

# Shellharbour Rural Local Environmental Plan 2004

[2004-818]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **See also**  
[Planning Legislation Amendment Bill 2019](#)

### 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](#).

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New South Wales

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# Shellharbour Rural Local Environmental Plan 2004



New South Wales

## Part 1 Preliminary

### 1 Name of plan

This plan is *Shellharbour Rural Local Environmental Plan 2004*.

### 2 Land to which plan applies

This plan applies to land within the local government area of Shellharbour City that is shown coloured on the zoning map marked “*Shellharbour Rural Local Environmental Plan 2004*”.

### 3 Aims of plan

The aims of this plan are as follows—

- (a) to provide a comprehensive rural planning framework based on the principles of ecologically sustainable development,
- (b) to establish ecologically sustainable development goals and require those goals to be taken into consideration when determining development applications,
- (c) to ensure that the primary use of prime agricultural land and other land in the 1 (a) Agriculture Zone is for sustainable agricultural pursuits and associated development that support a diversified range of agricultural uses,
- (d) to preserve and enhance the visual rural landscape character of land in the 1 (rl) Rural Landscape Zone,
- (e) to provide for the management of the extraction of mineral resources in a manner that has regard to the surrounding land uses and end-use options of the altered landscape while minimising the environmental impacts of mineral extraction,
- (f) to protect, enhance and manage environmentally important land having special aesthetic, historic, ecological or conservation values for the benefit of present and future generations.

#### **4 Relationship to other environmental planning instruments**

- (1) This plan amends *Shellharbour Local Environmental Plan 2000* by inserting at the end of clause 3—
  - (2) However, this plan does not apply to land to which *Shellharbour Rural Local Environmental Plan 2004* applies.
- (2) *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development* is amended by inserting at the end of Schedule 1 (Ancillary or incidental development involving acid sulfate soils excepted from clause 10)—

Clause 41 of *Shellharbour Rural Local Environmental Plan 2004*

#### **5 Adoption of Model Provisions**

The *Environmental Planning and Assessment Model Provisions 1980* are adopted for the purposes of this plan, except for clauses 4 (1), 15–23, 25, 26, 29 and 33 (1) of those provisions.

#### **6 Consent authority**

The Council is the consent authority for the purposes of this plan, subject to the Act.

#### **7 General restrictions on granting development consent**

- (1) Before granting consent for any development, the consent authority is to consider whether it will be ecologically sustainable development.
- (2) The consent authority must not grant consent for any development unless it is satisfied that carrying out the proposed development will be consistent with achieving—
  - (a) the ecologically sustainable development goals in Schedule 1, and
  - (b) the objectives for the zone in which the proposed development will be carried out.
- (3) When taking zone objectives into account, the consent authority is to treat any primary objectives for the zone as more significant than the secondary objectives for the zone and a primary objective is to prevail over a secondary objective for the same zone to the extent of any inconsistency.

#### **8 Definitions**

- (1) The Dictionary at the end of this plan contains definitions of certain terms used in this plan.



- (2) In this plan, a reference to a map is to a map kept at the office of the Council.
- (3) Notes included in this plan do not form part of this plan.

## **9 Zones indicated on the zoning map**

Land is within one of the following zones for the purposes of this plan if it is shown on the zoning map in the manner specified below—

- 1 (a) Agriculture Zone—shown a light yellow colour.
- 1 (rl) Rural Landscape Zone—shown a yellow colour.
- 1 (x) Extractive Industry Zone—shown a medium grey colour.
- 5 (a) Special Uses (School) Zone—shown a dark yellow colour and lettered with the word “SCHOOL”.
- 5 (b) Special Railway Uses Zone—shown a dark grey colour.
- 6 (a) Public Open Space Zone—shown a light green colour.
- 7 (n) Nature Conservation Zone—shown a medium tan colour.
- 7 (w) Wetlands Zone—shown a rust colour.
- 9 (b) Arterial Roads Reservation Zone—shown a red colour.
- 9 (c) Local Roads Reservation Zone—shown a light grey colour.

## **10 Zone objectives and development control table**

- (1) The objectives of a zone are set out in Part 2 (General land use controls) for the zone under the heading “Objectives of the zone”.
- (2) Except as otherwise provided by this plan, for each zone specified in a “general controls for development” clause in Part 2, the development that—
  - (a) may be carried out without development consent, and
  - (b) may be carried out only with development consent, and
  - (c) is prohibited,is indicated in that clause under the headings “Allowed without development consent”, “Allowed only with development consent” and “Prohibited in the zone” respectively, appearing in the matter relating to the zone.
- (3) Consent must not be granted to development unless the consent authority has taken into consideration—

- (a) the aims of this plan in so far as they are relevant to the proposed development and promote the principles of ecologically sustainable development, and
- (b) whether the proposed development is consistent with such of the objectives of the zone in which it is proposed to carry out the development as are relevant to the proposed development.

### **11 Exempt and complying development**

- (1) Development of minimal environmental impact listed as exempt development in *Shellharbour Development Control Plan No 11/98 for Exempt Development*, as in force on 4 May 2005, is **exempt development**, despite any other provision of this plan.
- (2) Development listed as complying development in *Shellharbour Development Control Plan No 11/98 for Complying Development*, as in force on 4 May 2005, is **complying development**, if—
  - (a) it is local development of a kind that may be carried out with development 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 the relevant development control plan referred to in subclause (1) or (2).
- (4) A complying development certificate issued for any complying development is to be subject to the conditions for the development specified in *Shellharbour Development Control Plan No 11/98 for Complying Development*, as in force when the certificate is issued.

### **12 Additional development**

- (1) Nothing in this plan prevents a person, with development consent, from carrying out development on land referred to in Schedule 2 if the development is specified in relation to that land in that Schedule, subject to such conditions, if any, as are specified in that Schedule.
- (2) Subclause (1) does not affect the operation of any other provision of this plan (such as a development standard) that is consistent with allowing that development to be carried out subject to any such conditions.

### **13 Unzoned land**

- (1) This clause applies to all land (including waterways) to which this plan applies that is not shown on the zoning map.
- (2) Development must not be carried out on land to which this clause applies except with

development consent.

- (3) In determining a development application required by this clause, the consent authority must have regard to the objectives of any zone within which the land abutting the unzoned land is situated.
- (4) Notwithstanding subclause (2), consent is not required for development on unzoned land for the purpose of roads or utility installations (other than railway, water or air transport, wharf or river infrastructure, gas holders or generating works).

#### **14 Suspension of restrictions on land**

- (1) To the extent necessary for the purpose of enabling development to be carried out in accordance with this plan or in accordance with a consent granted under the Act, any covenant, agreement or like instrument imposing restrictions on, or prohibiting, the development shall not apply to the development.
- (2) Subclause (1) does not affect the rights of the Council or any other statutory body or public authority under any registered instrument.
- (3) Pursuant to section 28 of the Act, the Governor approved of subclauses (1) and (2) before this plan was made.

#### **15 Savings**

- (1) A development application relating to land to which this plan applies that was lodged with the consent authority, but that was not finally determined before the commencement of this plan, is to be determined as if this plan had been exhibited but had not been made.
- (2) Nothing in Part 2 or 3 prohibits or requires development consent for an agricultural use of land to which this plan applies if that use—
  - (a) was being lawfully carried out on the land without development consent at the same or a greater intensity during the period of 12 months immediately before the commencement of this plan, and
  - (b) does not involve the clearing of land, the erection of a structure, the carrying out of a work, or the demolition of any structure or work.
- (3) If a development application has been made before the commencement of *State Environmental Planning Policy Amendment (Planning for Bush Fire Protection) 2020* in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if that Policy had not commenced.

## **Part 2 General land use controls**

### **Division 1 Development in the 1 (a) Agriculture and 1 (rl) Rural Landscape Zones**

#### **16 General controls for development in the 1 (a) Agriculture Zone**

(1) **Objectives of the zone** The primary objectives of the zone are as follows—

- (a) to recognise the importance and retain the productive capacity of high class agricultural land,
- (b) to encourage sustainable agricultural practices and management of rural land,
- (c) to minimise the incidence of existing and potential rural land use conflict by the appropriate separation of potentially incompatible uses,
- (d) to ensure that development and management of land within the zone has a minimal impact on—
  - (i) water quality and environmental flows of receiving streams, and
  - (ii) ecological values of the land, including habitat corridors, and
  - (iii) the amenity of surrounding landowners, and
  - (iv) rural landscape character,
- (e) to encourage habitat restoration on cleared land and rehabilitation activities that enhance the biodiversity values of the escarpment, foothills, riparian corridors, wetlands and wildlife links,
- (f) to ensure that mineral resources of State or regional significance are not sterilised by the location of inappropriate uses on adjoining land.

The secondary objective of the zone is to allow non-agricultural uses that are compatible with the environmental quality and visual rural landscape character of land within the zone and that do not adversely impact on the agricultural potential or use of surrounding lands.

(2) **Allowed without development consent** Exempt development and development for the purpose of the following may be carried out without development consent—

agriculture; approved bush fire hazard reduction; bush food plantations; home businesses; home occupations; identification signs; removal of environmental weeds; roadside stalls.

(3) **Allowed only with development consent** Any development not included in subclause (2) or (4) may be carried out only with development consent.

- (4) **Prohibited in the zone** Subdivisions that create lots less than 40 hectares in area and development for the purpose of the following are prohibited—

advertisements not displaying the purpose for which the land is used or directional information; amusement parks; boarding houses; brothels; bulky goods; bush rock removal; caravan parks; car repair stations; child care centres; clubs; commercial premises; detached dual occupancies; educational establishments; heavy industries; helipads; hospitals; hotels; housing for older people or people with a disability; houses on lots less than 40 hectares in area; industries; junk yards; light industries; liquid fuel depots; medium density housing; mineral sand mines; mines; motels; motor showrooms; offensive or hazardous industries; passenger terminals; places of assembly; places of worship; professional consulting rooms; public buildings; racecourses; recreation facilities; road transport terminals; rural workers' dwellings; service stations; shops; warehouses.

## **17 General controls for development in the 1 (rl) Rural Landscape Zone**

- (1) **Objectives of the zone** The primary objectives of the zone are as follows—

- (a) to protect the landform, native vegetation, habitat corridors and other environmental attributes which contribute to the scenic and ecological values of the rural landscape,
- (b) to ensure that mineral resources of State and regional significance are not sterilised from future possible extraction by the location of inappropriate uses on adjoining land,
- (c) to provide for compatible land uses adjacent to areas of present or likely future mineral resources of State or regional significance,
- (d) to ensure that development and management of the land has a minimal impact on—
  - (i) the availability of land containing mineral resources of State and regional significance for future extraction, and
  - (ii) water quality and environmental flows of receiving streams, and
  - (iii) ecological values of the land, and
  - (iv) the amenity of surrounding uses, and
  - (v) visual impact on the rural landscape character.

The secondary objectives of the zone are to retain the agricultural productive capacity of rural land and to encourage habitat restoration on cleared land and rehabilitation activities that enhance the biodiversity values of the foothills, riparian corridors, wetlands and habitat corridors.

- (2) **Allowed without development consent** Exempt development and development for the purpose of the following may be carried out without development consent—

agriculture; approved bush fire hazard reduction; bush food plantations; home businesses; home occupation identification signs; removal of environmental weeds.

- (3) **Allowed only with development consent** Subdivisions that create lots 40 hectares or greater in area and development for the purpose of the following may be carried out only with development consent—

aquaculture; bed and breakfast accommodation; bush food plantations; clearing of land; drainage of land; farm dams; farm sheds; filling; houses on lots of 40 hectares or greater in area; intensive animal establishments; intensive plant growing; local roads; picnic grounds; plant nurseries; roadside stalls; rural restaurants; telecommunications facilities; telecommunications networks; utility installations (other than gas holders or generating works); wetland improvement.

- (4) **Prohibited in the zone** Any development not included in subclause (2) or (3) is prohibited.

## **18 Subdivision of land in the 1 (a) Agriculture or 1 (rl) Rural Landscape Zone**

- (1) Consent for the subdivision of land in the 1 (a) Agriculture or 1 (rl) Rural Landscape Zone may be granted only if—

(a) the consent authority is satisfied that—

(i) the land is intended and likely to be used for development that is permissible under this plan and is consistent with the ecologically sustainable development goals and objectives of this plan, and

(ii) each proposed lot has an area equal to or greater than 40 hectares or, if it has a smaller area, has been created in accordance with clause 24, or

(b) the subdivision is to adjust a boundary between two existing lots where—

(i) no additional lots will be created, and

(ii) the proposed lot configuration will not result in the creation of a lot of less than 40 hectares on which an existing house will be situated or a house is proposed to be erected.

- (2) **Requirements for subdivision of land** Before granting consent to the subdivision of land in the 1 (a) Agriculture or 1 (rl) Rural Landscape Zone, the consent authority must be satisfied that, to the fullest extent possible or practicable, allotment boundaries follow catchment, topographical or other natural features so as to facilitate long-term biodiversity conservation management and implementation of the principles of

ecologically sustainable development.

- (3) Consent must not be granted for a subdivision of land in the 1 (a) Agriculture or 1 (rl) Rural Landscape Zone that is wholly or partly within an area of high conservation value unless the consent authority has considered a property management plan.
- (4) Before granting consent for a subdivision of land in the 1 (a) Agriculture or 1 (rl) Rural Landscape Zone, the consent authority must have regard to—
  - (a) the capability of the land for agricultural use, and
  - (b) the ability to site a house and associated buildings on the land, and
  - (c) the visual impact that any proposed development of the land will have on the visual character and amenity of the surrounding area, including the visual impact of any clearing and fencing that will be undertaken as a consequence of the subdivision, and
  - (d) whether the land is suitable for disposing of effluent, and
  - (e) the impact of water usage on watercourses and environmental flows where new allotments will have riparian rights under the [Water Management Act 2000](#), and
  - (f) whether there will be legal and practicable vehicular access to the land, and
  - (g) the potential for land use conflict between the proposed or potential agricultural use of the land and the use of any adjacent houses or any house on the property, and
  - (h) whether the consequence of the subdivision or likely future development may affect the availability for extraction of mineral resources of State and regional significance.

