

Muswellbrook Local Environmental Plan 1985

[1985-324]



New South Wales

Status Information

Currency of version

Historical version for 17 March 2006 to 30 March 2006 (accessed 18 July 2024 at 12:29)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 17 March 2006

Muswellbrook Local Environmental Plan 1985



New South Wales

Contents

Part 1 Preliminary	5
1 Name of plan	5
2 Aims, objectives etc.....	5
3 Land to which plan applies	5
4 Relationship to other environmental planning instruments	5
5 Interpretations.....	6
6 Adoption of Model Provisions	13
7 Consent authority	13
Part 2 General restrictions on development on land	13
8 Zones and development control table	13
Part 3 Special provisions	33
Division 1 Subdivision	33
9 Subdivision	33
Division 2 Advertisement of certain development applications	33
10 Applications that must be advertised	33
Division 3 Development in rural and environment protection zones	34
11 General principles.....	34
12 Clearing of land	36
13 Subdivision—general provisions	37
14 Subdivision—special provisions	37

15 Dwelling-houses	38
16 Special requirements—Zone No 7 (d)	39
17 Special requirements—Zone No 7 (L1)	39
18 Special requirements—Zone No 7 (L2)	40
19 Transport corridors	41
20 Development adjoining main or arterial roads	42
21 Advertisements	42
Division 4 Development in residential zones	43
22 Subdivision	43
23 Dwellings	43
24–26 (Repealed)	43
27 Development in Zone No 2 (b)	44
28 Development in Zone No 2 (c)	44
29 Limitations on residential development	44
30 General store	45
31 Exhibition homes	45
32 Advertisements	45
33 Underground electricity mains	46
Division 5 Miscellaneous provisions	46
34 Consideration of development applications	46
35 Flood-prone land	47
36 Preservation of trees	48
37 Land in Zone No 6 (b)	48
38 Payment towards provision or improvement of amenities or services	49
39 Aboriginal conservation areas and relics	49
40 Height of buildings	49
41, 42 (Repealed)	49
43 Roads, drainage, open space and parking	50
44 Development of certain land within Zone No 3 (a)	50
45 Closing of roads	50
46 Access	50
47 Community use of school facilities or sites	50
48 Utility corridors	50

48A Conveyance of coal over power station land.....	51
49 Railway land	51
50 Suspension of laws etc	51
51 Underground mining.....	52
52 Development for certain additional purposes.....	52
52A Classification and reclassification of public land as operational land	52
53 Subdivision of certain land—Racecourse Road, Muswellbrook.....	53
54 Subdivision of certain land—Denman Road	53
55 Subdivision of certain land—Collins Lane, Muswellbrook.....	54
56 Subdivision of certain land—Yarrowa Road, Denman.....	54
57 (Repealed)	54
58 Carrying out of certain development in Zone No 8 (a)	54
59 What is exempt and complying development?	55
Schedule 1	55
Schedule 2	56
Schedule 3 Development for certain additional purposes	56
Schedule 4 Classification and reclassification of public land as operational land	60

Muswellbrook Local Environmental Plan 1985



New South Wales

Part 1 Preliminary

1 Name of plan

This plan may be cited as *Muswellbrook Local Environmental Plan 1985*.

2 Aims, objectives etc

(1) The principal aims of this plan are:

- (a) to provide the council with the means of managing the urban growth of Muswellbrook and Denman resulting from major resource-based development projects,
- (b) to ensure that growth and development in the Shire of Muswellbrook occurs in a way which preserves existing environmental qualities and minimizes adverse environmental impacts,
- (c) to retain options for long-term land use and transport structural change,
- (d) to protect the agricultural production potential of rural land in the Shire of Muswellbrook, and
- (e) to ensure that existing and future residents enjoy a range of attractive living environments and have access to the widest possible range of services and amenities.

(2) The particular objectives, policies and strategies adopted by this plan to achieve the aims referred to in subclause (1) are set out in the Table to clause 8 and in Schedule 1.

3 Land to which plan applies

This plan applies to all the land within the Shire of Muswellbrook as shown on the map.

4 Relationship to other environmental planning instruments

This plan repeals:

- (a) *Interim Development Order No 2—Shire of Muswellbrook*, and

(b) Muswellbrook Local Environmental Plans Nos 1-16.

5 Interpretations

(1) In this plan except in so far as the context or subject-matter otherwise indicates or requires:

agricultural machinery showroom means a building or place used or intended for use for the display and sale of agricultural machinery, whether or not agricultural machinery accessories are also displayed or sold therein or thereon.

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.

caravan park means land used as a site for movable dwellings, including tents and caravans and other vehicles used for temporary accommodation.

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

- (a) a dwelling-house used 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.

cluster development means the erection, on a single allotment of land within a residential zone, of more than one dwelling-house, but does not include the erection of a second dwelling-house on such an allotment where that dwelling-house is intended to replace entirely an existing dwelling-house on that allotment.

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

- (a) does not exceed 0.8 square metres 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 thereat,
- (v) particulars or notifications required or permitted to be displayed by or under any Act or any Act of the Commonwealth,
- (vi) particulars relating to the goods, commodities or services dealt with or provided at the place or premises, or
- (vii) particulars of any activities held or to be held at the place or premises.

community centre means a building or place owned or controlled by the council or a person with the approval of the council and used to provide facilities comprising or relating to any one or more of the following purposes:

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

container depot means an area or place where:

- (a) the contents of containers are unloaded for the purpose of their further consignment to other places,
- (b) goods brought from other places are loaded into containers for their consignment as one load, or
- (c) containers are repaired, refitted or stored.

council means the Council of the Shire of Muswellbrook.

existing parcel of land means any areas of adjoining or adjacent land held in the same ownership on and from 11 April 1974 and includes any such area from which land has been excised for a public purpose after that date. Areas of adjoining or adjacent land do not cease to be an existing parcel of land only because they have been transferred in their entirety to another ownership after that date.

external surfaces includes external walls and any cladding thereon, doors, door and window frames (but not window panes), columns, roofs, fences and any other surface

visible from the exterior.

extractive material means sand, gravel, clay, turf, soil, rock, stone and similar substances, but does not include any metal or mineral.

flood fringe, in relation to land, means the area which is flood prone but outside the floodway or flood storage area.

flood prone, in relation to land, means that area within the flood plain which is affected by flooding and includes that land within the “100 year flood line” shown on the map.

flood storage area means those parts of the floodplain which are used for the temporary storage of floodwater during the passage of a flood.

floodplain means the portion of a river valley, adjacent to the river channel, which is covered with water when the river overflows during floods.

floodway means those areas of land where a significant volume of water flows during floods and includes the channel of a river or stream and those portions of the flood plain adjoining the channel which constitute the main flow path for floodwaters.

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

home occupation means an occupation carried on in a dwelling-house or in a dwelling in a residential flat building by the permanent residents of the dwelling-house or dwelling, which does not require or involve:

- (a) the registration of the building under the [Factories, Shops and Industries Act 1962](#), except where registration is required by reason only of the installation and use in the dwelling-house or dwelling of not more than one electric motor having a capacity of not more than 370 watts,
- (b) the employment of persons other than those residents,
- (c) interference with the amenity of the locality by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil or otherwise,
- (d) the display of goods, whether in a window or otherwise, or
- (e) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling-house or dwelling to indicate the name and occupation of the resident).

horse training establishment means premises used for the training, educating and

breaking-in of horses, and includes ancillary buildings such as stables, feed rooms, staff residential quarters, amenities buildings, garages and trainer's residence.

land includes the bed of any river, creek, lake or lagoon.

local light industry means any light industry which:

- (a) is carried on in a building or buildings, the floor space of which does not exceed 500 square metres,
- (b) occupies a site which does not exceed 1 000 square metres in area,
- (c) does not require the provision of any essential service mains of a greater capacity than that required for normal development in the locality, and
- (d) does not, by the carriage of goods or materials, create traffic upon public roads in the locality likely to create congestion or danger or require roads of a higher standard than would be necessary for normal development in the locality.

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

parcel, in relation to land, means any area of adjoining or adjacent land held in the same ownership.

plant depot means a building or place used for the parking or servicing of movable plant by the owner or lessee of that building or place in the pursuit of an occupation or business carried on at some other location.

prime crop and pasture land means land within an area identified on a map prepared by or on behalf of the Director-General of the Department of Agriculture, copies of which are deposited in the office of the council, as Class 1, Class 2 or Class 3 or as land of merit for special agricultural uses, but does not include land which the Director-General of Agriculture has notified the council in writing is not prime crop and pasture land for the purposes of this plan.

public place means public road, bridge, jetty, wharf, road-ferry or other place which the public are entitled to use, but does not include a public reserve.

public utility undertaking means any of the following undertakings carried on by or by authority of any Government Department or under the authority of or in pursuance of any Act or any Act of the Commonwealth:

- (a) railway, road transport, water transport, air transport, wharf, harbour, river, flood mitigation, soil conservation, or bushfire control undertakings,
- (b) undertakings for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services,

(c) telephone exchange,

and a reference to a person carrying on a public utility undertaking shall be deemed to include a reference to a council, county council, Government Department, corporation, firm or authority carrying on the undertaking.

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

relocatable home hostel site means a site used for the purpose of:

- (a) placing movable dwellings (as defined in section 289E (1) of the *Local Government Act 1919*) for permanent accommodation by tourists or construction industry workers, or
- (b) the erection, assembly or placement of cabins for temporary accommodation by tourists or construction industry workers.

research establishment means a laboratory or other place where scientific or technological development or research is carried out.

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.

rural worker's building means a building containing one or more dwellings for the residential accommodation of persons engaged in rural occupations on the land on which it is situated.

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

stock transport terminal means a building or place used principally for the purpose of assembling livestock for transport by road or rail and includes facilities for the loading and unloading of livestock at such a building or place and for the parking, servicing, repair and maintenance of vehicles or equipment used in the operation of such a building or place.

storey means the space within a building which is situated between one floor level and the floor level next above or, if there is no floor above, the ceiling or roof above, but does not include any such space used principally for storage or parking.

the map means the map marked "*Muswellbrook Local Environmental Plan 1985*", 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.

