

Cessnock Local Environmental Plan 1989

[1989-3]



New South Wales

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New South Wales

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Cessnock Local Environmental Plan 1989



New South Wales

Part 1 Preliminary

1 Name of plan

This plan may be cited as *Cessnock Local Environmental Plan 1989*.

2 Aims, objectives etc

- (1) The principal aim of this plan is to consolidate and update existing planning controls in the City of Cessnock.
- (2) The aims of this plan relating to business centres are set out in Schedule 1.
- (3) (Repealed)
- (4) The particular objectives, policies and strategies applicable to land within a zone referred to in this plan are set out in relation to the respective zones in the Table to clause 10.

3 Land to which plan applies

This plan applies to all land within the City of Cessnock, as indicated on the map.

4 Relationship to other environmental planning instruments

This plan:

- (a) repeals the Northumberland Local Environmental Plan,
- (b) repeals Interim Development Orders Nos 1, 4-10, 15-22, 24, 25 and 27-33—City of Greater Cessnock,
- (c) repeals Interim Development Orders Nos 13 and 29—City of Cessnock,
- (d) repeals Greater Cessnock Local Environmental Plans Nos 1, 3-22, 24 and 25,
- (e) repeals Cessnock Local Environmental Plans Nos 26-52 and 55-57, and
- (f) repeals such other environmental planning instruments as, immediately before the

appointed day, applied to the land to which this plan applies but to the extent only to which those instruments applied to that land.

5 Definitions

(1) In this plan:

accommodation means a dwelling, room or the like in which a person may live.

agriculture means the use of land for the purposes of animal husbandry, including the keeping or breeding of livestock and the growing of fruit, vegetables and the like, but does not include the use of the land for the purposes of a commercial vineyard or a building or place used for a purpose elsewhere specifically defined in this clause.

amusement park means an area of land open to the public and containing a number of buildings which constitute or contain various mechanical devices for entertainment, operated with a view to obtaining a profit, but does not include an area of land used only temporarily for a fete, bazaar or similar event to raise funds for a charitable or community project.

appointed day means the day on which this plan takes effect.

art gallery means a building or part of a building used for the display and sale of works of art.

automotive use means a use of a building or place for the purpose of fuelling, lubricating, cleaning, caring for, maintaining or repairing motor vehicles or of offering for sale and installing automotive accessories or parts, and includes a car repair station, an auto-electrician's workshop, a shop for the sale of automotive spare parts, tyres or car batteries, a tyre retreading workshop and any other establishment performing similar functions.

bed and breakfast accommodation means an establishment operated by the permanent residents of a dwelling-house which:

- (a) provides temporary accommodation for the short-term traveller,
- (b) offers meals for guests only,
- (c) does not accommodate more than 12 persons,
- (d) does not have a floor area greater than 300 m²,
- (e) does not contain cooking facilities in rooms for the preparation of meals by guests,
- (f) is not used in whole or in part for the permanent or long-term accommodation of any person other than the person or persons who normally reside in the dwelling-house, and

(g) is contained wholly within the confines of that dwelling-house.

brothel means a premises habitually used for the purposes of prostitution. Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

child care centre means a building or place used for the purpose of caring for children and includes:

- (a) a dwelling-house adapted for use solely for that purpose,
- (b) a public hall used for that purpose, or
- (c) part of a shop or factory used for that purpose,

but does not include a dwelling being used as a domicile.

commercial sign means an advertisement, whether illuminated or not, which:

- (a) does not exceed 1 square metre in area, and
- (b) in respect of any place or premises to which it is affixed, contains only:
 - (i) a reference to the identification or description of the place or premises,
 - (ii) a reference to the identification or description of any person residing or carrying on an occupation at the place or premises,
 - (iii) particulars of any occupation carried on at the place or premises,
 - (iv) such directions or cautions as are usual or necessary relating to the place or premises or any occupation carried on at the place or premises,
 - (v) particulars or notifications required or permitted to be displayed by or under any Act or any Act of the Parliament of the Commonwealth,
 - (vi) particulars relating to the goods, commodities or services dealt with or provided at the place or premises,
 - (vii) a notice that the place or premises is or are for sale or letting together with particulars of the sale or letting, or
 - (viii) particulars of any activities held or to be held at the place or premises.

commercial vineyard means a plantation of grape vines, commercially grown for grape or wine production purposes.

community centre means a building or place owned or controlled by the Council or a public authority and used to provide facilities comprising or relating to any one or more of the following:

- (a) a public library,
- (b) public health services,
- (c) rest rooms,
- (d) meeting rooms,
- (e) indoor recreation,
- (f) child minding facilities,
- (g) any other like purpose.

conference facilities means a building or buildings used for the purpose of meetings or gatherings of any organisation, association or group or for the purpose of conventions, training or meetings or any other like purpose.

conservation area means the land edged heavy black and marked “conservation area” on the map.

Council means the Council of the City of Cessnock.

crematorium means a furnace for cremating human corpses and includes a building containing such a furnace and any ancillary chapel and building.

demolition, in relation to a building or work, means the damaging, defacing, destruction, pulling down or removal of that building or work, in whole or in part.

existing holding means:

- (a) except as provided by paragraph (b)—the area of a lot as it was at 31 December 1984, or
- (b) where, as at 31 December 1984, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the aggregation of the areas of those lots, portions or parcels as they were at that date,

and includes such a holding affected by a subdivision of a type referred to in clause 11 (2) or 12 (3) since that date.

external surfaces in relation to a building, includes external walls and any cladding on the building, doors and window frames (but not window panes), columns, roofs, fences and any other surface visible from the outside of the building.

extractive material means sand, gravel, clay, turf, soil, rock, stone and similar substances, but does not include petroleum, coal, shale, any metal or any mineral within the meaning of the *Mining Act 1973*.

feed lot means an enclosure where animals are aggregated, where the aggregation is above the normal carrying capacity of the holding on which the enclosure is constructed.

floodway means the channel of a river or stream and those portions of the flood plain adjoining the channel which are required to carry and discharge floodwaters, being land marked “floodway” on the map.

holiday cabin means a dwelling used, constructed or adapted to be used for the provision of temporary accommodation for holiday purposes only, being one of a group of similar dwellings erected on an allotment of land or allotments of land in the same ownership.

home business means a business, profession or trade, (not being a home industry, home occupation or professional consulting room) carried on in part of a dwelling or within the curtilage of a dwelling, or on adjoining land in the same ownership, by a permanent resident of the dwelling or by persons employed by, or employing or in partnership with, that resident.

horse training establishment means premises used for the training, education and breaking-in of horses, and includes ancillary buildings such as stables, feed rooms, staff residential quarters, amenities buildings, garages and trainers’ residences.

hotel means any premises specified in a hotelier’s licence under the [Liquor Act 1982](#) which is primarily used or intended to be used for the sale of liquor by retail, whether or not for consumption on the premises.

integrated tourist development means the use of land for the purposes of one or more vineyard tourist accommodation buildings in association with one or more tourist-related land uses such as refreshment rooms, conference facilities, wineries and the like.

item of the environmental heritage means a building, work, relic or place of historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance to the City of Cessnock which is:

- (a) situated on land edged heavy black and marked “Heritage Conservation” on the map, or
- (b) described in Schedule 3.

junkyard means land used:

- (a) for the collection, storage, abandonment or sale of scrap metals, waste paper, rags, bottles, recycled building materials or other scrap materials or goods (such as recycled timber, concrete, windows, bricks, iron, pipe and the like), or

- (b) for the collecting, dismantling, storage, salvaging or abandonment of automobiles or other vehicles or machinery or for the sale of any parts of such automobiles, vehicles or machinery.

natural ground level means the actual physical level of a site at the appointed day.

permanent or long-term accommodation means accommodation that is, or is to be, occupied by a person as the person's principal place of residence for more than 42 consecutive days (or, in aggregate, more than 150 days in any 12 month period), whether or not occupation of the accommodation involves the payment of money.

reception establishment means a building or place used for the purpose of wedding receptions, birthday parties, conferences, conventions and the like where admission is by private invitation, but does not include a refreshment room or hotel.

recreation area means:

- (a) a children's playground,
- (b) an area used for sporting activities or sporting facilities,
- (c) an area used to provide facilities for recreational activities which promote the physical, cultural or intellectual welfare of persons within the community, being facilities provided by:
 - (i) the Council,
 - (ii) a public authority, or
 - (iii) a body of persons associated for the purposes of the physical, cultural or intellectual welfare of persons within the community,

but does not include a racecourse or a showground.

relic means any deposit, object or material evidence relating to the settlement (including Aboriginal habitation) prior to 1 January 1900 of the area of the City of Cessnock.

renovation, in relation to a building or work, means:

- (a) the making of structural changes to the inside or outside of the building or work,
or
- (b) the making of non-structural changes to the fabric or appearance of the outside of the building or work, including changes that involve the repair or the painting, plastering or other decoration of the outside of the building or work.

riding school means a building or place used for the purpose of teaching horse riding skills or for the hiring of horses for recreational riding, whether or not accommodation

is also provided for the riders.

stable means a building or place used or designed for use for the purpose of receiving, maintaining, boarding or keeping horses.

temporary accommodation means accommodation that is, or is to be, occupied by a person for no more than 42 consecutive days (or, in aggregate, no more than 150 days in any 12 month period), whether or not occupation of the accommodation involves the payment of money.

the map means the series of maps marked “*Cessnock Local Environmental Plan 1989*”, as amended by the maps marked as follows:

Editorial note—

The amending maps are not necessarily listed in the order of gazettal. Information about the order of gazettal can be determined by referring to the Historical notes at the end of the plan.

Cessnock Local Environmental Plan 1989 (Amendment No 1)

Cessnock Local Environmental Plan 1989 (Amendment No 2)

Cessnock Local Environmental Plan 1989 (Amendment No 3)

Cessnock Local Environmental Plan 1989 (Amendment No 4)

Cessnock Local Environmental Plan 1989 (Amendment No 6)

Cessnock Local Environmental Plan 1989 (Amendment No 8)

Cessnock Local Environmental Plan 1989 (Amendment No 9)

Cessnock Local Environmental Plan 1989 (Amendment No 10)

Cessnock Local Environmental Plan 1989 (Amendment No 11)

Cessnock Local Environmental Plan 1989 (Amendment No 12)

Cessnock Local Environmental Plan 1989 (Amendment No 13), Sheet 2

Cessnock Local Environmental Plan 1989 (Amendment No 14)

Cessnock Local Environmental Plan 1989 (Amendment No 15)

Cessnock Local Environmental Plan 1989 (Amendment No 18)

Cessnock Local Environmental Plan 1989 (Amendment No 20)

Cessnock Local Environmental Plan 1989 (Amendment No 21)

Cessnock Local Environmental Plan 1989 (Amendment No 23)

Cessnock Local Environmental Plan 1989 (Amendment No 24)

Cessnock Local Environmental Plan 1989 (Amendment No 25)

Cessnock Local Environmental Plan 1989 (Amendment No 26)

Cessnock Local Environmental Plan 1989 (Amendment No 30)—Sheets 1-7

Cessnock Local Environmental Plan 1989 (Amendment No 33)

Cessnock Local Environmental Plan 1989 (Amendment No 34)

Cessnock Local Environmental Plan 1989 (Amendment No 35)

Cessnock Local Environmental Plan 1989 (Amendment No 37)

Cessnock Local Environmental Plan 1989 (Amendment No 38)

Cessnock Local Environmental Plan 1989 (Amendment No 40)

Cessnock Local Environmental Plan 1989 (Amendment No 41)

Cessnock Local Environmental Plan 1989 (Amendment No 44)

Cessnock Local Environmental Plan 1989 (Amendment No 47)

Cessnock Local Environmental Plan 1989 (Amendment No 49)—Sheets 3, 5 and 6

Cessnock Local Environmental Plan 1989 (Amendment No 53)

Cessnock Local Environmental Plan 1989 (Amendment No 58)

Cessnock Local Environmental Plan 1989 (Amendment No 59)

Cessnock Local Environmental Plan 1989 (Amendment No 70)

Cessnock Local Environmental Plan 1989 (Amendment No 75)

tourist recreation facilities means an establishment primarily providing or intending to provide temporary accommodation for holiday purposes, entertainment or recreation, and may include such things as arts and crafts industries, camping grounds, caravan parks, equestrian centres, holiday cabins, motels, playgrounds, refreshment rooms, water sports facilities, premises specified in any licence (including a hotelier's licence) under the [Liquor Act 1982](#), a club (whether or not registered under the [Registered Clubs Act 1976](#)) used in conjunction with any such activities or other services primarily intended to serve the needs or interests of tourists or holiday makers.

tourist-related craft shop means a building or part of a building used for the display and sale of tourist-related craft merchandise.

vineyard tourist accommodation building means a building or series of buildings containing one or more vineyard tourist accommodation units.

vineyard tourist accommodation unit means a building used for the temporary accommodation of up to 4 tourists in a maximum of 2 bedrooms but does not include bed and breakfast accommodation.

waste management facilities or works means a facility used for the storage, treatment, purifying or disposal of waste, whether or not it is also used for the sorting, processing, recycling, recovering, use or reuse of material from that waste, and whether or not any commercial gain is obtained from such operations.

winery means a building erected or proposed to be erected for the purpose of manufacturing, storing and offering for sale viticultural products.