#### **19 Additional requirements for development in the 1 (a) Agriculture and 1 (rl) Rural Landscape Zones**

- (1) Before granting consent for development of land for the purpose of a house or other building on land in the 1 (a) Agriculture or 1 (rl) Rural Landscape Zone, the consent authority must have regard to the following matters to the extent that they are relevant to the proposed development—
  - (a) the capability for agricultural uses of the part of the land that will not be the site of the house,
  - (b) the likely impact of the proposed development on the existing, or potential, agricultural uses of the surrounding land,
  - (c) vehicular access to the site,

- (d) the visual impact of the house or other building and its associated buildings and the way in which services will be provided for the house or other building on the visual landscape character,
  - (e) the likely impact on the winning of mineral resources from land containing mineral resources of State and regional significance,
  - (f) the ability to dispose of effluent without adversely impacting on the water quality of nearby streams.
- (2) The height of any building erected on land in the 1 (a) Agriculture or 1 (rl) Rural Landscape Zone must not exceed 8 metres above natural ground level when measured vertically between any part of the building and the natural ground level directly below.

## **Division 2 Extractive industry**

### **20 General controls for development in the 1 (x) Extractive Industry Zone**

- (1) **Objectives of the zone** The objectives of the zone are as follows—
- (a) to identify land that contains mineral resources,
  - (b) to minimise the impact of any development associated with mineral extraction on the amenity of surrounding landowners and the ongoing sustainability of any agricultural uses on adjoining land,
  - (c) to avoid the sterilisation of the mineral resources from future possible extraction caused by the development of surrounding land,
  - (d) to have regard to site rehabilitation and end-use options.
- (2) **Allowed without development consent** Exempt development and development for the purpose of the following may be carried out without development consent—
- agriculture; approved bush fire hazard reduction; removal of environmental weeds.
- (3) **Allowed only with development consent** Subdivisions that create lots 40 hectares or greater in area and development for the purpose of the following may be carried out only with development consent—
- clearing of land; drainage of land; extractive industries; filling; identification signs; mineral sand mines; mines; public utility undertakings; sand mining; site rehabilitation works; stockpiling; telecommunications facilities; telecommunications networks.
- (4) **Prohibited in the zone** Any development not included in subclause (2) or (3) is prohibited.



## **21 Preliminary planning required for extractive industry**

Before granting consent for development for the purposes of an extractive industry in the 1 (x) Extractive Industry Zone, the consent authority is to have regard to an environmental management and site rehabilitation plan that addresses the following—

- (a) best practice guidelines and other current methods for measuring and minimising all associated environmental impacts of the proposed development,
- (b) any likely social impacts of the proposed development, including the amenity of nearby residents,
- (c) the visual impact of the proposed development on the landscape, including the ability for the development to be seen from public places and nearby houses,
- (d) noise, dust and airborne pollution that may arise from the proposed development,
- (e) protection and enhancement of areas of native vegetation in the vicinity of the proposed development,
- (f) any likely seismic impacts of the proposed development on surrounding buildings,
- (g) hydrology impacts and the implications of the proposed development on the water quality and flow rates in the catchment,
- (h) if the proposed development involves quarrying operations, whether a buffer area comprised of land owned by the person who will carry out the quarrying operations has or can be established to which any measurable adverse environmental impacts that affect the amenity of any nearby residents will be confined,
- (i) if the proposed development involves quarrying operations, access for quarry vehicles and the environmental impacts associated with the transport of extractive materials,
- (j) rehabilitation of the site and co-ordination with any proposed or approved site rehabilitation on adjoining land,
- (k) staging and co-ordination of extraction to minimise environmental impacts and allow for the orderly rehabilitation of the site.

## **22 Land containing mineral resources of State and regional significance**

- (1) **To what land does this clause apply?** This clause applies to land containing mineral resources of State and regional significance.
- (2) **What must be considered in assessing a development application?** Consent must not be granted to any development on land to which this clause applies which in the opinion of the consent authority would lead to the sterilisation of mineral resources of State and regional significance from future possible extraction.

### 23 Buffer for extractive industry

- (1) **To what land does this clause apply?** This clause applies to—
  - (a) land that is within one kilometre of land containing mineral resources of State and regional significance, and
  - (b) land in the 1 (x) Extractive Industry Zone.
- (2) **What must be included in assessing a development application?** Consent must not be granted to any development on land to which this clause applies unless the consent authority has considered—
  - (a) the impact the proposed development is likely to have on the availability of the particular mineral resource for future extraction, and on any current resource extraction, and
  - (b) whether the development would render that mineral resource unavailable and, if so, the cost of not being able to recover the mineral resource.

#### 23A Access and buffer for extractive industry at Croom

- (1) **To what land does this clause apply?** This clause applies to the following land at Dunsters Lane, Croom—
  - (a) so much of Lot 2, DP 858245, as is identified as “Access Land” and shown edged with a heavy black broken line on Sheet 1 of the map marked “*Shellharbour Rural Local Environmental Plan 2004 (Amendment No 1)*”, which is referred to in this clause as **the access land**,
  - (b) so much of Lot 1, DP 858245, as is identified as “Buffer Land” and shown edged with a heavy black broken line on Sheet 1 of the map marked “*Shellharbour Rural Local Environmental Plan 2004 (Amendment No 1)*”, which is referred to in this clause as **the buffer land**,
  - (c) so much of Lot 1, DP 858245, as is within the 1 (x) Extractive Industry Zone, which is referred to in this clause as **the extractive operations land**.
- (2) **What restrictions apply to extractive operations?** Development may be carried out, with development consent, on the access land for the purpose of—
  - (a) a quarry haul road servicing extraction and ancillary activities on the extractive operations land, and
  - (b) a bund wall screening that road.
- (3) The use of any land other than a road on the access land screened by a bund wall to provide vehicular access to, or egress from, extraction and ancillary activities on the extractive operations land is prohibited.

- (4) Development may be carried out, with development consent, on the buffer land for the purpose of a bund that will reduce the environmental impact on adjoining land of extractive operations carried out on Lot 1, DP 858245.
- (5) Consent must not be granted to the carrying out of extractive operations on the extractive operations land unless the consent authority is satisfied that the environmental impact on that adjoining land of those operations will be adequately reduced by a bund on the buffer land.

#### **24 Subdivision for the purpose of extractive industry**

- (1) **To what land does this clause apply?** This clause applies to land that is within the planning buffer area shown on the State and Regionally Significant Mineral Resources Map.
- (2) **What must be considered before granting development consent?** Land to which this clause applies may be subdivided to create lots of any size but only with development consent which may be granted only if the consent authority is satisfied that—
  - (a) the purpose of the subdivision is to excise land needed for an extractive industry or operational buffer to an extractive industry, and
  - (b) the land is or adjoins land containing mineral resources of State and regional significance, and
  - (c) the proposed lot that consists of land other than the land excised as referred to in paragraph (a) will be used for an agricultural or other permitted use, and
  - (d) any rural land not required for extraction of mineral resources or an operational buffer will be consolidated with other adjoining agricultural land, wherever possible.

### **Division 3 Development in the special uses zones**

#### **25 General controls for development in the 5 (a) Special Uses (School) Zone**

- (1) **Objectives of the zone** The objective of the zone is to maintain land for certain community facilities and services.
- (2) **Allowed without development consent** Exempt development and development for the purpose of the following may be carried out without development consent—

approved bush fire hazard reduction; home businesses; home occupations; removal of environmental weeds.
- (3) **Allowed only with development consent** Development for the purpose of the following may be carried out only with development consent—

clearing of land; drainage of land; filling; educational establishments; utility

installations (other than gas holders or generating works).

- (4) **Prohibited in the zone** Any development not included in subclause (2) or (3) is prohibited.

## **26 General controls for development in the 5 (b) Special Railway Uses Zone**

- (1) **Objectives of the zone** The objective of the zone is to maintain land for railway purposes.
- (2) **Allowed without development consent** Exempt development and development for the purpose of the following may be carried out without development consent—  
approved bush fire hazard reduction; home businesses; home occupations; removal of environmental weeds.
- (3) **Allowed only with development consent** Development for the purpose of the following may be carried out only with development consent—  
clearing of land; drainage of land; filling; railway uses (other than advertisements, except at railway stations); utility installations (other than gas holders or generating works).
- (4) **Prohibited in the zone** Any development not included in subclause (2) or (3) is prohibited.

## **Division 4 Development in the 6 (a) Public Open Space Zone**

### **27 General controls for development in the 6 (a) Public Open Space Zone**

- (1) **Objectives of the zone** The objective of the zone is to make identified land available for either active or passive recreational pursuits by the general public.
- (2) **Allowed without development consent** Exempt development and development for the purpose of the following may be carried out without development consent—  
approved bush fire hazard reduction; removal of environmental weeds.
- (3) **Allowed only with development consent** Development for the purpose of the following may be carried out only with development consent—  
advertisements displaying the purpose for which the land is used; clearing of land; drainage of land; filling.
- (4) **Prohibited in the zone** Any development not included in subclause (2) or (3) is prohibited.

## **Division 5 Development in the 7 (n) Nature Conservation Zone**

### **28 General controls for development in the 7 (n) Nature Conservation Zone**

(1) **Objectives of the zone** The primary objectives of the zone are—

- (a) to protect and enhance native vegetation, riparian and wildlife corridors or links for the conservation of native wildlife, and
- (b) to encourage habitat restoration on cleared land in the zone and rehabilitation activities that enhance the biodiversity values of the escarpment, foothills, riparian corridors, wetlands and wildlife corridors or links, and
- (c) to minimise the impact of development on the ecological and scenic attributes of land in the zone, including—
  - (i) water quality of receiving streams, and
  - (ii) Aboriginal cultural values and places of importance to the Aboriginal peoples of the Illawarra, and
  - (iii) the ecological and biodiversity values of the land, and
- (d) to minimise the visual impact of development on landscape character, and
- (e) to minimise clearing of native vegetation for bush fire hazard reduction.

The secondary objectives of the zone are—

- (a) to allow for the development of uses that are ancillary to and directly related to nature conservation, scenic amenity and Aboriginal cultural heritage, and
- (b) to ensure that relevant natural and human-induced hazards, including bush fire hazard, are considered and adequately addressed in the use and management of the land.

(2) **Allowed without development consent** Exempt development and development for the purpose of the following may be carried out without development consent—

approved bush fire hazard reduction; removal of environmental weeds.

(3) **Allowed only with development consent** Subdivision to create lots 40 hectares or greater in size and development for the purpose of the following may be carried out only with development consent—

agriculture; attached dual occupancies; bed and breakfast accommodation; bush food plantations; clearing of land; drainage of land; eco-tourism facilities; farm dams; farm sheds; farm stay establishments; filling; home businesses; home occupations; houses on lots with an area of 40 hectares or more; identification

signs; local roads; public utility undertakings; sanctuaries; telecommunications facilities; telecommunications networks; tourist cabins.

- (4) **Prohibited in the zone** Any development not included in subclause (2) or (3) is prohibited.

## **29 Subdivision of land in the 7 (n) Nature Conservation Zone**

- (1) Consent for the subdivision of land in the 7 (n) Nature Conservation Zone may be granted only if the consent authority is satisfied that—
- (a) the land is intended and likely to be used for development that is permissible under this plan and is consistent with the ecologically sustainable development goals and objectives of this plan, and
  - (b) each proposed lot has an area greater than or equal to 40 hectares, and
  - (c) to the fullest extent possible or practical, allotment boundaries will follow catchment, topographical or other natural features so as to facilitate long-term biodiversity conservation management and implementation of the principles of ecologically sustainable development.
- (2) Before granting consent for the subdivision of land in the 7 (n) Nature Conservation Zone, the consent authority must have regard to the following—
- (a) a property management plan, if the land is wholly or partly within an area of high conservation value,
  - (b) the ability to site a house and any associated buildings on the land,
  - (c) the capacity and sustainability of the land to accept effluent disposal on each new allotment,
  - (d) the cumulative impact of development including clearing and fencing, effluent disposal, rural pursuits and bush fire hazard reduction on the land and locality,
  - (e) the impact of likely future development of the land and any associated clearing of the land on the biodiversity attributes of the land and surrounding area, including the conservation priority rating of the vegetation community and any wildlife corridors or links or riparian corridors,
  - (f) vehicular access to the site, including access for emergency and fire fighting vehicles,
  - (g) the impact on water usage from watercourses and environmental flows where new allotments will have riparian rights under the [Water Management Act 2000](#),
  - (h) minimising impacts on wildlife corridors or links and riparian corridors and, in particular, how the subdivision lot layout can minimise the fragmentation of those

corridors and links into different ownerships,

- (i) the impact on native habitat and the possibility for environmental conservation works to enhance the native habitat or wildlife and riparian corridor value of the land,
- (j) the environmental and visual impacts of providing services to the new allotment,
- (k) the slope and stability of the land,
- (l) the environmental impacts associated with any bush fire hazard reduction works that will result from the development.

