



New South Wales

State Environmental Planning Policy Amendment (Miscellaneous) 2012

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

BRAD HAZZARD, MP
Minister for Planning and Infrastructure

2012 No 473

Clause 1 State Environmental Planning Policy Amendment (Miscellaneous) 2012

State Environmental Planning Policy Amendment (Miscellaneous) 2012

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy Amendment (Miscellaneous) 2012*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Maps—Penrith City Centre

Each map adopted by *Penrith City Centre Local Environmental Plan 2008* that is specified in Column 1 of the following Table is declared by this Policy to be amended or replaced, as the case requires, by the map specified opposite in Column 2 of the Table as approved by the Minister on 9 November 2011:

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Penrith City Centre Local Environmental Plan 2008—North Penrith—Height of Buildings Map (6350_NP_HOB_001_20110922)	Penrith City Centre Local Environmental Plan 2008—North Penrith—Height of Buildings Map (6350_CEN_HOB_NP_001_004_20110922)
Penrith City Centre Local Environmental Plan 2008—North Penrith—Heritage Map (6350_NP_HER_001_20110921)	Penrith City Centre Local Environmental Plan 2008—North Penrith—Heritage Map (6350_CEN_HER_NP_001_004_20110921)

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Penrith City Centre Local Environmental Plan 2008—North Penrith—Land Application Map (6350_NP_LAP_001_20110921)	Penrith City Centre Local Environmental Plan 2008—North Penrith—Land Application Map (6350_CEN_LAP_NP_001_004_20110921)
Penrith City Centre Local Environmental Plan 2008—North Penrith—Land Zoning Map (6350_NP_LZN_001_20110921)	Penrith City Centre Local Environmental Plan 2008—North Penrith—Land Zoning Map (6350_CEN_LZN_NP_001_004_20110921)

4 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

2012 No 473

State Environmental Planning Policy Amendment (Miscellaneous) 2012

Schedule 1 Amendment of State Environmental Planning Policy (Major Development) 2005

Schedule 1 Amendment of State Environmental Planning Policy (Major Development) 2005

[1] Clause 18

Insert after clause 17:

18 Savings provision—Warnervale Town Centre

- (1) This Policy continues to apply to development carried out in Warnervale Town Centre that is a transitional Part 3A project under Schedule 6A to the Act as if Part 16 of Schedule 3 to this Policy had not been repealed by *State Environmental Planning Policy Amendment (Miscellaneous) 2012*.
- (2) In this clause:
Warnervale Town Centre means the land shown on the State Environmental Planning Policy (Major Projects) 2005 (Amendment No 24)—Warnervale Town Centre—Land Application Map as in force immediately before the commencement of *State Environmental Planning Policy Amendment (Miscellaneous) 2012*.

[2] Schedule 3 State significant sites

Omit the definition of *Warnervale Airport Obstacles Limitation Surface Map* from clause 2 (2) of Part 15.

Insert instead:

Warnervale Airport Obstacle Limitation Surface Map means the Wyong Local Environmental Plan 1991—Warnervale Town Centre—Warnervale Airport Obstacle Limitation Surface Map.

[3] Schedule 3, Part 16 (Warnervale Town Centre)

Omit the Part.

Schedule 2 Amendment of Wyong Local Environmental Plan 1991

[1] Part 5

Insert after Part 4:

Part 5 Warnervale Town Centre

93 Application of Part

- (1) This Part applies to the land shown edged red on the Land Application Map, referred to in this Part as the *Warnervale Town Centre*.
- (2) No other provision of this plan (other than clause 7 (3)) applies to the Warnervale Town Centre.

94 Interpretation

- (1) In this Part:
 - Council* means the Council of the Shire of Wyong.
 - Height of Buildings Map* means the Wyong Local Environmental Plan 1991—Warnervale Town Centre—Height of Buildings Map.
 - Land Application Map* means the Wyong Local Environmental Plan 1991—Warnervale Town Centre—Land Application Map.
 - Land Reservation Acquisition Map* means the Wyong Local Environmental Plan 1991—Warnervale Town Centre—Land Reservation Acquisition Map.
 - Land Zoning Map* means the Wyong Local Environmental Plan 1991—Warnervale Town Centre—Land Zoning Map.
 - Lot Size Map* means the Wyong Local Environmental Plan 1991—Warnervale Town Centre—Lot Size Map.
 - the Wyong DCP* means *Development Control Plan 2005—Development Controls for Wyong Shire*, as adopted by the Council on 13 July 2011.
 - Warnervale Airport Obstacle Limitation Surface Map* means the Wyong Local Environmental Plan 1991—Warnervale Town Centre—Warnervale Airport Obstacle Limitation Surface Map.
- (2) In 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

2012 No 473

State Environmental Planning Policy Amendment (Miscellaneous) 2012

Schedule 2 Amendment of Wyong Local Environmental Plan 1991

- (b) a reference to a type of building or other thing does not include (despite any definition in this Part) a reference to a type of building or other thing referred to separately in the Part in relation to the same zone.
- (3) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*, unless it is otherwise defined in this Part.

