



New South Wales

Newcastle City Centre Local Environmental Plan 2008

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the
Environmental Planning and Assessment Act 1979. (S06/01148/PC)

FRANK SARTOR, M.P.,
Minister for Planning

2008 No 24

Newcastle City Centre Local Environmental Plan 2008

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Clause 1 Newcastle City Centre Local Environmental Plan 2008

Part 1 Preliminary

Newcastle City Centre Local Environmental Plan 2008

under the

Environmental Planning and Assessment Act 1979

Part 1 Preliminary

1 Name of Plan

This Plan is *Newcastle City Centre Local Environmental Plan 2008*.

2 Aims of Plan

- (1) This Plan aims to make local environmental planning provisions for land in the Newcastle city centre that are generally in accordance with the relevant standard environmental planning instrument (as in force on 31 December 2007) under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) to promote the economic revitalisation of the Newcastle city centre,
 - (b) to strengthen the regional position of the Newcastle city centre as a multi-functional and innovative centre that encourages employment and economic growth,
 - (c) to protect and enhance the positive characteristics, vitality, identity, diversity and sustainability of the Newcastle city centre, and the quality of life of its local population,
 - (d) to promote the employment, residential, recreational and tourism opportunities within the Newcastle city centre,
 - (e) to facilitate the development of building design excellence appropriate to a regional city,
 - (f) to encourage responsible management, development and conservation of natural and man-made resources and to ensure that the Newcastle city centre achieves sustainable social, economic and environmental outcomes,
 - (g) to protect and enhance the environmentally sensitive areas and natural and cultural heritage of the Newcastle city centre for the benefit of present and future generations,

- (h) to help create a mixed use place, with activity during the day and throughout the evening, so the Newcastle city centre is safe, attractive, inclusive and efficient for its local population and visitors alike.

3 Land to which Plan applies

This Plan applies to the land identified on the Land Application Map.

4 Definitions

The Dictionary at the end of this Plan defines words and expressions for the purposes of this Plan.

5 Notes

Notes in this Plan are provided for guidance and do not form part of this Plan.

6 Consent authority

The consent authority for the purposes of this Plan is (subject to the Act) the Council.

7 Maps

- (1) A reference in this Plan to a named map adopted by this Plan 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 Plan 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.

Note. The maps adopted by this Plan are the Floor Space Ratio Map, the Height of Buildings Map, the Heritage Map, the Key Sites Map, the Land Application Map, the Land Reservation Acquisition Map, the Land Zoning Map and the Wickham Redevelopment Area Map.

8 Repeal of other local planning instruments applying to land

- (1) All local environmental plans and deemed environmental planning instruments applying only to the land to which this Plan applies are repealed.

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Part 1 Preliminary

- (2) All local environmental plans and deemed environmental planning instruments applying to the land to which this Plan applies and to other land cease to apply to the land to which this Plan applies.
- (3) If a development application has been made, before the commencement of this Plan, in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application is to be determined as if this Plan had been exhibited but not commenced.

9 Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development on land within any zone to be carried out in accordance with this Plan or with a 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 prescribed instrument within the meaning of section 183A of the *Crown Lands Act 1989*, or
 - (c) to any conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
 - (d) to any Trust agreement within the meaning of the *Nature Conservation Trust Act 2001*, or
 - (e) to any property vegetation plan within the meaning of the *Native Vegetation Act 2003*, or
 - (f) to any biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*.
- (3) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (4) Pursuant to section 28 of the Act, before the making of this clause, the Governor approved of subclauses (1)–(3).

10 Application of SEPPs and REPs

- (1) This Plan is subject to the provisions of any State environmental planning policy and any regional environmental plan that prevail over this Plan as provided by section 36 of the Act.

Note. Section 36 of the Act generally provides that SEPPs prevail over REPs and LEPs and that REPs prevail over LEPs. However, a LEP may (by an additional provision included in the Plan) displace or amend a SEPP or REP to deal specifically with the relationship between this Plan and the SEPP or REP.

- (2) The following State environmental planning policies and regional environmental plans (or provisions) do not apply to the land to which this Plan applies:

State Environmental Planning Policy No 1—Development Standards

State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development (clause 6)

State Environmental Planning Policy No 9—Group Homes

State Environmental Planning Policy No 60—Exempt and Complying Development

State Environmental Planning Policy No 71—Coastal Protection

Hunter Regional Environmental Plan 1989

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Part 2 Permitted or prohibited development

Part 2 Permitted or prohibited development

11 Land use zones

The land use zones under this Plan are as follows:

Residential Zones

R3 Medium Density Residential

Business Zones

B3 Commercial Core

B4 Mixed Use

Special Purpose Zones

SP2 Infrastructure

Recreation Zones

RE1 Public Recreation

12 Zoning of land to which Plan applies

For the purposes of this Plan, land is within the zones shown on the Land Zoning Map.

13 Zone objectives and land use table

- (1) The Table at the end of this Part specifies for each zone:
 - (a) the objectives for development, and
 - (b) development that may be carried out without consent, and
 - (c) development that may be carried out only with consent, and
 - (d) development that is prohibited.
- (2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.
- (3) In the Table at the end of this Part:
 - (a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and
 - (b) a reference to a type of building or other thing does not include (despite any definition in this Plan) a reference to a type of building or other thing referred to separately in the Table in relation to the same zone.
- (4) This clause is subject to the other provisions of this Plan.

Notes.

- 1 Schedule 1 sets out additional permitted uses for particular land.

- 2 Schedule 2 sets out exempt development (which is generally exempt from both Parts 4 and 5 of the Act). Development in the land use table that may be carried out without consent is nevertheless subject to the environmental assessment and approval requirements of Part 5 of the Act or, if applicable, Part 3A of the Act.
- 3 Schedule 3 sets out complying development (for which a complying development certificate may be issued as an alternative to obtaining development consent).
- 4 Clause 16 requires consent for subdivision of land.
- 5 Part 5 contains other provisions which require consent for particular development. (See, for example, clause 46.)

14 Unzoned land

- (1) Development may be carried out on unzoned land only with consent.
- (2) Before granting consent, the consent authority:
 - (a) must consider whether the development will impact on adjoining zoned land and, if so, consider the objectives for development in the zones of the adjoining land, and
 - (b) must be satisfied that the development is appropriate and is compatible with permissible land uses in any such adjoining land.

15 Additional permitted uses for particular land

- (1) Development on particular land that is described or referred to in Schedule 1 may be carried out:
 - (a) with consent, or
 - (b) if the Schedule so provides—without consent, in accordance with the conditions (if any) specified in that Schedule in relation to that development.
- (2) This clause has effect despite anything to the contrary in the Land Use Table or any other provision of this Plan.

16 Subdivision—consent requirements

- (1) Land to which this Plan applies may be subdivided, but only with consent.
- (2) However, 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) making an adjustment to a boundary between lots, being an adjustment that does not involve the creation of a greater number of lots,
 - (c) a minor realignment of boundaries that does not create additional lots or the opportunity for additional dwellings,

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Part 2 Permitted or prohibited development

- (d) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,
- (e) rectifying an encroachment on a lot,
- (f) creating a public reserve,
- (g) 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.

Note. If a subdivision is exempt development, the Act enables the subdivision to be carried out without consent.

17 Temporary use of land

- (1) Despite any other provision of this Plan, but subject to subclauses (2) and (3), consent may be granted for the use of land for any purpose (including, but not limited to, an exhibition, concert, fair, sporting event, fete or market) if the consent authority is satisfied that:
 - (a) the use of the land for the purpose specified will cease within a specified period of time, and
 - (b) suitable arrangements have been or will be made for the removal of any waste or any temporary structures associated with the temporary use and for the restoration of the land at the cessation of the temporary use, and
 - (c) the temporary use is reasonable, having regard to the nature of the temporary use and the economic use of the land pending its development otherwise in accordance with this Plan (other than this clause), and
 - (d) the temporary use will not adversely affect the economic viability of any commercial use within the vicinity, and
 - (e) the temporary use will not have an unreasonable impact on residential amenity within the locality, and
 - (f) the temporary use will not, in the long term, have an impact on the carrying out of development in accordance with the objectives of the zone, and
 - (g) the temporary use will not be inconsistent with any development consent applying to the land or with any applicable plan of management under the *Local Government Act 1993* or *Crown Lands Act 1989*.
- (2) Development consent may be granted for the temporary use of land (or a building on land) for not more than 52 days, whether consecutive or not, in any one year.
- (3) Development consent may be granted for a temporary use over a period of not more than 3 consecutive years.

Land Use Table

Zone R3 Medium Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide for a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To allow some diversity of activities and densities if:
 - the scale and height of proposed buildings is compatible with the character of the locality, and
 - traffic generation can be managed in a way that avoids adverse impacts on the local road system, and
 - there will be no significant adverse impact on the amenity of any existing or proposed development nearby.
- To encourage increased population levels in locations that will support the commercial viability of the Newcastle city centre provided that the associated new development:
 - has regard to the desired future character of residential streets, and
 - does not significantly detract from the amenity of any existing or proposed development nearby.

2 Permitted without consent

Nil

3 Permitted with consent

Bed and breakfast accommodation; Boarding houses; Car parks (but only public car parks provided by or on behalf of the Council); Child care centres; Community facilities; Dual occupancies; Dwelling houses; Educational establishments; Environmental facilities; Food and drink premises; Group homes; Health consulting rooms; Home businesses; Hospitals; Hostels; Multi dwelling housing; Neighbourhood shops; Places of public worship; Public administration buildings; Recreation areas; Residential care facilities; Residential flat buildings; Roads; Seniors housing; Shop top housing; Tourist and visitor accommodation; Utility installations.

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Clause 17 Newcastle City Centre Local Environmental Plan 2008

Part 2 Land Use Table

4 Prohibited

Any development not specified in item 2 or 3.

Zone B3 Commercial Core

1 Objectives of zone

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To strengthen the role of the Newcastle city centre as the regional business, retail and cultural centre of the Hunter region.
- To provide for land uses of a higher order and density within the Commercial Core zone than those located within the Mixed Use zone.
- To encourage a diverse and compatible range of activities including:
 - commercial and retail development, and
 - cultural and entertainment facilities, and
 - tourism, leisure and recreation facilities, and
 - social, education and health services.
- To provide for residential development that contributes to the vitality of the Newcastle city centre, where provided within a mixed use development.
- To create opportunities to improve the public domain and pedestrian links throughout the Newcastle city centre.
- To provide for the retention and creation of view corridors.
- To protect and enhance the unique qualities and character of special areas within the Newcastle city centre.

2 Permitted without consent

Nil

3 Permitted with consent

Advertisements; Business premises; Car parks (but only if required by this Plan or public car parks provided by or on behalf of the Council); Child care centres; Community facilities; Educational establishments;

Entertainment facilities; Food and drink premises; Function centres; Hospitals; Information and education facilities; Kiosks; Markets; Medical centres; Office premises; Passenger transport facilities; Places of public worship; Public administration buildings; Public halls; Recreation facilities (indoor); Registered clubs; Residential flat buildings (but only as a component of mixed use developments involving a permitted non-residential use); Retail premises; Roads; Seniors housing; Serviced apartments; Sex services premises; Tourist and visitor accommodation; Utility installations.

4 Prohibited

Any development not specified in item 2 or 3.

Zone B4 Mixed Use**1 Objectives of zone**

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To support the higher order Commercial Core zone, while providing for the daily needs of the Mixed Use zone.
- To encourage a diverse and compatible range of activities including:
 - commercial and retail development, and
 - cultural and entertainment facilities, and
 - tourism, leisure and recreation facilities, and
 - social, education and health services, and
 - higher density residential development.
- To allow development along the coastline to take advantage of and retain view corridors whilst avoiding a continuous built edge along the waterfront.
- To create opportunities to improve the public domain and pedestrian links within the Mixed Use zone.
- To protect and enhance the unique qualities and character of special areas within the Newcastle city centre.

2 Permitted without consent

Nil

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Clause 17 Newcastle City Centre Local Environmental Plan 2008

Part 2 Land Use Table

3 Permitted with consent

Any development not specified in item 2 or 4.

4 Prohibited

Bulky goods premises having a gross floor area greater than 400 square metres; Car parks (other than car parks required by this Plan or public car parks provided by or on behalf of the Council); Caravan parks; Cemeteries; Extractive industries; Hazardous industries; Hazardous storage establishments; Industries (excluding light industries); Liquid fuel depots; Mines; Offensive industries; Offensive storage establishments; Roadside stalls; Warehouses or distribution centres; Waste management facilities.

Zone SP2 Infrastructure

1 Objectives of zone

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

2 Permitted without consent

Nil

3 Permitted with consent

The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose; Car parks (but only if required by this Plan or public car parks provided by or on behalf of the Council); Commercial activities; Drainage; Earthworks; Passenger transport facilities; Roads; Telecommunications facilities; Temporary structures; Utility installations.

4 Prohibited

Any development not specified in item 2 or 3.

Zone RE1 Public Recreation

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.

-
- To protect and enhance the natural environment for recreational purposes.

2 Permitted without consent

Environmental facilities; Environmental protection works.

3 Permitted with consent

Boat launching ramps; Boat repair facilities; Car parks (but only if required by this Plan or public car parks provided by or on behalf of the Council); Caravan parks; Child care centres; Community facilities; Flood mitigation works; Kiosks; Marinas; Passenger transport facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Restaurants; Roads; Tourist and visitor accommodation; Utility installations; Any development allowed by a plan of management under the *Local Government Act 1993* or *Crown Lands Act 1989*.

4 Prohibited

Any development not specified in item 2 or 3.

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Clause 18 Newcastle City Centre Local Environmental Plan 2008

Part 3 Exempt and complying development

Part 3 Exempt and complying development

18 Exempt development

Note. Under section 76 of the Act, exempt development may be carried out without the need for development consent under Part 4 of the Act or for assessment under Part 5 of the Act.

The section states that exempt development:

- (a) must be of minimal environmental impact, and
 - (b) cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), and
 - (c) cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).
- (1) The objective of this clause is to identify development of minimal environmental impact as exempt development.
 - (2) Development specified in Schedule 2 that meets the standards for the development contained in that Schedule and that complies with the requirements of this Part is exempt development.
 - (3) To be exempt development, the development:
 - (a) must meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (b) must not, if it relates to an existing building, cause the building to contravene the *Building Code of Australia*, and
 - (c) must not be designated development, and
 - (d) must not be carried out on land that comprises, or on which there is, an item that is listed on the State Heritage Register under the *Heritage Act 1977* or that is subject to an interim heritage order under the *Heritage Act 1977*, and
 - (e) must not be carried out in an environmentally sensitive area for exempt or complying development (as defined in clause 20).
 - (4) Development that relates to an existing building that is classified under the *Building Code of Australia* as class 1b or class 2–9 is exempt development only if:
 - (a) the building has a current fire safety certificate or fire safety statement, or
 - (b) no fire safety measures are currently implemented, required or proposed for the building.

19 Complying development

Note. Under section 76A of the Act, development consent for the carrying out of complying development may be obtained by the issue of a complying development certificate.

The section states that development cannot be complying development if:

- (a) it is on land that is critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*), or
 - (b) it is on land within a wilderness area (identified under the *Wilderness Act 1987*), or
 - (c) the development is designated development, or
 - (d) the development is on land that comprises, or on which there is, an item of environmental heritage (that is listed on the State Heritage Register or in Part 1 of Schedule 5 to this Plan or that is subject to an interim heritage order under the *Heritage Act 1977*), or
 - (e) the development requires concurrence (except a concurrence of the Director-General of the Department of Environment and Climate Change in respect of development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat (identified under the *Threatened Species Conservation Act 1995*)), or
 - (f) the development is on land identified as an environmentally sensitive area.
- (1) The objective of this clause is to identify development as complying development.
 - (2) Development specified in Part 1 of Schedule 3 that is carried out in compliance with:
 - (a) the development standards specified in relation to development, and
 - (b) the requirements of this Part,
 is complying development.
 - (3) To be complying development, the development must:
 - (a) be permissible, with consent, in the zone in which it is carried out, and
 - (b) meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
 - (c) have an approval, if required by the *Local Government Act 1993*, from the Council for an on-site effluent disposal system if the development is undertaken on unsewered land.
 - (4) A complying development certificate for development specified in Part 1 of Schedule 3 is subject to the conditions (if any) set out in Part 2 of that Schedule.

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Clause 20 Newcastle City Centre Local Environmental Plan 2008

Part 3 Exempt and complying development

20 Environmentally sensitive areas excluded

- (1) Exempt or complying development must not be carried out on any environmentally sensitive area for exempt or complying development.
- (2) Exempt or complying development must not be carried out on flood prone land except where otherwise expressly provided in Schedule 2 or 3.
- (3) For the purposes of this clause:
environmentally sensitive area for exempt or complying development means any of the following:
 - (a) the coastal waters of the State,
 - (b) a coastal lake,
 - (c) land to which *State Environmental Planning Policy No 14—Coastal Wetlands* or *State Environmental Planning Policy No 26—Littoral Rainforests* applies,
 - (d) land reserved as an aquatic reserve under the *Fisheries Management Act 1994* or as a marine park under the *Marine Parks Act 1997*,
 - (e) land within a wetland of international significance declared under the Ramsar Convention on Wetlands or within a World heritage area declared under the World Heritage Convention,
 - (f) land within 100 metres of land to which paragraph (c), (d) or (e) applies,
 - (g) land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance,
 - (h) land reserved as a state conservation area under the *National Parks and Wildlife Act 1974*,
 - (i) land reserved or dedicated under the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes,
 - (j) land identified as being critical habitat under the *Threatened Species Conservation Act 1995* or Part 7A of the *Fisheries Management Act 1994*.

