



New South Wales

State Environmental Planning Policy Amendment (Minmi–Newcastle Link Road) 2013

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

State Environmental Planning Policy Amendment (Minmi–Newcastle Link Road) 2013

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy Amendment (Minmi–Newcastle Link Road) 2013*.

2 Commencement

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

3 Maps

- (1) Each map adopted by *Cessnock Local Environmental Plan 2011* 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 the making of this Policy:

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Cessnock Local Environmental Plan 2011 Land Application Map (1720_COM_LAP_001_250_20111220)	Cessnock Local Environmental Plan 2011 Land Application Map (1720_COM_LAP_001_250_20121206)
Cessnock Local Environmental Plan 2011 Land Zoning Map (1720_COM_LZN_009_080_20111214)	Cessnock Local Environmental Plan 2011 Land Zoning Map (1720_COM_LZN_009_080_20120504)
Cessnock Local Environmental Plan 2011 Land Zoning Map (1720_COM_LZN_009A_040_20111220)	Cessnock Local Environmental Plan 2011 Land Zoning Map (1720_COM_LZN_009A_040_20121207)

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Cessnock Local Environmental Plan 2011 Land Reservation Acquisition Map (1720_COM_LRA_009_080_2011128)	Cessnock Local Environmental Plan 2011 Land Reservation Acquisition Map (1720_COM_LRA_009_080_2012120)
Cessnock Local Environmental Plan 2011 Land Reservation Acquisition Map (1720_COM_LRA_009A_040_2011128)	Cessnock Local Environmental Plan 2011 Land Reservation Acquisition Map (1720_COM_LRA_009A_040_20120504)

- (2) Each map adopted by *Newcastle Local Environmental Plan 2012* 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 the making of this Policy:

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_001A_020_20120402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_001A_020_20120926)
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_001B_020_20121206)
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_001D_020_20120402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_001D_020_20120926)

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Clause 3

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Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002A_020_2012 0402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002A_020_2012 0926)
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002B_010_2012 0402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002B_010_2012 0926)
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002E_010_2012 0402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002E_010_2012 0926)
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002F_010_2012 0402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002F_010_2012 0926)
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002G_010_2012 0402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_002G_010_2012 0926)
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_004A_010_2012 0402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_004A_010_2012 0926)
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_004B_010_2012 0402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_004B_010_2012 0927)

Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_004C_010_2012 0402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_004C_010_2012 0926)
Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_004G_010_2012 0402)	Newcastle Local Environmental Plan 2012 Land Reservation Acquisition Map (5900_COM_LRA_004G_010_2012 0926)
Newcastle Local Environmental Plan 2012 Land Zoning Map (5900_COM_LZN_001B_020_2012 0411)	Newcastle Local Environmental Plan 2012 Land Zoning Map (5900_COM_LZN_001B_020_2012 1206)
Newcastle Local Environmental Plan 2012 Land Zoning Map (5900_COM_LZN_002A_020_2012 0411)	Newcastle Local Environmental Plan 2012 Land Zoning Map (5900_COM_LZN_002A_020_2012 0814)
Newcastle Local Environmental Plan 2012 Floor Space Ratio Map (5900_COM_FSR_001B_020_2012 524)	Newcastle Local Environmental Plan 2012 Floor Space Ratio Map (5900_COM_FSR_001B_020_2012 1120)
Newcastle Local Environmental Plan 2012 Floor Space Ratio Map (5900_COM_FSR_002A_020_2012 0524)	Newcastle Local Environmental Plan 2012 Floor Space Ratio Map (5900_COM_FSR_002A_020_2012 1120)
Newcastle Local Environmental Plan 2012 Height of Buildings Map (5900_COM_HOB_001B_020_2012 0525)	Newcastle Local Environmental Plan 2012 Height of Buildings Map (5900_COM_HOB_001B_020_2012 1120)
Newcastle Local Environmental Plan 2012 Height of Buildings Map (5900_COM_HOB_002A_020_2012 0524)	Newcastle Local Environmental Plan 2012 Height of Buildings Map (5900_COM_HOB_002A_020_2012 1120)
Newcastle Local Environmental Plan 2012 Lot Size Map (5900_COM_LSZ_001B_020_2012 402)	Newcastle Local Environmental Plan 2012 Lot Size Map (5900_COM_LSZ_001B_020_2012 206)

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Clause 4

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Column 1	Column 2
Name of map being amended or replaced	Name of amending or replacement map
Newcastle Local Environmental Plan 2012 Lot Size Map (5900_COM_LSZ_002A_020_2012 0402)	Newcastle Local Environmental Plan 2012 Lot Size Map (5900_COM_LSZ_002A_020_2012 0816)
Newcastle Local Environmental Plan 2012 Urban Release Area Map	Newcastle Local Environmental Plan 2012 Urban Release Area Map (5900_COM_URA_001B_020_2012 0817)
Newcastle Local Environmental Plan 2012 Urban Release Area Map	Newcastle Local Environmental Plan 2012 Urban Release Area Map (5900_COM_URA_002A_020_2012 0817)

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.