### **30 Additional requirements for development in the 7 (n) Nature Conservation Zone**

- (1) Before granting consent for development on land in the 7 (n) Nature Conservation Zone for the purpose of a house or other building, the consent authority must have regard to the following—
  - (a) the impact of the development and any associated clearing of the land on the biodiversity attributes of the land and surrounding area, including the conservation priority rating of the vegetation community and identified wildlife or riparian corridors,
  - (b) the cumulative impact of development, including clearing and fencing, effluent disposal, rural pursuits and bush fire hazard reduction on the land and in the locality,
  - (c) vehicular access to the site, including access for emergency and fire fighting vehicles,
  - (d) environmental impacts associated with any bush fire hazard reduction works that will result from the development,
  - (e) topographic features of the land, including slope and instability,
  - (f) environmental and visual impacts of providing services to any house,
  - (g) the ability to dispose of effluent without adversely impacting on the water quality of nearby streams,
  - (h) the ability to site a house on the land, if proposed, and the impact of the house and any associated buildings, and of the provision of services to it, on the visual landscape character,
  - (i) the impact of the development on native habitat and the possibility for environmental conservation works to enhance the native habitat or wildlife and riparian corridor value of the land.

- (2) The height of any building erected on land in the 7 (n) Nature Conservation Zone must not exceed 8 metres above natural ground level when measured vertically between any part of the building and the natural ground level directly below.

## **Division 6 Development in the 7 (w) Wetlands Zone**

### **31 General controls for development in the 7 (w) Wetlands Zone**

- (1) **Objectives of the zone** The objective of the zone is to protect and enhance wetland areas, the natural hydrology of their ecosystems and the important habitats for species of wetland flora and fauna that they provide.
- (2) **Allowed without development consent** Approved bush fire hazard reduction.
- (3) **Allowed only with development consent** Development for the purpose of the following may be carried out only with development consent—  
aids to marine navigation; utility installations (other than gas holders or generating works); wetland improvement.
- (4) **Prohibited in the zone** Any development not included in subclause (2) or (3) is prohibited.

## **Division 7 Development in the 9 (b) Arterial Roads Reservation Zone**

### **32 General controls for development in the 9 (b) Arterial Roads Reservation Zone**

- (1) **Objectives of the zone** The objectives of the zone are—
- (a) to identify land reserved for main or arterial roads for the purpose of its acquisition, and
- (b) to allow use of that land for the purpose of roads.
- (2) **Allowed without development consent** Development for the purpose of the following may be carried out without development consent—  
main or arterial roads; removal of environmental weeds; widening of existing main or arterial roads.
- (3) **Allowed only with development consent** Development for the purpose of the following may be carried out only with development consent—  
clearing of land; drainage of land; extractive industries; filling; mineral sand mines; telecommunications facilities; telecommunications networks; utility installations (other than gas holders and generating works).
- (4) **Prohibited in the zone** Any development not included in subclause (2) or (3) is prohibited.



### 33 Acquisition of land in the 9 (b) Arterial Roads Reservation Zone

**Note—**

Nothing in this clause is to be construed as requiring a public authority to acquire land—see section 27 (3) of the Act.

- (1) The owner of any land within the 9 (b) Arterial Roads Reservation Zone may, by notice in writing, require the Roads and Traffic Authority (the **RTA**) to acquire the land.
- (2) On receipt of such a notice, the RTA must acquire the land if—
  - (a) the land is vacant, or
  - (b) the land is not vacant but is included in the 5-year works program of the RTA current at the time of the receipt of the notice, or
  - (c) the land is not vacant but the RTA has decided not to give concurrence to an application for consent to the carrying out of development on the land, or
  - (d) the land is not vacant but the RTA is of the opinion that the owner of the land will suffer hardship if the land is not acquired within a reasonable period of time, but the RTA is not required to acquire the land if it might reasonably be required to be dedicated for public road.
- (3) Despite any other provision of this plan, development may be carried out, but only with development consent, on land within the 9 (b) Arterial Roads Reservation Zone (whether or not it has been acquired) if the development may be carried out (with or without consent) on land in an adjoining zone or if the development is compatible with any such development.
- (4) In granting any such consent, the consent authority may impose conditions—
  - (a) requiring the removal of any building or work for which it has granted consent, or
  - (b) requiring the reinstatement of the land or removal of any waste material or refuse, or
  - (c) relating to any requirement requested by the RTA to be imposed by a condition of consent when granting its concurrence to the consent.
- (5) (Repealed)

### Division 8 Development in the 9 (c) Local Roads Reservation Zone

#### 34 General controls for development in the 9 (c) Local Roads Reservation Zone

- (1) **Objectives of the zone** The primary objective of the zone is to identify road reservations that will be needed in the future.

The secondary objective is to permit the use of land reserved for roads while it is not required for local roads.

(2) **Allowed without development consent** Development for the purpose of the following may be carried out without development consent—

local roads; removal of environmental weeds; widening of local existing roads.

(3) **Allowed only with development consent** Development for the purpose of the following may be carried out only with development consent—

clearing of land; drainage of land; filling; telecommunications facilities; telecommunications networks; utility installations (other than gas holders and generating works); wetland improvement.

(4) **Prohibited in the zone** Any development not included in subclause (2) or (3) is prohibited.

### **35 Acquisition of land in the 9 (c) Local Roads Reservation Zone**

(1) The owner of land in the 9 (c) Local Roads Reservation Zone may, by notice in writing, require the Council to acquire the land.

(2) On receipt of such a notice, the Council must acquire the land.

(3) Despite any other provision of this plan, until it is acquired, development may be carried out, but only with development consent, on land within the 9 (c) Local Roads Reservation Zone if the development may be carried out (with or without consent) on land in an adjoining zone or if the development is compatible with any such development.

(4) In granting such a consent, the consent authority may impose conditions requiring—

(a) the removal of any building or work for which it has granted consent, and

(b) the reinstatement of the land or removal of any waste material or refuse.

## **Part 3 Special provisions**

### **Division 1 Areas of high conservation value**

#### **36 Areas of high conservation value**

(1) **Environmental management objectives** The environmental management objectives of this clause are—

(a) to require certain environmental issues to be considered before development is carried out on land within an area of high conservation value, and

(b) to retain bushland in parcels of a size and configuration which will, as far as

possible, enable the native flora and fauna species and communities to survive in the long term, and

- (c) to maintain and, where appropriate, revegetate habitat corridors between remnant areas of bushland, and
- (d) to ensure that any development adjacent to, adjoining or within a watercourse or wetland does not adversely impact on water quality, the natural hydrological regime or habitat value, and
- (e) to ensure that any development adjacent to, adjoining or within a riparian corridor conserves or enhances the aquatic and native vegetation of the riparian corridor, and
- (f) to protect bushland and existing landforms for their scenic values, and
- (g) to retain the unique visual identity of the landscape.

(2) **Is consent required?** A person shall not carry out development, including the clearing of land, in an area of high conservation value except with development consent.

(3) **What must be included in an assessment by the consent authority?** Before granting consent for development of land allowed to be carried out with consent by Part 2, the consent authority must consider the following—

- (a) the impact of the proposal on the habitat value of vegetation within riparian corridors and wildlife corridors or links,
- (b) the potential for undertaking environmental conservation works to enhance the biodiversity values of the land, including the potential for rehabilitation works of degraded habitats or breaks in riparian corridors or wildlife corridors or links,
- (c) whether the design and construction of any proposed fencing minimises possible limitation of fauna movement,
- (d) whether provision has been made for the planting of appropriate native plant species on the land where the planting would visually screen the development or contribute to the restoration or enhancement of riparian and wildlife corridors or links.

(4) **What must the consent authority be satisfied about before granting consent?** Consent must not be granted to development of land in an area of high conservation value unless the consent authority is satisfied that—

- (a) the development has been designed to minimise disturbance to native vegetation communities, and
- (b) opportunities to restore or enhance the biodiversity values of the land, including

riparian corridors and wildlife corridors or links, have been considered.

- (5) The consent authority may decline to consent to development of land in an area of high conservation value until it has considered a site plan of an appropriate scale clearly and accurately showing the boundary of any vegetation edge and stands of remnant vegetation on the subject land to enable it to properly assess the impact of the proposed development on that vegetation and the biodiversity it supports.

## **Division 2 Land management issues**

### **37 Clearing of land**

- (1) **Environmental management objectives** The environmental management objectives of this clause are to ensure that the development of land has minimal impact on the biodiversity of native vegetation and to encourage environmental conservation works to enhance wildlife corridors or links and remnant stands of vegetation within the rural area.
- (2) **Consent required for clearing** A person must not clear land except with development consent.
- (3) **Exception** Despite subclause (2), a person may clear land without development consent if the clearing comprises a maximum of 7 trees per annum from a property for farm management and fencing purposes.
- (4) **What must be included in an assessment by the consent authority?** Consent must not be granted to clearing of vegetation on land in a rural zone unless the consent authority has taken into consideration the following—
  - (a) the impact of the proposed development on the movement of native fauna,
  - (b) the impact of the proposed development on any regionally or locally rare communities, populations, species or ecologically significant habitats,
  - (c) the potential for undertaking environmental conservation works to enhance the biodiversity values of the land,
  - (d) the impact of the proposed development on any endangered or vulnerable species, populations or ecological communities and their habitats.
- (5) **What must the consent authority be satisfied about before granting consent?** Consent must not be granted for clearing unless the consent authority is satisfied that—
  - (a) there is no reasonable alternative to the removal of the vegetation to be cleared, and
  - (b) the proposed development will not have an unacceptable visual impact on the scenic quality of the area, and

- (c) the amount of the vegetation proposed to be removed is minimal, and
- (d) opportunities for planting local native plant species elsewhere on the land have been considered, and
- (e) the proposed development will not threaten the integrity of any unbroken natural tree canopy cover or create smaller discrete parcels of vegetation from an existing stand.

### **38 Land and water management**

- (1) **Environmental management objectives** The environmental management objective of this clause is to ensure that development carried out on land adjoining a stream, creek or river—
  - (a) conserves or enhances the aquatic and remnant native vegetation within the riparian corridor, and
  - (b) has minimal impact on the natural hydrological regime and potential fish habitat of the watercourse.
- (2) **When is consent required?** A person must not carry out development for the purpose of earthworks, drainage, dams or land filling without development consent if the development—
  - (a) will raise or lower the ground level by 50 centimetres or more, through filling or reshaping the existing ground level, or
  - (b) is carried out within 40 metres of the high bank of a watercourse or edge of a wetland, or
  - (c) involves land forming or filling over natural drainage lines, or
  - (d) in the opinion of the consent authority, affects the flow of water across property boundaries or risks the degradation of land, riparian corridors or wetlands.
- (3) **What must be included in an assessment by the consent authority?** Consent must not be granted for the carrying out of earthworks, drainage, dams, land forming or filling, unless the consent authority has made an assessment of the following—
  - (a) whether the land is flood liable land,
  - (b) the likely effect of flooding or surface runoff on adjoining land or other land in the locality, as a result of the proposed land forming, filling or use of the land,
  - (c) the risk of soil erosion and other land degradation,
  - (d) any likely loss of, or impact on, vegetation, wildlife or riparian corridors, including threatened species,

- (e) the need for drainage easements and arrangements made with adjoining property owners to secure such easements,
- (f) the impact on environmental flows that maintain natural watercourses,
- (g) the impact of drainage discharges on the environment, including their effect on water quality and fish habitat as well as any obstruction to fish passage within an existing water course.

### **39 Bush fire risk assessment**

- (1) **Environmental management objectives** The environmental management objectives of this clause are to minimise bush fire risk to built assets and people as well as to reduce bush fire threat to ecological assets.
- (2) **What must be included in assessing a development application?** Before granting consent to development on land that is bush fire prone land, the consent authority must take into account—
  - (a) whether the development is likely to have a significant adverse effect on the implementation of any strategies for bush fire control and fuel management outlined in the adopted *Bush Fire Risk Management Plan*, and
  - (b) whether a significant threat to the lives of residents, visitors or emergency services personnel may be created or increased as a result of the development, and
  - (c) whether the increased demand for emergency services during bush fire events increased by the development would lead to a significant decrease in the ability of the emergency services to effectively control major bush fires, and
  - (d) the measures proposed to avoid or mitigate the threat from bush fire, including—
    - (i) the siting of the development, and
    - (ii) the design of structures and combustible nature of materials used, and
    - (iii) the provision of an asset protection zone on the land, and
    - (iv) the provision of a two-way access that links the road and fire trail network, and
    - (v) adequate access around buildings and manoeuvring areas on site for fire fighting vehicles, and
    - (vi) adequate water supply for fire fighting purposes, and
  - (e) whether any such proposed measures meet the performance requirements of the document entitled *Planning for Bush Fire Protection*, ISBN 978 0 646 99126 9,

prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, Industry and Environment, dated November 2019, available from the Council and the nature of any variations from those requirements, and

- (f) the environmental and visual impacts of the clearing of vegetation for hazard reduction activities, including the conservation priority rating of the vegetation community and any wildlife corridors or links or riparian corridors.

#### **40 Development on land known to be flood liable**

- (1) **Ecologically sustainable development objectives** The ecologically sustainable development objectives of this clause are—
  - (a) to regulate development of the flood plain so as to minimise the hazard to built assets and people, and
  - (b) to allow for the natural functioning of the flood plain.
- (2) **What must be included in an assessment by the consent authority?** Before granting consent for development on flood liable land, or on land the consent authority considers to be potentially flood liable, the consent authority must make an assessment of the following—
  - (a) the likely levels, velocity, sedimentation and debris-carrying effects of flooding,
  - (b) the structural sufficiency of any building the subject of the application and its ability to withstand flooding,
  - (c) the effect that the development, if carried out, will or is likely to have on the flow characteristics of floodwaters,
  - (d) whether or not access to the site will be possible during a flood,
  - (e) the likely increased demand for assistance from emergency services during a flood,
  - (f) the cumulative impact of development on flooding within the area,
  - (g) the possible effects on the development of floods in excess of the flood planning level and the significance of the risk to development posed by such floods.
- (3) **What must the consent authority be satisfied about before granting consent?** Before granting consent to the erection of a building or the carrying out of a work on land that is known to the consent authority to be subject to flooding, the consent authority must be satisfied that the proposed development will not—
  - (a) risk the safety of the community or future occupants, or
  - (b) increase the community burden from flooding, including flood damage.