- (2) In this plan:
- (a) a reference to a building or place used for a purpose includes a reference to a building or place intended to be used for the purpose,
 - (b) a reference to a map is a reference to a map deposited in the office of the Council, and
 - (c) a reference to land within a zone specified in clause 8 is a reference to land shown on the map in the manner specified in relation to that zone in that clause as the means of identifying land of the zone so specified.

6 Adoption of Model Provisions

- (1) Subject to subclause (2), the *Environmental Planning and Assessment Model Provisions 1980* (except for the definitions of **agriculture**, **child care centre**, **extractive material**, **hotel**, **map**, **tourist facilities** and **junkyard** in clause 4 (1) and clauses 8 (7), 14 (2), 15, 16, 17, 29, 33 and 34) are adopted for the purposes of this plan.
- (2) For the purpose of this plan, the *Environmental Planning and Assessment Model Provisions 1980* shall be read as if:
- (a) (Repealed)
 - (b) the reference in the definition of **arterial road** in clause 4 (1) of those provisions to a “continuous red band on white” were a reference to a “continuous black line”,
 - (b1) the definition of **commercial premises** in clause 4 (1) of those provisions specifically excluded a commercial vineyard,
 - (b2) the definition of **place of assembly** in clause 4 (1) of those provisions did not include a reference to the use of land for the purpose of a theatre, cinema or

drive-in theatre in Zone No 1 (v),

- (c) the reference in clause 19 of those provisions to a service station included a reference to a car repair station,
- (d) clause 8 of Schedule 1 to those provisions did not except the widening of a road on land acquired by the Council for that purpose, and
- (e) the definition of **utility installation** in clause 4 (1) of those provisions included a building or work used by a private organisation in the provision of water, sewerage or other utility services.

7 Consent authority

The Council shall be the consent authority for the purposes of this plan.

Part 2 General restrictions on development of land

8 Zones indicated on the map

For the purposes of this plan, land to which this plan applies shall be within a zone specified hereunder if the land is shown on the map in the manner specified hereunder in relation to that zone:

Zone No 1 (a) (Rural "A" Zone)—black edging and lettered "1 (a)".

Zone No 1 (a1) (Rural "A1" Zone)—black edging and lettered "1 (a1)".

Zone No 1 (c) (Rural-Residential/Rural (Small Holdings) Zone)—edged heavy black and lettered "1 (c)".

Zone No 1 (c1) (Rural (Small Holdings) Zone)—black edging and lettered "1 (c1)".

Zone No 1 (c2) (Rural (Small Holdings) Zone)—edged heavy black and lettered "1 (c2)".

Zone No 1 (f) (Rural (Forestry) Zone)—black edging and lettered "1 (f)".

Zone No 1 (v) (Rural (Vineyards) Zone)—black edging and lettered "1 (v)".

Zone No 2 (a) (Residential "A" Zone)—black edging and lettered "2 (a)".

Zone No 2 (b) (Village Zone)—black edging and lettered "V".

Zone No 2 (c) (Residential (Development Control Area) Zone)—black edging and lettered "2 (c)".

Zone No 3 (a) (General Business Zone)—black edging and lettered "3 (a)".

Zone No 3 (b) (Neighbourhood Business Zone)—black edging and lettered "3 (b)".

Zone No 3 (c) (Centre Support Zone)—black edging and lettered “3 (c)”.

Zone No 4 (a) (Industrial Zone)—black edging and lettered “4 (a)”.

Zone No 4 (b) (Light Industrial Zone)—black edging and lettered “4 (b)”.

Zone No 5 (a) (Special Uses Zone)—black edging and lettered “5 (a)” with the particular use shown in black.

Zone No 5 (b) (Special Uses (Railways) Zone)—black edging and lettered “5 (b)”.

Zone No 5 (c) (Proposed Arterial Road Zone)—black edging and lettered “5 (c)”.

Zone No 5 (d) (Proposed Local Road Zone)—black edging and lettered “5 (d)”.

Zone No 6 (a) (Open Space Zone)—black edging and lettered “6 (a)”.

Zone No 6 (b) (Proposed Open Space Zone)—black edging and lettered “6 (b)”.

Zone No 6 (c1) (Private Recreation Zone)—black edging and lettered “6 (c1)”.

Zone No 7 (d1) (Environmental Protection (Scenic) Zone)—black edging and lettered “7 (d1)”.

9 Zone objectives and development control table

- (1) The objectives of a zone are set out in the Table to this clause under the heading “Objectives of zone” appearing in the matter relating to the zone.
- (2) Except as otherwise provided by this plan, in relation to land within a zone specified in the Table to this clause, the purposes (if any) for which:
 - (a) development may be carried out without development consent,
 - (b) development may be carried out only with development consent, and
 - (c) development is prohibited,are specified under the headings “Without consent”, “Only with consent” and “Prohibited”, respectively, appearing in the matter relating to the zone.
- (3) Except as otherwise provided by this plan, the Council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Table

Zone No 1 (a) Rural “A” Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to enable the continuation of existing forms of agricultural land use and occupation,
- (b) to ensure that potentially productive land is not withdrawn from production,
- (c) to encourage new forms of agricultural land use,
- (d) to enable other forms of development which are associated with rural activity and which require an isolated location, or which support tourism and recreation, and
- (e) to ensure that the type and intensity of development is appropriate in relation to:
 - (i) the rural capability and suitability of the land,
 - (ii) the preservation of the agricultural, mineral and extractive production potential of the land,
 - (iii) the rural environment (including scenic resources), and
 - (iv) the costs of providing public services and amenities.

2 Without consent

Agriculture (other than animal boarding, breeding or training establishments, pig keeping establishments, feed lots or poultry farming establishments); commercial vineyards; forestry; stables.

3 Only with consent

Any purpose other than a purpose included in item 2 or 4.

4 Prohibited

Advertising structures; amusement parks; automotive uses; boarding houses; bulk stores (other than those associated with an agricultural use); commercial premises (other than those primarily intended to provide services to tourists); heliports; industries (other than home industries or rural industries); junk yards; liquid fuel depots; mortuary chapels; motor showrooms; recreation facilities (other than those ancillary or related to a

tourist recreation facility); residential flat buildings; shops (other than those primarily intended to provide services to tourists or general stores); transport terminals (other than the storage and servicing of vehicles associated with the occupation of the owner); warehouses.

Zone No 1 (a1) Rural “A1” Zone

1 Objectives of zone

The objective of this zone is to encourage agricultural development and communal facilities on land owned in association with land within Zone No 1 (c1).

2 Without consent

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

3 Only with consent

Barbecue and picnic areas; bridges; dams; drainage; fire trails; roads; tree planting; utility installations (other than gas holders or generating works).

4 Prohibited

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

Zone No 1 (c) Rural-Residential/Rural (Small Holdings) Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to enable small holdings development to be carried out on land which is suitable for that purpose, and
- (b) to enable other forms of development to be carried out on land within the zone if they are in keeping with the rural character of the locality and are compatible with existing or likely future small holdings.

2 Without consent

Agriculture (other than animal boarding, breeding or training establishments, pig keeping establishments, feed lots or poultry farming establishments); dwelling-houses; forestry stables accommodating no more than 3 horses.

3 Only with consent

Any purpose other than a purpose included in item 2 or 4.

4 Prohibited

Advertising structures; aerodromes; amusement parks; animal boarding, breeding or training establishments; art galleries; automotive uses; boarding houses; bulk stores; caravan parks; cemeteries and crematoria; clubs; commercial premises (other than veterinary establishments); commercial vineyards; conference facilities; extractive industries; feed lots; gas holders; generating works; helipads; heliports; horse training establishments; hotels; industries (other than home industries or rural industries); institutions; integrated tourist development; junk yards; liquid fuel depots; mines; mortuary chapels; motor showrooms; pig keeping establishments; places of assembly; poultry farming establishments; reception establishments; recreation facilities; refreshment rooms; residential flat buildings; retail plant nurseries; roadside stalls; sawmills; service stations; shops (other than general stores); stock and sale yards; timber yards; tourist recreation facilities; tourist-related craft shops; transport terminals; vineyard tourist accommodation buildings; warehouses.

Zone No 1 (c1) Rural (Small Holdings) Zone

1 Objectives of zone

The objective of this zone is to encourage high quality and environmentally sensitive rural-residential and compatible development.

2 Without consent

Agriculture (other than animal boarding, breeding or training establishments, pig keeping establishments, feed lots or poultry farming establishments); dwelling-houses sited in accordance with the relevant development control plan.

3 Only with consent

Child care centres; dams; drainage; dwelling-houses (other than those referred to in item 2); fire trails; general stores; home businesses; home occupations; pedestrian ways; roads; stables; tree planting; utility installations (other than gas holders or generating works).

4 Prohibited

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

Zone No 1 (c2) Rural (Small Holdings) Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to enable small holdings development to be carried out on land which is suitable for that purpose, and
- (b) to enable other forms of development to be carried out on land within the zone if they are in keeping with the rural character of the locality and are compatible with existing or likely future small holdings.

2 Without consent

Agriculture (other than animal boarding, breeding or training establishments, pig keeping establishments, feed lots or poultry farming establishments); dwelling-houses; forestry; stables accommodating no more than 3 horses.

3 Only with consent

Any purpose other than a purpose included in item 2 or 4.

4 Prohibited

Advertising structures; aerodromes; amusement parks; art galleries; automotive uses; boarding houses; bulk stores; caravan parks; cemeteries and crematoria; clubs; commercial premises (other than veterinary establishments); commercial vineyards; conference facilities; extractive industries; feed lots; gas holders; generating works; helipads; heliports; hotels; industries (other than home industries or rural industries); institutions; integrated tourist development; junk yards; liquid fuel depots; mines (other than underground mining which does not involve surface works or infrastructure within the 1 (c2) zone); mortuary chapels; motels; motor showrooms; pig keeping establishments; places of assembly; poultry farming establishments; reception establishments; recreation facilities; residential flat buildings; retail plant nurseries (other than for the sale of plants of plant products grown on the subject land); roadside stalls; sawmills; service stations; shops (other than general stores); stock and sale yards; timber yards; tourist recreation facilities; tourist-related craft shops; transport

terminals; vineyard tourist accommodation buildings; warehouses.

Zone No 1 (f) Rural (Forestry) Zone

1 Objectives of zone

The objective of this zone is to recognise and protect the renewable resources of State and private forests and their ancillary recreational functions.

2 Without consent

Forestry; camping areas; picnic areas.

3 Only with consent

Agriculture; extractive industries; mines; recreation areas; sawmills; utility installations.