95 Maps

- (1) A reference in this Part to a named map adopted by this Part 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 Part to any such named map is a reference to the relevant part or aspect of the single map.
- (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 Part, a map may be in, and may be kept and made available in, electronic or paper form, or both.

96 Application of SEPPs

- (1) This Part is subject to the provisions of any State environmental planning policy that prevails over this Part as provided by section 36 of the Act.
- (2) The following State environmental planning policies (or provisions) do not apply to the land to which this Part 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 Part 3)
 - State Environmental Planning Policy No 60—Exempt and Complying Development*

97 Repeal of other LEPs

Any local environmental plan or deemed environmental planning instrument that, immediately before the commencement of this Part, applied to the land to which this Part applies is repealed to the extent that it applies to that land.

98 Consent authority

The Council is the consent authority for the purposes of this Part.

99 Land use zones

For the purposes of this Part, land within the Warnervale Town Centre is within a zone as follows if the land is shown on the Land Zoning Map as being within that zone:

- (a) Zone R1 General Residential,
- (b) Zone B2 Local Centre,
- (c) Zone B4 Mixed Use,
- (d) Zone SP2 Infrastructure,
- (e) Zone RE1 Public Recreation,
- (f) Zone E2 Environmental Conservation,
- (g) Zone E3 Environmental Management.

100 Objectives of land use zones to be taken into account

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.

101 Zone R1 General Residential

- (1) The objectives of Zone R1 General Residential are as follows:
 - (a) to provide for the housing needs of the community,
 - (b) to provide for a variety of housing types, tenures, affordability and densities,
 - (c) to enable other land uses that provide facilities or services to meet the day to day needs of residents,
 - (d) to promote development that is sensitive to the conservation values of the Warnervale Town Centre,
 - (e) to maximise public transport patronage and encourage walking and cycling.

2012 No 473

State Environmental Planning Policy Amendment (Miscellaneous) 2012

Schedule 2 Amendment of Wyong Local Environmental Plan 1991

- (2) Development for any of the following purposes is permitted without development consent on land within Zone R1 General Residential:
home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R1 General Residential:
attached dwellings; bed and breakfast accommodation; boarding houses; car parks; child care centres; community facilities; dual occupancies; dwelling houses; exhibition homes; exhibition villages; group homes; health consulting rooms; home-based child care; home businesses; home industries; hospitals; hostels; multi dwelling housing; neighbourhood shops; places of public worship; recreation areas; residential care facilities; residential flat buildings; respite day care centres; roads; semi-detached dwellings; seniors housing; shop top housing.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone R1 General Residential unless it is permitted by subclause (2) or (3).

102 Zone B2 Local Centre

- (1) The objectives of Zone B2 Local Centre are as follows:
 - (a) 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,
 - (b) to encourage employment opportunities in accessible locations,
 - (c) to maximise public transport patronage and encourage walking and cycling,
 - (d) to provide uses compatible with the environmental sensitivities and conservation values of the Warnervale Town Centre.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone B2 Local Centre:
nil.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone B2 Local Centre:
boarding houses; bulky goods premises; car parks; child care centres; commercial premises; community facilities; educational

establishments; entertainment facilities; function centres; information and education facilities; medical centres; passenger transport facilities; public administration buildings; pubs; recreation facilities (indoor); registered clubs; respite day care centres; restricted premises; roads; service stations; shop top housing; tourist and visitor accommodation.

- (4) Except as otherwise provided by this Part, development on land within Zone B2 Local Centre is prohibited unless it is permitted by subclause (2) or (3).

103 Zone B4 Mixed Use

- (1) The objectives of Zone B4 Mixed Use are as follows:
- (a) to provide a mixture of compatible land uses,
 - (b) to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone B4 Mixed Use:
- nil.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone B4 Mixed Use:
- attached dwellings; boarding houses, child care centres, commercial premises; community facilities; educational establishments; entertainment facilities; function centres; hotel or motel accommodation; information and education facilities; medical centres; passenger transport facilities; recreation facilities (indoor); registered clubs; residential flat buildings; respite day care centres; restricted premises; roads; seniors housing; shop top housing.
- (4) Except as otherwise provided by this Part, development on land within the Zone B4 Mixed Use is prohibited unless it is permitted by subclause (2) or (3).