Muswellbrook Local Environmental Plan 1985 (Amendment No 3)

Muswellbrook Local Environmental Plan 1985 (Amendment No 4)

Muswellbrook Local Environmental Plan 1985 (Amendment No 8)

Muswellbrook Local Environmental Plan 1985 (Amendment No 9)

Muswellbrook Local Environmental Plan 1985 (Amendment No 10)

Muswellbrook Local Environmental Plan 1985 (Amendment No 15)

Muswellbrook Local Environmental Plan 1985 (Amendment No 19)

Muswellbrook Local Environmental Plan 1985 (Amendment No 21)

Muswellbrook Local Environmental Plan 1985 (Amendment No 24)

Muswellbrook Local Environmental Plan 1985 (Amendment No 26)

Muswellbrook Local Environmental Plan 1985 (Amendment No 28)

Muswellbrook Local Environmental Plan 1985 (Amendment No 29)

Muswellbrook Local Environmental Plan 1985 (Amendment No 34)

Muswellbrook Local Environmental Plan 1985 (Amendment No 35)

Muswellbrook Local Environmental Plan 1985 (Amendment No 37)

Muswellbrook Local Environmental Plan 1985 (Amendment No 40)

Muswellbrook Local Environmental Plan 1985 (Amendment No 41)

Muswellbrook Local Environmental Plan 1985 (Amendment No 44)

Muswellbrook Local Environmental Plan 1985 (Amendment No 45)

Muswellbrook Local Environmental Plan 1985 (Amendment No 48)

Muswellbrook Local Environmental Plan 1985 (Amendment No 49)

Muswellbrook Local Environmental Plan 1985 (Amendment No 50)

Muswellbrook Local Environmental Plan 1985 (Amendment No 51)

Muswellbrook Local Environmental Plan 1985 (Amendment No 52)

Muswellbrook Local Environmental Plan 1985 (Amendment No 56)

Muswellbrook Local Environmental Plan 1985 (Amendment No 58)

Muswellbrook Local Environmental Plan 1985 (Amendment No 59)

Muswellbrook Local Environmental Plan 1985 (Amendment No 60)

Muswellbrook Local Environmental Plan 1985 (Amendment No 70)

Muswellbrook Local Environmental Plan 1985 (Amendment No 71)

Muswellbrook Local Environmental Plan 1985 (Amendment No 73)

Muswellbrook Local Environmental Plan 1985 (Amendment No 74)

Muswellbrook Local Environmental Plan 1985 (Amendment No 75)

Muswellbrook Local Environmental Plan 1985 (Amendment No 76)

Muswellbrook Local Environmental Plan 1985 (Amendment No 77)

Muswellbrook Local Environmental Plan 1985 (Amendment No 78)

Muswellbrook Local Environmental Plan 1985 (Amendment No 81)

Muswellbrook Local Environmental Plan 1985 (Amendment No 85)

Muswellbrook Local Environmental Plan 1985 (Amendment No 86)

Muswellbrook Local Environmental Plan 1985 (Amendment No 90)

Muswellbrook Local Environmental Plan 1985 (Amendment No 93)

Muswellbrook Local Environmental Plan 1985 (Amendment No 97)

Muswellbrook Local Environmental Plan 1985 (Amendment No 99)

Muswellbrook Local Environmental Plan 1985 (Amendment No 100)

tourist establishment means a building designed or used or land used for rendering service to or providing accommodation for travellers, tourists or persons engaged in recreational pursuits.

(2) A reference in this plan:

(a) 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) to a map is a reference to a map deposited in the office of the council, and

(c) to land within a zone specified in the Table to clause 8 is a reference to land shown on the map in the manner indicated in clause 8 (1) 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 **child care centre**, **extractive material**, **floor**, **home occupation**, **public utility undertaking** and **rural worker's dwelling** in clause 4 (1), clauses 8 (7), 23, 29, 33 and 36 and clause 7 of Schedule 1), are adopted for the purposes of this plan.
- (2) For the purposes of their adoption by this plan, the *Environmental Planning and Assessment Model Provisions 1980*, shall be read as if clause 11 of Schedule 1 includes a reference to the carrying out of works under the *Hunter Valley Flood Mitigation Act 1956*, and the words "and related activities" were included after the words "river improvement".

7 Consent authority

The council is the consent authority for the purposes of this plan.

Part 2 General restrictions on development on land

8 Zones and development control table

- (1) 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)—coloured light brown.

Zone No 1 (c) (Rural Small Holdings Zone)—coloured brown with red edging and lettered "1 (c)".

Zone No 2 (a) (Residential "A" Zone)—coloured light scarlet.

Zone No 2 (b) (Residential "B" Zone)—coloured light scarlet with red edging and lettered "2 (b)".

Zone No 2 (c) (Residential "C" Zone)—coloured light scarlet with red edging and lettered "2 (c)".

Zone No 2 (d) (Residential "D" Zone)—coloured light scarlet with red edging and lettered "2 (d)".

Zone No 2 (v) (Village Zone)—uncoloured with red edging and lettered "V".

Zone No 3 (a) (General Business Zone)—coloured light blue.

Zone No 3 (b) (Special Business Zone)—coloured light blue with red edging and

lettered “3 (b)”.

Zone No 3 (c) (Neighbourhood Business Zone)—coloured medium blue.

Zone No 4 (a) (General Industrial Zone)—coloured purple.

Zone No 4 (b) (Light Industrial Zone)—coloured purple with dark red edging and lettered “4 (b)”.

Zone No 5 (a) (Special Uses “A” Zone)—coloured yellow.

Zone No 5 (b) (Special Uses “B” [Railways] Zone)—coloured blue-purple.

Zone No 6 (a) (Open Space [Existing Recreation] Zone)—coloured dark green.

Zone No 6 (b) (Open Space [Proposed Recreation] Zone)—coloured light green with dark green edging.

Zone No 7 (d) (Environment Protection [Scenic] Zone)—coloured orange with red edging and lettered “7 (d)”.

Zone No 7 (L1) (Environment Protection General “L1” [Alluvial Areas] Zone)—coloured orange with red edging and lettered “7 (L1)”.

Zone No 7 (L2) (Environment Protection General “L2” [Urban Buffer] Zone)—coloured orange with red edging and lettered “7 (L2)”.

Zone No 8 (a) (National Parks and Nature Reserves Zone)—uncoloured with dark green edging.

- (2) 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.
- (3) 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:
 - (i) only with development consent but where that consent cannot be refused, and
 - (ii) subject to such conditions as may be imposed under section 91 of the Act,
 - (c) development may be carried out only with development consent, and
 - (d) development is prohibited,are specified under the headings “Without development consent”, “Subject to conditions”, “Only with development consent” and “Prohibited”, respectively,

appearing in the matter relating to the zone.

- (4) 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 the development is proposed to be carried out.

Table

Zone No 1 (a) (Rural "A" Zone)

1 Objectives of zone

The objectives are:

- (a) to regulate the subdivision of rural land to ensure that actual or potentially productive land is not withdrawn from production,
- (b) to encourage continued growth in the Shire's rural economic base,
- (c) to ensure that building development in rural areas is carried out in a manner that minimizes risks from natural hazards, functions efficiently, does not unreasonably increase demands for public services or reduce existing levels of service, does not prejudice other economic development and does not detract from the scenic quality of rural areas,
- (d) to enable mining to occur in an environmentally acceptable manner,
- (e) to enable development to occur that will serve the needs of rural communities,
- (f) to enable development to occur which requires a rural or isolated location or has a nexus with agricultural uses including tourist oriented development and rural industry, and
- (g) to minimize the economic disadvantages to farmers from unjustified speculative increases in land values.

2 Without development consent

Agriculture (including the erection of fences, stock yards, windmills, pumping sheds and the like, but not including cattle feed lots, pig keeping, poultry farming, or the erection of farm sheds associated with agriculture); forestry.

3 Subject to conditions

Dwelling-houses on parcels of land not less than 40 hectares in area; the

erection of sheds or other outbuildings associated with agriculture.

4 Only with development consent

Abattoirs; agriculture and associated buildings other than those included in Item 2 or 3 of the matter relating to this zone; animal boarding, breeding or training establishments; any purpose ordinarily incidental or subsidiary to agriculture or forestry; bulk stores; bus depots; bushfire fighting establishments; cemeteries; community halls; drive-in theatres; dwelling-houses (other than those included in Item 3 of the matter relating to this zone); educational establishments; extractive industries; garbage disposal areas; general stores; home industries; home occupations; horse training establishments; hospitals; institutions; mines; offensive and hazardous industries which, in the opinion of the council, are incapable of being rendered sufficiently safe for location in an industrial zone and are adequately separated from adjoining development; picnic grounds; places of public worship; plant depots; recreation establishments; recreation facilities; relocatable home or hostel site; research establishments; retail plant nurseries; riding schools; road transport terminals; rural industries; sawmills; stables; stock and sale yards; stock transport terminals; tourist establishments; tourist facilities; utility installations; veterinary hospitals; veterinary surgeons' establishments.

5 Prohibited

Any purpose other than a purpose included in Item 2, 3 or 4 of the matter relating to this zone.

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

1 Objectives of zone

The objectives are:

- (a) to accommodate demands for rural residential use, rural retreats and hobby farms in a manner that will minimize the loss of productive agricultural land, minimize demands for uneconomic provision of services, provide reasonable access to urban facilities and minimize the visual impact on rural environments,
- (b) to enable development which serves the needs of rural communities,
- (c) to enable a reasonable range of activities associated with residential

occupation of land,

(d) to ensure that development is carried out in a manner that minimizes adverse effects of other development in the vicinity, particularly mining, and

(e) to increase the choice of housing types available within the Shire.

2 Without development consent

Agriculture (other than cattle feed lots, pig keeping or poultry farming); forestry.

3 Subject to conditions

Dwelling-houses.

4 Only with development consent

Any purpose ordinarily incidental or subsidiary to agriculture or forestry; bus depots; bushfire fighting establishments; cemeteries; community halls; educational establishments; general stores; home industries; home occupations; horse training establishments; hospitals; places of public worship; picnic grounds; recreation facilities; retail plant nurseries; road transport terminals; rural industries; stables; utility installations (other than generating works); veterinary hospitals; veterinary surgeons' establishments.

5 Prohibited

Any purpose other than a purpose included in Item 2, 3 or 4 of the matter relating to this zone.

Zone No 2 (a) (Residential "A" Zone)

1 Objectives of zone

The objectives are:

(a) to accommodate existing residential areas of a predominantly single dwelling character, and to preserve that character,

(b) to enable sensitive infill development of other housing types,

(c) to allow people to carry out a reasonable range of activities from their homes, where such activities do not adversely affect the living

environment of neighbours, and

(d) to enable development which serves the needs of residential areas.

2 Without development consent

Dwelling-houses.

3 Subject to conditions

Nil.

4 Only with development consent

Boarding houses; child care centres; cluster development; community centres; educational establishments; home industries; home occupations; hospitals; motels; places of public worship; professional consulting rooms; public buildings; recreation facilities; residential flat buildings; utility installations (other than generating works).

5 Prohibited

Any purpose other than a purpose included in Item 2 or 4 of the matter relating to this zone.

Zone No 2 (b) (Residential “B” Zone)

1 Objectives of zone

The objectives are:

- (a) to encourage redevelopment for flats or other higher density housing forms in locations close to the business centre of Muswellbrook,
- (b) to enable business uses which do not detract from residential amenity, and which support the commercial functions of the main business centre of Muswellbrook, and
- (c) to enable appropriate forms of mixed residential and commercial development.

2 Without development consent

Dwelling-houses.

3 Subject to conditions

Nil.