Part 4 Principal development standards and related provisions

21 Height of buildings

- (1) The objectives for the control of the height of buildings are as follows:
 - (a) to allow sunlight access to key areas of the public domain by ensuring that further overshadowing of certain parks and community places is avoided or limited during nominated times,
 - (b) to ensure that the built form of the Newcastle city centre develops in a coordinated and cohesive manner,
 - (c) to ensure that taller buildings are appropriately located,
 - (d) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,
 - (e) to ensure the preservation of view corridors that are significant for historic and urban design reasons.
- (2) Subject to subclauses (3) and (4) and the other provisions of this Plan, the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (3) Subject to clause 22, street frontage heights of a building in a section shown by distinctive marking in figure 2.10 of the City Centre Development Control Plan 2006 are not to exceed the maximum heights shown for that section in whichever of figure 2.11, 2.12 and 2.13 of that plan relates to that section.

Note. Figures 2.10–2.13 are in Part 2.8 of the City Centre Development Control Plan 2006.
- (4) The height of a building on land within the area bounded by Hunter Street, King Street, Newcomen Street and Perkins Street may exceed the maximum height referred to in subclause (2) if:
 - (a) the site area concerned is greater than 10,000 square metres, and
 - (b) the height of any building on that land does not exceed 40 metres Australian Height Datum, and
 - (c) the consent authority is satisfied that the impact of the height of the building on view corridors, identified in *Newcastle Development Control Plan 2005*, to and from the Christchurch Cathedral and the Hunter River foreshore is not unreasonable.

22 Architectural roof features

- (1) Development involving an architectural roof feature that exceeds, or causes a building to exceed, 14 metres in height may be carried out, but only with consent.

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Part 4 Principal development standards and related provisions

- (2) Development consent must not be granted for any such development unless the consent authority is satisfied that the architectural roof feature:
 - (a) comprises a decorative element on the uppermost portion of a building, and
 - (b) does not support any advertisements, and
 - (c) does not include floor space area and is not reasonably capable of modification to include floor space area, and
 - (d) causes minimal overshadowing, and
 - (e) if the feature supports any business or building identification sign or contains equipment or structures for servicing the building (such as plant, lift motor rooms, fire stairs and the like)—the sign, equipment or structure is fully integrated into the design of the feature.
- (3) Nothing in this clause restricts the operation of clause 28.

23 Floor space ratio

- (1) The objectives of this Plan for the control of floor space ratios are as follows:
 - (a) to ensure a degree of equity in relation to development potential for sites of different sizes and for sites located in different parts of the Newcastle city centre,
 - (b) to ensure that proposals for new buildings are assessed with due regard to the design excellence and built form provisions of this Plan,
 - (c) to provide sufficient floor space for high quality development for the foreseeable future,
 - (d) to regulate density of development and generation of vehicular and pedestrian traffic,
 - (e) to facilitate development that contributes to the economic growth of the Newcastle city centre.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.
- (3) Despite subclause (2) and except as provided by subclauses (4) and (7), the maximum floor space ratio for a building on land that is:
 - (a) in Area A, and
 - (b) in a zone specified in the Table to this subclause, and

- (c) on land for which the maximum building height is as specified in Column 1 of the Table under the heading for that zone, is the amount specified opposite that height in Column 2 of the Table if the building is not used for a commercial activity or in Column 3 if the building is used only for a commercial activity.

Table—Maximum FSR in Area A

Column 1	Column 2	Column 3
B3 Commercial Core zone		
24m, 30m or 35m	3.0:1	4.0:1
45m	3.0:1	6.0:1
60m	3.5:1	7.0:1
90m	3.5:1	8.0:1
B4 Mixed Use zone		
24m	2.5:1	3.0:1
30m or 35m	3.0:1	4.0:1
45m	3.5:1	5.0:1
60m	4.0:1	6.0:1

- (4) The maximum floor space ratio for a building in Area A that has a site area of less than 1,500 square metres is the least of the following:
- the floor space ratio determined in accordance with subclause (3),
 - 4.0:1,
 - the floor space ratio determined in accordance with subclause (7).
- (5) Despite subclause (2) and except as provided by subclause (7), the maximum floor space ratio for a building on land that is:
- in Area B, and
 - in a zone specified in the Table to this subclause, and
 - on land for which the maximum building height is as specified in Column 1 of the Table under the heading for that zone,
- is the amount specified opposite that height in Column 2 of the Table if the building is not used for an educational and cultural activity or in Column 3 if the building is used only for an educational and cultural activity.

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Clause 23 Newcastle City Centre Local Environmental Plan 2008

Part 4 Principal development standards and related provisions

Table—Maximum FSR in Area B

Column 1	Column 2	Column 3
B4 Mixed Use zone		
24m	2.5:1	3.0:1
30m or 35m	3.0:1	4.0:1
45m	3.5:1	5.0:1

- (6) Despite subclause (2) and except as provided by subclause (7), the maximum floor space ratio for a building on land that is:
- (a) in Area C, and
 - (b) in a zone specified in the Table to this subclause, and
 - (c) on land for which the maximum building height is as specified in Column 1 of the Table under the heading for that zone,

is the amount specified opposite that height in Column 2 of the Table if the building is not used for a tourist activity or in Column 3 if the building is used only for a tourist activity.

Table—Maximum FSR in Area C

Column 1	Column 2	Column 3
B4 Mixed Use zone		
18m, 20m or 24m	2.5:1	3.0:1
30m or 36m	3.0:1	4.0:1
45m	3.5:1	5.0:1
60m	4.0:1	6.0:1

- (7) If a building within Area A, Area B or Area C is used for a combination of the specified activity for the Area and one or more other activities, the maximum floor space ratio for the building is:

$$((NFSR \times N/100) + (SFSR \times S/100)):1$$

where:

N is the percentage of the building used for an activity other than the specified activity.

NFSR is the maximum floor space ratio in accordance with this clause if the building were used only for an activity other than the specified activity.

S is the percentage of the building used for the specified activity.

SFSR is the maximum floor space ratio in accordance with this clause if the building were used only for the specified activity.

Note. The following gives an example of how a maximum floor space ratio is to be calculated for a building on land, having a site area equal to or greater than 1,500 square metres and a maximum building height of 90m, that is within Zone B3 Commercial Core (located in Area A), 30 per cent of which is to be used for commercial activity and 70 percent of which is to be used for another activity:

$$((NFSR \times N/100) + (SFSR \times S/100)):1$$

$$((3.5 \times 70/100) + (8 \times 30/100)):1$$

$$(2.45 + 2.4):1$$

4.85:1 is the maximum floor space ratio.

- (8) In this clause:

Area A means the area shown on the Floor Space Ratio Map edged heavy black and marked “Area A—Commercial”.

Area B means the area shown on the Floor Space Ratio Map edged heavy black and marked “Area B—Educational and Cultural”.

Area C means the area shown on the Floor Space Ratio Map edged heavy black and marked “Area C—Tourist”.

educational and cultural activity, in relation to the use of a building, means the use of the building for the purposes of a school, tertiary institution, community facility, hostel or boarding house for students, theatre, cinema, music hall, concert hall or lecture theatre or a combination of any such uses.

maximum building height, in relation to land, means the maximum building height shown for the land on the Height of Buildings Map.

specified activity means:

- (a) in relation to Area A—commercial activity, and
- (b) in relation to Area B—educational and cultural activity, and
- (c) in relation to Area C—tourist activity.

tourist activity, in relation to the use of a building, means the use of the building for the purposes of tourist and visitor accommodation or uses ancillary to the tourism industry (such as conference rooms or tourism-based business) or a combination of such uses.

Note. For the meaning of **commercial activity**, see the Dictionary.

Clauses 24 and 36 (6) enable the consent authority, in certain circumstances, to grant consent to buildings that exceed the maximum floor space ratios specified in this clause.

24 City East precinct—exception to clauses 21 and 23

- (1) This clause applies to buildings on land shown edged heavy blue and notated “City East” on the Height of Buildings Map.

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- (2) The consent authority may consent to development that causes a building to which this clause applies to exceed the maximum height set by clause 21 up to the height of an existing building on an adjoining site.
- (3) The consent authority may consent to development that causes the floor space ratio of a building to which this clause applies to exceed the maximum floor space ratio set by clause 23 up to the floor space ratio of an existing building on an adjoining site.
- (4) The height or floor space ratio of a building to which this clause applies may only exceed the maximum height or floor space ratio set by clause 21 or 23, up to the height or floor space ratio permitted under this clause, if the consent authority is satisfied that the building, having regard to development on the adjoining site, achieves an appropriate urban design outcome.
- (5) In considering whether a building achieves an appropriate design outcome, the consent authority must have regard to:
 - (a) an urban design analysis indicating how the building will integrate with the surrounding natural and urban environment (including existing streetscapes, built form, heritage values, view corridors and open space), and
 - (b) the views of any group or panel established by the Council to consult on urban design on the extent to which the building integrates with that surrounding environment.
- (6) For the purposes of this clause, a site adjoins another site only if it has a common boundary with that other site.
- (7) Nothing in this clause restricts the operation of clause 28.

25 Minimum building street frontage

- (1) A building that is erected on land within Zone B3 Commercial Core is to have at least one street frontage of 20 metres or more.
- (2) Despite subclause (1), the consent authority may grant development consent to the erection of a building that does not comply with that subclause if it is of the opinion that:
 - (a) due to the physical constraints of the site, it is not physically possible for the building to have at least one street frontage of 20 metres or more, and
 - (b) the erection of the building is consistent with the other relevant provisions of this Plan.
- (3) Nothing in this clause restricts the operation of clause 28.

26 Car parking

- (1) If development involves the erection of a new building, or an alteration to an existing building that increases the gross floor area of the building:
 - (a) car parking must be provided in accordance with *Newcastle Development Control Plan 2005*, and
 - (b) at least one car parking space must be provided for every 60 square metres of gross floor area that is used for office premises.
- (2) Car parking required to be provided by this clause is to be provided on site unless the consent authority is satisfied that car parking will be adequately provided for elsewhere.
- (3) For the purposes of this clause, any area of the building that is used for car parking is to be included as part of a building's gross floor area, except where the car parking is provided as required by this clause.
- (4) Council-owned public car parking is not to be included as part of a building's gross floor area.

27 Building separation

- (1) A building on land to which this Plan applies must be erected so that the distance from the building to any other building is not less than 24 metres at 45 metres or higher above ground level.
- (2) For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.

28 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 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

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- (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:
 - (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
 - (iii) if the development is on land that comprises, or on which there is, an item of environmental heritage that is listed on the State Heritage Register under the *Heritage Act 1977* or in Part 1 of Schedule 5 to this Plan or that is subject to an interim heritage order under the *Heritage Act 1977*, the development will retain the heritage significance of the item, and
 - (b) the concurrence of the Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.
- (6) 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).
- (7) 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*

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Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

- (c) a development standard in Part 5 (other than clause 38 (4)).

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29 Land acquisition within certain zones

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

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

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

Type of land shown on Map	Authority of the State
---------------------------	------------------------

Zone RE1 Public Recreation and marked "Local open space"	Council
--	---------

Zone RE1 Public Recreation and marked "Regional open space"	The corporation constituted by section 8 of the Act
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- (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.

30 Development on proposed classified road

- (1) Consent for development on land reserved for the purposes of a classified road may, before the land becomes a classified road, be granted only if:
- (a) the development is carried out with the concurrence of the Roads and Traffic Authority (**the RTA**), and
 - (b) the development is of a kind, or is compatible with development of a kind, that may be carried out on land in an adjoining zone.

-
- (2) In deciding whether to grant concurrence to proposed development under this clause, the RTA must take the following matters into consideration:
- (a) the need to carry out development on the land for the purposes of a classified road or a proposed classified road,
 - (b) the imminence of acquisition of the land by the RTA,
 - (c) the likely additional cost to the RTA resulting from the carrying out of the proposed development.

31 Classification and reclassification of public land

- (1) The objective of this clause is to enable the Council to classify or reclassify public land as “operational land” or “community land” in accordance with Part 2 of Chapter 6 of the *Local Government Act 1993*.
- Note.** Under the *Local Government Act 1993*, “public land” is generally land vested in or under the control of a council (other than roads, Crown reserves and commons). The classification or reclassification of public land may also be made by a resolution of the Council under section 31, 32 or 33 of the *Local Government Act 1993*. Section 30 of that Act enables this Plan to discharge trusts on which public reserves are held if the land is reclassified under this Plan as operational land.
- (2) The public land described in Part 1 or Part 2 of Schedule 4 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*.
- (3) The public land described in Part 3 of Schedule 4 is classified, or reclassified, as community land for the purposes of the *Local Government Act 1993*.
- (4) The public land described in Part 1 of Schedule 4:
- (a) does not cease to be a public reserve to the extent (if any) that it is a public reserve, and
 - (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants that affected the land before its classification, or reclassification, as operational land.
- (5) The public land described in Part 2 of Schedule 4, to the extent (if any) that it is a public reserve, ceases to be a public reserve when the description of the land is inserted into that Part and is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land, except:
- (a) those (if any) specified for the land in Column 3 of Part 2 of Schedule 4, and
 - (b) any reservations that except land out of the Crown grant relating to the land, and

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- (c) reservations of minerals (within the meaning of the *Crown Lands Act 1989*).

Note. In accordance with section 30 (2) of the *Local Government Act 1993*, the approval of the Governor to subclause (5) applying to the public land concerned is required before the description of the land is inserted in Part 2 of Schedule 4.

32 Community use of educational establishments

- (1) The objective of this clause is to allow the use of educational establishments, including their site and facilities, for other community purposes.
- (2) An educational establishment (including the site and facilities) may, with consent, be used for any other community purpose, whether or not any such use is a commercial use of the land.
- (3) Nothing in this clause requires consent to carry out development on any land if that development could, but for this clause, be carried out on that land without consent.

33 Ecologically sustainable development

Before granting consent for development for the purposes of a building, the consent authority must have regard to the principles of ecologically sustainable development as they relate to the proposed development based on a “whole of building” approach by considering:

- (a) greenhouse gas reduction, and
- (b) embodied energy in materials and building processes, and
- (c) building design and orientation, and
- (d) passive solar design and day lighting, and
- (e) natural ventilation, and
- (f) energy efficiency and energy conservation, and
- (g) water conservation and reuse, and
- (h) waste minimisation and recycling, and
- (i) reduction of car dependence, and
- (j) potential for adaptive reuse.

34 Public safety—licensed premises

- (1) Before granting consent for development involving the use of land as licensed premises, the consent authority must consider any impact of the proposed development on public safety.
- (2) In this clause:
licensed premises means a hotel within the meaning of the *Liquor Act 1982* or a registered club.

35 Serviced apartments

Development consent must not be granted to development for the purpose of the strata subdivision of a building or part of a building that is or has been used for serviced apartments, unless the consent authority is satisfied that the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* and the design principles of the *Residential Flat Design Code* (Department of Planning, September 2002) are achieved for the development as if it were residential flat development.

36 Design excellence

- (1) This clause applies to development involving:
 - (a) the construction of a new building, or
 - (b) additions or external alterations to an existing building that, in the opinion of the consent authority, are significant.
- (2) Development consent must not be granted for development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.
- (3) In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:
 - (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
 - (b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,
 - (c) whether the proposed development detrimentally impacts on view corridors identified in *Newcastle Development Control Plan 2005*,
 - (d) how the proposed development addresses the following matters:
 - (i) heritage issues (including archaeology) and streetscape constraints,
 - (ii) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
 - (iii) bulk, massing and modulation of buildings,
 - (iv) street frontage heights,

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- (v) environmental impacts, such as sustainable design, overshadowing, wind and reflectivity,
 - (vi) the achievement of the principles of ecologically sustainable development,
 - (vii) pedestrian, cycle, vehicular, service and public transport access, circulation and requirements,
 - (viii) impact on, and any proposed improvements to, the public domain.
- (4) Development consent must not be granted to the following development to which this Plan applies unless an architectural design competition has been held in relation to the proposed development:
- (a) development for which an architectural design competition is required as part of a concept plan approved by the Minister under Division 3 of Part 3A of the Act,
 - (b) development in respect of a building that is, or will be, greater than 48 metres in height,
 - (c) development having a capital value of more than \$1,000,000 on a key site, being a site shown edged heavy black and distinctively coloured on the Key Sites Map,
 - (d) development for which the applicant has chosen to have such a competition.
- (5) Subclause (4) does not apply if the Director-General certifies in writing that the development is one for which an architectural design competition is not required.
- (6) The consent authority may grant development consent to the construction of a new building, or external alterations to an existing building, that has a floor space ratio of up to 10 percent greater than that allowed by clause 23 or a height of up to 10 percent greater than that allowed by clause 21, but only if:
- (a) the design of the building or alteration is the result of an architectural design competition, and
 - (b) the concurrence of the Director-General has been obtained to the development application.
- (7) In determining whether to provide his or her concurrence to the development application, the Director-General is to take into account the result of the architectural design competition (if any).
- (8) Nothing in subclause (6) restricts the operation of clause 28 to clause 21 or 23.

- (9) In this clause:

architectural design competition means a competitive process conducted in accordance with procedures approved by the Director-General from time to time.