4 Prohibited

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

Zone No 1 (v) Rural (Vineyards) Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to maintain prime viticultural land and enhance the economic and ecological sustainability of the Vineyards District, and
- (b) to encourage appropriate tourist development consistent with the rural and viticultural character of the Vineyards District, and
- (c) to minimise conflict between viticultural and non-viticultural land uses by ensuring sympathetic location and design of those uses, and
- (d) to enable continued rural use of land which is complementary to the viticultural character of land within this zone, and
- (e) to protect the water quality of receiving streams and to reduce land degradation, and
- (f) to actively promote the need to conserve and enhance the biodiversity of the Vineyards District, and

(g) to conserve the aboriginal archaeology and european heritage of the Vineyards District.

2 Without consent

Agriculture (other than animal boarding, breeding or training establishments, pig keeping, feed lots or poultry farming establishments); stables accommodating no more than 2 animals.

3 Only with consent

Animal boarding, breeding or training establishments (other than for dogs); art galleries; attached dual occupancies; bed and breakfast accommodation; child care centres; commercial vineyards; community centres; commercial signs; conference facilities; dwelling-houses; home industries; home occupations; horse training establishments; integrated tourist development; motels; picnic grounds; places of assembly; public buildings; reception establishments; recreation facilities in association with vineyard tourist accommodation buildings; refreshment rooms; riding schools; sheds; stables accommodating more than 2 animals; tourist-associated premises specified in any licence granted under the [Liquor Act 1982](#); tourist-related shops in association with integrated tourist development; tourist-related craft shops; underground coal mining which does not involve surface works or infrastructure; utility installations; vineyard tourist accommodation buildings; wineries.

4 Prohibited

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

Zone No 2 (a) Residential “A” Zone

1 Objectives of zone

The objectives of this zone are:

- (a) primarily to provide for low density residential development,
- (b) to enable residential flat buildings which are compatible with single dwelling development,
- (c) to provide for other forms of development which may appropriately be located in a residential zone, and
- (d) to ensure non-residential development is of a type, scale and character

which will maintain residential amenity.

2 Without consent

Dwelling-houses.

3 Only with consent

Any purpose other than a purpose included in item 2 or 4.

4 Prohibited

Advertising structures; aerodromes; amusement parks; animal boarding, breeding or training establishments; art galleries; automotive uses; bulk stores; cemeteries and crematoria; clubs; commercial premises; commercial vineyards; conference facilities; extractive industries; feed lots; gas holders; generating works; helipads; heliports; horse training establishments; hotels; industries (other than home industries); institutions; integrated tourist development; junk yards; liquid fuel depots; mines; mortuary chapels; motor showrooms; pig keeping establishments; places of assembly; poultry farming establishments; reception establishments; recreation establishments; recreation facilities; refreshment rooms; retail plant nurseries; riding schools; roadside stalls; sawmills; service stations; shops (other than general stores); stables; stock and sale yards; timber yards; tourist recreation facilities (other than motels); tourist-related craft shops; transport terminals; vineyard tourist accommodation buildings; warehouses; wineries.

Zone No 2 (b) Village Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to recognise existing villages and to enable future development appropriate to their function while ensuring residential lifestyles are maintained,
- (b) to provide for other forms of development which will not impact on the amenity of existing villages and which are compatible with the functioning and scale of the environment.

2 Without consent

Dwelling-houses (other than those which have access only by way of an unformed or unmade road).

3 Only with consent

Any purpose other than a purpose included in item 2 or 4.

4 Prohibited

Aerodromes; animal boarding, breeding or training establishments; commercial vineyards; conference facilities; extractive industries; feed lots; forestry; helipads; heliports; industries (other than home industries, light industries or rural industries); institutions; integrated tourist development; junk yards; mines; pig keeping establishments; poultry farming establishments; sawmills; stock and sale yards; vineyard tourist accommodation buildings.

Zone No 2 (c) Residential (Development Control Area) Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to provide for low density residential development in new urban areas,
- (b) to provide for other types of development, particularly shops, commercial premises and service trades, which are primarily intended to serve the residential neighbourhood in which they are located, and
- (c) to enable the Council to flexibly allocate land use by way of a development control plan.

2 Without consent

Nil.

3 Only with consent

Advertising structures; art galleries; bed and breakfast accommodation; boarding houses; bus stations; child care centres; clubs; commercial premises, shops and light industries primarily intended to serve the neighbourhood in which they are situated; community centres; dwelling-houses; educational establishments; home businesses; home industries; home occupations; hospitals; hotels; motels; places of assembly; places of public worship; professional consulting rooms; public buildings; reception establishments; recreation facilities; refreshment rooms; residential flat buildings; retail plant nurseries; service stations; utility installations (other than gas holders or generating works).

4 Prohibited

Any purpose other than a purpose included in item 3.

Zone No 3 (a) General Business Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to encourage the provision of retail, commercial and other business services, and associated development such as parking, dwellings, service industries and the like,
- (b) to encourage development associated with tourism,
- (c) to encourage the concentration of retailing and other related uses and services, and
- (d) to encourage improvements in pedestrian networks and pedestrian amenity in business centres.

2 Without consent

Nil.

3 Only with consent

Any purpose other than a purpose included in item 4.

4 Prohibited

Aerodromes; agriculture; caravan parks; cemeteries and crematoria; commercial vineyards; extractive industries; forestry; generating works; helipads; heliports; horse training establishments; industries (other than light or home industries); institutions; junk yards; liquid fuel depots; mines; panel beating; recreation establishments; sawmills; stables; stock and sale yards.

Zone No 3 (b) Neighbourhood Business Zone

1 Objectives of zone

The objective of this zone is to provide for shops and other services to adequately serve the residential neighbourhood in which the zone is situated.

2 Without consent

Nil.

3 Only with consent

Advertising structures; art galleries; bed and breakfast accommodation; bus stations; child care centres; clubs; commercial premises and light industries primarily intended to serve the neighbourhood in which they are situated; community centres; dwelling-houses; home businesses; home industries; home occupations; hotels; places of assembly; places of public worship; public buildings; reception establishments; recreation facilities; refreshment rooms; residential flat buildings attached to a building used for a purpose permitted in this zone; retail plant nurseries; service stations; shops; utility installations (other than gas holders or generating works).

4 Prohibited

Any purpose other than a purpose included in item 3.

Zone No 3 (c) Centre Support Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to encourage a wide range of land uses which support or are related to the functions of the Cessnock, Kurri Kurri and Weston business centres, and
- (b) to ensure that the design and layout of development is sympathetic with any adjoining residential development.

2 Without consent

Nil.

3 Only with consent

Any purpose other than a purpose included in item 4.

4 Prohibited

Aerodromes; agriculture; commercial vineyards; extractive industries; forestry; heliports; horse training establishments; industries (other than light industries or home industries); institutions; junk yards; mines; sawmills;

stables; stock and sale yards.

Zone No 4 (a) Industrial Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to encourage industrial development which will generate employment,
- (b) to provide opportunities for other activities which support industrial land use, or which are reasonably located in an industrial zone, and
- (c) to ensure that development will not:
 - (i) cause permanent damage to the natural environment,
 - (ii) detract from the amenity of any residential or other urban area in the vicinity, or
 - (iii) create excessive demands on infrastructure and roads.

2 Without consent

Nil.

3 Only with consent

Any purpose other than a purpose included in item 4.

4 Prohibited

Art galleries; bed and breakfast accommodation; boarding houses; caravan parks; commercial premises and shops (other than those ordinarily incidental or subsidiary to industry, or which are primarily intended to serve persons occupied or employed in purposes otherwise permitted in this zone, or which by virtue of their nature, the services provided, or the products produced, distributed or sold, are, in the opinion of the Council, appropriately located in an industrial zone); commercial vineyards; conference facilities; dwelling-houses (other than those ancillary to purposes permitted in this zone); educational establishments (other than those associated with purposes permitted in this zone); hospitals; institutions; integrated tourist development; mines; motels; places of assembly; places of public worship; reception establishments; residential flat buildings; roadside stalls; tourist recreation facilities; tourist-related craft shops; vineyard tourist accommodation buildings.

Zone No 4 (b) Light Industrial Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to encourage development for light industrial and service trades purposes which will generate employment and contribute to the needs of the City of Cessnock,
- (b) to provide opportunities for other activities that support industrial land use, or which are reasonably located in an industrial zone, and
- (c) to ensure that industrial or other permitted development is carried out in a manner which does not compromise the amenity of any residential development in the vicinity.

2 Without consent

Nil.

3 Only with consent

Any purpose other than a purpose included in item 4.

4 Prohibited

Art galleries; bed and breakfast accommodation; boarding houses; caravan parks; commercial premises and shops (other than those ordinarily incidental or subsidiary to industry, or which are primarily intended to serve persons occupied or employed in purposes otherwise permitted in this zone, or which by virtue of their nature, the services provided, or the products produced, distributed or sold, are, in the opinion of the Council, appropriately located in an industrial zone); commercial vineyards; conference facilities; dwelling-houses (other than those ancillary to purposes permitted in this zone); educational establishments (other than those associated with purposes permitted in this zone); extractive industries; hospitals; industries (other than light industries or home industries); institutions; integrated tourist development; mines; motels; places of assembly; places of public worship; reception establishments; residential flat buildings; roadside stalls; tourist recreation facilities; tourist-related craft shops; vineyard tourist accommodation buildings.

Zone No 5 (a) Special Uses Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to accommodate development by public authorities on publicly-owned land,
- (b) to provide for appropriate community uses, and
- (c) to enable associated and ancillary development.

2 Without consent

Nil.

3 Only with consent

The particular purpose indicated on the map; any public purpose; utility installation.

4 Prohibited

Any purpose other than a purpose included in item 3.

Zone No 5 (b) Special Uses (Railways) Zone

1 Objectives of zone

The objective of this zone is to enable development for railways and related purposes on railway land, whether in public or private ownership.

2 Without consent

Nil.

3 Only with consent

Railways; utility installations.

4 Prohibited

Any purpose other than a purpose included in item 3.

Zone No 5 (c) Proposed Arterial Road Zone

1 Objectives of zone

The objective of this zone is to identify and preserve land intended to be

acquired for new arterial roads or widening of existing arterial roads.

2 Without consent

Arterial roads; arterial road widening.

3 Only with consent

Utility installations.

4 Prohibited

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

Zone No 5 (d) Proposed Local Road Zone

1 Objectives of zone

The objective of this zone is to identify and preserve land intended to be acquired for new local roads or widening of existing local roads.

2 Without consent

Local roads; local road widening.

3 Only with consent

Utility installations.

4 Prohibited

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

Zone No 6 (a) Open Space Zone

1 Objectives of zone

The objectives of this zone are:

- (a) to recognise existing public land used or capable of being used for public recreation purposes, and
- (b) to recognise private recreation facilities on privately owned land or on land where general public access may be restricted.

2 Without consent

Works for the purposes of landscaping, gardening and bushfire hazard

reduction.

3 Only with consent

Agriculture (other than animal boarding, breeding or training establishments, pig keeping establishments, feed lots or poultry farming establishments); bowling or golf clubs; buildings for the purposes of landscaping, gardening or bushfire hazard reduction; caravan parks; child care centres; community centres; forestry; helipads; kiosks; mines; racecourses; recreation areas; recreation facilities; showgrounds; stables; utility installations.

4 Prohibited

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

Zone No 6 (b) Proposed Open Space Zone

1 Objectives of zone

The objective of this zone is to identify and protect land intended to be acquired for public open space.

2 Without consent

Works for the purposes of landscaping, gardening or bushfire hazard reduction.

3 Only with consent

Agriculture (other than animal boarding, breeding or training establishments, pig keeping establishments, feed lots or poultry farming establishments); bowling or golf clubs; buildings for the purposes of landscaping, gardening or bushfire hazard reduction; caravan parks; child care centres; community centres; forestry; helipads; kiosks; mines; racecourses; recreation areas; recreation facilities; showgrounds; stables; utility installations.

4 Prohibited

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

Zone No 6 (c1) Private Recreation Zone

1 Objectives of zone

The objective of this zone is to enable private recreation facilities on privately owned land.

2 Without consent

Nil.

