



New South Wales

# **State Environmental Planning Policy Amendment (West Byron Bay) 2014**

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

PRU GOWARD, MP  
Minister for Planning

## **State Environmental Planning Policy Amendment (West Byron Bay) 2014**

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### **1 Name of Policy**

This Policy is *State Environmental Planning Policy Amendment (West Byron Bay) 2014*.

### **2 Commencement**

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

### **3 Repeal of Policy**

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

## Schedule 1 Amendment of Byron Local Environmental Plan 1988

### Part 4

Insert after Part 3:

### Part 4 West Byron Bay site

#### Division 1 Preliminary

##### 65 Application of Part

- (1) This Part applies to the land identified on the Land Application Map, referred to in this Part as the *West Byron Bay site*.
- (2) No other provisions of this plan (other than clause 7) apply to land within the West Byron Bay site.

##### 66 Interpretation

- (1) In this Part:

*Acid Sulfate Soils Map* means the Byron Local Environmental Plan 1988—West Byron Bay—Acid Sulfate Soils Map.

*Council* means the Byron Shire Council.

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

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

*Flood Planning Map* means the Byron Local Environmental Plan 1988—West Byron Bay—Flood Planning Map.

*Height of Buildings Map* means the Byron Local Environmental Plan 1988—West Byron Bay—Height of Buildings Map.

*Land Application Map* means the Byron Local Environmental Plan 1988—West Byron Bay—Land Application Map.

*Land Reservation Acquisition Map* means the Byron Local Environmental Plan 1988—West Byron Bay—Land Reservation Acquisition Map.

*Land Zoning Map* means the Byron Local Environmental Plan 1988—West Byron Bay—Land Zoning Map.

*Lot Size Map* means the Byron Local Environmental Plan 1988—West Byron Bay—Lot Size Map.

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

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

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

**Urban Release Area Map** means the Byron Local Environmental Plan 1988—West Byron Bay—Urban Release Area Map.

- (2) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* unless it is otherwise defined in this Part.

## 67 Maps

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

## 68 Savings provision relating to development applications

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

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

## 69 Repeal of planning instruments applying to land

- (1) All local environmental plans and deemed environmental planning instruments applying only to the West Byron Bay site are repealed.
- (2) All local environmental plans and deemed environmental planning instruments applying to the West Byron Bay site and to other land cease to apply to the West Byron Bay site.

## 70 Relationship with this Part and other environmental planning instruments

The only other environmental planning instruments that apply, according to their terms, to land within the West Byron Bay site are all State environmental planning policies, except the following:

- State Environmental Planning Policy No 1—Development Standards*,
- State Environmental Planning Policy No 71—Coastal Protection*,
- North Coast Regional Environmental Plan*.

## **Division 2 Provisions applying to development in West Byron Bay site**

### **71 Land use zones**

For the purposes of this Part, land within the West Byron Bay site is in a zone as follows if the land is shown on the Land Zoning Map as being in that zone:

- (a) Zone R2 Low Density Residential,
- (b) Zone R3 Medium Density Residential,
- (c) Zone B1 Neighbourhood Centre,
- (d) Zone IN2 Light Industrial,
- (e) Zone RE1 Public Recreation,
- (f) Zone E2 Environmental Conservation,
- (g) Zone E3 Environmental Management.

### **72 Zone objectives and control of development**

- (1) 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.
- (2) In this Division, a reference to a type of building or other thing does not include (despite any definition in this plan or the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*) a reference to a type of building or other thing referred to separately in the same clause.