4 Only with development consent

Boarding houses; child care centres; cluster development; community centre; educational establishments; home industries; home occupations; hospitals; motels; places of public worship; professional consulting rooms; public buildings; recreation facilities; residential flat buildings; utility installations (other than generating works).

5 Prohibited

Any purpose other than a purpose included in Item 2 or 4 of the matter relating to this zone.

Zone No 2 (c) (Residential “C” Zone)

1 Objectives of zone

The objectives are:

- (a) to provide a land bank to accommodate future urban expansion in a logical and efficient manner, integrated with programmes for the extension of essential utility services,
- (b) to ensure that the process of the release of land for future urban development is controlled in a manner which will minimize public costs, provide efficient access, enable competition between public and private developers and maximize the choice of housing,
- (c) to enable non-residential development which services the various needs of residential communities, and
- (d) to ensure that new development carries a reasonable share of the costs of utilities and community facilities likely to be demanded by new residents.

2 Without development consent

Nil.

3 Subject to conditions

Nil.

4 Only with development consent

Boarding houses; child care centres; cluster development; community centres; dwelling houses; educational establishments; home industries; home occupations; hospitals; motels; places of public worship; professional consulting rooms; public buildings; recreation facilities; residential flat buildings; utility installations (other than generating works).

5 Prohibited

Any purpose other than a purpose included in Item 4 of the matter relating to this zone.

Zone No 2 (d) (Residential “D” Zone)

1 Objectives of zone

The objectives are:

- (a) to inhibit the intensification of residential and other inappropriate uses in flood affected areas, and
- (b) to ensure that development which does take place is designed and constructed in a manner which is compatible with the flood risk of the area.

2 Without development consent

Nil.

3 Subject to conditions

Nil.

4 Only with development consent

Community centres; dwelling-houses; educational establishments; home industries; home occupations; places of public worship; professional consulting rooms; utility installations (other than generating works).

5 Prohibited

Any purpose other than a purpose included in Item 4 of the matter relating to this zone.

Zone No 2 (v) (Village Zone)

1 Objectives of zone

The objectives are to recognize the village of Sandy Hollow and to allow for future development of a residential, commercial or light industrial nature associated with residents of the village, surrounding rural communities, tourists and travellers.

2 Without development consent

Dwelling-houses.

3 Subject to conditions

Nil.

4 Only with development consent

Any purposes other than a purpose included in Item 2 or 5 of the matter relating to this zone.

5 Prohibited

Abattoirs; amusement parks; container depots; industries (other than home industries, local light industries or rural industries); institutions; junk yards.

Zone No 3 (a) (General Business Zone)

1 Objectives of zone

The objectives are:

- (a) to maintain the status and encourage the future growth of the Muswellbrook business centre as a retail, service, commercial and administrative centre while maintaining the centre's compact form,
- (b) to maintain the status and encourage the future growth of the Denman business centre as a district service centre,
- (c) to encourage the provision of shopping and other services to the residents of South Muswellbrook,
- (d) to enable a wide range of land uses that are associated with, ancillary to or supportive of the retail and service functions of a business centre,
- (e) to maintain the existing character of the Muswellbrook and Denman business centres, and

(f) to support business development by way of the provision of parking and other civic facilities.

2 Without development consent

Nil.

3 Subject to conditions

Commercial premises, the floor space of which does not exceed 1 500 square metres, shops, the floor space of which does not exceed 1 000 square metres.

4 Only with development consent

Any purpose other than a purpose included in Item 3 or 5 of the matter relating to this zone.

5 Prohibited

Amusement parks; bus depots; caravan parks; dwelling-houses (other than those used in conjunction with shops or commercial premises); industries (other than home industries or local light industries); institutions; junk yards; liquid fuel depots; mines; road transport terminals; sawmills; stables; stock and sale yards.

Zone No 3 (b) (Special Business Zone)

1 Objectives of zone

The objectives are:

- (a) to recognize the established primarily non-retail functions of existing business areas outside the main business centre of Muswellbrook, and to encourage future development of a similar character,
- (b) to enable new development that is supportive of the business centre, as well as meeting the needs of motorists and residents in the vicinity, and
- (c) to ensure new development in designed in a manner which minimizes flood damage risks.

2 Without development consent

Nil.

3 Subject to conditions

Nil.

4 Only with development consent

Agricultural machinery showrooms; builders' supplies establishments; bulk stores; car repair stations; child care centres; clubs; commercial premises; community centres; dwelling-houses and flats used in conjunction with purposes permitted in this zone; home industries; home occupations; hotels; local light industries; motels; motor showrooms; professional consulting rooms; public buildings; reception establishments; recreation facilities; refreshment rooms; retail plant nurseries; shops, including general stores, chemists' shops and newsagents primarily intended to serve the immediate locality and motorists; service stations; transport terminals; utility installations; warehouses.

5 Prohibited

Any purpose other than a purpose included in Item 4 of the matter relating to this zone.

Zone No 3 (c) (Neighbourhood Business Zone)

1 Objectives of zone

The objectives are:

- (a) to ensure the day to day shopping and service needs of residential communities are met, and
- (b) to complement the function and growth of major retailing and service centres.

2 Without development consent

Nil.

3 Subject to conditions

Shops, commercial premises and refreshment rooms primarily intended to serve the neighbourhood in which they are situated.

4 Only with development consent

Child care centres; community centres; dwelling-houses and flats used in

conjunction with purposes permitted in this zone; professional consulting rooms; public buildings; recreation facilities; services stations; taverns; utility installations.

5 Prohibited

Any purpose other than a purpose included in Item 3 or 4 of the matter relating to this zone.

Zone No 4 (a) (General Industrial Zone)

1 Objectives of zone

The objectives are:

- (a) to recognize existing industry and to encourage the establishment of new industry so as to expand the local employment base, and to minimize any adverse effects of industry on residential communities,
- (b) to accommodate larger industries or those which potentially could create nuisance in locations separated from residential areas but accessible to the workforce,
- (c) to enable development that is associated with, ancillary to or supportive of industry or industrial employees, and
- (d) to accommodate industry unable to locate in rural, business or light industrial zones.

2 Without development consent

Nil.

3 Subject to conditions

Light industry.

4 Only with development consent

Agricultural machinery showrooms; any purpose ordinarily incidental or subsidiary to industry; any purpose, including a shop, refreshment room, commercial premises, child care centre, hotel or tavern, primarily intended to serve persons occupied or employed in activities otherwise permitted in this zone; builders' supply establishments; bulk stores; car repair stations; container depots; industries (other than extractive industry, light industry or

offensive or hazardous industry); junk yards; liquid fuel depots; plant depots; recreation facilities; research establishments; sawmills; service stations; stables; stock and sale yards; stock transport terminals; timber yards; transport terminals; utility installations; warehouses.

5 Prohibited

Any purpose other than a purpose included in Item 3 or 4 of the matter relating to this zone.

Zone No 4 (b) (Light Industrial Zone)

1 Objectives of zone

The objectives are:

- (a) to recognize existing industries, and to accommodate new industries which by their nature are not incompatible with any residential development in the locality,
- (b) to enable development that is associated with, ancillary to, or supportive of, industry or industrial employees, and
- (c) to encourage new industry which will reinforce the Shire's economic base.

2 Without development consent

Nil.

3 Subject to conditions

Nil.

4 Only with development consent

Agricultural machinery showrooms; any purpose ordinarily incidental or subsidiary to light industry; any purpose, including a shop, refreshment room, commercial premises, child care centre, hotel or tavern, primarily intended to serve persons occupied or employed in activities otherwise permitted in this zone; builders' supplies establishments; bulk stores; car repair stations; container depots; dwelling-houses and flats in each case used in conjunction with another purpose permitted in this zone); light industries; liquid fuel depots; plant depots; recreation facilities; research establishments; saw-mills; service stations; stables; stock and sale yards;

stock transport terminals; timber yards; transport terminals; utility installations; warehouses.

5 Prohibited

Any purpose other than a purpose included in Item 4 of the matter relating to this zone.

Zone No 5 (a) (Special Uses “A” Zone)

1 Objectives of zone

The objective of the zone is to recognize existing public land uses and to enable their continued operation, growth, or expansion to accommodate associated, ancillary or otherwise related uses.

2 Without development consent

Nil.

3 Subject to conditions

The particular purpose indicated by scarlet lettering on the map.

4 Only with development consent

Any purpose ordinarily incidental or subsidiary to a purpose included in Item 3 of the matter relating to this zone, utility installations.

5 Prohibited

Any purpose other than a purpose included in Item 3 or 4 of the matter relating to this zone.

Zone No 5 (b) (Special Uses “B” Railways) Zone)

1 Objectives of zone

The objectives are:

- (a) to recognize existing railway land and to enable future development for railway and associated purposes, and
- (b) to prohibit advertising hoardings on railway land.

2 Without development consent

Nil.

3 Subject to conditions

Railway purposes.

4 Only with development consent

Nil.

5 Prohibited

Any purpose other than a purpose included in Item 3 of the matter relating to this zone.

Zone No 6 (a) (Open Space (Existing Recreation) Zone)

1 Objectives of zone

The objectives are:

- (a) to recognize existing publicly owned land that is used or capable of being used for active or passive recreation purpose,
- (b) to encourage the development of public open spaces in a manner which maximizes the satisfaction of the community's diverse recreation needs,
- (c) to enable development associated with, ancillary to or supportive of public recreation use, and
- (d) to encourage the development of open spaces as major urban landscape elements.

2 Without development consent

Nil.

3 Subject to conditions

Any public recreation purpose.

4 Only with development consent

Any purpose ordinarily incidental or subsidiary to a purpose included in Item 3 of the matter relating to this zone; bowling greens; camping grounds;

caravan parks; clubs; community centres; golf course; places of assembly; racecourses; recreation facilities; riding schools; show grounds; sports grounds; utility installations.

5 Prohibited

Any purpose other than a purpose included in Item 3 or 4 of the matter relating to this zone.

Zone No 6 (b) (Open Space (Proposed Recreation) Zone)

1 Objectives of zone

The objectives are:

- (a) to identify land which is suitable for future public recreation use and which can be brought into public ownership as a consequence of development contributions from residential development,
- (b) to provide additional land to meet the objectives specified in respect of land within Zone No 6 (a),
- (c) to enable the development of a foreshore park on the Hunter River in Muswellbrook, and
- (d) to enable the development of an urban parkland system on flood affected land in Denman.

2 Without development consent

Nil.

3 Subject to conditions

Any public recreation purpose.

4 Only with development consent

Any purpose ordinarily incidental or subsidiary to a purpose included in Item 3 of the matter relating to this zone; bowling greens; recreation facilities; sportsgrounds; utility installations.

5 Prohibited

Any purpose other than a purpose included in Item 3 or 4 of the matter relating to this zone.