104 Zone SP2 Infrastructure

- (1) The objectives of Zone SP2 Infrastructure are as follows:
- (a) to provide for infrastructure and related uses,
 - (b) to prevent development that is not compatible with or that may detract from the provision of infrastructure.

2012 No 473

State Environmental Planning Policy Amendment (Miscellaneous) 2012

Schedule 2 Amendment of Wyong Local Environmental Plan 1991

- (2) Development for any of the following purposes is permitted without development consent on land within Zone SP2 Infrastructure:
nil.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone SP2 Infrastructure:
roads; the purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose.
- (4) Except as otherwise provided by this Part, development on land within Zone SP2 Infrastructure is prohibited unless it is permitted by subclause (2) or (3).

105 Zone RE1 Public Recreation

- (1) The objectives of Zone RE1 Public Recreation are as follows:
 - (a) to enable land to be used for public open space or recreational purposes,
 - (b) to provide a range of recreational settings and activities and compatible land uses,
 - (c) to protect and enhance the natural environment for recreational purposes,
 - (d) to promote the integration of public open space areas with other land uses within the Warnervale Town Centre,
 - (e) to maximise public transport patronage and encourage walking and cycling.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone RE1 Public Recreation:
environmental facilities; environmental protection works.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone RE1 Public Recreation:
community facilities; health consulting rooms; kiosks; recreation areas; recreation facilities (indoor); recreation facilities (outdoor); roads; water supply systems.
- (4) Except as otherwise provided by this Part, development on land within Zone RE1 Public Recreation is prohibited unless it is permitted by subclause (2) or (3).

106 Zone E2 Environmental Conservation

- (1) The objectives of Zone E2 Environmental Conservation are as follows:
 - (a) to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values,
 - (b) to prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone E2 Environmental Conservation:
environmental protection works.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone E2 Environmental Conservation:
environmental facilities; roads; water supply systems.
- (4) Development for any of the following purposes is prohibited on land within Zone E2 Environmental Conservation:
business premises; hotel or motel accommodation; industries; multi dwelling housing; recreation facilities (major); residential flat buildings; restricted premises; retail premises; seniors housing; service stations; warehouse or distribution centres; any other development not specified in subclause (2) or (3).

107 Zone E3 Environmental Management

- (1) The objectives of Zone E3 Environmental Management are as follows:
 - (a) to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values,
 - (b) to provide for a limited range of development that does not have an adverse effect on those values.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone E3 Environmental Management:
environmental protection works; home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone E3 Environmental Management:
dwelling houses; environmental facilities; information and education facilities; roads; water supply systems.

2012 No 473

State Environmental Planning Policy Amendment (Miscellaneous) 2012

Schedule 2 Amendment of Wyong Local Environmental Plan 1991

- (4) Development for any of the following purposes is prohibited on land within Zone E3 Environmental Management:
- industries; multi dwelling housing; residential flat buildings; retail premises; seniors housing; service stations; warehouse or distribution centres; any other development not specified in subclause (2) or (3).

108 Exempt development

- (1) The objective of this clause is to identify development of minimal environmental impact as exempt development.
- (2) Development specified in Chapter 85 of the Wyong DCP that meets the standards for the development contained in that instrument 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* or, if there are no such relevant provisions, must be structurally adequate, 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*.
- (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.
- (5) To be exempt development, the development must:
- (a) be installed in accordance with the manufacturer's specifications, if applicable, and
 - (b) not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent.

109 Complying development

- (1) The objective of this clause is to identify development as complying development.
- (2) Development specified in Chapter 86 of the Wyong DCP that is carried out in compliance with:
 - (a) the development standards specified in that instrument in relation to that development, and
 - (b) the requirements of this Part, is complying development.
- (3) To be complying development, the development must:
 - (a) be permissible, with development 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.

110 Subdivision—consent requirements

- (1) Land to which this Part applies may be subdivided, but only with development consent.
- (2) Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot Size Map in relation to that land.

111 Infrastructure development and the use of existing buildings of the Crown

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

2012 No 473

State Environmental Planning Policy Amendment (Miscellaneous) 2012

Schedule 2 Amendment of Wyong Local Environmental Plan 1991

112 Public utility infrastructure

- (1) Development consent must not be granted for development on land within the Warnervale Town Centre unless the consent authority 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) In this clause, *public utility infrastructure* includes infrastructure for any of the following:
 - (a) the supply of water,
 - (b) the supply of electricity,
 - (c) the supply of natural gas,
 - (d) the disposal and management of sewage.
- (3) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure referred to in this clause.