### **73 Zone R2 Low Density Residential**

- (1) The objectives of Zone R2 Low Density Residential are as follows:
  - (a) to provide for the housing needs of the community within a low density residential environment,
  - (b) to enable other land uses that provide facilities or services to meet the day to day needs of residents.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone R2 Low Density Residential:  
environmental protection works; home-based child care; home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R2 Low Density Residential:  
attached dwellings; bed and breakfast accommodation; boarding houses; business identification signs; dual occupancies; dwelling houses; group homes; health consulting rooms; home industries; multi dwelling housing; neighbourhood shops; roads; seniors housing; any other development not specified in subclause (2) or (4).
- (4) Development for any of the following purposes is prohibited on land within Zone R2 Low Density Residential:  
agriculture; air transport facilities; airstrips; amusement centres; animal boarding or training establishments; biosolids treatment facilities; boat building and repair facilities; boat launching ramps; boat sheds; camping grounds; car parks; caravan parks; cemeteries; charter and tourism boating facilities; commercial premises; correctional centres; crematoria; depots; eco-tourist facilities; electricity generating works; entertainment facilities;

exhibition villages; extractive industries; farm buildings; forestry; freight transport facilities; function centres; health services facilities; heavy industrial storage establishments; helipads; highway service centres; home occupations (sex services); industrial retail outlets; industrial training facilities; industries; information and education facilities; jetties; marinas; mooring pens; moorings; mortuaries; open cut mining; passenger transport facilities; public administration buildings; recreation facilities (indoor); recreation facilities (major); recreation facilities (outdoor); registered clubs; research stations; residential accommodation; residential care facilities; restricted premises; rural industries; service stations; sewage treatment plants; sex services premises; signage; storage premises; tourist and visitor accommodation; transport depots; truck depots; vehicle body repair workshops; vehicle repair stations; veterinary hospitals; warehouse or distribution centres; waste or resource management facilities; water recreation structures; water recycling facilities; water supply systems; wharf or boating facilities; wholesale supplies.

#### **74 Zone R3 Medium Density Residential**

- (1) The objectives of Zone R3 Medium Density Residential are as follows:
  - (a) to provide for the housing needs of the community within a medium density residential environment,
  - (b) to provide a variety of housing types within a medium density residential environment,
  - (c) to enable other land uses that provide facilities or services to meet the day to day needs of residents.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone R3 Medium Density Residential:  
environmental protection works; home-based child care; home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone R3 Medium Density Residential:  
attached dwellings; bed and breakfast accommodation; boarding houses; business identification signs; child care centres; community facilities; group homes; home industries; multi dwelling housing; neighbourhood shops; places of public worship; respite day care centres; roads; seniors housing; serviced apartments; any other development not specified in subclause (2) or (4).
- (4) Development for any of the following purposes is prohibited on land within Zone R3 Medium Density Residential:  
agriculture; air transport facilities; airstrips; amusement centres; animal boarding or training establishments; biosolids treatment facilities; boat building and repair facilities; boat launching ramps; boat sheds; camping grounds; car parks; cemeteries; charter and tourism boating facilities; commercial premises; correctional centres; crematoria; depots; eco-tourist facilities; electricity generating works; entertainment facilities; exhibition villages; extractive industries; farm buildings; forestry; freight transport facilities; function centres; heavy industrial storage establishments; helipads; highway service centres; home occupations (sex services); industrial retail outlets; industrial training facilities; industries; information and education facilities; jetties; marinas; mooring pens; moorings; mortuaries; open cut mining; passenger transport facilities; recreation facilities (indoor); recreation facilities (major); recreation facilities (outdoor); registered clubs; research stations; restricted premises; rural industries; rural workers' dwellings; service stations; sewage treatment plants; sex services premises; signage; storage

premises; tourist and visitor accommodation; transport depots; truck depots; vehicle body repair workshops; vehicle repair stations; veterinary hospitals; warehouse or distribution centres; waste or resource management facilities; water recreation structures; water recycling facilities; water supply systems; wharf or boating facilities; wholesale supplies.