37 Ground floors of buildings within Zone B3 Commercial Core

- (1) The ground floor of a building on land within Zone B3 Commercial Core is to be used for commercial activities, or retail activities, and have an active street frontage.

Note. For the meaning of **commercial activity**, see the Dictionary. For the meaning of **retail activity**, see subclause (3).

- (2) However, subclause (1) does not apply in respect of any part of a ground floor:
- (a) used as a lobby for any commercial activities, or for any dwelling (as part of a residential flat building), serviced apartments or hotel above the ground floor, or
 - (b) used as access for fire services, or
 - (c) used for vehicular access or parking, or
 - (d) facing a service lane.

- (3) In this clause:

retail activity, in relation to the use of a building, means the use of the building for the purposes of retail premises, amusement centres, function centres, medical centres, registered clubs or a combination of such uses.

38 Wickham Redevelopment Area

- (1) This clause applies to development applications with respect to a redevelopment site in the Wickham Redevelopment Area.
- (2) Despite any other provisions of this Plan, the consent authority must not grant consent to a development application to which this clause applies unless it is satisfied that the development:
- (a) will not prejudice the orderly development of the redevelopment site as a whole, and
 - (b) provides for all the public thoroughfares and public open space indicated by the Wickham Redevelopment Area Map as being on the land to which the application relates, and
 - (c) provides for public access from a public place to those thoroughfares and that space on completion of the development.
- (3) Despite subclause (2), development consent may be granted to a development application to which this clause applies if, in the opinion

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of the consent authority, the development is of a minor nature and will not prejudice the orderly development of the redevelopment site as a whole.

(4) Business premises, office premises or retail premises in the Wickham Redevelopment Area are not to exceed 400 square metres.

(5) In this clause:

redevelopment site means one or more lots (whether or not under one ownership) identified as a redevelopment site on the Wickham Redevelopment Area Map.

Wickham Redevelopment Area means the land shown edged heavy black and marked "Wickham Redevelopment Area" on the Wickham Redevelopment Area Map.

39 Classified roads

(1) The objectives of this clause are:

- (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads (within the meaning of the *Roads Act 1993*), and
- (b) to prevent or reduce the potential impact of traffic noise and vehicle emissions on development adjacent to classified roads.

(2) Consent must not be granted to the development of land that has a frontage to a classified road unless the consent authority is satisfied that:

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the proposed development as a result of:
 - (i) the design of the vehicular access to the land, or
 - (ii) the emission of smoke or dust from the proposed development, or
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures to ameliorate potential traffic noise or vehicle emissions within the site of the proposed development.

40 Development in proximity to a rail corridor

(1) The objective of this clause is to ensure that development for the purpose of residential accommodation, places of public worship,

hospitals, educational establishments or other noise sensitive buildings in the proximity of operating or proposed railways is not adversely affected by rail noise or vibration.

- (2) This clause applies to land comprising, or within 60 metres of, an operating railway line or land reserved for the construction of a railway line (referred in this clause as a *rail corridor*).
- (3) Development consent must not be granted to development:
- (a) that is within a rail corridor, and
 - (b) that the consent authority considers is, or is likely to be, adversely affected by rail noise or vibration,
- unless the consent authority is satisfied that the proposed development incorporates all practical mitigation measures for rail noise or vibration recommended by Rail Corporation New South Wales for development of that kind.

41 Development within the coastal zone

- (1) The objectives of this clause are as follows:
- (a) to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,
 - (b) to implement the principles in the NSW Coastal Policy, and in particular to:
 - (i) protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and
 - (ii) protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and
 - (iii) provide opportunities for pedestrian public access to and along the coastal foreshore, and
 - (iv) recognise and accommodate coastal processes and climate change, and
 - (v) protect amenity and scenic quality, and
 - (vi) protect and preserve rock platforms, beach environments and beach amenity, and
 - (vii) protect and preserve native coastal vegetation, and
 - (viii) protect and preserve the marine environment, and

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- (ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
 - (x) ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and
 - (xi) protect Aboriginal cultural places, values and customs, and
 - (xii) protect and preserve items of heritage, archaeological or historical significance.
- (2) Consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:
- (a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:
 - (i) maintaining existing public access and, where possible, improving that access, and
 - (ii) identifying opportunities for new public access, and
 - (b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:
 - (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and
 - (ii) the location, and
 - (iii) the bulk, scale, size and overall built form design of any building or work involved, and
 - (c) the impact of the proposed development on the amenity of the coastal foreshore including:
 - (i) any significant overshadowing of the coastal foreshore, and
 - (ii) any loss of views from a public place to the coastal foreshore, and
 - (d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and
 - (e) how biodiversity and ecosystems, including:
 - (i) native coastal vegetation and existing wildlife corridors, and
 - (ii) rock platforms, and
 - (iii) water quality of coastal waterbodies, and
 - (iv) native fauna and native flora, and their habitats,

- can be conserved, and
- (f) the effect of coastal processes and coastal hazards and potential impacts, including sea level rise:
 - (i) on the proposed development, and
 - (ii) arising from the proposed development, and
 - (g) the cumulative impacts of the proposed development and other development on the coastal catchment.
- (3) Consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:
- (a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and
 - (b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and
 - (c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform.

42 Development below mean high water mark

- (1) The objective of this clause is to ensure appropriate environmental assessment for development carried out on land covered by tidal waters.
- (2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).

43 Development on flood prone land

- (1) The objectives of this clause are:
 - (a) to maintain the existing flood regime and flow conveyance capacity, and
 - (b) to enable safe occupation of flood prone land, and
 - (c) to avoid significant adverse impacts upon flood behaviour, and
 - (d) to avoid significant adverse effects on the floodplain environment that would cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of the river bank or watercourse, and

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- (e) to limit uses to those compatible with flow conveyance function and flood hazard.
- (2) Before determining an application for consent to carry out development on flood prone land, the consent authority must consider:
 - (a) the impact of that development on:
 - (i) flood behaviour, including the flood peak at any point upstream or downstream of the site of the development, and
 - (ii) the flow of floodwater on adjoining lands, and
 - (iii) the flood hazard or risk of flood damage to property and personnel, and
 - (iv) erosion, siltation or destruction of riparian vegetation in the area, and
 - (v) the water table on any adjoining land, and
 - (vi) river bank stability, and
 - (vii) the safety in time of flood of the site of the development and of any buildings or works intended to be erected or carried out, and
 - (viii) the hydraulic capacity of flood liable land in the locality, and
 - (ix) the provision of emergency equipment, personnel, welfare facilities or other resources that might be needed for an evacuation resulting from flooding, and
 - (x) the risk to life and personal safety of any emergency service and rescue personnel who might be involved in any such evacuation, and
 - (xi) the cumulative impact of further development on flooding, and
 - (xii) the potential for pollution during flooding, and
 - (b) the impact that flooding will have on the proposed development, including the flood liability of access to the site of the proposed development, and
 - (c) the provisions of any floodplain management plan adopted by the Council that applies to the land.

Note. Persons seeking information about whether particular land in the Newcastle city centre is liable to flood may apply to the Council for a Flood Information Certificate relating to the land.

44 Excavation and filling of land

- (1) The objective of this clause is to ensure that any land excavation or filling work will not have a detrimental impact on environmental

functions and processes, neighbouring uses, or cultural or heritage items and features.

- (2) Consent for excavation of land or the placing of fill may be granted only if the consent authority is satisfied that there would be no adverse impact on:
- (a) a waterbody, or
 - (b) private or public property, or
 - (c) ground water quality and resources, or
 - (d) stormwater drainage, or
 - (e) flooding.

45 Preservation of trees or vegetation

- (1) The objective of this clause is to preserve the amenity of the area through the preservation of trees and other vegetation.
- (2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.
- Note.** A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.
- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:
- (a) development consent, or
 - (b) a permit granted by the Council.
- (4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.
- (5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.
- (6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.
- (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:
- (a) that is or forms part of a heritage item, or
 - (b) that is within a heritage conservation area.

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Clause 46 Newcastle City Centre Local Environmental Plan 2008

Part 5 Miscellaneous provisions

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 46 will be applicable to any such consent.

- (8) This clause does not apply to or in respect of:
- (a) the clearing native vegetation that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003* or that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
 - (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause, or
 - (c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*, or
 - (d) action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying Act 2002*, or
 - (e) plants declared to be noxious weeds under the *Noxious Weeds Act 1993*,
 - (f) the carrying out of any work in relation to a tree that is exempt development.

46 Heritage conservation

(1) **Objectives**

The objectives of this clause are:

- (a) to conserve the environmental heritage of Newcastle city centre, and
- (b) to conserve the heritage significance of heritage items and heritage conservation areas including associated fabric, settings and views, and
- (c) to conserve archaeological sites, and
- (d) to conserve places of Aboriginal heritage significance.

(2) **Requirement for consent**

Development consent is required for any of the following:

- (a) demolishing or moving a heritage item or a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item or a building, work, relic, tree or place within a heritage conservation area, including (in the case of a

- building) making changes to the detail, fabric, finish or appearance of its exterior,
- (c) altering a heritage item that is a building by making structural changes to its interior,
 - (d) disturbing or excavating 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) disturbing or excavating a heritage conservation area that is a place of Aboriginal heritage significance,
 - (f) erecting a building on land on which a heritage item is located or that is within a heritage conservation area,
 - (g) subdividing land on which a heritage item is located or that is within a heritage conservation area.

(3) When consent not required

However, consent under this clause is not required if:

- (a) the applicant has notified the consent authority 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 the proposed development:
 - (i) is of a minor nature, or is for the maintenance of the heritage item, archaeological site, or a building, work, relic, tree or place within a heritage conservation area, and
 - (ii) would not adversely affect the significance of the heritage item, archaeological site or heritage conservation area, or
- (b) the development is in a cemetery or burial ground and the proposed development:
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to a place of Aboriginal heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the consent authority is satisfied is a risk to human life or property, or
- (d) the development is exempt development.

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(4) **Effect on heritage significance**

The consent authority must, before granting consent under this clause, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned. This subclause applies regardless of whether a heritage impact statement is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) **Heritage impact assessment**

The consent authority may, before granting consent to any development on land:

- (a) on which a heritage item is situated, or
- (b) within a heritage conservation area, or
- (c) within the vicinity of land referred to in paragraph (a) or (b),

require a heritage impact statement to be prepared that assesses 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.

(6) **Heritage conservation management plans**

The consent authority may require, after considering the significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) **Archaeological sites**

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

Note. Section 139 (1) of the *Heritage Act 1977* provides that a person must not disturb or excavate any land 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 unless the disturbance or excavation is carried out in accordance with an excavation permit.

The Council's *Newcastle Archaeological Management Plan* (February 1997) may be consulted to determine the level of disturbance of land, as defined in that plan.

(8) **Places of Aboriginal heritage significance**

The consent authority must, before granting consent under this clause to the carrying out of development in a place of Aboriginal heritage significance:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place, and
- (b) notify the local Aboriginal communities (in such way as it thinks appropriate) about the application and take into consideration any response received within 28 days after the notice is sent.

(9) **Demolition of item of State significance**

The consent authority must, before granting consent for the demolition of a heritage item identified in Part 1 of Schedule 5 as being of State significance (other than an item listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council about the application, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(10) **Conservation incentives**

The consent authority may grant consent to development for any purpose of a building that is a heritage item, or of the land on which such a building is erected, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage conservation management plan that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage conservation management plan is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

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47 Bush fire hazard reduction

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

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

48 Development for group homes

- (1) The objective of this clause is to facilitate the establishment of:
 - (a) permanent group homes in which disabled persons or socially disadvantaged persons may live in an ordinary residential household environment instead of an institutional environment, and
 - (b) transitional group homes that provide temporary accommodation for disabled persons or socially disadvantaged persons in an ordinary residential household environment instead of an institutional environment for such purposes as alcohol or drug rehabilitation and half-way rehabilitation for persons formerly living in institutions and refuges for men, women or young persons.
- (2) If development for the purpose of a dwelling house or a dwelling in a residential flat building may lawfully be carried out in accordance with this Plan, development for the purposes of a group home may, subject to this clause, be carried out.
- (3) Consent is required to carry out development for the purposes of a transitional group home.
- (4) Consent is required to carry out development for the purposes of a permanent group home that contains more than 5 bedrooms.
- (5) Consent is required to carry out development for the purposes of a permanent group home that contains 5 or less bedrooms and that is occupied by more residents (including any resident staff) than the number calculated by multiplying the number of bedrooms in that home by 2.
- (6) Consent may not be refused under this clause unless an assessment has been made of the need for the group home concerned.
- (7) Nothing in this clause requires consent to be obtained by the Department of Housing (or by a person acting jointly with the Department of Housing) to carry out development for the purposes of a transitional group home.

49 Crown development and public utilities

- (1) Nothing in this Plan is to be construed as restricting or prohibiting or enabling the consent authority to restrict or prohibit:
 - (a) the carrying out of development of any description specified in subclauses (2)–(12), or
 - (b) the use of existing buildings of the Crown by the Crown.
- (2) The carrying out by persons carrying on railway undertakings on land comprised in their undertakings of:
 - (a) any development required in connection with the movement of traffic by rail, including the construction, reconstruction, alteration, maintenance and repair of ways, works and plant, and
 - (b) the erection within the limits of a railway station of buildings for any purpose,
but excluding:
 - (c) the construction of new railways, railway stations and bridges over roads, and
 - (d) the erection, reconstruction and alteration of buildings for purposes other than railway undertaking purposes outside the limits of a railway station and the reconstruction or alteration, so as materially to affect their design, of railway stations or bridges, and
 - (e) the formation or alteration of any means of access to a road, and
 - (f) the erection, reconstruction and alteration of buildings for purposes other than railway purposes where such buildings have direct access to a public place.
- (3) The carrying out by persons carrying on public utility undertakings, being water, sewerage, drainage, electricity or gas undertakings, of any of the following development, being development required for the purpose of their undertakings:
 - (a) development of any description at or below the surface of the ground,
 - (b) the installation of any plant inside a building or the installation or erection within the premises of a generating station or substation established before the commencement of this Plan of any plant or other structures or erections required in connection with the station or substation,
 - (c) the installation or erection of any plant or other structures or erections by way of addition to or replacement or extension of plant or structures or erections already installed or erected, including the installation in an electrical transmission line of

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- substations, feeder-pillars or transformer housing, but not including the erection of overhead lines for the supply of electricity or pipes above the surface of the ground for the supply of water, or the installation of substations, feeder-pillars or transformer housing of stone, concrete or brickworks,
- (d) the provision of overhead service lines in pursuance of any statutory power to provide a supply of electricity,
 - (e) the erection of service reservoirs on land acquired or in the process of being acquired for the purpose before the commencement of this Plan, provided reasonable notice of the proposed erection is given to the consent authority,
 - (f) any other development, except:
 - (i) the erection of buildings, the installation or erection of plant or other structures or erections and the reconstruction or alteration of buildings so as materially to affect their design or external appearance, or
 - (ii) the formation or alteration of any means of access to a road.
- (4) The carrying out by persons carrying on public utility undertakings, being water transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by water, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, wharves, works and plant required for that purpose, except:
- (a) the erection of buildings and the reconstruction or alteration of buildings so as materially to affect their design or external appearance, or
 - (b) the formation or alteration of any means of access to a road.
- (5) The carrying out by persons carrying on public utility undertakings, being wharf or river undertakings, on land comprised in their undertakings, of any development required for the purposes of shipping or in connection with the embarking, loading, discharging or transport of passengers, livestock or goods at a wharf or the movement of traffic by a railway forming part of the undertaking, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, works and plant for those purposes, except:
- (a) the construction of bridges, the erection of any other buildings, and the reconstruction or alteration of bridges or of buildings so as materially to affect their design or external appearance, or
 - (b) the formation or alteration of any means of access to a road.

- (6) The carrying out by persons carrying on public utility undertakings, being air transport undertakings, on land comprised in their undertakings within the boundaries of any aerodrome, of any development required in connection with the movement of traffic by air, including the construction, reconstruction, alteration, maintenance and repair of ways, buildings, wharves, works and plant required for that purpose, except:
- (a) the erection of buildings and the reconstruction or alteration of buildings so as materially to affect their design or external appearance, or
 - (b) the formation or alteration of any means of access to a road.
- (7) The carrying out by persons carrying on public utility undertakings, being road transport undertakings, on land comprised in their undertakings, of any development required in connection with the movement of traffic by road, including the construction, reconstruction, alteration, maintenance and repair of buildings, works and plant required for that purpose, except:
- (a) the erection of buildings and the reconstruction or alteration of buildings so as materially to affect their design or external appearance, or
 - (b) the formation or alteration of any means of access to a road.
- (8) The carrying out by the owner or lessee of a mine (other than a mineral sands mine), on the mine, of any development required for the purposes of a mine, except:
- (a) the erection of buildings (not being plant or other structures or erections required for the mining, working, treatment or disposal of minerals) and the reconstruction, alteration or extension of buildings, so as materially to affect their design or external appearance, or
 - (b) the formation or alteration of any means of access to a road.
- (9) The carrying out of any development required in connection with the construction, reconstruction, improvement, maintenance or repair of any road, except the widening, realignment or relocation of such road.
- (10) The carrying out of any forestry work by the Forestry Commission or Community Forest Authorities empowered under relevant Acts to undertake afforestation, the construction of roads, protection, cutting and marketing of timber, and other forestry purposes under such Acts or upon any Crown land temporarily reserved from sale as a timber reserve under the *Forestry Act 1916*.