3 Only with consent

Drainage; places of assembly; recreation areas; roads; tree planting; utility installations (other than gas holders or generating works).

4 Prohibited

Any purpose other than a purpose included in item 3.

Zone No 7 (d1) Environmental Protection (Scenic) Zone

1 Objectives of zone

The objective of this zone is to restrict development in order to protect the scenic qualities of the land.

2 Without consent

Nil.

3 Only with consent

Dams; drainage; fire trails; picnic areas; roads; utility installations (other than gas holders or generating works).

4 Prohibited

Any purpose other than a purpose included in item 3.

Part 3 Special provisions

10 General development principles—rural and environmental protection zones

(1) In determining any application for consent to carry out development on land within Zone No 1 (a), 1 (a1), 1 (c), 1 (c1), 1 (c2), 1 (f), 1 (v) or 7 (d1), the Council shall have regard, in addition to the matters specified in section 90 (1) of the Act:

(a) to the following general principles:

(i) development should be generally compatible with the rural suitability and capability of the land on which it is to be carried out, as indicated on maps deposited in the office of the Council,

(ii) development should be of a type compatible with the maintenance and

enhancement, as far as is practicable, of the existing rural and scenic character of the City of Cessnock,

- (iii) development (other than development on land within Zone No 1 (c), 1 (c1) or 1 (c2)) should not materially reduce the agricultural production potential of the land on which it is to be carried out, or of adjoining land,
- (iv) the existing and possible future use of the land and of other land in the locality should not be prejudiced (particularly in the case of land which contains recoverable mineral or extractive resources),
- (v) development should not materially affect any wildlife refuge, significant wetland or any identified site containing Aboriginal archaeological relics and such relics or places should be preserved where necessary,
- (vi) development (including associated access roads) should not create or worsen soil erosion potential through the action of wind or water or the alteration of land form, and adequate measures should be taken to avoid such an effect,
- (vii) adequate utility services and community facilities should be available to the land and its future occupants, and the land should be capable of accommodating on-site disposal of domestic waste and the provision of a domestic water supply, including a fire-fighting capacity,
- (viii) development should not have the possible effect of creating demands for unreasonable or uneconomic provision or extension of services by the Council or any other public authority,
- (ix) development should not create significant additional traffic or create or increase a condition of ribbon development on any road, particularly a main or arterial road, relative to the capacity, standard and safety of the road,
- (x) the creation of vehicular access to a main or arterial road should be minimised and where no alternative access is available, the location and treatment of the access should minimise potential traffic hazards,
- (xi) development should incorporate adequate drainage measures, including sediment and waste control, and prevention of the uncontrolled flow of water across the land or adjoining land,
- (xii) development should not lead to any deterioration of water supply or water quality within a water catchment,
- (xiii) where land is proposed to be cleared, vegetation should be retained in appropriate locations to reduce the visual impact of clearing to the maximum extent consistent with the rural character of the area,

- (xiv) in the case of land within Zone No 1 (v), the general impact of development on the scenic catchment of the vineyards district should be minimised,
- (b) to the following principles with respect to subdivision:
- (i) the ratio of depth to frontage of each allotment to be created by the subdivision should be determined having regard to the purpose for which it is to be used and the need to minimise the creation of vehicular access points to any road and particularly to main or arterial roads,
 - (ii) the subdivision should not to any material extent create or increase the potential for ribbon development along any road, particularly a main or arterial road,
 - (iii) adequate all weather flood-free access should be available to each allotment to be created by the subdivision and located so as to minimise the risk of soil erosion,
 - (iv) a subdivision should be designed to maximise the retention of natural vegetation in any subsequent development, to ensure that any buildings likely to be erected on allotments created by the subdivision are able to be sufficiently separated to maintain the rural character of the locality, and to minimise the potential for significant alterations to the natural land form in any subsequent development by way of construction of access driveways, excavations, filling and the like,
 - (v) each allotment to be created by the subdivision should include flood-free land for building sites and for the movement of any stock during floods,
 - (vi) each allotment to be created by the subdivision should provide potential building sites with minimum risk of damage by bushfires or soil instability,
 - (vii) adequate soil erosion control measures should be incorporated in the subdivision, including measures to be carried out prior to the subdivision taking place,
 - (viii) allotments intended for use for pastoral purposes should be of sufficient size to ensure an adequate water supply for stock unless water can otherwise be provided, and
- (c) to the following principles with respect to buildings:
- (i) buildings should be sited and designed and be of an appropriate scale so as to maintain the rural character of the locality, to minimise disturbance to the landscape through clearing, earthworks, access roads, the use of platforms or stilts and other similar construction methods, to maintain slope stability, and to generally fit into their environment to the maximum extent consistent with

- their being sited to minimise flood and bushfire hazards,
- (ii) buildings should not intrude into the skyline, when viewed from roads or other public places,
 - (iii) buildings should be sited in relation to the boundaries of the site, to existing buildings on the site or on adjoining land, and to potential building sites on adjoining land, so as to avoid too high a concentration of buildings and so that the overall pattern of building development maintains the rural character of the locality,
 - (iv) building materials and painting or other finishes should preferably be of dark natural tones with low reflective quality to the maximum extent consistent with effective heat insulation of the building and the comfort of its occupants,
 - (v) the curtilage of buildings should, wherever possible, be landscaped so as to lessen the impact of buildings on their natural or rural setting,
 - (vi) essential buildings should be sited in positions of least flood risk, and the floor levels of dwellings should be above the 100 year flood level and be capable of withstanding floodwater pressures,
 - (vii) adequate all weather flood-free access should be available to dwellings.
- (2) The Council must, when determining any application for consent to carry out development on land within Zone No 1 (v) that is shown by diagonal broken black hatching on the map (being land that is potentially affected by the activities at the Singleton Army Field Firing Range), have regard to the likely effect of those activities.

10A What is exempt and complying development?

- (1) Development of minimal environmental impact listed as exempt development in *Development Control Plan No 43* as adopted by the Council on 16 August 2000 is **exempt development**, despite any other provision of this plan.
- (2) Development listed as complying development in *Development Control Plan No 43* as adopted by the Council on 16 August 2000 is **complying development** if:
 - (a) it is local development of a kind that can be carried out with consent on the land on which it is proposed, and
 - (b) it is not an existing use, as defined in section 106 of the Act.
- (3) Development is exempt or complying development only if it complies with the development standards and other requirements applied to the development by *Development Control Plan No 43* as adopted by the Council on 16 August 2000.
- (4) A complying development certificate issued for any complying development is to be

subject to the conditions for the development specified in *Development Control Plan No 43* adopted by the Council, as in force when the certificate is issued.

11 Subdivision of land—general

- (1) Except as provided by subclause (2), a person shall not subdivide land to which this plan applies without the consent of the Council.
- (2) The consent of the Council is not required for a subdivision for any one or more of the following purposes:
 - (a) to enable the opening of a public road (not involving the creation of an allotment which does not comply with a development standard specified in this plan) or to widen a public road,
 - (b) to make minor adjustments to common property boundaries provided no additional allotment of land is created,
 - (c) to amalgamate existing allotments otherwise than as specified in paragraph (d),
 - (d) to enlarge the area of an allotment of land within Zone No 1 (a) or 1 (v) by amalgamating the allotment with another allotment,
 - (e) to rectify an encroachment upon an existing allotment,
 - (f) to facilitate the creation of a public reserve, or
 - (g) to excise from an allotment land which is, or is intended to be, used for public purposes, including drainage purposes, bushfire brigade services or other rescue services or public conveniences.
- (3) The council shall not grant consent to the subdivision of any land where a reticulated sewerage system is not available unless the Council is satisfied that the land the subject of the application is suitable for disposing and containing effluent on site.
- (4) Despite the other provisions of this plan, the Council may consent to the subdivision of a parcel of land that is within more than one zone if the proposed subdivision (except for any residue allotment) meets the minimum lot size requirements for the zone in which the greater part of the land concerned is situated.

12 Subdivision of land within Zone No 1 (a)

- (1) Subject to this clause, land within Zone No 1 (a) shall not be subdivided unless each allotment to be created has an area of not less than 40 hectares.
- (1A) The Council may consent to a subdivision for the purpose of adjusting boundaries of allotments of land within Zone No 1 (a) that results in the creation of one or more allotments of less than 40 hectares in area, but only if the subdivision will not:

- (a) create any additional allotments of land, or
 - (b) give rise to any additional right to erect a dwelling-house, or
 - (c) prejudice the agricultural capability of the land.
- (2) The Council may refuse consent to a subdivision of land which creates allotments of land of not less than 40 hectares in area where it is of the opinion, having regard to the nature and rural capability and suitability of the land, that the allotments are of insufficient size to allow reasonable agricultural use or use for another permitted purpose.
- (3) The Council may grant consent to a subdivision of land which creates allotments of land of less than 40 hectares in area where the allotment is used for a permissible purpose other than agriculture, forestry or a dwelling-house (not being a dwelling-house ancillary to the purpose) and in the opinion of the Council:
- (a) the land does not comprise any prime crop and pasture land or any land that is or could be used for a form of agriculture common in the area, and
 - (b) the area of each allotment to be created by the subdivision is appropriate having regard to the purpose for which it is being created.
- (4) The Council may consent to the creation of an allotment of not more than 2 hectares in area intended to be used primarily for the purpose of a dwelling-house if:
- (a) the allotment is to be excised from an existing holding which is, and has remained, in the same ownership as it was prior to 31 December 1984,
 - (b) the existing holding has an area of not less than 10 hectares,
 - (c) not more than one such allotment is created from an existing holding which has an area of less than 80 hectares,
 - (d) not more than 2 such allotments are created from an existing holding which has an area of or in excess of 80 hectares, and
 - (e) the Council is of the opinion that the creation of such an allotment or allotments is desirable, having regard to:
 - (i) the characteristics of the land, including its agricultural value,
 - (ii) the proposed subdivision pattern and the nature and intensity of rural dwelling-house development in the vicinity,
 - (iii) the desirability of the allotment or allotments and the residue of the existing holding being of adequate size for the proposed and existing use respectively, and

(iv) whether the proposed subdivision and the subsequent erection of dwelling-houses is unlikely to adversely affect existing or potential agricultural production on the land or on other land in the vicinity.

(5) subclause (4) does not apply to Lot 1, DP 986143 and Part Lot 133, DP 755254 (being Lots 9, 12, 13, 14, 15 and 16—Barraba Subdivision).

13 Dwelling-houses—Zone No 1 (a)

(1) Except as provided by subclause (2) or (4) or by clause 24, one, but not more than one, dwelling-house may be erected on land within Zone No 1 (a) if the land:

(a) has an area of not less than 40 hectares,

(b) comprises an allotment created by a subdivision referred to in clause 12 (4) (including any residue of the existing holding), or

(c) comprises the whole of a vacant existing holding the area of which is less than 40 hectares and the Council is satisfied that:

(i) there will be adequate vehicular access to the dwelling-house,

(ii) the erection of the dwelling-house will not create or increase ribbon development along a main or arterial road, and

(iii) a water supply and facilities for the removal of sewage and drainage are available or, where any such supply or facility is not so available and the Council considers that such a supply or facility should be provided, arrangements satisfactory to the Council have been made for the provision of that supply or facility to the existing holding.

(1A) If a residue allotment of land within Zone No 1 (a) having an area of less than 40 hectares is created by an amalgamation referred to in clause 11 (2) (d), a dwelling-house may be erected on the residue allotment only if:

(a) a dwelling-house could have been erected, pursuant to subclause (1), on the allotment existing prior to the amalgamation, or

(b) the amalgamation creates an allotment that meets the criteria set out in subclause (1),

and the allotment is not an allotment originally created under clause 12 (4) whose area, as a result of the amalgamation, exceeds 2 hectares.

(2) In addition to a dwelling-house permitted by subclause (1), one additional dwelling-house may, with the consent of the Council, be erected where that additional dwelling-house is or will be actually occupied by a person employed or engaged by the owner of the land in the actual use of the land for the purpose of agriculture.