#### **75 Zone B1 Neighbourhood Centre**

- (1) The objective of Zone B1 Neighbourhood Centre is to provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone B1 Neighbourhood Centre:  
environmental protection works; home-based child care; home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone B1 Neighbourhood Centre:  
boarding houses; business premises; child care centres; community facilities; health consulting rooms; home industries; hostels; hotel or motel accommodation; medical centres; neighbourhood shops; respite day care centres; roads; shop top housing; any other development not specified in subclause (2) or (4).
- (4) Development for any of the following purposes is prohibited on land within Zone B1 Neighbourhood Centre:  
agriculture; air transport facilities; airstrips; animal boarding or training establishments; biosolids treatment facilities; boat building and repair facilities; boat launching ramps; boat sheds; bulky goods premises; camping grounds; caravan parks; cellar door premises; cemeteries; charter and tourism boating facilities; correctional centres; crematoria; depots; eco-tourist facilities; electricity generating works; exhibition homes; exhibition villages; extractive industries; farm buildings; forestry; freight transport facilities; health services facilities; heavy industrial storage establishments; helipads; highway service centres; home occupations (sex services); industrial retail outlets; industrial training facilities; industries; jetties; landscaping material supplies; marinas; mooring pens; moorings; mortuaries; open cut mining; passenger transport facilities; recreation facilities (indoor); recreation facilities (major); recreation facilities (outdoor); research stations; residential accommodation; resource recovery facilities; restricted premises; roadside stalls; rural industries; rural supplies; sewage treatment plants; sex services premises; storage premises; timber yards; tourist and visitor accommodation; transport depots; truck depots; vehicle body repair workshops; vehicle repair stations; vehicle sales or hire premises; warehouse or distribution centres; waste disposal facilities; water recreation structures; water recycling facilities; water supply systems; wharf or boating facilities; wholesale supplies.

#### **76 Zone IN2 Light Industrial**

- (1) The objectives of Zone IN2 Light Industrial are as follows:
  - (a) to provide a wide range of light industrial, warehouse and related land uses,
  - (b) to encourage employment opportunities and to support the viability of centres,
  - (c) to minimise any adverse effect of industry on other land uses,

- (d) to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area,
  - (e) to support and protect industrial land for industrial uses.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone IN2 Light Industrial:  
environmental protection works.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone IN2 Light Industrial:  
agricultural produce industries; depots; garden centres; general industries; hardware and building supplies; industrial training facilities; landscaping material supplies; light industries; liquid fuel depots; neighbourhood shops; plant nurseries; roads; rural supplies; take away food and drink premises; timber yards; vehicle sales or hire premises; warehouse or distribution centres; any other development not specified in subclause (2) or (4).
- (4) Development for any of the following purposes is prohibited on land within Zone IN2 Light Industrial:  
agriculture; air transport facilities; airstrips; amusement centres; animal boarding or training establishments; biosolids treatment facilities; boat launching ramps; boat sheds; camping grounds; caravan parks; cemeteries; charter and tourism boating facilities; child care centres; commercial premises; correctional centres; eco-tourist facilities; exhibition homes; exhibition villages; extractive industries; farm buildings; forestry; health services facilities; heavy industrial storage establishments; helipads; highway service centres; home-based child care; home businesses; home occupations; home occupations (sex services); industries; jetties; marinas; mooring pens; moorings; open cut mining; passenger transport facilities; recreation areas; recreation facilities (major); recreation facilities (outdoor); registered clubs; research stations; residential accommodation; resource recovery facilities; respite day care centres; rural industries; sewage treatment plants; tourist and visitor accommodation; waste disposal facilities; water recreation structures; water recycling facilities; water supply systems; wharf or boating facilities.

## **77 Zone RE1 Public Recreation**

- (1) The objectives of Zone RE1 Public Recreation are as follows:
- (a) to enable land to be used for open space or recreational purposes,
  - (b) to provide a range of recreational settings and activities and compatible land uses,
  - (c) to protect and enhance the natural environment for recreational purposes.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone RE1 Public Recreation:  
environmental protection works.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone RE1 Public Recreation:  
boat launching ramps; boat sheds; camping grounds; caravan parks; child care centres; community facilities; emergency services facilities; entertainment facilities; environmental facilities; flood mitigation works; function centres; horticulture; information and education facilities; jetties; kiosks; markets; recreation areas; recreation facilities (indoor); recreation facilities (major);



recreation facilities (outdoor); respite day care centres; restaurants or cafes; roads; signage.

- (4) Except as otherwise provided by this Part, development is prohibited on land within Zone RE1 Public Recreation unless it is permitted by subclause (2) or (3).