113 Height of buildings

The height of a building on any land within the Warnervale Town Centre must not exceed the maximum height shown for the land on the Height of Buildings Map.

114 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development 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) Development 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) Development 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
 - (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) Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation or Zone E3 Environmental Management 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).

2012 No 473

State Environmental Planning Policy Amendment (Miscellaneous) 2012

Schedule 2 Amendment of Wyong Local Environmental Plan 1991

- (8) This clause does not allow development 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 100.

115 Land acquisition within certain zones

- (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 within the Warnervale Town Centre that is 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	Council
----------------------------	---------

- (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.

Note. If land, other than land specified in the Table to subclause (2), is required to be acquired under the owner-initiated acquisition provisions, this Part is required to be amended to designate the acquiring authority for that land (see section 27 of the Act). The Minister for Planning and Infrastructure 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 and Infrastructure (see section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991*).

116 Development close to a rail corridor

- (1) The objective of this clause is to ensure that development of land within the Warnervale Town Centre for the purpose of residential accommodation, places of public worship, hospitals, educational establishments or other noise sensitive buildings in the proximity of operating or proposed railways is not adversely affected by rail noise or vibration.
- (2) This clause applies to land comprising, or within 60 metres of, an operating railway line or land reserved for the construction of a railway line (referred to in this clause as a *rail corridor*).
- (3) Development:
 - (a) that is within a rail corridor, and
 - (b) that is likely to be adversely affected by rail noise or vibration,must not be carried out unless the proposed development incorporates all practicable mitigation measures for rail noise or vibration recommended by Rail Corporation New South Wales for development of that kind.

117 Development in the vicinity of Warnervale Airport

- (1) The objectives of this clause are:
 - (a) to provide for the effective and on-going operation of Warnervale Airport, and
 - (b) to ensure that such operation is not compromised by any proposed development.
- (2) Development consent must not be granted for the erection on land of a building, the height of which exceeds the obstacle limitation surface height for that land, unless the consent authority is satisfied that the building will not constitute an obstruction or hazard to aircraft flying in the vicinity.
- (3) In this clause:

obstacle limitation surface height, for land, means the height of the obstacle limitation surface for that land shown on the Warnervale Airport Obstacle Limitation Surface Map.

2012 No 473

State Environmental Planning Policy Amendment (Miscellaneous) 2012

Schedule 2 Amendment of Wyong Local Environmental Plan 1991

118 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the Warnervale Town Centre, including biodiversity values, through the preservation of trees and other vegetation.
- (2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.

- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:
 - (a) development consent, or
 - (b) a permit granted by the Council.
- (4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.
- (5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.
- (6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.
- (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:
 - (a) that is or forms part of a heritage item or that is within a heritage conservation area, or
 - (b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,unless the Council is satisfied that the proposed activity:
 - (c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and

- (d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 32 will be applicable to any such consent.

- (8) This clause does not apply to or in respect of:
- (a) the clearing of native vegetation:
 - (i) that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*, or
 - (ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
 - (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause, or
 - (c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*, or
 - (d) action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying and Spatial Information Act 2002*, or
 - (e) plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.
- Note.** Permissibility may be a matter that is determined by or under any of these Acts.
- (9) Subclause (8) (a) (ii) does not apply in relation to land in Zone E2 Environmental Conservation or E3 Environmental Management.

119 Bush fire hazard reduction

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

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

120 Controls relating to miscellaneous permissible uses

- (1) This clause applies to development only if it is permitted under this Part.

2012 No 473

State Environmental Planning Policy Amendment (Miscellaneous) 2012

Schedule 2 Amendment of Wyong Local Environmental Plan 1991

- (2) **Bed and breakfast accommodation**
Development for the purposes of bed and breakfast accommodation that is provided to guests must consist of no more than 5 bedrooms.
- (3) **Home businesses**
Development for the purposes of a home business must not involve the use of more than 30 square metres of floor area.
- (4) **Home industries**
Development for the purposes of a home industry must not involve the use of more than 50 square metres of floor area.
- (5) **Kiosks**
Development for the purposes of a kiosk must not involve the use of more than 30 square metres of gross floor area.
- (6) **Neighbourhood shops**
Development for the purposes of a neighbourhood shop must not involve the use of more than 125 square metres for the retail floor area of the shop.

121 Savings provision relating to pending application

A development application that has been made but not finally determined before the commencement of this Part must be determined as if *State Environmental Planning Policy Amendment (Miscellaneous) 2012* had not commenced.

[2] Schedule 2 Development for certain additional purposes

Omit the matter relating to Sparks Road, Warnervale.