- (4) Conditions may be imposed on such a consent that set floor levels, require filling, structural changes or other measures to mitigate the effects of flooding or otherwise assist in emergency situations.

**41 Development on lands identified with potential acid sulfate soils**

- (1) **Ecologically sustainable development objectives** The ecologically sustainable development objectives of this clause are to prevent or minimise the environmental consequences caused by the exposure of potentially acid sulfate soils.
- (2) **Consent usually required** Notwithstanding Part 2, a person must not, without development consent, carry out works described in the following table on land of the class specified for those works, except as provided by subclause (4).

<b>Class of land as shown on Acid Sulfate Soils Planning Maps</b>	<b>Works</b>
1	Any works
2	Works below the natural ground surface Works by which the watertable is likely to be lowered
3	Works beyond 1 metre below the natural ground surface Works by which the watertable is likely to be lowered beyond 1 metre below the natural ground surface
4	Works beyond 2 metres below the natural ground surface Works by which the watertable is likely to be lowered beyond 2 metres below the natural ground surface
5	Works, within 500 metres of adjacent Class 1, 2, 3 or 4 land, which are likely to lower the watertable below 1 metre AHD on adjacent Class 1, 2, 3 or 4 land

- (3) For the purposes of the table to subclause (2), **works** includes—
- (a) any disturbance of more than one tonne of soil (such as occurs in carrying out agriculture, the construction or maintenance of drains, extractive industries, dredging, the construction of artificial water bodies (including canals, dams and detention basins) or foundations, or flood mitigation works), or
- (b) any other works that are likely to lower the watertable.

- (4) **Exception following preliminary assessment** This clause does not require consent for the



carrying out of those works if—

- (a) a copy of a preliminary assessment of the proposed works undertaken in accordance with the *Acid Sulfate Soils Assessment Guidelines* has been given to the Council, and
- (b) the Council has provided written advice to the person proposing to carry out the proposed works confirming that the results of the preliminary assessment indicate the proposed works need not be carried out pursuant to an acid sulfate soils management plan prepared in accordance with the *Acid Sulfate Soils Assessment Guidelines*.

(5) **Considerations for consent authority** A consent required by this clause must not be granted unless the consent authority has considered—

- (a) the adequacy of an acid sulfate soils management plan prepared for the proposed development in accordance with the *Acid Sulfate Soils Assessment Guidelines*, and
- (b) the likelihood of the proposed development resulting in the discharge of acid water, and
- (c) (Repealed)

(6) **Public authorities not excepted** The clause requires consent for development to be carried out by councils, county councils or drainage unions despite—

- (a) clause 35 of, and clauses 2 and 11 of Schedule 1 to, the *Environmental Planning and Assessment Model Provisions 1980*, as adopted by this plan, and
- (b) (Repealed)

## 42 Visual landscape character assessment

(1) **Ecologically sustainable development objectives** The ecologically sustainable development objectives of this clause are to ensure—

- (a) that the visual character and quality of the landscape are assessed before consent is granted for development, and
- (b) that the visual impacts of proposed development are minimised.

(2) **What must be included in an assessment by a consent authority?** Before granting consent for development involving the carrying out of any works or building construction, within the rural zones, the consent authority must have regard to the likely visual impacts of carrying out the proposal, including the visual impacts of ancillary uses like driveways and fencing and of the provision of electricity and other services to the site of the development.

(3) In assessing visual impacts, consideration must be given to the following—

- (a) important visual features and the landscape character of the site and surrounding land,
- (b) minimising the visual impact of the proposal on views from public areas, including public roads,
- (c) siting buildings below visually prominent ridgelines,
- (d) reducing the visual impact of driveways and the provision of services to the development,
- (e) reducing the visual impact of proposed buildings by ensuring that external finishes are non-reflective and of a colour that blends in with the surroundings,
- (f) ensuring fencing and building styles are compatible with the visual character of the area.

## **Division 3 Conservation of heritage**

### **43 Heritage conservation objectives**

The ecologically sustainable development objectives in relation to heritage are as follows—

- (a) to conserve the environmental heritage of the rural area of the City of Shellharbour,
- (b) to conserve the existing significant fabric, setting, relics and views associated with the heritage significance of heritage items and heritage conservation areas,
- (c) to ensure that archaeological sites and Aboriginal places which have cultural heritage significance are protected.

### **44 Heritage conservation incentives**

- (1) Consent may be granted to the use, for any purpose, of a building that is a heritage item or of the land on which such a building is erected, even though the use would otherwise be prohibited by this plan, if—
  - (a) the consent authority is satisfied that the retention of the heritage item depends on the granting of consent, and
  - (b) the proposed use is in accordance with a conservation management plan which has been endorsed by the consent authority, and
  - (c) the granting of consent to the proposed use would ensure that all necessary conservation work identified in the conservation management plan is carried out, and
  - (d) the proposed use would not adversely affect the heritage significance of the item

or its setting, and

(e) the proposed use would not adversely affect the amenity of the surrounding area otherwise than to an insignificant extent.

(2) When considering an application for consent to erect a building on land on which a building that is a heritage item is located, the consent authority may, for the purpose of determining—

(a) the floor space ratio, and

(b) the number of parking spaces to be provided on the site,

exclude the floor space of the heritage item from its calculation of the floor space of the buildings erected on the land, but only if the consent authority is satisfied that the conservation of the heritage item depends on it making the exclusion.

#### **45 Protection of heritage items, heritage conservation areas and relics**

(1) **When is consent required?** The following development may be carried out only with development consent—

(a) demolishing, damaging or moving a heritage item or a building, work or relic within a heritage conservation area,

(b) altering a heritage item, or a building, work or relic within a heritage conservation area by making structural or non-structural changes to its exterior, such as to its detail, fabric, finish or appearance,

(c) altering a heritage item by making structural changes to its interior,

(d) disturbing or excavating a place of Aboriginal heritage significance or an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,

(e) moving the whole or part of a heritage item,

(f) erecting a building on, or subdividing, land on which a heritage item is located or which is within a heritage conservation area.

(2) **What exceptions are there?** Development consent is not required by this clause if—

(a) in the opinion of the consent authority—

(i) the proposed development is of a minor nature or consists of maintenance of the heritage item or of a building, work or archaeological site within a heritage conservation area, and

- (ii) the proposed development would not adversely affect the significance of the heritage item or heritage conservation area, and
  - (b) the proponent has notified the consent authority in writing of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that development consent is not required by this clause or otherwise by this plan.
- (3) **What must be included in assessing a development application?** Before granting a consent required by this clause, the consent authority must assess the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.
- (4) Before granting a consent required by this clause, the consent authority must assess the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned. The assessment must include consideration of a heritage impact statement that addresses at least the issues referred to in subclause (5) (but is not to be limited to assessment of those issues, if the heritage significance concerned involves other issues). The consent authority may also decline to grant such a consent until it has considered a conservation management plan, if it considers the development proposal should be assessed with regard to such a plan.

**Note—**

The website of the Heritage Branch of the Department of Planning has publications that provide guidance on assessing the impact of proposed development on the heritage significance of items (for example, *Statements of Heritage Impact*).

- (5) **What extra documentation is needed?** The minimum number of issues that must be addressed by the heritage impact statement are—
  - (a) for development that would affect a heritage item—
    - (i) the heritage significance of the item as part of the environmental heritage of the Shellharbour City local government area, and
    - (ii) the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features, and
    - (iii) the measures proposed to conserve the heritage significance of the item and its setting, and
    - (iv) whether any archaeological or potential archaeological site would be adversely affected by the proposed development, and
    - (v) the extent to which the carrying out of the proposed development would affect any historic subdivision pattern, and

- (b) for development that would be carried out in a heritage conservation area—
  - (i) the heritage significance of the heritage conservation area and the contribution which any building, work or relic affected by the proposed development makes to this heritage significance, and
  - (ii) the impact that the proposed development would have on the heritage significance of the heritage conservation area, and
  - (iii) the compatibility of any proposed development with nearby original buildings and the character of the heritage conservation area, taking into account the size, form, scale, orientation, setbacks, materials and detailing of the proposed development, and
  - (iv) the measures proposed to conserve the significance of the heritage conservation area and its setting, and
  - (v) whether any landscape or horticultural features which contribute to the heritage significance of the area would be affected by the proposed development, and
  - (vi) whether any archaeological site or potential archaeological site would be affected by the proposed development, and
  - (vii) the extent to which the carrying out of the proposed development in accordance with the consent would affect any historic subdivision pattern, and
  - (viii) the issues raised by any submission received in relation to the proposed development in response to the notification or advertising of the application.

#### **46 Development in heritage conservation areas**

- (1) Before granting consent for the erection of a building within a heritage conservation area, the consent authority must be satisfied that the features and location of the proposed building will be compatible with the heritage significance of the heritage conservation area.
- (2) In satisfying itself about those features, the consent authority must have regard to at least the following (but is not to be limited to having regard to those features)—
  - (a) the pitch and form of the roof,
  - (b) the style, size, proportion and position of the openings for windows or doors,
  - (c) the colour, texture, style, size and type of finish of the materials to be used on the exterior of the building.

#### **47 Advertised development**

The following development is identified as advertised development—

- (a) the demolition of a heritage item or a building or work in a heritage conservation area,
- (b) the carrying out of any development allowed by clause 44 (Heritage conservation incentives).

#### **48 (Repealed)**

#### **49 Development affecting places or sites of known or potential Aboriginal heritage significance**

- (1) Before granting consent for development that is likely to have an impact on a place of Aboriginal heritage significance, or a potential place of Aboriginal heritage significance, or that will be carried out on an Aboriginal archaeological site, or potential Aboriginal archaeological site or a relic that has Aboriginal heritage significance, the consent authority must—
  - (a) consider a heritage impact statement explaining how the proposed development would affect the conservation of the place or site and any relic known or reasonably likely to be located at the place or site, and
  - (b) except where the proposed development is integrated development, notify the local Aboriginal communities (in such a way as it thinks appropriate) of its intention to do so and take into consideration any comments received in response within 21 days after the relevant notice was sent.
- (2) Before granting consent for development on, or in the vicinity of, an Aboriginal place or archaeological site, the consent authority must consider—
  - (a) the archaeological and scientific significance of the place or site, and
  - (b) the potential impact of the development on the known Aboriginal cultural values of the place or site, and
  - (c) connectivity between individual places or archaeological sites that may represent a network of past Aboriginal activity across the landscape, and
  - (d) management issues, including monitoring and controlled access to the place or site, and
  - (e) any study or plan of management for the Aboriginal place or site, and
  - (f) the likely impact of any development during and after any proposed construction works, and
  - (g) any mitigation works to protect the heritage values of the place or site.

**50 Development affecting known or potential archaeological sites or relics of non-Aboriginal heritage significance**

- (1) Before granting consent for development that will be carried out on an archaeological site or a potential archaeological site of a relic that has non-Aboriginal heritage significance (whether or not it is, or has the potential to be, also a site of a relic of Aboriginal heritage significance) the consent authority must—
  - (a) consider a heritage impact statement explaining how the proposed development will affect the conservation of the site and any relic known or reasonably likely to be located at the site, and
  - (b) be satisfied that any necessary excavation permit required by the *Heritage Act 1977* has been granted.
- (2) This clause does not apply if the proposed development—
  - (a) does not involve disturbance of below-ground deposits and the consent authority is of the opinion that the heritage significance of any above-ground relics would not be adversely affected by the proposed development, or
  - (b) is integrated development.

**51 Development in the vicinity of a heritage item**

- (1) Before granting consent to development in the vicinity of a heritage item, the consent authority must assess the impact of the proposed development on the heritage significance of the heritage item and of any heritage conservation area within which it is situated.
- (2) This clause extends to development—
  - (a) that may have an impact on the setting of a heritage item, for example, by affecting a significant view to or from the item or by overshadowing, or
  - (b) that may undermine or otherwise cause physical damage to a heritage item, or
  - (c) that will otherwise have any adverse impact on the heritage significance of a heritage item or of any heritage conservation area within which it is situated.
- (3) The consent authority may refuse to grant any such consent unless it has considered a heritage impact statement that will help it assess the impact of the proposed development on the heritage significance, visual curtilage and setting of the heritage item.
- (4) The heritage impact statement should include details of the size, shape, and scale of, setbacks for, and the materials to be used in, any proposed building or works and details of any modification that would reduce the impact of the proposed development on the heritage significance of the heritage item.

## **Division 4 Miscellaneous**

### **52 Agriculture in accordance with property management plan**

- (1) Consent is not required to carry out development for the purpose of agriculture on any land if the development could be carried out with consent in the absence of this clause and is carried out in accordance with a property management plan that has been approved for the land by the Council.
- (2) Before approving a property management plan for any land, the Council must take into consideration the objectives of the zone in which the land is situated and may decline to approve the plan unless it has been altered to make it consistent with any of those objectives to the satisfaction of the Council.

### **53 Controls for intensive agriculture**

- (1) **Ecologically sustainable development objectives** The ecologically sustainable development objective of this clause is to encourage ecologically sustainable intensive agriculture undertaken in an environmentally sensitive manner and having minimal impact on both the amenity of adjoining property owners and the environment.
- (2) Consent must not be granted to development for the purpose of intensive agriculture on any site unless the consent authority has had regard to the following—
  - (a) the potential for odours to adversely impact on the amenity of residences and other land uses within the vicinity of the site,
  - (b) the potential for the pollution of surface water and ground water and, if the proposal may have an adverse impact on water quality, any water quality monitoring,
  - (c) the ability for all adverse environmental impacts associated with the intensive agriculture to be contained within the site,
  - (d) measures to mitigate potential adverse environmental impacts,
  - (e) measures for the health and welfare of animals, including how any relevant industry codes of practice for the health and welfare of animals can be enforced.