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Part 5 Miscellaneous provisions

- (11) The carrying out by a rural lands protection board of any development required for the improvement and maintenance of travelling stock and water reserves, except:
- (a) the erection of buildings and the reconstruction or alteration of buildings so as materially to affect their design or purposes, and
 - (b) any development designed to change the use or purpose of any such reserve.
- (12) The carrying out or causing to be carried out by the consent authority, where engaged in flood mitigation works, or by a government department, of any work for the purposes of soil conservation, irrigation, afforestation, reafforestation, flood mitigation, water conservation or river improvement in pursuance of the provisions of the *Water Act 1912*, the *Water Management Act 2000*, the *Farm Water Supplies Act 1946* or the *Rivers and Foreshores Improvement Act 1948*, except:
- (a) the erection of buildings, and installation or erection of plant or other structures or erections and the reconstruction or alteration of buildings so as materially to affect their design or external appearance, and
 - (b) the formation or alteration of any means of access to a road.

50 Council development

- (1) The objectives of this clause are:
- (a) to remove the need for the Council to obtain development consent for commonly undertaken civic works and facilities, and
 - (b) to enable the Council to carry out, with development consent, additional development in the interest of the public.
- (2) Development may be carried out by or on behalf of the Council without development consent on any land.
- (3) Subclause (2) does not apply to any of the following development:
- (a) development on land that comprises, or on which there is:
 - (i) an item that is listed on the State Heritage Register under the *Heritage Act 1977* or that is subject to an interim heritage order under that Act, or
 - (ii) a heritage item,
 - (b) the erection of a building of any class under the *Building Code of Australia* other than a class 10 building,
 - (c) development having a capital value of more than \$1,000,000,
 - (d) development for the purposes of ovals, tennis courts, grandstands, dressing sheds or the like,

- (e) development for the purposes of car parks with more than 30 car parking spaces,
 - (f) development for the purposes of caravan parks,
 - (g) development for the purposes of depots.
- (4) Development referred to in subclause (3) may be carried out by or on behalf of the Council with consent on any land.
- (5) Nothing in this clause restricts the operation of clause 49 or Schedule 2.

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Schedule 1 Additional permitted uses

Schedule 1 Additional permitted uses

(Clause 15)

[On the making of this Plan no matter was contained in this Schedule.]

Schedule 2 Exempt development

(Clause 18)

Note. The cutting down, topping, lopping, removal or destruction of trees to enable the carrying out of any of the development listed in this Schedule may require a permit or a development consent under clause 45 (Preservation of trees or vegetation) or clause 46 (Heritage conservation) of this Plan. See also entry for trees in this Schedule and in Schedule 3 (Complying development).

1 Access ramps for persons with disability

(1) **Siting**

Must be located wholly within the boundaries of the relevant lot.

(2) Must be at least 0.9 metre from any property boundary.

(3) Must be at least 1 metre from any sewer main.

(4) Must not encroach on any easement, pipeline or watercourse.

(5) **Dimensions**

Maximum height—1 metre above ground level (existing).

(6) Maximum grade—1:14.

(7) **Heritage**

Must not be located on land that comprises or on which there is a heritage item.

(8) If the land is in a heritage conservation area, the ramp must be sited behind the relevant building line.

2 Air conditioning units for dwellings

(1) **Siting**

Must be located outside the building in which the dwelling is situated.

(2) Must not be located on any facade of the building directly facing a public street or public space.

(3) Must not be located on the roof of the building unless hidden from view by a parapet or similar existing structure.

(4) **Noise**

Must not be audible inside a habitable room of any adjoining dwelling between 10.00pm and 7.00am on weekdays, and between 10.00pm and 8.00am on Saturdays, Sundays and public holidays.

(5) At any other times, noise levels must not exceed 5dBA above ambient background noise level measured at the boundary of the relevant lot.

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Schedule 2 Exempt development

(6) **Heritage**

Must not be located out on land that comprises or on which there is a heritage item.

3 Ancillary works external to a building—landscaping, driveways, paving, pathways, drainage, filling, excavation, erosion and sedimentation control works, pollution control works, or laying or repairing underground services

(1) **Works to be incidental or ancillary to use of land**

Works must be ordinarily incidental or ancillary to a lawful use of land.

(2) **Siting**

Filling or excavation must be located at least 0.9 metre from any property boundary.

(3) **Dimensions**

Maximum height of excavation and filling (if any part of the development involves both excavation and filling)—no more than 1 metre, as measured from the top of the fill to the base of so much of the excavation as is filled.

(4) Maximum height of excavation or filling (if any part of the development involves excavation or filling, but not excavation and fill)—no more than 1 metre, as measured from the top of the excavation or fill to its base.

(5) Maximum area of excavation or filling—50 square metres.

(6) **Heritage**

Must not be carried out on land that comprises or on which there is a heritage item.

(7) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

(8) **Surfaces impervious to rainwater**

Run off from impervious surfaces must comply with *Newcastle Development Control Plan 2005*.

(9) **Water pollution**

Adequate measures must be carried out to prevent sediment or other pollutants from entering drains or watercourses.

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- (10) **Stormwater**
Works must not restrict flow of stormwater.
- (11) Overland stormwater flow must not be directed by works to dwellings, garages or adjoining properties.
- (12) Works must not restrict access to stormwater pipelines.
- 4 Animal shelters—aviaries, kennels, hutches, poultry sheds or similar buildings (other than horse stables or housing for swine) used to house domestic animals**
- (1) **General**
May only be erected and used in association with occupation of lawful dwelling.
- (2) Must not be used for commercial purposes.
- (3) **Siting**
Must be at least 0.9 metre from any property boundary.
- (4) Must not be located between the front of the dwelling and the street alignment.
- (5) Must be at least 1 metre from any sewer main.
- (6) Must not encroach on any easement, pipeline or watercourse.
- (7) Must be located so as not to be visible from any public road.
- (8) **Dimensions**
Maximum height—2.4 metres above ground level (existing).
- (9) Maximum area—10 square metres.
- 5 Awnings, canopies or weather protection structures (other than awnings, canopies or weather protection structures to which clause 28 applies)**
- (1) **General**
May only be erected and used in association with occupation of lawful dwelling.
- (2) The structure must not have enclosing walls.
- (3) **Siting**
Must not be located on any facade of the building facing a public street or public space (except in the case of awnings over windows and doorways where the awnings have a width of no more than 3 metres and a depth of no more than 1 metre).
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Schedule 2 Exempt development

- (4) Must be located wholly within boundaries of the relevant lot.
- (5) Must be located at least 0.9 metre from any property boundary.
- (6) Must not be located between the dwelling and the street alignment.
- (7) Must be located at least 1 metre from any sewer main.
- (8) Must not encroach on any easement, pipeline or watercourse.
- (9) **Dimensions**
Maximum height—3.6 metres above ground level (existing).
- (10) Maximum area—10 square metres.
- (11) **Heritage**
Must not be located on land that comprises or on which there is a heritage item.
- (12) If the land is in a heritage conservation area, the structure must be sited at the rear of the dwelling with which it is associated.
- (13) **Bush fire prone land**
Must not be located on land that is bush fire prone land.

6 Barbeques or similar structures used for outdoor cooking of food (other than barbeques to which clause 28 applies)

- (1) **Siting**
Must be located at least 0.9 metre from any property boundary.
- (2) Must not be located between the front of any building with which it is associated and the street alignment.
- (3) Must be located at least 1 metre from any sewer main.
- (4) Must not encroach on any easement, pipeline or watercourse.
- (5) **Dimensions**
Maximum height—1.8 metres above ground level (existing).
- (6) Maximum area—3 square metres.
- (7) **Smoke and odour**
Must be located so that generally no smoke or odour nuisance will be caused to adjoining properties.
- (8) **Heritage**
Must not be located on land that comprises a heritage item or be attached to anything (other than land) that is a heritage item.

(9) **Bush fire prone land**

Must not be located on land that is bush fire prone land.

7 Building alterations

(1) **Premises on which may not be carried out**

The alterations must not be carried out on any of the following premises:

- (a) premises used as a hairdressing or beauty salon,
- (b) premises on which skin penetration procedures (within the meaning of section 51 of the *Public Health Act 1991*) are carried out,
- (c) premises used for the sale of food, or the storage or handling of food for sale.

(2) **General**

May only be minor non-structural alterations, such as the following:

- (a) plastering or cement rendering,
- (b) attachment of fittings,
- (c) replacement of doors or windows,
- (d) replacement of ceiling, wall or floor linings or decorative work,
- (e) replacement of bathroom,
- (f) installation of kitchen or laundry fixtures,
- (g) carrying out of decorative work.

(3) **Impact on structure**

Wall, door or window openings must not be enlarged or reduced.

(4) Alterations must not affect the load bearing capacity of any load bearing component of the building.

(5) **Safety**

Any work involving asbestos cement must comply with the following WorkCover Authority guidelines:

- (a) *Your guide to working with asbestos: safety guidelines and requirements for work involving asbestos*, March 2003,
- (b) *Asbestos: guidelines for licensed asbestos removal contractors*.

(6) If paint removal is carried out in conjunction with the alterations, it must be carried out in a manner that prevents possible contamination of air or ground by lead or other toxic compounds.

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Schedule 2 Exempt development

(7) **Heritage and bush fire prone land**

Must not be carried out on land that comprises or on which there is a heritage item.

(8) Alterations must not be to the exterior of a building in a heritage conservation area or on bush fire prone land.

(9) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

8 Change of use—retail premises, business premises, office premises, research facilities and technical services facilities

(1) **General**

The development is the different use of a building resulting from a change:

- (a) from one type of retail premises to another type of retail premises, or
- (b) from one type of business premises to another type of business premises, or
- (c) from business premises to office premises, or
- (d) from one type of office premises to another type of office premises, or
- (e) from office premises to business premises, or
- (f) from one type of research facility to another type of research facility.

(2) **Current use**

The current use of the building must be lawful and must not be an existing use (within the meaning of section 106 of the Act).

(3) **Proposed use**

The proposed use of the premises must not comprise any of the following:

- (a) premises for the sale of food or the storage or handling of food for sale,
- (b) hairdressing or beauty salons,
- (c) premises on which ear piercing, tattooing or other skin penetration procedures (within the meaning of section 51 of the *Public Health Act 1991*) are carried out,

(d) premises used for the sale or display of publications or objects primarily concerned with sexual activity.

(4) **Floor area**

The proposed use must not involve any increase in floor area.

(5) **Operation**

Hours of operation must not extend beyond any existing approved hours.

Note. A current development consent applying to the premises may contain conditions on the permitted hours of operation.

(6) If the proposed use is as retail premises or office premises, the curtilage of the premises must not be used for storage or display purposes.

(7) The new use must be carried out in accordance with any conditions of a current development consent relating to the premises, including car parking, loading, vehicular movement, traffic generation, waste management, noise and site landscaping.

9 Decks (including around spa and swimming pools), verandahs, patios or similar structures that provide outdoor extensions to buildings containing dwellings

(1) **Siting**

Must not be located between the front of the existing building and the street alignment.

(2) Must be located wholly within the boundaries of the relevant lot.

(3) Must be at least 0.9 metre from any property boundary.

(4) Must be at least 1 metre from any sewer main.

(5) Must not encroach on any easement, pipeline or watercourse.

(6) **Dimensions**

Maximum roof height—3.6 metres above ground level (existing).

(7) Maximum floor level—1 metre above ground level (existing).

(8) Maximum area—20 square metres.

(9) **Heritage**

If the land is in a heritage conservation area, the structure must be sited so as not to be visible from a public road.

(10) **Bush fire prone land**

Must not be located on bush fire prone land.

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Schedule 2 Exempt development

(11) **Surfaces impervious to rainwater**

Run off from impervious surfaces must comply with *Newcastle Development Control Plan 2005*.

10 Demolition of minor structures

(1) **General**

Only involves the demolition of:

- (a) a structure where the erection of such a structure is exempt development, or
- (b) a garage or carport.

(2) **Safety**

Must comply with Australian Standard AS 2601—2001, *Demolition of structures*.

(3) Any work involving asbestos cement must comply with the following WorkCover Authority guidelines:

- (a) *Your guide to working with asbestos: safety guidelines and requirements for work involving asbestos*, March 2003,
- (b) *Asbestos: guidelines for licensed asbestos removal contractors*.

(4) **Heritage**

Must not be carried out on land that comprises or on which there is a heritage item.

(5) **Flood prone land**

May be carried out on flood prone land.

11 Fences (other than fences for swimming pools to which the Swimming Pools Act 1992 applies and fencing referred to in clause 28)

(1) **Dimensions**

Maximum height—2 metres above ground level (existing) in the case of a fence constructed of timber, metal or lightweight materials along a rear boundary or a side boundary not forward of existing buildings.

(2) Maximum height—1.2 metres above ground level (existing) in any other case.

(3) **Heritage**

Must not be located on land that comprises or on which there is a heritage item.

(4) If the land is in a heritage conservation area, the fence must be sited behind the building line of the dwelling house or other principal buildings of the property or properties concerned.

(5) **Stormwater**

Must not restrict or divert flow of stormwater or floodwaters.

12 Flagpoles (other than flagpoles referred to in clause 28)

(1) **General**

Must be used in association with the occupation of a dwelling.

(2) **Number**

Maximum of one flagpole per dwelling house or building (in the case of a building containing more than one dwelling).

(3) **Siting**

Located clear of any powerlines, or other overhead services, in accordance with the relevant utility supplier's requirements.

(4) Flags suspended from poles projecting over a public road must not project over the carriageway.

(5) **Dimensions**

Maximum height—6 metres above ground level (existing)

(6) Flags suspended from poles projecting over a public road must be suspended at least 3.6 metres above any footway.

(7) **Heritage**

Must not be located on land that comprises or on which there is a heritage item.

13 Home occupations

Note. See definition of *home occupation* in Dictionary. Among other things, the definition identifies things that a home occupation does not involve or include.

(1) **General**

Does not involve any of the following:

- (a) premises used as a hairdressing or beauty salon,
- (b) premises on which skin penetration procedures (within the meaning of section 51 of the *Public Health Act 1991*) are carried out,
- (c) premises used for the sale of food, or the storage or handling of food for sale.

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(2) **Signs**

Any notice, advertisement or sign exhibited on the dwelling at which the home occupation is carried out must not be illuminated and must be no more than 0.25 square metre in area.

Note. See definition of *home occupation* in Dictionary. That definition restricts the kind of notice, advertisement or sign that may be exhibited to one that is exhibited on the dwelling to indicate the name of the resident concerned and the occupation carried on at that dwelling.

14 Maintenance of heritage items or buildings, works, archaeological sites, trees or places within heritage conservation areas

Note. See definition of *maintenance* in Dictionary.

(1) **General**

The consent authority must have advised, in writing, that it is satisfied of the matters referred to in clause 46 (3) (a) of this Plan.

(2) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

(3) **Replacement or repair of cladding**

If the maintenance involves the replacement or repair of wall cladding or roof cladding, must comply with the requirements set out in this Schedule for that kind of development.

15 Pergolas or trellises (other than pergolas referred to in clause 28)

(1) **General**

Must be used in association with occupation of lawful dwelling.

(2) Must not have enclosing walls, but may be covered with shade cloth, include lattice or have open battens.

(3) **Siting**

Must not be located on any facade of the building facing a public street or public space.

(4) Must be located wholly within boundaries of the relevant lot.

(5) Must be located at least 0.9 metre from any property boundary.

(6) Must not be located between the dwelling house, or building containing dwellings, and the street alignment.

(7) Must be located at least 1 metre from any sewer main.

(8) Must not encroach on any easement, pipeline or watercourse.

(9) Dimensions

Maximum height—3.6 metres above ground level (existing).

(10) Maximum area—20 square metres.

(11) Heritage

If the land is in a heritage conservation area, pergola or trellis must be sited at the rear of the dwelling house, or building containing dwellings, with which it is associated.

(12) Bush fire prone land

Must be separated from any dwelling by at least 0.9 metre on bush fire prone land.

16 Public roads—construction of footpaths, footpath crossings, kerb crossings or stormwater drainage connections

Note. The carrying out of works on a public road requires consent of the appropriate roads authority (usually the Council) under the *Roads Act 1993*.

(1) Damage

Any damage caused to kerb, guttering or footways during carrying out of works must be rectified in accordance with any requirements of the appropriate roads authority under the *Roads Act 1993*.

(2) Storage of construction materials on roads or public reserves

No part of public road to be used for storage of construction materials without the authorisation of the appropriate roads authority under the *Roads Act 1993*.

(3) No part of public reserve to be used for storage of construction materials without the authorisation of the Council.

(4) Flood prone land

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

(5) Water pollution

Adequate measures must be carried out to prevent sediment or other pollutants from entering drains or watercourses.

(6) Stormwater

Works must not restrict flow of stormwater.

(7) Overland stormwater flow must not be directed as a result of the works over land to buildings (such as garages and dwellings).

(8) Works must not restrict access to stormwater pipelines.

17 Replacement or repair of wall cladding or roof cladding

(1) **Materials**

Existing cladding must be replaced with similar materials that, where relevant, have the same fire rating properties as the existing cladding.

(2) Replacement wall cladding must not consist of concrete or masonry materials.

(3) **Siting**

Wall cladding on dwelling house, or building containing dwellings, must be at least 0.9 metre from any property boundary.

(4) Wall cladding on garages, sheds or other outbuildings must be at least 0.6 metre from any property boundary.