#### **78 Zone E2 Environmental Conservation**

- (1) The objectives of Zone E2 Environmental Conservation are as follows:
- (a) to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values,
  - (b) to prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone E2 Environmental Conservation: environmental protection works.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone E2 Environmental Conservation: boat sheds; environmental facilities; recreation areas; roads.
- (4) Except as otherwise provided by this Part, development for any of the following purposes is prohibited on land within Zone E2 Environmental Conservation:  
business premises; hotel or motel accommodation; industries; multi dwelling housing; recreation facilities (major); residential flat buildings; restricted premises; retail premises; seniors housing; service stations; warehouse or distribution centres; any other development not specified in subclause (2) or (3).

#### **79 Zone E3 Environmental Management**

- (1) The objectives of Zone E3 Environmental Management are as follows:
- (a) to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values,
  - (b) to provide for a limited range of development that does not have an adverse effect on those values.
- (2) Development for any of the following purposes is permitted without development consent on land within Zone E3 Environmental Management: environmental protection works; home-based child care; home occupations.
- (3) Development for any of the following purposes is permitted only with development consent on land within Zone E3 Environmental Management: bed and breakfast accommodation; boat launching ramps; building identification signs; business identification signs; camping grounds; community facilities; dual occupancies (attached); dwelling houses; eco-tourist facilities; emergency services facilities; environmental facilities; extensive agriculture; farm buildings; farm stay accommodation; flood mitigation works; home businesses; home industries; horticulture; jetties; places of public worship; recreation areas; roads; veterinary hospitals; wharf or boating facilities.

- (4) Except as otherwise provided by this Part, development for any of the following purposes is prohibited on land within Zone E3 Environmental Management:

industries; multi dwelling housing; residential flat buildings; retail premises; seniors housing; service stations; warehouse or distribution centres; any other development not specified in subclause (2) or (3).

#### **80 Subdivision—consent requirements**

- (1) Land within the West Byron Bay site may be subdivided, but only with development consent.

**Notes.**

- 1 If a subdivision is specified as **exempt development** in an applicable environmental planning instrument, such as this plan or *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the Act enables it to be carried out without development consent.
  - 2 Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides that the strata subdivision of a building in certain circumstances is **complying development**.
- (2) Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot Size Map in relation to that land.

**Note.** The definition of **secondary dwelling** requires the dwelling to be on the same lot of land as the principal dwelling.

#### **81 Minimum subdivision lot size**

- (1) The objectives of this clause are as follows:
- (a) to establish a minimum lot size for Zone R2 Low Density Residential and Zone R3 Medium Density Residential,
  - (b) to encourage small residential lots in appropriate locations in West Byron Bay.
- (2) This clause applies to a subdivision of any land within the West Byron Bay site shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Part.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.
- (4) This clause does not apply in relation to the subdivision of individual lots in a strata plan or community title scheme.

#### **82 Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings**

- (1) The objective of this clause is to achieve planned residential density in certain zones.
- (2) Despite clause 81, development consent may be granted to development on a lot in a zone shown in Column 2 of the Table to this clause for a purpose shown in Column 1 of the Table opposite that zone, only if the area of the lot is equal

to or greater than the area specified for that purpose and shown in Column 3 of the Table.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
Dual occupancy (attached)	R2 Low Density Residential R3 Medium Density Residential	300 square metres
Dual occupancy (detached)	R2 Low Density Residential R3 Medium Density Residential	400 square metres
Multi dwelling housing	R2 Low Density Residential R3 Medium Density Residential	450 square metres
Residential flat building	R3 Medium Density Residential	1,000 square metres

**83 Exceptions to minimum subdivision lot sizes for certain residential development**

- (1) The objective of this clause is to encourage housing diversity without adversely impacting on residential amenity.
- (2) This clause applies to development on land in the following zones:
  - (a) Zone R2 Low Density Residential,
  - (b) Zone R3 Medium Density Residential.
- (3) Development consent may be granted for a single development application for development to which this clause applies that is both of the following:
  - (a) the subdivision of land into 3 or more lots,
  - (b) the erection of a dwelling house, an attached dwelling or a semi-detached dwelling on each lot resulting from the subdivision, if the size of each lot is equal to or greater than:
    - (i) for the erection of a dwelling house—200 square metres, or
    - (ii) for the erection of an attached dwelling—150 square metres, or
    - (iii) for the erection of a semi-detached dwelling—150 square metres.