Zone No 7 (d) (Environment Protection (Scenic) Zone)

1 Objectives of zone

The objectives are:

- (a) to encourage the preservation of existing wooded hilltops, parts of river valley systems, major scenic corridors, and other local features of scenic attraction,
- (b) to enable development of a similar nature to that intended for Zone No 1 (a), except for development that by its nature would be visually destructive or intrusive, and provided such development is carried out in a manner which minimizes its visual impact,
- (c) to ensure that development within the zone on land that forms part of river systems, is subject to similar principles as development within Zone No 7 (L1),
- (d) to ensure that development within this zone adjoining land within Zone No 8 (a) is compatible with the management objectives for that land, and
- (e) to form part of the urban buffer for the town of Denman and to this extent, to meet the objectives specified in respect of land within Zone No 7 (L2).

2 Without development consent

Agriculture (including the erection of fences, stock yards, windmills, pumping sheds and the like, but not including cattle feed lots, pig keeping, poultry farming, or the erection of farm sheds associated with agriculture).

3 Subject to conditions

Nil.

4 Only with development consent

Agricultural purposes other than a purpose included in Item 2 of the matter relating to this zone; any purpose ordinarily incidental or subsidiary to agriculture; animal boarding, breeding or training establishments; bush-fire fighting establishments; dwelling-houses; extractive industries; forestry; garbage disposal areas; home industries; home occupations; horse training establishments; institutions; picnic grounds; plant nurseries; recreation establishments; relocatable home or hostel site; research establishments;

rural industries; stables; tourist facilities; underground mining and any surface structures ordinarily associated therewith; utility installations; veterinary hospitals; veterinary surgeons' establishments.

5 Prohibited

Any purpose other than a purpose included in Item 2 or 4 of the matter relating to this zone.

Zone No 7 (L1) (Environment Protection General (L1) (Alluvial Areas) Zone)

1 Objectives of zone

The objectives are:

- (a) to ensure that prime alluvial and irrigable land is preserved for agricultural use,
- (b) to ensure that any development of non-agricultural nature is located and designed in such a way that the reduction of productive land is minimized, flooding risks are minimized, and surface or subterranean water systems are not adversely affected,
- (c) to form part of the urban buffer for the towns of Muswellbrook and Denman and, to this extent, to meet the objectives specified in respect of land within Zone No 7 (L2),
- (d) to enable the future construction of a railway, and to ensure that development does not foreclose this option, and
- (e) to enable development that is associated with, ancillary to or supportive of, the primary agricultural uses of the land.

2 Without development consent

Agriculture (including the erection of fences, stock yards, windmills, pumping sheds and the like, but not including cattle feed lots, pig keeping, poultry farming, or the erection of farm sheds associated with agriculture); forestry.

3 Subject to conditions

Dwelling-houses on parcels of land not less than 40 hectares in area, the erection of sheds or other out-buildings associated with agriculture.

4 Only with development consent

Agricultural purposes other than a purpose included in Item 2 or 3 of the matter relating to this zone; animal boarding, breeding or training establishments; any purpose ordinarily incidental or subsidiary to agriculture or forestry; bulk stores; bush-fire fighting establishments; dwelling-houses (other than those included in Item 3 of the matter relating to this zone); garbage disposal areas; home industries; home occupations; horse training establishments; picnic grounds; plant nurseries; research establishments; riding schools; rural industries; stables; stock and sale yards; stock transport terminals; utility installations; veterinary hospitals; veterinary surgeons' establishments.

5 Prohibited

Any purpose other than a purpose included in Item 2, 3 or 4 of the matter relating to this zone.

Zone No 7 (L2) (Environment Protection General (L2) (Urban Buffer) Zone)

1 Objectives of zone

The objectives are:

- (a) to establish around the town of Muswellbrook a protective buffer of an essentially rural character, which will separate the town from future surface mining activity outside the zone and require additional protective measures in the event of expansion of existing mines within the buffer,
- (b) to accommodate development of a rural character or associated with rural uses, or development which requires a location close to the town of Muswellbrook, provided that development will not adversely affect other development within Muswellbrook or within this zone, and will not be adversely affected itself by mining development outside the buffer,
- (c) to enable the future construction of a railway and a highway deviation, and to ensure that development does not foreclose these options, and
- (d) to encourage development that will provide or maintain an appropriate rural setting for the town of Muswellbrook.

2 Without development consent

Agriculture (including the erection of fences, stock yards, windmills, pumping sheds and the like, but not including cattle feed lots, pig keeping, poultry farming, or the erection of farm sheds associated with agriculture); forestry.

3 Subject to conditions

Dwelling-houses on parcels of land not less than 40 hectares in area, the erection of sheds or other out-buildings associated with agriculture.

4 Only with development consent

Agricultural purposes other than a purpose included in Item 2 or 3 of the matter relating to this zone; any purpose ordinarily incidental or subsidiary to agriculture or forestry; animal boarding, breeding or training establishments; any purpose (other than mining referred to in clause 18 (2) which in the opinion of the Council is unlikely to have any significant environmental impact on land within a residential, special uses or open space zone in the town of Muswellbrook or on land within this zone, and which is itself unlikely to be subject to within this zone, and which is itself unlikely to be subject to any significant environmental impact from mining or other major development outside this zone; bush-fire fighting establishments; dwelling-houses (other than those included in Item 3 of the matter relating to this zone); garbage disposal areas; home industries; home occupations; horse training establishments; mining referred to in clause 18 (2); relocatable home or hostel site; research establishments; rural industries; stables; stock and sale yards; stock transport terminals; utility installations.

5 Prohibited

Any purpose other than a purpose included in Item 2, 3 or 4 of the matter relating to this zone.

Zone No 8 (a) (National Parks and Nature Reserves Zone)

1 Objectives of zone

The objective of the zone is to recognize existing national parks and nature reserves and to provide for their continued management under the *National Parks and Wildlife Act 1974*.

2 Without development consent

Any purpose authorized under the *National Parks and Wildlife Act 1974*, or any purpose ordinarily incidental or subsidiary thereto.

3 Subject to conditions

Nil.

4 Only with development consent

Nil.

5 Prohibited

Any purpose other than a purpose included in Item 2 of the matter relating to this zone.

Part 3 Special provisions

Division 1 Subdivision

9 Subdivision

- (1) This clause applies to land within Zone No 1 (a), 1 (c), 2 (a), 2 (b), 2 (c) 2 (d), 2 (v), 3 (a), 3 (b), 3 (c), 4 (a), 4 (b), 6 (b), 7 (d), 7 (L1) or 7 (L2).
- (2) A person shall not subdivide land to which this clause applies without the consent of the Council.

Division 2 Advertisement of certain development applications

10 Applications that must be advertised

- (1) Pursuant to section 30 (4) of the Act, but subject to subclause (2), the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of development to be carried out on land:
 - (a) within Zone No 7 (L2) for any purpose specified in the matter relating to that Zone in clause 8 as being a purpose for which development may be carried out with development consent (other than any agricultural purpose, any purpose ordinarily incidental or subsidiary to agriculture or forestry, bush-fire fighting establishments, dwelling houses, garbage disposal areas, home industries, home occupations or utility installations),
 - (b) within Zone No 2 (c) for any purpose that is inconsistent with a development control plan applying to the land,

- (c) within Zone No 2 (a) or 2 (b) for the purposes of a child care centre, home industry, hospital, motel, place of public worship, professional consulting room, recreation facility or an educational establishment,
 - (d) within Zone No 2 (v) for any purpose other than a dwelling-house, a home occupation, housing for aged or disabled persons, subdivision or a utility installation, and
 - (e) for the purpose of a residential flat building, in the same way as those provisions apply to and in respect of designated development, and
 - (f) within Zone No 2 (d) for the purpose of a home industry, place of public worship, professional consulting room or an educational establishment.
- (2) Section 84 (4) of the Act shall not be applied under subclause (1) to the extent that it requires a notice referred to in that subsection to contain a statement to the effect that the development application referred to in the notice and the documents accompanying that application may be inspected at the office of the Department.

Division 3 Development in rural and environment protection zones

11 General principles

- (1) In determining any application for the carrying out of development on land within Zone No 1 (a), 1 (c), 7 (d), 7 (L1) or 7 (L2), the council shall have regard to:
- (a) in relation to any proposed development:
 - (i) whether it is of a type compatible with the maintenance and enhancement, as far as is practicable, of the existing rural and scenic character of the Shire of Muswellbrook,
 - (ii) whether it will materially reduce the agricultural production potential of the land or of adjoining land,
 - (iii) its affect on existing or likely future mining proposals and the affect of those proposals on the proposed development,
 - (iv) whether it will create or worsen soil erosion potential,
 - (v) whether adequate utility services and community facilities will be available to the land and its future occupants or the land will be capable of accommodating on-site disposal of domestic waste and the provision of a domestic water supply, including a fire-fighting capacity,
 - (vi) whether it will create demands for unreasonable or uneconomic provision or extension of services by the council,

- (vii) whether it will generate significant additional traffic or create or increase a condition of ribbon development on any road, relative to the capacity and safety of the road,
 - (viii) whether the creation of vehicular accesses to main or arterial roads is minimized and, where no alternative access is available, whether the location and treatment of any access will minimize potential traffic hazards,
 - (ix) whether the development incorporates adequate drainage measures, including sediment and waste control, and prevention of the uncontrolled flow of water across the land or adjoining land, and
 - (x) whether, on the basis of information available to the council, adequate assessment has been made of the likely impact of the development on identified items of Aboriginal heritage value, and whether reasonable steps have been taken to determine whether any other aboriginal relics are likely to be affected by the development,
- (b) where the proposed development is or includes a subdivision:
- (i) the intended use of the allotments to be created by the subdivision relative to the ratio of depth to frontage of the allotments to be so created,
 - (ii) if the land to be subdivided has frontage to a main or arterial road—minimizing the number of allotments created as a result of the subdivision which will have vehicular access to the main or arterial road, and locating any new access points in safe positions,
 - (iii) whether the subdivision will result in the sterilisation of mineral resources,
 - (iv) whether the subdivision will to any significant extent increase the potential for ribbon development along any road,
 - (v) whether the subdivision is designed to maximize the retention of natural vegetation in any subsequent development (other than agriculture or forestry), ensure that any buildings likely to be erected on allotments to be created by the subdivision are able to be sufficiently separated to maintain the rural character of the locality and minimize the potential for significant alterations to the natural land form in any subsequent development by way of the construction of access driveways, excavations, filling and the like,
 - (vi) whether adequate all-weather flood-free access will be available to each allotment to be created as a result of the subdivision,
 - (vii) whether each allotment to be created as a result of the subdivision will include flood-free land for building sites and for movement of any stock during floods,

- (viii) whether each allotment to be created as a result of the subdivision will provide potential building sites with minimum risk of damage by bushfires,
 - (ix) whether allotments to be created as a result of the subdivision and intended to be used primarily for the grazing of stock will be of sufficient size to ensure the provision of an adequate water supply for stock unless water can otherwise be provided, and
 - (x) whether adequate soil erosion control measures will be incorporated in the subdivision, including measures prior to the subdivision, and
- (c) where the proposed development is or includes the erection of a building:
- (i) whether the building will be sited and designed, and be of an appropriate scale so as to maintain, in the opinion of the council, the rural character of the locality, minimize disturbance to the landscape through clearing, earthworks, access roads, the use of platforms or stilts or other construction measures and generally fit into its environment to the maximum extent consistent with its being sited to minimize flood and bushfire hazards,
 - (ii) whether the building will intrude into the skyline when viewed from roads or other public places,
 - (iii) whether the building will be sited in relation to the boundaries of the land on which it is to be erected, to existing buildings on that land or on adjoining land, and to potential building sites on adjoining land, in order that, in the opinion of the council, an overconcentration of buildings will be avoided, and that the overall pattern of building development will maintain the rural character of the locality,
 - (iv) the possibility of landscaping the curtilage of the building so as to lessen the impact of that building on its natural or rural setting,
 - (v) whether essential rural buildings are to be sited in a position of least flood risk with respect to ground level access and flood velocity,
 - (vi) whether the floor level of any proposed dwelling is above the 100 year flood level and whether the structure is capable of withstanding floodwater pressures, and
 - (vii) whether adequate all-weather flood-free access will be available to the building.