### **54 Horticulture uses off Illawarra Highway, Albion Park**

- (1) This clause applies to Lot 1, DP 996926, Moss Vale Road, Albion Park.
- (2) Land to which this clause applies may be subdivided only with development consent and only if—
  - (a) each lot to be created will have an area of at least 12 hectares, and
  - (b) the consent authority is satisfied that each of those lots will be used for a



horticultural use.

## **55 Bush food plantation**

- (1) **Ecologically sustainable development objectives** The ecologically sustainable development objective of this clause is to encourage bush food plantation farming in an environmentally sensitive manner which utilises native plant species on existing lawfully cleared areas.
- (2) **What must be included in the assessment before consent is granted?** Consent must not be granted to development for the purposes of bush food plantation unless the consent authority is satisfied that—
  - (a) any trees to be planted will be planted on lawfully cleared land and will be of native species, and
  - (b) the plantation will be required to be managed in accordance with a comprehensive plan of management that promotes ecologically sustainable development, and
  - (c) an access road is already available to the site of the proposed development or can be provided without adversely affecting other stands of existing native forest or causing unacceptable adverse environmental impact, and
  - (d) the harvesting of bush food will be carried out in an environmentally sensitive manner, and
  - (e) any bush fire hazard reduction areas will be confined to identified parts of the plantation site at its inception and will not involve existing vegetated areas.

## **56 Eco-tourism facility**

Consent must not be granted for the erection of an eco-tourism facility unless the consent authority is satisfied that the facility will be managed in an ecologically sustainable way to ensure that the facility and associated activities do not adversely impact on the environment or intentionally disturb wildlife or its habitat.

## **57 Development along main roads**

- (1) **Ecologically sustainable development objectives** The ecologically sustainable development objective of this clause is to ensure safe and efficient transport and vehicle use of main roads.
- (2) **What must be included in the assessment before consent is granted?** Consent must not be granted to the carrying out of development on land with frontage to a main road unless—
  - (a) access to that land is provided by a road other than the main road wherever

practicable, and

- (b) in the opinion of the consent authority, the safety and efficiency of traffic on the main road will not be adversely affected by—
  - (i) the design of the access to the site of the proposed development, or
  - (ii) the nature, volume or frequency of vehicles using the main road to gain access to the site of the proposed development.

## **58 Telecommunications**

- (1) **Ecologically sustainable development objectives** The ecologically sustainable development objective of this clause is to encourage telecommunications facilities and networks—
  - (a) to be provided in a manner that makes efficient use of existing infrastructure and services, and
  - (b) to be designed and located in such a way as to avoid and minimise impacts on the environment and amenity of the area in which the facilities or network are to be located, including the siting of those facilities.
- (2) **What must be included in the assessment before consent is granted?** Before granting consent to development for the purposes of telecommunications facilities or telecommunications networks, the consent authority must have regard to the following—
  - (a) whether the telecommunications facilities or telecommunications networks have been designed, and will be installed and operated, to comply with standards relating to human exposure to electromagnetic energy appearing in any applicable code or standard made under any applicable law of the Commonwealth,
  - (b) whether the telecommunications lines will be located within existing underground conduits or ducts and whether antennae (and similar structures) are to be attached to existing utility poles, towers, structures or buildings so as to minimise visual clutter,
  - (c) a site analysis showing site boundaries and dimensions, existing vegetation, location of existing buildings, views to and from the site and the location of sensitive land uses within the exposure area, together with a written statement explaining how the design of the telecommunications facilities or telecommunications networks has responded to the site analysis.

## **59 Heavy vehicle transport route**

- (1) **To what land does this clause apply?** This clause applies to land to the north of Albion Park that is adjacent to the western extension of Tripoli Way as shown on the zoning

map.

- (2) **What must be included in the assessment before consent is granted?** Before granting consent for development on land to which this clause applies, the consent authority must have regard to the following—
- (a) the impact of additional access points to the transport route,
  - (b) any means that are available to control or regulate the number of those access points,
  - (c) any adverse impacts on the amenity of existing and future residents caused by the projected traffic volumes and associated traffic noise.

## **60 Roadside stalls**

- (1) **Where can roadside stalls be located?** Development for the purpose of roadside stalls is prohibited on land that is not adjacent to a local road.
- (2) **What must be included in an assessment before consent is granted?** Before granting consent for a roadside stall, the consent authority must have regard to the following—
- (a) the ability for at least two cars to pull off the road pavement for the purpose of their occupants visiting the roadside stall,
  - (b) the safety of the travelling public,
  - (c) adequate sight distances for vehicles travelling along the road and entering and leaving the site,
  - (d) the size and number of any signs used to alert the travelling public to the presence of the roadside stall.

## **61 Development in the vicinity of Illawarra Regional Airport**

Despite any other provision of this plan, consent must not be granted to development on land affected by restrictions as indicated in the plan titled *Airport Height Limitation and Noise Exposure Forecast Plan* dated 17 April 1998 and held in the office of the Council unless—

- (a) the consent authority is satisfied that the proposal is acceptable in relation to building height, noise exposure, lighting and bird hazard management, and
- (b) where a proposal does not comply with that plan, the Civil Aviation Safety Authority has been given notice of the proposal and any comments made by it to the consent authority within 28 days of its being notified have been taken into consideration by the consent authority.

## **62 Dunmore Lakes Estate**

- (1) This clause applies to land identified as Lots 2–30, DP 285417, Swamp Road, Dunmore, and known as the “Dunmore Lakes Estate”.
- (2) Each lot referred to in subclause (1) may, with development consent, have a house erected on it.

## **63 Houses on allotments not approved**

Consent must not be granted for the erection of a house on an allotment created by a subdivision—

- (a) for which consent was not granted, or
- (b) that was not consented to or approved by the Council.

## **64 Houses on identified rural lots**

- (1) This clause applies to the land identified in Schedule 3.
- (2) Notwithstanding any other provision of this plan, one house may be erected on each parcel of land identified in Schedule 3 with development consent but, in the case of the land comprised in Lot 2, DP 508735 at Albion Park, only if a strip of the land 30 metres wide along the Macquarie Rivulet frontage of the land is dedicated in favour of the Council for public open space.
- (3) Subclause (2) does not affect the operation of any other provision of this plan (such as a development standard) that is consistent with allowing that development to be carried out.

## **64A Exceptions to development standards**

- (1) The objectives of this clause are as follows—
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request

from the applicant that seeks to justify the contravention of the development standard by demonstrating—

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

- (a) the consent authority is satisfied that—
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone 1 (a) Agriculture Zone, Zone 1 (rl) Rural Landscape Zone, Zone 7 (n) Nature Conservation Zone or Zone 7 (w) Wetlands Zone if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that

would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated.

#### **64B Subdivision—consent requirements**

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

##### **Notes—**

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

#### **64C Demolition requires development consent**

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

##### **Note—**

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

#### **64D Temporary use of land**

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.
- (2) Despite any other provision of this plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.
- (3) Development consent must not be granted unless the consent authority is satisfied that—
  - (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this plan and any other applicable environmental planning instrument, and
  - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
  - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase

the risk of natural hazards that may affect the land, and

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

(4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.

(5) Subclause (3)(d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).

#### **64E Conversion of fire alarms**

(1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.

(2) The following development may be carried out, but only with development consent—

(a) converting a fire alarm system from connection with the alarm monitoring system of Fire and Rescue NSW to connection with the alarm monitoring system of a private service provider,

(b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider,

(c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.

(3) Development to which subclause (2) applies is complying development if it consists only of—

(a) internal alterations to a building, or

(b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm × 100mm × 100mm.

(4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.

(5) In this clause—

**private service provider** means a person or body that has entered into an agreement that is in force with Fire and Rescue NSW to monitor fire alarm systems.

## Part 4 Illawarra Regional Business Park site

### Division 1 Preliminary

#### 65 Land to which Part applies

- (1) This Part applies to the land identified on the [Land Application Map](#), referred to in this Part as the **Illawarra Regional Business Park site**.
- (2) No other provision in this plan (except clauses 6, 11 and 64B-64E) applies to the land to which this Part applies.

#### 66 Interpretation

- (1) In this Part—

**Airport Height Limitation Plan** means the plan titled *Airport Height Limitation and Noise Exposure Forecast Plan*, 17 April 1998, specifying the obstacle limitation surface for the land and held in the office of the Council.

**Height of Buildings Map** means the [Shellharbour Rural Local Environmental Plan 2004—Illawarra Regional Business Park site—Height of Buildings Map](#).

**Land Application Map** means the [Shellharbour Rural Local Environmental Plan 2004—Illawarra Regional Business Park site—Land Application Map](#).

**Land Reservation Acquisition Map** means the [Shellharbour Rural Local Environmental Plan 2004—Illawarra Regional Business Park site—Land Reservation Acquisition Map](#).

**Land Zoning Map** means the [Shellharbour Rural Local Environmental Plan 2004—Illawarra Regional Business Park site—Land Zoning Map](#).

**wetland improvement** means the creation, enhancement, regeneration or maintenance of wetlands whether the wetland is natural or artificial and whether or not the wetland forms part of an integrated drainage system.

- (2) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#) (as in force immediately before the commencement of the [Standard Instrument \(Local Environmental Plans\) Amendment Order 2011](#)) unless it is otherwise defined in this Part.

#### 67 Maps

- (1) A reference in this Part to a named map adopted by this Part is a reference to a map by that name—
  - (a) approved by the Minister when the map is adopted, and



- (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace that map, and approved by the Minister when the instruments are made.
- (2) Any 2 or more named maps may be combined into a single map. In that case, a reference in this Part to any such named map is a reference to the relevant part or aspect of the single map.
- (3) Any such maps are to be kept and made available for public access in accordance with arrangements approved by the Minister.
- (4) For the purposes of this Part, a map may be in, and may be kept and made available in, electronic or paper form, or both.

### **68 Relationship with other environmental planning instruments**

The only environmental planning instruments that apply, according to their terms, to land within the Illawarra Regional Business Park site are this Part and all State environmental planning policies, except [State Environmental Planning Policy No 1—Development Standards](#).

## **Division 2 Provisions applying to development within Illawarra Regional Business Park site**

### **69 Land use zones**

- (1) For the purposes of this Part, land within the Illawarra Regional Business Park site is in a zone as follows if the land is shown on the Land Zoning Map as being within that zone—
  - (a) Zone IN2 Light Industrial,
  - (b) Zone SP2 Infrastructure,
  - (c) Zone E2 Environmental Conservation.
- (2) The consent authority must have regard to the objectives for development within a zone when determining a development application in respect of land within the zone.

### **70 Zone IN2 Light Industrial**

- (1) The objectives of Zone IN2 Light Industrial are as follows—
  - (a) to facilitate development for a wide range of employment generating light industrial purposes,
  - (b) to provide for airport related facilities and services, including hotel or motel accommodation and passenger transport facilities,

- (c) to provide for roads and service stations, warehouse or distribution centres and information and education facilities,
  - (d) to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area,
  - (e) to minimise any adverse effect of industry on other land uses and the environment.
- (2) Development for the following purposes is permitted without development consent on land within Zone IN2 Light Industrial—
- environmental protection works.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone IN2 Light Industrial—
- airports; child care centres; depots; fill; flood mitigation works; food and drink premises; freight transport facilities; helipads; heliports; hotel or motel accommodation; industrial retail outlets; information and education facilities; landscape and garden supplies; light industries; liquid fuel depots; neighbourhood shops; office premises (that are ancillary to development for another permitted purpose); passenger transport facilities; public administration buildings; recreation facilities (indoor); roads; service stations; signage; timber and building supplies; transport depots; truck depots; vehicle body repair workshops; vehicle repair stations; vehicle sales or hire premises; veterinary hospitals; warehouse or distribution centres.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone IN2 Light Industrial unless it is permitted by subclause (2) or (3).

## **71 Zone SP2 Infrastructure**

- (1) The objectives of Zone SP2 Infrastructure are as follows—
- (a) to provide for infrastructure and related uses,
  - (b) to prevent development that is not compatible with or that may detract from the provision of infrastructure,
  - (c) to protect the infrastructure of Illawarra Regional Airport.
- (2) Development for the following purposes is permitted without development consent on land within Zone SP2 Infrastructure—
- drainage; fencing.
- (3) Development for the following purposes is permitted only with development consent on land within Zone SP2 Infrastructure—

the purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose; roads.

- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone SP2 Infrastructure unless it is permitted by subclause (2) or (3).

## **72 Zone E2 Environmental Conservation**

- (1) The objectives of Zone E2 Environmental Conservation are as follows—
  - (a) to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values,
  - (b) to prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- (2) Development for the following purposes is permitted without development consent on land within Zone E2 Environmental Conservation—  
environmental protection works.
- (3) Development for the following purposes is permitted only with development consent on land within Zone E2 Environmental Conservation—  
earthworks; environmental facilities; recreation areas; roads; wetland improvements.
- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone E2 Environmental Conservation unless it is permitted by subclause (2) or (3).