**84 Height of buildings**

- (1) The objective of this clause is to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.
- (2) 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.

**85 Exceptions to development standards**

- (1) The objectives of this clause are as follows:
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However,

- this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
- (a) the consent authority is satisfied that:
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the 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) Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation or Zone E3 Environmental Management if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
  - (c) clause 87 (Controls relating to miscellaneous permissible uses),
  - (d) clause 99 or 100.

## 86 Relevant acquisition authority

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

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

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

Type of land shown on 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 under section 8 of the Act

- (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.

## 87 Controls relating to miscellaneous permissible uses

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

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

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

- (2) **Home businesses**

If development for the purposes of a home business is permitted under this Part, the carrying on of the business must not involve the use of more than 40 square metres of floor area.

- (3) **Home industries**

If development for the purposes of a home industry is permitted under this Part, the carrying on of the home industry must not involve the use of more than 40 square metres of floor area.

- (4) **Industrial retail outlets**

If development for the purposes of an industrial retail outlet is permitted under this Part, the retail floor area must not exceed:

- (a) 40% of the gross floor area of the industry or rural industry located on the same land as the retail outlet, or
- (b) 250 square metres,
- whichever is the lesser.

(5) **Farm stay accommodation**

If development for the purposes of farm stay accommodation is permitted under this Part, the accommodation that is provided to guests must consist of no more than 12 bedrooms.

(6) **Kiosks**

If development for the purposes of a kiosk is permitted under this Part, the gross floor area must not exceed 50 square metres.

(7) **Neighbourhood shops**

If development for the purposes of a neighbourhood shop is permitted under this Part, the retail floor area must not exceed 200 square metres.

(8) **Roadside stalls**

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

(9) **Secondary dwellings**

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

- (a) 60 square metres,
- (b) 35% of the total floor area of the principal dwelling.

**88 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
  - (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) Development 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 cumulative impacts of the proposed development and other development on the coastal catchment.
- (3) Development 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, and
  - (d) the proposed development will not:
    - (i) be significantly affected by coastal hazards, or

- (ii) have a significant impact on coastal hazards, or
- (iii) increase the risk of coastal hazards in relation to any other land.

#### **89 Conversion of fire alarms**

- (1) This clause applies to a fire alarm system that can be monitored by Fire and Rescue NSW or by a private service provider.
- (2) The following development may be carried out, but only with development consent:
  - (a) converting a fire alarm system from connection with the alarm monitoring system of Fire and Rescue NSW to connection with the alarm monitoring system of a private service provider,
  - (b) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with the alarm monitoring system of another private service provider,
  - (c) converting a fire alarm system from connection with the alarm monitoring system of a private service provider to connection with a different alarm monitoring system of the same private service provider.
- (3) Development to which subclause (2) applies is complying development if it consists only of:
  - (a) internal alterations to a building, or
  - (b) internal alterations to a building together with the mounting of an antenna, and any support structure, on an external wall or roof of a building so as to occupy a space of not more than 450mm × 100mm × 100mm.
- (4) A complying development certificate for any such complying development is subject to a condition that any building work may only be carried out between 7.00 am and 6.00 pm on Monday to Friday and between 7.00 am and 5.00 pm on Saturday, and must not be carried out on a Sunday or a public holiday.
- (5) In this clause:  
***private service provider*** means a person or body that has entered into an agreement that is in force with Fire and Rescue NSW to monitor fire alarm systems.

#### **90 Preservation of trees or vegetation**

- (1) The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.
- (2) This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.  
**Note.** A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.
- (3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:
  - (a) development consent, or
  - (b) a permit granted by the Council.
- (4) The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal



by the Council to grant consent for the carrying out of the activity for which a permit was sought.