Schedule 1 Amendment of Lake Macquarie Local Environmental Plan 2004

Part 10

Insert after Part 9:

Part 10 Minmi–Newcastle Link Road site

Division 1 Preliminary

106 Application of Part

- (1) This Part applies to the land identified on the Land Application Map, referred to in this Part as the *Minmi–Newcastle Link Road site*.
- (2) No other provision of this Plan (other than clauses 4 and 6) applies to land within the Minmi–Newcastle Link Road site.

107 Interpretation

- (1) In this Part:
 - Council* means the Council of the City of Lake Macquarie.
 - Height of Buildings Map* means the Lake Macquarie Local Environmental Plan 2004—Minmi–Newcastle—Height of Buildings Map.
 - Land Application Map* means the Lake Macquarie Local Environmental Plan 2004—Minmi–Newcastle—Land Application Map.
 - Land Reservation Acquisition Map* means the Lake Macquarie Local Environmental Plan 2004—Minmi–Newcastle—Land Reservation Acquisition Map.
 - Land Zoning Map* means the Lake Macquarie Local Environmental Plan 2004—Minmi–Newcastle—Land Zoning Map.
- (2) 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.

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108 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 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.

109 Relationship with other environmental planning instruments

The only other environmental planning instruments that apply, according to their terms, to land within the Minmi–Newcastle Link Road site are all State environmental planning policies, except *State Environmental Planning Policy No 1—Development Standards*.

110 Savings provision relating to development applications

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

Note. However, under Division 4B of Part 3 of the Act, a development application may be made for consent to carry out development that may only be carried out if the environmental planning instrument applying to the relevant development is appropriately amended or if a new instrument, including an appropriate principal environmental planning instrument, is made, and the consent authority may consider the application. The Division requires public notice of the development application and the draft environmental planning instrument allowing the development at the same time, or as closely together as is practicable.

Division 2 Provisions applying to development in Minmi–Newcastle Link Road site

111 Land use zones

For the purposes of this Part, land within the Minmi–Newcastle Link Road site is in a zone as follows if the land is shown on the Land Zoning Map as being in that zone:

- (a) Zone R2 Low Density Residential,
- (b) Zone B2 Local Centre,
- (c) Zone E1 National Parks and Nature Reserves,
- (d) Zone E2 Environmental Conservation.

112 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.

113 Zone R2 Low Density Residential

- (1) The objectives of Zone R2 Low Density Residential are as follows:
 - (a) to provide for the housing needs of the community within a low density residential environment,
 - (b) to enable other land uses that provide facilities or services to meet the day to day needs of residents.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone R2 Low Density Residential:
environmental protection works; home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R2 Low Density Residential:
bed and breakfast accommodation; boarding houses; building identification signs; business identification signs; child care centres; community facilities; dual occupancies; dwelling houses; emergency services facilities; environmental facilities; environmental protection works; exhibition homes; exhibition villages; flood mitigation works; group homes; health consulting rooms; home businesses; home industries; hostels; information and education facilities; neighbourhood shops; places of public worship; recreation areas; respite day care centres; roads;

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secondary dwellings; semi-detached dwellings; seniors housing; shop top housing.

- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone R2 Low Density Residential unless it is permitted by subclause (2) or (3).

114 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 for residential development that maintains active retail and business street frontages in order to contribute to a safe, attractive, friendly, accessible and efficient pedestrian environment.
- (2) Development for any of the following purposes is permitted without consent on land within Zone B2 Local Centre:
- environmental protection works.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone B2 Local Centre:
- amusement centres; boarding houses; car parks; child care centres; commercial premises; community facilities; educational establishments; entertainment facilities; environmental facilities; function centres; health consulting rooms; home industries; home occupations; home occupations (sex services); hostels; information and education facilities; medical centres; mortuaries; passenger transport facilities; places of public worship; public administration buildings; recreation areas; recreation facilities (indoor); registered clubs; respite day care centres; restricted premises; roads; service stations; sex services premises; shop top housing; signage; tourist and visitor accommodation; vehicle repair stations; veterinary hospitals.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone B2 Local Centre unless it is permitted by subclause (2) or (3).