- (3) A dwelling-house may be erected on an allotment of land created by a subdivision referred to in clause 12 (3) where the use of the dwelling-house is ancillary and subsidiary to the purpose for which the allotment is used.
- (4) Nothing in this clause shall prevent the erection of a dwelling-house on land on which another dwelling-house is erected where the dwelling-house to be erected is intended to replace the original dwelling-house and is not occupied until the original dwelling-house is demolished or its occupation has permanently ceased.
- (5) If an allotment of land within Zone No 1 (a) is lawfully created pursuant to an objection under *State Environmental Planning Policy No 1—Development Standards* to a provision of this plan, the Council may consent to the erection of a dwelling-house on the allotment concerned despite any other provision of this plan that could also be the subject of an objection under that Policy.

14 Subdivision of land within Zone No 1 (c)

- (1) Subject to this clause, land within Zone No 1 (c) shall not be subdivided unless each proposed allotment has an area determined by the Council having regard to:
 - (a) the availability of reticulated water services or, if those services are unavailable, the capacity of the land to provide an adequate domestic water supply without adversely affecting existing surrounding downstream water supply,
 - (b) where connection to a sewerage system is not required in the opinion of the Council, the ability of the land to accommodate disposal of domestic waste,
 - (c) the standard and capacity of public roads serving the land relative to the likely volume of traffic to be generated as a consequence of the density of the subdivision, and the means available to improve roads to a standard appropriate to the level of traffic likely to generated,
 - (d) the availability of other utility services and social services relative to the likely demand for those services and the costs of their provision,
 - (e) the likely impact the development will have on other land, and in particular on land located between the land to be subdivided and major public roads and utility services,
 - (f) the nature and topography of the land as related to the density of the subdivision,
 - (g) whether any source of pollution in the locality requires larger allotments to enable separation of dwellings from that source,
 - (h) the desirability of providing a range and a mix of allotment sizes,
 - (i) the need to maintain a semi-rural character in the area,

- (j) the purpose for which the land is to be used after the subdivision, and
 - (k) the likely impact the development will have on the land's capability to support that development without suffering land degradation, including erosion.
- (2) Subject to clause (3), the Council shall not consent to the subdivision of land within Zone No 1 (c) which creates allotments the Council is satisfied will be used for the erection of dwelling-houses where those allotments have an area of less than:
- (a) in the case of an allotment to be connected to a reticulated water supply—4,000 square metres, or
 - (b) in any other case—2 hectares.
- (3) In considering and application for consent to a subdivision of land within Zone No 1 (c), the Council shall have regard to:
- (a) where the land may, in the opinion of the Council, be suitable for long term urban development, whether the subdivision has been designed to facilitate its possible future resubdivision,
 - (b) whether it is possible to construct a dam on each allotment, and
 - (c) whether the subdivision enables the subsequent erection of dwelling-houses in a manner that appropriately relates dwelling-houses to each other and to the topography of the land.

14A Dwelling-houses—Zone No 1 (c)

- (1) One, but not more than one, dwelling-house may be erected on land within Zone No 1 (c) that has an area of not less than 4,000 square metres, if it is land on which no dwelling-house is erected and whether or not it comprises an existing holding.
- (2) One, but not more than one, dwelling-house may be erected on land within Zone No 1 (c) that has an area of less than 4,000 square metres, if it is land on which no dwelling-house is erected and which comprises an existing holding and the Council is satisfied that:
 - (a) water supply and facilities for the removal of sewage and drainage are available, or
 - (b) arrangements satisfactory to the Council have been made for the provision of a water supply and facilities for the removal of sewage and drainage.
- (3) Nothing in this clause prevents the creation or erection of a dual occupancy building in accordance with clause 24.

14B Subdivision of land within Zone No 1 (c2)

- (1) Land within zone No 1 (c2) shall not be subdivided for residential purposes unless each proposed allotment has an area not less than four (4) hectares.
- (2) In assessment of an application to subdivide land within the 1 (c2) zone Council will have regard to:
 - (a) The capacity of the site to accommodate on-site effluent waste disposal.
 - (b) The standard and capacity of the public roads serving the land.
 - (c) The availability of utility services and community services and facilities and cost of service provision.
 - (d) Natural and man made constraints within or adjoining the site.
 - (e) The desirability of providing a range of allotment sizes.
 - (f) The need to minimise vegetation clearing.

14C Dwelling-houses within Zone No 1 (c2)

- (1) A person may erect a dwelling-house on an allotment of land within Zone No 1 (c2) if the allotment has an area of not less than 4 hectares or the allotment was created pursuant to clause 12 (4).
- (2) Despite subclause (1), a person may erect one dwelling on an existing allotment that is less than 4 hectares and on which no dwelling-house or attached or detached dual occupancy exists if the allotment constitutes the whole or a part of an existing holding under this plan. Only one such dwelling may be erected for each existing holding.
- (3) Not more than one attached dual occupancy may be created or erected pursuant to clause 24 on an allotment with an area of less than 4 hectares forming the whole or part of an existing holding within Zone No 1 (c2) if there is no other dwelling-house or dual occupancy on the existing holding.

15 Subdivision of land within Zone No 1 (v)

- (1) The Council must not consent to a subdivision of land within Zone No 1 (v) under the [Conveyancing Act 1919](#) unless each allotment to be created has an area of not less than 40 hectares.
- (2) (Repealed)

16 Dwelling-houses—Zone No 1 (v)

- (1) Except as provided by subclause (2) or (3) or by clause 24, one, but not more than one, dwelling-house may be erected on land within Zone No 1 (v) if the land:

- (a) has an area of not less than 40 hectares, or
 - (b) has an area of less than 40 hectares and comprises the whole of an existing holding, being land on which no dwelling-house is erected, but only if the Council is satisfied that:
 - (i) there will be adequate vehicular access to the dwelling-house,
 - (ii) the erection of the dwelling-house will not create or increase ribbon development along a main or arterial road, and
 - (iii) a water supply and facilities for the removal of sewage and drainage are available or, where any such supply or facility is not so available and the Council considers that such a supply or facility should be provided, arrangements satisfactory to the Council have been made for the provision of that supply or facility to the existing holding.
- (1A) If a residue allotment of land within Zone No 1 (v) having an area of less than 40 hectares is created by an amalgamation referred to in clause 11 (2) (d), a dwelling-house may be erected on the residue allotment only if:
- (a) a dwelling-house could have been erected, pursuant to subclause (1), on the allotment existing prior to the amalgamation, or
 - (b) the amalgamation creates an allotment that meets the criteria set out in subclause (1),
- and the allotment is not an allotment originally created under clause 12 (4) whose area, as a result of the amalgamation, exceeds 2 hectares.
- (2) In addition to a dwelling-house permitted by subclause (1), one additional dwelling-house may, with the consent of the Council, be erected where that additional dwelling-house is or will be occupied by a person employed or engaged by the owner of the land in the actual use of the land for the purpose of managing a commercial vineyard or for the purpose of managing tourist-related development having vineyard tourist accommodation building components.
 - (3) Nothing in this clause prevents the erection of a dwelling-house on land on which another dwelling-house is erected where the dwelling-house to be erected is intended to replace the original dwelling-house and is not occupied until the original dwelling-house is demolished or its occupation has permanently ceased.
 - (4) Nothing in this clause prevents the erection of one, but not more than one, dwelling-house on vacant land (including any residue of the existing holding) which was previously subdivided under clause 12 (4) when the land was within Zone No 1 (a).

17 Subdivision of land within Zone No 1 (v) in conjunction with major tourism

development

- (1) This clause applies to land shown cross-hatched on the map.
- (2) Notwithstanding clauses 15 (1) and 16 (1), the Council may grant consent to the subdivision of land and the erection of dwelling-houses, villas, duplexes and the like on the allotments so created where the subdivision is, in the opinion of Council, required as an integral part of a major tourist recreation facility.
- (3) The provisions of clauses 16 (2) and 24 shall not apply to or in respect of any allotments created or buildings erected in accordance with the provisions of subclause (2).
- (4) If consent to development to which this clause applies has not been granted within 3 years after the day on which *Cessnock Local Environmental Plan 1989 (Amendment No 39)* took effect, this clause ceases to have effect.
- (5) Nothing in subclause (4) prevents the Council from consenting to the carrying out of alterations or extensions to or the rebuilding of a building or work being used for a purpose consented to under this clause.

18 Building lines

Where land within a zone has frontage to a road, a building erected on the land shall be set back from the nearest alignment of the road a distance determined by the Council having regard to:

- (a) the nature, scale and function of the building,
- (b) the maximisation of sight distances for drivers using the road, including visibility of points of access to the road,
- (c) the minimisation of distractions to drivers using the road, and
- (d) any possible future need to alter the road alignment.

19 Dwelling-houses fronting unformed or unmade roads

Notwithstanding clause 9, a person shall not, except with the consent of the Council, erect a dwelling-house on land within any zone that has access only by way of an unformed or unmade road.

20 Clearing

- (1) In this clause, **clearing** means the removal of trees and other vegetation (other than any noxious tree, shrub or bush), but does not include the removal of incomplete regrowth from land previously cleared for agricultural use, or the cutting down of individual trees for farm purposes such as fencing or firewood, which may be carried out without the consent of the Council.

- (2) Subject to this clause, land within Zone No 1 (a), 1 (f) or 1 (v) may be cleared for the purposes of agriculture, forestry, air navigation safety, land survey, fencing or bushfire hazard reduction (including the maintenance and construction of fire trails, and the removal by burning or mechanical clearing of firebreaks or fire hazards, carried out or arranged by the Cessnock District Bush Fire Protection Committee) without the consent of the Council and for any other purpose with the consent of the Council.
- (3) Subclause (2) does not authorise the clearing of land within Zone No 1 (v) for the purposes of agriculture or commercial vineyards without the consent of the Council.
- (3A) Nothing in subclauses (1), (2) or (3) authorises the clearing of land within Zone No 1 (v) within areas designated as native vegetation corridors in the development control plan for the Vineyards District adopted by the Council.
- (4) Nothing in subclause (1) or (2) authorises the clearing of land in contravention of any other Act or instrument made under an Act concerned with soil erosion, protection of riverbank vegetation or catchment areas or the like.
- (5) A person shall not, without the consent of the Council, clear land (other than for the purposes of bushfire hazard reduction) within Zone No 1 (a), 1 (c) or 1 (c2) and which is identified as Class VII or Class VIII on the Rural Capability Map prepared by the Soil Conservation Service as part of the Land Resources Study—City of Greater Cessnock 1982.
- (6) In granting consent to an application for clearing as referred to in subclause (5), the Council may attach conditions to the consent intended to minimise the risk of soil erosion.
- (7) Land referred to in clause 42 shall not be cleared for any purpose except with the consent of the Council.
- (8) a person shall not, without the consent of the Council, clear land within zone no 1 (c) or 1 (c2), except for the purpose of land survey, fencing on the land or bushfire hazard reduction carried out or advised by the Cessnock District Bushfire Management Committee.

21 Development on main and arterial road frontages—Zone No 1 (a)

- (1) This clause applies to land within Zone No 1 (a):
 - (a) having frontage to a main or arterial road,
 - (b) which otherwise relies on a main or arterial road for its sole means of access, or
 - (c) which has access to a road which intersects with a main or arterial road, where the point of access is within 90 metres of the intersection of the road and the main or arterial road.

- (2) The Council shall not grant consent to development on land to which this clause applies unless it is satisfied that:
- (a) the development by its nature, intensity or the volume and type of traffic likely to be generated is unlikely to constitute a traffic hazard or to materially reduce the capacity and efficiency of the main or arterial road,
 - (b) the development is of a type that (whether or not because of the characteristics of the land on which it is proposed to be carried out) justifies a location in proximity to a main or arterial road,
 - (c) the location, standard and design of access points, and on-site arrangements for vehicle movement and parking, ensure that through traffic movements on the main or arterial road are not impeded, and
 - (d) the development will not prejudice future improvements to or realignment of the main or arterial road, as may be indicated to the Council from time to time by the Roads and Traffic Authority.
- (3) Notwithstanding the provisions of clause 9 but subject to this clause, the Council may grant consent to development on land to which this clause applies which has frontage to a main or arterial road for the purposes of providing services to motorists, tourists and the travelling public, including development for the purposes of a motel, general store, refreshment room, tourist recreation facility, transport terminal or service station, where:
- (a) the Council is satisfied that demand for the development exists, having regard to the nature and volume of traffic using the road, the location of and distance from existing development of a similar type and the location of and distance from other land on which development of a similar type may be carried out, and
 - (b) the development comprises or is part of a planned roadside service area that has been located and designed so as to minimise interference with the free flow of traffic on the road and to minimise traffic hazards.