- (5) This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.
- (6) This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.
- (7) A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:
  - (a) that is or forms part of a heritage item or that is within a heritage conservation area, or
  - (b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,unless the Council is satisfied that the proposed activity:
  - (c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and
  - (d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

**Note.** As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 92 will be applicable to any such consent.

- (8) This clause does not apply to or in respect of:
  - (a) the clearing of native vegetation:
    - (i) that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*, or
    - (ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or
  - (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003*) that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause, or
  - (c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*, or
  - (d) action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying and Spatial Information Act 2002*, or
  - (e) plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.**Note.** Permissibility may be a matter that is determined by or under any of these Acts.
- (9) Subclause (8) (a) (ii) does not apply in relation to land in Zone E2 Environmental Conservation or Zone E3 Environmental Management.

#### **91 Trees or vegetation not prescribed by development control plan**

- (1) This clause applies to any tree or other vegetation that is not of a species or kind prescribed for the purposes of clause 90 by a development control plan made by the Council.

- (2) The ringbarking, cutting down, topping, lopping, removal, injuring or destruction of any tree or other vegetation to which this clause applies is permitted without development consent.

## **92 Heritage conservation**

### **(1) Objectives**

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of the West Byron Bay site,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

### **(2) Requirement for consent**

Development consent is required for any of the following:

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):
  - (i) a heritage item,
  - (ii) an Aboriginal object,
  - (iii) a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 2 in relation to the item,
- (c) 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,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land:
  - (i) on which a heritage item is located or that is within a heritage conservation area, or
  - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
- (f) subdividing land:
  - (i) on which a heritage item is located or that is within a heritage conservation area, or
  - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

### **(3) When consent not required**

However, development 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, Aboriginal object, Aboriginal place of heritage significance or

archaeological site or a building, work, relic, tree or place within the heritage conservation area, and

- (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, 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 an Aboriginal place of heritage significance, or
  - (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
  - (d) the development is exempt development.
- (4) **Effect of proposed development on heritage significance**

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

(5) **Heritage assessment**

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

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

require a heritage management document 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 heritage 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.

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

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of 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 by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

(9) **Demolition of nominated State heritage items**

The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:

- (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, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Part, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document 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 management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

**93 Bush fire hazard reduction**

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

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

**94 Infrastructure development and use of existing buildings of the Crown**

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

- (2) This Part does not restrict or prohibit, or enable the restriction or prohibition of, the use of existing buildings of the Crown by the Crown.

**95 Eco-tourist facilities**

- (1) The objectives of this clause are as follows:
- (a) to maintain the environmental and cultural values of land on which development for the purposes of eco-tourist facilities is carried out,
  - (b) to provide for sensitively designed and managed eco-tourist facilities that have minimal impact on the environment both on and off-site.
- (2) This clause applies if development for the purposes of an eco-tourist facility is permitted with development consent under this Part.
- (3) The consent authority must not grant consent under this Part to carry out development for the purposes of an eco-tourist facility unless the consent authority is satisfied that:
- (a) there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and
  - (b) the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and
  - (c) the development will enhance an appreciation of the environmental and cultural values of the site or area, and
  - (d) the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and native flora and fauna will be minimal, and
  - (e) the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and
  - (f) waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and
  - (g) the development will be located to avoid visibility above ridgelines and against escarpments and from watercourses and that any visual intrusion will be minimised through the choice of design, colours, materials and landscaping with local native flora, and
  - (h) any infrastructure services to the site will be provided without significant modification to the environment, and
  - (i) any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and
  - (j) the development will not adversely affect the agricultural productivity of adjoining land, and
  - (k) the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:
    - (i) measures to remove any threat of serious or irreversible environmental damage,
    - (ii) the maintenance (or regeneration where necessary) of habitats,
    - (iii) efficient and minimal energy and water use and waste output,
    - (iv) mechanisms for monitoring and reviewing the effect of the development on the natural environment,

- (v) maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.

**96 Suspension of covenants, agreements and instruments**

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

**97 Acid sulfate soils**

- (1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.
- (2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

**Class of land Works**

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1	Any works.
2	Works below the natural ground surface. Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.
4	Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.