(5) Wall cladding on buildings, other than dwelling houses, buildings containing dwellings or outbuildings, must be at least 3 metres from any property boundary.

(6) **Safety**

Any work involving asbestos cement must comply with the following WorkCover Authority guidelines:

(a) *Your guide to working with asbestos: safety guidelines and requirements for work involving asbestos*, March 2003,

(b) *Asbestos: guidelines for licensed asbestos removal contractors*.

(7) If paint removal is carried out in conjunction with the recladding, it must be carried out in a manner that prevents possible contamination of air or ground by lead or other toxic compounds.

(8) **Heritage**

May be carried out on a heritage item, or on land that contains or comprises a heritage item, if the recladding or repair is for the maintenance of the heritage item.

(9) May not be carried out on a building within a heritage conservation area unless the recladding or repair is for the maintenance of the building in the heritage conservation area.

(10) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

18 Retaining walls**(1) Siting**

Must be located wholly within the boundaries of the relevant lot.

(2) Outer face must be at least 0.9 metre from any property boundary.**(3)** Must be at least 1 metre from any sewer main.**(4)** Must not encroach on any easement, pipeline or watercourse.**(5) Dimensions**

Maximum aggregated height of cut or fill—1 metre at any given point.

(6) Structural support

Must not provide any structural support to any building.

(7) Heritage

Must not be located on land that comprises or on which there is a heritage item.

(8) Stormwater

Must not restrict or divert flow of stormwater or floodwaters.

19 Satellite dishes attached to an existing dwelling**(1) Number**

Maximum of one satellite dish per dwelling house or other building containing dwellings.

(2) Siting

Must be located so as not to be visible from any public road.

(3) Dimensions

Maximum dish diameter—1 metre.

(4) Heritage

Must not be located on land that comprises or on which there is a heritage item.

20 Scaffolding or hoardings**(1) Siting**

Must not encroach on any public land or public road.

(2) Any encroachment on an adjoining property must have been consented to, in writing, by the adjoining property owner.

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(3) **Heritage**

Must not be affixed to a heritage item (other than land comprising a heritage item) or damage a heritage item (including a heritage item comprising land).

21 Sheds, lawn lockers, gazebos, greenhouses, cubbyhouses or other buildings of a similar nature

(1) **General**

Must be used in association with occupation of a dwelling house or a dwelling.

(2) **Number**

Maximum of two such buildings per dwelling house or building containing dwelling houses.

(3) **Siting**

Must not be located between the front of the existing dwelling house, or building containing dwellings, and the street alignment.

(4) Must be located wholly within the boundaries of the relevant lot.

(5) Must be at least 0.6 metre from any property boundary.

(6) Must be at least 1 metre from any sewer main.

(7) Must not encroach on any easement, pipeline or watercourse.

(8) **Dimensions**

Maximum height—2.4 metres above ground level (existing).

(9) Maximum area—10 square metres.

(10) **Heritage**

Must not be located on land that comprises or on which there is a heritage item.

(11) **Bush fire prone land**

Must not be located on bush fire prone land.

(12) **Stormwater**

Must not restrict or divert flow of stormwater or floodwaters.

22 Signs—business identification

(1) **Number**

Maximum of one business identification sign per premises.

- (2) **Siting**
No freestanding signs on a public road (including the footway of a public road).
- (3) Signs may be suspended from a building over the footway of a public road and, in that case, must be located no closer than 3.6 metres from the edge of the kerb and at least 2.6 metres above ground level (existing).
- (4) **Dimensions**
Maximum area—1 square metre.
- (5) **Heritage**
Must not be located on land that comprises or on which there is a heritage item.

23 Signs erected by the Council or other public authorities

- (1) **General**
Must comprise one or more of the following:
 - (a) name plates,
 - (b) street signs,
 - (c) directional signs,
 - (d) traffic signs,
 - (e) community or Council information signs,
 - (f) law enforcement signs.
- (2) **Compliance with Development Control Plan**
Must comply with *Newcastle Development Control Plan 2005*.
- (3) **Siting**
Traffic signs and street signs may be erected on or above a public road.
- (4) Other signs may not be erected on a public road, but may be suspended over the footway of a public road and, in that case, must be located no closer than 3.6 metres from the edge of the kerb and at least 2.6 metres above ground level (existing).

24 Solar or wind energy generating works or water heaters used for the purpose of collecting solar or wind energy

- (1) **Siting**
Must not be located between the front of a building and the street alignment.

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- (2) Must not direct glare into the windows of buildings on other properties.
- (3) Roof-mounted solar panels must be aligned parallel to the roof plane.
- (4) **Dimensions**
Maximum height—2.7 metres above ground level (existing), unless mounted on an existing building or structure.
- (5) **Capacity**
Maximum generating capacity of 5 kilowatts for a photovoltaic array.
- (6) Maximum generating capacity of 2 kilowatts for wind turbines.
- (7) **Noise control**
Noise must be free from any tonal component and noise levels must not exceed 5dBA above ambient background noise level measured at the boundary of the relevant lot.
- (8) **Heritage**
Must not be located on land that comprises or on which there is a heritage item.

25 Spa pools

Note. Spa pools are subject to additional requirements under the *Swimming Pools Act 1992* as a kind of swimming pool.

Decks around swimming pools are dealt with elsewhere in this Schedule.

- (1) **General**
Must be prefabricated.
- (2) May only be installed and used in association with the occupation of a dwelling house or a building containing dwellings.
- (3) **Siting**
Inside edge of the pool must be at least 1 metre from side and rear property boundaries.
- (4) Must not encroach on any easement, pipeline (excluding any plumbing to or from the pool) or watercourse.
- (5) **Noise control**
Noise emissions from any filtration equipment or pumps must not be audible inside any dwelling on an adjoining lot between 10.00pm and 7.00am on weekdays, and between 10.00pm and 8.00am on Saturdays, Sundays and public holidays. At all other times, noise levels must not exceed 5dBA above ambient background noise level measured at the boundary of the relevant lot.

(6) Notification to Council

Council must be notified of the installation of the pool within 14 days of installation.

26 Trees—cutting down, topping, lopping or removal

- (1) Must comply with the requirements set out in Schedule 1 to *Newcastle Local Environmental Plan 2003* that apply to the removal or pruning of trees.
- (2) The tree must not be a heritage item.

27 Use of public land or a public road for an exhibition, meeting or community event

Note. In the case of Crown land or land vested in or under the control of the Council, permission must be sought from the council or other authority responsible for managing the land concerned before any development (including exempt development) is carried out on the land. Where the land is a public road, permission must be sought from the appropriate roads authority under the *Roads Act 1993* (usually the Council).

Under section 68 of the *Local Government Act 1993*, certain activities carried out on community land require approval from the local council.

(1) Definition

In this clause:

community event has the same meaning as in *State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007*.

(2) Plans of management

Must be consistent with any plan of management under the *Local Government Act 1993* or the *Crown Lands Act 1989* that applies to the land.

(3) Temporary structures

The erection and use of any temporary structures for the purposes of the exhibition, meeting or event must be exempt development or complying development under *State Environmental Planning Policy (Temporary Structures and Places of Public Entertainment) 2007*.

(4) Bush fire prone land

The exhibition, meeting or event must not be carried out on bush fire prone land.

(5) Flood prone land

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

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Schedule 2 Exempt development

28 Works and other development by public authorities on public land or public roads

(1) General

Development must comprise one or more of the following:

- (a) landscaping or maintenance of trees or shrubs,
- (b) the installation or maintenance of artworks,
- (c) the installation or maintenance of waste or recycling bins,
- (d) the installation or maintenance of flagpoles,
- (e) the installation or maintenance of street furniture comprising bus or weather shelters, seating, telephone kiosks or other street furniture (excluding outdoor vending machines),
- (f) the installation or maintenance of structures in parks, including any of the following:
 - (i) park furniture (for example, seating, picnic tables, barbeque units and shelters),
 - (ii) awnings, pergolas, pedestrian bridges, staircases, steps and boardwalks,
- (g) the installation or maintenance of bollards by or on behalf of the Council,
- (h) the installation or maintenance of parking meters,
- (i) the installation or maintenance of cycle racks or cycle lockers,
- (j) the installation or maintenance of lighting (other than floodlighting of sporting or other venues), including street lights,
- (k) the installation or maintenance of playground equipment, goal posts, sight screens, fencing or other ancillary sporting structures on sporting or playing fields for use in the performance of sporting events (excluding grandstands, dressing sheds and other similar structures),
- (l) the installation or maintenance of footpaths, cycle ways, fire trails, walking tracks and other public pedestrian areas, kerbing, guttering and the like.

(2) Plans of management

Must be consistent with any plan of management under the *Local Government Act 1993* or the *Crown Lands Act 1989* that applies to the land.

(3) Safety

Must not obstruct vision of motorists or pedestrians when using or crossing roads.

- (4) To extent relevant, must incorporate appropriate public security measures, such as lighting and measures to assist visibility.
- (5) **Dimensions of bus or weather shelters**
Maximum height of bus or weather shelters—3 metres above ground level (existing).
- (6) **Access**
In the case of the installation of street furniture, park furniture, pedestrian bridges, boardwalks, parking meters, playground equipment, footpaths and walking tracks and other public pedestrian areas—provision is made, where reasonably practicable, for access by persons with a disability to use those items.

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Schedule 3 Complying development

Schedule 3 Complying development

(Clause 19)

Part 1 Types of development

1 Change of use—from retail premises and warehouses

(1) General

The development is the different use of a building resulting from a change:

- (a) from one type of retail premises to another type of retail premises or to office premises, business premises or a technical services facility, or
- (b) from one type of warehouse or distribution centre to another type of warehouse or distribution centre.

(2) Current use

The current use of the building must be lawful and must not be an existing use (as defined in section 106 of the Act).

(3) Proposed development or use

The proposed development may include structural alterations, but only to the interior of the premises concerned.

(4) The proposed premises must not comprise premises for the sale of food or the storage or handling of food for sale.

(5) Floor area

The proposed use must not involve any increase in floor area.

(6) Flood prone land

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

2 Dwelling houses and associated outbuildings

Note. Works ancillary to the development allowed by this clause, such as landscaping, the installation of driveways, paving, drainage, filling, excavation and the laying of underground services may be carried out as exempt development. See entry for ancillary works external to a building in Schedule 2.

Works on public roads, such as footpath crossings, kerb crossings or stormwater drainage connections for dwelling houses may also be carried out as exempt development. See entry for ancillary works on public roads in Schedule 2.

(1) **General**

The development involves one of the following:

- (a) the erection of a new dwelling house,
- (b) the alteration of or addition to an existing dwelling house,
- (c) the erection of a carport or garage ancillary to an existing dwelling house,
- (d) the erection of any other kind of outbuilding (other than a swimming pool) ancillary to an existing dwelling house,
- (e) demolition of a building of a kind referred to in paragraphs (a)–(d) prior to the carrying out of development referred to in any of those paragraphs.

(2) **Site area**

The development does not result in more than one dwelling on the relevant lot.

- (3) May only be carried out on land in Zone R3 that has gravity drainage to a public drainage system.

(4) **Siting**

Any external wall of the resulting building must be at least 0.9 metre from any side or rear property boundary.

- (5) The outside of any new eaves or gutter must be at least 0.675 metre from any side or rear property boundary.

- (6) Minimum setback from boundary of secondary street frontage on corner lot—2.5 metres.

- (7) Minimum setback from any other boundary with a street—5 metres.

- (8) Must not encroach on any easement, pipeline or watercourse.

(9) **Number of storeys—dwelling houses and outbuildings**

Any proposed dwelling house or outbuilding may only be a single storey building.

(10) **Additions**

Any addition to a dwelling house may only be to the ground floor of the dwelling house.

(11) **Streetscape**

Dwelling houses facing a public road must have at least a front door or window of a habitable room facing the road.

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Schedule 3 Complying development

- (12) The combined width of all proposed garages or carports facing a public road must not be more than the lesser of:
- (a) 6 metres, or
 - (b) 40 per cent of the width of the frontage, whichever is the lesser.
- (13) **Bulk and scale**
Maximum height of underside of eaves—3.5 metres above ground level (existing).
- (14) Maximum roof pitch—30 degrees.
- (15) Any roof openings must be flush with the roof pitch.
- (16) Maximum floor area of any carport, garage or other outbuilding—40 square metres.
- (17) **Safety**
Any work involving asbestos cement must comply with the following WorkCover Authority guidelines:
- (a) *Your guide to working with asbestos: safety guidelines and requirements for work involving asbestos*, March 2003,
 - (b) *Asbestos: guidelines for licensed asbestos removal contractors*.
- (18) **Solar access**
The resulting building or structure must comply with Element 5.1.5 of *Newcastle Development Control Plan 2005*.
- (19) **Privacy**
If a new window in a habitable room allows an outlook to a window in a habitable room of an adjoining dwelling and the two windows are less than 9 metres apart:
- (a) the new window must be offset, from its edge to the edge of the window in the adjoining dwelling, by a distance of at least 0.5 metre, or
 - (b) the new window must have a sill height of at least 1.5 metres above floor level, or
 - (c) any part of the new window below 1.5 metres above floor level must have fixed obscure glazing.
- (20) **Car parking**
At least one car parking space must be provided for a new dwelling.

(21) **Landscaping**

The percentage of the area of the relevant lot comprising surfaces that are permeable to rainwater must be at least 20 per cent after the development is carried out.

(22) **Utilities**

The lot must be connected to a reticulated sewerage system operated by the Hunter Water Corporation.

(23) **Stormwater**

The flow of stormwater must not be restricted.

(24) The development must comply with applicable requirements in Element 4.5 of *Newcastle Development Control Plan 2005*.

(25) **Waste**

The development must comply with applicable requirements in Element 4.6 of *Newcastle Development Control Plan 2005*.

(26) **Bush fire prone land**

The development must not be carried out on bush fire prone land.

(27) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

(28) **Trees**

The development must not involve the removal of a tree identified as significant on any approved subdivision plan applying to the land.

Note. The cutting down, topping, lopping, removal or destruction of trees to enable the carrying out of any of the development listed in this Schedule may require a permit under clause 45 (Preservation of trees or vegetation), or a consent under clause 46 (Heritage conservation), of this Plan. See also entry for trees in Schedule 2 (Exempt development).

3 Strata subdivision

(1) **General**

The development comprises subdivision for the purpose of creating a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* in relation to a building for which an occupation certificate has been issued.

(2) **Parking**

Parking spaces must be allocated to units in accordance with the terms of any existing development consent applying to the premises.

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(3) Visitor parking required to be provided under the terms of any existing development consent applying to the premises must be located within common property.

(4) **Development lots**

The strata plan must not include any development lots, as defined in the *Strata Schemes (Freehold Development) Act 1973*.

4 **Swimming pools ancillary to dwelling houses**

Note. Swimming pools are subject to requirements under the *Swimming Pools Act 1992*.

Decks may be installed around swimming pools as exempt development. See Schedule 2.

(1) **Siting**

Inside edge of the pool must be at least 1 metre from side and rear property boundaries.

(2) Must not be located between the dwelling house and the street alignment.

(3) Must not encroach on any easement, pipeline or watercourse.

(4) **Bulk and scale**

Any coping or decking around the pool must be no more than 0.5 metre above or below ground level (existing) at any point.

(5) **Landscaping**

The percentage of the area of the relevant lot comprising surfaces that are permeable to rainwater must be at least 20 per cent following installation.

(6) **Drainage**

Must not impede existing site drainage, or restrict or divert stormwater or floodwaters.

(7) Perimeter drainage around the pool must be designed so as to direct water away from adjoining properties.

(8) Wastewater from the pool's filtration system must discharge to:

(a) a reticulated sewerage system operated by the Hunter Water Corporation, or

(b) in the case of land not serviced by that sewerage system—a waste treatment system that is the subject of an approval under Chapter 7 of the *Local Government Act 1993*.

(9) **Flood prone land**

May be carried out on flood prone land if relevant provisions of *Newcastle Development Control Plan 2005* are complied with.

5 Trees—cutting down, topping, lopping or removal

- (1) Must comply with the requirements set out in Schedule 2 (Complying development) of *Newcastle Local Environmental Plan 2003* that apply to the removal or pruning of trees.
- (2) Despite anything to the contrary in that environmental planning instrument, the tree may be a heritage item, but only if clause 46 (3) (a) of this Plan applies and the relevant development is the pruning of the tree.

Part 2 Complying development certificate conditions

Note. Conditions are also prescribed by the regulations made under the *Environmental Planning and Assessment Act 1979*.

Division 1 Change of use

6 Hours of operation

Hours of operation must not extend beyond any existing approved hours.

Note. A current development consent applying to the premises may contain conditions on the permitted hours of operation.

7 Conditions of another development consent

The new use must be carried out in accordance with any conditions of a current development consent relating to the premises, including car parking, loading, vehicular movement, traffic generation, waste management, noise and site landscaping.

8 Use of curtilage of premises

The curtilage of office premises must not be used for storage or display purposes.

Division 2 Building work, demolition and installation of swimming pools

9 Before work begins

The person having the benefit of the complying development certificate must give any occupier of adjoining premises at least 2 days before work begins.

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Schedule 3 Complying development

Note. See also section 86 of the Act, which requires certain steps to be taken before the erection of a building begins. These include the principal certifying authority notifying the Council of his or her appointment.

