhouse and Tennis Courts	1-7 Kilgour Avenue	Pt Lot 258 and Lot 3140 DP 755247	Local

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Bar Beach	Residence	10 Parkway Ave	Lot 2 DP 513566	Local
Cooks Hill	Horse Trough	Corner of Darby and Young Streets		Local
Cooks Hill	Former St Hilda's Hostel	250 Darby Street	Lot 2 DP 872146	Local
Cooks Hill	Von Bertouch Galleries	61 Laman Street	Lot 1 DP 851075, Lot 21 DP 825796	State
Cooks Hill	Dr Watkins House	64 Parkway Avenue	Lots 125 and 126 DP 37825	Local
Cooks Hill	Residence	79 Parkway Avenue	Lot 115 DP 154294	Local
Elermore Vale	Jubilee ventilation shaft (Wallsend Colliery)	124 Cardiff Road	Lot 20A DP 17677	Local
Elermore Vale	Former West Wallsend Steam Tram Line	Glendale to Wallsend		Local
Islington	Hamilton Station Hotel	6 Fern Street	Lot 1 DP 75464	Local
Merewether	Merewether Baby Health Clinic	25 Caldwell Street	Lot 1 DP 1103114	Local
Merewether	Former Glebe Methodist Church	101 City Road	Lots 33 and 34 Sec 7 DP 111240	Local
Merewether	Residence	1A Curry Street	Lot 1 DP 866521	Local
Merewether	Brown Sisters' Convent	8 Janet Street	Lot 1 DP 210515	Local
Merewether	Holy Family Parish Hall	19 Janet Street (Ridge Street)	Lot 1 DP 547032	Local
Merewether	Residence	8 Kempster Road	Lots 90 and 91 DP 1082365	Local
Merewether	Former Police Station	85 Llewellyn Street	Lot 101 DP 829724	Local

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Merewether	Blairgowrie (Residence)	39 Lloyd Street	Lot 1 DP 514500	Local
Merewether	Merewether Baptist Church	75 Morgan Street	Lot 3 DP 153084	Local
Merewether	Residence	26 Rowan Crescent	Lot 91 DP 521593	Local
Newcastle	Sunnyside (Residence)	44 Newcomen Street	Lot 41 DP 1060945	Local
Newcastle	Miss Chippendale's School Room	45 Perkins Street	Lot 1 DP 1034041	Local
The Hill	Captain Allan's House	19 Barker Street	Lot 343 DP 54152	Local
The Hill	St Ronans (Residence)	18 Bingle Street	Lot B DP 420523	State
The Hill	Bishopscourt (Residence)	34 Brown Street	Lot 102 DP 1020129	Local
The Hill	Gate and Stairs	52 Church Street	Lot 1 DP 594939	Local
The Hill	Newcastle Grammar School— Berkeley House Building	60 Newcomen Street	Lot 1 DP 198891	Local
The Hill	Newcastle Grammar School— Merrick House Building	60 Newcomen Street	Lot 1 DP 198891	Local
The Hill	Former Stables	8/60 Tyrrell Street	Lot 53 SP 69660	Local
The Junction	Residence	26 Farquhar Street	Lot 80 DP 95001	Local
The Junction	Former Primitive Methodist Parsonage	28 Farquhar Street	Lot 81 DP 95001	Local

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The Junction	St Joseph's Convent and School Group (incorporating St Thomas More Centre)	34 Kenrick Street	Pt Lot 38 and Lots 39, 40 and 43-50 Sec N DP 978941	Local
Wickham	Former New Zealand Loan Co Wool Store	2/33 Annie Street	Lot 3 DP 346352	Local