22 Development on main or arterial road frontages—Zone No 1 (v)

The Council shall not consent to development on land within Zone No 1 (v) which has frontage to an arterial road unless:

- (a) access to that land is provided by a road other than the arterial road, wherever practicable, and
- (b) in the opinion of the Council, the safety and efficiency of the arterial road will not be adversely affected by:
 - (i) the design of the access to the proposed development,

- (ii) the emission of smoke or dust from the proposed development, and
 - (iii) the nature, volume or frequency of vehicles using the arterial road to gain access to the proposed development, and
- (c) no vehicular crossings will be created over land shown by heavy black dashes on the map, except where the Council is satisfied that paragraph (b) will still be complied with.

23 (Repealed)

24 Dual occupancy

- (1) **Definitions** In this clause:

attached dual occupancy means a building containing two dwellings only.

detached dual occupancy means two detached dwelling-houses only on one allotment of land.

floor space ratio, in relation to a building, means the ratio of the gross floor area of the building (exclusive of the area of any carport or garage) to the area of the allotment on which the building is erected.

- (2) **Land to which clause applies** This clause applies to all land in the City of Cessnock within Zone No 1 (a), 1 (c), 1 (c1), 1 (c2), 1 (v), 2 (a), 2 (b) or 2 (c).
- (3) **Dual occupancy allowed only with consent** A person may, but only with the consent of the Council:
- (a) alter or add to a dwelling-house so as to create an attached dual occupancy, or
 - (b) erect an attached or a detached dual occupancy,
- on land to which this clause applies.
- (4) **Restrictions on detached dual occupancies** The Council shall not grant consent to development resulting in a detached dual occupancy unless:
- (a) the land on which the development is to be carried out is within Zone No 2 (a), 2 (b) or 2 (c), and
 - (b) the area of the allotment on which the development is to be carried out is not less than 600 square metres, and
 - (c) the floor space ratio of the two dwelling-houses on the allotment will not be greater than 0.5:1, and
 - (d) arrangements satisfactory to the Council have been made for the provision of a water supply and for the disposal of sewage and stormwater from the land.

- (5) **Restrictions on attached dual occupancies** The Council shall not grant consent to development resulting in an attached dual occupancy unless:
- (a) the area of the allotment on which the development is to be carried out is not less than 400 square metres, and
 - (b) in the case of development where a dwelling-house is to be altered or added to so as to create an attached dual occupancy, the floor space ratio of the proposed attached dual occupancy will not be greater than the floor space ratio of the dwelling-house before it was altered or added to, or 0.5:1, whichever is the greater, and
 - (c) in the case of development where a new attached dual occupancy is to be erected, the floor space ratio of the proposed attached dual occupancy will not be greater than 0.5:1, and
 - (d) if the development is to be carried out on land within Zone No 2 (a), 2 (b) or 2 (c), arrangements satisfactory to the Council have been made for the provision of a water supply and for the disposal of sewage and stormwater from the land.
- (6) **Additional restrictions on attached dual occupancies in rural zones** The Council shall not grant a consent referred to in subclause (3) that will result in an attached dual occupancy on land within Zone No 1 (a), 1 (c), 1 (c1), 1 (c2) or 1 (v) unless:
- (a) the area of the allotment on which the development is proposed to be carried out is not less than the minimum area (if any) prescribed by this plan for the erection of a dwelling-house on the land, and
 - (b) the proposed building as altered, added to or erected will not exceed 2 storeys in height above ground level, and
 - (c) arrangements satisfactory to the Council have been made for the provision of a water supply to each dwelling and for the disposal of sewage and stormwater from each dwelling, and
 - (d) the granting of consent would not result in there being more than 2 dwellings on the allotment.
- (7) **Restrictions on residential flat buildings not to apply** The provisions of this plan relating to residential flat buildings do not apply to a dwelling-house altered, added to or erected, or proposed to be altered, added to or erected, pursuant to this clause.

25 Development in flight paths

- (1) A person shall not erect a building on land that is within the flight path of an airport to a height above the obstacle height limitation surface for that airport without the consent of the Council.

- (2) The Council shall not grant consent under subclause (1) unless it is satisfied, after consultation with the proper officers of the Commonwealth Department of Transport and Communications, that the building will not constitute an obstruction, hazard or potential hazard to aircraft flying in the vicinity.
- (3) In granting consent under subclause (1), the Council shall give consideration to any noise exposure forecasts prepared by officers of the Commonwealth Department of Transport and Communications and to whether the proposed use of the building will be adversely affected by exposure to aircraft noise.
- (4) For the purposes of this clause, the flight path of an airport shall include such land as is determined by the proper officers of the Commonwealth Department of Transport and Communications and communicated to the Council.

25A Development in areas subject to airport noise

- (1) This clause applies to certain land at Nulkaba, being land affected by Australian Noise Exposure Forecast contours of between 20 and 25.
- (2) A person shall not, without the consent of the Council, erect a building for residential purposes, or intended for human occupation, on land to which this clause applies.
- (3) The Council shall not grant consent to the erection of such a building unless it is satisfied that measures will be taken which accord with section 3 of AS 2021 and that there is incorporated in the building's envelope an extent of aircraft noise reduction estimated in accordance with clause 3.2.2 of AS 2021.
- (4) In this clause, **AS 2021** means the document titled "*Acoustics—Aircraft Noise Intrusion—Building Siting and Construction*" published by Standards Australia.

26 Advertisements

- (1) A commercial sign may be erected or displayed without the consent of the Council on any land other than land within Zone No 1 (v).
- (2) An advertising structure larger than a commercial sign may be erected:
 - (a) only on land within Zone No 3 (a), 3 (b), 3 (c), 4 (a), 4 (b) or 5 (a), and
 - (b) only if it is to be the sole such structure on the land, and
 - (c) only for the purpose of displaying a notice relating to the purpose for which the land is being lawfully used, and
 - (d) only with the consent of the Council.
- (3) An advertising structure may be erected and an advertisement displayed on it without the consent of the Council for a period not exceeding two months in any twelve months on any land other than land within Zone No 1 (v). The Council may take such

steps as it considers appropriate or necessary to require the removal of the advertisement and the advertising structure at the expiry of the two-month period.

27 Development principles—Zone Nos 3 (a) and 3 (c)

The Council shall not grant consent to development on land within Zone No 3 (a) or 3 (c) unless it is satisfied that:

- (a) the development is designed and arranged in a manner which:
 - (i) achieves an effective relationship with adjoining development, having regard to the functions of the centre in which the development is proposed to be situated,
 - (ii) wherever practicable, contributes to a pedestrian network and provides amenity and comfort for pedestrians,
 - (iii) retains opportunities for through site links for pedestrians,
 - (iv) wherever practicable, enables integration and connection of parking areas, including access for pedestrians,
 - (v) contributes to an overall improvement to the character, appearance and functioning of the centre in which the land is situated, and
 - (vi) is compatible with traffic management (including service vehicles) proposals adopted by the Council for the centre in which the land is situated, and
- (b) the development, by its nature, orientation, height, design and operation will not adversely affect the amenity of any residential development in the vicinity.

28 Roads, drainage, recreation areas and parking

- (1) Nothing in clause 9 shall prevent the Council from, or require the Council to obtain its own consent for, carrying out development on land within any zone for the purposes of roads, stormwater drainage, recreation areas, landscaping, gardening, bushfire hazard reduction or parking.
- (2) A person may, with the consent of the Council, (except in the case of landscaping and gardening, which may be carried out without consent) carry out development on land within any zone for a purpose referred to in subclause (1).
- (3) The reference in subclause (1) to the carrying out of development for the purpose of roads includes a reference to the winning of extractive material by the Council for the purpose of road construction.

29 Community use of school facilities or sites

- (1) Where land to which this plan applies is used for the purposes of an educational establishment, the site and facilities of the establishment may, with the consent of the

Council, be used for the purposes of meeting rooms, public halls, public libraries, entertainment, sport or recreation or for any other community purpose, whether or not any such use is a commercial use of the land.

- (2) Nothing in this clause requires development consent to be granted for the carrying out of development on any land if that development could, but for this clause, be carried out on that land without development consent.

30 Preservation of trees

The powers conferred on the Council in pursuance of clause 8 of the *Environmental Planning and Assessment Model Provisions 1980* shall not apply to trees:

- (a) in a state forest or on land reserved as a timber reserve within the meaning of the *Forestry Act 1916*,
- (b) required to be lopped in accordance with Regulation 38 or 39 of the *Overhead Line Construction and Maintenance Regulations 1962*,
- (c) in any Water Catchment Area under the control of an authority responsible for the water supply, or
- (d) in a proclaimed national park.

31 Flood affected land

A person shall not carry out development on land within a floodway unless the Council is satisfied that the carrying out of the development is not likely:

- (a) to impede the flow of flood waters on the land,
- (b) to imperil the safety of persons on the land in the event of the land being inundated with flood waters,
- (c) to aggravate the consequences of flood waters flowing on the land with regard to erosion, siltation and the destruction of vegetation,
- (d) to have an adverse effect on the water table of the land or of land in its immediate vicinity,
- (e) to have an adverse effect on riverbank stability, or
- (f) to increase the level or flow of flood waters on other land.

32 Land subject to bushfire hazards

- (1) The Council shall not grant consent to any development on land to which this plan applies which is subject to bushfire hazards until it has made an assessment of:
- (a) the nature and degree of the hazard, relative to the appropriate measures

available to reduce the hazard,

- (b) in the case of a subdivision of land within Zone No 2 (a), 2 (b) or 2 (c):
 - (i) whether the subdivision has been designed to enable the siting of any subsequent buildings in areas of least risk,
 - (ii) the necessity for the inclusion of a perimeter road in the subdivision, or on land adjoining the subdivision, for the purposes of providing a fire break and access for fire fighting vehicles,
 - (iii) the necessity to provide for the creation of a fire radiation zone managed for hazard reduction and located on the bushland side of the perimeter road,
 - (iv) the necessity to increase the depth of allotments of adjoining land which may be the source of bushfire hazard, whether or not defined by a perimeter road, to enable an appropriate setback for the building line, and
 - (v) whether the subdivision has been designed in a manner which minimises the length of the hazard perimeter and avoids configurations which are vulnerable in the event of bushfires,
 - (c) in the case of a subdivision of land within Zone No 1 (a), 1 (a1), 1 (c), 1 (c1) 1 (c2) or 1 (c2):
 - (i) the necessity for the inclusion of a vehicular road through that land to which individual access roads are linked, and
 - (ii) the necessity for the inclusion of fire trails which link individual access roads or a through road, or both,
 - (d) in the case of the erection of a building:
 - (i) whether the building has been sited in a manner which reduces bushfire hazard, and
 - (ii) the necessity to require fireproof building materials,
 - (e) the means of access for fire fighting vehicles, and
 - (f) the means available to ensure that fire protection measures including fire radiation zones and hazard reduction are appropriately maintained.
- (2) Notwithstanding subclause (1), the Council may refuse consent to a development application where it is of the opinion that the development is inappropriate, having regard to bushfire hazard affecting the land the subject of the application.

32A Brothels

Development for the purpose of a brothel may be carried out, but only with development consent, on land within Zone No 4 (a) or 4 (b), despite any other provision of this plan.