10 Site management

- (1) Run-off and erosion controls must be implemented to prevent erosion, water pollution or the discharge of loose sediment on surrounding land by:
 - (a) diverting uncontaminated run-off around cleared or disturbed areas, and
 - (b) erecting and maintaining a silt fence to prevent debris escaping into drainage systems or waterways, and
 - (c) preventing tracking of sediment by vehicles onto roads, and
 - (d) stockpiling topsoil, excavated material, construction and landscaping supplies and debris within the site.

Note. Under the *Protection of the Environment Operations Act 1997* it is an offence to pollute any waters.

- (2) Any removal or disturbance of vegetation or topsoil must be confined to within 3 metres of the proposed building.

11 Hours of work

- (1) Demolition or construction work that is audible within adjoining premises may be carried out only between the following hours:
 - (a) Monday–Friday—7.00am and 6.00pm,
 - (b) Saturday—8.00am and 1.00pm.
- (2) No such work may be carried out at any time on a Sunday or a public holiday.

12 Public roads and reserves

- (1) Any damage caused to kerbs, guttering or footways during carrying out of work must be rectified in accordance with any requirements of the appropriate roads authority under the *Roads Act 1993*.
- (2) No part of any public road is to be used for storage of construction materials without the approval of the appropriate roads authority under the *Roads Act 1993*.
- (3) No part of any public reserve is to be used for storage of construction materials without the authorisation of the Council.

13 On-site toilet

A temporary on-site toilet or access to an existing toilet on site must be provided to the site before the commencement of work.

14 Asbestos

Any work involving asbestos cement must comply with the following WorkCover Authority guidelines:

- (a) *Your guide to working with asbestos: safety guidelines and requirements for work involving asbestos*, March 2003,
- (b) *Asbestos: guidelines for licensed asbestos removal contractors*.

15 Street trees

- (1) Prior to commencement of the development, all necessary steps must be taken to protect street trees (including their root systems) from disturbance or damage as a result of the development, including the installation of protective chain link fencing as required.
- (2) Any damage caused to street trees as a result of the development is to be rectified.

16 Additional provisions applying to demolition of a building

Any demolition of a building must be carried out in accordance with:

- (a) Australian Standard AS 2601—2001, *Demolition of structures*, and
- (b) any applicable requirements of the WorkCover Authority.

17 Additional provisions applying to swimming pools

- (1) Noise emissions from any filtration equipment or pumps must not be audible inside any dwelling on an adjoining lot between 10.00pm and 7.00am on weekdays, and between 10.00pm and 8.00am on Saturdays, Sundays and public holidays. At all other times, noise levels must not exceed 5dBA above ambient background noise level measured at the boundary of the relevant lot.
- (2) Any relevant provisions of the *Swimming Pools Act 1992* and regulations under that Act must be complied with.

Division 3 Removal etc of trees**18 Site management**

- (1) Run-off and erosion controls must be implemented to prevent erosion, water pollution or the discharge of loose sediment on surrounding land by:
 - (a) diverting uncontaminated run-off around cleared or disturbed areas, and
 - (b) erecting and maintaining a silt fence to prevent debris escaping into drainage systems or waterways, and
-

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Schedule 3 Complying development

- (c) preventing tracking of sediment by vehicles onto roads, and
- (d) stockpiling topsoil, excavated material, construction and landscaping supplies and debris within the site.

Note. Under the *Protection of the Environment Operations Act 1997* it is an offence to pollute any waters.

- (2) Any removal or disturbance of vegetation (other than the tree) or topsoil is to be minimised.

19 Hours of work

- (1) Work that is audible within adjoining premises may be carried out only between the following hours:
 - (a) Monday–Friday—7.00am and 6.00pm,
 - (b) Saturday—8.00am and 1.00pm.
- (2) No such work may be carried out at any time on a Sunday or a public holiday.

20 Public roads and reserves

- (1) Any damage caused to kerbs, guttering or footways during carrying out of works must be rectified in accordance with any requirements of the appropriate roads authority under the *Roads Act 1993*.
- (2) No part of any public road is to be used for storage of construction materials without the approval of the appropriate roads authority under the *Roads Act 1993*.
- (3) No part of any public reserve is to be used for storage of construction materials without the authorisation of the Council.

21 Replacement trees

Where practicable, a suitable replacement tree is to be planted on the property concerned in accordance with Element 4.10 of *Newcastle Development Control Plan 2005*.

22 Safe work practices

The WorkCover Authority's *Code of Practice: Amenity tree industry* (ISBN 0 7310 8738 0, August 1998) must be complied with when carrying out work.

23 Disposal of trees

Trees and stumps are to be:

- (a) disposed of at a waste management facility, or
- (b) recycled, or
- (c) disposed of as fire wood.

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Schedule 4 Classification and reclassification of public land

Schedule 4 Classification and reclassification of public land

(Clause 31)

Part 1 Land classified, or reclassified, as operational land—no interests changed

Column 1	Column 2
Locality	Description

Part 2 Land classified, or reclassified, as operational land—interests changed

Column 1	Column 2	Column 3
Locality	Description	Any trusts etc not discharged

Part 3 Land classified, or reclassified, as community land

Column 1	Column 2
Locality	Description

Schedule 5 Environmental heritage

(Clause 46)

Part 1 Heritage items

Suburb	Item name	Address	Property description	Significance
Cooks Hill	Former Signalman's Cottage	12 Laman Street	Lot 11, DP 95189; Lot 12, DP 150135	Local
Cooks Hill	Former Railway Overpass	12 Laman Street	Lot 11, DP 95189	Local
Cooks Hill	St Andrews Presbyterian Church	12 Laman Street	Lot 10, DP 95189	State
Cooks Hill	Baptist Tabernacle	25 Laman Street	Pt Lot 19, Sec G, DP 978941	State
Cooks Hill	Fire Station	44 Union Street	Lot 1, DP 77102	Local
Newcastle	Newcastle Post Office Annex	5 Bolton Street	Lot 1, DP 430746	State
Newcastle	NZ Insurance Building	12 Bolton Street	SP 51662	Local
Newcastle	Union Trustee Building	18 Bolton Street	Lot 42, DP 542509	Local
Newcastle	Former Eldon Chambers	24 Bolton Street	Lot 2, DP 136640	Local
Newcastle	Court Chambers	40 Bolton Street	Lot 71, DP 541527	Local
Newcastle	Steels Garage (Former Olympic Hall)	47 Bolton Street	Lot 1, DP 74337	Local
Newcastle	Former David Cohen & Co Warehouse	50 Bolton Street	Lot 1, DP 601267	State
Newcastle	Toll Cottage (Former Rose Cottage)	51 Bolton Street	Lot 394, DP 747410	State
Newcastle	Former Newcastle East Public School	58 Bolton Street	Lot 1, DP 709455	Local

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Schedule 5 Environmental heritage

Suburb	Item name	Address	Property description	Significance
Newcastle	Customs House	1 Bond Street	Lot 1, DP 533984	State
Newcastle	Stanton Catchlove Bond Store	11 Bond Street	Lot 1, DP 619238	Local
Newcastle	Macquarie House	8 Church Street	Lot 10, DP 24188	State
Newcastle	Courthouse	9 Church Street	Pt DP 755247	State
Newcastle	Buchanan Terrace and footpath	10 Church Street	Lot 9, DP 24188	State
Newcastle	Buchanan Terrace and footpath	12 Church Street	Lot 8, DP 24188	State
Newcastle	Buchanan Terrace and footpath	14 Church Street	Lot 7, DP 24188	State
Newcastle	Buchanan Terrace and footpath	16 Church Street	Lot 6, DP 24188	State
Newcastle	Buchanan Terrace and footpath	18 Church Street	Lot 5, DP 24188	State
Newcastle	Buchanan Terrace and footpath	20 Church Street	Lot 4, DP 24188	State
Newcastle	Buchanan Terrace and footpath	22 Church Street	Lot 3, DP 24188	State
Newcastle	Buchanan Terrace and footpath	24 Church Street	Lot 2, DP 24188	State
Newcastle	Buchanan Terrace and footpath	26 Church Street	Lot 1, DP 24188	State
Newcastle	Buchanan Terrace and footpath	28 Church Street	Lot B, DP 420090	State
Newcastle	Buchanan Terrace and footpath	30 Church Street	Lot A, DP 420090	State
Newcastle	Grand Hotel	32 Church Street	Lot 32, DP 343633	State
Newcastle	Dwelling	46 Church Street	Lot A, DP 331216	Local
Newcastle	Nos 1 and 2 Lee Wharf Buildings A and C	9 Honeysuckle Drive	Pt Lot 51, DP 1036132	State
Newcastle	Civic Railway Workshops Group	9 Honeysuckle Drive	Pt Lot 51, DP 1036132	State

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Environmental heritage

Schedule 5

Suburb	Item name	Address	Property description	Significance
		10A Merewether Street	Lot 50, DP 1036132	State
Newcastle	T & G Mutual Life Assurance Building	45 Hunter Street	Lot 6, DP 75385	State
Newcastle	Sun Building (Facade only)	48–56 Hunter Street	Lot 4, DP 76454	Local
Newcastle	AMP Building	55 Hunter Street	SP 53607	State
Newcastle	Former CBA Bank	67 Hunter Street	SP 65329	Local
Newcastle	Former National Bank	68 Hunter Street	Lot 1, DP 66499	Local
Newcastle	National Australia Bank	73 Hunter Street	Lot A, DP 60510	State
Newcastle	Former Department of Public Works Office	74 Hunter Street	Lot 3224, DP 729951	State
Newcastle	Former Emporium Building	87–89 Hunter Street	Lots 1 and 2, DP 152682	Local
Newcastle	Former Police Station	90 Hunter Street	Lot 3223, DP 729951	State
Newcastle	Post Office and War Memorial Statue	96–100 Hunter Street	Lot 103, DP 758769	State
Newcastle	ANZ Bank	102 Hunter Street	Lot 1, DP 131741	State
Newcastle	CML Building	108–112 Hunter Street	Lot 1, DP 331485	State
Newcastle	Centennial Hotel	114 Hunter Street	Lots 1 and 2, DP 745997	Local
Newcastle	Municipal Building	121 Hunter Street	Lot 31, DP 864001	Local
Newcastle	Municipal Building	122–132 Hunter Street	Lots A–F, DP 80153	Local
Newcastle	Former Hotel Hunter	154 Hunter Street	Lot 2, DP 600274	Local

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Schedule 5 Environmental heritage

Suburb	Item name	Address	Property description	Significance
Newcastle	Municipal Building	164–170 Hunter Street	Lot 1, DP 600274	Local
Newcastle	David Jones (Commercial building)	169–185 Hunter Street	Lot 1, DP 749729	Local
Newcastle	Former A A Dangar Building	176 Hunter Street	Lot 1, DP 110615	Local
Newcastle	Former School of Arts	182 Hunter Street	Lot 212, DP 660080	Local
Newcastle	Crown & Anchor Hotel	189 Hunter Street	Lot 1, DP 79759	Local
Newcastle	Former Johns Building	200–212 Hunter Street	Lot 1, DP 228072	Local
Newcastle	Commonwealth Bank Building	220 Hunter Street	Lot 1, DP 78033	Local
Newcastle	Former ANZ Bank	227 Hunter Street	Lot 1, DP 770692	Local
Newcastle	Lucky Country Hotel	237 Hunter Street	Lots 1 and 2, DP 331728	Local
Newcastle	Former Tramway Substation	342 Hunter Street	SP 21188	Local
Newcastle	Former Frederick Ash Building	357 Hunter Street	Lot 2, DP 1010675	Local
Newcastle	Civic Theatre	373 Hunter Street	Pt Lot 1, DP 225689	State
Newcastle	Former Emporium Building	517–529 Hunter Street	Lot 801, DP 562199	Local
Newcastle	Former Police Station	558 Hunter Street	Lot 3195, DP 705450	Local
Newcastle	Wheeler House	8 King Street	SP 65842	Local
Newcastle	Ireland Bond Store	123 King Street	Lot 1, DP 64187	Local
Newcastle	Albert Terraces	164–176 King Street	Lots 1–5, DP 263453	Local
Newcastle	The Moorings (Residential units)	199 King Street	SP 2831	Local
Newcastle	Civic Park	201 King Street	Lot 300, DP 604071	Local

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Environmental heritage

Schedule 5

Suburb	Item name	Address	Property description	Significance
Newcastle	Church Walk Park	203 King Street	Lot 27, DP 150538	Local
Newcastle	City Hall and lamp posts	290 King Street	Pt Lot 1, DP 225689	State
Newcastle	Christie Place (including fountain)	292 King Street	Pt Lot 1, DP 225689	Local
Newcastle	Nesca House	300 King Street	Lot 2, DP 225689	State
Newcastle	Newcastle War Memorial Cultural Centre	1 Laman Street	Lots 18 and 19, Sec G, DP 978941	State
Newcastle	Terrace House	49 Newcomen Street	Lot 61, DP 569796	Local
Newcastle	Newcomen House (Residence)	51 Newcomen Street	Lot 1, DP 794738	Local
Newcastle	Newcastle Hospital North Wing	21 Pacific Street	Lot 22, DP 880526	State
Newcastle	Former Nurses Home	30 Pacific Street	Lot 100, DP 883220	Local
Newcastle	Former Victoria Theatre	8–10 Perkins Street	Lot 1, DP 1005699	State
Newcastle	Former Superintendent's Residence	88 Scott Street	Lot 3211, DP 722246	State
Newcastle	Former Coutts Sailor Home	88 Scott Street (facing Bond Street)	Lot 3211, DP 722246	State
Newcastle	Great Northern Hotel	89 Scott Street	Lot 100, DP834251	State
Newcastle	Former Residence	90 Scott Street	Lot 1, DP 123946	Local
Newcastle	Convict Lumber Yard-Stockade Site	92 Scott Street	Pt Lot 2, DP 706760; Lot 3214, DP 729000	State
Newcastle	Station Master's Residence	92 Scott Street	Pt Lot 2, DP 706760	Local

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Schedule 5 Environmental heritage

Suburb	Item name	Address	Property description	Significance
Newcastle	Former Station Master's Residence	92 Scott Street	Pt Lot 2, DP 706760	State
Newcastle	Former Railway Pay Office	92 Scott Street (facing Bond Street)	Pt Lot 2, DP 706760	State
Newcastle	Newcastle Railway Station	110 Scott Street	Lot 8, DP 720672	State
Newcastle	Centennial Hotel	127 Scott and 114 Hunter Streets	Lots 1 and 2, DP 745997	Local
Newcastle	Air Force Club (Wood Chambers)	129 Scott Street	Lot 1, DP 996093	State
Newcastle	Rundles Buildings (Former R Hall & Sons)	161 Scott Street	SP 57218	Local
Newcastle	Former Beberfaulds Warehouse	175 Scott Street	SP 35541; SP 37388	Local
Newcastle	Howard Smith Chambers	14 Watt Street	SP 16024	Local
Newcastle	Manufacturers House	35-37 Watt Street	Lot 1, DP 342578	State
Newcastle	St Phillips Church	48 Watt Street	Lot 38, DP 51452	Local
Newcastle	Watt Street Terrace	50 Watt Street	Lot 12, DP 24188	State
Newcastle	Watt Street Terrace	52 Watt Street	Lot 13, DP 24188	State
Newcastle	Watt Street Terrace	54 Watt Street	Lot 14, DP 24188	State
Newcastle	United Services Club	55 Watt Street	Lot 2, DP 609103	Local
Newcastle	Watt Street Terrace	56 Watt Street	Lot 15, DP 24188	State
Newcastle	Watt Street Terrace	58 Watt Street	Lot 16, DP 24188	State
Newcastle	Watt Street Terrace	60 Watt Street	Lot 17, DP 24188	State
Newcastle	Watt Street Terrace	62 Watt Street	Lot 18, DP 24188	State
Newcastle	Former Military Hospital	72 Watt Street	Lot 1, DP 1069317	State

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Environmental heritage

Schedule 5

Suburb	Item name	Address	Property description	Significance
Newcastle	Former Barracks	72 Watt Street	Lot 1, DP 1069317	State
Newcastle	Fletcher Monument	75 Watt Street	Ms 1135 Md	Local
Newcastle	Argyle House	311 Wharf Road	Lot 190, DP 541370	State
Newcastle	Retaining walls with sandstone steps	Wolfe Street		Local
Newcastle East	Nobbys Lighthouse, headland and breakwater	Nobbys Road	Pt Lot 2613, DP 755247; Pt Lot 105, DP 1104195	State
Newcastle East	Fort Scratchley group (Buildings and underground forts)	31 Nobbys Road	Lot 1, DP 407886	State
Newcastle East	Nobbys Beach Pavilion	35 Nobbys Road	Lot 7005 and Pt Lot 7006, DP 1057119	Local
Newcastle East	Boatmans Terrace group (Residences)	36–66 Nobbys Road	Lot 1, DP 617504	Local
Newcastle East	Column from original Courthouse	Parnell Place	Pt N 137–844 R	Local
Newcastle East	Coal Memorial	Parnell Place	Pt N 137–844 R	Local
Newcastle East	The Retreat (Residence)	31 Parnell Place	Lot 4, DP 4296	Local
Newcastle East	The Carlton (Residential units)	19 Scott Street	SP 39163	Local
Newcastle East	Former Newcastle East Police Station	63 Scott Street	Lot 328, DP 758769	State
Newcastle East	Soldiers Baths	Shortland Esplanade	Lot 7060, DP 1118739	State
Newcastle East	Ocean Baths	30 Shortland Esplanade	Pt Ms 1133 Md	Local
Newcastle East	Stevenson Place Precinct (Terraces)	1–55 Stevenson Place		Local