12 Clearing of land

- (1) Subject to subclause (2), a person may, without the consent of the council, clear land within Zone No 1 (a) or 1 (c) for the purposes of agriculture, forestry or fire safety.

- (2) Subclause (1) shall not operate to obviate any requirement to obtain approval for the clearing of land under the *Soil Conservation Act 1938* or the *Water Act 1912*.

13 Subdivision—general provisions

- (1) A person shall not subdivide land to which this plan applies except with the consent of council.
- (2) The Council must not consent to an application to subdivide land within Zone No 1 (a) 1 (c), 7 (d), 7 (L1) or 7 (L2) unless it has obtained all relevant information in relation to, and made an assessment of:
- (a) the primary purpose for which each allotment to be created by the subdivision is intended to be used,
 - (b) whether any allotment to be created by the subdivision is intended to be used primarily for the purposes of agriculture, and
 - (c) whether a dwelling is intended to be erected on any allotment to be created by the subdivision and the approximate location of any such dwelling.

14 Subdivision—special provisions

- (1) Land within Zone No 1 (a), 7 (d), 7 (L1) or 7 (L2) shall not be subdivided unless each allotment to be created has an area of not less than 40 hectares.
- (2) Notwithstanding subclause (1), an allotment of land having an area of less than 40 hectares but not less than 10 hectares may be created within Zone No 1 (a), 7 (d), 7 (L1) or 7 (L2) if the council is satisfied the allotment is intended to be used for the purposes of agriculture or horticulture.
- (3) Notwithstanding subclause (1), an allotment of land having an area of less than 40 hectares may be created within Zone No 1 (a), 7 (d), 7 (L1) or 7 (L2) if the council is satisfied the allotment is intended to be used for a permissible purpose other than agriculture, forestry or a dwelling-house (not being a dwelling-house ancillary to the purpose) and if none of the land is prime crop and pasture land.
- (4) Notwithstanding subclause (1), the council may grant development consent to a subdivision of an existing parcel of land within Zone No 1 (a), 7 (d), 7 (L1) or 7 (L2) which excises one allotment of land not more than 2 hectares in area and which the Council is satisfied is intended to be used primarily for the purpose of a dwelling-house if:
- (a) the existing parcel of land has an area of more than 10 hectares, and
 - (b) no previous subdivision of the existing parcel of land has occurred on or after 11 April 1974.

- (5) Land within Zone No 1 (c) shall not be subdivided unless:
- (a) each separate allotment created by the subdivision has an area of 4,000 square metres or more,
 - (b) arrangements satisfactory to the council have been made for the provision of water and drainage services to the land and for the disposal of sewage from the land, and
 - (c) the land capability (including soil resource and soil stability), natural constraints and hazards of the land to be subdivided in relation to the density of the allotments has been assessed by the council.
- (6) This clause does not restrict or prohibit the subdivision of land for the purpose of road widening or any other public purpose.

15 Dwelling-houses

- (1) Except as provided by subclauses (2), (3) and 4, one but not more than one dwelling-house may be erected on land within Zone No 1 (a), 7 (d), 7 (L1) or 7 (L2) but only if the land:
- (a) has an area of not less than 40 hectares, or
 - (b) comprises a vacant existing parcel of land, or
 - (c) comprises an allotment within a subdivision which was approved by the council after 9 August 1985, or
 - (d) comprises an allotment created pursuant to clause 14 (4).
- (2) In addition to a dwelling-house permitted by subclause (1), additional dwelling-houses may, with the consent of the council, be erected where the additional dwelling-house or dwelling-houses are or will be occupied by a relative of the owner or a person employed or engaged by the owner of the land in the use of the land for the purpose of agriculture.
- (3) A dwelling-house may be erected on an allotment of land created by subdivision in accordance with clause 14 (2) if:
- (a) the use of the dwelling-house is ancillary to agricultural purposes,
 - (b) the applicant has satisfied the council of the need to have a dwelling-house on the subject allotment, and
 - (c) the lot created under clause 14 (2) has been operated as a viable agricultural activity independent from other land for a minimum period of 2 years after subdivision consent was granted.

- (4) A dwelling-house may be erected on an allotment of land created by subdivision in accordance with clause 14 (3) where the use of the dwelling-house is ancillary to the purpose for which the allotment was intended to be used and the use is established.
- (5) Nothing in this clause shall prevent the erection of a dwelling-house on land on which another dwelling-house is erected where the additional 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.
- (6) A dwelling-house shall not be created on an allotment of land within Zone No 1 (c) unless the allotment has an area of 4,000 square metres or more.

16 Special requirements—Zone No 7 (d)

- (1) The council may require, as a condition of its consent to the clearing of land within Zone No 7 (d), that existing vegetation that should, in the opinion of the council, be retained be so retained in appropriate locations, or new vegetation be planted to reduce the visual impact of clearing to the maximum extent consistent, in the opinion of the council, with the use of the land for agricultural production.
- (2) The council may require, as a condition of its consent to the erection of any building on land within Zone No 7 (d), that the external surfaces of buildings erected be of low reflective quality and be painted or otherwise finished in a manner which, in the opinion of the council, blends with the landscape of the site area and its surroundings.
- (3) In the case of a dwelling-house, any requirements of the council under subclause (2) shall have regard to the effective heat installation of the building.
- (4) The council shall not consent to the carrying out of development for the purposes of an extractive industry on land within Zone No 7 (d) unless it is satisfied that the development:
 - (a) will be suitably screened from public roads, other vantage points or other development likely to be disadvantaged by exposure to works,
 - (b) will not permanently destroy or impair the agricultural production potential of the land, and
 - (c) will not detrimentally affect in any way the quantity and quality of water in either subterranean or surface water systems.

17 Special requirements—Zone No 7 (L1)

- (1) In determining any development application in relation to land within Zone No 7 (L1), the council may impose such conditions as it considers appropriate or necessary to ensure that:
 - (a) alluvial land or other land capable of being irrigated is not rendered incapable of

agricultural production or that any loss of production potential of that land is minimized and that any agricultural relationship between irrigable land and high land is not necessarily reduced, and

(b) the possible long-term construction of a railway is not prejudiced by the construction of major buildings or works within the narrowest practicable corridor identified by the council for that purpose pursuant to clause 19.

(2) Subject to clauses 34 (1) (b) and 35, the council may consent to the carrying out of development on land within Zone No 7 (L1) for:

(a) the purposes of an extractive industry or for underground mining (other than surface works associated therewith), where it is satisfied that such development will not:

(i) destroy or impair the agricultural production potential of the land or, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface,

(ii) detrimentally affect in any way the quantity and quality of water in either subterranean or surface water systems, or

(iii) in the case of an extractive industry, visually intrude into its surroundings, except by way of suitable screening, or

(b) a purpose permissible in an adjoining rural or environmental protection zone, where it is satisfied that the land is not physically part of the alluvial plain and the development will not have the effects referred to in paragraph (a) (i), (ii) and (iii).

18 Special requirements—Zone No 7 (L2)

(1) In determining any development applications in relation to land within Zone No 7 (L2), the council shall have regard to:

(a) the general objective of restricting development within the zone so as to provide a visual and noise buffer between the town of Muswellbrook and land on which mining is or may be carried out,

(b) whether the development the subject of the development application is likely to be visible from any land within Zone No 2 (a), 2 (b), 2 (c), 5 (a), 6 (a) or 6 (b) within the town of Muswellbrook and, if so, the extent to which the development may need to be screened by landscaping or other means,

(c) whether the development is likely to create noise, or be affected by noise from mining, and the means available to minimize either effect, and

(d) whether the development is likely to have any bearing on the possible long-term construction of a railway or a main road within the narrowest practicable corridor

identified by the council for those purposes pursuant to clause 19 and the extent to which such options can be kept open by the siting of buildings or the design of subdivisions.

- (2) Subject to subclause (3) and (4), the council may consent to the carrying out of development on land within Zone No 7 (L2) for:
 - (a) the purposes of underground or open cut mining pursuant to leases or authorizations within the meaning of the *Coal Mining Act 1973*, which at the appointed day were held in favour of the Muswellbrook Coal Company, or
 - (b) the purposes of underground mining pursuant to leases or authorizations within the meaning of the *Coal Mining Act 1973*, which at the appointed day were held in favour of Mount Sugarloaf Collieries.
- (3) The council shall not grant consent under subclause (2) unless it is satisfied that mining and any surface works associated therewith:
 - (a) will not increase, and will preferably reduce, any nuisance to residents of Muswellbrook by way of noise, dust, blasting, traffic or other effect,
 - (b) will be satisfactorily screened from view from any point within the urban area of Muswellbrook,
 - (c) will not necessarily prejudice future options for relocation of the New England Highway, and
 - (d) will not, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface.
- (4) The council shall not grant consent to development for the purposes of mining referred to in subclause (2) (b) unless all surface works associated with the mining are located on land within Zone No 1 (a).

19 Transport corridors

- (1) This clause provides for the identification by the council of the corridors for future railway and main road construction referred to in clause 17 (1) (b) and 18 (1) (d).
- (2) The council shall, as soon as practicable after the appointed day, cause to be prepared plans showing the routes and width of the corridors referred to in subclause (1).
- (3) The plans referred to in subclause (2) may be modified from time to time by resolution of the council.
- (4) The plans referred to in subclause (2), and any modifications made under subclause (3), shall be available for inspection without fee at the offices of the council during

normal business hours.

- (5) Where land is affected by this clause the council may include advice to the effect that the land is so affected in any certificate issued under section 149 of the Act in respect of that land.
- (6) If, after 5 years from the appointed day the council has been unable to secure a commitment from the relevant public authority for the acquisition of the land referred to in this clause for the purposes of a railway, a main road or both, this clause, and clauses 17 (1) (b) and 18 (1) (d) shall, in respect of that land for which there is no commitment for acquisition, cease to apply.