33 Temporary uses

The Council may grant consent to the temporary development of any land, including development for the purposes of temporary accommodation, construction camps, construction depots, markets, fetes, circuses, public purposes and the like, for such period as may be determined by the Council, where it is satisfied that:

- (a) the development, by virtue of its location, scale, site landscaping and treatment, and temporary nature, is unlikely to significantly conflict with the purpose of the zone applying to the land on which the development is proposed to be carried out,
- (b) appropriate arrangements have been made for any necessary water supply, sewage disposal and stormwater drainage, other utility services, access to and parking on that land,
- (c) the development is unlikely to interfere with the amenity of any residential development or rural dwellings in the vicinity, and
- (d) appropriate arrangements have been made for the reinstatement of the land following cessation of the development.

34 Acquisition and development of land within Zone No 5 (d) or 6 (b)

- (1) The owner of any land within Zone No 5 (d) or 6 (b) may, by notice in writing, require the Council to acquire the land.
- (2) On receipt of a notice, the Council must acquire the land.
- (3) A person may, with the consent of the Council carry out development on land within Zone No 5 (d) or 6 (b) if the Council is satisfied that the development will not adversely affect the usefulness of the land for the purposes for which it has been reserved.

35 Acquisition and development of land reserved for roads

- (1) The owner of any land within Zone No 5 (c) may, by notice in writing, require the RTA to acquire the land.
- (2) On receipt of such a notice, the RTA must acquire the land if:
 - (a) the land is vacant, or
 - (b) the land is not vacant but:
 - (i) the land is included in a 5 year works programme of the RTA current at the

time of the receipt of the notice, or

- (ii) the RTA has decided not to give concurrence under subclause (3) to an application for consent to the carrying out of development on the land, or
- (iii) the RTA is of the opinion that the owner of the land will suffer hardship if the land is not acquired within a reasonable time,

but the RTA is not required to acquire the land if it might reasonably be required to be dedicated for public road.

- (3) A person may, with the consent of the Council and the concurrence of the RTA, carry out development on land within Zone No 5 (c):
 - (a) for a purpose for which development may be carried out on land in an adjoining zone, or
 - (b) for any other purpose which is compatible with development which may be carried out on land in an adjoining zone, or
 - (c) for any purpose of a temporary nature.
- (4) In deciding whether to grant concurrence to proposed development under this clause, the RTA must take the following matters into consideration:
 - (a) the need to carry out development on the land for the purpose for which the land is reserved,
 - (b) the imminence of acquisition,
 - (c) the likely additional cost to the RTA resulting from the carrying out of the proposed development.
- (5) Land acquired under this clause may be developed, with the consent of the Council, for any purpose, until such time as it is required for the purpose for which it was acquired.

(6) In this clause:

the RTA means the Roads and Traffic Authority constituted under the [Transport Administration Act 1988](#).

vacant land means land on which, immediately before the day on which a notice under subclause (1) if given, there were no buildings other than fences.

36 Items of the environmental heritage

- (1) A person shall not, in respect of a building, work, relic or place that is an item of the environmental heritage:

- (a) demolish, renovate or extend that building or work,
- (b) damage or despoil that relic or place or any part of that relic or place,
- (c) excavate any land for the purpose of exposing or removing that relic,
- (d) erect a building on the land on which that building, work or relic is situated or the land which comprises that place, or
- (e) subdivide the land on which that building, work or relic is situated or the land which comprises that place,

except with the consent of the Council.

(2) The Council shall not grant that consent unless it has made an assessment of:

- (a) the significance of the item as an item of the environmental heritage of the City of Cessnock,
- (b) the extent to which the carrying out of the development in accordance with the consent would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item and its site,
- (c) whether the setting of the item and, in particular, whether any stylistic, horticultural or archaeological features of the setting should be retained, and
- (d) whether the item constitutes a danger to the users or occupiers of that item or to the public.

37 Development in the vicinity of items of the environmental heritage

The Council shall not grant consent to a development application to carry out development in the vicinity of an item of the environmental heritage unless it has made an assessment of the effect which the carrying out of that development will have on the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item of the environmental heritage and its setting.

38 Conservation area

(1) A person shall not, in respect of a conservation area:

- (a) demolish, extend or change the outside of a building or work within that area, including changes to the outside of a building or work that involves the repair or the painting, plastering or other decoration of the outside of the building or work,
- (b) damage or despoil a relic or part of a relic within that area,
- (c) excavate any land for the purpose of exposing or removing a relic within that area,
- (d) erect a building within that area, or

(e) subdivide land within that area,

except with the consent of the Council.

(2) The Council shall not grant that consent unless it has made an assessment of:

(a) the extent to which the carrying out of the development in accordance with the consent would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the conservation area, and

(b) whether a refusal to grant consent would constitute a danger to the users or occupiers of that land or the public.

(3) The Council shall not grant that consent, being a consent to erect a new building or to alter the exterior of an existing building, unless the Council has made an assessment of:

(a) the pitch and form of the roof,

(b) the style, size, proportion and position of the openings for windows and doors, and

(c) whether the colour, texture, style, size and type of finish of the materials to be used on the exterior of the building are compatible with the materials used in the existing buildings in the conservation area.

39 Heritage Council to be given prior notice of demolition consent

Where a person makes a development application to demolish a building or work that is an item of the environmental heritage, the Council shall not grant consent to that application until 28 days after the Council has notified the Secretary of the Heritage Council of its intention to do so.

40 Advertising of heritage applications

(1) Subject to subclause (2), the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:

(a) the demolition of a building or work within a conservation area,

(b) the demolition of a building or work that is an item of the environmental heritage, and

(c) the use of a building or land referred to in clause 41 (1) for a purpose which, but for that clause, would be prohibited under this plan,

in the same way as those provisions apply to and in respect of designated development.

(2) Subclause (1) does not apply to the partial demolition of a building or work where, in

the opinion of the Council, the partial demolition is of a minor nature and does not adversely affect the significance of the building or work as part of the environmental heritage of the City of Cessnock.

41 Conservation incentives relating to heritage items

- (1) Nothing in this plan prevents a person, with the consent of the Council, from carrying out development comprising:
 - (a) the use for any purpose of a building within a conservation area or of the land on which the building is erected, or
 - (b) the use for any purpose of a building that is an item of the environmental heritage or of the land on which that building is erected.
- (2) The Council shall not grant such a consent unless it is satisfied that:
 - (a) the use would have little or no adverse effect on the amenity of the area, and
 - (b) conservation of the building depends on the Council granting consent in pursuance of this subclause.
- (3) The Council, when considering an application to erect a building on the land upon which there is a building which is an item of the environmental heritage, may exclude from its calculation of the floor space of the buildings erected on the land the floor space of the item of the environmental heritage:
 - (a) for the purposes of determining the floor space ratio, and
 - (b) for the purposes of determining the number of parking spaces to be provided on the site,but only if the Council is satisfied that the conservation of the building depends upon the Council granting consent.

42 Land having environmental conservation value

- (1) This clause applies to land shown hatched on the map as being land of environmental conservation value.
- (2) The Council shall not grant consent to development on land to which this clause applies unless it is satisfied that the development will not detract from the particular environmental qualities of the land, as specified in a development control plan.

43 Suspension of certain laws

- (1) For the purposes of enabling development to be carried out in accordance with this plan (as in force at the time development is carried out) or in accordance with a consent granted under the Act, or in relation to development within any zone (other

than Zone No 2 (a)), the operation of any covenant, agreement or instrument imposing restrictions as to the erection or use of buildings for certain purposes or as to the use of land for certain purposes, to the extent necessary to serve that purpose, shall not apply to any such development.

- (2) Nothing in subclause (1) shall affect the rights or interests of any statutory authority under any registered instrument.
- (3) For the purpose of enabling development to be carried out in accordance with clause 24 or in accordance with a consent granted under the Act in relation to that clause, section 37 of the *Strata Titles Act 1973*, to the extent necessary to serve that purpose, shall not apply to the development.
- (4) Pursuant to section 28 of the Act, before the making of this clause:
 - (a) the Governor approved of subclauses (1) and (3), and
 - (b) the Minister for the time being administering section 37 of the *Strata Titles Act 1973* concurred in writing in the recommendation for the approval by the Governor of that subclause.

44 Restrictions on access

A road or other means of access to an arterial road shall not be formed without the consent of the Council.

45 Development for certain additional purposes

- (1) Nothing in this plan prevents a person, with the consent of the Council, from carrying out development on land referred to in Schedule 5 for a purpose specified in relation to that land in that Schedule, subject to such conditions (if any) as are so specified.
- (2) Subclause (1) does not affect the application, to or in respect of development to which that subclause applies, of such of the provisions of this plan as are not inconsistent with that subclause or with a consent granted by the Council in respect of the development.
- (3) The reference to an item number in Schedule 5 is a reference to the number indicated on a map showing the location of the land referred to in that item.

46 Development of certain land

- (1) This clause applies to land within Zone No 1 (a1), 1 (c1), 5 (a), 6 (c1) or 7 (d1).
- (2) The Council shall not grant consent to the subdivision of land to which this clause applies unless each allotment created by the subdivision has a minimum area of:
 - (a) in the case of land within Zone No 1 (c1)—1 hectare,

- (b) in the case of land within Zone No—5 (a) at Hungry Creek—1,200 square metres,
and
- (c) in the case of land within Zone No 7 (d1)—80 hectares.
- (3) Notwithstanding subclause (2) (a), the Council shall not consent to the subdivision of land within Zone No 1 (c1), unless the average area of allotments created by the subdivision is not less than 1.5 hectares.
- (4) A person may, with the consent of the Council erect one, but not more than one, dwelling-house on an allotment of land within Zone No 1 (c1).
- (5) The minimum floor level of a dwelling-house referred to in subclause (4) shall be 0.5 metre above the estimated 1 in 100 year flood profile as shown on the map.
- (6) An application for consent to carry out tree planting on land to which this clause applies shall be accompanied by plans and details showing the location, number and type of trees to be planted.
- (7) An application for consent to carry out development of land to which this clause applies shall be accompanied by plans and details showing the existing vegetation and the proposed landscaping of the site, including the number and type of trees and shrubs to be planted.
- (8) A person shall not construct a dam or drainage structure on land to which this clause applies without the consent of the Council.
- (9) A person shall not graze or house livestock on land within Zone No 5 (a), 6 (c1) or 7 (d1).
- (10) A person shall not erect a stockyard on land within Zone No 1 (c1).
- (11) A person shall not use any vehicle on land within Zone No 7 (d1) except for emergencies, purposes associated with permissible utility installations and purposes associated with the maintenance of fencing, fire trails and fire hazard reduction.

47 Development within mine subsidence districts

- (1) The Council shall not grant consent to development on land within a mine subsidence district except with the concurrence of the Mine Subsidence Board.
- (2) In determining whether to grant concurrence under subclause (1), the Mine Subsidence Board shall have regard to:
 - (a) whether the proposed development is likely to conflict with the future extraction of coal, and
 - (b) whether the proposed development is under threat of subsidence.

47A Classification and reclassification of public land as operational land

- (1) The public land described in Part 1 of Schedule 6 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*.
- (2) A parcel of land described in Part 2 of Schedule 6 is not a public reserve and the land or any part of the land is not affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants except for:
 - (a) any reservations that except land out of a Crown grant relating to the land, and
 - (b) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).
- (3) In accordance with section 30 of the *Local Government Act 1993*, a parcel of land described in Part 3 of Schedule 6, to the extent (if any) that it is a public reserve, ceases to be a public reserve on the commencement of the relevant amending plan and, by the operation of that plan, is discharged from any trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except for:
 - (c) any reservations that except land out of a Crown grant relating to the land, and
 - (d) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).
- (4) Before the relevant amending plan that inserted the description of a parcel of land into Part 3 of Schedule 6 was made, the Governor approved of subclauses (3) and (5) applying to the land.
- (5) In this clause, **the relevant amending plan**, in relation to a parcel of land described in Part 3 of Schedule 6, is the local environmental plan cited at the end of the description of the parcel.
- (6) Land described in Part 1 of Schedule 2 is not affected by the amendments made by the *Local Government Amendment (Community Land Management) Act 1998* to section 30 of the *Local Government Act 1993*.