## **73 Infrastructure development and use of existing buildings of the Crown**

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

## **74 Subdivision—consent requirements**

- (1) Land within the Illawarra Regional Business Park site may be subdivided, but only with development consent.
- (2) However, development consent is not required for a subdivision for the purpose only of any one or more of the following—
  - (a) widening a public road,

- (b) a minor realignment of boundaries that does not create additional lots or the opportunity for additional buildings,
- (c) a consolidation of lots that does not create additional lots or the opportunity for additional buildings,
- (d) rectifying an encroachment on a lot,
- (e) creating a public reserve,
- (f) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

## **75 Height of buildings**

- (1) The objectives of this clause are as follows—
  - (a) to regulate the height of buildings on land in the Illawarra Regional Business Park site,
  - (b) to ensure that the effective and on-going operation of Illawarra Regional Airport is not compromised by any development,
  - (c) to protect the views to and from “Ravensthorpe” at 52–56 Tongarra Road, Albion Park, being a heritage item.
- (2) The height of a building on any land within the Illawarra Regional Business Park site is not to exceed the maximum height shown for the land on the—
  - (a) [Height of Buildings Map](#), or
  - (b) Airport Height Limitation Plan,whichever is the lesser.
- (3) Despite subclause (2), development consent may be granted for development that exceeds the maximum height for the land if—
  - (a) the consent authority is satisfied that the proposed building is unlikely to adversely affect the views to and from “Ravensthorpe” as referred to in subclause (1) (c), and
  - (b) the consent authority is satisfied that the proposed building is unlikely to constitute an obstruction or hazard to aircraft flying in the vicinity, and
  - (c) the proposed building does not comply with the Airport Height Limitation Plan, the Civil Aviation Safety Authority has been given notice of the proposal and any comments made by it to the consent authority within 28 days of its being notified

have been taken into consideration by the consent authority.

## **76 Floor space ratio**

The floor space ratio for a building on any land in the Illawarra Regional Business Park site is not to exceed 1:1.

## **77 Exceptions to development standards**

- (1) The objectives of this clause are—
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this Part or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that—
  - (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
  - (b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.
- (5) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (6) This clause does not allow consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated.

## **78 Controls relating to miscellaneous permissible uses**

- (1) **Industrial retail outlets** If development for the purposes of an industrial retail outlet is permitted on any land within the Illawarra Regional Business Park site, the retail floor area must not exceed—
  - (a) 40% of the combined gross floor area of the industrial retail outlet and the building or place on which the relevant industry is carried out, or
  - (b) 400 square metres,whichever is the lesser.
- (2) **Neighbourhood shops** If development for the purposes of a neighbourhood shop is permitted on any land within the Illawarra Regional Business Park site, the retail floor area must not exceed 80 square metres.

## **79 Controls relating to office premises**

The consent authority must not grant development consent to development for the purpose of office premises on land within the Illawarra Regional Business Park site unless it is satisfied that—

- (a) the office premises are ancillary to another use of the land, and
- (b) the gross floor area of the office premises will not exceed 25% of the gross floor area of all of the buildings on the land.

## **80 Relevant acquisition authority**

- (1) The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) (**the owner-initiated acquisition provisions**).

### **Note—**

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

- (2) The authority of the State that will be the relevant authority to acquire land, if the

land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the [Land Reservation Acquisition Map](#) (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).

Type of land shown on <a href="#">Land Reservation Acquisition Map</a>	Authority of the State
Zone SP2 Infrastructure and marked "Airport"	Council

- (3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.

**Note—**

If land, other than land specified in the Table to subclause (2), is required to be acquired under the owner-initiated acquisition provisions, the Minister for Planning is required to take action to enable the designation of the acquiring authority under this clause. Pending the designation of the acquiring authority for that land, the acquiring authority is to be the authority determined by order of the Minister for Planning (see section 21 of the [Land Acquisition \(Just Terms Compensation\) Act 1991](#)).

**81 Zone IN2 Light Industrial—satisfactory arrangements for the provision of regional transport infrastructure and services**

- (1) This clause applies to land within Zone IN2 Light Industrial within the Illawarra Regional Business Park site, but does not apply to any such land if the whole or any part of it is in a special contributions area (as defined by section 93C of the Act).
- (2) The object of this clause is to require assistance to authorities of the State towards the provision of designated State public infrastructure to satisfy needs that arise from development on land to which this clause applies.
- (3) Despite any other provision of this Part, the consent authority must not consent to the subdivision of land to which this clause applies unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the land to which this clause applies.
- (4) Subclause (3) does not apply in relation to—
- (a) any land that is reserved exclusively for a public purpose, or
  - (b) any development that is, in the opinion of the consent authority, of a minor nature.
- (5) In this clause, **designated State public infrastructure** means public facilities or services that are provided or financed by the State (or if provided or financed by the

private sector, to the extent of any financial or in-kind contribution by the State) of the following kinds—

- (a) State and regional roads,
- (b) bus interchanges and bus lanes,
- (c) rail infrastructure and land,
- (d) land required for regional open space,
- (e) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).

## **82 Suspension of covenants, agreements and instruments**

- (1) For the purpose of enabling development on land within the Illawarra Regional Business Park site to be carried out in accordance with this plan or with a development consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.
- (2) This clause does not apply—
  - (a) to a covenant imposed by the Council or that the Council requires to be imposed, or
  - (b) to any relevant instrument within the meaning of section 13.4 of the *Crown Land Management Act 2016*, or
  - (c) to any conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
  - (d) to any Trust agreement within the meaning of the *Nature Conservation Trust Act 2001*, or
  - (e) to any property vegetation plan within the meaning of the *Native Vegetation Act 2003*, or
  - (f) to any biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*, or
  - (g) to any planning agreement within the meaning of Division 6 of Part 4 of the Act.
- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (4) Under section 28 of the Act, before the making of this clause, the Governor approved of subclauses (1)–(3).



### **83 Savings provision relating to pending applications**

A development application that has been made but not finally determined before the commencement of this Part must be determined as if *State Environmental Planning Policy (Major Development) Amendment (Transfer of Planning Controls) 2010* had not commenced.

## **Schedule 1 Ecologically sustainable development goals**

(Clause 7)

### **Agriculture**

To retain productive capacity of high class agricultural land and the continued use of rural lands for sustainable agriculture.

### **Biodiversity**

To protect and enhance valuable natural environments, including riparian and wildlife corridors or links, core conservation areas and areas of high conservation value.

### **Wildlife habitats**

To achieve a network of representative native habitats, including wildlife and riparian links, to support native flora and fauna and enhance biodiversity conservation objectives.

### **Cultural heritage**

To protect and preserve items and places of heritage significance, including the escarpment, which have natural and cultural heritage significance for our community.

To protect and preserve items, sacred sites and places which are important to the Aboriginal peoples of the Illawarra.

To ensure the preservation of the landscape and special scenic qualities of the rural area.

### **Water resources**

To protect, enhance and restore the rivers, aquifers, wetlands and other water sources, their associated ecosystems, ecological processes and their water quality.

### **Settlement**

To ensure that rural settlement that—

- (a) is ancillary to and supports other rural land uses, and
- (b) protects the agricultural potential of rural land, and
- (c) does not occur in locations that pose a risk to public safety due to hazards including flood, land slip and bush fire, and
- (d) is compatible with the scenic and cultural heritage of the rural landscape, and

- (e) protects or enhances, or protects and enhances, nature conservation areas and habitat corridors and their associated values, functions and processes, and
- (f) minimises and, where possible, avoids land use conflicts with agricultural uses and mineral extraction.

### **Mineral extraction**

To carefully manage extractive industry so as to—

- (a) minimise potential conflicts with surrounding land uses, and
- (b) protect and enhance adjoining ecologically significant areas, and
- (c) avoid rendering important mineral resources unavailable for future possible extraction, and
- (d) minimise changes to the natural hydrology of the catchment, enhance the habitat values of wetlands and achieve sustainable water cycles for the catchment, and
- (e) provide transportation routes that minimise impacts on the local community and the environment, and
- (f) take into account short and long-term end-use options for extractive areas in consultation with the community, with emphasis on protecting the surrounding scenic rural character.

### **Rural development**

To promote opportunities for appropriate rural-based economic development.

### **Tourism**

To promote tourism and recreational opportunities which preserve natural areas, heritage values and landscapes.

### **Community consultation**

To continue to encourage community awareness and participation in identifying and resolving planning issues and decision making.

## **Schedule 2 Additional development**

(Clause 12)

<b>Land description</b>	<b>Additional development allowed</b>
Lot 1, DP 605111, Tripoli Way, Albion Park	Erection of no more than one house on the allotment.
Lot 2, DP 605111, Tripoli Way, Albion Park	Erection of no more than one house on the allotment.
Lot 1, DP 745632, Swamp Road, Dunmore	Inhabitation of the former “Peterborough” School Building as house.
Part Lot 1, DP 70380, Tongarra Road, Albion Park Rail, as shown edged with a heavy black broken line and labelled “Schedule 2” on the zoning map	Development for the purpose of a landscape supplies depot.

Lot 13, DP 658385, Croome Lane, Albion Park Rail Development for the purpose of an earthmoving equipment depot.

### Schedule 3 Allotments less than 40 hectares

(Clause 64)

Street address	Lot	DP
Green Mountain Road, Yellow Rock	A	158505
Green Mountain Road, Yellow Rock	375	838713
Green Mountain Road, Yellow Rock	376	838713
Illawarra Highway, Albion Park	2	508735*
Illawarra Highway, Tongarra	3	3331
Illawarra Highway, Tullimbar	42	878122
Lakeview Road, Tongarra	54	751274
Mellows Road, Calderwood	72	751263
Mellows Road, Calderwood	381	839106
Princes Highway, Croom	72	837462
Swamp Road, Dunmore	100	1010931
Swamp Road, Dunmore	Part of Lot 201	865859
Terry Street, Albion Park	21	751290
Tongarra Road, Tongarra	1	158420
Tripoli Way, Albion Park	1	605111
Yellow Rock Road, Yellow Rock	720	830673
Yellow Rock Road, Yellow Rock	3	904043
Yellow Rock Road, Yellow Rock	32	751274
Yellow Rock Road, Yellow Rock	34	751274
Yellow Rock Road, Yellow Rock	10	664717
Yellow Rock Road, Yellow Rock	16	111195
Yellow Rock Road, Yellow Rock	17	111195

**Note—**

\* subject to the dedication of public open space 30 metres wide along the Macquarie Rivulet frontage.

## Schedule 4 Heritage items

(Clause 48 and Dictionary)

Item No	Heritage item	Level of significance
<b>Albion Park</b>		
AP1	“Tulkeroo” Lot 1, DP 910045, 23 Calderwood Road, Albion Park	Local
AP7	“Ravensthorpe” Lot 1, DP 741745 and Parts Lot 9, 52-56 Tongarra Road, Albion Park	Local
<b>Calderwood</b>		
CA1	Marshall Mount Methodist Cemetery Lot 1, DP 195342, Calderwood Road, Calderwood	Local
<b>Croom</b>		
CR1	“The Hill” Part Lot 5, DP 3709, Dunsters Lane, Croom	State
CR2	“Kurrawong” Lot 100, DP 717430, Princes Highway, Croom	Local
CR3	Avenue of Norfolk Island Pines Princes Highway, Croom, extending 800 metres south and 1,100 metres north of the symbol on the zoning map	Local
<b>Dunmore</b>		
DU1	“Dunmore House” Part Lot A, DP 366905, Princes Highway, Dunmore	Regional
DU2	Station Master’s Residence State Rail Authority land fronting Shellharbour Road, Dunmore	Local
DU3	Former Minnamurra School, Residence and Grounds Lot 1, DP 745632, Swamp Road, Dunmore	Regional

DU4	“Glengowrie” and Fig Trees Lot 2, DP 602557, Swamp Road, Dunmore	Local
DU5	Tree on former Peterborough Estate, Dunmore	Local
<b>Macquarie Pass</b>		
MP1	“Nurrewin” Lot 68, DP 751263, Illawarra Highway, Macquarie Pass	Regional
<b>Tullimbar</b>		
TU1	Former School Residence and Tullimbar School Lot 1, DP 905581, Tullimbar Lane, Tullimbar	Local
TU2	“Toongla” Lot 82, DP 634605, Tullimbar Lane, Tullimbar	State
<b>Yellow Rock</b>		
YR1	“Wairanga” and Coach House Lots 32 and 33, DP 751274, Yellow Rock Road, Yellow Rock	Local

## Dictionary

(Clause 8 (1))

**Aboriginal relic** means any deposit, object or material evidence (not being a handicraft made for sale) relating to indigenous habitation either prior to or concurrent with the occupation of New South Wales by persons of European extraction, and includes Aboriginal remains.

**acid sulfate soils** means actual or potential acid sulfate soils as defined in the *Acid Sulfate Soils Assessment Guidelines*.

**Acid Sulfate Soils Assessment Guidelines** means the *Acid Sulfate Soils Assessment Guidelines* published by the NSW Acid Sulfate Soils Management Advisory Committee, as adopted from time to time by the Director-General.

**acid sulfate soils planning maps** means the series of maps marked “*Shellharbour City Council Potential Acid Sulfate Soils Planning Map*” kept in the office of the Council.

**advertised development** has the same meaning as in the Act.

**advertisement** has the same meaning as in the Act.

**agriculture** means the keeping of livestock, where the stocking rate is not above that of the

demonstrated carrying capacity of the land, and rain fed cropping, where fertiliser and irrigation may be applied from time to time. It may consist of or include grazing of beef or dairy cattle, deer farming or cereal cropping. It also includes pasture improvement and the like but (in Part 2) does not include a land use elsewhere defined in this Dictionary.

**alter**, in relation to a heritage item, building or work, means—

- (a) make structural changes to the outside of the heritage item, building or work, or
- (b) make non-structural changes to the detail, fabric, finish or appearance of the outside of the heritage item, building or work, not including changes resulting from maintenance.

**amusement park** means a commercially run area where amusements and mechanical entertainment equipment or structures are operated.

**approved bush fire hazard reduction** means reduction of fuel loads by controlled burning or any other means authorised by a bush fire hazard reduction certificate issued by the relevant authority under the *Rural Fires Act 1997*.

**archaeological site** means the site of one or more relics. It includes a site known to the Council to have archaeological significance.

**area of high conservation value** means an area shown coloured beige on the Areas of High Conservation Value Map.

**Areas of High Conservation Value Map** means the map marked “*Shellharbour Rural Local Environmental Plan 2004—Areas of High Conservation Value Map*”, as amended by the maps, or sheets of 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.