115 Zone E1 National Parks and Nature Reserves

- (1) The objectives of Zone E1 National Parks and Nature Reserves are as follows:
 - (a) to enable the management and appropriate use of land that is reserved under the *National Parks and Wildlife Act 1974*,
 - (b) to enable uses authorised under the *National Parks and Wildlife Act 1974*,
 - (c) to identify land that is to be reserved under the *National Parks and Wildlife Act 1974* and to protect the environmental significance of that land.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone E1 National Parks and Nature Reserves:
uses authorised under the *National Parks and Wildlife Act 1974*.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone E1 National Parks and Nature Reserves:
nil.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone E1 National Parks and Nature Reserves unless it is permitted by subclause (2) or (3).

116 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 consent on land within Zone E2 Environmental Conservation:
environmental protection works.
- (3) Development for any of the following purposes is permitted with consent on land within Zone E2 Environmental Conservation:
environmental facilities; roads; water recreation structures.

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- (4) Except as otherwise provided by this Part, development for 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).

117 Subdivision—consent requirements

Land to which this Part applies may be subdivided, but only with development consent.

Notes.

- 1 If a subdivision is specified as **exempt development** in an applicable environmental planning instrument, such as this Part or *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the Act enables it to be carried out without development consent.
- 2 Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides that the strata subdivision of a building in certain circumstances is **complying development**.

118 Demolition requires development consent

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

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

119 Height of buildings

- (1) The objectives of this clause are as follows:
- (a) to establish a maximum height limit for buildings under design,
 - (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,
 - (c) to ensure the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.

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- (2) The height of a building on land within the Minmi–Newcastle Link Road site is not to exceed the maximum height shown for the land on the Height of Buildings Map.

120 Bush fire hazard reduction

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

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

121 Exceptions to development standards

- (1) The objectives of this clause are as follows:
- (a) to provide an appropriate degree of flexibility in applying certain 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 Part 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

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- of the particular standards 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 benefits 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 if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow 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 123.

122 Relevant acquisition authority

- (1) The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public

purposes if the land is required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991* (**the owner-initiated acquisition provisions**).

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

If land is required to be acquired under the owner-initiated acquisition provisions, 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*).

- (2) The authority of the State that will be the relevant authority to acquire land to which this clause applies, 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 Land Reservation Acquisition Map	Authority of the State
Zone E1 National Parks and Nature Reserves and marked “National Park”	Minister administering the <i>National Parks and Wildlife Act 1974</i>

Note. If land, other than land specified in the Table to subclause (2), is required to be acquired under the owner-initiated acquisition provisions, the Minister for Planning 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*).

- (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.

123 Controls relating to miscellaneous permissible uses

- (1) **Bed and breakfast accommodation**

If development for the purposes of bed and breakfast accommodation is permitted under this Part, the accommodation

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that is provided to guests must consist of no more than 4 bedrooms.

Note. Any such development that provides for a certain number of guests or rooms may involve a change in the class of building under the *Building Code of Australia*.

(2) **Home businesses**

If development for the purposes of a home business is permitted under this Part, the carrying on of the business must not involve the use of more than 30 square metres of floor area.

(3) **Home industries**

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

(4) **Farm stay accommodation**

If development for the purposes of farm stay accommodation is permitted under this Part, the accommodation that is provided to guests must consist of no more than 3 bedrooms.

(5) **Kiosks**

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

(6) **Neighbourhood shops**

If development for the purposes of a neighbourhood shop is permitted under this Part, the retail floor area must not exceed 150 square metres.

(7) **Secondary dwellings**

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

- (a) 60 square metres,
- (b) 20% of the total floor area of the principal dwelling.

124 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.

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- (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.

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- (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.

125 Trees or vegetation not prescribed by development control plan

- (1) This clause applies to any tree or other vegetation that is not of a species or kind prescribed for the purposes of clause 124 by a development control plan made by the Council.
- (2) The ringbarking, cutting down, topping, lopping, removal, injuring or destruction of any tree or other vegetation to which this clause applies is permitted without development consent.

126 Arrangements for designated State public infrastructure

- (1) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land to which this Part applies to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.