48 Development of land at Kurri Kurri

- (1) This clause applies to Part lot 804, DP 46731, off main road 218, Kurri Kurri.
- (2) Notwithstanding any other provision of this plan, a person may, with the consent of the Council and the concurrence of the Director, subdivide the land to which this clause applies so as to create residential allotments.
- (3) In deciding whether to grant concurrence as referred to in subclause (2), the Director shall take into consideration whether the employment level, continued operation and viability of Kurri Kurri Abattoir would be adversely affected as a consequence of the subdivision.

49 Exhibition homes

- (1) A person may, with the consent of the Council, use a dwelling on land within Zone No 2 (a) as an exhibition home.
- (2) The use of a dwelling within any other zone as an exhibition home is prohibited.
- (3) In this clause, **exhibition home** means a dwelling constructed for display purposes to demonstrate aspects of housing form, design, construction, materials and the like, and which may or may not contain ancillary uses such as a site office for use related to house sales.

50 Subdivision of land within zone No 2 (b) at Ellalong

- (1) This clause applies to land within Zone No 2 (b) at Ellalong shown as hatched or cross-hatched on Sheet 6 of the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 30)*".
- (2) Land to which this clause applies shown as hatched must not be subdivided for residential purposes unless each proposed allotment has a minimum area of not less than 1,500 square metres. The Council may require a larger area in the case of identified on-site constraints relating to drainage or domestic effluent disposal.
- (3) No further subdivision for residential purposes is permitted on the land to which this clause applies shown as cross-hatched.

51 Dwellings within Zone No 2 (b) at Ellalong

- (1) This clause applies to land within Zone No 2 (b) at Ellalong shown as hatched or cross-hatched on Sheet 6 of the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 30)*".
- (2) Subject to no significant on-site constraints relating to drainage or domestic effluent disposal, a person may erect a dwelling-house on an allotment of land to which this clause applies shown as hatched, if the allotment has an area of not less than 1,500 square metres.
- (3) Despite subclause (2), a person may erect a dwelling on an existing allotment that is less than 1,500 square metres and on which no dwelling-house exists if the allotment constitutes the whole or a part of an existing holding under this plan. Only one such dwelling may be erected for each existing holding. With subsequent subdivision of a larger holding, the Council will require an increase in the size of the residential lot to meet the minimum 1,500 square metres.
- (4) Subject to no significant on-site constraints relating to drainage or domestic effluent disposal, a person may erect a dwelling on an existing allotment of land to which this clause applies shown as cross-hatched.

52 Tourist development densities within Zone No 1 (v)

- (1) The Council shall not grant consent to tourist development within Zone No 1 (v) which exceeds a tourist accommodation density of one vineyard tourist accommodation unit per hectare of land.
- (2) Notwithstanding the provisions of subclause (1), the Council may consent to tourist development within Zone No 1 (v) to a maximum density of 1.5 vineyard tourist accommodation units per hectare where a proposal seeks to fully comply with the requirements for establishment and maintenance of native vegetation corridors for the full length of property boundaries or creeklines, as relevant, or where a proposal seeks to establish and maintain a minimum of 6000m² of native vegetation on land not affected by native vegetation corridor locations, in accordance with the provisions of the development control plan for the Vineyards District adopted by the Council.
- (3) The Council shall not grant consent to development within Zone No 1 (v) which exceeds a floor space ratio of 0.1:1.
- (4) The Council shall not grant consent to tourist development within Zone No 1 (v) which exceeds the maximum number of permissible vineyard tourist accommodation buildings specified in the following table for the lot:

Lot size (hectares)	Maximum permissible number of vineyard tourist accommodation buildings at 1 vineyard tourist accommodation unit/hectare	Maximum permissible number of vineyard tourist accommodation buildings at 1.5 vineyard tourist accommodation unit/hectare
Up to 10	Not applicable	Not applicable
Exceeding 10 but not exceeding 20	6	8
Exceeding 20 but not exceeding 30	9	12
Exceeding 30 but not exceeding 40	12	16
Exceeding 40	15	20

53 Commercial vineyards within Zone No 1 (v)

- (1) In considering development applications for the establishment of new or expanded commercial vineyards, the Council shall give consideration to those measures contained in the development control plan for the Vineyards District adopted by the Council.
- (2) Development consent is not required for the use of land for replanting and operating a

commercial vineyard where the replanting of that land occurs within 5 years from the date at which the land ceased to be used as a commercial vineyard.

55 Development near zone boundaries

- (1) This clause applies to land which is within 20 metres of a boundary between any two zones.
- (2) Subject to subclause (3), development may, with the consent of the council, be carried out on land to which this clause applies for any purpose for which development may be carried out in the adjoining zone on the other side of the boundary.
- (3) The council shall not consent to development referred to in subclause (2) unless the development is desirable, in the opinion of council, due to planning, design, ownership, servicing or similar requirements relating to the optimum development of land to which this plan applies.
- (4) The council may require that an area of land, sufficient and suitable in the opinion of the council, be provided in the adjoining zone referred to in subclause (2) for the purpose for which the land the subject of the development application is zoned.

Schedule 1 Additional aims for business centres

(Clause 2 (2))

- (a) to promote the continued growth of the major business centres and their support zones, consistent with each centre's function in the hierarchy, and without creating undue oversupply of retail floorspace,
- (b) to provide improved services and facilities for residents and visitors,
- (c) to encourage new development that is likely to stimulate regeneration and redevelopment of existing shopping centres,
- (d) to discourage major out-of-centre development which is likely to detract from existing business centres,
- (e) to work towards improvement of the amenity of centres through increased parking, pedestrian accessibility and comfort, and reduced pedestrian and vehicular conflicts,
- (f) to provide for a full range of business and service opportunities in the major business centres and support zones,
- (g) to promote the arrangements and design of development in business centres and support zones in a manner which is compatible with adjoining residential areas,
- (h) to enable the improvement of the local road network in the city area and to minimise conflicts between through and local traffic, while maintaining convenient access to business facilities for through traffic, and

- (i) to conserve and enhance the environmental heritage of the city of Cessnock.

Schedule 2 (Repealed)

Schedule 3 Items of the environmental heritage

(Clause 5)

- 1 Cessnock Hotel (above awning)—Lot B, DP 369757, No 234 Wollombi Road, (opposite Vincent Street), Cessnock.
- 2 Commercial Bank—Lot 31, DP 588605, No 117 Vincent Street, Cessnock.
- 3 Royal Oak Hotel—Corner Lots 1 and 2, Section D, DP 4653, No 221 Vincent Street, south west corner of Vincent and Snape Streets, Cessnock.
- 4 United Services Hotel—Lot 100, DP 712730, No 167 Vincent Street, (corner Hall Street), Cessnock.
- 5 Court House—Lot 2, Section 6, Maitland Road, near Millfield Street, Cessnock.
- 6 “Marthaville”—Lot A, DP 390312, single storey dwelling, No 200 Wollombi Road, Cessnock.
- 7 Chelmsford Hotel—Corner Lot 6, Section 20, No 122 Lang Street, (south west corner of Lang Street and Victoria Street), Kurri Kurri.
- 8 Kurri Kurri Hotel—Lot 16, Section 20, No 186 Lang Street, (north east corner of Hampden Street and Lang Street), Kurri Kurri.
- 9 Rising Sun Inn—Lots 20, 21 and 25, DP 13266, Wollombi Road, Millfield.
- 10 Richmond Main Colliery—Former Richmond Vale Colliery, Kurri Kurri.
- 11 Ironbark Cottage—Broke Road, at Peppertree Vineyard, Pokolbin.
- 12 General Cemetery—Allandale Road, Cessnock.
- 13 Wilderness Cemetery—Wilderness Road, Rothbury.
- 14 Burial Ground—Peacocks Hill, Debeyers Road, Rothbury.
- 15 Former Bickmore’s Store—corner Lot A, DP 340739, No 84 Lang Street, Kurri Kurri.

Schedule 4 (Repealed)

Schedule 5 Development for certain additional purposes

(Clause 45)

- 1 Special Lease No 41/2, Section 8, corner Edgeworth and Vincent Streets, Aberdare—sheltered workshop.
- 2 Land in Heaton State Forest No 122, Mount Sugarloaf Range, Parish of Mulbring, County of Northumberland—two way radio (country) transmission tower and ancillary building where both

the tower and ancillary building will be either constructed of dark coloured materials with a matt finish or painted in dark colours with a matt finish, so as to blend with the environment.

- 3 Unnumbered lot, DP 959255, in the vicinity of Scott, Morgan and Mayne Streets, North Rothbury, as shown edged heavy black on the map marked *Cessnock Local Environmental Plan 1989 (Amendment No 5)*—subdivision creating 3 lots, each lot having a minimum area of 2000 square metres and the erection of a dwelling-house on each lot so created.
- 4 Part of Lot 811, DP 728985, Hart Road, Loxford, Parish of Heddon, as shown edged heavy black on the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 7)*"—construction of a scrap aluminium recycling facility.
- 5 Land fronting George Booth Drive, Richmond Vale, Parish of Stockrington, as shown edged heavy black on Sheet 1 of the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 13)*"—explosives research and production facility involving:
 - (a) the construction and use of offices, laboratories and workshops for the purposes of research into, and development of, explosives and associated manufacturing processes, methods of application of explosives, related advanced engineering processes and blasting physics, and
 - (b) the production, storage and testing of explosives.
- 6 Lot 50, DP 746450, No 317 Maitland Road, Cessnock and Lot 51, DP 746450, No 311 Maitland Road, Cessnock—the display and sale of new and used motor vehicles.
- 7 Lot 5, DP 749628, Valley View Place, Nulkaba—subdivision creating 3 lots and the erection of a dwelling-house on each lot so created.
- 8 Lot 931, DP 816814, John Renshaw Drive, Blackhill, Parish of Stockrington, as shown edged heavy black on the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 43)*"—waste water treatment facility.
- 9 Lot 41 DP 996992, Lot 548 DP 720699, Lot 48 DP 755215, Pt DP 755215, Pt Lot 59 DP 755215, Pt Lot 547 DP 755215 and closed road, Old Maitland Road and Maitland Road, Cessnock, as shown edged heavy black on the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 51)*"—waste management facilities or works, where any such facility accepts only waste collected in the Cessnock local government area.
- 10 Land being Part Lot 2110, DP 789531 and Part Lot 210, DP 559578, Main Road 220, Pokolbin, as shown edged heavy black on the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 56)*"—Hunter Wine Country Interpretative Centre which is an establishment:
 - (a) predominantly providing information to, and experiences for, people visiting the area or engaged in viticulture, production and sales, including public refreshment rooms, meeting rooms, conference facilities, wine tasting and retail sales, and
 - (b) servicing the wine industry through the provision of office space.
- 11 Lot 85, DP 755211, McMullins Road, East Branxton, as shown edged heavy black on the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 65)*"—subdivision creating 4 lots, each having a minimum area of 4000 square metres, and the erection of a dwelling-house on

Church Street Lots 78 and 79, DP 15069, as shown edged heavy black on Sheet 5 of the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 49)*".

Dixon Street Lots 137-140, DP 12878, as shown edged heavy black on Sheet 4 of the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 49)*".

Dover Street Lots 14-16 and Lot 95, DP 15069, as shown edged heavy black on Sheet 6 of the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 49)*".

Maclean Street Lots 36 and 37, DP 12682, as shown edged heavy black on Sheet 3 of the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 49)*".

Ellalong

Olney Street Lot 1, DP 758382, Section 2, as shown edged heavy black on Sheet 1 of the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 49)*".

Paxton

Hall Street Lot 63A, DP 12136, as shown edged heavy black on Sheet 2 of the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 49)*".

Part 2

Branxton

Part of Branxton Oval, comprising so much of Lot 21, DP 263526, Parish of Branxton, as is shown edged heavy black on the map marked "*Cessnock Local Environmental Plan 1989 (Amendment No 59)*".

Part 3