**Class of land Works**

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- 5 Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.
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- (3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.
- (4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if:
- (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and
  - (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.
- (5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power):
- (a) emergency work, being the repair or replacement of the works of the public authority, required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,
  - (b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),
  - (c) minor work, being work that costs less than \$20,000 (other than drainage work).
- (6) Despite subclause (2), development consent is not required under this clause to carry out any works if:
- (a) the works involve the disturbance of less than 1 tonne of soil, and
  - (b) the works are not likely to lower the watertable.
- (7) Despite subclause (2), development consent is not required under this clause for the carrying out of works for the purpose of agriculture if:
- (a) a production area entitlement is in force in respect of the land when the works are carried out, and
  - (b) the works are carried out in accordance with a drainage management plan, and
  - (c) the works are not carried out in respect of a major drain identified on the Acid Sulfate Soils Map, and
  - (d) the works are not carried out on land to which *State Environmental Planning Policy No 14—Coastal Wetlands* applies.

(8) In this clause:

**drainage management plan** means an irrigation and drainage management plan that:

- (a) is prepared in accordance with the *NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005)*, and
- (b) is endorsed by the Sugar Milling Co-operative as being appropriate for the land.

**NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005)** means the guidelines approved by the Director-General of the Department of Infrastructure, Planning and Natural Resources on 25 May 2005.

**production area entitlement** means a contractual arrangement between the Sugar Milling Co-operative and a grower member of that cooperative for the production of sugar cane for milling.

**Sugar Milling Co-operative** means the New South Wales Sugar Milling Co-operative Limited or its successor.

**Note.** The *NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005)* is available on the Department of Planning and Infrastructure's website.

## 98 Flood planning

(1) The objectives of this clause are as follows:

- (a) to minimise the flood risk to life and property associated with the use of land,
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of projected sea level rise,
- (c) to avoid significant adverse impacts on flood behaviour and the environment.

(2) This clause applies to:

- (a) land identified as "Flood planning area" on the Flood Planning Map, and
- (b) other land at or below the flood planning level.

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

(4) A word or expression used in this clause has the same meaning as it has in the *Floodplain Development Manual* (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.



- (5) In this clause:
- flood planning level*** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.
- projected sea level rise*** means the 2050 and 2100 sea level rise planning benchmarks as specified in the *NSW Coastal Planning Guideline: Adapting to Sea Level Rise* (ISBN 978-1-74263-035-9) published by the NSW Government in August 2010.

### **Division 3 Urban release areas**

#### **99 Arrangements for designated State public infrastructure**

- (1) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.
- (2) Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.
- (3) Subclause (2) does not apply to:
- any lot identified in the certificate as a residue lot, or
  - any lot to be created by a subdivision of land that was the subject of a previous development consent granted in accordance with this clause, or
  - any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or
  - a subdivision for the purpose only of rectifying an encroachment on any existing lot.
- (4) This clause does not apply to land in an urban release area if all or any part of the land is in a special contributions area (as defined by section 93C of the Act).

#### **100 Public utility infrastructure**

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

#### **101 Development control plan**

- (1) The objective of this clause is to ensure that development on land in an urban release area occurs in a logical and cost-effective manner, in accordance with

- a staging plan and only after a development control plan that includes specific controls has been prepared for the land.
- (2) Development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.
- (3) The development control plan must provide for all of the following:
- (a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,
  - (b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,
  - (c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,
  - (d) a network of active and passive recreation areas,
  - (e) stormwater and water quality management controls,
  - (f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,
  - (g) detailed urban design controls for significant development sites,
  - (h) measures to encourage higher density living around transport, open space and service nodes,
  - (i) measures to accommodate and control appropriate neighbourhood commercial and retail uses,
  - (j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.
- (4) Subclause (2) does not apply to development for any of the following purposes:
- (a) a subdivision for the purpose of a realignment of boundaries that does not create additional lots,
  - (b) a subdivision of land if any of the lots proposed to be created is to be reserved or dedicated for public open space, public roads or any other public or environmental protection purpose,
  - (c) a subdivision of land in a zone in which the erection of structures is prohibited,
  - (d) proposed development on land that is of a minor nature only, if the consent authority is of the opinion that the carrying out of the proposed development would be consistent with the objectives of the zone in which the land is situated.