20 Development adjoining main or arterial roads

- (1) Where land within Zone No 1 (a), 1 (c), 7 (d), 7 (L1) or 7 (L2) has frontage to a main or arterial road, a building shall be set back from the nearest alignment of the road such distance as may be determined by the council having regard to:
 - (a) the nature, scale and function of the building,
 - (b) the maximization of sight distances for drivers using the road, including visibility of points of access to the road,
 - (c) the minimization of distractions to drivers using the road, and
 - (d) any possible need to alter the road alignment in the future.
- (2) The council may grant consent to the carrying out of development on land having frontage to a main or arterial road (other than a motorway within the meaning of Part 5AA of the [Main Roads Act 1924](#)) within Zone No 1 (a), 1 (c), 7 (d) or 7 (L2), for the purposes of providing services to motorists, tourists and the travelling public, including development for the purposes of a motel, general store, tourists establishment, tourist facility or a service station, where:
 - (a) the council is satisfied that demand for such development exists, having regard to the nature and volume of traffic using the road, the location and distance of 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 minimize traffic hazards and interference with the free flow of traffic on the road.

21 Advertisements

- (1) Subject to this clause, an advertising structure shall not be erected and an advertisement shall not be displayed on any land within Zone No 1 (a), 1 (c), 7 (d), 7 (L1) or 7 (L2).

- (2) Notwithstanding subclause (1), the council may consent to the erection of a single advertising structure on land referred to in that subclause for the purpose only of displaying a notice related to the purpose for which the land is used.
- (3) Nothing in this clause shall operate to prohibit the council, or a person with the consent of the council, from erecting advertising structures on land referred to in subclause (1) for the purpose of directing the travelling public to tourist areas, or for the display on such structures of advertisements of tourist establishments or facilities.

Division 4 Development in residential zones

22 Subdivision

- (1) Land within Zone No 2 (a), 2 (b) or 2 (c) shall not be subdivided for the purposes of the erection of a dwelling-house unless each allotment created in the subdivision will have an area of not less than 550 square metres.
- (2) Land within Zone No 2 (v) shall not be subdivided for the purposes of the erection of a dwelling-house unless each allotment created in the subdivision is, in the opinion of the council, of sufficient area to accommodate on site septic disposal of domestic waste.

23 Dwellings

- (1) Subject to subclauses (3) and (4), a dwelling-house shall not be erected on any allotment of land within Zone No 2 (a), 2 (b), 2 (c) or 2 (d) if:
 - (a) the area of the allotment is less than 550 square metres, or
 - (b) another dwelling-house is already erected on the allotment.
- (2) For the purposes of subclause (1), the area of a hatchet-shaped allotment does not include the area of an access corridor.
- (3) A dwelling-house may be erected on an allotment of land within Zone No 2 (a), 2 (b), 2 (c) or 2 (d) and having an area of less than 550 square metres where the allotment was in existence as a separate allotment of land at the appointed day.
- (4) The council may consent to the carrying out of cluster development on land within Zone No 2 (a), 2 (b) or 2 (c) where the nett site area of one or more dwelling-houses within the cluster development is less than 550 square metres.
- (5) For the purpose of subclause (4), **nett site area**, in relation to a dwelling-house within a cluster development, means that area which is intended to be included in the title to the dwelling-house, but does not include any common property which is included in that title.

24-26 (Repealed)

27 Development in Zone No 2 (b)

- (1) The council may grant consent to the carrying out of development on land within Zone No 2 (b) for the purposes of commercial premises, refreshment room or shops to be constructed or used in conjunction with a residential flat building.
- (2) Before granting consent to the carrying out of development referred to in subclause (1), the council shall have regard to:
 - (a) the compatibility of the development with existing or likely future residential flat development, and
 - (b) the manner in which the development will support or complement existing or likely future development on land within Zone No 3 (a) within the town of Muswellbrook.

28 Development in Zone No 2 (c)

- (1) A person shall not subdivide land within Zone No 2 (c) unless the council is satisfied that:
 - (a) water and sewerage services will be available to the land at the time when development is likely to be carried out on that land, and
 - (b) the subdivision conforms with council's proposals for the hierarchy and pattern of roads in the locality.
- (2) Subclause (1) does not apply to the excision of an allotment of land on which a dwelling-house is erected.
- (3) Where the boundary of an allotment of land within Zone No 2 (c) has the annotation "subject to survey" noted on the map, a person shall not carry out development on that land unless the boundary has been surveyed.
- (4) Where, following the survey referred to in subclause (3), the boundary between land in Zone Nos (2) (c) and 6 (a) or 7 (L2) is determined in a different location from that indicated on the map, the land shall be deemed to be within the appropriate zone as determined by the survey.
- (5) A person may, with the consent of the council, carry out development for the purposes of shops, commercial premises, taverns, service stations or refreshment rooms where the development comprises or form part of a neighbourhood business area that has been located and designed to maximise accessibility to the residents of the neighbourhood that it is intended to serve.

29 Limitations on residential development

- (1) This clause applies to land within Zone Nos 2 (a) and 2 (c), being the land shown on

the map:

- (a) south and west of the firm blue line, and
- (b) between the firm blue line and the broken blue line.

(2) A person shall not carry out development on land to which this clause applies:

- (a) where the development is subdivision—unless the subdivision is designed and laid out in such a manner that dwelling-houses to be erected on allotments created by the subdivision will suffer the minimum practicable exposure to potential noise and visual pollution from mining or related development carried out or to be carried out on land generally to the south of the town of Muswellbrook,
- (b) where the development is development for the purpose of a dwelling-house—unless the height and orientation of the dwelling-house, the materials used in south-facing walls, and the number and position of windows or other openings in those walls enable the minimum practicable exposure to the potential noise and visual pollution referred to in paragraph (a), and
- (c) in the case of any development—unless the southern portion of the site is adequately landscaped or treated by other means so as to form a visual screen.

(3) The council shall not grant consent to the carrying out of development for the purposes of a residential flat building on land to which this clause applies unless it is satisfied that the design, orientation, manner of construction and materials to be used in the building and the site treatment will be such that the overall exposure of future residents to potential noise or visual pollution will be less than would otherwise occur with development for the purpose of dwelling-houses.

(4) The council may, as a condition of its consent to a subdivision of land to which this clause applies, require that each allotment created by the subdivision be larger than 550 square metres.

30 General store

A person may, with the consent of the council, carry out development for the purposes of a general store on an allotment of land within Zone No 2 (a), but only if there is no other store within 400 metres from the site of the proposed general store.

31 Exhibition homes

A dwelling-house erected on land within Zone No 2 (a), 2 (b), 2 (c) or 2 (v) may, with the consent of the council, be used as an exhibition home.

32 Advertisements

(1) A person may, with the consent of the council, erect an advertising structure on land

within Zone No 2 (a), 2 (b) or 2 (c) only if:

- (a) the advertising structure is designed to indicate only the purpose for which the premises on which it is erected are used, and
- (b) the council is satisfied that the advertising structure is not likely to interfere with the amenity of the area.

(2) A commercial sign may, with the consent of the council, be displayed on land within Zone No 2 (a), 2 (b) or 2 (c).

33 Underground electricity mains

The council, in considering any development application relating to land within Zone No 2 (a), 2 (b) or 2 (c), shall take into account whether:

- (a) underground electricity reticulation and street lighting are, or are capable of being, available in relation to the land, and
- (b) arrangements satisfactory to the council have been made for the provision and supply of that reticulation and lighting,

and may, as a condition of consent, require that arrangements satisfactory to the council be made for the provision and supply of that reticulation and lighting.

Division 5 Miscellaneous provisions

34 Consideration of development applications

- (1) Before determining a development application the council shall make an assessment of:
 - (a) (Repealed)
 - (b) in the case of development for the purpose of an extractive industry or mine:
 - (i) the advisability of imposing conditions to secure the reinstatement of the land, the removal of waste material or refuse and the securing of public safety and amenity of the neighbourhood, and
 - (ii) the advice of the Water Resources Commission obtained after the council has consulted the Commission in relation to the effect of an extractive industry on river bank stability.
- (2) Before determining any development application on land adjoining land within Zone No 8 (a), the council shall consult with and take into consideration the advice of the Director of National Parks and Wildlife in relation to the effect of the development on the management and conservation values of land within Zone No 8 (a) generally, and specifically in relation to:

- (a) bushfire hazards and management,
- (b) access,
- (c) protection of scenic quality,
- (d) erosion control,
- (e) water quality, and
- (f) control of noxious weeds and feral animals.

35 Flood-prone land

- (1) Notwithstanding any other provision of this plan, the council shall not consent to the carrying out of any development in any floodway where, in its opinion, the development would adversely affect the efficiency, or unduly restrict the capacity, of the floodway, or where the safety of the development would be affected in time of flood.
- (2) A dwelling-house or residential flat building shall not be erected on flood fringe land unless:
 - (a) the floor level is 0.5 metres above the 100 year flood level, and
 - (b) the building is capable of withstanding floodwater pressures,except where the council is satisfied that other flood protection measures proposed in the development will achieve a comparable level of safety.
- (3) In determining a development application to erect a building, other than a building referred to in subclause (2), on flood fringe land the council shall take into consideration the likelihood of floodwaters entering the building and may attach conditions to any consent requiring the floor to be erected at a height sufficient to prevent or reduce the incidence of flooding of the building, and to take such other measures as the council may consider appropriate to flood-proof the building.
- (4) For the purposes of subclauses (1), (2) and (3), the council shall consult with and take into consideration the advice of the Water Resources Commission in relation to the delineation of floodways, the height to which floors should be raised and to any other flood-proofing measures.
- (5) The council may refuse consent to any development which in its opinion will:
 - (a) affect flood peak at any point above or below the development,
 - (b) affect, to a substantial degree, the flow of flood water on adjoining flood-prone lands,

- (c) cause avoidable erosion, siltation or unnecessary destruction of river bank vegetation in the area,
- (d) affect the water table on any adjoining land, or
- (e) adversely affect river bank stability.

36 Preservation of trees

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

- (a) in a State forest, on land reserved as a timber reserve or on Crown timber lands 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,
- (d) in a proclaimed national park,
- (e) required to be cleared so as to enable the use of land for agriculture, or to reduce the risk of bushfires, or
- (f) where the safety or health of persons or property is threatened.

37 Land in Zone No 6 (b)

- (1) The council shall not consent to a plan of subdivision of land where part of that land is in Zone No 6 (b) unless that part of the land is included in the plan of subdivision as a separate and single allotment.
- (2) Notwithstanding the provisions of subclause (1), the council may, where it considers that the topography of the land to be subdivided makes it necessary, consent to a plan of subdivision of land that includes land within Zone No 6 (b) whereby the boundaries of the separate allotment referred to in that subclause will not correspond precisely with the boundaries of the land within Zone No 6 (b) as shown on the map but which depart therefrom only to a minor extent.
- (3) Where following a subdivision referred to in subclause (2), the boundary between land within Zone No 6 (b) and other land within another zone is determined in a different position from that indicated on the map, land shall be deemed to be within the appropriate zone as determined by the subdivision.
- (4) The owner of any land included in Zone No 6 (b) may, by notice in writing, require the council to acquire any part or parts of the land which may not be required to be provided without cost to the council as a condition of its consent to the subdivision of

other land in the same ownership, and upon receipt of such notice the council shall acquire the land to which that notice relates.