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Suburb	Item name	Address	Property description	Significance
Newcastle East	Former John Bull Warehouse	28 Stevenson Place	SP 48754	Local
Newcastle East	Former Earp Gillam Bond Store	16 Telford Street	SP 44807	State
Newcastle East	Tyrrell House (Facade only)	49 Telford Street	SP 20749	Local
Newcastle East	Stone Boat Harbour (Relic)	48 Wharf Road	Pt Lot 52, DP 791037	State
Newcastle West	Former City Bank	553–557 Hunter Street	Lots A and B, DP 162398	Local
Newcastle West	Former CBC Bank	559 Hunter Street	Lot 941, DP 997920	Local
Newcastle West	Newcastle Technical College	590–608 Hunter Street	Lots 1 and 2, DP 852552	State
Newcastle West	Hunter Water Board Building	599 Hunter Street	Lot 1, DP 595677	Local
Newcastle West	Theatre Royale	669 Hunter Street	Lot 111, DP 75158	State
Newcastle West	Palais Royale	684 Hunter Street	Lot 11, DP 872463	Local
Newcastle West	Bellevue Hotel	738 Hunter Street	Lot 8, DP 1008628	Local
Newcastle West	Bank Corner (Former Bank of NSW)	744 Hunter Street	Lot 1, DP 75008; Lot 1, DP 196241	Local
Newcastle West	Regional Museum	787 Hunter Street	Lot 21, DP 774313	State
Newcastle West	St Josephs Convent and Sacred Heart Church and School	841 Hunter Street	Lot 1, DP 95139; Lots 38 and 39, DP 95306; Lot 1, DP 129569; Lot 2, DP 787816	Local
Newcastle West	Former Newcastle Co-operative Store	854 Hunter Street	Lot 1, DP 82517	Local
Newcastle West	Dairy Farmers Building	924 Hunter Street	Lot 2, DP 445736	Local
Newcastle West	Miss Porter's Residence	434 King Street	Lot 441, DP 998073	State

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Schedule 5

Suburb	Item name	Address	Property description	Significance
Newcastle West	Army Drill Hall	498 King Street	Lot 1, DP 222839	Local
Newcastle West	Birdwood Park	502 King Street	Pt Lots 112–118, DP 95185	Local
Newcastle West	Hamilton College of TAFE	91 Parry Street	Lot 1, DP 584429	Local
Newcastle West	Former Gasworks Office	18 Steel Street	Lot 1, DP 797175	Local
The Hill	Dr Richard Harris's Residence	81 King Street	Lot 1, DP 36886	Local
Wickham	Former Wickham Town Hall	12 Albert Street	Lot 2, DP 538523	Local
Wickham	Former Council Chambers	18A Albert Street	Lot 3175, DP 755247	Local
Wickham	Hawkins Oval	22 Albert Street	Ms 4983 Md; Pt Lot 152, DP 755247; Pt Lot 165 and Pt Lot 166, DP 755247	Local
Wickham	Hawkins Oval Memorial	22 Albert Street	Ms 4983 Md; Pt Lot 152, DP 755247	Local
Wickham	Former Police Lock-up	25 Albert Street	Lot 12, DP 1005516	Local
Wickham	Dalgety Warehouse	49 Annie Street	Lot 2, DP 346352	Local
Wickham	R A Ritchie & Sons & Hudson Bros Engineering (Former industrial site)	20 Greenway Street	SP 31620	Local
Wickham	Wickham Railway Station	Hannell Street	Railway land	Local
Wickham	Signal Box—Wickham	Hannell Street	Railway land	Local
Wickham	Former School of Arts	22A Hannell Street	Lot 1, DP 1009228	Local
Wickham	Wickham Public School	54 Hannell Street	Lot 1, DP 850430	Local

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Schedule 5 Environmental heritage

Suburb	Item name	Address	Property description	Significance
Wickham	Former Infants School	64 Hannell Street	Lot 3203, DP 723289	Local
Wickham	Albion Hotel	72 Hannell Street	Lot 1, DP 76135	Local
Wickham	Stella Maris Seamans Mission	102 Hannell Street	Lot A, DP 386601	Local
Wickham	The Salvation Army Men's Hostel	116–120 Hannell Street	Lot 1, DP 217399; Lot 1, DP 90935	Local
Wickham	Lass O'Gowrie Hotel	14 Railway Street	Lot 1, DP 774645	Local

Part 2 Heritage conservation areas

Description	Identification on Heritage Map
Cooks Hill	Shown by a heavy black broken line and marked "Cooks Hill Heritage Conservation Area"
Newcastle City Centre	Shown by a heavy black broken line and marked "Newcastle City Centre Heritage Conservation Area"
Newcastle East	Shown by a heavy black broken line and marked "Newcastle East Heritage Conservation Area"
The Hill	Shown by a heavy black broken line and marked "The Hill Heritage Conservation Area"

Dictionary

(Clause 4)

Aboriginal object means any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

advertisement has the same meaning as in the Act.

Note. The term is defined as a sign, notice, device or representation in the nature of an advertisement visible from any public place or public reserve or from any navigable water.

advertising structure has the same meaning as in the Act.

Note. The term is defined as a structure used or to be used principally for the display of an advertisement.

amusement centre means a building or place (not being part of a pub or registered club) used principally for playing:

- (a) billiards, pool or other like games, or
- (b) electronic or mechanical amusement devices, such as pinball machines, computer or video games and the like.

archaeological site means the site (as shown on the Heritage Map or listed in Part 1 of Schedule 5) of one or more relics.

attic means any habitable space, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like.

backpackers' accommodation means tourist and visitor accommodation:

- (a) that has shared facilities, such as a communal bathroom, kitchen or laundry, and
- (b) that will generally provide accommodation on a bed basis (rather than by room).

basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

bed and breakfast accommodation means tourist and visitor accommodation comprising a dwelling (and any ancillary buildings and parking) where the accommodation is provided by the permanent residents of the dwelling for a maximum of 8 guests and:

- (a) meals are provided for guests only, and
- (b) cooking facilities for the preparation of meals are not provided within guests' rooms, and
- (c) dormitory-style accommodation is not provided.

biodiversity means biological diversity.

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Dictionary

biological diversity has the same meaning as in the *Threatened Species Conservation Act 1995*.

Note. The term is defined as follows:

biological diversity means the diversity of life and is made up of the following 3 components:

- (a) genetic diversity—the variety of genes (or units of heredity) in any population,
- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities or ecosystems.

boarding house means a building:

- (a) that is wholly or partly let in lodgings, and
- (b) that provides lodgers with a principal place of residence for 3 months or more, and
- (c) that generally has shared facilities, such as a communal bathroom, kitchen or laundry, and
- (d) that has rooms that accommodate one or more lodgers,

but does not include backpackers' accommodation, a serviced apartment, seniors housing or hotel accommodation.

boat launching ramp means a structure designed primarily for the launching of trailer borne recreational vessels, and includes associated car parking facilities.

boat repair facility means any facility (including a building or other structure) used primarily for the construction, maintenance or repair of boats, whether or not including the storage, sale or hire of boats, but does not include a marina or boat shed.

boat shed means a building or other structure used for the storage and routine maintenance of a boat or boats and that is associated with a private dwelling or non-profit organisation, and includes any skid used in connection with the building or other structure.

brothel has the same meaning as in the Act.

building has the same meaning as in the Act.

Note. The term is defined to include part of a building and any structure or part of a structure, but not including a manufactured home, a moveable dwelling or associated structure (or part of a manufactured home, moveable dwelling or associated structure).

building height (or **height of building**) means the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

building identification sign means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol, but that does not include general advertising of products, goods or services.

building line or **setback** means the horizontal distance between the property boundary or other stated boundary (measured at 90 degrees from the boundary) and:

- (a) a building wall, or

- (b) the outside face of any balcony, deck or the like, or
 - (c) the supporting posts of a carport or verandah roof,
- whichever distance is the shortest.

bulky goods premises means a building or place used primarily for the sale by retail, wholesale or auction of (or for the hire or display of) bulky goods, being goods that are of such size or weight as to require:

- (a) a large area for handling, display or storage, or
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,

but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or display of bulky goods.

bush fire hazard reduction work has the same meaning as in the *Rural Fires Act 1997*.

Note. The term is defined as follows:

bush fire hazard reduction work means:

- (a) the establishment or maintenance of fire breaks on land, and
- (b) the controlled application of appropriate fire regimes or other means for the reduction or modification of available fuels within a predetermined area to mitigate against the spread of a bush fire,

but does not include construction of a track, trail or road.

bush fire prone land has the same meaning as in the Act.

Note. The term is defined, in relation to an area, as land recorded for the time being as bush fire prone land on a map for the area certified as referred to in section 146 (2) of the Act.

business identification sign means a sign:

- (a) that indicates:
 - (i) the name of the person or business, and
 - (ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and
- (b) that may include the address of the premises or place and a logo or other symbol that identifies the business,

but that does not include any advertising relating to a person who does not carry on business at the premises or place.

business premises means a building or place at or on which:

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
 - (b) a service is provided directly to members of the public on a regular basis,
- and may include, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, medical centres, betting agencies and the like, but does not include sex services premises.

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car park means a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not.

caravan park means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.

cemetery means a building or place for the interment of deceased persons or their ashes, and includes a funeral chapel or crematorium.

child care centre means a building or place used for the supervision and care of children that:

- (a) provides long day care, pre-school care, occasional child care or out-of-school-hours care, and
- (b) does not provide overnight accommodation for children other than those related to the owner or operator of the centre,

but does not include:

- (c) home-based child care, or
- (d) an out-of-home care service provided by an agency or organisation accredited by the NSW Office of the Children's Guardian, or
- (e) a baby-sitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or
- (f) a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised, or
- (g) a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium), by or on behalf of the person conducting the facility, to care for children while the children's parents are using the facility, or
- (h) a service that is concerned primarily with the provision of:
 - (i) lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or
 - (ii) private tutoring, or
- (i) a school, or
- (j) a service provided at exempt premises (within the meaning of section 200 of the *Children and Young Persons (Care and Protection) Act 1998*), such as hospitals, but only if the service is established, registered or licensed as part of the institution operating on those premises.

City Centre Development Control Plan 2006 means *Newcastle City Centre Development Control Plan 2006* adopted by the Council, as in force at the commencement of this Plan.

classified road has the same meaning as in the *Roads Act 1993*.

Note. The term is defined as follows:

classified road means any of the following:

- (a) a main road,
- (b) a highway,
- (c) a freeway,
- (d) a controlled access road,
- (e) a secondary road,
- (f) a tourist road,
- (g) a tollway,
- (h) a transitway,
- (i) a State work.

(See *Roads Act 1993* for meanings of these terms.)

clearing native vegetation has the same meaning as in the *Native Vegetation Act 2003*.

Note. The term is defined as follows:

clearing native vegetation means any one or more of the following:

- (a) cutting down, felling, thinning, logging or removing native vegetation,
- (b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.

(See Division 3 of Part 3 of the *Native Vegetation Act 2003* for the exclusion of routine agricultural management and other farming activities from constituting the clearing native vegetation if the landholder can establish that any clearing was carried out for the purpose of those activities).

coastal foreshore means land with frontage to a beach, estuary, coastal lake, headland, cliff or rock platform.

coastal lake means a body of water specified in Schedule 1 to the *State Environmental Planning Policy No 71—Coastal Protection*.

coastal waters of the State—see section 58 of the *Interpretation Act 1987*.

coastal zone has the same meaning as in the *Coastal Protection Act 1979*.

Note. The term is defined as follows:

coastal zone means:

- (a) the area within the coastal waters of the State as defined in Part 10 of the *Interpretation Act 1987* (including any land within those waters), and
- (b) the area of land and the waters that lie between the western boundary of the coastal zone (as shown on the maps outlining the coastal zone) and the landward boundary of the coastal waters of the State, and
- (c) the seabed (if any) and the subsoil beneath, and the airspace above, the areas referred to in paragraphs (a) and (b).

The coastal zone consists of the area between the western boundary of the coastal zone shown on the maps outlining the coastal zone and the outermost boundary of the coastal waters of the State. The coastal waters of the State extend, generally, to 3 nautical miles from the coastline of the State.

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Dictionary

commercial activity, in relation to the use of a building, means the use of the building for the purposes of office premises, retail premises, business premises, hotel accommodation (but not hotel accommodation that is subdivided under a strata scheme) or other like uses or a combination of such uses.

community facility means a building or place owned or controlled by a public authority and used for the physical, social, cultural or intellectual development or welfare of the community.

community land has the same meaning as in the *Local Government Act 1993*.

Council means the Newcastle City Council.

crematorium means a building in which deceased persons or pets are cremated, and includes a funeral chapel.

Crown reserve means:

- (a) a reserve within the meaning of Part 5 of the *Crown Lands Act 1989*, or
- (b) a common within the meaning of the *Commons Management Act 1989*, or
- (c) lands within the meaning of the *Trustees of Schools of Arts Enabling Act 1902*, but does not include land that forms any part of a reserve under Part 5 of the *Crown Lands Act 1989* provided for accommodation.

curtilage, in relation to a heritage item or conservation area, means the area of land (including land covered by water) surrounding a heritage item, a heritage conservation area, or building, work or place within a heritage conservation area, that contributes to its heritage significance.

demolish, in relation to a heritage item, or a building, work, relic or tree within a heritage conservation area, means wholly or partly destroy, dismantle or deface the heritage item or the building, work, relic or tree.

depot means a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use.

drainage means any activity that intentionally alters the hydrological regime of any locality by facilitating the removal of surface or ground water. It may include the construction, deepening, extending, opening, installation or laying of any canal, drain or pipe, either on the land or in such a manner as to encourage drainage of adjoining land.

dual occupancy means 2 dwellings (whether attached or detached) on one lot of land.

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

dwelling house means a building containing only one dwelling.

earthworks means excavation or filling.

ecologically sustainable development has the same meaning as in the Act.

educational and cultural activity, in relation to the use of a building, means the use of the building for the purposes of a school, tertiary institution, community facility, hostel or boarding house for students, theatre, cinema, music hall, concert hall or lecture theatre or a combination of any such uses.

educational establishment means a building or place used for education (including teaching), being:

- (a) a school, or
- (b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.

entertainment facility means a theatre, cinema, music hall, concert hall, dance hall, amusement centre and the like.

environmental facility means a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, board walks, observation decks, bird hides or the like, and associated display structures.

environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like.

estuary has the same meaning as in the *Water Management Act 2000*.

Note. The term is defined as follows:

estuary means:

- (a) any part of a river whose level is periodically or intermittently affected by coastal tides, or
- (b) any lake or other partially enclosed body of water that is periodically or intermittently open to the sea, or
- (c) anything declared by the regulations (under the *Water Management Act 2000*) to be an estuary,

but does not include anything declared by the regulations (under the *Water Management Act 2000*) not to be an estuary.

excavation means the removal of soil or rock, whether moved to another part of the same site or to another site, but does not include garden landscaping that does not significantly alter the shape, natural form or drainage of the land.

extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

extractive material means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the *Mining Act 1992*.

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fill means the depositing of soil, rock or other similar extractive material obtained from the same or another site, but does not include:

- (a) the depositing of topsoil or feature rock imported to the site that is intended for use in garden landscaping, turf or garden bed establishment or top dressing of lawns and that does not significantly alter the shape, natural form or drainage of the land, or
- (b) a waste disposal land fill operation.

fish has the same meaning as in the *Fisheries Management Act 1994*.

Note. The term is defined as follows:

Definition of “fish”

- (1) **Fish** means marine, estuarine or freshwater fish or other aquatic animal life at any stage of their life history (whether alive or dead).
- (2) **Fish** includes:
 - (a) oysters and other aquatic molluscs, and
 - (b) crustaceans, and
 - (c) echinoderms, and
 - (d) beachworms and other aquatic polychaetes.
- (3) **Fish** also includes any part of a fish.
- (4) However, **fish** does not include whales, mammals, reptiles, birds, amphibians or other things excluded from the definition by the regulations under the *Fisheries Management Act 1994*.

flood mitigation work means work designed and constructed for the express purpose of mitigating flood impacts. It involves changing the characteristics of flood behaviour to alter the level, location, volume, speed or timing of flood waters to mitigate flood impacts. Types of works may include excavation, construction or enlargement of any fill, wall, or levee that will alter riverine flood behaviour, local overland flooding, or tidal action so as to mitigate flood impacts.

flood prone land means land that is at or below 0.5 metres above the 1 percent Annual Exceedance Probability flood level.

floor space ratio of buildings on a site is the ratio of the total floor space area of all buildings within the site to the site area.

Floor Space Ratio Map means the Newcastle City Centre Local Environmental Plan 2008 Floor Space Ratio Map.

food and drink premises means retail premises used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes restaurants, cafes, take away food and drink premises, milk bars and pubs.

forestry has the same meaning as **forestry operations** in the *Forestry and National Park Estate Act 1998*.