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- (2) Development consent must not be granted for the subdivision of land to which this Part applies if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the commencement of this Part, unless the Director-General has certified in writing that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.
- (3) Subclause (2) does not apply in relation to:
- (a) any lot identified in the certificate as a residue lot, or
 - (b) any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or
 - (c) any lot that is proposed to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities, or any other public purpose, or
 - (d) a subdivision for the purpose only of rectifying an encroachment on any existing lot.
- (4) In this clause, *designated State public infrastructure* means public facilities or services that are provided or financed by the State (or if provided or financed by the private sector, to the extent of any financial or in-kind contribution by the State) of the following kinds:
- (a) State and regional roads,
 - (b) bus interchanges and bus lanes,
 - (c) land required for regional open space,
 - (d) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).
- (5) This clause does not apply to any part of the Minmi–Newcastle Link Road site if all or any part of it is in a special contributions area (as defined by section 93C of the Act).

127 Public utility infrastructure

- (1) Development consent must not be granted for development on land within the Minmi–Newcastle Link Road site 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.

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- (2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.
- (3) In this clause, *public utility infrastructure* includes infrastructure for any of the following:
 - (a) the supply of water,
 - (b) the supply of electricity and gas,
 - (c) the disposal and management of sewage.

128 Development control plan

- (1) The objective of this clause is to ensure that development on land within the Minmi–Newcastle Link Road site occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.
- (2) Development consent must not be granted for development on land within the Minmi–Newcastle Link Road site unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.
- (3) The development control plan must provide for all of the following:
 - (a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,
 - (b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,
 - (c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,
 - (d) a network of passive and active recreational areas,
 - (e) stormwater and water quality management controls,
 - (f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,

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- (g) detailed urban design controls for significant development sites,
 - (h) measures to encourage higher density living around transport, open space and service nodes,
 - (i) measures to accommodate and control appropriate neighbourhood commercial and retail uses,
 - (j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.
- (4) Subclause (2) does not apply to any of the following development:
- (a) a subdivision for the purpose of a realignment of boundaries that does not create additional lots,
 - (b) a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,
 - (c) a subdivision of land in a zone in which the erection of structures is prohibited,
 - (d) proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.

129 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, by or on behalf of a public authority, that is permitted to be carried out with or without development consent, or that is exempt development, under the *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.

130 Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land within the Minmi–Newcastle Link Road site to be carried out in accordance with this Part or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the

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carrying out of that development does not apply to the extent necessary to serve that purpose.

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

131 Flood planning

- (1) The objectives of this clause are as follows:
 - (a) to minimise the flood risk to life and property associated with the use of land,
 - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
 - (c) to avoid significant adverse impacts on flood behaviour and the environment.
- (2) This clause applies to land at or below the flood planning level.
- (3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:
 - (a) is compatible with the flood hazard of the land, and

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- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
 - (c) incorporates appropriate measures to manage risk to life from flood, and
 - (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
 - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
- (4) A word or expression used in this clause has the same meaning as it has in the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.
- (5) In this clause:
- flood planning level*** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

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Schedule 2 Amendment of Newcastle Local Environmental Plan 2012

Schedule 2 Amendment of Newcastle Local Environmental Plan 2012

[1] Clause 4.6 Exceptions to development standards

Insert after clause 4.6 (8) (c):

(ca) clause 8.1 or 8.2.

[2] Part 8

Insert after Part 7:

Part 8 Additional local provisions—urban release areas

8.1 Arrangements for designated State public infrastructure

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

- (4) This clause does not apply to land in an urban release area if all or any part of the land is in a special contributions area (as defined by section 93C of the Act).

8.2 Public utility infrastructure

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

8.3 Development control plan

- (1) The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with a staging plan and only after a development control plan that includes specific controls has been prepared for the land.
- (2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.
- (3) The development control plan must provide for all of the following:
- (a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,
 - (b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,
 - (c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,
 - (d) a network of active and passive recreation areas,
 - (e) stormwater and water quality management controls,

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- (f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,
 - (g) detailed urban design controls for significant development sites,
 - (h) measures to encourage higher density living around transport, open space and service nodes,
 - (i) measures to accommodate and control appropriate neighbourhood commercial and retail uses,
 - (j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.
- (4) Subclause (2) does not apply to any of the following developments:
- (a) a subdivision for the purpose of a realignment of boundaries that does not create additional lots,
 - (b) a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,
 - (c) a subdivision of land in a zone in which the erection of structures is prohibited,
 - (d) proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.

8.4 Relationship between Part and remainder of Plan

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

[3] Dictionary

Insert in alphabetical order:

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

- (a) State and regional roads,
- (b) bus interchanges and bus lanes,

- (c) land required for regional open space,
- (d) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).

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

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

urban release area means the area of land identified as “Urban Release Area” on the Urban Release Area Map.

Urban Release Area Map means the Newcastle Local Environmental Plan 2012 Urban Release Area Map.