**asset protection zone** has the same meaning as in the document entitled *Planning for Bush Fire Protection*, ISBN 978 0 646 99126 9, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, Industry and Environment, dated November 2019 available from the Council.

**associated buildings**, in relation to a house, means driveways, power lines, garden sheds, carports and freestanding garages.

**attached dual occupancy** means two houses on a single allotment of land that are physically attached and are characterised by having the appearance of a single house with identical roof pitch, external finishes and similar design features.

**bed and breakfast accommodation** means a lawfully erected house occupied for permanent residential use in which a maximum of three rooms are made available by the residents for temporary holiday accommodation.

**biodiversity** means the variety of life forms, the different plants, animals and micro-organisms, the genes they contain and the ecosystems they form.

**boarding house** includes a house let in lodgings or a hostel but does not include a motel.

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

**bulky goods** means large goods which are of such a size, weight or shape as to require a large area for handling, storage or display, but not food and grocery items.

**bush fire** means any unplanned fire in vegetation.

**bush food plantation** means the growing of native plants on cleared land and the erection of associated buildings to obtain bush foods for commercial gain.

**bush rock removal** means the disturbance, dislodgment or removal of bush rock from land.

**bushland** means land on which there is vegetation which is either a remainder of the natural vegetation of the land, or, if that has been altered, is still representative of the structure and floristics of the natural vegetation.

**car repair station** means a building or place used for the carrying out of repairs to motor vehicles or agricultural machinery, not being—

- (a) vehicle body building, or
- (b) panel beating which involves dismantling, or
- (c) spray painting other than of a touching-up character.

**caravan park** means land used as sites for tents, or caravans or other vehicles, which are movable and used for temporary accommodation by tourists.

**child care centre** means a building or place used for the supervision of, or caring for, children and which—

- (a) caters for 6 or more pre-school age children, whether or not those children are related to the owner or operator of the building or place, and
- (b) may include an educational function, and
- (c) may be operated for gain,

but does not include a building or place providing residential care for those children.

**clearing of land** means—

- (a) the cutting down, felling, thinning, logging or removal of native vegetation or non-native tree species, or
- (b) the killing, destroying, poisoning, ringbarking, uprooting or burning of native vegetation or non-native tree species, or
- (c) the severing, topping or lopping of branches, limbs, stems or trunks of native vegetation or non-native tree species, or
- (d) the substantial damaging or injuring in any way of any vegetation on protected land,

but does not include—

- (e) the destruction of any tree, shrub or plant—
  - (i) that is required or expressly authorised by or in pursuance of the provisions of any Act or statutory instrument or by any statutory authority in pursuance of the provisions of any Act or statutory instrument, or
  - (ii) where the destruction is necessary in an emergency to prevent the spread of fire or in circumstances where the tree, shrub or plant presents a danger to life or property, or
  - (iii) where the destruction is necessary to enable the carrying out of a development in accordance with a development consent, or
- (f) the removal of noxious weeds and trees listed under the Council's Tree Management Order in a manner that minimises soil erosion, soil compaction or damage to any surrounding native vegetation.

**club** means a building used by persons associated, or by a body incorporated, for social, sporting, athletic or other lawful purpose, whether or not the whole or a part of the building is the premises of a club registered under the [Registered Clubs Act 1976](#).

**commercial premises** means a building or place used as an office or for other business or commercial purposes, but does not include a building or place elsewhere specifically defined in this Dictionary.

**complying development** has the same meaning as in the Act.

**conservation management plan** means a document prepared in accordance with the requirements of the NSW Heritage Office that establishes the heritage significance of an item, place or heritage conservation area and identifies conservation policies and management mechanisms that are appropriate to enable that significance to be retained.

**conservation priority rating of vegetation community** means the conservation importance attributed to the ecological significance of the vegetation community as determined in the document entitled *Nature Conservation Study* prepared by Kevin Mills & Associates, dated June 2000, and available at the office of the Council.

**core conservation area** means an area identified as a core conservation area in the *Nature Conservation Study* prepared by Kevin Mills & Associates, dated June 2000, and available at the office of the Council.

**cumulative impact of development** means the accumulation of environmental and social impacts that result from either a number of developments over time or a number of developments in a given location, or both.

**damage**, in relation to vegetation, includes lopping, topping, ring barking, poisoning, felling, digging up, pulling out, smothering or any other form of deliberate damage.

**demolish**, in relation to a heritage item, or a building, work, relic, tree or place within a heritage conservation area, means total or partial destruction or dismantling of the heritage item, or the building, work, relic, tree or place.



**detached dual occupancy** means two houses on a single allotment of land.

**development** has the same meaning as in the Act.

**drainage of land** means the engineered flow of water from the land into natural or engineered channels or water bodies, or both.

**ecological communities** means an assemblage of species occupying a particular area which forms an ecosystem.

**ecological processes** means those processes that play an essential role in maintaining the integrity and continuity of an ecosystem.

**ecologically significant habitat** means habitat that is important for the survival of a rare or threatened ecological community, population or species and includes rare and threatened ecological communities, populations and species contained in the *Nature Conservation Study* prepared by Kevin Mills & Associates, dated June 2000, and available at the office of the Council.

**ecologically sustainable development** means development which improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends. For the purposes of this definition, the key principles of ecologically sustainable development are described in section 6 (2) of the *Protection of the Environment Administration Act 1991* and include the following (as described in greater detail in that subsection)—

- (a) the precautionary principle,
- (b) inter-generational equity,
- (c) conservation of biological diversity and ecological integrity,
- (d) improved valuation, pricing and incentive mechanisms to reflect the real cost of development, including environmental factors.

**ecosystem** means the dynamic, complex interaction of plants, animals, micro-organisms and ecological communities and their physical environment interacting as an ecological unit.

**eco-tourism facility** means a facility for nature-based tourism situated on land on which a house may be lawfully constructed. It includes an accommodation facility at which education about, and interpretation of, the natural and cultural environment are provided.

**educational establishment** means a building used as a school, college, technical college, university, academy, training facility, lecture hall, gallery, museum, display centre or the like, but does not include a building used wholly or principally as an institution or child care centre.

**endangered species, populations and ecological communities** has the same meaning as in the *Threatened Species Conservation Act 1995* and includes an endangered species within the meaning of Part 7A of the *Fisheries Management Act 1994*.

**environmental conservation works** means work carried out to protect, rehabilitate or restore native vegetation, or riparian or wildlife corridors or links, and to enhance or restore the natural ecological systems of the land.

**environmental weed** means an invasive plant that spreads and invades disturbed native vegetation or pasture land.

**environmental weed management** means the management of noxious or environmental weeds and includes hand and mechanical removal, the use of herbicides and other chemicals to remove weeds and prevent the spread of weed seeds.

**exempt development** has the same meaning as in the Act.

**extractive industry** means—

- (a) the winning of extractive material, or
- (b) an industry or undertaking, not being a mine, which depends for its operations on the winning of extractive material from the land on which it is carried out, and includes any washing, crushing, grinding, milling, stockpiling or separating into difference sizes of that extractive material on that land, or
- (c) works associated with a site rehabilitation plan.

**extractive material** means sand, gravel, clay, soil, rock, stone or any similar substance, but does not include turf subject to turf farming operations.

**farm dam** means a constructed artificial water storage facility designed primarily for agricultural or domestic purposes.

**farm shed** means a building erected on land and used for the storage and maintenance of farm equipment associated with the agricultural use of the land.

**farm stay establishment** means an established farming enterprise that provides short-term self-contained accommodation (including accommodation in converted or newly constructed outbuildings or cottages) in association with a working farm or agricultural enterprise.

**filling** means the placement of fill independently of other development for which consent has been granted—

- (a) on an area within 40 metres of a watercourse, or
- (b) to a depth greater than 500 millimetres above the existing ground level of land, or
- (c) where natural drainage to a watercourse or an adjacent property will be affected.

**flood liable land** means land that is below the flood planning level.

**flood planning level** means 0.5 metre above the predicted water level of the 1 in 100 year flood for a particular site.

**forestry** means arboriculture, silviculture, forest protection, the cutting, dressing and preparation, otherwise than in a sawmill, of wood and other forest products and the establishment of roads required for the removal of wood and forest products and for forest protection.

**fragmentation** means the process of progressive loss and isolation of habitat leading to a reduction in habitat connectivity for some species.

**gas holder** means a container designed to hold more than 500 litres of liquid petroleum gas.

**general store** means a shop used for the sale by retail of general merchandise. It may include the facilities of a post office, dry cleaning agency, financial agency or the like.

**generating works** means a building or place used for the purpose of generating gas, electricity or other forms of energy.

**habitat** means those parts of the environment that native flora and fauna require for different parts of their life cycle, including feeding, roosting, migrating, nesting and the rearing of young. Habitat may be occupied either permanently, periodically or occasionally by a species, population or ecological community.

**health care professional** means a person who renders professional health services to members of the public, and includes a podiatrist, a chiropracist, a chiropractor, a physiotherapist and an optometrist.

**heavy industry** means an industry, not being an extractive, light, offensive or hazardous or rural industry.

**heavy vehicle parking** means the parking of large vehicles, including earth moving equipment.

**helipad** means an area or place for use by helicopters and includes any ancillary terminal buildings and facilities for the parking, servicing and repair of helicopters.

**heritage conservation area** means an area of land shown edged heavy red with diagonal hatching and marked "Heritage Conservation Area" on the Heritage Conservation Area Map. It includes natural areas, buildings, works, archaeological sites, trees and places of heritage significance situated on or within the land.

**Heritage Conservation Area Map** means the map marked "*Heritage Conservation Area Map*", as amended by the maps, or sheets of maps, marked as follows—

**Editorial note—**

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**heritage impact statement** means a statement demonstrating the heritage significance of an item, a property, an archaeological site or a place, assessing the impact that proposed development will have on that significance and explaining measures that are proposed to minimise that impact.

**heritage item** means a building, work, tree, place or archaeological site (which may or may not be situated on or within land that is a heritage conservation area) identified in Schedule 4 and shown edged heavy red (but not with diagonal hatching) and numbered in red on the zoning map. A heritage item includes all parts of the fabric, structure, fixtures and fittings of any such building, work, tree or place.

**heritage significance** means historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic value.

**high class agricultural land** means land described as being of Class 1, 2 or 3 by the Department of Agriculture in the *Sydney Region Agricultural Land Classification Atlas*.

**home-based child care** means the provision of child care in a house erected with development consent and in accordance with the [Family Day Care and Home Based Child Care Services Regulation 1996](#).

**home business** means a business carried on from a house for which a building approval or development consent has been granted, where—

- (a) the majority of the business is carried on away from the house, with the house and its outbuildings and curtilage being used primarily as a base or office, and
- (b) the business will not—
  - (i) interfere with the amenity of the neighbourhood by reason of traffic generation, noise or otherwise, or
  - (ii) involve the exposure to view from any adjacent premises or from any public place of any goods associated with the business or any unsightly matter, or
  - (iii) involve the parking of heavy vehicles either on or adjacent to the property, or
  - (iv) involve the employment of persons other than the permanent residents of the house at the base or office, and
- (c) the house continues to be used for permanent residential occupation by the person carrying on the business.

**home occupation** means an occupation or industry carried on from an allotment that is the site of a house for which a building approval or development consent has been granted, where—

- (a) the dominant use of the allotment remains that for which the land is zoned, and
- (b) the floor space of the building or the area used for the occupation or industry does not exceed 50 square metres and is located within the curtilage of the house, and
- (c) the occupation or industry does not—
  - (i) interfere 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 material, grit or oil, or otherwise, or
  - (ii) involve exposure to view from any adjacent premises or from any public place of any unsightly matter or any goods, or
  - (iii) require the provision of any essential service main of a greater capacity than that available in the locality, or
  - (iv) involve the exhibition of any notice, advertisement or sign other than a single notice to indicate the name, occupation and contact number of the resident, or
  - (v) employ more than one person who is not a permanent resident of the house, or
  - (vi) involve the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail.

**hospital** means a building or place used for the purpose of providing professional health care services (such as preventative or convalescent care, diagnosis, medical or surgical treatment, care for people with developmental disabilities, psychiatric care or counselling and services provided by health care professionals) to people admitted as in-patients (whether or not out-patients are also cared for or treated there) and includes a shop, refreshment rooms, accommodation, research or educational facilities or a dispensary used in conjunction with that use.

**hotel** means premises to which a hotelier's licence granted under the [Liquor Act 1982](#) relates.

**house** means a building containing a room or rooms in which people live and which can be used or occupied as a single residence.

**housing for older people or people with a disability** means residential accommodation which is or is intended to be used permanently as housing for the accommodation of older people or people with a disability which may consist of a residential care facility, hostel or grouping of 2 or more self-contained houses, or a combination of these, but does not include a hospital.

**identification sign** for a property means a sign attached to the property or within the property boundary which identifies the property name (if any) and its owners, and the occupation of its owners or the use of the property.

**industry** means—

- (a) any manufacturing process, or
- (b) the breaking up or dismantling of any goods or any article for trade or sale or gain or as ancillary to any business.

**institution** means a penal or reformatory establishment.

**intensive agriculture** means—

- (a) use of an intensive agriculture establishment for the purpose of agriculture, or
- (b) intensive plant growing.

**intensive animal establishment** means a building or place used to hold livestock for commercial breeding or nurturing purposes where the livestock are fed by a method other than natural grazing and includes, but is not limited to—

- (a) poultry farming, and
- (b) commercial horse training, stabling and breeding and riding schools, and
- (c) dog and cat boarding, breeding and training, and
- (d) cattle feedlots, and
- (e) pig farming, and
- (f) worm farming.