Note. The term is defined as follows:

forestry operations means:

- (a) logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or
- (b) forest products operations, namely, the harvesting of products of trees, shrubs and other vegetation (other than timber) that are of economic value, or
- (c) on-going forest management operations, namely, activities relating to the management of land for timber production such as thinning, bush fire hazard reduction, bee-keeping, grazing and other silvicultural activities, or
- (d) ancillary road construction, namely, the provision of roads and fire trails, and the maintenance of existing railways, to enable or assist in the above operations.

function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

funeral chapel means business premises used to arrange, conduct and cater for funerals and memorial services, and includes facilities for the short-term storage, dressing and viewing of bodies of deceased persons, but does not include premises with mortuary facilities.

gross floor area means the sum of the floor area of each storey of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
 - (b) habitable rooms in a basement, and
 - (c) any shop, auditorium, cinema, and the like, in a basement or attic,
- but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

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ground level (existing) means the existing level of a site at any point.

group home means a dwelling that is a permanent group home or a transitional group home.

hazardous industry means development for the purpose of an industry that, when the development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the development from existing or likely future development on other land in the locality), would pose a significant risk in the locality:

- (a) to human health, life or property, or
- (b) to the biophysical environment.

hazardous storage establishment means any establishment where goods, materials or products are stored that, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on other land in the locality), would pose a significant risk in the locality:

- (a) to human health, life or property, or
- (b) to the biophysical environment.

headland includes a promontory extending from the general line of the coastline into a large body of water, such as a sea, coastal lake or bay.

health care professional means any person registered under an Act for the purpose of providing health care.

health consulting rooms means one or more rooms within (or within the curtilage of) a dwelling house used by not more than 3 health care professionals who practise in partnership (if there is more than one such professional) who provide professional health care services to members of the public.

Height of Buildings Map means the Newcastle City Centre Local Environmental Plan 2008 Height of Buildings Map.

helipad means a place not open to the public used for the taking off and landing of helicopters.

heritage conservation area means:

- (a) an area of land that is shown as a heritage conservation area on the Heritage Map, as referred to in Part 2 of Schedule 5 (including any heritage items situated on or within that conservation area), or
- (b) a place of Aboriginal heritage significance shown on the Heritage Map.

heritage conservation management plan means a document prepared in accordance with guidelines prepared by the Department of Planning that documents 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.

heritage impact statement means a document consisting of:

- (a) a statement demonstrating the heritage significance of a heritage item, archaeological site, place of Aboriginal heritage significance or other heritage conservation area, and
- (b) an assessment of the impact that proposed development will have on that significance, and
- (c) proposals for measures to minimise that impact.

heritage item means a building, work, archaeological site, tree, place or Aboriginal object specified in an inventory of heritage items that is available at the office of the Council and the site and nature of which is described in Part 1 of Schedule 5.

Heritage Map means the Newcastle City Centre Local Environmental Plan 2008 Heritage Map.

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

home-based child care means a dwelling used by a resident of the dwelling for the supervision and care of one or more children and that satisfies the following conditions:

- (a) the service is appropriately licensed within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*,
- (b) the number of children (including children related to the carer or licensee) does not at any one time exceed 7 children under the age of 12 years, including no more than 5 who do not ordinarily attend school.

home business means a business carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling that does not involve:

- (a) the employment of more than 2 persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or
- (d) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling to indicate the name of the resident and the business carried on in the dwelling), or
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building, or
- (f) the use of more than 25 square metres of floor area to carry on the business, but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.

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home occupation means an occupation carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling that does not involve:

- (a) the employment of persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the display of goods, whether in a window or otherwise, or
- (d) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling to indicate the name of the resident and the occupation carried on in the dwelling), or
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include bed and breakfast accommodation, a brothel or home occupation (sex services).

home occupation (sex services) means the provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling, by no more than 2 permanent residents of the dwelling and that does not involve:

- (a) the employment of persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or
- (c) the exhibition of any notice, advertisement or sign, or
- (d) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include a home business or sex services premises.

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, psychiatric care or care for people with disabilities, or counselling 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 ancillary facilities for (or that consist of) any of the following:

- (a) day surgery, day procedures or health consulting rooms,
- (b) accommodation for nurses or other health care workers,
- (c) accommodation for persons receiving health care or for their visitors,
- (d) shops or refreshment rooms,
- (e) transport of patients, including helipads, ambulance facilities and car parking,
- (f) educational purposes or any other health-related use,
- (g) research purposes (whether or not it is carried out by hospital staff or health care workers or for commercial purposes),

- (h) chapels,
- (i) hospices,
- (j) mortuaries.

hostel means premises that are generally staffed by social workers or support providers and at which:

- (a) residential accommodation is provided in dormitories, or on a single or shared basis, or by a combination of them, and
- (b) cooking, dining, laundering, cleaning and other facilities are provided on a shared basis.

hotel accommodation means a building (whether or not a hotel within the meaning of the *Liquor Act 1982*) that provides tourist and visitor accommodation consisting of rooms or self-contained suites, but does not include backpackers' accommodation, a boarding house or bed and breakfast accommodation.

industry means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing or adapting, or the research and development of any goods, chemical substances, food, agricultural or beverage products, or articles for commercial purposes, but does not include extractive industry or a mine.

information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

Key Sites Map means the Newcastle City Centre Local Environmental Plan 2008 Key Sites Map.

kiosk means retail premises with a gross floor area not exceeding 20 square metres and that is used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like.

Land Application Map means the Newcastle City Centre Local Environmental Plan 2008 Land Application Map.

Land Reservation Acquisition Map means the Newcastle City Centre Local Environmental Plan 2008 Land Reservation Acquisition Map.

Land Use Table means the Table at the end of Part 2 of this Plan.

Land Zoning Map means the Newcastle City Centre Local Environmental Plan 2008 Land Zoning Map.

light industry means an industry, not being a hazardous or offensive industry or involving use of a hazardous or offensive storage establishment, in which the processes carried on, the transportation involved or the machinery or materials used do not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise.

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liquid fuel depot means a depot or place used for the bulk storage for wholesale distribution of petrol, oil, petroleum or other inflammable liquid and at which no retail trade is conducted.

maintenance, in relation to a heritage item or a building, work, archaeological site, tree or place within a heritage conservation area, means on-going protective care. It does not include the removal or disturbance of existing fabric, alterations, such as carrying out extensions or additions, or the introduction of new materials or technology.

marina means a permanent boat storage facility (whether located wholly on land, wholly on the waterway or partly on land and partly on the waterway) together with any associated facilities, including:

- (a) any facility for the construction, repair, maintenance, storage, sale or hire of boats, and
- (b) any facility for providing fuelling, sewage pump-out or other services for boats, and
- (c) any facility for launching or landing boats, such as slipways or hoists, and
- (d) any associated car parking, commercial, tourist or recreational or club facility that is ancillary to a boat storage facility, and
- (e) any associated single mooring.

market means retail premises comprising an open-air area or an existing building used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.

mean high water mark means the position where the plane of the mean high water level of all ordinary local high tides intersects the foreshore, being 1.44m above the zero of Fort Denison Tide Gauge and 0.515m Australian Height Datum.

medical centre means business premises used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals, and may include the ancillary provision of other health services.

mezzanine means an intermediate floor within a room.

mine means any place (including any excavation) where an operation is carried on for mining of any mineral by any method and any place on which any mining related work is carried out, but does not include a place used only for extractive industry.

mining means mining carried out under the *Mining Act 1992* or the recovery of minerals under the *Offshore Minerals Act 1999*, and includes:

- (a) the construction, operation and decommissioning of associated works, and
- (b) the rehabilitation of land affected by mining.

mixed use development means a building or place comprising 2 or more different land uses.

mooring means a detached or freestanding apparatus located on or in a waterway and that is capable of securing a vessel.

mortuary means premises that are used, or intended to be used, for the receiving, preparation, embalming and storage of bodies of deceased persons pending their interment or cremation.

moveable dwelling has the same meaning as in the *Local Government Act 1993*.

Note. The term is defined as follows:

moveable dwelling means:

- (a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or
- (b) a manufactured home, or
- (c) any conveyance, structure or thing of a class or description prescribed by the regulations (under the *Local Government Act 1993*) for the purposes of this definition.

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land.

native fauna means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, whether vertebrate (including fish) or invertebrate and in any stage of biological development, but does not include humans.

native flora means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, and marine vegetation within the meaning of Part 7A of the *Fisheries Management Act 1994*.

native vegetation has the same meaning as in the *Native Vegetation Act 2003*.

Note. The term is defined as follows:

Meaning of “native vegetation”

- (1) **Native vegetation** means any of the following types of indigenous vegetation:
 - (a) trees (including any sapling or shrub, or any scrub),
 - (b) understorey plants,
 - (c) groundcover (being any type of herbaceous vegetation),
 - (d) plants occurring in a wetland.
- (2) Vegetation is **indigenous** if it is of a species of vegetation, or if it comprises species of vegetation, that existed in the State before European settlement.
- (3) **Native vegetation** does not include any mangroves, seagrasses or any other type of marine vegetation to which section 205 of the *Fisheries Management Act 1994* applies.

neighbourhood shop means retail premises used for the purposes of selling small daily convenience goods, such as foodstuffs, personal care products, newspapers and the like for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank, newsagency or dry cleaning, but does not include restricted premises.

Newcastle Development Control Plan 2005 means *Newcastle Development Control Plan 2005* adopted by the Council, as in force at the commencement of this Plan.

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NSW Coastal Policy means the publication titled *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*, published by the Government.

offensive industry means any development for the purpose of an industry that would, when the development is in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the development from existing or likely future development on other land in the locality), emit a polluting discharge (including, for example, noise) in a manner that would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality.

offensive storage establishment means any establishment where goods, materials or products are stored and that would, when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on other land in the locality), emit a polluting discharge (including, for example, noise) in a manner that would have a significant adverse impact in the locality or on the existing or likely future development on other land in the locality.

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

operational land has the same meaning as in the *Local Government Act 1993*.

parking space means a space dedicated for the parking of a motor vehicle, including any manoeuvring space and access to it, but does not include a car park.

passenger transport facility means a building or place used for the assembly or dispersal of passengers by any form of transport, including facilities required for parking, manoeuvring, storage or routine servicing of any vehicle that uses the building or place.

permanent group home means a dwelling:

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and
- (b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,

but does not include a building to which *State Environmental Planning Policy (Seniors Living) 2004* applies.

place of Aboriginal heritage significance means an area of land shown on the Heritage Map that is:

- (a) the site of one or more Aboriginal objects or 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. It includes natural features such as creeks or mountains of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance.

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

pub means licensed premises under the *Liquor Act 1982* the principal purpose of which is the sale of liquor for consumption on the premises, whether or not the premises include hotel accommodation and whether or not food is sold on the premises.

public administration 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 and included a courthouse or a police station.

public authority has the same meaning as in the Act.

public hall has the same meaning as in the *Local Government Act 1993*.

Note. The term is defined as follows:

public hall means any building or part of a building that is used or intended to be used for the purpose of providing public entertainment or conducting public meetings.

public land has the same meaning as in the *Local Government Act 1993*.

Note. The term is defined as follows:

public land means any land (including a public reserve) vested in or under the control of the council, but does not include:

- (a) a public road, or
- (b) land to which the *Crown Lands Act 1989* applies, or
- (c) a common, or
- (d) land subject to the *Trustees of Schools of Arts Enabling Act 1902*, or
- (e) a regional park under the *National Parks and Wildlife Act 1974*.

public reserve has the same meaning as in the *Local Government Act 1993*.

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

- (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,

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and a reference to a person carrying on a public utility undertaking includes a reference to a council, electricity supply authority, Government Department, corporation, firm or authority carrying on the undertaking.

recreation area means a place used for outdoor recreation that is normally open to the public, and includes:

- (a) a children's playground, or
- (b) an area used for community sporting activities, or
- (c) a public park, reserve or garden or the like,

and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).

recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

recreation facility (major) means a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people whether regularly or periodically, and includes sports stadiums, showgrounds, racecourses and motor racing tracks.

recreation facility (outdoor) means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

registered club means a club in respect of which a certificate of registration under the *Registered Clubs Act 1976* is in force.

relic means any deposit, object or other material evidence of human habitation:

- (a) that relates to the settlement of the Newcastle local government area, not being Aboriginal settlement, and
- (b) that is more than 50 years old, and
- (c) that is a fixture or is wholly or partly within the ground.

remove, in relation to a tree, means cut down, fell, destroy, kill, transplant or uproot a tree.

residential accommodation means a building or place used predominantly as a place of residence, but does not include tourist and visitor accommodation.

residential care facility means accommodation for seniors (people aged 55 years or more) or people with a disability that includes:

-
- (a) meals and cleaning services, and
 - (b) personal care or nursing care, or both, and
 - (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

not being a dwelling, hospital or psychiatric facility.

residential flat building means a building containing 3 or more dwellings.

restaurant means a building or place the principal purpose of which is the provision of food or beverages to people for consumption on the premises and that may also provide takeaway meals and beverages.

restricted premises means business premises or retail premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises but does not include hotel accommodation, a pub, home occupation (sex services) or sex services premises.

retail premises means a building or place used for the purpose of selling items by retail, or for hiring or displaying items for the purpose of selling them by retail or hiring them out, whether the items are goods or materials (or whether also sold by wholesale).

roadside stall means a place or temporary structure with a gross floor area not exceeding 8 square metres used for retail selling of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.

school means a government school or non-government school within the meaning of the *Education Act 1990*.

seniors housing means residential accommodation that consists of:

- (a) a residential care facility, or
- (b) a hostel, or
- (c) a group of self-contained dwellings, or
- (d) a combination of these,

and that is, or is intended to be, used permanently for:

- (e) seniors or people who have a disability, or
- (f) people who live in the same household with seniors or people who have a disability, or
- (g) staff employed to assist in the administration of the residential accommodation or in the provision of services to persons living in the accommodation,

but does not include a hospital.

serviced apartment means a building or part of a building providing self-contained tourist and visitor accommodation that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

sex services means sexual acts or sexual services in exchange for payment.

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sex services premises means a brothel, but does not include home occupation (sex services).

shop top housing means one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises.

site area means the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other.

spa pool has the same meaning as in the *Swimming Pools Act 1992*.

Note. The term is defined to include any excavation, structure or vessel in the nature of a spa pool, flotation tank, tub or the like.

storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) a space that contains only a lift shaft, stairway or meter room, or
- (b) a mezzanine, or
- (c) an attic.

swimming pool has the same meaning as in the *Swimming Pools Act 1992*.

Note. The term is defined as follows:

swimming pool means an excavation, structure or vessel:

- (a) that is capable of being filled with water to a depth of 300 millimetres or more, and
- (b) that is solely or principally used, or that is designed, manufactured or adapted to be solely or principally used, for the purpose of swimming, wading, paddling or any other human aquatic activity,

and includes a spa pool, but does not include a spa bath, anything that is situated within a bathroom or anything declared by the regulations made under the *Swimming Pools Act 1992* not to be a swimming pool for the purposes of that Act.

take away food and drink premises means food and drink premises that are predominantly used for the preparation and sale of food or drink (or both) for immediate consumption away from the premises.

telecommunications facility means:

- (a) any part of the infrastructure of a telecommunications network, or
- (b) any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or to be used, 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.

temporary structure has the same meaning as in the Act.

Note. The term is defined as follows:

temporary structure includes a booth, tent or other temporary enclosure (whether or not part of the booth, tent or enclosure is permanent), and also includes a mobile structure.

the Act means the *Environmental Planning and Assessment Act 1979*.

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes hotel accommodation, serviced apartments, bed and breakfast accommodation and backpackers' accommodation.

transitional group home means a dwelling:

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and
- (b) that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide half-way accommodation for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people,

but does not include a building to which *State Environmental Planning Policy (Seniors Living) 2004* applies.

turf farming means the commercial cultivation of turf for sale and the removal of turf for that purpose.

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

warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made.

waste disposal land fill operation means use of land for the purpose of disposing of industrial, trade or domestic waste on that land.

waste management facility means a facility used for the storage, treatment, purifying or disposal of waste, whether or not it is also used for the sorting, processing, recycling, recovering, use or reuse of material from that waste, and whether or not any such operations are carried out on a commercial basis. It may include but is not limited to:

- (a) an extractive industry ancillary to, required for or associated with the preparation or remediation of the site for such storage, treatment, purifying or disposal, and
- (b) eco-generating works ancillary to or associated with such storage, treatment, purifying or disposal.

waterbody means a waterbody (artificial) or waterbody (natural).

waterbody (artificial) means an artificial body of water, including any constructed waterway, canal, inlet, bay, channel, dam, pond, lake or artificial wetland, but does not include a dry detention basin or other stormwater management construction that is only intended to hold water intermittently.

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Dictionary

waterbody (natural) means a natural body of water, whether perennial or intermittent, fresh, brackish or saline, the course of which may have been artificially modified or diverted onto a new course, and includes a river, creek, stream, lake, lagoon, natural wetland, estuary, bay, inlet or tidal waters (including the sea).

watercourse means any river, creek, stream or chain of ponds, whether artificially modified or not, in which water usually flows, either continuously or intermittently, in a defined bed or channel, but does not include a waterbody (artificial).

waterway means the whole or any part of a watercourse, wetland, waterbody (artificial) or waterbody (natural).

wetland means:

- (a) natural wetland, including marshes, mangroves, backwaters, billabongs, swamps, sedgelands, wet meadows or wet heathlands that form a shallow waterbody (up to 2 metres in depth) when inundated cyclically, intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities, or
- (b) artificial wetland, including marshes, swamps, wet meadows, sedgelands or wet heathlands that form a shallow waterbody (up to 2 metres in depth) when inundated cyclically, intermittently or permanently with water, and are constructed and vegetated with wetland plant communities.

Wickham Redevelopment Area Map means the Newcastle City Centre Local Environmental Plan 2008 Wickham Redevelopment Area Map.

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