38 Payment towards provision or improvement of amenities or services

As a consequence of the carrying out of development in accordance with this plan (as in force at the time the development is carried out), this plan identifies a likely increased demand for public amenities and public services as specified in Schedule 2 and stipulates that dedication or a contribution under section 94 (1) of the Act, or both, may be required as a condition of any consent to that development.

39 Aboriginal conservation areas and relics

- (1) The council shall maintain a register containing a description of each Aboriginal Conservation Area (in this clause referred to as an **Area**) and sites containing aboriginal relics, as may be notified to be council from time to time by the National Parks and Wildlife Service.
- (2) The register referred to in subclause (1) shall be available for inspection without fee at the offices of the council during normal business hours.
- (3) The council shall notify the owner of land which includes an area or site referred to in subclause (1) of the inclusion of that area or site in the register, and of the effect of such inclusion as set out in this clause.
- (4) Where land is affected by this clause the council may include advice to the effect that the land is so affected in any certificate issued under section 149 of the Act in respect of that land.
- (5) An Area or relic that is included in the register referred to in subclause (1) shall not be altered, disturbed, excavated or built upon without the consent of the council.
- (6) The council shall not grant consent under subclause (5) unless:
 - (a) it has been made and forwarded to the Director of National Parks and Wildlife an assessment of the extent to which such consent would affect the scientific, cultural, aboriginal or aesthetic significance of the Area or relic, and
 - (b) it has received advice from the Director of the National Parks and Wildlife Service that, in the opinion of that Director, an adequate assessment has been made.

40 Height of buildings

A building shall not be erected to a height greater than 2 storeys without the consent of the council.

41, 42 (Repealed)

43 Roads, drainage, open space and parking

- (1) Nothing in Part 2 shall prevent the council, or a person with the consent of council, from carrying out development on land within any zone for the purposes of roads, drainage, open space or parking, but where land within Zone No 2 (a), 2 (b) or 2 (c) is used for parking it may be used only for parking ancillary to a purpose permissible in the zone.
- (2) The reference in subclause (1) to the carrying out of development for the purposes of roads includes a reference to the winning of extractive materials by a public authority for the purpose of road construction.

44 Development of certain land within Zone No 3 (a)

Where the council is of the opinion that any part of the land within Zone No 3 (a) having frontage to Rutherford Road, South Muswellbrook, is unlikely to be developed for purposes permissible in that zone, it may grant consent to the subdivision of that land and the erection of dwelling-houses or residential flat buildings on that land.

45 Closing of roads

Any land comprised in a road or part of a road shown on the map by black diagonal hatching superimposed on a colour shall, upon resumption, be deemed to be included in the zone indicated by that colour.

46 Access

A road or other means of access to an existing public road shall not be opened without the consent of the council.

47 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.

48 Utility corridors

In respect of any application or proposal to construct an electricity transmission line, a pipeline, a conveyor or the like, the council shall have regard to the desirability and practicability of integrating such utilities into a common corridor.

48A Conveyance of coal over power station land

The Council may consent to the carrying out of development for the purpose of conveying coal over the surface of land within Zone 5 (a) where the particular purpose indicated for the land by scarlet lettering on the map is "Power Station".

49 Railway land

- (1) All land within the Shire of Muswellbrook owned by the State Rail Authority of New South Wales and used for railway purposes shall be deemed to be within Zone No 5 (b).
- (2) An advertising structure shall not be erected and an advertisement shall not be displayed on any land within Zone No 5 (b).

50 Suspension of laws etc

- (1) In respect of the carrying out of development on any land other than land within Zone No 2 (a), 2 (b), 2 (c) or 2 (v), the operation of any agreement, covenant 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 is hereby suspended to the extent to which that covenant, agreement or instrument is inconsistent with any provisions of this plan (as in force at the time the development is carried out) or with any consent given under the Act.
- (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 on land to which this plan applies in accordance with clause 15 of the *Environmental Planning and Assessment Model Provisions 1980*, as adopted by this plan or in accordance with a consent granted under the Act pursuant to that clause as so adopted:
 - (a) section 314 (1) (c) of, and Schedule 7 to, the *Local Government Act 1919*,
 - (b) section 37 of the *Strata Titles Act 1973*, and
 - (c) except as provided by subclause (2), any agreement, covenant or instrument (other than an instrument under section 88B of the *Conveyancing Act 1919*) 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 the development.
- (4) Pursuant to section 28 of the *Environmental Planning and Assessment Act 1979*, before the making of this plan:
 - (a) the Governor approved of subclauses (1) and (3),

- (b) the Minister for the time being administering the provisions of the *Local Government Act 1919*, referred to in subclause (3) concurred in writing in the recommendation for the approval of the Governor of that subclause in so far as those subclauses relate to those provisions, and
- (c) the Minister for the time being administering the provisions of the *Strata Titles Act 1973*, referred to in subclause (3), concurred in writing in the recommendation for the approval of the Governor of subclause (3) in so far as that subclause relates to that provision.

51 Underground mining

- (1) This clause applies to all land to which this plan applies, other than land within Zone No 7 (L1) or 7 (L2).
- (2) Subject to subclause (3), the council may consent to the carrying out of development which involves mining beneath the surface of land, where that land is within a zone which otherwise prohibits development for the purposes of mining.
- (3) The council shall not grant consent referred to in subclause (2) unless it is satisfied that:
 - (a) all surface works associated with the development will be confined to land within a zone in which development for the purposes of mining may be permitted with consent,
 - (b) underground mining will not unreasonably restrict or otherwise affect any other development on the surface, and
 - (c) underground mining will not detrimentally affect in any way the quantity and quality of water in either subterranean or surface water systems.

52 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 3 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.

52A Classification and reclassification of public land as operational land

- (1) The public land described in Schedule 4 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*, subject to this clause.

- (2) Land described in Part 1 of Schedule 4 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*.
- (3) Land described in Part 2 of Schedule 4:
 - (a) to the extent (if any) that the land is a public reserve, does not cease to be a public reserve, and
 - (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants by which it was affected before its classification, or reclassification, as the case requires, as operational land.
- (4) Land described in Columns 1 and 2 of Part 3 of Schedule 4, 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 all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land except:
 - (a) those (if any) specified for the land in Column 3 of Part 3 of Schedule 4, and
 - (b) any reservations that except land out of a Crown grant relating to the land, and
 - (c) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).
- (5) In this clause, **the relevant amending plan**, in relation to land described in Part 3 of Schedule 4, means the local environmental plan that inserted the land description in that Part.
- (6) Before the relevant amending plan inserted a description of land into Part 3 of Schedule 4, the Governor approved of subclause (4) applying to the land.

53 Subdivision of certain land—Racecourse Road, Muswellbrook

- (1) This clause applies to lot 6, DP 25274, being land in the vicinity of Racecourse Road, Muswellbrook.
- (2) Nothing in this plan prevents a person, with the consent of the council, from:
 - (a) subdividing the land to which this clause applies into 14 allotments generally in accordance with the plan of subdivision prepared by M. M. Hyndes, Bailey and Co., Surveyors, as submitted to the council, and
 - (b) erecting stables, and a dwelling-house to be used in connection with those stables, on each allotment created by the subdivision referred to in paragraph (a).

54 Subdivision of certain land—Denman Road

- (1) This clause applies to lot E, DP 25666, Denman Road.

- (2) Nothing in this plan prevents a person, with the consent of the council, from subdividing the land to which this clause applies into 2 allotments generally in accordance with the plan of subdivision prepared by Geoffrey Rex Bailey and in respect of which the Muswellbrook Shire Clerk's Certificate No 9/75 has been issued.
- (3) The council shall not consent to the carrying out of the subdivision referred to in subclause (2) unless:
 - (a) the 2 allotments to be created by that subdivision will have a common access to Denman Road,
 - (b) a tree screen along the Denman Road frontages of those 2 allotments is established and required to be maintained to the satisfaction of the council, and
 - (c) the council is satisfied that, in respect of proposed lot 10 marked on the plan of subdivision referred to in that subclause, a building will not be erected within 61 metres of the alignment of Denman Road.

55 Subdivision of certain land—Collins Lane, Muswellbrook

- (1) This clause applies to land in M.P.S. (O.S.) 10403, being part of lot 2 of a subdivision of part lots 1, 2 and 3, section 4, Rosebrook Estate, Collins Lane, Muswellbrook.
- (2) Nothing in this plan prevents a person, with the consent of the council, from:
 - (a) subdividing the land to which this clause applies into 2 allotments, 1 of which will have an area of approximately 715 square metres, and
 - (b) erecting a dwelling-house on the allotment the area of which is referred to in paragraph (a).

56 Subdivision of certain land—Yarrawa Road, Denman

- (1) This clause applies to part portion 4, Parish of Denman, Yarrawa Road, Denman.
- (2) Nothing in this plan prevents a person, with the consent of the council, from:
 - (a) subdividing the land to which this clause applies into no more than 4 allotments of approximately equal area, and
 - (b) erecting a dwelling-house on each allotment created by the subdivision referred to in paragraph (a).

57 (Repealed)

58 Carrying out of certain development in Zone No 8 (a)

Notwithstanding clause 8, a person may carry out development without the necessity for consent under the Act being obtained therefor on land within Zone No 8 (a) for the purposes of an electricity transmission line from Bayswater Power Station to Mount Piper

Power Station.

59 What is exempt and complying development?

- (1) Development of minimal environmental impact listed as exempt development in *Development Control Plan No 12—Exempt and Complying Development*, as adopted by the Council on 11 October 1999, is **exempt development**, despite any other provisions of this plan.
- (2) Development listed as complying development in *Development Control Plan No 12—Exempt and Complying Development*, as adopted by the Council on 11 October 1999, 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 12—Exempt and Complying Development*, as adopted by the Council on 11 October 1999.
- (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 12—Exempt and Complying Development* adopted by the Council on 11 October 1999, as in force when the certificate is issued.

Schedule 1

(Clause 2 (2))

The particular objectives of this plan are:

- (a) URBAN BUFFER—to ensure that the towns of Muswellbrook and Denman are protected from any adverse impacts of future mining.
- (b) COMMERCE—to contribute to the continued economic growth of business in the Shire.
- (c) AGRICULTURE—to support and maintain the continued economic production of agriculture in rural areas.
- (d) TRANSPORT—to maintain and provide for the improvement of the arterial road system and railway network to provide an efficient traffic network for the movement of goods and people.
- (e) TOURISM—to encourage tourism as a contributor to the economy of the Shire.
- (f) INDUSTRY—to increase employment opportunities.
- (g) PUBLIC FACILITIES AND SERVICES—to more fully utilize existing facilities and services and to

support the economic and efficient provision of new public facilities and services by way of equitable cost-sharing arrangements.