**intensive plant growing** means the commercial growing of plants and fungi where water is applied

over and above that naturally occurring and includes (but is not limited to) the following horticultural systems—

- (a) hydroponics, and
- (b) crop protection, and
- (c) market gardening, and
- (d) orcharding, and
- (e) field flowers, and
- (f) vineyards, and
- (g) turf farming,

but does not include the growing of plants for the consumption or enjoyment of the owner or occupier of the land.

**introduced species** means a species that is not locally indigenous.

**junk yard** means land used for the collection, storage, abandonment or sale of scrap metals, waste paper, rags, bottles or other scrap materials, waste material or goods, including collecting, dismantling, storing, salvaging or abandoning of automobiles or for the sale of their parts.

**land containing mineral resources of State and regional significance** means land shown in hatching on the State and Regionally Significant Mineral Resources Map.

**land degradation** means the decline in the quality of the land and its natural resources, commonly caused by inappropriate human usage. It includes soil degradation and the deterioration of the habitat values of native vegetation, landscapes and water resources.

**landscape** means the pattern of physical, natural and human-made features set on the land surface which are identifiable and may have visual aesthetic appeal.

**light industry** means an industry, not being an extractive, rural, heavy, offensive or hazardous industry, in which the processes carried on, the transportation involved or the machinery or materials used do not interfere with the amenity of nearby residents by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste material, grit or oil, or otherwise.

**liquid fuel depot** means a depot or place used for the bulk storage for wholesale distribution of petrol, oil, petroleum or other inflammable liquid.

**local road** means a road that is maintained and controlled by the Council and is not a main or arterial road.

**main or arterial road** means a main road, State highway, freeway or tollway within the meaning of the [Roads Act 1993](#).

**maintenance**, in relation to a heritage item, or a building, work, relic, tree or place within a heritage conservation area, means the ongoing protective care of the heritage item, building, work, relic, tree or place or heritage conservation area, but does not include alterations or the introduction of new

materials or technology.

**medium density housing** means a building or group of buildings containing three or more houses located on a single parcel of land.

**mine** means any place where mining is carried out to obtain any metal or mineral by any method and any place on which the mined metal or mineral is stacked, stored, crushed or otherwise treated, but does not include a quarry.

**mineral sand mine** means a mine used for or in connection with the purpose of obtaining ilmenite, monazite, rutile, zircon or similar materials.

**motel** means a building or buildings substantially used for the overnight accommodation of travellers and the vehicles used by them, whether or not the building or buildings are also used in the provision of meals for those travellers. A motel does not include other types of accommodation defined in this Dictionary.

**motor showroom** means a building or place used for the display or sale of motor vehicles, caravans, boats or trailers, whether or not accessories are also sold or displayed there.

**native fauna** includes all species that are endemic to New South Wales or are known to periodically or occasionally migrate to New South Wales, whether vertebrate or invertebrate, but does not include humans.

**native vegetation** has the same meaning as in the [Native Vegetation Conservation Act 1997](#).

**natural and human induced hazards** includes landslip and instability, flooding, acid sulfate soils, environmental weeds, feral and domestic animals and the like.

**natural ground level** means the level of the ground surface before any changes have been made by excavation or filling.

**nature conservation area** means a primary or supplementary conservation area identified in the *Nature Conservation Study* prepared by Kevin Mills & Associates, dated June 2000, and available at the office of the Council.

**offensive or hazardous industry** means an industry which by reason of the processes involved or the method of manufacture or the nature of the materials used or produced, requires isolation from other buildings.

**older people** means people aged 55 years or over.

**operational buffer** means the area required to contain most of the adverse externalities associated with mineral extraction.

**passenger terminal** means a building or place used for the assembly and dispersal of travelling passengers.

**people with a disability** means people of any age who, as a result of having intellectual, physical, psychiatric or sensory impairment, either permanently or for an extended period, have substantially limited opportunities to enjoy a full and active life.

**picnic ground** means an area of open space used for passive recreation (not being bush land) and may include tables, seating, barbecues, sunshade structures and an amenity building.

**place of Aboriginal heritage significance** means—

- (a) a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people. It can (but need not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or
- (b) a natural Aboriginal sacred site or other sacred feature.

Such places may include natural features such as creeks, ridges or other topographic features of long standing cultural significance as well as initiation, ceremonial, story places or areas of more contemporary cultural significance.

**place of assembly** means a public hall, theatre, cinema, music hall, concert hall, dance hall, open air theatre, drive-in theatre, music bowl or any other building of a like character used as such and whether used for the purposes of gain or not.

**place of worship** means a building or place used primarily for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, religious training or related social events.

**plant nursery** means a building or area used for the growing and retail selling of plants, whether or not ancillary products are sold there.

**potential Aboriginal archaeological site** means a site identified as potentially containing Aboriginal relics in accordance with the Zones of Archaeological Sensitivity shown on a map held by the Council associated with the *Aboriginal Heritage Study*. It includes a site known to the Council to have archaeological potential even if the site is not so identified and shown on that map.

**potential place of Aboriginal heritage significance** means a place that in the opinion of the Council has the potential to have Aboriginal heritage significance.

**primary conservation area** means an area identified as such on mapping held by the Council associated with the *Nature Conservation Study* prepared by Kevin Mills & Associates, dated June 2000, and available at the office of the Council.

**professional consulting rooms** means a room or a number of rooms forming either the whole of or part of, attached to or within the curtilage of, a house and used by not more than three legally qualified medical practitioners or by not more than three dentists, or by not more than three health care professionals, who practise there the profession of medicine, dentistry or health care respectively and, if more than one, practice in partnership, and who employ not more than three employees in connection with that practice.

**property management plan** for land means a plan, prepared by or on behalf of the property owner of the land, that specifies ongoing land management goals and a program of activities and works proposed to be undertaken on the subject land to enhance or restore the natural ecosystem, areas of native vegetation and any wildlife corridors or links and may contain proposals for farm management practices. These activities and works may include, but are not limited to—



- (a) fencing riparian corridors to regulate stock access points, or
- (b) planting native species, or
- (c) fencing of remnant vegetation to exclude stock and encourage re-growth, or
- (d) environmental weed management, or
- (e) bush fire hazard reduction works for fuel or ecosystem management purposes.

**protected land** means land that is State protected land or regional protected land within the meaning of the *Native Vegetation Conservation Act 1997*.

**public building** means a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a council or an organisation established for public purposes.

**public utility undertaking** means any of the following undertakings carried on or permitted to be carried on by authority of any Government Department or under the authority of, or in pursuance to, any Commonwealth or State Act including—

- (a) railway, road transport, water transport, air transport, wharf or river undertakings,
- (b) undertakings for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services.

**racecourse** means a place used for the organised racing of animals or vehicles and includes ancillary buildings and facilities.

**recreation area** means—

- (a) a children's playground, or
- (b) an area used for informal outdoor recreation activities,

that is made available to the general public without cost.

**recreation establishment** means health farms, religious retreat houses, youth camps and the like, but (in Part 2) does not include a building or place elsewhere specifically defined in this Dictionary.

**recreation facility** means a building or place used for indoor or outdoor recreation, including a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley, fun parlour or any other building of like character used for recreation, whether used for the purposes of gain or not.

**relic** means—

- (a) any deposit, object or material evidence (which may consist of human remains) that is more than 50 years old relating to the use or settlement, not being Aboriginal habitation, of the Shellharbour City local government area, or
- (b) any deposit, object or material evidence (which may consist of human remains) of any age relating to Aboriginal habitation of the Shellharbour City local government area.

**remnant native vegetation** means a fragmented portion, or patch, of the former dominant native vegetation which once covered the area prior to the surrounding area being cleared for human land use.

**riparian corridor** means land—

- (a) within 40 metres, measured from the top of the bank of a stream, river or watercourse, or the edge of a wetland, comprising or adjacent to Marshall Mount Creek, Macquarie Rivulet or the Minnamurra River, and
- (b) shown coloured beige on the Areas of High Conservation Value Map.

**roadside stall** means a building or place not exceeding 20 square metres in floor space or area, respectively, where only primary products produced on the property on which the building or place is situated are exposed or offered for sale or sold by retail.

**road transport terminal** means a building or place used mainly for the bulk handling of goods for transport, and includes facilities for the loading and unloading of vehicles used to transport those goods and for the parking, servicing and repair of those vehicles.

**rural industry** means the handling, treating, processing or packing of primary products and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality.

**rural restaurant** means a restaurant, winery, café, tearoom or the like that is associated with a rural industry or agricultural use and is situated on the same land on which the industry or use is carried out.

**rural tourist facility** means an establishment providing holiday accommodation and may include a souvenir shop or arts and craft gallery for the exhibition of craft articles, paintings and the like, but does not include a motel.

**rural worker's dwelling** means a house which is on land on which there is already a house erected and which is occupied by persons engaged in rural occupation on that land.

**rural zone** means the 1 (a) Agriculture, 1 (rl) Rural Landscape, 1 (x) Extractive Industry, 7 (n) Nature Conservation or 7 (w) Wetlands Zone.

**sawmill** means a mill handling, cutting and processing timber from logs or baulks.

**service station** means a building or place used for the fuelling of motor vehicles involving the sale by retail of petrol, oil and other petroleum products, whether or not the building or place is also used for any one or more of the following—

- (a) the sale by retail of spare parts and accessories for motor vehicles,
- (b) washing and greasing of motor vehicles,
- (c) installation of accessories,
- (d) repairing and servicing of motor vehicles involving the use of hand tools (other than repairing and servicing which involves top overhaul of motors, body building, panel beating or spray painting, or suspension, transmission or chassis restoration).

**shop** means a building or place used for selling, exposing or offering for sale by retail goods, merchandise or materials.

**showground** means an area used to present organised cultural events to the public and may include both indoor and outdoor facilities for exhibitions and festivities.

**site rehabilitation plan** means a plan of work, approved by the Council, and proposed to be undertaken to restore soil structures, landscape features or to regenerate native vegetation systems and native habitat potential.

**species** means a group of organisms capable of interbreeding freely with each other but (usually) not with members of other species, and includes any recognised sub-species and taxon below a sub-species, and any recognisable variant of a sub-species or taxon.

**State and Regionally Significant Mineral Resources Map** means the map marked “*Shellharbour Rural Local Environmental Plan 2004—State and Regionally Significant Mineral Resources*”, as amended by the maps, or sheets of 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.

**stock and sale yard** means a building or place used for offering animals for sale.

**subdivision of land** has the same meaning as in the Act.

**supplementary conservation area** means an area identified as such on mapping held by the Council associated with the *Nature Conservation Study* prepared by Kevin Mills & Associates, dated June 2000, and available at the office of the Council.

**sustainable agriculture** means agriculture that implements the principles of ecologically sustainable development.

**telecommunications facility** means any part of the infrastructure of a telecommunications network. It includes any telecommunications line, equipment, apparatus, telecommunications tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or for use, in or in connection with a telecommunications network.

**telecommunications network** means a system, or series of systems, that carries, or is capable of carrying, communications by means of guided or unguided electromagnetic energy, or both.

**the Act** means the [Environmental Planning and Assessment Act 1979](#).

**the Council** means Shellharbour City Council.

**threatened species, populations and ecological communities** has the same meaning as in the [Threatened Species Conservation Act 1995](#) and includes endangered or vulnerable species within the meaning of Part 7A of the [Fisheries Management Act 1994](#).

**timber yard** means a place or building used for the storage, treatment and sale of timber products.

**tourist cabin** means a freestanding building used to provide short-term self-contained holiday

accommodation on land on which a house may lawfully be constructed.

**turf farming** means the cultivation and extraction of turf.

**utility installation** means a building or work used by a public utility undertaking, but does not include a building designed wholly or principally as administrative or business premises.

**vegetation community** means a group of organisms living together in a definable region or habitat defined by its vegetation.

**vulnerable species** has the same meaning as in the [Threatened Species Conservation Act 1995](#) and includes a vulnerable species within the meaning of the [Fisheries Management Act 1994](#).

**warehouse** means a building or place used for the storage of goods, merchandise or materials.

**waste material** means—

- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, consistency or manner as to cause an alteration in the environment, or
- (b) any discarded, rejected, unwanted, surplus or abandoned substance, or
- (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, reprocessing, recovery or purification by separate operation from that which produced the substance, or
- (d) any substance prescribed to be waste for the purpose of the [Protection of the Environment Operations Act 1997](#) by the regulations made under that Act.

A substance is not precluded from being waste material merely because it can be reprocessed, re-used or recycled.

**watercourse** includes any stream of water, whether perennial or intermittent, flowing either in a natural or artificial channel from which the stream of water flows from its headwater to a coastal bay, lake, inlet or estuary.

**wetland improvement** means the creation, enhancement, regeneration or maintenance of wetlands whether the wetland is natural or artificial and whether or not the wetland forms part of an integrated drainage system.

**wetlands** includes any land that is inundated with water cyclically, intermittently or permanently (such as a marsh, a swamp or ephemeral wetlands) comprising emergent aquatic vegetation dominated by characteristic wetland species. They may be fresh, brackish or saline and are usually shallow and slow moving or stationary.

**wildlife corridors or links** means an area or network of areas of native vegetation or habitat that enables migration, colonisation or interbreeding of plants and animals between two or more larger areas of habitat. Wildlife corridors or links include stands or dispersed areas of vegetation which may be used by wildlife to move from one area to another, for habitat or foraging. Wildlife corridors include, but are not limited to, those areas identified in the *Nature Conservation Study*, prepared by Kevin Mills & Associates, dated June 2000, and available at the office of the Council.

**zoning map** means the map marked “*Shellharbour Rural Local Environmental Plan 2004—Zoning Map*” as amended by the maps, or sheets of maps, marked as follows—

**Editorial note—**

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*Shellharbour Rural Local Environmental Plan 2004 (Amendment No 1)—Sheet 2*