- (h) ADMINISTRATION—to increase the flexibility of zoning provisions and widen the discretion available to the council.
- (i) COMMUNITY FACILITIES—to aid the provision of community services and facilities.
- (j) SCENIC PROTECTION—to promote a high standard of visual amenity in the Shire of Muswellbrook by way of controls related to conservation of key scenic elements.
- (k) CONSERVATION—to recognize the value of items of the Aboriginal, European, cultural and natural environmental heritage and to protect them from degradation by unnecessary demolition or unsympathetic development.
- (l) RESIDENTIAL—to ensure that the range of densities and developments permissible in residential areas is compatible with the residential environment and that the various housing needs of the community are met.
- (m) LAND USE—to ensure that land uses are compatible with their environment and adjoining uses, and that they function in a safe and economical manner in relation to services, traffic, flooding or other similar hazards.

Schedule 2

(Clause 38)

- 1 Serviced land for community facilities.
- 2 Local community facilities and associated landscaping and car parking; child care centres; community meeting rooms and activity space.
- 3 Local open space and embellishments to local open space such as landscaping and infrastructure; public recreation facilities.
- 4 Stormwater drainage.
- 5 Construction and landscaping of drainage structures, including drainage swales, retention basins, inlet/outlet systems, culverts and piping systems.
- 6 Local roads; construction of local road works including, but not limited to, excavation, drainage culverts and bridge works.
- 7 Water supply and sewerage.

Schedule 3 Development for certain additional purposes

(Clause 52)

Land contained in Filed Plan 410315—service station, restaurant and general store, subject to compliance with the requirements of the Department of Main Roads and Police Department (Traffic Branch).

Lot 41, DP 528526, and lot 10, DP 25827, having frontage to Maitland Street, Muswellbrook—warehouses; processing; packing and sale of meat and frozen foodstuffs; washing of potatoes; packaging of potatoes and onions.

Lot 11, DP 26760—wholesale and retail sale of wine in association with the existing industry.

Lot 162, DP 571189, Sowerby Street, Muswellbrook—cool room and awning.

Lot 2, DP 200624, Sydney Street, Muswellbrook—church.

Lot 31, DP 570405, Market Street, Muswellbrook—public building.

Lot 22, DP 569619, Aberdeen Street, Muswellbrook—retail sale of wine and associated purposes.

Lot 8, resubdivision lot 3, section 11, Bridge Street, Muswellbrook—restaurant.

Land within the area bounded by Macauley, Paxton, Merino and Virginia Streets, Denman, that is shown in the records of the council as being owned by or in association with Denman Van Village, or its successors in title—caravan park, motel, tourist facilities, tourist establishments and associated purposes.

Part lot 1000, DP 262814, Woollybutt Way, Muswellbrook—women’s and children’s refuge.

Lot 391, DP 595130, Maitland Street, Muswellbrook—roadhouse, incorporating fuel and food facilities for motorists and associated carparking.

Part of portion 171 and portion 172, Parish of Savoy, Sylvesters Road, Muswellbrook, as shown edged heavy black on the map marked “*Muswellbrook Local Environmental Plan 1985 (Amendment No 5)*”—bulk explosives manufacture.

Portion 121, Parish of Denman, Almond Lane, Denman—storage of equipment used in the concrete construction industry.

Portion 138, Parish of Bureen, Turnerman’s Road, Martindale—subdivision into a maximum of 60 rural residential allotments.

Lot 22, DP 616590, and lot A, FP 385642, New England Highway, Muswellbrook—itinerant markets, trade fairs, exhibitions and similar events.

Lot 121, DP 717942, Palace Street, Denman, as shown edged heavy black on map marked “*Muswellbrook Local Environmental Plan 1985 (Amendment No 7)*”—subdivision into 4 allotments.

Land in the Parish of Ellis, County of Brisbane, land district of Muswellbrook, being part of Portion 3, and being land fronting Kayuga Road, as shown edged heavy black on the map marked “*Muswellbrook Local Environmental Plan 1985 (Amendment No 18)*”—roadside stall not exceeding 30 square metres in floor space, where only primary products primarily grown on the land and the adjoining land are exposed or offered for sale or sold by retail.

Lot 3, DP 258548, Parish of Savoy—subdivision so as to create a new lot (being Lot 31 of 900 square metres in plan of Surveyor Murray dated 13 July 1989) and the use of that new lot for the purposes of a microwave repeater tower and associated equipment buildings.

Lot 127, DP 716184 and Lot 1241, DP 792850, Parish of St. Aubins, McCully's Gap Road, McCully's Gap, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 22)*"—subdivision into 7 lots and the erection of a dwelling on each lot so created, with 2 of the lots each having an area of 4.6 hectares and having frontage to McCully's Gap Road, McCully's Gap, and the remaining 5 lots having approximate areas of 6, 5.6, 47, 7 and 6 hectares and having frontage to Dolahenty's Road, in accordance with a plan of subdivision adopted by the council.

Land in the township of Muswellbrook, being proposed Lot 202 to be created by a subdivision of Lot 20, DP 518098, Parish of Brougham, shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 23)*"—commercial premises, but only if used in association with a dwelling to be erected on proposed Lot 203 to be created by the subdivision.

Land in the Parish of Denman, County of Brisbane, being Part Lot 3, DP 607 310, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 25)*"—erection, and use for no longer than 5 years from the date of consent to its erection, of a temporary concrete batching plant, but only to produce concrete for supply to the Myambat Army Base.

Land in the Parish of Denman, being Portion 20, Parish of Denman, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 27)*"—subdivision into 3 lots, with 2 of those lots each having an area of not less than 4 hectares.

Land in the township of Muswellbrook, being Lot 1, DP 795201, Bridge Street, Muswellbrook shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 30)*"—sale of arts and crafts, in conjunction with operation of tea rooms.

Portion 87, Parish of Hall, County of Brisbane, shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 33)*"—subdivision into 2 lots.

Lot 2, DP 247373, Parish of Hall, County of Brisbane, shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 31)*"—subdivision into 3 lots.

Portion 166, Parish of Hall, County of Brisbane, at Giants Creek, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 38)*"—erection of a dwelling.

Lot 400, DP 789812, Parish of Hall, County of Brisbane, at Giants Creek, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 42)*"—subdivision into 3 lots.

Lot 1, DP 816642, Parish of Hall, County of Brisbane, at Giants Creek as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 46)*"—subdivision.

Lot 12, Section 10, Palace Street, Denman, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 47)*"—installation of a 55kl above ground diesel tank and associated infrastructure and their use for the purpose of a service station on adjoining land.

Portions 90, 91, 169, Lot 7 DP 821171 and Lot 1 FP 415752, Parish of Rowan as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 53)*"—subdivision into 11 lots.

Lot 57, DP 750940, Parish of Manobalai, Giants Creek, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 54)*"—construction of single dwelling.

Land in the Parish of Althorpe, County of Durham, being Lot 2, DP 221400, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 61)*"—erection of a concrete batching plant.

Land in the Parish of Rowan, County of Durham, being Lot 1, DP 220699 and Lot 21, DP 830326, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 63)*"—veterinary hospital and stables.

Lots 22 and 23, DP 842221, Parish of Wickham, Sandy Hollow, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 68)*"—commercial premises or shop, and dwelling-house.

Portions 64, 102, 155, and 158, Parish of Manobalai, Giants Creek, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 67)*"—erection of a dwelling-house on each portion.

Lot 330 and Lot 331, DP 868878, Parishes of Yarraman and Denman, fronting Main Road 209 at Hollydene—subdivision and other development pursuant to the [Community Land Development Act 1989](#) for the purpose of a tourist establishment.

Lots 3 and 4 in DP 261812, 6–8 Wollombi Road, Muswellbrook, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 79)*"—retail plant nursery.

Lots 103 and 104 in DP 750968, Ridglands Road, Wybong, Parish of Wybong, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 84)*"—erection of a rural dwelling on Lot 104 in DP 750968 subject to its consolidation with Lot 103 in DP 750968.

Lot 213, DP 839334, Brook Street, Muswellbrook, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 89)*"—conservatorium of music.

Lots 11, 15 and 16, DP 701496, Lot 16, DP 247944, Lot 1, DP 774681 and Lot 4, DP 774679 in the Parish of Savoy, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 88)*"—coal mining.

Lot 23, DP 24649, Lot 191, DP 654043 and part of Lot 222, DP 564889, New England Highway, Muswellbrook, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 91)*"—tourist establishment, tourist facilities and associated purposes.

Lots 6 and 7, DP 25935, 125–129 Maitland Street, Muswellbrook, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 94)*"—truck storage and workshop facility.

Land containing the larger railway building in the railway station complex in Market Street, Muswellbrook, as shown edged heavy black on the map marked "*Muswellbrook Local Environmental Plan 1985 (Amendment No 98)*"—museums, commercial premises, community centres, professional consulting rooms, public buildings, reception establishments, recreation facilities, refreshment rooms,

tourist facilities and tourist establishments.

Lot 561, 548054, 23 Sowerby Street, Muswellbrook, as shown edged heavy black on the map marked “*Muswellbrook Local Environmental Plan 1985 (Amendment No 92)*”—skin care and beauty premises.

Schedule 4 Classification and reclassification of public land as operational land

(Clause 52A)

Part 1 Land classified, or reclassified, under original section 30 of Local Government Act 1993

Muswellbrook

Calgaroo Avenue—Lot 3066, DP 263113, as shown edged heavy black on the map marked “*Muswellbrook Local Environmental Plan 1985 (Amendment No 66)*”.

Queen Street and Mataro Avenue—Lots 632 and 633 and part Lot 627, DP 856333, as shown edged heavy black on the map marked “*Muswellbrook Local Environmental Plan 1985 (Amendment No 55)*”.

Thompson Street—part of Lot 117, DP 229323, as shown edged heavy black on the map marked “*Muswellbrook Local Environmental Plan 1985 (Amendment No 66)*”.

Part 2 Land classified, or reclassified, under amended section 30 of Local Government Act 1993—interests not changed

Locality	Description
----------	-------------

Part 3 Land classified, or reclassified, under amended section 30 of Local Government Act 1993—interests changed

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged
Muswellbrook		
Acacia Drive	So much of Lot 4095, DP 794059, as is shown edged heavy black on Sheet 2 of the map marked “ <i>Muswellbrook Local Environmental Plan 1985 (Amendment No 96)</i> ”.	Nil.
Shaw Crescent	Lot 16, DP 28425, as shown edged heavy black on Sheet 1 of the map marked “ <i>Muswellbrook Local Environmental Plan 1985 (Amendment No 96)</i> ”.	Nil.